

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 23, 2015

Present: Ald. Johnson (Chairman), Danberg, Sangiolo, Leary, Kalis, Baker, Hess-Mahan

Absent: Ald. Yates

Also Present: Ald. Gentile, Harney and Brousal-Glaser

City Staff: James Freas (Acting Director, Planning Dept.), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#293-15 11 JOHN STREET LLC petition to rezone land known as Section 65, Block 8, Lot 70 at 11 JOHN STREET from MULTI RESIDENCE 1/BUSINESS 1 to BUSINESS 1. [10/09/15 @1:00PM]

ACTION: **WITHDRAWAL WITHOUT PREJUDICE APPROVED 7-0 (Ald. Hess-Mahan not voting)**

NOTE: Attorney Laurance Lee, representing the 11 John Street LLC, submitted a letter of withdrawal on behalf of the petitioner.

The Committee approved the request for withdrawal without prejudice.

#196-15 TAMMY ARCURI et al. petition to rezone land known as Section 41, Block 6, Lots 11, 12, and Lot 13 1B located at 132 CHARLES STREET, AUBURNDALE, from MULTI RESIDENCE 2 to MANUFACTURING .

ACTION: **HELD 8-0**

NOTE: Ald. Johnson noted that a public hearing was held and closed on this item. The Committee had asked that the Planning Department prepare a memo and provide recommendations on this petition. The memo was included in the Friday Packet and can be found attached to the online agenda.

James Freas, Acting Director of the Planning Department presented a PowerPoint which is attached to this report. He explained that the petitioner is asking that the two back lots and a portion of the side lot at 132 Charles Street be rezoned from Multi Residence 2 (MR2) to Manufacturing. The Planning Department's recommendation is to vote No Action Necessary on this request. Mr. Freas explained that the overall area needs a more comprehensive review based on the access to the lots, the constraints on parking, the various uses on the petitioner's land as well as the residential use on the surrounding parcels. The department would like to work with the petitioner and the neighbors to determine the most appropriate zoning districts for the area.

Committee Comments/Questions

Denial

Ald. Gentile's explained that he would like to recommend denial of this petition. He believes that the petitioner could still come before the Board for a special permit, but felt this particular petition had no merit. He noted that he and other Aldermen have received an extraordinary number of emails relative to this property in the past year or so. The Inspectional Services Department had issued three violation notices to the owner of the property in May, June and December of 2014 with an unsatisfactory response from the owner. Therefore, the City took the matter to court. Ald. Gentile agreed with much of the Planning Department's recommendation and felt some of the long-time uses on the site were probably legal or should be made legal, however, the newer intensified activity on the site from the Charles River Canoe and Kayak Company has been the cause of most of the problems.

Ald. Gentile felt that it was the responsibility of the petitioner to show some good faith and take some action particularly after a year of ignoring citations from the City. He spoke with the petitioner months ago and felt that she was not doing anything to meet the City even halfway in resolving the violations. He said the canoes and kayaks continue to be stored there and the business continues to run there which it is not fair to the neighborhood.

Ms. Lawlor explained that no fines have been imposed as of yet by the City. The show cause hearing was not allowed to move forward and the Magistrate in District Court ordered a stay of the violations to allow the petitioner to pursue administrative remedies, i.e. this rezoning petition. The matter cannot be brought back to court until the petition is acted upon by the Board. Ald. Sangiolo noted that it is not fair that the community continues to deal with a property in violation of its current zoning and all the negative effects those violations bring to the neighborhood, she therefore moved Denial on this petition and wants the enforcement action to move forward. Ald. Baker was troubled by people coming to the Board to seek a change in the rules in order to remedy a past violation. The ordinances should mean something and should be enforced and he is willing to consider a denial motion based on that.

Ms. Lawlor explained that if the Board votes denial on this petition and the land remains zoned as is, then the enforcement proceedings could go forward; there would first be a show cause hearing and if that was successful the matter would move to trial. If the trial showed the property owner to be in violation, then the fines would be imposed.

Denial vs. No Action Necessary

Mr. Freas said the overall rezoning of this area should be addressed and a denial vote would prohibit a request to come forward for another two years. A No Action Necessary vote would allow time to work with the neighborhood, determine the appropriate zoning, and allow the petitioner to seek a special permit for the commercial building that might allow continuation of the current uses under non-conforming provisions. The special permit could also set limitations and conditions to address the impacts on the larger neighborhood. Marie Lawlor, Assistant City Solicitor, agreed with this interpretation. A denial vote of this petition would disallow another attempt for two years without a super-majority vote of the Board, and the by-right Manufacturing and other allowed uses at the building could continue without further conditions set by the City.

No Action Necessary

Some Committee members felt that keeping the option open with a vote of NAN would be more useful and allow for a more timely and productive discussion and solution to the problem in the area. Some of the current uses in the building might be better than a manufacturing use, which is not really appropriate for the neighborhood anymore as it may have been in 1927, when the building was constructed and put into use. As mentioned, it would also allow the opportunity, through the special permit process to set limitations and conditions on the uses in the building to benefit the neighborhood and mitigate negative effects. Ald. Harney felt it was a difficult situation and that the neighbors should be involved in figuring that out, but he was not sure of the correct course of action at this point.

Mr. Freas said he would like to continue conversations with the ward Aldermen in order to determine the best way to move forward on finding a solution. He estimates the process could take anywhere from 3-6 months in order to conduct neighborhood meetings and create a solution that is beneficial to all involved.

Injunction/Agreement

There was a question as to whether a temporary injunction could be sought to enjoin the non-conforming use on the site. Ms. Lawlor said an enforcement action is pending in District Court and that court does not grant injunctions; it would have to be taken to Superior Court. It was suggested in Committee that the property owner might voluntarily suspend the use until the matter is resolved. There is always the chance that the City could lose the court case and it may be better to keep options open instead of denying this petition.

A Committee member asked if a stipulation could be entered into between the petitioner and the City about the specific uses that are going on and could go on, and if that stipulation was not satisfactory, the Committee could amend the motion from No Action Necessary to Denial on the floor of the Board. It would allow two weeks in order to get that agreement in place. This would allow the neighborhood some measure of satisfaction that the issues were in the process of being resolved. Ms. Lawlor said she would like to speak with Julie Ross as she has been handling the case in District Court.

Next Steps

Ald. Baker and Ald. Hess-Mahan noted that a consent decree could be entered into and it could even include a stipulation that if there is a breach the matter could be reconsidered for a different action. Those stipulations could include removal of the existing violations and a clarification of the current uses and what limitations for those uses are allowed in the current zoning. Some of the stipulations could be connected to the current enforcement action and there could also be a collateral agreement which improves the current situation more comprehensively. The incentive for the petitioner is she avoids the risk of fines and further enforcement action by the City and the incentive for the community is they get some certainty for the time being and a process for getting better certainty in the future.

Ald. Johnson suggested holding the item and allowing conversations to take place in the meantime about an agreement with the petitioner, the Ward 4 Aldermen, the neighbors and the

Law Department. The Committee could meet prior to the full Board on November 8th at 7:00PM to hear the outcome, and then vote No Action Necessary or to Deny based on that outcome. Ms. Lawlor said she would consult with Ms. Ross as well.

Ald. Sangiolo substituted her denial motion for a motion to hold and the Committee voted in favor.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

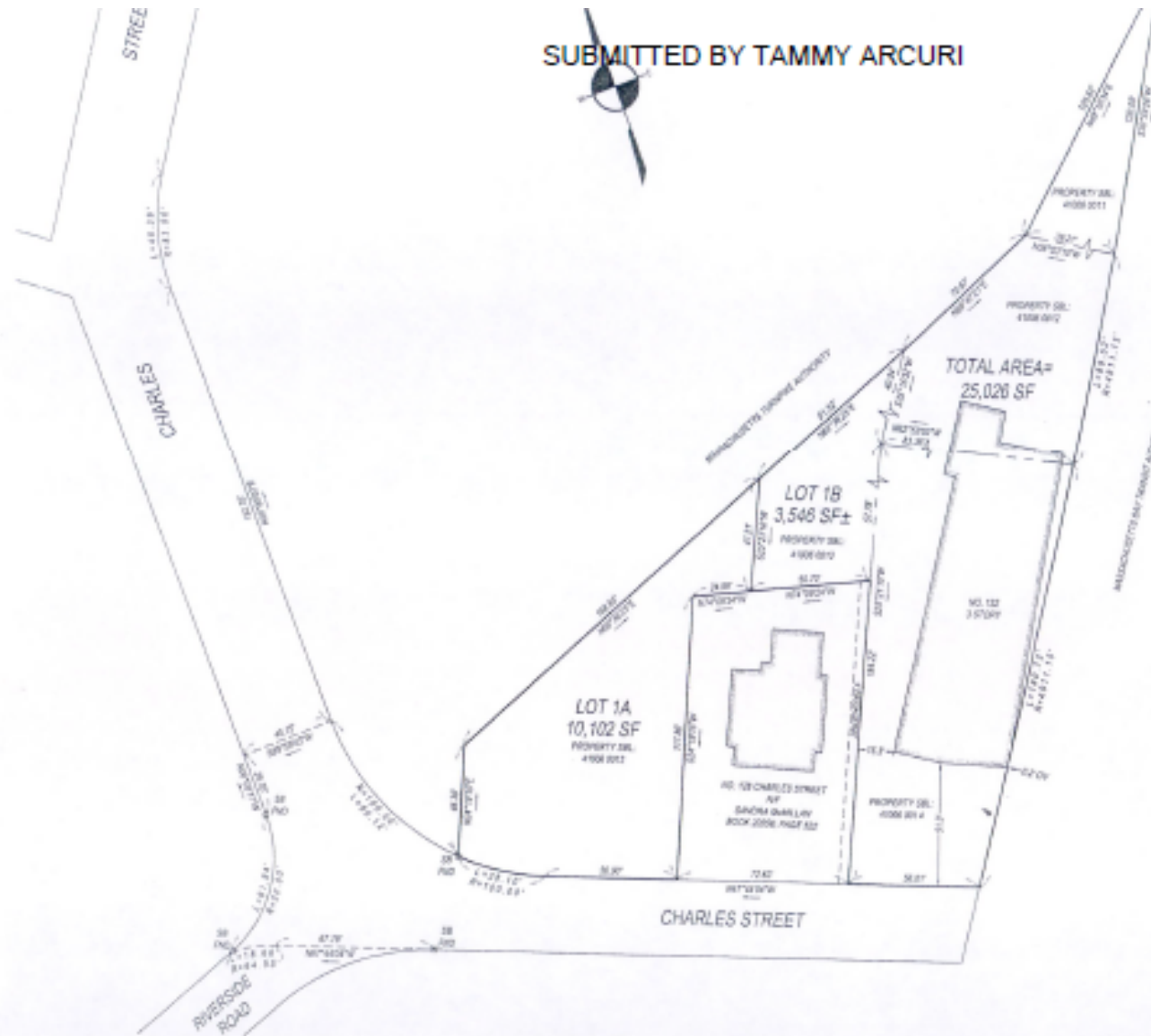
Zoning and Planning Committee

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REZONING **Charles Street**

SUBMITTED BY TAMMY ARCURI

Exhibit # 2 #196-15



PLAN OF LAND
 LOCATED AT
132 CHARLES STREET
 NEWTON, MA

PREPARED FOR:
 JOSEPH T. ARCURI
 132 CHARLES STREET
 NEWTON, MA

BOSTON
SURVEY, INC.
 ONE C/O SHIRLEY PLACE
 CHARLESTOWN, MA 02129
 (617) 552-1111







