

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MAY 22, 2012

Present: Ald. Ted Hess-Mahan (Chairman), Ald. Laredo, Albright, Crossley, Fischman, and Harney; absent: Ald. Merrill and Schwartz

City staff: Robert Waddick (Assistant City Solicitor), Eve Tapper (Chief Planner for Current Planning), Derek Valentine (Senior Planner), Alexandra Ananth (Senior Planner), John Lojek (Commissioner of Inspectional Services), Linda Finucane (Assistant Clerk of the Board)

#93-12 TIMOTHY ADLER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a new single-family dwelling with a Floor Area Ratio of .45 where .39 is allowed by right at 35 NORWOOD AVENUE, Ward 6, Newton Centre, on land known as SBL 62, 1, 28, containing approximately 9,573 sq. ft. of land in a district zoned Single Residence 2. Ref: 30-24, 30-23, 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-1 (Hess-Mahan)

NOTE: The public hearing for this petition was opened and closed on May 15. The petitioner and architects Tom Timko of Copper Beech Design and Michael Kim of Michael Kim Associates presented the petition. The subject site is long and narrow. The rear property line abuts Crystal Lake. Currently, it contains a 2,100 square-foot single-family cape built in 1930 (found "not historically significant" by the city's Senior Preservation Planner). The petitioner, who engaged both architects to work parallel but independently to see if the existing house could be incorporated into a design suitable for a growing family with three young children or a new house could be designed within the by-right Floor Area Ratio (FAR), ultimately concluded that none of the proposed designs would meet all the family's goals. The petitioner plans to demolish the existing house and construct a new, larger single-family home, for which he is seeking a permit to increase the FAR to .45, where .39 is the maximum allowed by right. The proposed house contains approximately 4,282 sq. ft. and, although it is wider than the existing house, meets all other dimensional requirements except for the FAR. The neighborhood consists mostly of single-family homes although there is a two-family house across the street and a 35-unit complex at 55 Norwood Avenue. The average FAR in the neighborhood is approximately .34, with a range of house sizes from 2,000 square feet to 7,600 square feet, with an average of approximately 3,556 square feet. Lot sizes vary from slightly over 6,500 square feet to 15,400 square feet, with an average of approximately 10,449.

The proposed 2.5-story house is contemporary and is sited as is the existing house sideways on the lot, with its main entrance on the south side. The proposed house is narrow at the front and widens towards the back. The proposed garage, like the existing garage, faces Norwood Avenue, although the proposed garage is sited partially below level in a portion of the basement, making it less prominent. The full basement contains a mechanical room, storage, a guest bedroom with

full bath, an office, a half bath, and a family room. The first floor shows a den, dining area, living room, and eat-in kitchen with a deck off the rear. The second floor has four bedrooms; and the third floor contains a large room and full bath. At approximately 35.9 feet to the ridge line, the height is less than the maximum 36 feet allowed by right.

The front and sides of the property are surrounded by mature trees, which the petitioner plans to retain. It was suggested the petitioner engage an arborist because the site is tight and the trees will be vulnerable during construction. The petitioner has filed a Notice of Intent with the Conservation Commission because the rear deck projects into the 100-foot wetland buffer zone. Conservation will review it in June. The petitioner stated that they intend to only use organic lawn care products. The petitioner has consulted with an arborist. If feasible, the petitioner plans to install a closed-loop geothermal heating/cooling system.

The Planning Department noted in its memorandum dated May 11, 2012 that this would be the first new house allowed to exceed the new maximum FAR requirements under Ordinance Z-77, which went into effect on October 15, 2011. Although the Planning Department acknowledged the sensitivity and aesthetics of the design, it recommended the petitioner reduce the size of the house by approximately 550 square feet, which would eliminate the need for a special permit.

Carole Birkestrand of 15 Norwood Avenue and Irwin Jungreis of 31 Norwood Road submitted letters in support of the petition. Mr. Jungreis spoke at the public hearing as well. He has reviewed the plans and is supportive. His only two concerns were the mature trees along the property line between his and the petitioner's property and the hours of construction, which the petitioner has agreed would not begin before 8:00 a.m. Mr. Jungreis agreed that in special circumstances construction might start earlier (which would require approval from the city) and said the petitioner has gone out of his way to be communicative.

This evening the Committee discussed the Planning Department's memorandum of May 18, 2012. This would be the first new house allowed to exceed the new maximum FAR requirements. And, although the petitioner has a right to ask for a waiver, historically a waiver from the FAR requirements has been used as a means to allow for some flexibility in extenuating circumstances, particularly to allow for small additions to existing houses, small additions on very small or constrained lots, or accommodate to people with houses where the basement or third floor count towards the FAR. FAR is used to measure the intensity and amount of construction on a lot. There are always outliers, but the intent of the FAR is as a relief valve. In addition, this site is small and environmentally sensitive because it abuts Crystal Lake. For these reasons, the Planning Department recommended the petition be denied.

The petitioner emailed to the Chairman, Alderman Crossley, and the Planning Department earlier today several documents (attached), which were distributed to the rest of the committee this evening, however, because they were put on the table this evening, the members were unable to review them.

Mr. Valentine and Ms. Ananth explained that the Design Review Team (DRT) meeting, which in this case was held in November, is a very preliminary step in the special permit process. Its

purpose is to offer advice and generally try to be helpful, which sometimes involves suggesting a by-right alternative be considered. In this case, the DRT was forthright that it was unsure there was a compelling reason for the Planning Department to recommend approval of this petition. Because this is the first proposal under the new FAR there are no other projects as examples. The Planning Department reiterated its concern after the petition was filed. However, although the Planning Department prepares a memorandum to provide technical information and planning analysis for the public hearing, it does not make a recommendation to the Board until the public hearing is closed.

Discussion included the following comments:

Alderman Fischman said there is no opposition; the proposed house is a sensitively done design in terms of massing

Alderman Crossley pointed out that the petitioner has the right to seek a special permit. She is not influenced by support or opposition to petition. The precedent is based only on size – it is not a big box structure, but beautifully and sensitively designed. There is a matter of fairness, if denied the petitioner will be unable to come back for two years unless the proposal is substantially different.

Alderman Laredo asked what about if the petitioner builds a by-right house and comes in three years from now for an addition? What if other houses in the neighborhood have been altered in the interim?

Alderman Harney was okay with the petition. He said somebody will set a precedent. Number 43 Norwood has a FAR of approximately .46 and number 31 Norwood, next door to the subject property, has a FAR of approximately .50. Ms. Ananth acknowledged that there are two outliers, but the average neighborhood FAR is .34. She noted that the average height of houses in the neighborhood is approximately 25 feet.

The petitioner circulated a plan showing 1,163 additional square feet from the lake to the lot line in the rear. However, it is not the petitioner's property. Alderman Albright pointed out that this additional swath of land creates a visual extension to the property, similar to the site at 66 Montrose Street, which is located next to the Ward School Playground, and for which a special permit to extend a non-conforming structure was granted in 2008. Alderman Albright also noted there is no massing on the street. She asked and Ms. Ananth confirmed that the FAR figures contained in the FAR comparison chart attached to the Planning Department memorandum of May 11, 2012 are based on the assessor's data base.

Commissioner Lojek reminded the Committee of his denial of a building permit for a two-family house at 32 Williams Street, a lot that was created by combining existing land with land that had been added naturally by accretion, which decision was upheld by the Zoning Board of Appeals. Although flooding was and remains a concern on the city's part, on appeal to Land Court it was remanded to the Zoning Board of Appeals.

Alderman Laredo moved approval of the petition.

Chairman Hess-Mahan gave his reasons for voting against recommending approval. He noted that he rarely if ever votes against a special permit that the rest of the committee votes in favor of, and that he had relied on the analysis and unanimous recommendation of the Planning Department staff, including both senior planners, the chief planner, and the director. The Planning Department rarely recommends denial of a special permit because most of the time petitioners either change their project to respond to its recommendations or withdraw the application altogether. As the former Chairman of the Zoning Task Force, he spent two years reviewing, among other zoning provisions, the 50% demolition rule, which allowed property owners to build additions as to which the FAR did not apply, provided that no more than 50% of the structure was demolished. The Zoning Task Force was created in response to a proposal to repeal the rule because of many large additions that were built which were far larger than existing homes in their respective neighborhoods. The Zoning Task Force recommended amending the rule so that FAR would apply, but allowing a bonus to permit homeowners to build modest additions without having to seek a special permit. The Board, however, rejected the Zoning Task Force's proposal and ultimately repealed the 50% demolition rule without amending the FAR ordinance. Because of complaints from homeowners and their representatives, the Board subsequently passed an ordinance allowing a .02 to .05 FAR bonus and allowed homeowners to seek a special permit to exceed the FAR to build an addition. Contemporaneously, the Board also created a task force to review the FAR ordinance and make recommendations for amendments. Based on the FAR Task Force's recommendations, the Board passed amendments that, among other things, created a sliding scale that was intended to allow homeowners with lots under 10,000 square feet to build modest additions by right without having to seek a special permit. The Board also repealed the FAR bonus and amended the ordinance to allow homeowners to seek a special permit to exceed the FAR for additions as well as new construction. This is the first application to exceed FAR for construction of a new home under the amended ordinance.

Chairman Hess-Mahan noted that, to be approved, special permits must be in harmony with the general purpose and intent of the Zoning Ordinances, and satisfy the specific criteria therein. He would find that this application is neither in harmony with the general purpose and intent of the Zoning Ordinances, nor does it satisfy the specific criteria for granting a special permit because the proposed building is not consistent with and is in derogation of the size, scale and design of other buildings in the neighborhood. Specifically, the general purpose and intent of amending the FAR ordinance was primarily to allow homeowners on smaller lots under 10,000 square feet to build modest additions to their homes without having to seek a special permit and to allow homeowners to seek a special permit to exceed FAR in order to add to existing homes or build new homes that were similar in scale to existing homes in the rest of the neighborhood. The average FAR for houses in the neighborhood is about .34 and the median is .31. The proposed house would have an FAR of .45, which is 50% more than half of the houses in the neighborhood, and a full .06 more than the .39 FAR allowed by right under the amended ordinance. Moreover, virtually all of the existing houses on small lots in the neighborhood are two story houses, while the proposed project would be 2.5 stories, including a fully finished basement, first floor, second floor and a third floor, which would have a total floor area of almost 6,000 square feet including the garage in the basement. If, on the other hand the petitioner were willing merely to eliminate the third floor, which is almost 550 square feet, the house would be within 12 square feet of complying with the FAR allowed by right. The only houses in the

immediate neighborhood that are larger and have more than 2 stories are two 19th century houses that were built on much larger lots of 12,000 and 15,000 square feet.

Chairman Hess-Mahan stated that, absent unusual circumstances concerning the size, shape or topography of the lot, homeowners generally should be required to comply with the FAR when adding to existing homes or building new ones. Otherwise, having an FAR serves no purpose. The existing house is well below the FAR allowed by right, and there is nothing about the size or shape of this lot, which is roughly rectangular and slightly under 10,000 square feet, and has an FAR of .39, which necessitates having to exceed the FAR a significant amount on this lot. While every special permit is unique, he is concerned about the precedential effect of approving this special permit for two reasons and thinks the Board should be conservative in applying the amended ordinance. First, there is another application to exceed FAR for a new house that has been assigned a public hearing in June which is 7500 square feet, which is larger than most if not all houses in that neighborhood. How the Land Use committee and the Board of Aldermen interprets and applies the amended FAR special permit ordinance will influence this and other applications that will be submitted in the future. Second, he is concerned that allowing the petitioner to demolish a house that complies with FAR and grant a special permit to build a new home that exceeds FAR by a significant amount will increase the average and median FAR in the neighborhood. In the future, this may encourage other homeowners in the neighborhood to demolish the existing two story houses in the neighborhood and seek special permits to exceed the FAR in order to allow them to build new houses that are similar in scale to the proposed house. This would irreversibly alter the fabric and feel of the neighborhood.

Alderman Laredo's motion to approved carried 5-1, with Alderman Hess-Mahan opposed, with the findings and conditions set out in draft special permit board order #93-12 dated June 4, 2012.

#279-98(3) SVETLANA OSTROVSKAYA petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL for an EXTENSION of a NONCONFORMING STRUCTURE #279-98(2), granted on 05/16/11, to construct an enclosed connecter from a new garage to the existing nonconforming single-family dwelling ~~and for two retaining walls greater than 4 feet in the front setback~~ at 14 ROLAND STREET, Ward 8, on land known as SBL 83, 33, 6, containing approx. 14,819 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21(b), ~~30-5(b)(4)~~ of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0; RELIEF FOR RETAINING WALLS WITHDRAWN WITHOUT PREJUDICE 5-0 (Crossley not voting)

NOTE: The public hearing was opened and closed on this item on May 15, 2012. The petitioner was granted a special permit in 1998 to construct a second-story addition and covered entrance a portion of which extended into the front setback. In 2011 the petitioner was granted a special permit to construct an attached garage with an open breezeway within the front setback. After beginning construction on the garage it was discovered that because of the grade of the site (the house is below street grade and slopes steeply to the rear of the site) the breezeway could not be built as approved because the garage is two feet higher than the house. The petitioner now wishes to enclose the breezeway/mudroom between the garage and house which will result in further extension into the front setback. The petitioner also requested relief to construct two

retaining walls of greater than 4 feet; however, the walls are now less than 4 feet and the petitioner no longer requires that relief.

Steve Praught of 100 Charlemont Street said he had spoken in opposition to the previous petition in 2011. He re-submitted his letter of May 12, 2011 (attached) in which he offered a number of comments and observations. There was no other public comment.

This evening, Alderman Fischman said he had noticed construction rubble on the east side of the site. The petitioner explained it was because construction had ceased pending this application. He asked if the petitioner had submitted a landscaping plan, to which she responded no. Mr. Valentine explained that the Planning Department doesn't usually require a landscaping plan for modest proposals such as this. The petitioner said she will remove the debris when the construction is completed. She is good friends with that neighbor and both have been unsuccessful in establishing landscaping other than the natural thicket that grows there. He asked if she would be willing to at least re-grade and add topsoil, to which she agreed.

Alderman Fischman moved approval of the petition finding that the extension of a nonconforming structure is not substantially more detrimental to the neighborhood than the existing nonconforming structure because many of the other houses in the neighborhood are legally nonconforming with respect to the front setback; expansion into the front setback requires less disturbance of the natural sloping topography; replacement of the deteriorating sidewalk will be a public benefit. The motion to approve carried unanimously, 6-0.

A motion to withdraw without prejudice the request for relief to construct two retaining walls of greater than 4 feet was approved 6-0.

#82-12 GEOFFREY & ROBIN PEDDER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for an EXTENSION OF A NONCONFORMING STRUCTURE to add a third story above a portion of an existing single-family dwelling, of which a portion counts as a basement and a portion counts as a first floor, increasing the Floor Area Ratio from .29 to .36, at 112 EXETER STREET, Ward 3, West Newton, on land known as SBL 32, 28, 21, containing approximately 16,080 sq. ft. of land in a district zoned Single Residence 1. Ref: Sec 30-24, 30-23, 30-15 Table 1 of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0

NOTE: The public hearing on this petition was opened and closed on May 15. The petition was presented by Mr. Pedder and architect Alan Mayer. The petitioners have a 1954 split level home that was expanded previously by-right. The front and rear of the house appear as a traditional split level with a clerestory above the main ridgeline. The petitioners wish to add a two-story addition of approximately 9' by 19.3' containing approximately 900 square feet to create two bedrooms on the southwest corner of the house. The corner lot slopes downward from north to south, which leaves a considerable amount of the basement walls exposed above grade on the southern portion of the house where the addition is proposed. That southern portion of the house

is considered a story because although half the basement meets the definition of basement the other half is defined as a story. The petitioners originally applied for a building permit on October 13, 2011 using the pre-October 15, 2011 calculations; however, the building permit was denied because of the three-floor configuration. The petitioners could construct an addition with a by-right FAR of .27 if they chose to fill around the house with an estimated 18" of dirt. They instead are seeking a special permit to increase the FAR from .29 to .36 where .32 is allowed by-right.

The proposed exterior changes mimic the mid-century split level style of the architecture. The clerestory will remain. The northern and rear facades remain unchanged. The front façade will change the most with a large window which mimics an existing window in the 1990's addition. The petitioner proposes a slight expansion of the existing driveway. The site is landscaped and lightly wooded with dense screening on the perimeter, particularly along the property line adjacent to the proposed addition.

The committee had received a letter from Anu Gulati of 235 Fuller Street, which is next door to the petitioners. The letter states that the petitioners had "constructive conversations" with the neighbors. The neighbors would like to see the project proceed, but there is some concern about the design and shape of the windows, particularly the "central" window.

Jeff Herrmann of 111 Exeter Street, which is across the street, spoke several times with the petitioners. He supports the petition, but has concerns with a perception of mass in front of the house. He hopes sufficient attention had been given to integrating the addition with the neighborhood. He has concerns about the windows. The Chairman disclosed that he had met Mr. Herrmann at a Library event and Mr. Herrmann had spoken with him about these concerns.

Susan Ain of 255 Fuller Street also has concerns about the façade, materials, trim, etc. and the windows.

The committee encouraged the petitioners and the neighbors to meet again, but pointed out that, although design may be a factor taken into consideration relative to massing or blocking light, the committee is not a design review authority. For example, the committee cannot require muntins in windows.

Subsequent to the public hearing, the petitioners modified the fenestration, reducing the size and number of windows.

Commissioner Lojek briefly explained the configuration of this typical 1950's split-level house. A portion of the basement is 50% above grade. The "third floor" is a half story and the first floor is another "half story." The basement is 16 inches at one end of the house because of the topography and the stepping above grade. He suggested picturing it as 2.5 stories – upside down. The atria, although not floor or living space, count towards the FAR. The 4-foot increase in height from 26.4 feet to 30.5 feet, where 36 feet is allowed by-right, is from continuing the existing angle of the roof up to the ridgeline.

Alderman Crossley moved approval of the petition, finding the site is an appropriate location for a 3-story dwelling because it features a split level home with an above-grade lower level on a sloping lot; the 3 stories and an FAR of .36 where .32 is allowed by right is not in derogation of the size, scale or design of other structures in the neighborhood as there are a number of other structures in the neighborhood that have been expanded and present a larger mass when viewed from the street and there is a wide variety of styles and building scales in the surrounding area. The motion to approve the petition carried unanimously, 6-0.

The meeting was adjourned at approximately 11:15 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman

Attachments: *Petition #93-12*

5/22/12 Petitioner submission to the Land Use working session

5/22/12 Comment on Planning Department memo dated 5/18/12

5/22/12 Summary of recent communication with the Planning Department

Plot plan proposed 7/28/11 revised 5/7/12

Petition #279-98(3)

18-May-2011 communication from Steve Praught

All other documents referenced in this report are available at www.ci.newton.ma.us under Board of Aldermen/Special Permits

From:
Tim Adler
25 Boynton Rd
Medford, MA. 02155

To: Land Use Committee of the Board of Aldermen

May 22nd, 2012

Re: (Petition #93-12) Petitioner Submission to the Land Use Working Session

RECEIVED
Newton City Clerk
2012 MAY 22 PM 9:57
David A. Olson, CMC
Newton, MA 02459

Dear Aldermen,

Thank-you for the opportunity to present our case at the public hearing on Tuesday May 15th. We very much appreciate the time you devoted to reviewing our application. While we were nervous on the night, it was also exciting for us to be possibly one step closer to getting started on building our future home. If you will kindly indulge us, my wife Inna and I would like to take a final opportunity to summarize our application.

Background

My wife and I did not start on this process intending to seek an exemption from the rules. This is not our nature, and in fact we commissioned Tom Timko prior to even closing on the house to research the new zoning rules that were due to soon come into effect, and determine how they would apply to us. We only arrived at the decision to pursue a special permit after unsuccessfully pursuing a number of designs that reused some of the existing structure and others designs for a new construction that were each within the by-right dimensional controls.

To maximize the chances of success and ensure a diversity of ideas, we took the somewhat unusual step for a residential project of engaging two architects, and for this phase Michael Kim and Tom Timko operated in parallel, independently pursuing different designs. This effort produced many designs that while good, did not meet all of our goals.

Goals

The critical goals were:

- Minimize visible massing and make the garage less prominent
- Minimize the expansion of the footprint towards Crystal Lake
- Maintain all of the healthy mature trees that border the property
- A home that was suitable for a growing family with three little kids and intended for use by our family indefinitely
- A somewhat contemporary design that was not inconsistent with the neighborhood

At some point it became clear that we could meet the intent of the new zoning rules by minimizing the visible massing, but we would probably not meet the numerical FAR definition and also meet all of our design goals.

Alternative designs included a narrow house that protruded much further towards the lake¹, or a more conventionally shaped house that presented more mass towards the front of the lot and also extended more towards the lake. We solicited feedback from various people with knowledge of the Newton's zoning rules, including the Building Department and a member of the FAR Working Group. The feedback we received was that we should consider pursuing a special permit because we had:

- A design that minimized visible massing
- A design that met all of the dimensional controls with the exception of a modest FAR overage
- A lot that with environmental constraints while also being relatively small

Consultative Process

As mentioned during the public hearing, we have pursued a highly consultative process throughout. We have sought to gain feedback from all stakeholders and wherever possible sought to accommodate requests to the best of our ability. This included a full design review with our two abutting neighbors, and consultation with five other neighbors. We were pleasantly surprised to receive universally positive feedback from the neighbors we spoke with, including three public letters of support. This feedback was all the more welcome given that we have not yet moved into the area and therefore had the opportunity to get to know our neighbors properly! We also undertook the optional Development Review in November 2011 with all relevant City departments, and, primarily via our architects, we maintained regular communication via email, phone and in-person meetings with the same departments.

There are two additional topics we would like to address in more detail.

'Third' Floor

At the public hearing there was a question surrounding our proposed use of the third floor. Although I did not do a good job of articulating this at the public hearing, this is something we have carefully considered. In the near term the room will be used as a games room, with table tennis for the family to enjoy, and the ¾ bathroom there will be used when the single children's bathroom on the second floor is occupied. It was also designed to provide flexibility should our family's configuration change in the future. If we have another child, or a parent came to live with us, we would move one of the children (who would then be older) to the third floor, to free up a bedroom on the second floor. Since we are hoping to build the house that our family will use indefinitely, we want to allow for this future flexibility now, rather than attempt to renovate or expand later. This approach provides for a stronger overall design while being more cost effective. Further, the 'third' floor roof line is set well back from the street and the roofline is carefully designed so that it appears to be connected to the second floor.

¹ Whereas the house proper in our proposed design is situated further from the lake than the current house, while only a portion of the deck is closer to the lake.

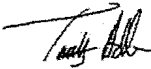
Basement Visible Massing

We understand that a significant motivation for the new FAR rules was to limit the visible massing of the ½ story, and the basement. In the publicly available documents explaining the new FAR rules, examples were shown where houses present as four stories. To limit this, under the new rules, the third floor now counts towards FAR, and a calculation would determine what fraction of the basement would also count towards FAR. The contribution of the basement towards FAR is determined by the ratio of the visible sections of the basement perimeter divided by the non-visible sections of the basement perimeter. We agree that penalizing the basement by the proportion that is visible is an intuitive and reasonable approach to minimize visible massing.

However, our particular design is arranged so that most of the technically visible basement sections (where more than 4ft is exposed) are in fact not practically visible to anybody not directly on the property. As seen in the attachment detailing the basement Floor Area calculation, there are four segments of our proposed basement perimeter that are technically considered exposed. The largest contributors are the two segments at the rear of the property where two sliding doors provide direct access to the backyard from either the guest room or the family room. A smaller segment is the basement window in Inna's office that will allow the winter sun to enter. These three segments increase our calculated FAR by about 340 sq. ft., yet none are visible in practice; the office window is recessed into a window well, and due to the ground topography and the landscaping, only one of the sliding doors will be even partially visible when standing in the lake approximately 100ft away. The mature trees and fence screen the view from the sides of the property.

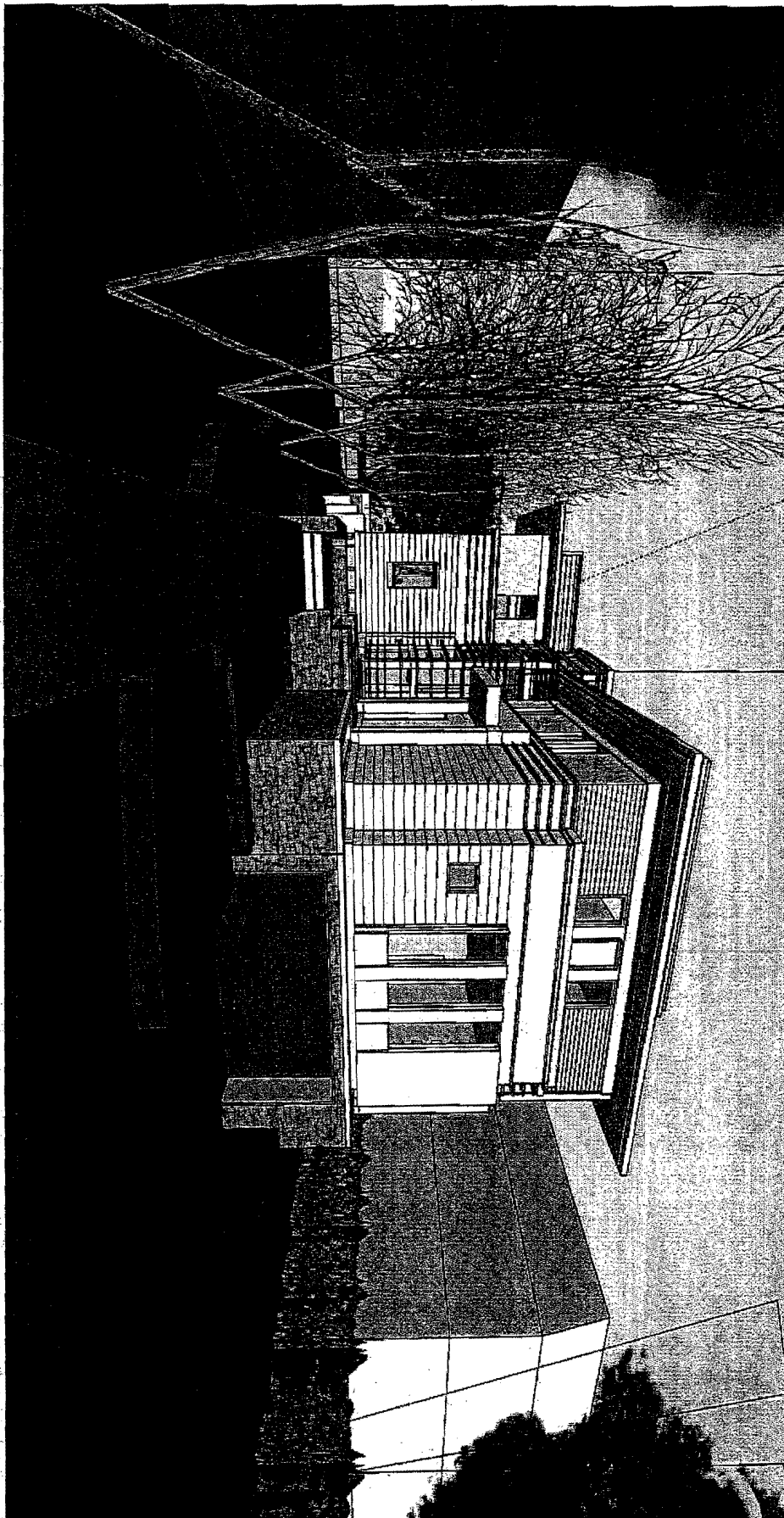
We offer this point only as a mitigating factor of our specific design for the Board's consideration and not as a critique of the new FAR rules. We would welcome any suggestions the Board might have to further mitigate this with additional landscaping.

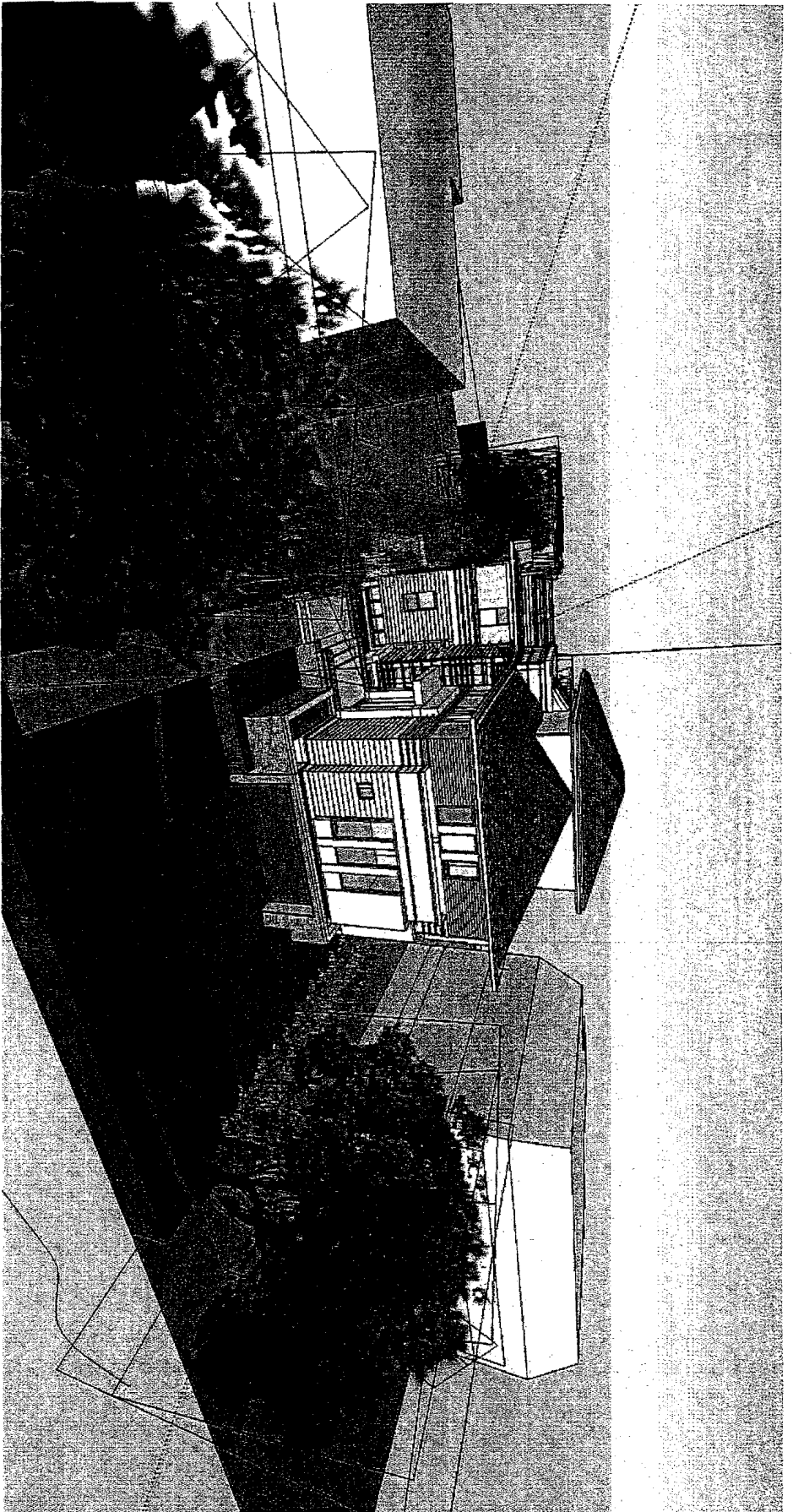
We thank you for your time and consideration, and we look forward to answering any questions you might have.



Timothy Adler

Street View





Aerial View



Approximate view from lake (There are additional trees on the left hand side, and the basement sliding door is less visible. Because the area between the basement sliding door and the backyard will be sloped steeply upwards, and is not flat as represented here, the sliding door will be only partially visible).

Tim Adler
25 Boynton Rd
Medford, MA. 02155

To: Land Use Committee of the Board of Aldermen

From: Tim Adler

May 22nd, 2012

Re: Petition #93-12 Comment on the Planning Department Memo dated May 18, 2012

We respectfully offer some comments on the Planning Department memo dated May 18, 2012.

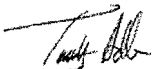
1. The memo restates the Planning Department's position that if approved "it will be the first new house allowed to exceed the new maximum FAR requirements". We remain unsure why this fact should negatively reflect upon the merits of our application. Both the new and old FAR rules contain provisions for a special permit process that, should the Aldermen approve, allows for waivers from FAR and other requirements for applications of merit. It seems unreasonable, and in fact extremely unfair, to penalize our application only because we happened to apply soon after the FAR rules were revised.
2. The memo also states that variations from FAR requirements have historically been granted for additions to existing houses. We completely understand and support the preference for maintaining and where appropriate expanding existing housing, especially that with historical significance. We note that this preference is clearly embedded in the new FAR rules through the .05 bonus given for additions to existing structures. However, we strongly disagree with the Planning Department's inference that this preference for expanding existing housing stock should extend to an automatic negative determination for special permit requests for appropriate new construction with extenuating circumstances.
3. In the final paragraph, the memo states that neighborhood structures that no longer meet current zoning standards should be excluded from any sample to determine what is reasonable and appropriate for the same neighborhood. The department's position seems inconsistent with the special permit criteria defined in the revised ordinance "*An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood*". This language does not appear to restrict the neighborhood sample to only those structures meeting current zoning standards. Further, we are not suggesting that our design is similar in visible massing as those we presented at the public hearing. Our structure presents significantly smaller massing than those examples, and we included those examples *only* to establish that our structure is *clearly not* "in derogation in size, scale and design in the neighborhood".
4. The memo states that "Floor area ratio is used to measure the intensity and amount of construction on a lot". However, this is not the only metric the zoning ordinance uses to limit the size of construction. As our zoning review reveals, our proposed design meets the seven other dimensional controls including all setbacks, the building height, the maximum stories, the maximum coverage and the minimum open space. Additionally, the Zoning Ordinance recognizes that a technical formula such as the FAR, cannot necessarily account for all the nuances of specific designs and specific lot characteristics, and allows the Aldermen discretion to override these when deemed appropriate.

5. The memo states the planning department's view that "there do not appear to be any extenuating circumstances" at this lot, yet the memo later states that the lot is an "environmentally sensitive site". The first statement appears to contradict the second statement. Moreover, the first statement also appears to contradict the Planning Department's own online document "Special Permits Step-by-Step" where the first unusual site feature listed that might justify a special permit is "environmental constraints"ⁱ. Sensitivity to the environment, in combination with our relatively narrow lot, *has* significantly shaped our design and contributed to the need for a special permit. Without these extenuating circumstances it is likely that we could have:
 - a. Expanded the current house (gaining a FAR bonus), or,
 - b. Built a new house that conformed to the new setbacks (gaining a FAR bonus), or,
 - c. Possibly redistributed the house closer to the lake with a more conventional design and avoided the need for a special permit

6. We agree with the memo's statement that ours is an "environmentally sensitive site". We have been sensitive to environmental considerations throughout this process and in fact were in touch with the Senior Conservation Planner prior to even submitting an offer to purchase (June 2011). Arguably, our proposed structure is more sensitive to the lake than the current structure. As noted on the site drainage plans developed in consultation with Conservation, and available for review at the Working Session, the proposed structure will entirely capture all run-off from the house and decks and redirect it to dry-wells. The current structure does not do this. Other environmental considerations include:
 - a. As mentioned at the public hearing, we intend to only use organic lawn care products (as we do now at our house in Medford) and avoid the environmentally harmful ice/snow melt products (as we also do now) that might damage the lake.
 - b. We intend to significantly reduce the amount of fossil fuels burned at site through a closed-loop Geothermal heating and cooling systemⁱⁱ. These systems are highly efficient and emit no pollutants.
 - c. We have consulted with an arborist experienced in working around Crystal Lake and will retain him to address some residual issues and ensure the future health of the trees on the property.

Thank you for your time and consideration.

Sincerely,



Timothy Adler

ⁱ <http://www.newtonma.gov/civica/filebank/blobdload.asp?BlobID=32194>

"They'll consider by-right alternatives and whether unusual site features limit the ability to build a by-right project on the site; these could include environmental constraints (such as wetlands), significant vegetation, unusual topography or lot shape ..."

ⁱⁱ While we have had detailed discussions with several providers, this is still subject to final site evaluation and permitting approval.

From:
Tim Adler
25 Boynton Rd
Medford, MA. 02155

May 22nd, 2012

To: Land Use Committee of the Board of Aldermen

Re: (Petition #93-12) Summary of Recent Communication with the Planning Department

Friday May 11th, 2012: The Planning Department released the staff analysis memo which revealed to us, for the first time, their view that we should redesign the house to avoid the need for a special permit. This was unexpected because we had not previously received this feedback during any of our prior communication with the Planning Department, including at the Development Review on November 23rd, 2011 where Derek Valentine represented the Planning Department and other city departments were also represented.

Monday May 14th 2012: Tom Timko contacted Alexandra on Monday May 14th 2012 to seek clarification and understanding of the basis for the negative view expressed in the planning memo. Our understanding from Alexandra's response was that the Planning Department were primarily concerned about the potential for setting a precedence, but that we should proceed to make our case to the Aldermen on the Land Use Committee at the public hearing.

Wednesday May 16th 2012: The day after the public hearing, Alexandra Ananth requested to arrange a meeting on Friday.

Friday May 18th 2012: We held a 10:00am conference call at which Eve Tapper, Alexandra Ananth, Tom Timko and Tim Adler participated. During this we were informed that it was a courtesy call to tell us that, in their view, the Aldermen will deny our application, and further that we should save any more time and effort by withdrawing our application prior to the Working Session.

The Planning Department's recommendation to withdraw our application prior to the working session does not reflect the many months of work that has gone into the design, the months invested in the special permit process, nor our understanding of the Special Permit process.

We were also informed on this call that we would not be scheduled for the working session on May 22nd, 2012, and we would instead be scheduled for a later date. Since this was contrary to what the Chairmen of the Land Use Committee proposed, we requested on multiple occasions during the call that we be allowed to continue to the May 22nd Working Session, as agreed at the Public Hearing.

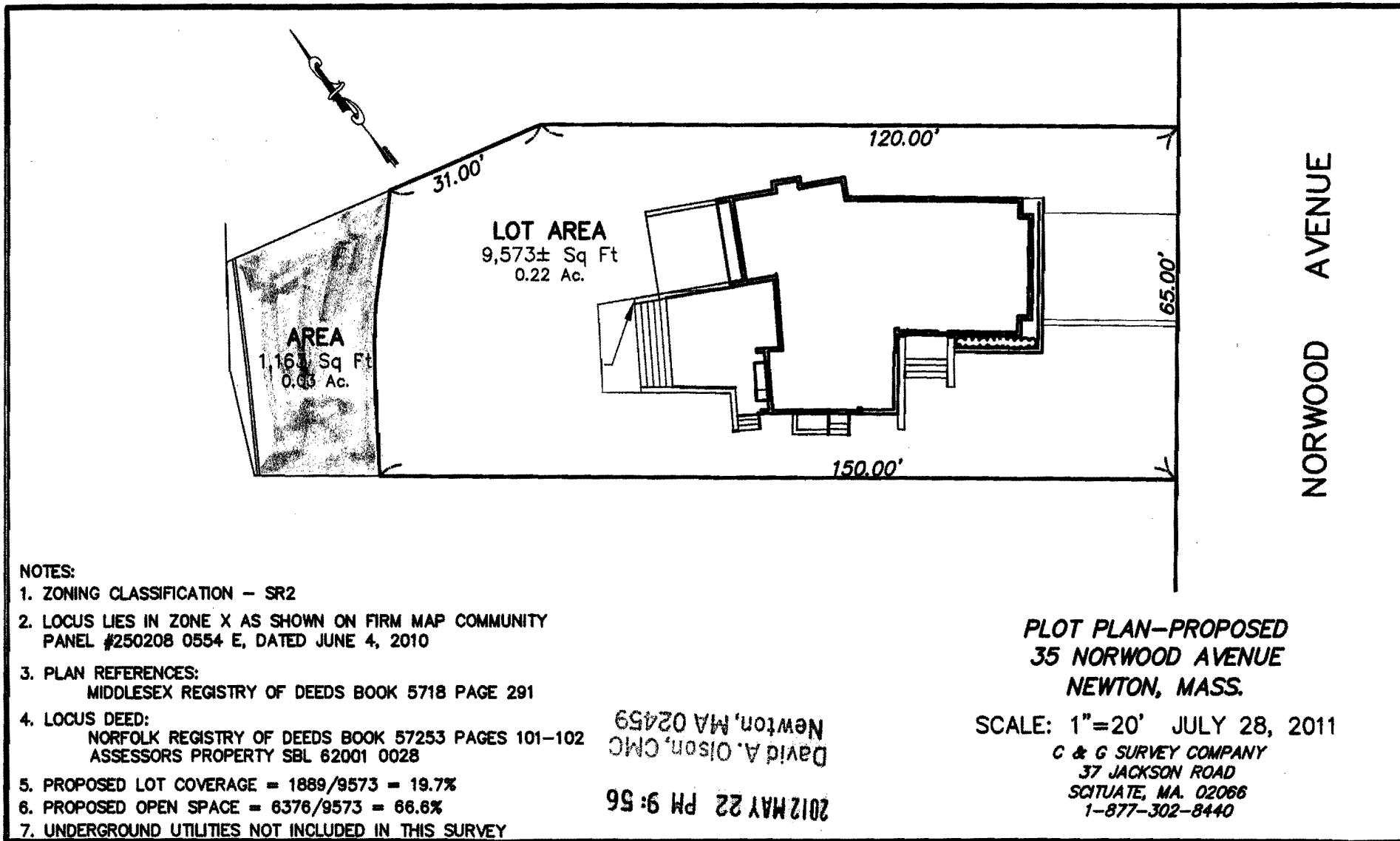
Later the same day, we received confirmation that we are back on the agenda for the May 22nd working session, and we also received a copy of the second Planning Department memo regarding our project. Our comments with respect to this memo are separately enclosed.

Sincerely,



Timothy Adler

RECEIVED
Newton City Clerk
2012 MAY 22 PM 9:57
David A. Olson, CMC
Newton, MA 02459



NORWOOD AVENUE

NOTES:

1. ZONING CLASSIFICATION - SR2
2. LOCUS LIES IN ZONE X AS SHOWN ON FIRM MAP COMMUNITY PANEL #250208 0554 E, DATED JUNE 4, 2010
3. PLAN REFERENCES:
MIDDLESEX REGISTRY OF DEEDS BOOK 5718 PAGE 291
4. LOCUS DEED:
NORFOLK REGISTRY OF DEEDS BOOK 57253 PAGES 101-102
ASSESSORS PROPERTY SBL 62001 0028
5. PROPOSED LOT COVERAGE = 1889/9573 = 19.7%
6. PROPOSED OPEN SPACE = 6376/9573 = 66.6%
7. UNDERGROUND UTILITIES NOT INCLUDED IN THIS SURVEY

**PLOT PLAN-PROPOSED
35 NORWOOD AVENUE
NEWTON, MASS.**

SCALE: 1"=20' JULY 28, 2011

C & G SURVEY COMPANY
37 JACKSON ROAD
SCITUATE, MA. 02066
1-877-302-8440

David A. Olson, CMC
Newton, MA 02459
2012 MAY 22 PM 9:56

RECEIVED
Newton City Clerk

REVISED 5-7-12

RE. 279.98(3)

----- Forwarded Message -----

From: stevedorrie@comcast.net

To: dcrossley@newtonma.gov

Sent: Wed, 18 May 2011 13:12:25 -0000 (UTC)

Subject: 14 Roland Street : Land Use Committee

Ms. Crossley:

It appears that the comments and observations on the attached correspondence forwarded to the City Clerk as requested at the 5-10-11 meeting were not sufficient to question your conscience decision to approve the petitioner's request for a variance from the current applicable setback requirements.

As an Architect, you should have been well aware of many of the legitimate concerns and comments noted in the attached correspondence prior to approval and would hope that Inspectional Services will not overlook these concerns as well.

It also appears that the somewhat self serving notes from that meeting did not reflect the entire discussion that took place that evening as well, which was surprising to me since this was my first venture into Newton City Politics.

Any questions or comments please do not hesitate to contact me.

Thank you,

Steve Praught

100 Charlemont Street

Newton, ma. 02461

RECEIVED
Newton City Clerk
2012 MAY 15 PM 11:28
David A. Olson, CMC
Newton, MA 02459

May 12, 2011

Ms. Linda Finucane
Associate City Clerk, City of Newton
1000 Commonwealth Avenue
Newton Centre, Ma. 02459-1449

Re: Petition # 279-98 (2)
14 Roland Street

Dear Ms. Finucane:

As a follow up to the 7:00 PM, May 10, 2011 Land Use Committee meeting and in response to the receipt of the following Drawings, which were received on that date I offer the following

Essex Engineering & Survey Inc, January 11, 2011, Progress Print
ROBERTS Architecture & Design Drawings A-1, Proposed Floor Plan (4-20-10)
ROBERTS Architecture & Design Drawings A-3, Proposed Elevations (4-20-10)

Several comments/observations as follows:

- 1.) The Civil Drawings, Progress Print, do not match the Architectural Floor Plan, A-1 with regard to the walkway location and or materials to be used.
- 2.) The Trench drain at the exterior face of the Parking Garage on Architectural Floor Plan, A-1, is not located on the Civil Drawing, Progress Print.
- 3.) There are no hay bales included with the silt fencing on the Civil Drawing, Progress Print. Standard Sedimentation and Erosion Control measures as mandated by DEP include Hay bales and silt fencing, especially with the adjacent Conservation area in the rear of the property.
- 4.) Should there be drainage on the inside of the proposed Garage with and gas & Oil separator provided? The pitch from the street could overcome the limits of the Trench Drain and water would enter the Garage.
- 5.) The Finished Floor (FF) elevation of the Garage on the Civil Plan is 101.5, while there is no Finished Floor (FF) elevation on the Architectural Floor Plan, A-1.
- 6.) The Architectural Floor Plan, A-1, references elevations and or details on Drawing A-4 and A-5, which do not exist with this submission.
- 7.) Should there be an illumination study performed based on the proposed three (3) Light fixtures mounted on the Exterior face of the Garage, since these are proposed at 17'6" from the back of the existing sidewalk? Also motion detection devises to activate these light fixtures not allowed due to sensitivity.
- 8.) There are no wall types or designations included with this submission.

9.) There are no downspouts indicated on the Architectural drawings which will need to be coordinated with the underground drainage. Civil Drawing, Progress Print, indicate one (1) roof leader for the entire Garage.

10.) The Civil Drawing, Progress Print indicates a sidewalk elevation of 100.9 and a Garage Finish Floor elevation of 101.5, while the Architectural Drawing, A-1, indicates that the proposed driveway is to be sloped from the back of sidewalk to the trench drain.

11.) There is no foundation plan included with this submission. Footings and frost wall construction or haunches at the exterior walls? Drawing A-3, Elevation Plans, does indicate an outline of footing and frost wall for the proposed garage.

12.) The Civil Drawing indicates an overall outside dimension of 20'-0" x 20'-0" while the Architectural Plan indicates overall dimension of 25'-0" x 25'-0".

13.) There is a new exterior door located on Drawing A-3, Proposed Elevations, at the face of the existing structure which is not located on the Drawing A-1.

Based on the above questions and concerns, this application should be rejected because of it's non conformance with the 8 th edition of the State Building Code, non compliance with Department of Planning and Development memo dated May 6, 2011, non compliance with the dimensional standards of Section 30-15, table 1 and the 25' setback requirement, non compliance with Engineering Division memo dated May 2, 2011.

As represented at the Land Use Committee meeting on Tuesday, May 10, 2011, I want to formally advise your office of my strenuous opposition to the consideration and and/or possible approval of the applicant 's amendment to the previously approved special permit.


- 1.) Since the connector is not connected to the house in an effort "to save closet space", there is no reason as to why the Garage could not be located in a manner to be in compliance with all applicable codes and standards.
- 2.) All of the houses indicated in paragraph A on page 4 of 6 in your May 6, 2011 memo are conforming and in compliance with applicable codes, standards and requirements relative to set back dimension, etc and it would be wrong to allow non compliance based on that fact alone.
- 3.) The City of Newton Engineering Division memo dated May 2, 2011, page 1 of 3, Attachment E, Executive Summary refers to the closing of one of the two existing curb cuts, which technically should be amended to reflect two curb cuts.
- 4.) The current plans do not include the specific items referenced on page 3 of 3 in the City of Newton Engineering Division memo dated May 2, 2011, Attachment E.

As you can see from the above comments and observations, there are significant legitimate objections noted that must lead to the rejection of the applicant's amendment to the existing special permit, which did not include any reference or consideration for a proposed Garage.

In the final analysis, once your committee has completed the Land Use committee review and if this determination is not satisfactory to the undersigned, I intend to pursue legal action to contest any decision to amend any and all applicable codes, standards or permits involved with this submission.

Any questions or comments please do not hesitate to contact me at stevedorrie@comcast.net at your convenience.

Yours truly;


Stephen J. Praught
100 Charlemont Street
Newton Highlands, Ma. 02461