

CITY OF NEWTON
IN BOARD OF ALDERMEN
LAND USE COMMITTEE REPORT

TUESDAY, MAY 20, 2014

Present: Ald. Laredo (Chairman), Ald. Crossley, Albright, Cote, Lennon, Lipof, Harney, and Schwartz; also present: Ald. Leary
Staff: Daniel Sexton (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#212-12(2) MICHAEL SOKOLOWSKI, TRUSTEE of 1081 WASHINGTON STREET REALTY TRUST petition for ONE-YEAR EXTENSION of TIME, from December 17, 2013 to December 17, 2014 in which to EXERCISE Special Permit/Site Plan Approval #212-12, granted on December 17, 2013 for various waivers from the parking requirements of Sec. 30-19 in order to construct a new two-story building for retail use at 1081 WASHINGTON STREET, Ward 3, West Newton. Ref: Sec 30-24(c)(4) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED

NOTE: Attorney Alan Schlesinger explained that revisions to the proposed project made during the permitting process required significant changes in the arrangements between the petitioner and the proposed tenant, Sleepy's mattress store. Those changes contributed to a delay in preparation of the final plans for construction. The project is now on track but requires an extension of time to December 17, 2014. Alderman Cote moved approval, which carried unanimously.

Public Hearing continued on May 13:

#141-13(3) NITZAN GORDON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a retaining wall greater than four feet in front of an existing garage, which will lower the grade of an existing driveway to create a flatter surface, and to locate two parking stalls in the front setback at 74 NEWTONVILLE AVENUE, Newton, Ward 1, on land known as SBL 12, 21, 25C containing approx. 10,021 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-19(g)(1), 30-19(m), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 7-0-1 (Lennon abstaining)

NOTE: The public hearing was opened on May 13 and continued. Present on May 13 were Aldermen Laredo (Chairman), Albright, Cote, Lipof, Schwartz, Lennon, and Harney. The petitioner previously applied for a special permit for a retaining wall in 2013 and the Land Use Committee approved it on November 19, 2013; however, the petitioner withdrew that petition because errors were found on the approved plans. Discrepancies involved accurate measurements of the driveway and surrounding slope, which exaggerated the proposed height of the proposed retaining walls. In addition, there were allegations of outstanding enforcement

cases and open building permits relative to the property. The Inspectional Services Department has reported that all of the city's previous enforcement cases and open building permit issues have been closed.

The petitioner (submittal attached) is proposing to reconstruct the driveway with a reduced slope, which involves demolishing and reconstructing the retaining walls surrounding the driveway in the front setback at a maximum height of approximately 5½ feet at the highest point. This will eliminate access to the existing two-car garage, which will be converted into living space, and will create two side-by-side parking stalls in the front setback. The usability of the existing driveway is limited, especially in winter. The petitioner is seeking relief to construct retaining walls greater than four feet in the front setback and to provide parking for two cars in the front setback. A snow storage area is proposed to the west of the driveway.

The Planning Department noted the significant slope on the property and on surrounding properties, which limits ways in which on-site parking can be accommodated. The slope does present challenges for the reasonable use of the driveway and attached garage: Reducing the slope of driveway would make parking more practical and safe. Furthermore, the Planning Department believes the proposed design should minimize the visual appearance of the project on the surrounding neighborhood. In addition, the proposed parking in the front setback is consistent with off-street parking patterns on nearby properties. The two parking stalls will be 4½ feet from the street, where 5 feet is the required minimum. This brings the parking as far as possible (10 feet) from the wall of the house.

The petition does not require a landscape plan. The petitioner is proposing to install a 42-inch metal railing on top of the proposed segment of the wall near the house. The wall material will be block; concrete pavers will be used for the driveway.

The associate city engineer, who was present this evening as was the petitioner's engineer, had provided an analysis of the proposal. The proposed trench drain will capture the existing uncontrolled runoff from the site onto Newtonville Avenue as well as capture runoff from behind the proposed retaining walls, which will infiltrate the runoff underground. The drainage is designed to adequately handle the proposed impervious surface, including the snow storage area. Water will no longer sheet onto Newtonville Avenue and create icy conditions in winter when it freezes.

Public Comment

Kate and Mager Walker, 71 Newtonville Avenue, 25-year residents, remain opposed to the petition. Ms. Walker cited prior transgressions, e.g. construction on weekends and evenings, destruction caused on adjacent properties, etc. Her comments are attached.

Gary George, 80 Newtonville Avenue, spoke in support of the project. He noted that a number of driveways on Newtonville Avenue slope severely to the street. He would like the project judged on its merits and the project completed. A letter dated May 14 summarizing many of Mr. George's comments is attached.

When asked about the status of the fence at the rear of the subject property and construction debris, consisting mostly of logs from downed trees, the petitioner said the fence has been repaired and all construction debris from her property has been removed from the Riley Carriage House Condominium property. The petitioner emphasized that the only trees that were removed were from her property, not the condominium property.

Alderman Lennon suggested the hearing be continued. He would like to ascertain that the issues of the fence and remains of downed trees in the condominium association's pond were resolved. Also, what about the status of the Certificate of Occupancy and other enforcement activities re the property? Although several members felt the hearing could be closed and the petition taken up, the committee agreed to continue the hearing to a date to be determined, which was May 20.

This evening, the Planning Department confirmed that records from the Inspectional Services Department (ISD) show that the house has been legally occupied since 1972, although there is no Certificate of Occupancy in the file; however, ISD indicates this is not unusual for older homes. ISD has issued two citations to the property, one in 2012 for a code violation concerning construction of retaining walls in combination exceeding four feet in height in the rear setback and another in 2013 for property damage caused on adjacent properties. All enforcement actions have been closed. The Planning Department Working Session Memorandum dated May 20 included emails from the petitioner to Patricia Hinchey, President of the Riley Carriage House Condominium Association re removal of the logs and repair of the fence.

Public Comment:

Mager Walker, 71 Newtonville Avenue, read a letter dated May 20, attached, setting forth concerns he and his wife have.

The public hearing was closed.

In working session, the committee noted that special permits are not "unique." The zoning ordinance contemplates relief that the special permit granting authority may in its discretion grant. The proposal will not eliminate the slope, but will reduce it to a gentler grade. Leveling the driveway is not an option as it would require a much higher retaining wall and exacerbate runoff.

The proposed parking is 4½ feet from the rear of stalls to the property line, with 10 feet to the house. If the two parking spaces were brought closer to the house it could undermine the structure. The two stalls meet the 19'x 9' dimensional requirement.

A draft special permit board order was prepared by the Planning Department. The committee discussed where contractors would park during construction, a draft construction management plan, and hours of construction. The petitioner has an arrangement with a business on Newtonville Avenue to provide parking for contractors. The petitioner is amenable to a condition limiting hours of construction from 8:00 a.m. to 5:00 p.m. on Saturdays, instead of until 7:00 p.m. as allowed in the Noise Ordinance. The draft Construction Management Plan (CMP) is an example from another special permit given to the petitioner by the Planning Department. Mr. Sexton assured the committee that a final CMP specific to this petition would

be required prior to the issuance of a building permit. Also, Mr. Sexton reminded the committee that all special permits include a condition requiring an affidavit by a registered architect, surveyor, or engineer be filed with the city certifying compliance with the approved plans prior to a certificate of occupancy.

Alderman Albright moved approval of the petition finding that the grade of the lot and seasonal conditions make the use of the existing steeply sloped driveway impractical for the owners; the site is an appropriate location for the reconstructed driveway as neighboring properties have accommodated parking in a similar manner and the petitioner has based the design on those properties; relief for retaining walls greater than 4 feet in height in the front setback will not adversely affect the neighborhood as all runoff from the driveway will be contained on site; parking in the setback will not create a nuisance or be a serious hazard to vehicles or pedestrians and literal compliance with parking requirements is impracticable due to the grade of the lot. Alderman Albright's motion carried 7-0-1, with Alderman Lennon abstaining.

Public Hearing continued on May 13:

#128-14 GEORGE M. & WALIA K. DUNGAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a one-story addition to the rear of an existing two-family home, which will increase the nonconforming Floor Area Ratio from .56 to .62, where .48 is the maximum allowed by right, at 50-52 NOBLE STREET, Ward 3, West Newton, on land known as SBL 44, 3, 3, containing approximately 6,235 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-15 Table A, 30-15(u)(2), 30-21(b) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 8-0

NOTE: The public hearing was opened and continued on May 13. Present on May 13 were Aldermen Laredo (Chairman), Albright, Cote, Lipof, Schwartz, Lennon, and Harney.

The petition was presented by attorney Terrence Morris. The petitioners, who lived next door for 23 years, purchased this property last year and wish to construct an approximately 385 square-foot, one-story addition to the rear of one side of the two-family dwelling. The proposed addition will increase the nonconforming Floor Area Ratio (FAR) from .56 to .62, where .48 is the maximum allowed by right. The house has an existing two-story deck off its rear. Although the existing deck was inaccurately shown on the site plan and not shown at all on the proposed elevations, construction of the proposed 385 square-foot addition will not require removal of the deck. The proposed addition will match the materials of the existing house and will be mostly screened from the public way and from the rear property line by existing vegetation. To further screen the proposed addition from abutting properties to the north, the Planning Department recommended that the petitioner plant additional screening along the northern property line. The petitioner has agreed to do so, but has not yet submitted a landscape plan.

The Planning Department believes this is a modest addition and is not in derogation of the size, scale and design of other structures in the neighborhood and will not be substantially more detrimental to the neighborhood than the existing structure. However, it recommended that the petitioner provide a revised site plan and elevations showing the correct location of the existing deck, as well as a landscape plan prior to a working session.

There was no public comment, and the public hearing was continued pending receipt of the revised plans.

This evening, the committee noted that members had received a revised site plan and revised elevations showing the existing deck and its correct location, as well as the proposed landscaping along the northern property line. The committee noted that virtually all the houses on this street, all built in the 1920s, exceed the FAR because of the elevation. Most are four feet above normal grade, which means a portion of the basement is counted towards the FAR. Alderman Crossley offered a friendly suggestion to the petitioners: they have the ability and may want to improve the pitch of the roof of the addition, as lowering it would reduce the scale and improve the neighbor's view.

Alderman Cote moved approval of the petition finding that the proposed addition is a modest size and is not in derogation of the size, scale and design of other structures in the neighborhood and the approximately 385 square-foot one-story addition increasing the nonconforming Floor Area Ratio from .56 to .62, where .48 is the maximum allowed by right is not substantially more detrimental than the existing structure. Alderman Cote's motion to approve carried unanimously.

The meeting was adjourned at approximately 8:15 PM.

Respectfully submitted,

Marc C. Laredo, Chairman

Attachments: #141-13(2) Petitioner's presentation
05-13-14 Walker comments
05-14-14 George letter
05-20-14 Walker letter

74 Newtonville Ave

Driveway project
SP # 141-13

RECEIVED
Newton City Clerk

2014 MAY 13 PM 10: 15

David A. Olson, CMC
Newton, MA 02459


41.13(3)

Petition to reduce the grade of the driveway

- ▶ Special permit due to wall higher than 4 feet within the front setback
- ▶ Parking within the front setback

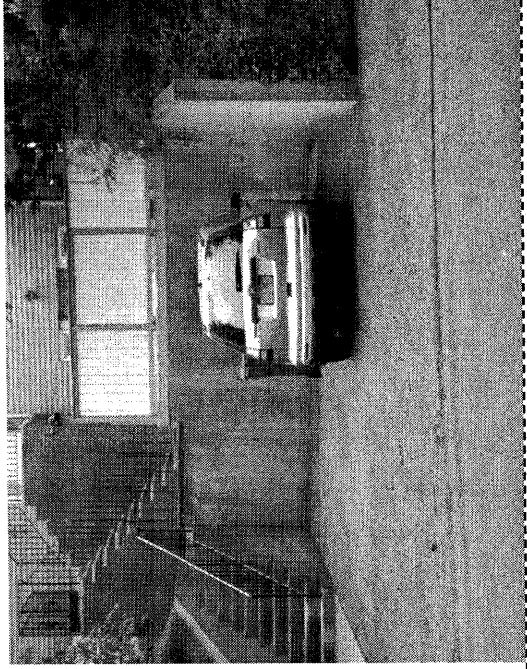


Wall higher than 4 feet

- ▶ We pulled the previous petition because we were aware of the board's concern with the wall height of the previous design
 - ▶ New design highest point is ~5.5feet
 - ▶ This is achievable by having a little slope
 - ▶ Additionally we discovered an error in the old plan
-
- 

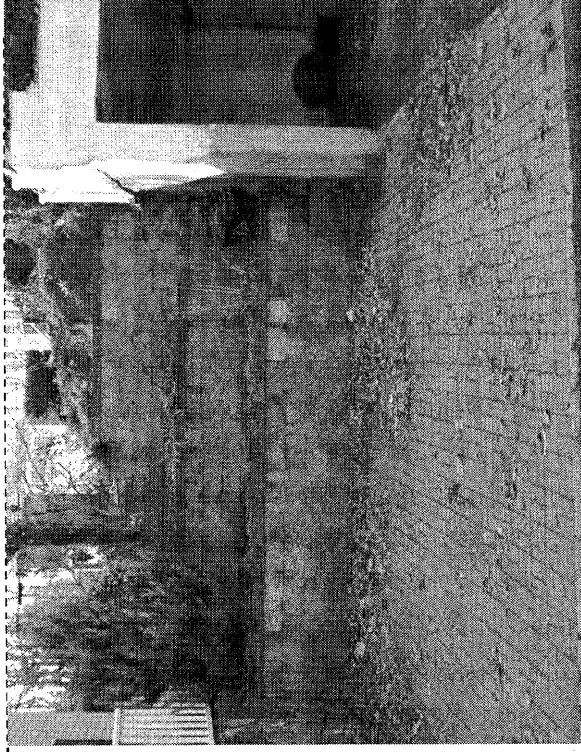
Retaining walls in our street

- ▶ Retaining walls higher than 4 feet is very common for many properties in our street
- ▶ Examples:
 - ▶ 130 Newtonville Ave.
 - ▶ 68 Newtonville Ave.

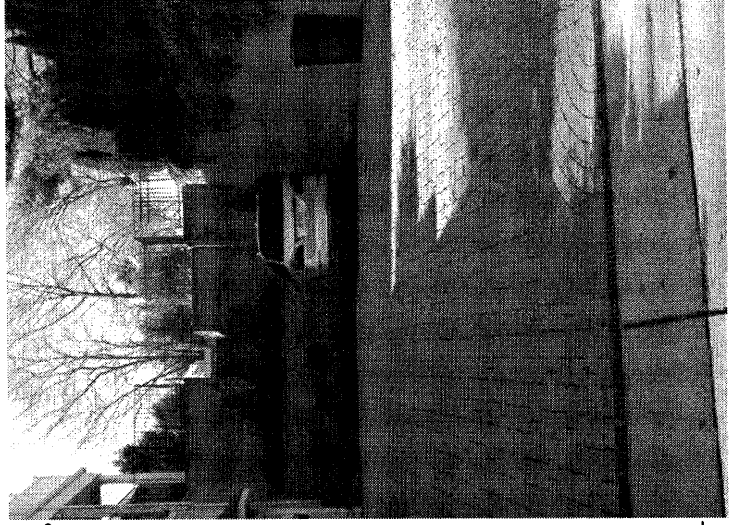


Retaining walls continued

- ▶ Additional examples
- ▶ Newtonville Ave.



- ▶ Wiswall Rd.

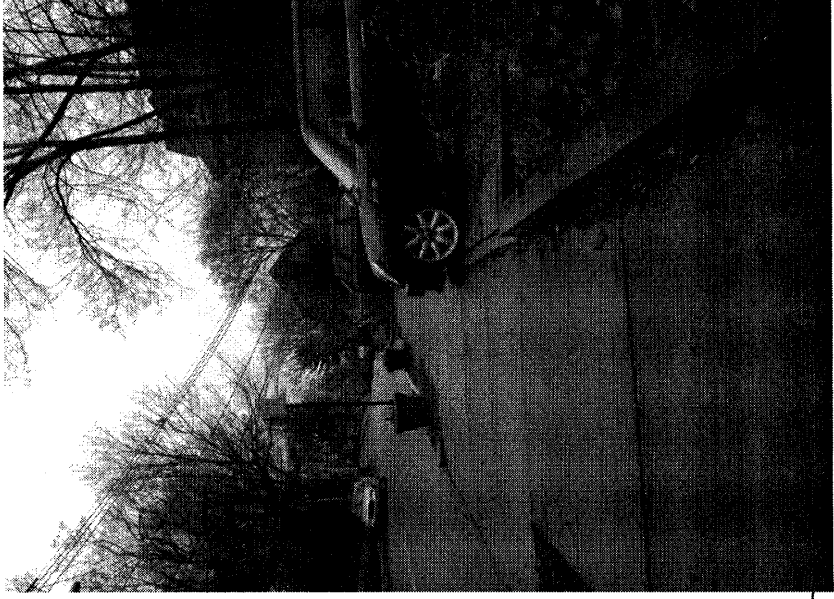


Parking within the front setback

- ▶ The two parking places we currently have will be replaced by two parking spots in the graded driveway.
- ▶ This is a very common solution to many properties in Newtonville Ave

Examples:

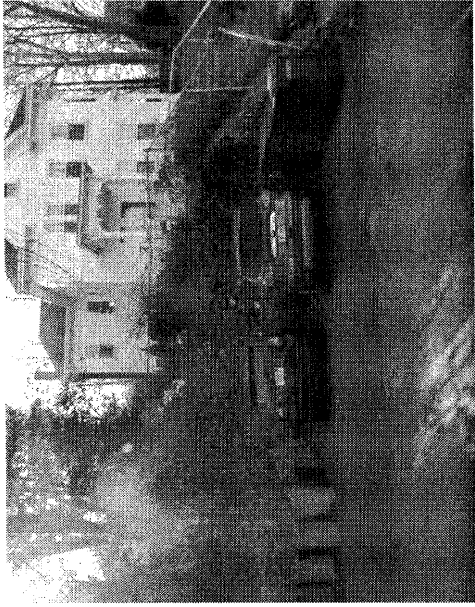
- ▶ 71-73 Newtonville Ave



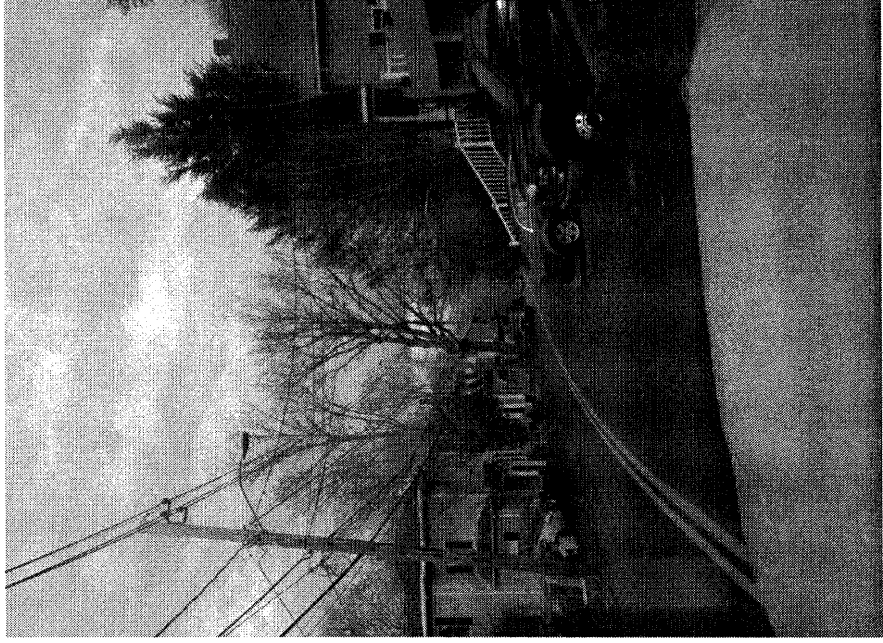
Parking within the front setback

- ▶ Additional examples:

- ▶ 130 Newtonville Ave



- ▶ Newtonville Ave



The Proposed Design



Design benefits

- ▶ Design incorporates a trench system to capture runoff from reaching the street
 - ▶ Materials used will make a visual improvement to the façade of the house
 - ▶ Design will make it safer for our family as we enter and exist the vehicles
-

Thank you

Nitzan Gordon

Public Hearing Statement 5/13/14:

FROM KATE & MACER
WALKER
71 NEWTONVILLE AVE

As residents of Newton, and tax-paying homeowners residing on Newtonville Avenue, we strongly urge that petitioner's request for a special permit/site plan approval be denied due to:

- petitioner's repeated display of gross negligence;
- historical reckless work habits;
- lack of proper permits secured in advance; and
- the unwillingness to communicate, discuss and respect neighboring residents' concerns regarding noise, property damage, and safety issues.

As recently as PALM SUNDAY (4/13/14), the petitioner had workers arriving at **8am** in the morning to dismantle, install and repair a chain link fence (which had been damaged, and the subject of a criminal complaint filed by the resident of Riley Condominiums) all outside of the times allowed according to City work ordinances.

Based on a review of the plans submitted for approval, we call to question:

- the validity of the wall heights being proposed (it appears the calculations are still inaccurate);

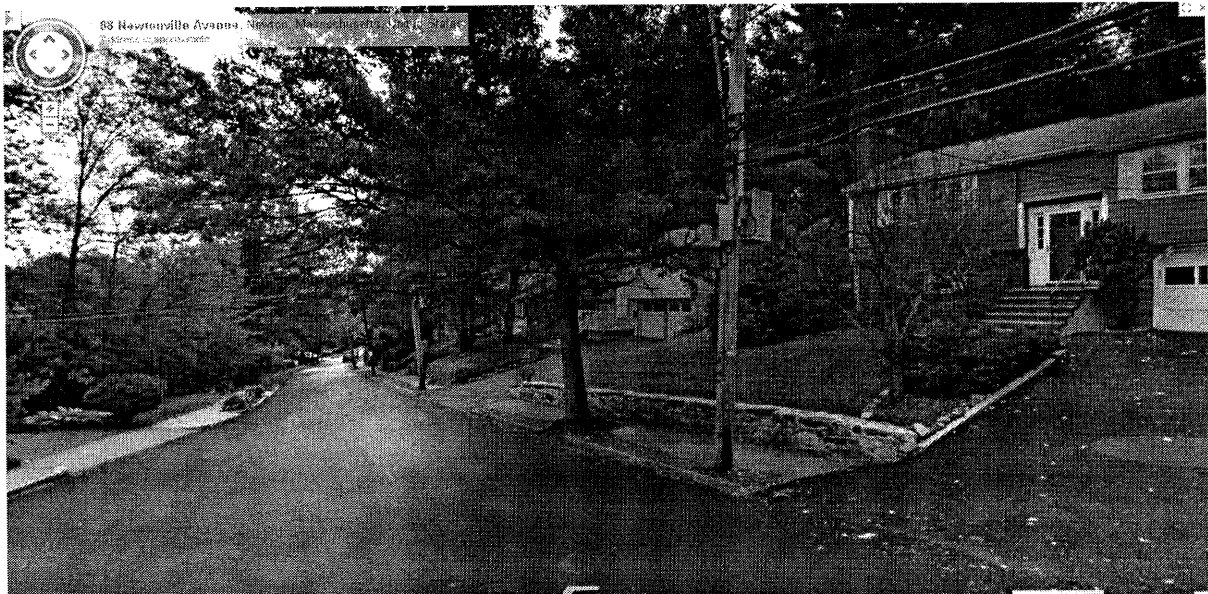
- the safety issues (for pedestrians and traffic) associated with not meeting the 5' required setback from the street;
- the accuracy of existing structures on the property and illustrated in plans submitted by petitioners;
- whether all outstanding permits have actually been closed as stated in the planning department memo (at least TWO/THREE appear to be open, including the Occupancy Permit - though the petitioners have been living here since mid-August, 2012 with no Occupancy Permit);
- whether the Land Use working session had indeed "approved" this project in November, since this is a different project in scope;
- the ability and willingness of petitioner to abide by any of the submitted draft construction management plan items and existing city laws/requirements;
- the need for ANY of this to go forward.

Additionally, the proposed plan would create an unsightly, dramatic change to the uninterrupted flow of the original estate's landscape as it meets Newtonville Avenue and cause additional parking problems for those using both the street and the sidewalk.

We also urge the members of the Land Use Committee to drive by this property so you can see for yourself how the once beautiful, majestic landscape of the old Bellevue Avenue estate is being butchered

The bottom line: The petitioner's project is unnecessary.

- The home was built in 1973, and since then has accommodated families, and their parking needs, year round for over 40 years without access problems.
- The last family who lived here, for nearly 13 years, drove their vehicles into the garages and unloaded their children safely, within their home, year after year.
- This was achieved in part by SHOVELING snow from the driveway and sidewalk AND treating the driveway's surface.



(Present flow of Newtonville Ave landscape – looking east to Centre St)

SUMMARY OF CONSTRUCTION ISSUES

- Reckless, unsafe, inconsiderate and illegal work habits
- Newton Police Department logged **12 visits** to the property since May, 2012
 - Many more were not logged and this does not include traffic violations/tickets issues near this property
- Continuous work being performed without a permit at the property since the end of **April**/beginning of **May, 2012**
- Work performed (without a detail officer) affecting street traffic, public endangerment on streets and blocked sidewalks
 - Unsafe work site
 - Debris filled driveway unsecured/uncovered for weeks
 - Spoil, construction debris, gravel and stone dust uncovered for weeks at a time
- Owner occupancy as of mid-August, 2012 **WITHOUT** an occupancy permit
- Excessive number of mature trees (15-20?) taken down behind the home causing trespassing, damage/destruction of neighbor's fence, improper disposal of waste and unstable soil environment

- Liability issues created due to downed fencing and cement pond accessibility in neighboring yard
- Inspectional Services Department Notice of Violation (*FINALLY*) issued on 9/27/12 citing numerous violations/issues with property and work performed on the home and in the backyard (retaining walls)
- Neighbors “Right to Quiet Enjoyment” has been severely compromised by not adhering to the city noise ordinance
 - Working well past 7pm, sometimes til 10:30pm!
 - Working on Saturday, Sunday & holidays
- Rude encounters with the petitioner when attempting to resolve any issues related to work being performed at 74 Newtonville Ave
- Trespassing on my property, parking on my property, blocking my driveways and both handicapped ramps on Newtonville Ave.
 - Yard waste barrels taken from my property and used for spent roof shingles
- Unsafe site – debris filled driveway unsecured
 - Spoil, construction debris, gravel and stone dust
 - Blocked sidewalks and street without permits/detail police.

141-13(3)

Gary George
80 Newtonville Ave
Newton, MA 02458

May 14, 2014

Re: Petition 141-13 (3) Driveway adjustment
Nikzum Gordon at 72 Newtonville Ave

To: Newton Board of Aldermen

Dear Members,

I hope the Board can accept my apology for venting frustration at your recent meeting regarding the actions of our neighbor who objects to the petitioner's driveway project. As an abutting neighbor, also with a difficult driveway, though less steep than the petitioner's, I fully support their project because :

- 1) Their driveway is dangerous. Like ours it slopes severely to the street, which itself is sloped.
 - I've had numerous near-accidents when I've backed from our garage on icy days only to slide out of control into traffic that was also unable to stop.
 - I know of two occasions when visitor's cars have overcome their parking brakes on our driveways and rolled into the street to sit there until we get a knock on the door.
 - It's difficult and dangerous to open car doors on our steep driveways, particularly for children.
- 2) There are houses on our block with driveways configured as the petitioner proposes however they consist of un-finished raw concrete while the petitioner commits to using attractive and expensive finishes.

Regarding delays to the project. The petitioner has made every effort to adjust their plans to comply with the sometimes changing city requirements yet their improvement projects have been variously delayed for two years. Consequently the petitioner and neighbors continue to live with an eyesore. It appears that some of the delay is attributable to a single, non-abutting complainer and organizer. This driveway is not her first campaign.

While the following items mentioned at the board meeting may not bear on the Board's actions, allow me to correct some of the neighbor's statements here:

- a) There is no parking problem on Newtonville Ave.
- b) The petitioner did not remove trees not located on their property.
- c) The fence damage in question was done by trees not located on the petitioner's property. The condo owned fence remains broken down and unsightly in five places all caused by condo owned

trees that fell onto our properties yet the complainer encouraged the condo to write otherwise. The petitioner replaced the condo fence abutting the petitioner's property at the petitioner's expense.

d) There have been no after-hours noise or other construction disruption. (We live adjacent to the petitioner while the complainer lives across the street and down the hill.)

e) The condo owns an unmaintained, unsightly concrete pond which causes severe runoff across the petitioners property and onto the street. The petitioner's predecessor constructed a retaining wall that exacerbated the problem. The petitioner removed that wall and contracted a new wall whereupon the complainer called the police and building inspector repeatedly. The city required the petitioner to remove the new wall and replace it with two engineered walls and dry well system which required the excavation of the petitioner's entire front yard at a cost of over \$30,000. All to remedy a problem caused entirely by the condo.

Rather than go on, and in behalf of neighbors who know the petitioners to be lovely and considerate people who are trying their best to comply with the city's requirements, I request the board consider the petitioner's request on its merits and allow them to finish their project soon and get the site cleaned up.

Respectfully yours,

Gary George

41. B(3)

H. Mager Walker & Kathleen J. Walker

71 Newtonville Ave Newton Corner, MA 02458

5/20/14

Board of Alderman
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

RECEIVED
Newton City Clerk
2014 MAY 20 PM 4: 51
David A. Olson, Clerk
Newton, MA 02459

Re: Request for Special Permit – Petition #141-13(3)

Dear Members,

We shared some of our concerns at the 5/13/14 public hearing regarding the project being proposed by the petitioner Nikzum Gordon of 72 Newtonville Avenue. However, we have several additional questions and comments to the Land Use Committee prior to moving towards the working session of considering this Request for Special Permit.

1. ***What is "special" about this request?*** – We question whether the information provided by the petitioner adequately supports the *special* request. The petitioner puts forward several examples of properties on Newtonville Avenue (i.e. 68 and 130 Newtonville Ave) that have similar retaining walls with parking within set back. What is not provided is that neither of these examples to our knowledge has or ever had "existing" adequate parking in "garaged space" within their structures like that is present in the petitioner's structure. It would seem that the examples cited were created to provide off street parking where none existed. That would seem to meet the litmus test of a special request. Providing relief from the mere inconvenience of a very common sloped driveway does not.

2. ***Supporting Documentation Lacking:*** The petitioner has provided engineering drawings on the proposed retaining wall and drainage systems. We are not engineers, so we would defer comment to the City's Engineering Dept. as to whether the information contained therein is sufficient to meet the City's requirements. However, after reviewing the engineering drawings, it did not seem clear to us what the existing grade condition of current full driveway was and what would the grade of parking resulting from completion of proposed project. The petitioner's engineer who was present at the 5/13/14 public hearing seemed from his comments to indicate there would still be a sloped grade even after completion of work. This then begs the question, why would the petitioner expend such considerable resources in undertaking a project that really does not create the desired result (i.e. a level driveway)? Further review of the documentation failed to reveal any information regarding the specifications and detail of the modular stone product that is being proposed for use. What is the product? What does it look like? Is there no brochure or specs on this product? It seems reasonable to think so. Do the provided engineering drawings support the manufacturer's recommended installation specifications and vice versa? Also, there is no architectural detail provided about proposed railing that is to be installed on top of retaining wall. Like the rest of photos depicting proposed scope of work, it appears the petitioner just grabbed an image from an off the shelf home hobbyist software library and pasted it into a photo of the house. Certainly, this would not meet the standard for professional support material typically provided for similar special permit request.

3. ***Property Improvement Enriching Neighborhood?*** – Beyond the technical review, we believe that the evaluation on whether to grant the special permit should consider whether the proposed project would not only meet the petitioner's individual needs. But, also blend in with the existing structures that populate the immediate neighborhood and hopefully improve upon it. We believe in and support projects that are planned and executed with not just the singular aim of addressing one individual's

desire. But, also in a process that lends sensitivity to its surrounding environment and their occupants.

The petitioner's structure mirrors those constructed around the same time at 80 and 82 Newtonville Avenue. All were sited on lots with considerable slope. Their "split level" design helps compensate for a sloped lot and allows for a full 2 car garage and is very common. Although not perfect or unique in design, these homes address the challenges of their site, are very functional, blend in well with much older structures in the neighborhood and in many ways are the quintessential suburban home of their time. The owners of these homes have over the years made improvements to their structures. For example, the previous owner of the petitioner's *own structure* installed a well-designed terraced walkway and steps that eloquently connects the structure to both the top and bottom of driveway. This was an indication to us that the previous owner recognized this was an appropriate compromise to creating safe travel that was desired and accepting the inherent conditions of the structure's site. As mentioned in the 5/13/14 public hearing. That owner lived safely with 3 children without incident in this structure for 15 years. No different from the owners that proceeded him no doubt. He seemed to have clearly recognized that these structures "*are what they are*" in many ways and don't pretend to be anything else. It was clearly a 'win-win' for both the owner and the neighborhood.

Refusal to accept or recognize these inherent conditions and embarking on a journey to go beyond what is reasonable (i.e. the petitioner's request), is wrought with problems and would most likely never achieve the desired result. Taking on such a task would seem to require a *unique set of skills and a history* of creatively addressing design challenges and *successfully executing such tasks*. The petitioner offers no support that they, their engineers or contractors possess such unique skills or performance history. However, demonstrating excessive stubbornness, arrogance and lack of

sensitivity to other's concerns, the petitioner wishes to undertake just such a task!

4. Detailed Construction Management Plan or Standard Boilerplate

Template? The petitioner has submitted what is referred to as a "Construction Management Plan". Once again, we find the documentation lacking and representative of the superficial and cursory approach that the petitioner has exhibited throughout this process.

a. Project Schedule: No detailed project schedule (i.e. Microsoft Project or other similar project management tool) is provided. This is customary for competent and experienced construction professionals. Such a detailed document would provide much desired specific information for all interested parties regarding the specific timing of tasks and component phases of the project. It would also communicate confidence to all interested parties that the petitioner or his/her contractors are up to the task.

b. Adherence to City Ordinances - The petitioner makes a lot of promises to adhere to the common city ordinances related to conducting a project of this scope. Unfortunately, Zion Yehoshua, the primary contact for the project put forward by the petitioner as being the "*superintendent on site each day to direct the operation and coordinate the activities of sub-contractors*" has shown in the past a reckless disregard to adhere to such ordinances. As detailed in the 5/20/14 Working Session Memo from the Planning Dept. to the Land Use Committee, the petitioner and/or Mr. Yehoshua has been issued two citations in past 2 years for code violations and property destruction caused on adjacent properties. Further, a review of police logs will reveal that there has been a consistent level of complaints since 2012 from multiple adjacent property owners about the petitioner's failure to adhere to the various city ordinances specifically referenced in the "Construction Management Plan"! The one outlier is Mr. Gary George (*a resident, not property owner at 80 Newtonville Avenue*). His recollection of recent history of the

petitioner at the 5/13/14 public hearing and subsequent 5/14/14 letter to the Land Use Committee leaves us baffled. We would just categorize his comments as a severe economy of the truth. We submit that a polling of the other above mentioned adjacent property owners would no doubt suggest we are generous with our characterization of Mr. George's comments.

- c. ***What about Phase 2?*** – During the 5/13/14 public hearing, the petitioner referenced that they would replace the existing garage doors as part of repurposing of the garage space. However, there was no time table or architectural plans provided for this work to be completed. It would seem to us that the two scopes of work are integrally linked to each other. Are we to assume that the retaining wall can be built without commitment to complete the work related to the garage repurposing? Would it not be reasonable that the special permit for the retaining wall not move forward until it is properly linked to the garage repurposing project?

We appreciate the opportunity to share our sincere comments and questions regarding the petitioner's request. It is not without significant effort to do so. We are also saddened that it was indeed necessary. Unfortunately, in our opinion it appears that the petitioner's approach would be a "text book case on how not apply for a special permit". None the less we believe "*experience is true*" and the knowledge gained from experience provides the basis for how we make the decisions that are fair and best for the future of Newton.

We trust you will agree with us in declining the petitioner's request for special permit.

Sincerely,

H. Mager Walker and Kathleen J. Walker