

January 31, 2017

SENT VIA EMAIL TO:

nkhan@newtonma.gov

AND IN-HAND TO

Marc C. Laredo, Chairman
The Land Use Committee
City of Newton
1000 Commonwealth Ave.
Newton, MA 02459

Re: Petition Nos. 180-16(2) and 179-16

Dear Chairman Laredo:

This is to follow up on my letter to you, dated January 12, 2017, which was submitted on behalf of my clients, Patrick J. Slattery and the P&K Realty Trust II. As you know, Mr. Slattery owns the property known as and numbered 227 Walnut Street in Newton. As the direct north-east abutter to the proposed development known as "Washington Place," no other property owner in Newton will be more effected by this project than him.

While Mr. Slattery is pleased that the developer, Mark Newtonville LLC, has evidenced a willingness to revise the project to address the various concerns of the community, he maintains that there remain a number of very significant matters affecting him that the developer has failed to address. Accordingly, Mr. Slattery has identified several additional areas of concern that he kindly asks the Land Use Committee to pose to the developer this evening.¹ They are as follows:

I. Adverse Impacts of the Current Site Plan on Mr. Slattery's Property

As part of the proposed development, Mark Newtonville LLC has sought site plan review and approval for the project. The purpose this process is "to protect the health, safety, convenience and general welfare of the inhabitants of the City by providing for a review of plans for certain proposed uses and structures in order to better control potential impacts on traffic, parking, municipal and public services, utilities, and environmental quality in the City, to

¹ The matters identified here either supplement, or are in addition to, those set forth in our January 12th letter to the Land Use Committee.

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administer the provisions of this Chapter and to ensure that the proposed uses and structures will be located, designed and constructed in a manner which promotes the appropriate use of land and upholds the purposes and objectives set forth in Section 2A of Chapter 808 of the Acts of 1975.” See Zoning Ordinance at §7.4.1. Unfortunately, the present site plan proposed by the developer does meet this standard.

A. Access to the Proposed Development through the Walnut Street Entrance is Dangerous and Inadequate.

Section 7.3.3(C)(4) of the City of Newton’s Zoning Ordinance (the “Ordinance”) requires the developer to illustrate that “access to the site over streets is appropriate for the types and numbers of vehicles involved.” Similarly, § 7.4.5(B)(1) of the Ordinance requires the developer to evidence that the proposed project will provide for the “(c)onvenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways....”

In this case, Mr. Slattery has engaged Kim Hazarvartian, Ph.D., P.E., PTOE of TEPP, LLC to investigate the adequacy of the developer’s proposed site plan and the impacts that it will have on his property. With regard to the developer’s plan to access the project site via an entrance on Walnut Street that abuts Mr. Slattery’s property, Mr. Hazarvartian findings support Mr. Slattery’s contention that this is a dangerous and inappropriate location given the types and numbers of vehicles that will utilize this point of entry. As mentioned in my January 12th letter, this roadway is simply too narrow to allow for the safe passage of vehicles along the north side of the project area. Mr. Hazarvartian findings also support Mr. Slattery’s claim that the inability of cars and trucks to navigate this access point will create safety and traffic problems on Walnut Street, and generate significant traffic-related noise and hazards in front of and adjacent to Mr. Slattery’s property.

Therefore, to make the proposed development consistent with the objectives of the Ordinance, and to ensure that safeguards are in place for the convenience and safety of vehicular and pedestrian movement in relation to his property, Mr. Slattery renews his request that the Land Use Committee recommend that the City Council condition (i) its grant of any special permit, and (ii) approval of the site plan on the developer’s removal the proposed access point on Walnut Street. See Ordinance at §§ 7.3.3(C)(2), 7.3.3(C)(4), 7.4.5.B(1) and 7.4.5(C).

B. Demolition and Construction Activities Will Damage Mr. Slattery’s Property

Two structures are situated on Mr. Slattery’s property: (i) a carriage house, and (ii) the main house. Both are historical structures with historical architectural elements, including fieldstone basements. Section 7.4.5(B)(7) of the Ordinance requires a developer seeking site plan review and approval to avoid “the removal or disruption of historic resources on or off-site. Historical resources include designated historical structures or sites, historical architectural elements or archaeological sites.” In this case, however, Mr. Slattery is unaware of any

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demolition or construction plans or mitigation measure proposed by the developer that evidence that it has taken steps to avoid damage or disruption to the two historical structures on his property.

To the contrary, Mr. Slattery’s preliminary discussions with Curt Freedman, P.E., CEM, CEA, of CMF Engineering, Inc. and Michael Berry, P.E., SECB of Consulting Structural Engineer, Inc. indicate that the demolition of the existing structures on the Orr Block, and the vehicles and equipment used for grading the project site and building the development, will generate sizeable vibrations that will adversely affect and cause serious damage to the fieldstone foundations supporting the structures located on Mr. Slattery’s property. Accordingly, Mr. Slattery respectfully request that the Land Use Committee recommend that the City Council condition (i) its grant of any special permit, and (ii) approval of the site plan on the developer’s submission of demolition or construction plans that adequately detail the conditions, limitations, and safeguards that the developer will employ to avoid damage and disruption to Mr. Slattery’s property. See Ordinance at §§ 7.3.3(C)(2), 7.3.3(C)(3) and 7.4.5(B)(7).

C. The Proposed Five-Story Building on the Northeast Corner of the Project Site will Case a Perpetual Shadow Over Mr. Slattery’s Property During Winter Months

In connection with its special permit and site plan approval applications, the developer submitted a “shadow study” that was completed by Bohler Engineering. Mr. Slattery subsequently engaged AEI Consultants to review that study and comment on the impacts that it shows the proposed development will have on his property. According to the Bohler study, AEI confirmed that the proposed five (5) story structure that is to be located on the northeast corner of the project site will cast a day-long shadow over Mr. Slattery’s entire property during winter months. AEI also confirmed that this building will cast a prolonged shadow over the carriage house located on his property during the spring and fall.

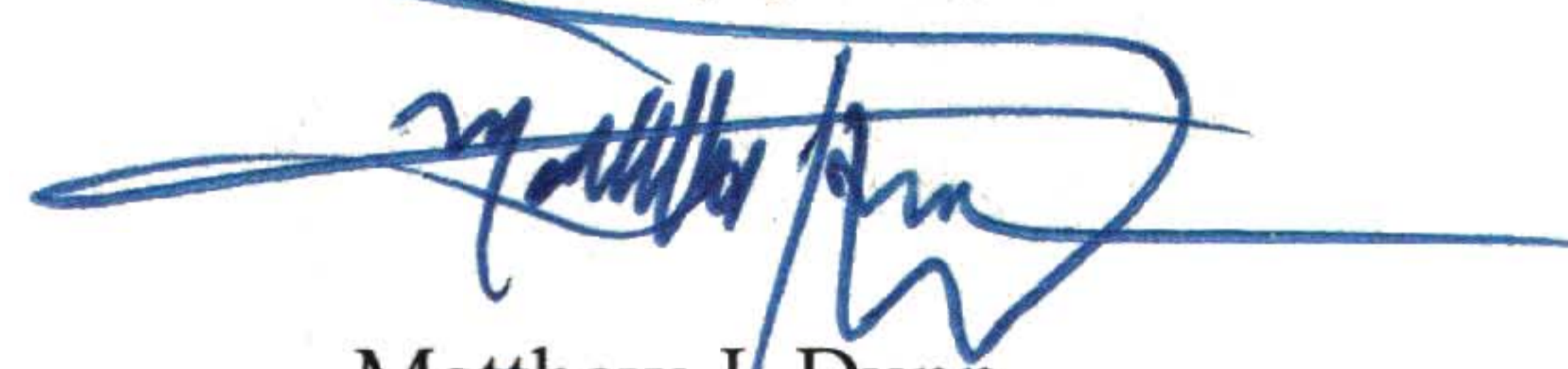
Section 7.4.5(B)(6) of the Ordinance requires the developer to give “(c)onsideration of site design, including the location and configuration of structures and the relationship of the site’s structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines” when seeking site plan review and approval. However, Mark Newtonville LLC’s own shadow study shows that it has provided no such consideration to Mr. Slattery because the five (5) story building that it proposes to construct on the abutting parcel will cast a months-long shadow over his property. As such a proposal will adversely affect Mr. Slattery’s property, and falls far short of the objectives of the Ordinance, the Land Use Committee should instruct the developer to redesign the proposed development in a manner that will resolve this unnecessary harm as condition to issuing any recommendation to the City Council.

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Conclusion

Given the requirement of the Ordinance for the issuance of the special permits and site plan approval that the developer seeks, and the deficiencies with the proposed development that are outlined above (and in Mr. Slattery's letter of January 12th), this Committee should delay issuing any recommendation to the City Council until such time Mark Newtonville LLC submits a revised site plan that full identifies and proposes mitigation for the adverse impacts that the proposed development will have on Mr. Slattery's property. In the event that such revisions are not provided, Mr. Slattery and the Trust reserve their right to seek judicial review of the special permits and site plan approval under M.G.L. c. 40A, § 17.²

Very truly yours,



Matthew J. Dunn

MJD

Cc: clients (via email)

² Mr. Slattery and the Trust also reserve their right to contest the validity of the proposed zoning change sought for the Orr Block pursuant to M.G.L. c. 240, § 14A.

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