

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**REAL PROPERTY REUSE COMMITTEE REPORT**

**TUESDAY, MAY 27, 2014**

Present: Ald. Albright (Chairman), Ald. Crossley, Hess-Mahan Leary, Danberg, Fuller, and Gentile; absent: Ald. Laredo; also present: Ald. Yates, Norton, and Johnson  
Staff: Ouida Young (Assistant City Solicitor), Alexandra Ananth (Chief Planner for Current Planning), Candace Havens (Director of Planning & Development), Nancy Hyde (Economic Development Director)

#71-09(3)     TERENCE P. MORRIS on behalf of HERRICK ROAD REALTY TRUST  
seeking to amend Board Order #71-09(2) for a renewable lease for a subsurface easement beneath city-owned land 1294 Centre Street, Newton Centre, for vehicular access to 17-31 Herrick Road; the petitioner is seeking to purchase the easement.

ACTION: HELD7-0

NOTE: This item is more complex than it appears. Herrick Road Realty Trust was granted special permit #272-09 on December 3, 2009 for a 3-story mixed-use building containing 4 dwelling units and ground floor commercial space with a 75-seat restaurant, with underground parking at 17-31 Herrick Road. The driveway providing the only access to the proposed underground garage traverses under the city-owned parking lot at 1294 Centre Street. Anticipating the special permit, the Herrick Road Realty Trust sought an easement for access to the garage. Upon the recommendation of the Real Property Reuse Committee a renewable *lease* was granted by the Board of Aldermen on April 6, 2009 via board order #71-09{2}. The reuse board order includes a condition that the *lease* is contingent upon the petitioner obtaining a special permit.

In 2010 the General Court approved the Permit Extension Act, Section 173 of Chapter 240, which to promote job growth and long-term economic recovery granted automatic four-year extensions to certain permits that were in existence during a qualifying period of August 15, 2008 through August 15, 2012. This act extended the petitioner's special permit through December 3, 2014. If the special permit is not exercised by then it will lapse and the petitioner will need to seek a new special permit. The petitioner is now seeking to purchase the easement as a *lease* is an obstacle to obtaining financing.

Ms. Young said she questioned this condition. It is legally impossible to create an easement and then *lease* it. An owner can sell or give an easement, but it cannot create an easement, continue to own the property and the easement, and lease the easement.

Since 2010, a group of property owners including Mr. Morris's client, who has participated in all the meetings, and representatives from the city have been in discussions relative to

providing long-term commuter and employer/employee parking in Newton Centre. The group developed a proposal to construct over the MBTA tracks and a portion of the Cypress Street parking lot a 30- 35 foot high, 3story parking structure, containing approximately 400 parking spaces. Ultimately, the group concluded that the parking garage cannot be built without a land swap with Herrick Road Realty Trust. However, a land swap involving city-owned land requires the city to comply with the public bidding law, which requires a Request for Proposals (RFP) for anything over \$25,000. Alternatively, the city could seek Home Rule Legislation to exempt it from the procurement process; however, Ms. Young pointed out that the Home Rule Legislation filed in January for an Article 97 to locate the temporary fire station at Nahanton Park has just reached the Governor's desk. The end of this session is rapidly approaching and it is unlikely that special legislation would be approved before December.

Ms. Havens reported that the administration has a positive interest in the project and communicated to the working group its intention to move the project forward, understanding that the building of the garage and the exercise of the special permit preclude one another. She also mentioned that we are in a more favorable financing climate now than four years ago.

The Board of Aldermen approved funds for an appraisal of the property at 1294 Centre Street. Planning will be looking soon at peer review and traffic and circulation studies. She said the Planning Department will have more to report next month.

There was some concern for potential loss of property value and the inaction would further exacerbate this problem. Alderman Gentile was concerned by the term "renewable lease" in reuse board order #71-09(2). . It should have been to grant or sell the easement.

Mr. Morris said that if a garage were constructed along the MBTA tracks approximately 10,000 square feet of land would be left over next to the Learning Express building. His client is willing to be cooperative in building the garage, but since there is an expiration date on his special permit, he needs to know if the garage is going forward, or whether he should exercise his special permit before it expires. He added that the owner of the special permit has been working patiently and cooperatively with the city on the goal of building the garage.

Ms. Young again noted that Home Rule Legislation may be sought to authorize a sale to a specific individual v. the RFP process. Alternatively, and RFP can be written with the parameters needed to allow the garage to be built. This has been used by other municipalities but it may not be a perfect solution.

Alderman Hess-Mahan noted that that the Board five years ago approved both the reuse and special permit board orders unanimously when the parameters of the proposed project were known. . Alderman Danberg said that in 2009 the garage was in the early concept stage with no defined location. She confirmed that construction of the garage would preclude development of Herrick Road Realty Trust's parcel.

The committee agreed it had insufficient information to vote this evening and held the item for June, when it expects the Planning Department will provide information to inform its decision.

#47-14(4) ALD. ALBRIGHT & JOHNSON proposing a RESOLUTION requesting His Honor the Mayor assure the redevelopment of the Austin Street parking lot is handled in a way that carries out the objectives of the Board of Aldermen's Reuse Board Order and fulfills all requirements of the city's special permit process, including community input, parking, traffic/circulation, architecture/massing/design, outdoor space, and site plan details

**ACTION: APPROVED 7-0**

NOTE: Please see note below.

#47-14(3) ALD. NORTON proposing a RESOLUTION requesting His Honor the Mayor extend the time in which to choose proposals for the development of the Austin Street parking to afford applicants the opportunity to submit new proposals that are more consistent with the Board of Aldermen's intent in declaring the parcel surplus and with the preferences of the Newtonville community, such that in order to be considered new proposals must be limited to a height of three stories or less, include no more than forty units of housing, and include sufficient parking for current and future uses of Newtonville Square, including possible additions to existing structures and additional build out of the area to the extent allowed by law.

**ACTION: MOTION TO APPROVE AS AMENDED FAILED 1-6** (Gentile voting in the affirmative; Albright, Crossley, Danberg, Fuller, Hess-Mahan, Leary opposed)

NOTE: Ms. Ananth presented the attached PowerPoint, which includes the goals of the Mixed Use 4 zoning district. She noted that that the city and developer will hold no fewer than three community meetings to allow input from the community. The community will have an additional opportunity for input during the special permit process.

Alderman Norton distributed an amended version of #47-14(3) which, since the Mayor has chosen the developer, removed the language asking the Mayor to extend the time for doing so.

In response to the committee, Ms. Young said this is candidly political; it is not a legal issue. The committee can approve any resolution it chooses; but, resolutions are not binding.

Alderman Gentile moved approval of #47-14(4). However, the Chairman and Alderman Johnson felt that since the Mayor had announced his choice of developer resolution #47-14(4) is moot and could be voted No Action Necessary.

Alderman Norton said there are great things in (4), but it is all about process. The purpose of #47-13(3) is to set a limitation on the outcome. She is aware that (3) will not please everyone because it allows something bigger than the initial proposal for the site; however, as an elected official she is seeking to express a vision for all of Newtonville.

Alderman Johnson explained that she and Alderman Albright docketed (4) to articulate for members of the Board and the public who were not in all the meetings what they would commit to as far as process, so, yes, the resolution is about process. What is the magic number of units? Neither of them is comfortable with the ambiguity of setting a cap on the number of units. What sizes will they be? Parking for what future uses?

Alderman Fuller said she supports (4) because it includes a message to the Mayor reinforcing the process. She cannot support (3). Who knows what number of stories and units are right. She likened traffic and parking to the conundrum of the chicken and the egg. It is an iterative process. She looks forward to the parking study. The city can do better on this site than a parking lot.

Alderman Gentile acknowledged that (4) is well-written and lays out the process, but his opinion has not changed even though the Mayor has announced his choice. He supports (3). It is unacceptable to approve 80-90 units. He believes it is important to send a message to the Mayor that there is a limit to what the Board will support. In the initial talks about developing this site, the number of units was 18-30. How did it get to 80-90 units? It is important to give the Mayor specific direction.

Alderman Crossley said a limitation on the number of stories and units is arbitrary. She cannot support a cap. There will be peer reviews as part of the special permit process. This is a unique situation and opportunity. Nobody wants to do a bad project. Partnering with the developer gives the city leverage. The project will die if it is financially unfeasible. Resolution (4) reinforces the process. She can appreciate the neighborhood concerns, and Alderman Norton has her ear to the ground, but she cannot support something so specific as (3).

Alderman Leary agreed. She appreciates the concerns expressed by Alderman Norton and many residents, but a parking lot is probably the poorest use of land. The project will be vetted during the special permit process. It has the potential to be a walkable/bike project model.

Alderman Hess-Mahan agreed with the substance of (4); however, the Board will have little say in what the project looks like. Once the special permit application is filed, other than small tweaks, it cannot be substantially changed. He supports (4) because it reinforces the statement at about how the Board wants the process to proceed. He cautioned that the Board must vote on the project before it, not the one it wishes were before it. Resolution (3) is well intended and reflective of what some people are saying; however the public bidding process was ill suited to what the city was trying to do here in the context of this site.

Alderman Danberg supports (4). The site is a great location for seniors. A smaller number of units could result in larger units with three-four bedrooms.

Alderman Gentile's motion to approve #47-14(4) was on the table. Alderman Albright and Johnson ultimately agreed that, although the Mayor had chosen a developer, approval of

the resolution instead of voting No Action Necessary would reinforce the goals expressed by the Board in reuse board order #150-09(6). Alderman Gentile's motion to approved carried 7-0.

Alderman Gentile then moved approval of#47-14(3) as amended, which motion failed to carry 1-6 (Alderman Gentile voting in the affirmative).

The meeting was adjourned at approximately 9:00 PM.

Respectfully submitted, Susan S. Albright, Chairman

Attachments: Planning Department PowerPoint

Resolution #47-14(3) Resolution #47-14(4)

# Department of Planning and Development



**REAL PROPERTY REUSE COMMITTEE**

**DOCKET #47-14(3) & #47-14(4)**

**AUSTIN STREET REUSE PROJECT**

**NEWTONVILLE**

**MAY 27, 2014**

## City Ordinance Section 2-7

2

- Docket item #47-14(3) Ald. Norton proposing a resolution requesting His Honor the Mayor extend the time in which to choose proposals for the development of the Austin Street parking to afford applicants the opportunity to submit new proposals that are more consistent with the Board of Aldermen's intent in declaring the parcel surplus and with the preferences of the Newtonville community, such that in order to be considered new proposals must be limited to a height of three stories or less, include no more than forty units of housing, and include sufficient parking for current and future uses of Newtonville Square, including possible additions to existing structures and additional build-out of the area to the extent allowed by law.

## City Ordinance Section 2-7

3

- Docket Item #47-14(4) Ald. Albright & Johnson proposing a Resolution requesting His Honor the Mayor assure the redevelopment of the Austin Street parking lot is handled in a way that carries out the objectives of the Board of Aldermen's Reuse Board Order and fulfills all requirements of the City's special permit process, including community input, parking, traffic/circulation, architecture/massing/design, outdoor space, and site plan details.

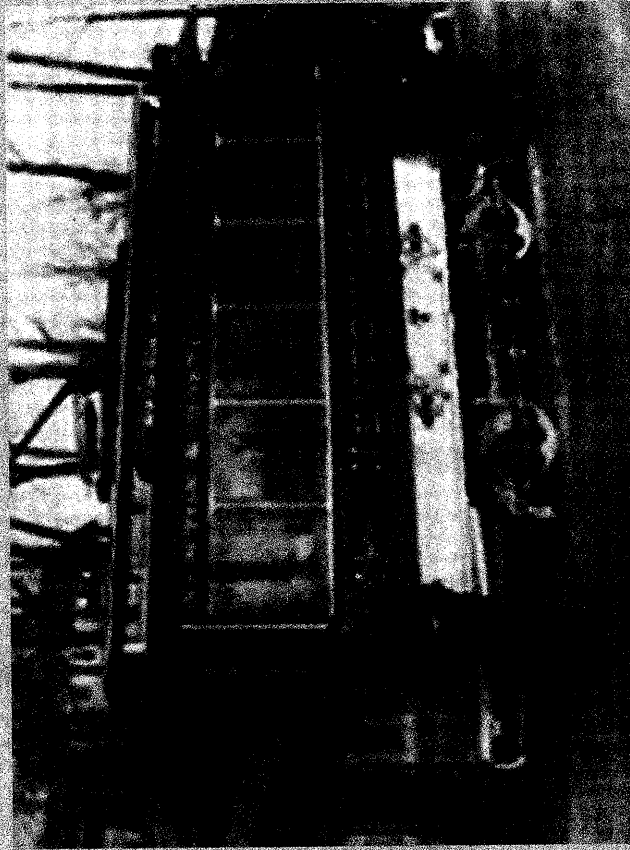


## Goals Mixed Use 4

4

- Adding vitality to the village
- Contributing to Newton's affordable housing stock
- A design that is context sensitive
- Development that is physically, financially and legally feasible

- A specific project for the lot has yet to be developed
- Community engagement



5

Add vitality to  
Newtonville  
Village

Create village  
housing

Fiscal benefits to  
the Village  
and the City

- No less than 3 community meetings
- A commitment to maximizing parking
- Context sensitive design

Add vitality to  
Newtonville  
Village

6

Create village  
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Fiscal benefits to  
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# Special Permit Process

7

- City remains in control of site
- Special Permit Process

## Mixed Use 4

8

- Board approved MU4 zone in October 2012
- Allows 2 stories by right or small (up to 19,999 SF) mixed-use residential (up to 3 stories) by right
- Allows mixed use residential up to 5 stories by special permit

# Mixed Use 4

9

- By right uses include general office above or below the street level
- Retail, personal service, business service and retail banking establishments of 5,000 SF or less
- Eating and drinking establishments with 50 seats or less
- Multifamily dwellings above the street level
- Community Use space, day care services, places of religious assembly, government offices or services, parks or gardens, nonprofit or public schools, libraries or museums
- All in a building size of 19,999 SF or less
- And with a minimum lot area per unit of 1,000 SF

CITY OF NEWTON

IN BOARD OF ALDERMEN

June 2, 2014

BE IT RESOLVED:

WHEREAS, the Newton Board of Aldermen declared the Austin St. parking lot surplus in hopes of finding a use that was compatible with the neighborhood and that maintained adequate public parking for existing businesses and other uses of Newtonville Square,

AND WHEREAS, the Joint Advisory Planning Group (JAPG), appointed to draft a framework for the Austin St. parcel, envisioned a development “benefitting not only those who occupy the site but others, as well, including nearby businesses and residents”,

AND WHEREAS, the level of activity in Newtonville Square, including use of the Austin St. lot, has increased considerably in the years since the parcel was declared surplus and since the JAPG report was issued,

AND WHEREAS, all but one of the proposals submitted in response to the February 14, 2013 RFP to develop the Austin Street parking lot proposed projects far greater in number of housing units and overall scale and density than was discussed by the Board of Aldermen or set as a minimum in the RFP,

AND WHEREAS, numerous residents – including through participation in a survey of over 700 Newtonville residents and businesses conducted by the newly formed Newtonville Area Council – have expressed concern regarding the density of the first round of proposals to develop the Austin St. site,

NOW, THEREFORE, BE IT RESOLVED that the Board of Aldermen respectfully requests that Mayor Warren work with his chosen developer to ensure that the proposal be limited to a height of three stories or less, include no more than forty units of housing, and include sufficient parking for current and future uses of Newtonville square, including possible additions to existing structures and additional build out of the area to the extent allowed by law.

CITY OF NEWTON  
IN BOARD OF ALDERMEN

June 2, 2014

WHEREAS the Board of Aldermen seeks to continue to contribute to the vibrancy of the Newtonville village center;

WHEREAS the Board of Aldermen seeks to encourage the creation of affordable housing and housing options for young professionals and those who want to downsize and remain in Newton near village centers;

WHEREAS the businesses in Newtonville may benefit from increased patrons living within walking distance of the village center; and

WHEREAS public parking will continue to be available on the Austin Street parking lot site to meet the needs of the community;

WHEREAS community input will be a critical element of the process of reviewing the plans for Austin Street;

NOW, THEREFORE, BE IT RESOLVED that the Board of Aldermen requests that the Mayor assure the redevelopment of the Austin Street parking lot is handled in a way that carries out the objectives of the Board of Aldermen's Re-Use Board Order and fulfills all requirements of the Zoning Ordinance Special Permit process. These measures should include:

- Community Input. The Mayor will ask the Newtonville Area Council to take a leadership role in the process by sponsoring community meetings in order to vet the design and potential impacts on the neighborhood directly with residents so that the developer will be able to revise the plans accordingly, while maintaining overall site development objectives in a manner that is financially and fiscally feasible.
- Parking. A requirement of the developer to have a professional parking study conducted. On-site parking must be sufficient to address current *and* future parking needs on this site. The City will also have the study evaluated by its own peer review consultant.
- Traffic/Circulation. A requirement of the developer to have a professional traffic/circulation study to show how the additional traffic will be managed and what improvements may be needed.
- Architecture /Massing/Design of building. A requirement of the Planning and Development Department's Development Review Team to review project plans which



will include consideration of design, colors, materials, massing, and detailing that is appropriate within the village of Newtonville emphasizing human scale, pedestrian-friendly features that are in keeping with the surroundings. In addition, the Urban Design Commission shall evaluate the design as many times as necessary in a public forum to ensure that the design is compatible with the village.

- Outdoor space. A requirement that the project's site plan will be reviewed by the Planning Department's Development Review Team to ensure that the project's open space will be a focal point for Newtonville with pleasant, well-designed outdoor public area, landscaping, benches, and other public amenities and to advise on code compliance, consistency with stated City goals, site plan, and other design features to help shape the project.
- Site Plan details. A requirement that at the Urban Design Commission review the project's site plan and its relationship to adjacent properties. The interface with Philip Bram Way poses some opportunities for existing businesses and their interface with the project will also be part of the review.
- Code Compliance. Requirement to perform a detailed, thorough zoning review to assure code compliance.

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