

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

THURSDAY, NOVEMBER 6, 2014

Present: Ald. Laredo (Chairman), Ald. Cote, Harney, Crossley, Lipof, Lennon; absent: Ald. Albright and Schwartz; also present: Ald. Ted Hess-Mahan
Staff: Stephen Pantalone (Senior Planner), Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board)

Hearings opened September 23

#273-14 NICORE CONSTRUCTION, CORP. petition to change the zone of 114 RIVER STREET, known also as Section 33, Block 23, Lot 15, containing approximately 6,837 square feet of land, from BUSINESS 1 to MULTI RESIDENCE 2.

#273-14(2) NICORE CONSTRUCTION CORP. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct four attached single-family dwellings in two buildings and to locate a driveway within 10 feet of a side lot line at 5-7 ELM STREET and 114 RIVER STREET, Ward 3, West Newton, on land known as SBL 33,23, 9, containing approximately 19,483 sf of land in a district zoned MULTI RESIDENCE 2 and SBL 33, 23, 15, containing approximately 6,837 sf of land in a *proposed* MULTI RESIDENCE 2 district, for a *proposed* total of 26,290 sf of land. Ref: Sec 30-24, 30-23, 30-15(b)(5)a) and b), 30-9(b)(5)a) of the City of Newton Rev Zoning Ord, 2012 and Amend Special Permit #40-07, dated May 21, 2007.

ACTION: HEARING CONTINUED

NOTE: The public hearing was opened on September 23 and continued to this evening. The Planning & Development Board held a separate hearing on October 21 on petition #273-14, the proposed change of zone at 114 River Street. Present on September 23 were Aldermen Laredo (Chairman), Albright, Cote, Crossley, Harney.

Attorney Terrence Morris presented the petition. The petitioner is seeking to rezone a substandard 7,837 square-foot lot at 114 River Street from a Business 1 to Multi Residence 2 zone and merge it with 5-7 Elm Street, which currently contains a two-family dwelling, in order to construct four attached dwellings. The petitioner is seeking relief to construct attached dwellings and to locate a driveway within ten feet of a side lot line. The petition meets the 25-foot setback requirement for attached dwellings and although there is no maximum Floor Area Ratio (FAR) for attached dwellings, FAR including the garage is approximately .48. The petitioner recently completed an attached dwelling project on the adjacent property at 11-19 Elm Street (special permit #40-07) and proposes providing access to the subject property through that site, which would amend the previously approved site plan for that property. The Planning Department noted that shared access will allow for a significant amount of landscaping, although it recommends that the petitioner reduce the landscaping along the front property line in order to improve the connection between the site, its structures and the streetscape. The Planning

Department also recommends that the petitioner repair the sidewalk along the front of the property and close two existing curb cuts.

The site is located in a dense, mostly residential neighborhood not too far from West Newton Square. The Planning Department believes there is no overwhelming reason to maintain the River Street site for commercial use as most surrounding Business 1 uses have been converted to residential. Although the Planning Department believes four units are appropriate for this site, it encourages the petitioner to reduce the size of some of the units to provide a more diverse housing stock.

There is a significant change in grade at the rear of the site. The proposed re-grading will be approximately eight feet higher than the existing grade towards the rear and a retaining wall will be constructed along the rear property line and a portion of the western property line. The buildings have been stepped down in the back, resulting in the abutting property at the rear having a grade three feet higher than the subject property. The Planning Department recommended a site visit so members could visualize the existing and proposed changes.

Public Comment:

Jane Yates, 101 River Street, an architect, opposes the rezoning of 114 River Street from Business to Multi residence. The lot is not substandard and could be the site of a business again. The proposal will destroy the business/mixed use fabric of the neighborhood.

Lorenz Glaser, 20 Auburndale Avenue, objects to the rezoning. The lot on River Street is viable for a small neighborhood business. Alternately, why not change the zone and allow someone to buy it to construct a home. There has been unrestrained piecemeal development on Elm Street. These developments are distorting the market for reasonable, affordable housing.

A resident of 20 Lindbergh Avenue said the buildings do not address the street. There are too many new luxury developments edging out modest existing homes.

Barbara Brousal-Glaser, 20 Auburndale Avenue, spoke of the character and history of the neighborhood. She also cited a 2007 Planning Department memo re special permit #40-07 in which it stated it "...remains concerned about the project scale (bulk), which should show careful respect for neighborhood context. The Planning Department notes that there are a number of large lots in the immediate neighborhood (>15,000 sq. ft.) that could potentially accommodate attached dwelling developments in the future by special permit. Additionally, many of the structures in the immediate neighborhood were built before 1900 making this a largely intact historic streetscape (though many of the structures have been vinyl sided) with significantly smaller units than those proposed. If the Board of Aldermen is concerned about the preservation of neighborhood character...the Board may want to ask the petitioner to bring the overall square footage down to 0.4 FAR."

Ann Dorfman, 9 Henshaw Street, urged the committee to consider the impact on existing homeowners, saying the number of teardowns that have pushed the boundaries.

A resident of 119 River Street, directly across the street from the site, said the proposal is not in keeping with the neighborhood, which is turning into a much different character with all the teardowns. This intersection of Elm and River Streets is difficult, what about traffic improvements?

Thomas Doherty, 16 Oak Avenue, is concerned about the change in grade and water runoff.

The committee continued the hearing pending a site visit.

This evening, the Chairman noted that members who attended a site visit on October 31 found it informative. This evening Mr. Morris presented revised plans. He explained that although the proposed dwellings look and the floor plans remain the same, the size of the units has been reduced in response to concerns expressed during the site visit. In addition, a revised landscape plan has been prepared showing heavily planted evergreens and additional deciduous trees in the rear. Engineer Joe Porter explained that the proposed retaining wall in the rear, which is two to three feet off the abutter's property line, will act as a dam and catch runoff onto the site. A swale and a smaller slope, and flat area will control runoff and recharge water on the site. Native plantings will also help control runoff. The Associate City Engineer did not raise any concerns in his review of the project.

Alderman Hess-Mahan noted that, although several neighbors had done so, it was incorrect to characterize this petition as part of a nine-unit project. He pointed out that allowing shared access eliminates two curbs cuts, one on Elm and the other on River, which is a benefit to the city.

Mr. Morris explained that he had not submitted the revised plans to the Planning Department for review because he wished to get a sense of direction from the committee. The committee generally welcomed the revisions, but continued the hearing to a date to be determined to allow time for the petitioner to submit and the Planning Department to review the new plans.

Hearing opened October 14

#335-14 B & M CALIFORNIA STREET, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 4-unit multi-family dwelling; to extend a nonconforming structure for lot size and frontage; to allow a building height of up to 36 feet and to allow up to 3 stories; to increase the Floor Area Ratio; to waive the number of required parking stalls and, to the extent necessary, associated parking waivers, at 198 CALIFORNIA STREET, Ward 1, on land known as SBL 11, 11, 7, containing approximately 8,294 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24. 30-23, 30-11(d)(8), 30-15 Table 3, 30-21(b), 30-19(d)(2) and (18) and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 4-0-1 (Lennon abstaining; Lipof recused)

NOTE: The public hearing was opened and continued on October 14. The petition was presented by attorney Stephen Buchbinder. The property consists of an 8,294 square-foot lot that contains a c.1890 two-family dwelling. The petitioner wishes to demolish the existing dwelling,

which the Historical Commission found not preferably preserved, and build a three-story, four-unit multi-family building with live/work spaces. The lot is located in a Business 1 district. Taking the Business 1 zoning into consideration, the Planning Department had challenged the petitioner to propose something other than a traditional design to add to the variety of the housing stock. The petitioner's response is to propose live/work units. Both lot size and frontage are dimensionally nonconforming and require relief as does the proposed increase in a nonconforming use. In addition, relief is sought for a multi-family building in a Business 1 zone, to allow for a three-story structure with a maximum height of 32 feet, Floor Area Ratio (FAR) of 1.1, where up to 1.5 is allowed by special permit, and to reduce the parking requirement by up to one-third.

The petitioner is proposing to provide 12 parking stalls on-site, eight in garages plus one guest stall in front of each garage. The most intensive parking requirement would be a service use, which requires one stall per 300 square feet plus one stall per every three employees at highest shift, i.e., two stalls per unit. Office use requires one parking stall per 250 square feet and medical office use requires one stall per 200 square feet. The actual parking requirement for this site ranges between 12 and 16 stalls. Section 30-19 allows for a reduction of the overall parking requirements by up to one third in a project that incorporates three or more uses within a single development. Using this provision, 10 stalls would be required. The Planning Department believes that 12 parking stalls for the small amount of office/studio space proposed is sufficient. The petitioner proposes closing the existing curb cut and creating a new one on the west side of the lot adjacent to its commercial neighbor to the west rather than the residential neighbor to the east. The curb cut is 16 feet wide, but the driveway widens to approximately 22 feet, which the Fire Department has reviewed and approved.

The site is located in an area that consists of a mix of zoning districts and uses that include commercial, manufacturing, fast food, as well as residential uses. Initially, the petitioner considered constructing attached dwellings, but site features including the limited amount of open space would not attract families. The Planning Department believes that although the proposed development will add mass and increase the intensity of use on the site, it will offer something unique to the residential market with its ground floor office/studio space as well as create a suitable transitional use to the surrounding properties, and it will not be more detrimental to the neighborhood than many of the by-right uses in a Business 1 district.

Businesses will be limited to approximately 200 square feet on the first floor. The petitioner is willing to cap the number of clients at any one time and to limit the number of employees. The petitioner has also agreed to prohibit certain types of businesses. The structure is a simple rectangular form with architectural details and different materials that break up the mass. The walls of glass on the first floor that wrap around the front give it a modern feel. Although it looks flat, the roof actually has a slight pitch. The second and third floors contain the living space.

Proposed landscaping includes nine new trees to replace the three trees and a street tree that will need to be removed. The Planning Department acknowledges the site constraints, but suggests

the petitioner carve out some space on the side lot lines for a few more trees in addition to the low shrubs shown on the plan. A low retaining wall and a five-foot fence are proposed around a portion of the perimeter of the site.

Public Comment

Joseph Wong, 196 California Street, lives next door. The proposal is a humungous thing that will block the daylight from his house. He does not like the architecture. The traffic into MacDonald's across the street already causes congestion. Where will the snow be plowed? He is recovering from cancer and his peace will be disrupted with the noise and bother from construction.

Members were intrigued with the live/work concept. Several others were not so enamored of the architecture and asked whether the petitioner had considered a more traditional design. Others suggested a flat roof might work better and reduce the height. How does the height compare with surrounding buildings? To allow the petitioner to address these questions, the committee continued the hearing to this evening.

The petitioner submitted revised plans reducing the building footprint and Floor Area Ratio. The rear setback has been increased from 16 feet to 20.1 feet. The petitioner is now proposing a flat roof, reducing the height of the proposed building to 30 feet. Other exterior modifications include the elimination of some windows from the third floor and alterations to exterior treatment of the first and second floors. Interior modifications include reducing the size of the dedicated work areas on the first floor from 165 square feet to 150 square feet and two of the four units are now proposed as two-bedroom units instead of three-bedroom units. The petitioner did submit an alternative elevation with a more traditional exterior for comparison purposes; however, the addition of a pitch roof increases the height significantly and requires the addition of dormers which add to the mass of the structure. The alternative elevation also gives the structure the appearance of an attached dwelling/townhouse development, a look the petitioner and Planning Department were trying to avoid. In response to the concerns of several aldermen, the petitioner will submit a final plan showing an additional detail such as a metal band or skirt on the first floor wrap-around windows so they do not resemble retail space.

The petitioner has added more screening at the rear of the site along the property line. However, the Planning Department is concerned that there are too many trees proposed – 16 trees, for a total of 21 new trees – and that they will not all survive. Roses are proposed along the fence and walkway on the easterly side of the property. Lighting will be residential, with no spill over. The petitioner will submit a final landscaping plan for review by the Planning Department.

Alderman Lennon reported that he spoke with the abutters to the rear of the property who are pleased with the reduction in height and the flat roof. Overall, they are pleased that their concerns relative to height, parking, screening, mass, and lighting have been addressed. Alderman Lennon supports the petition, but abstained this evening because he has not had an opportunity to speak with Mr. Wong.

Alderman Lennon moved approval of the petition with the findings and conditions listed in draft special permit #335-14, dated November 17, 2014. The motion to approve carried 4-0-1 (Lennon abstaining; Lipof recused)

#344-14 ERIC BERNARD & GIDA ZIKAS-BERNARD petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE in order to replace an existing 7'x 4' landing and staircase and replace them with an approximately 23.75' x 5/7' covered porch and new staircase at 1044-1046 CHESTNUT STREET, Ward 5, on land known as SBL 51, 7, 7, containing approximately 11,390 sf of land in a district zoned MULTI RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 1 of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 5-0-1 (Crossley abstaining)

NOTE: The petitioner wishes to replace an existing landing at the front entrance of his c.1830 two-family dwelling with a 23'x 5'7" covered porch. The existing landing is located approximately 11'8" from the front property line, where a 25' setback is required. The petitioner is seeking relief to extend the existing nonconforming setback by 1'7". The Upper Falls Historic District Commission reviewed the design and materials and approved it by a 4-2 vote on January 10, 2014.

Public Comment:

Judy Malone Neville, 68 High Street, spoke in opposition. She had attended the District Commission meeting as well. A porch is out of character with the neighborhood, none of which have front porches. Adding a porch to this 1830s worker's house will change the entire aspect of Elliot and Chestnut Streets. The recent demolition of the Wetherell House and another four-square dwelling in the neighborhood has left holes in the fabric of the neighborhood.

Land Surveyor/Civil Engineer Verne Porter, who was here for another petition, said he owns two houses in this neighborhood, both built approximately in the same era. One has a front porch with a shed roof; the other does not have a front porch but looks like it probably did have one years ago.

Alderman Crossley asked the petitioner if he had considered shortening the width of the proposed porch. The petitioner explained that the width had been shortened in response to the Commission.

In working session, Alderman Crossley moved approval of the petition, but said she would abstain this evening. The motion to approve carried 5-0-1, with Alderman Crossley abstaining, with the findings and conditions contained in draft special permit #344-14, dated November 17, 2014.

20-95(3) THE CAPITAL GRILLE OF CHESTNUT HILL, INC. petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #520-95 to expand its hours of operation from 5:00 p.m. to 1:00 a.m. to 11:00 a.m. to 1:00 a.m., to modify its valet parking protocol to reduce the number of valet employees, to eliminate the requirement for stacked parking at the rear of the site, and to allow for a podium to be used by valet employees at the front entrance at 250 BOYLSTON STREET, Ward 7, CHESTNUT HILL, on land known as SBL 82, 2, 8, containing approximately 61,304 sf of land in a district zoned BUSINESS 4. Ref: Sec 30-24, 30-23 of the City of Newton Rev Zoning Ord, 2012 and special permit #520-95 conditions 2, 8b, and c.

ACTION: HEARING CLOSED; APPROVED 5-0 (Crossley not voting)

NOTE: The petition was presented by attorney Stephen Buchbinder and Jeff Dunn, General Manager of Capital Grille. In 1996, special permit #510-95 created the 196-seat restaurant and set the hours of operation, which are 5:00 PM to 1:00 AM. The restaurant obtained a special permit in 1999 to expand the hours of operation in the month of December in order to serve lunch. However, this second board order was never recorded at the Registry of Deeds. The petitioner is now seeking to legally serve lunch year round and be open from 11:00 AM to 1:00 AM. In addition, the petitioner is asking to amend the original special permit to remove the stacked parking spaces at the rear of the property, to permit the valet parking service to be handled by two employees, and to allow for a small removable podium in the front of the building for the valets. The podium would be wheeled inside when not in use.

A parking analysis was submitted. There are 80 parking stalls on the site, with three HP stalls in front of the restaurant. The restaurant has 196 seats and 25 employees on the largest dinner shift. In addition, there is approximately 6,500 square feet of office space currently not occupied. The Planning Department pointed out that a strict reading of the zoning requires 101 parking stalls; however, it also noted that the original special permit was approved with the same 80 parking stalls that are shown on the current plan. Special permit #520-95 approved the existing parking configuration for all of the existing and proposed uses on-site at that time. A consistency ruling by the Commissioner of Inspectional Services in 2010 confirmed the existing conditions. The petitioner does not need a parking waiver. In the evening many people self-park in the adjacent Chestnut Hill Square lot. The requirement for stacked parking is no longer necessary.

Some residents of Florence Street and Heath Street in Brookline have expressed concern that the Capital Grille driveway is being used as a cut-through from Chestnut Hill Square to Florence Street to avoid having to exit the Square directly onto Route 9. This connection was shown on the approved plans for Chestnut Hill Square, but it may have been obscured by the proposed residential building shown on the west side of the Square's property. As the structure has not yet been built, its proposed location is currently being used for parking. This could become an issue, but it is not relevant at this time in relation to the relief requested in Capital Grille's petition.

Although the 1996 special permit only permitted dinner but not lunch because of the overlap of the office and restaurant hours, the restaurant has been serving lunch without complaint or incident. The average number of lunch patrons is 50 with 15 employees. Generally, the

petitioner anticipates 50-75 lunch patrons. The only time lunch business would have 100-150 patrons would be at holidays or on several special occasions over the course of a year. The Planning Department suggests that should this special permit be approved the committee consider limiting the number of lunch seats. Limiting the number of seats to 100 would require 35 parking stalls, assuming the number of employees remains the same. It suggests that the committee may also allow up to 150 seats for lunch if valet service is provided.

The petitioner is seeking to reduce the number of valets required in special permit #520-95. The restaurant offers the valet service as a convenience and is well aware of the number of valets it needs at any given time to continue to do so. Elimination of the stacked parking would reduce the number of valets needed.

Several Aldermen asked whether there is a sidewalk along this portion Route 9 and if so what condition is it in? Mr. Dunn texted the restaurant and a colleague sent photos of the sidewalk, which appears to be in good condition. This was a condition of the Chestnut Hill Square special permit; however, if repairs to the sidewalk are necessary New England Development, who owns the property, will do so.

There was no public comment, and in working session Alderman Lipof moved approval of the petition which carried 5-0, with Alderman Crossley not voting, with the findings and conditions contained in special permit draft #520-95(3), dated November 17, 2014.

#365-14 KARYOPHARM THERAPEUTICS/NS WELLS ACQUISTION LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow for recombinant DNA research and technology at 75-85 WELLS AVENUE, Ward 8, on land known as SBL 84, 34, 2C in a district zoned LIMITED MANUFACTURING. Ref: Sec 30-24, 30-23, 30-12(e)(9) of the City of Newton Rev Zoning Ord, 2012.
ACTION: HEARING CLOSED; APPROVED 5-0 (Harney not voting)

NOTE: The subject property consists of a 557,570 square-foot lot with a three-story, approximately 263,260 square-foot commercial building. The petition was presented by Yosef Landesman, Senior Director and Head of Biology at Karyopharm Therapeutics. Karyopharm is a four-year old clinical-stage pharmaceutical company focused on discovery and development of drugs for the treatment of cancer and other diseases. The petitioner is currently operating at the site after relocating from Natick and is seeking a special permit to allow a recombinant DNA research and technology (rDNA) laboratory. rDNA research and technology is regulated under Chapter 12 (Health and Human Services) and Chapter 30 (Zoning) of the city's ordinances. The requirements of Chapter 12 include submittal of a permit application to the Commissioner of Health and Human Services who reviews the application jointly with the Newton Biosafety Committee. rDNA is only allowed by special permit and only in Limited Manufacturing, Manufacturing and Mixed Use 1 and 2 zoning districts. The petitioner has met all applicable guidelines and received approval from the Biosafety Committee at its September 3, 2014 meeting. The Interim Director of Health and Human Services transmitted their decision in a letter to the Board of Aldermen dated October 30, 2014.

The Economic Development Commission submitted a letter dated October 31, 2014 in which it urged the Board of Aldermen to grant this special permit. There was no public comment. The hearing was closed and in working session Alderman Lipof moved approval of the petition with the findings listed in draft special permit #520-95(3). The motion to approve carried 5-0, with Alderman Harney not voting.

#228-14(2) GONGXIONG WU petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing attached garage and breezeway and construct a new one-stall garage with a master suite and one bedroom above it, maintaining the existing nonconforming side setback but vertically extending the nonconforming side setback, and to construct an office and bath in the attic, which will increase the nonconforming Floor Area Ratio from .42 to .56, where .38 is the maximum allowed by right, at 102 McCARTHY ROAD, Ward 8, NEWTON CENTRE on land known as SBL 84, 27, 6, containing approximately 10,033 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. 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: WITHDRAWAL WITHOUT PREJUDICE APPROVED 5-0 (Lennon not voting)

Respectfully submitted,

Marc C. Laredo, Chairman