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STAFF MEMORANDUM

Meeting Date: **Wednesday, October 16, 2019**

DATE: October 10, 2019

TO: Urban Design Commission

FROM: Shubee Sikka, Urban Designer

SUBJECT: Additional Review Information

The purpose of this memorandum is to provide the members of the Urban Design Commission (UDC) and the public with technical information and planning analysis which may be useful in the review and decision-making process of the UDC. The Department of Planning and Development's intention is to provide a balanced view of the issues with the information it has at the time of the application's review. Additional information may be presented at the meeting that the UDC can take into consideration when discussing Sign Permit or Fence Appeal applications.

Dear UDC Members,

The following is a brief discussion of the sign permit applications that you should have received in your meeting packet and staff's recommendations for these items.

I. Roll Call

II. Regular Agenda

Sign Permits

1. 132-136 Adams Street – Patzcuaro Taqueria & Bar

PROJECT DESCRIPTION: The property located at 132-136 Adams Street is within a Business 1 district. The applicant is proposing to install the following signs:

1. Two awning split principal signs, non-illuminated, with approximately 18 sq. ft. of sign area on the northwestern building façade facing Watertown Street.

TECHNICAL REVIEW:

- As per §5.2.8, *“In particular instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign.”* Both the proposed split principal signs appear to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two split principal signs are allowed, which the applicant is not exceeding, and on this façade of 40 feet, the total maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of both the proposed split principal signs.

2. 978 Watertown Street - Spinbox

PROJECT DESCRIPTION: The property located at 978 Watertown Street is within a Business 1 zoning district. The applicant is proposing to install the following sign:

1. One wall mounted principal sign, non-illuminated, with approximately 35 sq. ft. of sign area on the northern building façade facing Watertown Street.

TECHNICAL REVIEW:

- The proposed principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 42 feet, the maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the proposed principal sign.

3. 320 Washington Street – Four Points by Sheraton

PROJECT DESCRIPTION: The property located at 320 Washington Street is within Business 1 zoning district. The applicant is proposing to replace and install the following signs:

1. One wall mounted principal sign, internally illuminated, with approximately 289 sq. ft. of sign area on the eastern façade facing Massachusetts Turnpike (I-90).
2. One wall mounted principal sign, internally illuminated, with approximately 289 sq. ft. of sign area on the western façade facing Massachusetts Turnpike (I-90).
3. One wall mounted principal sign, internally illuminated, with approximately 73 sq. ft. of sign area on the western façade facing Massachusetts Turnpike (I-90).
4. One wall mounted principal sign, internally illuminated, with approximately 60 sq. ft. of sign area on the western façade facing Massachusetts Turnpike (I-90).

5. One free-standing principal sign, internally illuminated, with approximately 38 sq. ft. of sign area perpendicular to Washington Street.
6. Two directional signs, non-illuminated, with approximately 7 sq. ft. of sign area on the northern façade facing Washington Street.
7. One wall mounted principal sign, internally illuminated, with approximately 104 sq. ft. of sign area on the southern façade facing Washington Street.

TECHNICAL REVIEW:

- Staff is in the process of finding recorded Board Orders for this property for all the signs.

STAFF RECOMMENDATION: Staff will have a recommendation for all the signs at the Urban Design Commission meeting on October 16th.

4. 562 Commonwealth Avenue – Forevermark Flowers

PROJECT DESCRIPTION: The property located at 562 Commonwealth Avenue is within Multi Residence 1 zoning district. The applicant is proposing to install the following sign:

1. One wall mounted principal sign, internally illuminated, with approximately 18 sq. ft. of sign area on the northern façade facing Commonwealth Avenue.

TECHNICAL REVIEW:

- The proposed principal sign appears to be consistent with the dimensional controls specified in §5.2.7. Per the Zoning Ordinance, one principal wall sign is allowed, which the applicant is not exceeding, and the maximum size of the sign allowed is 20 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the proposed principal sign.

5. 85 Chapel Street – Advanced learning Center

PROJECT DESCRIPTION: The property located at 85 Chapel Street is within Manufacturing zoning district. The applicant is proposing to install the following sign:

1. One wall mounted principal sign, non-illuminated, with approximately 8 sq. ft. of sign area on the northwestern façade facing the parking lot.

TECHNICAL REVIEW:

- The proposed principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 50 feet, the maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding.

STAFF RECOMMENDATION: Staff recommends approval of the proposed principal sign.

6. 40 Austin Street – Rockland Trust

PROJECT DESCRIPTION: The property located at 40 Austin Street is within Business 5 zoning district. The applicant is proposing to install the following signs:

1. One free-standing principal sign, internally illuminated, with approximately 20 sq. ft. of sign area perpendicular to Austin Street.
2. One wall mounted secondary sign, internally illuminated, with approximately 32 sq. ft. of sign area on the northern façade facing Austin Street.

TECHNICAL REVIEW:

- The proposed free-standing principal sign appears to be not consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one free-standing principal sign is allowed, which the applicant is not exceeding. Per §5.2.13.A, *"In particular instances, the City Council may grant a special permit to allow free-standing signs and exceptions to the limitations imposed by this Sec. 5.2 on the number, size, location and height of signs where it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street is such that free-standing signs or exceptions should be permitted in the public interest."* The staff has spoken to the applicant about applying for a Special Permit to the Land Use Committee of the City Council.
- The proposed secondary sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two secondary signs are allowed, which the applicant is not exceeding, and on this façade of 38 feet, the maximum size of the sign allowed is 38 sq. ft., which the applicant is also not exceeding.
- The applicant will bring additional photographs to the UDC meeting on October 16th.

STAFF RECOMMENDATION: Staff recommends approval of the proposed secondary sign. Staff recommends the applicant to apply for a Special Permit to the Land Use Committee of the City Council.

Fence Appeal

1. 1707 Washington Street Fence Appeal

PROJECT DESCRIPTION: The property located at 1707 Washington Street is within a Single Residence 2 district. The applicant has added the following fence:

- a) Front Lot Line along Washington Street – The applicant has added a fence along Washington Street front lot line, set at the front property line with a new fence, 69 ½ inches in height.

- b) Front Lot Line along Bonmar Circle – The applicant has added a fence along Bonmar Circle front lot line, set at the front property line with a new fence, 69 ½ inches in height.
- c) Side Lot Line – The applicant has added a fence along the side lot line, set at the side property line with a new fence, 69 ½ inches in height.

TECHNICAL REVIEW:

The existing fence along the front property lines appear to be not consistent with the fence criteria outlined in §5-30(d)(1) of the Newton Code of Ordinances.

According to §5-30(d)(1), "Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line."

The existing fence along the side property line appears to be consistent with the fence criteria outlined in §5-30(d)(3) of the Newton Code of Ordinances except the portion of the fence which is within two feet of the front lot line.

According to §5-30(d)(2), "Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line."

The existing fence at the corner appears to be not consistent with the fence criteria outlined in §5-30(f)(7) of the Newton Code of Ordinances.

According to §5-30(f)(7), "Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer."

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City's Fence Ordinance. The proposed fence, however, must be found to comply with the *"requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise."* The UDC must also determine whether the *"desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."*

The applicant is seeking an exception to allow 69 ½ inches tall fence at both the front property lines for a length of 91 ½ feet, where the ordinance would permit such a fence to be 4 feet tall at the front property line. The applicant's stated reasons for seeking this exception are that *"Two years ago I undertook to repair my fence by replacing panels, but not posts. Unfortunately, and to my great regret I did not think I needed to obtain permission from the city to repair an existing structure. Had I sought a permit; I would quickly have learned that the fence ordinance had changed since the fence went up in the last century (the fence was up when my wife moved to this address in 1991). Had I the opportunity to read the restrictions embodied in the new ordinance, I most certainly would have taken a different approach to repairing my fence, and it would have remained, as defined in the ordinance, "non-compliant legal". It's important to note that I did not alter the dimensions of the fence in any way.*

Not meaning to waste your time, I would however like to briefly tell you about me, as I believe that it still matters who a person is, and that it should count for something. I moved here several years ago from a very quiet dead-end street bordering the great salt march in Newbury, MA. My current address sits nearly atop of one of the busiest, noisiest intersections in the city; I'll address that in more detail later. Having acclimated myself to my new urban environment I began to discover many of the wonderful qualities presented in the area. Beyond that, I further developed a stronger sense of community; I volunteer weekly at the Newton Senior Center and I participate in the Newton Friendly Visitors Program. It's likely that I will expand my participation to other programs as well. So, you may well imagine my surprise and consternation upon having received a bright orange "ticket" attached to my door notifying me of an ordinance violation. This appeal is my only practical recourse.

In accordance with Newton Ordinances - Public and Inspectional Services, Article III. Fences Sec. 5-30 (h) Exceptions, I am seeking relief on the basis of my health, mental and physical, in accordance with the general guidelines of the Americans with Disabilities Act, which provides for reasonable accommodation(s) for disabled persons as defined in the ADA.

As you know, the ADA is targeted primarily at protecting disabled individuals. Under the Act, an individual is considered "disabled" if:

- 1. The person is substantially impaired with respect to a major life activity;*

2. The person has a record of such an impairment; or
3. The person is regarded as having such in impairment

Under Sec. 12102 of the act (2) Major Life Activities, (A) In general - for the purpose of paragraph (1) above, major life activities include, but are not limited to, caring for oneself, performing manual tasks seeing, hearing eating, sleeping, walking, standing , lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

I will, for the purpose of this document assume that you have not been made privy to my prior correspondence to the Department of Planning and Development, so I will recap and expand upon my assertions put forth therein.

I suffer from a permanent sleep disorder, and have struggled with it since 2013, now going into year seven. In order to preserve my privacy in the public venue of this appeal, I have kept my documentation simple. Please see the note from my neurologist contained in this packet. There are more detailed records available should the need arise to bring them forth in another venue.

It is absolutely vital to me to retain my fence at its current height of 6 Feet. As I mentioned earlier, I am situated at an extremely noisy intersection. My fence offers no small amount of relief from the traffic din in that it deflects a significant percentage of it. Kindly note that Washington Street is a corridor from Rte 128 to the Mass Pike and vice versa, over which many large vehicles such as tractor trailers, cement trucks, work trucks of all manner with rattling equipment, busses, motorcycles and vehicles with modified/loud exhausts. It's not merely the noise of passing vehicles; because of the traffic lights, these engine noises are amplified as they accelerate from a dead stop. I hope to be able to provide you with a short video at the hearing on the 16th if permissible. Finally, and conceding that no barrier can serve to mitigate the sound of emergency vehicle sirens, I do nonetheless suffer them on a daily basis, as the fire station is across the street and Newton Wellesley Hospital is about a half-mile down the street.

While traffic ebbs and flows, loud vehicles appear at all hours of the day or night. My condition is such that it is very difficult to fall asleep and I am easily disturbed once I do. Because of my erratic sleep patterns, it is often necessary that I try to nap during the day, when the noise is loudest.

I respectfully suggest that forcing me to comply with the ordinance under the circumstances would be unreasonable considering the following:

1. *Moving the fence closer to the house would not only be disquieting and stressful. Besides losing precious buffer space, it would require that a large portion of my yard that is paved with stone be dug up/altered at considerable expense (see photo #1). As a seventy-year-old on a fixed income, it seems a high price to pay for my mistake in 2017.*

2. *I would be deprived of the use of a considerable portion of my already small yard. Given the real cost of land in the city, the amount in lost assets is not small.*

3. *My fence does not present a safety hazard. Please see photo #2, taken from behind the crosswalk on Bonmar Circle that shows the sightline to oncoming traffic is unimpeded. Furthermore, I have learned from the Newton Police Department, that records available from 2006 to present reveal that a total of three (3) accidents occurred at the intersection of Bon mar and Washington, none of which involved cars exiting Bonmar.*

4. *Although I have no intentions to do so, I could plant shrubbery along my property line that would dwarf my six-foot fence.*

5. *Each winter, out of necessity, the city piles snow on the very corner of Bonmar, on my side, which presents a far more tangible impediment to the sight line of traffic on Washington Street.*

6. *At the end of the day, I'm just an old guy who made a bad mistake. All I am asking for is that my fence be granted the non-conforming legal status I enjoy ed prior to this whole distressing fair. Since receiving the violation notice, my first waking thought has been upon this issue. There are very likely hundreds of fences so categorized existing throughout the city, and I respectfully submit that by granting me this request (keeping in mind my previous contentions relative to the Americans with Disabilities Act), it would be a small matter for the City of Newton."*

STAFF RECOMMENDATION: Based on the information submitted in the fence appeal application and staff's technical review, staff seeks advise from Urban Design Commission.

2. 650 Commonwealth Avenue Fence Appeal

PROJECT DESCRIPTION: The property located at 650 Commonwealth Avenue is within a Single Residence 2 district. The applicant has added the following fence:

- a) Front Lot Line along Centre Street – The applicant has added a fence along Centre Street front lot line, set at the front property line with a new fence, 6 feet in height.
- b) Corner Lot Line along corner of Centre Street and Commonwealth Avenue – The applicant has added a fence along the corner lot line, set at the property line with a new fence, 6 feet in height.

TECHNICAL REVIEW:

The existing fence along the front property lines appear to be not consistent with the fence criteria outlined in §5-30(d)(1) of the Newton Code of Ordinances.

According to §5-30(d)(1), "Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line."

The existing fence at the corner appears to be not consistent with the fence criteria outlined in §5-30(f)(7) of the Newton Code of Ordinances.

According to §5-30(f)(7), "Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer."

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City's Fence Ordinance. The proposed fence, however, must be found to comply with the *"requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise."* The UDC must also determine whether the *"desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."*

The applicant is seeking an exception to allow 6 feet tall fence at the front property lines and at the corner for a length of 176 feet, where the ordinance would permit such a fence to be 4 feet tall at the front property line. The applicant's stated reasons for seeking this exception are that *"The property at 650 Commonwealth Avenue is at the corner of Commonwealth Avenue (Comm Ave) and Centre Street. This is a legal condominium with two addresses- both 650 Comm Ave owned by Scott and Geri Reinhardt and 1073 Centre St owned by Nancy Hurwitz.*

When Ms Hurwitz purchased her property in 2012, there was a 6 ft wooden fence in place along the property line that traversed the Centre St property line and included the corner at the Comm Ave side. The fence stopped at both the 650 and the 1073 driveways. In 2016, the fence was in poor condition and both owners each paid \$5,800 (total cost of the fence was \$11,600) and had Reliable fence install a new but identical 6 ft wooden fence to replace the old fence. The exact position of the fence did not change.

In mid-September of 2019, we received a notice of an anonymous complaint about the fence. The complaint was that it was not to code.

The fence along Centre St sits between 11 and 15 inches behind the property line. The fence sits 6 ft 9 inches behind the property line at the corner and along Comm Ave. The fence sits well within the legal area of a 6 ft fence at this intersection, so the appeal is to allow the Centre St portion to remain as is, as there is no breach of code for the corner portion of the fence. There are photos to document this.

Ms Hurwitz spoke to the city inspector and was informed we had two choices:

- 1. Move the fence back a foot from where it stands, so there will be a two-foot setback from the front lot line and create an open area of 2 feet for the excess 2 ft above the allowed 4 ft height.*
- 2. Cut off 2 ft of height from the existing fence and allow it to remain as is.*

The option of an appeal was not mentioned. Ms Hurwitz spoke to the zoning department and was then informed she could make an appeal.

Reliable Fence has given an estimate of \$10,800 to "move the 136 feet of Centre Street fence back 1-2 feet. Basically, a new fence needs to be rebuilt after the present fence (built 3 years ago for over

\$11,000) is removed.

The estimate to cut off the top 2 feet of the 6 ft fence along the 136 feet of the Centre Street fence is \$1,750. This will leave the entire length of the property on Centre Street open to all the foot traffic, automobile traffic and all of the increase in sounds and the lights, not to mention the garbage thrown over the fence.

We realize the house is at a very busy corner and the property was purchased with this knowledge. But the property was also purchased with the protection of a 6 ft fence as a buffer from the onlookers. There is a newly established Rock Garden built in 2019 by Ms Hurwitz that has a seating area that sits 3- 4 feet from the 6 ft fence. The 6 ft fence also provides privacy from all people walking by and standing at the bus stop on both sides of Centre Street near the 1073 driveway. Without the 6ft fence, the Living

Room and the Second Floor Bedroom is easily seen from the street. As a single woman, Ms Hurwitz is concerned about her privacy and safety as lowering the fence will open up a view to inside of her home to onlookers as they walk by and as they sit in traffic both North and South Bound on Centre Street.

We are positive that the 6 ft fence at the corner and of Comm Ave falls within the town regulations.

We ask for a variance to allow the 6-foot fence to remain on the Centre Street to afford the necessary safety and privacy for Ms Hurwitz. There is no apparent risk to the fence remaining as it has for over 15 years. The fence does not hinder visibility nor passage on Centre Street nor Comm Ave, nor at the intersection of both streets.

There are pictures submitted, numbered on the back of each photo, that show:

The corner portion of the Fence:

1. The imaginary line created as described in 5-30 (7) which describes the fence regulations on a Corner Lot to create a "affected area" was measured and remeasured. Photo 1 shows Ms Hurwitz holding the tape measure along the Comm Ave side at the 25 ft setback and Mr. Reinhardt is hold the other end of the tape measure along the Centre St side at the 25 ft setback. Clearly the fence is falling outside of the restricted fence area and is not in the "affected area".

a. Photos 1A and 1B are similar photos but different views if clarification is needed.

b. Photos 1 C and 1 D show the 25 ft set back from the point at which the property lines intersect. Mr Reinhardt is standing (carefully) at the intersection point.

2. Photo 2 shows the view of Ms Hurwitz's property from Centre Street. This fence is at 4 ft and is then angled up to 6 ft as you see in 2A.

a. Photo 2B shows the amount of height and privacy that would be lost by removing 2 ft from the fence. The orange chalk line denotes the 4 ft height as viewed from the sidewalk.

b. Photo 2 C makes a similar point, but shows the fence as viewed from the inside of the property sitting at the rock garden seated area. The orange line denotes a fence at 4 ft. The hand you see in the photo is Ms Hurwitz (who is 5ft- 6inch tall) fulling extending her hand to show how easily it will be for someone to simple look into the property while standing at the bus stop, etc.

c. *Photo 2 D shows where Ms Hurwitz was sitting to show the point as made above, however the photo was taken before she had the great idea of marking 4ft with orange chalk, so there is no chalk line.*

3. *In order to remove this fence and build a new fence anywhere along the Centre St property line, it is important to realize that is virtually impossible due to the fact there are large trees and plantings that sit within 1-2 feet of the fence, inside of the fence. Pictures 3 show this.*

a. *Picture 3 shows the view discussed in point 2, but from a step back so that you can see the large old tree, the bushes and plantings that are along the Centre Street fence, inside of the fence. If the fence were to be moved back, it would be requiring removal of almost all of these plantings as there is virtually no space behind them in most areas to rebuild the fence.*

b. *Photo 3A shows that same tree in photo 3, but allows you to see the tree is only 6 inches from the fence and the base of the tree extends to over 2 feet from the fence, within the property. Moving the fence back 3 feet to allow the tree to remain would mean the fence would be at or within 1.5 feet of the granite surrounding the rock garden.*

c. *Photo 3B is a different view of the same tree as described just above.*

d. *Photos 3 C and 3D are showing that there are low plantings that would be destroyed by moving the fence back 1-2 feet. The planting are all along the fence. This is shown in 3 E and 3 F.*

4. *Photo 4 shows not only that Ms Hurwitz did not think to use the panorama photo on her iPhone, but that the plantings and 2 large old trees sit up just inside the fence on the Reinhardt's property. Moving the fence back here would mean having to cut down the tree on the right as it sits up again the brick border of the Reinhardt's driveway, allowing no room for a fence behind that tree.*

5. *Photos 5, SA and 5 B simply show the intersection as the view coming from Newton Centre on Centre St. There is no significant site loss from the fence. You can see the car sitting at the light in the far left lane waiting to turn left in photo 5. In SA you have clear site of a car turning right onto Centre from Comm Ave all the way as you sit in traffic on Centre street 3-4 cars back.*

6. *Photos 6, 6 A-D show the intersection as one is driving East on Comm Ave. These are taken to show that from as far back as 4 car lengths (6C) drivers have a clear sight line to turn right and the fence is not even visible if you are getting ready to turn right (photo 6).*

7. *The final photo (7) is a photo of the fence on Centre Street. There are old and beautiful trees that sit just at that fence and these trees make moving the fence back nearly*

impossible. In order to have the safety and privacy of a fence, the point, I think, of paying \$11,600 for the fence we built, the fence truly needs to remain as it is, and we ask for your approval."

The staff has received letters of support (attachment A) for the existing fence from the following abutters:

- Samuel Ntonme, resident of 1082 Centre Street
- Debbie McNamara for Elizabeth Cann, commercial business owner at 1064&1066 Centre Street
- Nina Mayer, resident at 1074B Centre Street

STAFF RECOMMENDATION: Based on the information submitted in the fence appeal application and staff's technical review, staff seeks advise from Urban Design Commission.

3. 524 California Street Fence Appeal

PROJECT DESCRIPTION: The property located at 524 California Street is within a Multi-Residence 1 district. The applicant is proposing to add the following fence:

- a) Front Lot Line along California Street – The applicant is proposing to replace a fence along California Street front lot line, set at the front property line with a new fence, varying in height from 6 feet 3 inches to 5 feet.
- b) Front Lot Line along Nevada Street – The applicant is proposing to replace a fence along Nevada Street front lot line, set at the front property line with a new fence, 5 feet in height.

TECHNICAL REVIEW:

The proposed fence along the front property lines appear to be not consistent with the fence criteria outlined in §5-30(d)(1) of the Newton Code of Ordinances.

According to §5-30(d)(1), "Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line."

The existing fence at the corner appears to be not consistent with the fence criteria outlined in §5-30(f)(7) of the Newton Code of Ordinances.

According to §5-30(f)(7), "Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as

amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer."

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City's Fence Ordinance. The proposed fence, however, must be found to comply with the *"requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise."* The UDC must also determine whether the *"desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."*

As proposed, the applicant is seeking an exception to allow a fence, varying in height from 6 feet 3 inches to 5 feet tall fence at front property line along California Street for a length of 46 feet. The applicant is also seeking an exception to allow a fence 5 feet tall fence at the front property lines along California Street and Nevada Street for a length of 182 feet, where the ordinance would permit such a fence to be 4 feet tall at the front property lines. The applicant's stated reasons for seeking this exception are that *"We, the owners of the property at 524 California Street, Newton, MA 02460 are requesting that the City of Newton's Department of Planning and Development grant our appeal for relief from the City's current street corner fence height restrictions for reasons of public safety, our personal safety, and for aesthetic reasons all of which are set forth in greater detail below.*

The current corner fence ordinance restricts the fence height to no greater than 4 feet above street level. Because we have a 15-inch retaining wall at the corner of our property, the maximum allowable fence height that we would be permitted under the ordinance would measure only 2 feet 9 inches high from the ground on the owner's side of the fence. This fence height would not provide sufficient safety and security for small children or dogs playing in the yard inside the fence. As two of the Owners have a toddler and intend to have a dog as well in the near future a fence height of 2 feet 9 inches would present serious personal safety concerns. Currently the existing fence, which is 25 years old, (and which was erected prior to the ordinance limiting the corner fence height to 4 feet) is 6 feet high at the corner and, as it sits on a 15-inch high retaining wall, measures 7 feet 3 inches above the street level. The current fence is made of wood and is a privacy fence style thus it is solid and cannot be seen through. It is our

desire that the Planning and Development Department grant us relief from the current corner height restriction so that we may erect a new white picket vinyl fence which would be 5 feet high or 6 feet 3 inches only at the corner and 5 feet everywhere else. Also, the new fence (see photo attached would be semi-private with gaps between the pickets allowing for more visibility at the corner}. Thus, from a public safety standpoint, the line of sight at the corner will be improved by a shorter, see through picket fence style than the current solid opaque style. Of note as well is that there is already a traffic light in place at the corner.

Finally, while we have the choice to retain the current fence height by merely repairing it, we prefer not to do so as the old solid grey fence is not likely to withstand too many more winters and is in a severe state of disrepair. At the age of 25 years it has reached the end of its useful life. The new white picket fence style will withstand the winter winds and will be more aesthetically pleasing to the eye. We feel that it is time to bid the old grey fence adieu and to welcome the new, but we cannot do so without this Board's approval of our request to grant a waiver with respect to the ordinance height. We have attached pictures of the current old grey fence and the new proposed white vinyl picket fence."

STAFF RECOMMENDATION: Based on the information submitted in the fence appeal application and staff's technical review, staff seeks advise from Urban Design Commission.

Shubee Sikka

From: Samuel N. <sntonme@gmail.com>
Sent: Wednesday, October 09, 2019 8:38 PM
To: Shubee Sikka
Subject: Fence Appeal

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Ms. Sika,

I am a resident of Newton living at 1082 Centre St, Newton, MA 02458 and live near 650 Commonwealth Avenue in Newton. My wife and I are in support of allowing the fence at the corner of Comm Ave and Centre street to remain as is. Centre and Commonwealth Ave are both busy streets and I completely understand the need of a fence to maintain privacy for them. I won't be able to attend the meeting on October 16, but respectfully ask that they be permitted to leave their fence as it. Thank you.

Regards,
Samuel Ntonme

Shubee Sikka

From: nmayer106@gmail.com
Sent: Wednesday, October 09, 2019 11:22 AM
To: Shubee Sikka
Subject: Fence at 650 Comm Ave

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

I am an abutter to 650 Comm Ave., Newton. I support their appeal to the Fence Appeal Board to allow their fence to remain as it is. It has remained this way for over fifteen years. Rather than being a problem, I have appreciated its grace and way it has aged appropriately. When I contrast it to the white plastic fences in the neighborhood, not to mention the ugly, decrepit fence at 990 Centre St., I am grateful to have abutters who have chosen such a fence.

Very truly yours,

Nina Mayer

1074 B Centre Street

Newton

Shubee Sikka

From: Debbie McNamara <debbie@lizcaan.com>
Sent: Monday, October 07, 2019 3:46 PM
To: Shubee Sikka
Subject: 650 Commonwealth Ave, Newton

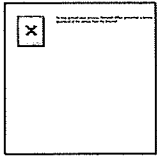
[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Ms. Shubee Sika,

We are a commercial office located directly across the street from the residence at 650 Commonwealth Avenue. We are in support of allowing the fence at the corner of Comm Ave and Centre, on their property, to remain as it is. In our opinion it is neither unsightly or a hindrance in any way. To ask them to replace or alter this fence seems absurd and we totally side with the homeowners to keep the fence as is.

Thank you for your time on this matter.

Debbie McNamara for Elizabeth Caan



Debbie McNamara | Office Manager
Liz Caan & Co.
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