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James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 10, 2015
Land Use Action Date: March 31, 2015
Board of Aldermen Action Date: April 21, 2015
90-Day Expiration Date: June 1, 2015

DATE: March 6, 2015

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Stephen Pantalone, Senior Planner 

SUBJECT: **Petition #40-15**, CURTIS P. O'HARA, JOHN O'HARA & KARL J. O'HARA, TRUSTEES of the BB&G REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING USE/STRUCTURE to construct additions to the northeast side and to the rear, which will increase the existing nonconforming floor area ratio and front and side setbacks, to increase the seating from 116 seats to 146 seats, and to waive 11 parking stalls at **95-97 Elm Street**, West Newton, Ward 3, on land known as SBL 33,13,11, containing a combined total of approximately 3,506 sq. ft. of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-11(d)(9), 30-15 Table 3, 30-19(c)(2)(a), 30-19(d)(13), 30-19(m), 30-21(b) of the City of Newton Rev Zoning Ord, 2012.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



95-97 Elm Street

EXECUTIVE SUMMARY

The property at 95-97 Elm Street consists of a 3,506 square foot lot located in a Business 1 zoning district (BU1), improved with a two-story nonconforming structure operating as a 116-seat restaurant (Paddy's Pub). The existing structure consumes almost the entire site and is nonconforming with regard to the Floor Area Ratio (FAR), the front and side setbacks, and the number of seats. The petitioner is proposing to construct a 77 square foot addition on the northeast side of the structure to create a handicap ramp and lift, a 284 square foot addition to the rear to expand the kitchen area, and an 86 square foot addition to the second floor towards the front of the property to improve internal access. The petitioner is seeking a special permit to expand the nonconforming restaurant, to waive 11 parking stalls, to extend the nonconforming FAR, and to extend the nonconforming side setback.

The site is located in the village of West Newton and is abutted by commercial uses and a multi-family dwelling. The Planning Department does not have any concerns regarding the bulk and mass of the proposed addition and the related requests to extend the nonconforming FAR and side setback. The addition of a handicap accessible ramp and lift will be a benefit to the patrons of the restaurant.

Using the Newton Zoning Ordinance's (NZO) parking requirement for restaurants, the increase in the parking demand will be approximately eleven stalls, or one for every three additional seats. The Planning Department is concerned with how the additional vehicles will be accommodated and whether there is adequate on-street parking in the surrounding neighborhood to handle the additional demand of the expanded restaurant. The Planning Department recommends that the petitioner conduct a parking study of the municipal parking lot directly across the street from the restaurant and of the surrounding metered stalls during peak weekday/weekend hours.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The proposed additions are not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§30-21(b))
- The specific site is an appropriate location for the proposed expansion of the restaurant use. (§30-24(d)(1))
- The proposed project, as developed and operated, will not adversely affect the neighborhood. (§30-24(d)(2))
- There will be no nuisance or serious hazard to vehicles or pedestrians (§30-24(d)(3))

- Access to the site over streets is appropriate for the types and number of vehicles involved. (§30-24(d)(4))
- Literal compliance with the parking requirements of the NZO is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§30-19(m))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located on Elm Street proximate to West Newton's village center. The land uses in the surrounding neighborhood consist of a mix of uses, including commercial, industrial, mixed use, open space (public parking lot), and single- and multi-family dwellings (**ATTACHMENT A**). The zoning districts in the surrounding neighborhood consist of Multi-Residence 1, Business 1, Manufacturing and Public Use districts (**ATTACHMENT B**). The site itself is zoned as Business 1.

B. Site

The site consists of 3,506 square feet of land, improved with a 2½-story building that is nonconforming with regards to FAR and the front and side setbacks. The building comprises the entire lot and is void of any parking or landscaping. The site is abuts a commercial use to the south and west, and the parking lot of a multi-family building to the north.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is proposing to add 30 seats to the existing restaurant, including 13 seats on the ground floor and 17 seats on the second floor. The Planning Department does not have any concerns with the increase in the intensity of the restaurant from a land use perspective, as the site is located in a mixed use area; however, the petitioner should explain how the additional parking demand will be accommodated.

B. Building and Site Design

The petitioner is proposing to construct a two-story, 77 square foot addition to the side of the existing building to allow for a handicap ramp and lift; a 284 square foot two-story addition to the rear of the existing building to expand the kitchen area and improve access to the second floor in the rear of the building; and an 85 square foot expansion of the second floor towards the front of the building to improve the

stair access.

The Planning Department does not have any concerns with the proposed additions, as they will result in a very modest expansion of the building's footprint and will be minimally visible from the streetscape. The additions will improve the site's accessibility and internal circulation, and are designed to complement the existing historically significant structure. As such, the Planning Department finds that the proposed structure, with its expanded footprint and increased mass and bulk, will not be substantially more detrimental than the existing nonconforming structure is to the surrounding neighborhood.

C. Traffic and Parking

The petitioner is proposing to increase the number of seats in the restaurant by 30, which increases the parking requirement by 11 stalls. The petitioner is seeking a parking waiver for all 11 stalls as no parking is available on the site. The Planning Department recommends that the petitioner complete a parking study of the on-street parking stalls in the immediate area in order to provide data on the existing parking utilization. The petitioner should be prepared to explain how the additional parking demand will be accommodated. Further, the petitioner is encouraged to consider ways to mitigate the off-site effects of the waiver, such as improvements to the surrounding pedestrian facilities.

D. Landscape Screening

The petitioner is not proposing landscape screening. Due to the existing conditions on the site and the narrow side and rear setbacks, the Planning Department does not believe that landscaping is practical or necessary for this site.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal with regard to zoning. The petitioner is seeking the following reliefs:

- §30-15 Table 3 and §30-21(b), to extend a nonconforming FAR
- §30-15 Table 3 and §30-21(b), to extend a nonconforming side setback
- §30-19(d)(13) and §30-19(c)(2)(a), to waive 11 parking stalls
- §30-11(d)(9) and §30-21(b), to extend a nonconforming restaurant with more than 50 seats

B. Engineering Review

The Engineering Division Memorandum (**ATTACHMENT D**) provides an analysis of the proposal with regard to engineering issues. Since the petitioner is not proposing to increase the amount of impervious surface on the site by more than 400 square feet, no drainage improvements are required. The Engineering Memorandum notes that the restaurant's grease traps on the sanitary sewer services should be up to date and maintained properly per Massachusetts State Plumbing Code.

C. Newton Historical Commission

The existing building is greater than 50 years old; however, the project as proposed was exempt from NHC review, as it did not meet the minimum review standard per the City's Ordinance.

V. PETITIONER'S RESPONSIBILITIES

The Planning Department recommends that the petitioner analyze the parking utilization of on-street parking stalls proximate to the site, and explain where the parking demand from the additional seating will be accommodated.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: Engineering Division Memorandum

Land Use Map 95-97 Elm Street

City of Newton,
Massachusetts

Legend

Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Industrial
- Mixed Use
- Open Space

ATTACHMENT A



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield







Map Date: March 03, 2015



Zoning Map 95-97 Elm Street

City of Newton,
Massachusetts

Legend

-  Multi-Residence 1
-  Business 1
-  Manufacturing
-  Public Use

ATTACHMENT B



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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Map Date: March 03, 2015





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ATTACHMENT C

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James Freas
Acting Director

ZONING REVIEW MEMORANDUM

Date: December 3, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Stephen J Buchbinder, Attorney
Curtis P. O'Hara and John O'Hara, applicants
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend a nonconforming structure (due to FAR and side setback), a waiver of 11 parking stalls, and to extend a nonconforming use

Applicant: Paddy's Pub	
Site: 95-97 Elm Street	SBL: 33013 0011
Zoning: BU1	Lot Area: 3,506 square feet
Current use: Restaurant with 116 seats	Proposed use: Restaurant with 146 seats

BACKGROUND:

The property at 95-97 Elm Street consists of a 3,506 square foot lot improved with a 116-seat restaurant known as Paddy's Pub. A restaurant use has operated on the site since the 1930's. From approximately 1972 to 2002, the Troubador Restaurant operated on site, with 116 seats. The applicants bought the property in 2002, and maintained the same number of seats. The restaurant has used 74 seats on the first floor on a daily basis, and the remaining 42 seats on the second floor for special events.

The applicants propose to make additions to the existing nonconforming structure which will add 30 seats to the restaurant and modernize the accessibility of the building.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Stephen J Buchbinder, attorney, dated 10/20/2014
- Parking calculation
- 1976 Inspection Certificate for Troubador Restaurant

- 2014 Common Victualler License for Paddy's Pub
- Existing conditions plan, prepared by Verne T. Porter, surveyor, dated 8/26/2014
- Proposed conditions plan, prepared by Verne T. Porter, surveyor, dated 8/26/2014
- Area plan, prepared by Verne T. Porter, dated 8/26/2014
- Existing parking plan, prepared by Verne T. Porter, dated 8/26/2014
- Architectural plans, prepared by Donald Lang Architects, dated 10/14/2014
 - Existing basement floor plan
 - Existing ground floor plan
 - Existing second floor plan
 - Existing roof plan
 - Existing east and north elevations
 - Proposed basement floor plan
 - Proposed ground floor plan
 - Proposed second floor plan
 - Proposed roof plan
 - Proposed north elevation and section
 - Proposed east and south elevations
 - Proposed stairway sections

ADMINISTRATIVE DETERMINATIONS:

1. The existing floor area ratio for the property is nonconforming at 1.15, where anything over 1.0 requires a special permit per Section 30-15, Table 3. The applicant proposes a 77.24 square foot addition to the northeast side of the structure, and a 284.34 square foot addition to the rear, creating a proposed FAR of 1.30. A special permit is required to increase the already nonconforming FAR from 1.15 to 1.30, where 1.0 is allowed by right, and up to 1.5 is allowed by special permit.
2. The existing structure is nonconforming with regard to front and side setbacks. The proposed additions will further increase the existing nonconforming side setback from 6.3 feet to 5.0 feet, where 15 feet is required. A special permit to extend the nonconforming structure is required per Sections 30-15, Table 3, and 30-21(b).
3. The restaurant has a current capacity of 116 seats, which has been in place since the prior restaurant business. The applicant is proposing to add 30 seats, for a total of 146 seats total. As the applicant is adding gross floor area, the provisions Section 30-19(c)(2)a apply. Using the "A-B+C=D" formula, a waiver of 11 parking stalls is required per Sections 30-19(d)(13) and 30-19(m) to accommodate the proposed additional seating.
4. The restaurant use on site pre-dates the 1987 amendment to the Ordinance requiring a special permit for a restaurant with more than 50 seats. The existing 116 seats are already nonconforming, as they exceed the 50 seats per Section 30-11(d)(9). To add 30 more seats for a total of 146 requires a special permit per Section 30-21(b) to further increase the nonconforming number of seats, and to operate a restaurant with more than 50 seats.

5. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-15, Table 3 30-21(b)	Extend nonconforming FAR	S.P. per §30-24
§30-15, Table 3 30-21(b)	Extend nonconforming structure with regard to side setback	S.P. per §30-24
§30-19(d)(13), §30-19(c)(2)a)	Parking waiver for 11 parking stalls	S.P. per §30-24
§30-11(d)(9), §30-21(b)	To extend a nonconforming restaurant with more than 50 seats	S.P. per §30-24

**CITY OF NEWTON
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – #95-97 Elm Street

Date: March 4, 2015

CC: Lou Taverna, PE City Engineer
Linda Finucane, Associate City Clerk
Alexandria Ananth, Chief Planner
Stephen Pantalone, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

*95-97 Elm Street Newton, MA Proposed Addition
Prepared by: Verne T. Porter, Jr., PLS
Dated: February 6, 2015*

Executive Summary:

Since the addition will be placed over existing impervious surfaces there is no increase of runoff. The only concern is that the restaurants grease trap(s) on the sanitary sewer services be up to date and maintained properly per Massachusetts State Plumbing Code.

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.