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#s 60-17 & 61-17

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Barney Heath
Director

PUBLIC HEARING/WORKING SESSION III MEMORANDUM

DATE: August 4 2017
MEETING DATE: August 8, 2017
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing and subsequent working sessions, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing and working sessions.

PETITIONS #s 60-17 & 61-17 431 Washington Street, 29 Hovey Street, and the adjacent unnumbered lot to the north on Hovey Street

Petition #60-17- for a change of zone to Business Use 2 for land located at 29 Hovey Street and an unnumbered lot on Hovey Street, and

Petition #61-17- for special permit/site plan approval to construct elderly housing with services in excess of 20,000 sq. ft. of gross floor area, consisting of 85 living units in a four-story structure not to exceed 48' in height and Floor Area Ratio not to exceed 2.0, extending the existing nonconforming front setback and constructing a retaining wall greater than 4' in a setback.

The Land Use Committee (the "Committee") held a public hearing on April 4, 2017 on these petitions as well as a subsequent working session on May 22, 2017 and June 22, 2017. This memo reflects revised plans and additional information submitted by the petitioner as of August 4, 2017, as addressed to the Planning Department.

This project, which would require the above-referenced rezoning of two of the three subject parcels as well as the requested special permit, involves the proposed construction of a four-story, 85-unit elderly housing with services facility that would extend an existing nonconforming front setback and include a retaining wall greater than 4' in a setback.

Updates:

On July 10, 2017, the Planning & Development Board voted 4-1-1 to recommend that Petition #60-17, i.e., the request to change the zoning of 29 Hovey Street and the adjacent unnumbered lot on Hovey Street from Multi-Residence 2 (MR2) to Business 2 (BU2), be granted.

On July 28, 2017, the Planning Department received a copy of a letter and related material the petitioner addressed to the Land Use Committee that discusses various aspects of the proposed project.

Design

The material submitted on July 28 included modified building and site plans reflecting a shift in the footprint of the proposed building, with some of its mass being moved southward toward Washington Street, as well as a modified architectural design, including altering the structure's roof line by giving it a sloped rather than flat appearance. Although the modified design increases the proposed building's size from 71,383 to 75,752 square feet and raises its floor area ratio from 1.07 to 1.13, it would remain below the 2.00 that could be allowed under a special permit for a four story building in a Business 2 (BU2) district.

The Planning Department notes that the southward shift of the building allows for the rear lot (i.e., the "unnumbered lot on Hovey Street") to be kept free of any portion of building and instead be fully occupied by a publically accessible "pocket park" and other landscaped areas. The shift also partially addresses a recommendation of the Urban Design Commission that more of the mass be located along Washington Street. The Department further notes that the design changes, including the sloped roof lines and revised facades, will serve to give the building a more residential appearance.

Inclusionary Zoning Issues

As discussed in the July 28 letter, petitioner is proposing to provide three affordable beds on-site to qualified residents. The letter details the petitioner's rationale for this approach to fulfilling the inclusionary zoning requirements for elder housing with services found in Sec. 5.11.11 of the Newton Zoning Ordinance. As detailed in the letter, the occupants of these three beds would not be responsible for any costs related to housing and related basic associated services but would be responsible for costs incurred for any additional care and services.

The Director of Planning and Development notes that the proposal described in the petitioner's letter varies from the language of the ordinance in that the petitioner asserts that that revenue from care services should not be included in determining the required contribution. Accordingly, the petitioner has premised its proposal solely upon estimated revenue from "housing and housing component services" from its first year of "project stabilization" and not the "annual gross revenue from fees or charges for housing and all services." However, it is further noted that the three beds would represent 2.5% of the facility's 122 beds, which parallels the Sec. 5.11.11's language that the petitioner's contribution shall be 2.5% of the above-referenced "annual gross revenue."

The Planning Department notes that proposal does forward a preference for the provision of units onsite (rather than a cash payment) and, recommends in the event the proposal is accepted, that the provision and occupation of any such beds be governed on an ongoing basis by the income eligibility, resident selection, annual reporting and other relevant provisions of Sec. 5.11.11

ATTACHMENTS

Attachment A: DRAFT Order

431 Washington Street, 29 Hovey Street, and adjacent unnumbered lot

CITY OF NEWTON

IN CITY COUNCIL

August , 2017

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of a SPECIAL PERMIT/SITE PLAN APPROVAL to

construct a 75,752 square foot, 85 unit elderly housing with services facility that four stories and 47.4 feet in height and has a floor area ratio (FAR) of 1.13, allow a retaining wall greater than four feet within a side setback, and the extension of a nonconforming front setback,

as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

- 1) the site is an appropriate location for the building as designed, given the adjacent neighborhood's mix of residential and commercial land uses and structures of varying scales and heights, as a transitional use along Washington Street from the commercial uses to the east and the residential uses to the west and north (§4.3.2.B.1; §4.3.3 and §7.3.3.C.1)
- 2) the proposed project as designed, developed and operated will not adversely affect the neighborhood as it is residential in nature and will be less traffic intensive than the site's previous use as a car dealership (§7.3.3.C.2)
- 3) there will be no nuisance or serious hazard to vehicles or pedestrians as the main entrance to the development will be located at a signalized intersection that will be improved a part of the project; further, the development will reduce the number of curb cuts and generate significantly fewer vehicle trips than the previous use of the site (§7.3.3.C.3)
- 4) access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- 5) the site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural

resources and energy as it is located near a village center and close to transit options and the Petitioner has indicated the facility will be operated so as to qualify for “Energy Star” certification by the United States Environmental Protection Agency (EPA). (§7.3.3.C.5)

- 6) the site is an appropriate location for a retaining wall greater than four feet as the proposed wall will be below grade and will facilitate access to underground parking (§7.3.3.C.1; §5.4.2.B)
- 7) extending the nonconforming front setback along Hovey Street by allowing a front setback of 5.6 feet where 10 feet is required would not be substantially more detrimental than the existing nonconforming use to the neighborhood as the current structure, although it has a shorter façade along Hovey Street than the proposed structure, has no setback and is built to the property line along that street (§ 7.8.2.C.2)
- 8) the Petitioner will provide three affordable beds on-site for the life of the project (§5.11.11)
- 9) the proposed project will include publically accessible open space amenities and,
- 10) consistent with Newton’s adopted Comprehensive Plan, the development will address some of the needs of the City’s large and growing elderly population.

PETITION NUMBER: #61-17

PETITIONER: Sunrise Development, Inc.

ADDRESS OF PETITIONER: 7902 Westpark Drive
McLean, VA 22102

LOCATION: 431 Washington Street, 29 Hovey Street and an adjacent unnumbered lot on Hovey Street, , Ward 1, on land known as Section 12, Block 12, Lots 3, 4, and 5, containing approx. 66,909 sq. ft. of land

OWNER: 431 Washington Street, LLC

ADDRESS OF OWNER: 391 Providence Highway
Norwood, MA 02062

TO BE USED FOR: Elderly Housing with Services

EXPLANATORY NOTES: Special permit per §7.3.3:

- To allow an Elder Housing with Services facility (§4.4.1; §6.2.10)
- Development of 20,000+ square feet of gross floor area (§4.1.2.B.1)

- To allow a building with four stories (§4.1.2.B.3; §4.1.3)
- To extend a nonconforming front setback (§4.1.3, §7.8.2.C.2)
- To allow a retaining wall in excess of 4 feet in a setback (§5.4.2.B)
- Inclusionary housing provisions (§5.11.11)

ZONING: **Business 2 (BU2)**

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with
 - a. A set of site plans entitled "Sunrise of Newton, 431 Washington St, Newton, Massachusetts, Special Permit Application," consisting of the following sheets:
 - i. Site/Civil plans, prepared by VHB, dated **March 3, 2017** as revised through July 9, 2017, signed and stamped by Curtis R. Quitzau, Professional Engineer:
 - Legend and General Notes (C-1);
 - Area Plan (C-2);
 - Zone Change Plan (C-3);
 - Zoning Assessment Plan (C-4);
 - Layout and Materials Plan (C-5);
 - Grading and Drainage Plan (C-6);
 - Utility Plan (C-7);
 - Erosion and Sediment Control Plan (C-8);
 - Site Details (C-9.1);
 - Site Details (C-9.2);
 - Fire Access Plan (C-10);
 - Existing Conditions Plan of Land (SV-1).
 - ii. Architectural plans, entitled "Sunrise of Newton, Washington & Hovey Street, Newton, MA 02458," prepared by JSA Inc., dated **July 19, 2017**, consisting of the following sheets:
 - Floor Plans- Parking and First Floor (A0.01);
 - Floor Plans- Second and Third Floors (A0.02);
 - Floor Plans- Fourth Floor and Roof (A0.03);

- Exterior Elevations (A2.01);
 - Rendered Site Plan (L1);
 - Landscape Plan (L1.1);
 - Fencing / Paving Details (L2.2);
 - Planting Details (L2.3);
 - Front View from Washington Street;
 - View from Hovey Street;
 - View from Hovey Street Sketch
 - View from Jewett Street;
 - Roof Comparison;
 - Building Site Line Comparison.
2. The petitioner shall comply with the City's **Noise Control Ordinance**, Sections 20-13 et seq of the Revised Ordinances 2012, at all times, which may require among other measures, the installation and maintenance of acoustical treatments of any and all Heating, Ventilation and Air Conditioning (HVAC) units to comply with the provisions of said Ordinance.
 2. All utilities shall be located underground from the property line.
 3. All lighting fixtures shall be residential in scale.
 4. Deliveries to the facility shall be limited to 8:00 AM – 5:00 PM; deliveries shall be made only with so-called “box trucks” or smaller vehicles.
 5. **Affordability requirements:**
The Petitioner shall at all times provide beds with attendant services (which shall include at least 45 minutes of care per day) within the facility to at least three residents at its sole cost and at no cost to said residents. The provision of such beds shall be compliant with the income, resident selection and reporting requirements of §5.11.11.C, D and E of the Newton Zoning Ordinance.
Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall enter into an Memorandum of Understanding (MOU) with the City of Newton, acting through its Department of Planning and Development, that defines the administration, management and reporting requirements for these beds, including but not limited to resident selection, resident income verification resident and occupancy times.
 6. The Petitioner shall operate and maintain two so-called **“pocket parks”** as shown on the Landscape Plan (Sheet L1.1) referenced above in Condition 1: one located on the west side of the property along Washington Street and labeled “Public Area;” the other located on the northern portion of the property on Hovey Street, labeled “Public Area” and shown to include a “natural play area,” “public picnic area (mulch)” and “labyrinth (permeable paving)” These areas shall be open to the public from dawn to dusk every day.

7. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a **final Operations and Maintenance Plan** (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
8. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
9. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall
 - a. record at the Middlesex South Registry of Deeds an **deed restriction**, that has the effect of forbidding, for the life of the project pursuant to this Special Permit/Site Plan Approval, the construction of any building(s) on area contained within the 15,754 square foot lot on Hovey Street currently identified by the Assessors Office and in the above-referenced plans as Section 12, Block 6 Lot 3
 - b. record at the Middlesex South Registry of Deeds an **Approval Not Required** (ANR) plan duly-approved in accordance to Massachusetts General Laws Chapter 41 Section 81P that has the effect of combining the three separate lots that are the subject of this special permit (land presently known as Section 12, Block 12, Lots 3, 4, and 5) into one lot as well as all required documents evidencing such combination of the lots and their conveyance into common ownership; and
 - c. file certified copies of such recorded documents with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
10. Prior to the issuance of any building permit pursuant to this Special Permit/Site Plan Approval the petitioner shall submit a **Construction Management Plan** (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services. The petitioner shall consider local traffic and pedestrian activity relating to the nearby public school in determining hours and routes for construction vehicles.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones,.

- d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. A plan for rodent control during construction.
 - i. The CMP shall also address the following:
 - safety precautions;
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties.
11. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
- a. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the Final Site Plan.
 - d. Provided a Final Landscape Plan showing all new plantings, for review and approval by the Director of Planning and Development.
 - e. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
 - f. Obtained a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #7.
12. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.

13. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
14. Prior to occupancy the petitioner shall provide a certificate from a **Licensed Site Professional** to the Director of Planning and Development certifying that the property is in full compliance with all applicable state and local statutes and regulations for hazardous waste cleanup and disposal.
15. Prior to the issuance of any Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval, the Petitioner shall, at its sole cost and expense, the Petitioner shall complete the **Intersection Improvements** described in **Schedule A** attached hereto and subject to inspection and approval by the City Engineer upon their completion.
16. Prior to the issuance of any Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval, the petitioner shall install, or arrange for the installation of, **a covered bus shelter** in the vicinity of the project, the design and location of which has been reviewed and approved by the Director of Transportation.
17. No Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed as required in Condition #1.
 - d. Incorporated the approved Operations and Maintenance Plan for Storm water Management on file with the City Clerk's Office into the Master Deed or otherwise noted in the chain of title of the property, which shall be recorded in conjunction with the completion of the construction of such special permit, proof of which shall be submitted to the Engineering Division.
 - e. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.

18. Notwithstanding the provisions of Condition #17 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
19. All landscaping and fencing shall be maintained in good condition and shall be replaced with similar materials as necessary.
20. Upon occupancy of the Project, the Petitioner shall institute a Transportation Demand Management Plan ("TDM Plan"), the details of which are set forth in Schedule A attached hereto. The Petitioner shall be obligated to continue such TDM Plan for the life of the Project and bear any and all costs associated with said plan.

DRAFT

SCHEDULE A

Traffic Mitigation

Intersection Improvements

The Petitioner shall make or cause to have made, at its sole cost and expense, the following improvements in the area of the intersection of Washington Street and Church Street (including the so-called "Site Driveway"), as described below and shown in **Attachment 1**:

- Install additional signal heads facing the southbound Site Driveway approach, requiring two new 10-foot posts and foundation
- Install a new signal head to the existing signal poles on the southeast and southwest corners of the intersection
- Relocate the existing pedestrian signal heads across the Church Street approach
- Install video detection module to existing traffic signal pole in on north side of street to control the Site Driveway approach
- Make pavement marking changes on the Church Street approach to include a shared left-through lane and an exclusive right turn lane
- Install a new crosswalk across the Site Driveway approach, complete with ADA compliant wheelchair ramps on each side
- Install two additional pedestrian signal heads for the new crosswalk across the Site Driveway approach
- Upgrade the existing "Do Not Block Intersection" signage and pavement markings at Washington Street/ Hovey Street
- Modify the controller and cabinet assembly to accommodate proposed timing and phasing changes necessary for driveway approach inclusion

Transportation Demand Management (TDM)

The Petitioner shall implement the following Transportation Demand Management measures:

- Display all public transit schedules in a central location within the facility;
- Provide a map of the area that displays the location of Newtonville MBTA station, MBTA bus stops, sidewalks, and crosswalks. This information shall be distributed to employees and posted in common areas;
- Provide a secure bicycle storage area on site; and
- Implement an onsite car-pool rideshare program with guaranteed ride home.

