

237.13

*Terrence P. Morris Esquire  
Attorney at Law  
57 Elm Road  
Newton, MA 02460  
617 202-9132*

October 7, 2013

**By Hand**

Ald. Ted Hess-Mahan, Chairman  
Land Use Committee  
Newton Board of Aldermen  
1000 Commonwealth Avenue  
Newton, MA 02459

RECEIVED  
Newton City Clerk  
2013 OCT -7 PM 5:57  
David A. Olson, CMC  
Newton, MA 02459

Re: 75-77 Auburn Street  
Public Hearing Petition #237-13

Dear Mr. Chairman:

I am writing to you in advance of the working session scheduled before the Land Use Committee on Tuesday, October 8, 2013. This letter will serve as the petitioner's response to several issues that were raised in the Planning Department report and at the public hearing on September 10, 2013. The report itself contained a number of positive observations and comments. Among them the following...

- *The Newton Historical Commission has approved the massing and elevations" ...*
- *"Because of the size of the site an increase in density would not be out of character with the neighborhood in terms of the lot area per unit." ...*
- *"...the new attached dwellings behind the existing structure will not extend over the existing house and will include recesses at different points to break up the mass. The proposed dwellings will also taper in from the existing house so that the mass will be reduced towards the northwestern corner." ...*
- *"The effect of the massing of the structure has been reduced by creating lower roof lines, by screening most of the structure property of others, and by recessing unit 2 and unit 3 to reduce the visibility from the Street."*

Notwithstanding these favorable observations, the staff report goes on to suggest that the petitioner reduce either the number or the size of the proposed units to meet the dimensional requirements of the site. In support of its suggestion, the report points to the petitioner's request

for zoning relief for increased lot coverage, side yard setback and location of a driveway within 10 feet of a side lot line. Yet in seemingly contradictory fashion, the report acknowledges that the reliefs sought are "*relatively minor*". The staff report seeks to apply a new "uniqueness" standard, ostensibly borrowed from the inapposite statutory variance criteria ("*there are no unique aspects of the site that make it impractical to adhere to the zoning regulations*").

The petitioner respectfully suggests that this petition be seen in the context of similarly-situated petitions recommended by the Land Use Committee and approved by the Board of Aldermen over the last several years, which belie the notion that there is nothing unique about the site. Of the 21 lots located on Auburn Street between Curve Street and Greenough Street, the locus with a lot size of 31,437 s.f., exceeds the next largest lot by 11,000 s.f. Unlike virtually all of the other lots on the street, which are uniformly rectangular, the subject lot is thirty-two feet (32') wider along the rear lot line (170') than its frontage (138'). This unique dimensional characteristic actually has facilitated compliance with the expanded 25' setbacks required for attached dwellings on the westerly side and northerly lot lines.

Moreover, the most significant characteristic that distinguishes the subject property from all of the other homes on the street is the existence of a historic house built in 1853. Consistently Board orders for attached dwelling/preservation projects have contained findings granting setback and lot coverage relief emanating from such preservation, to wit, the following...

- "*The Board finds that the proposed waivers to the side and rear setback requirements and lot coverage ratios are appropriate as the petitioner is preserving the existing historic structure which will be a benefit to the neighborhood and will not adversely affect abutters or the immediate neighborhood.*" [Board Order #282-11(2) 87-89 Waban Park].
- "*A side setback of 17.5 feet for the existing dwelling unit and 20.2 and 20.3 feet for the proposed new units and a rear setback of 16.3 feet for the existing dwelling unit, where 25 foot setbacks are required, are appropriate due to the size and shape of the lot and the location of the existing historic house on the lot.*" [Board Order #259-12(4) 9 Ripley Street].
- "*Lot coverage of 25.5% with 25% is allowed by right is appropriate because the petitioner has incorporated an existing historic structure into the site design, thereby saving and rehabilitating this building, and the increased lot coverage is necessary to support the proposed rehabilitation of an historic structure.*" [Board Order #10-12 37 Elm Street].

The common denominator in all of these petitions and predicate for the special permit is the preservation/restoration of an architecturally and historically significant structure.

It is important to note that these homes are not large by today's standards. As originally designed, the houses had an average living area of 2,600 s.f., ranging in size from 2,233 s.f. to 3,000 s.f. While the FAR originally was at 48.8, much of that was attributed to the space in the garages, which accounted for 2,340 s.f. or 7.4%. Notwithstanding that fact the petitioner went back to the drawing board in an attempt to respond to the staff concerns. As a result the plans, which are

being put before you at the working session, show a reduction in lot coverage from 26.8 to 24.8. Accordingly no relief is being requested or required for lot coverage. As a result of reducing the building footprint, the living area within the units has been reduced to an average of 2,563 s.f., ranging in size from 2,173 s.f. to a maximum of 2,823 s.f. In like manner the FAR has been reduced to 46.5% with the garages comprising 5.7% of that number.

Given the lack of data in the assessor's database for much of the city's existing stock, it is difficult to establish a quantitative context for the project. Nonetheless there are two properties which shed some light on the appropriateness of this project from a design and massing standpoint. The property at 45-47 Auburn Street was built in 2006 as a by-right "tear-down", containing two dwelling units each with living area of 2,900+ s.f., garage area of 507 s.f. And unfinished attic area of 571+s.f. each for a total floor area of 8,008 sf. This translates into a 64.2 FAR. The circa-1910, two-family dwelling, which abuts the locus at 83-85 Auburn Street, contains 2,580 s.f. with a detached garage of 399 s.f. on a 6,396 s.f. lot for a 46.6 FAR.

As stated at the public hearing, the evolution of the attached dwelling provisions of the Ordinance has brought significant improvement to both site planning and unit design. Principal among these is the provision for garage parking in lieu of the open parking lots that characterized earlier developments. In addition, the amendment allowing two-unit attached dwellings has resulted in developments that more closely resonate with the spatial relationship of land to buildings in the multi-residence districts in which they are located. Indeed in this case the sole setback waiver is for a garage that is 15' from the side lot line shared with an NStar power station and 40' feet from the nearest residence on the abutting property.

Finally, we believe that the retention of the existing curb cut with its own driveway provides the ability to access parking beneath the historic building, which otherwise would not be possible. This particular site planning solution was utilized at 87-89 Waban Park, where the Board found *"that the design and location of access driveways are appropriate to the site and neighborhood and will not result in any vehicular or pedestrian safety concerns."* At the public hearing, the Committee received testimony from Ms. Judith Evergreen of 70 Auburn Street whose driveway is directly opposite the primary drive which services this site. Ms. Evergreen favored retaining the two existing curb cuts both from a personal standpoint as well as her view that more curb cuts would have the effect of slowing traffic on Auburn Street.

Thank you for your consideration.

Sincerely,

*Terrence P. Morris*

Terrence P. Morris

Attachments: Revised Plans

Cc: Land Use Committee

Linda Finucane, Clerk of Committee

Alexandra Ananth, Chief Planner

Stephen Pantalone, Sr. Planner