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Peter F. Harrington

October 14, 2014

RECEIVED
NEWTON CITY CLERK
2014 OCT 14 PM 10:10
James P. Harrington
Adrian P. Harrington
David A. Oison, CMC
Newton, MA 02459

MEMORANDUM

The purpose of this Memorandum is to provide the Board of Aldermen and the public with factual information and analysis which should be useful in making a determination of the Application of Leopoldo Butera, Docket #319-14.

The property located at 26 Elm Street

- i) contains 8,520 square feet of land, a single family house that was built in 1955,
- ii) an accessory building, containing a garage, that was built in 1999 in accordance with a Building Permit #1314-99 and
- iii) an attached roof sheltering a part of the lot along the Southerly side of the accessory building, that was added in early 2000's.

Mr. and Mrs. Butera purchased the property in 1965. At that time, Mr. Butera was in the business of Landscape gardening. See Exhibit 1, a copy of a portion of the 1966 Poll List. In 1965, there were no prohibitions against the parking of business vehicles in a residential zone and there was no prohibition against having a home office for one's business in one's residence. The 1965 standard to measure a home business was not based upon office work or billing or record keeping. It was based on site sales from the home and number of customers.

It is relevant to note that the City of Newton has had an ongoing policy of hard enforcement against landscape gardeners and other tradesmen who use their home as a base of their operations and no similar enforcement policy for professionals (lawyers, architects, etc.), sales representatives and other "white collar workers", who work from their residence.

Mr. Butera is in a Timothy F. Sullivan situation, see Exhibit 2, news article from Newport Daily News.

The City of Newton, after notices of violations that were and are disputed by Mr. Butera, brought criminal charges against both Mr. & Mrs. Butera relating to the conduct of a business at 26 Elm Street. Although the Executive Summary issued by the Planning Department states that “The issue of the landscaping business has been resolved” the criminal charges against Mr. & Mrs. Butera are still pending in the Newton District Court. Also, the Summary does not point out that Mr. Butera ceased doing business in 2010 and dissolved his corporation on April 28, 2011. See Exhibit 3, a copy from the records from office of the Secretary of the Commonwealth.

Mr. Butera contends that a number of the factual claims set forth in the “balanced view of the issues” presented by the City are, in fact, erroneous.

First, the size of the building: The building footprint is slightly less than the footprint shown on the Building Permit Application that was approved by the City of Newton when it issued Building Permit #1314-99, a copy of which is attached as Exhibit 4. The proposed building footprint was 30 feet in width and 40 feet in depth as shown on a plan drawn by Ralph Bibbo, and attached as Exhibit 5. The actual building footprint is 29.5 feet X 40 feet and is shown on a Plan drawn by Frank Iebba and attached as Exhibit 6.

Second, the claims that the height of the building and that the accessory building is not 1½ stories are incorrect..

Third, variances: It is Mr. Butera’s position that he does not need the variances the City has told him he is required to seek. The accessory building is a pre-existing building, built within the requirements of the then applicable zoning ordinances. It is a pre-existing, nonconforming building.

Fourth, because of the size and shape of the lot, the Petitioner seeks a waiver of open space and lot coverage requirements or, in the alternative, a recommendation that a variance be granted for the same.

Exhibit 1. a copy of a portion of the 1966 Poll List

Exhibit 2. news article from Newport daily News

Exhibit 3. a copy from the records from office of the Secretary of the Commonwealth.

Exhibit 4. Building Permit #1314-99

Exhibit 5. 1999 plan drawn by Ralph Bibbo

Exhibit 6. 2014 Plan drawn by Frank Iebba

Exhibit 7. Newton Ordinance 30-15 (m) and Table I, 1965 edition;

Amendment V 111 (height Definition) 4/23/97;

Amendment V 113 (½ story definition) 4/23/97

Amendment V273 (Accessory building defined) 12/06/99

Exhibit 8. a copy of signatures in support of the petition

Exhibit 9. a plan of neighborhood showing signers of the petition of support for the Special Permit.

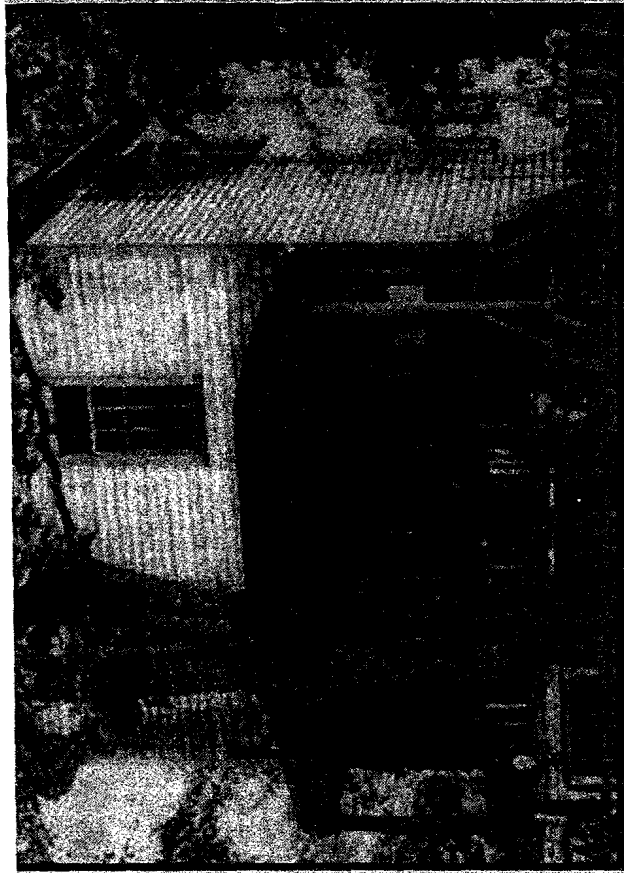
1966

Poll List

City of Newton, Massachusetts

WARD 3 PRECINCT 3 PAGE 13

NO.	NAME	NAT'Y	PREVIOUS OR LEGAL RESID.	OCCUPATION	BORN
DUNCAN ROAD (W.N. 65)					
77	D 11 Clark, Anno D.		Same	Housewife	4/22/31
	D 11 Clark, Edward W.		Same	Fire Capt.	1921
1/44	V 12 Pillion, Louise T.		Same	Clerical	11/30/14
44	V 14 Dewire, Mary Jane		Waltham	Housewife	5/12/10
1/19	V 14 Dewire, Norman J.		Waltham	Carpenter	7/8/10
1/16	14 LeBlanc, Lucy A.		Weston	Cook	8/12/08
ELM STREET (W.N. 65)					
	5 Williams, Garet P.		* Connecticut	Student	7/19/41
	5 Williams, Patricia T.		Connecticut	Teacher	10/25/39
	V 7 Caso, Adolph		Watertown	Teacher	1/7/34
	7 Caso, Amelia	Italian	Italy	At Home	6/28/33
	11 Barnes, Hugh L., Jr.		Lenox	Service Mgr.	1/2/14
1/26	11 Barnes, Mildred H.		Lenex	At Home	10/10/20
1/26	13 Quinlan, Stephen J.		9 Baldwin St.	Shipper	10/25/44
1/02	13 Spoto, Frances		Same	At Home	1895
8	R 13 Spoto, Vincenzo		Same	Shipper	1891
6	R 21 Beveridge, Olive A.		Same	Retired	1890
6	R 21 Budlong, Florence M.		Same	Teacher	1900
5/39	V 22 Teti, Elizabeth		Waltham	Assembler	5/12/22
1/4/38	D 22 Teti, John		Waltham	Tool Grinder	4/17/24
1/7/31	26 Butera, Lepoldo			Landscape	3/6/38
1/2/31	26 Butera, Maria			At Home	8/7/44
5	V 29 Gilles, Cynthia A.		Maryland	Housewife	12/9/31
29	V 29 Gilles, Floyd H.		Maryland	Pathologist	10/18/30
1/4/27	D 31 Ieraci, Frank		37 Elm St.	Laborer	1921
1/15/29	D 31 Ieraci, Nicolena		37 Elm St.	Housewife	1924
1/7/25	31 Matthews, Mary L.		Same	Housewife	5/29/35
94	31 Matthews, Robert W.		Same	Laborer	11/5/33
92	D 32 White, Harold A.		Same	Machinist	1903
19/25	V 32 White, Joan		Same	Student	1933
28	D 32 White, Mary C.		Same	At Home	1907
12	D 37 Ieraci, Antonio		Same	Garden Work	1896
9/11	37 Ieraci, Maria		Same	At Home	1897
14	37 Paola, Antonio	Italian	67 River St.	Brick-Layer	7/1/29
15	37 Paola, Rose	Italian	67 River St.	Machine Opr.	4/19/31
1/27/42	38 Johnson, Arthur C.		Same	Steamfitter	1914
1/25/09	V 38 Johnson, Marguerite V.		Same	At Home	1914
1/0	V 38 Slacke, Cora D.		Same	Housewife	1885
1/2/23	V 38 VanWhy, Doris M.		Same	Housewife	1925
1/9/22	D 45 Arpino, Eleanor		Jonos Ct.	At Home	4/5/16
1/96	D 45 Arpino, John		Same	Laborer	10/2/10
1/9/03	D 45 Taranto, Elvira		Waltham	At Home	3/14/37
1/3/27	V 45 Taranto, Felix		Waltham	Laborer	6/10/33
1/32	V 46 Poly, Mabel		Waltham	At Home	10/23/12
	V 46 Poly, Theron A.		Waltham	Manager	7/23/12
	46R Poly, Den G.		Waltham	U S Army	10/12/33
	R 50 Dexter, Doris M.		Same	Store Mgr.	1909
			Same	Splicer	1906



Courtesy of Newport Life Magazine



Dave Hansen | Staff photographer

Then & Now

Bruen Villa's Gardener's Cottage

It may seem outlandish today but at one time there was a junkyard amid the pomp and splendor of Newport's Bellevue Avenue, and the city — well, most of it — actually celebrated that fact.

After a fire at the Bruen Villa estate, located between Bellevue and Coggeshall avenues and just north of Howe Avenue, Julia Sullivan and her brother Timmy bought the estate's gardener's cottage, located close to Bellevue Avenue. The Sullivan siblings soon transformed themselves into local celebrities.

Julia, who once ran a variety store at the corner of Thames and Wellington, often could be seen walking in the yard of their Bellevue Avenue cottage in her bathrobe, sometimes with a sneaker on one foot and a rubber boot on the other. She was dubbed with some affection "Dirty Julia."

Born in Fall River, Mass., in 1883, Timmy worked at a variety of jobs before deciding salvage was a useful pursuit that was more in tune with his independent nature. Soon he was a regular fixture on the city's south end streets, picking through what people were throwing out and hauling his prizes back to Bellevue Avenue in his trusty wheelbarrow.

Unfortunately for some of his neighbors, Timmy — affectionately dubbed "The Woodhooker" for his penchant of hauling salvageable lumber — stored much of his accumulated treasures in his yard for all who wandered down to Bellevue Avenue to see. At some point, it even bulged out into Howe Avenue, then an unpaved road.

Although many in the city looked upon Timmy with some bemusement, some of his neighbors decidedly were not amused.

Mrs. Peyton J. Van Rensselaer, whose estate the Hedgees was located across Howe Avenue from the Sullivans, got a group of her neighbors to join her in petitioning the Zoning Board of Review in 1947 to try to force Julia and Timmy to clean up their property. The mayor and city solicitor, as well as the Sullivans neighbor Mrs. Harold Brown, backed the Sullivans and the petition was rejected. In 1949, Rensselaer took the issue to court. During the subsequent trial, Rensselaer testified that she even tried to entice the Sullivans, offering to give them an all-expenses-paid trip to Florida, pay for removal of the debris and have their house painted at her cost, if they would clean up their lot.

The two parties ultimately reached a compromise in which the Sullivans agreed not to use the former Howe Avenue for storage and Rensselaer agreed not to interfere with the Sullivans' household affairs.

On Oct. 18, 1957, Timmy, the Woodhooker, died in his front yard amid the treasures he had accumulated for 40 years. So well known was he that the Daily News ran his obituary on the front page.

Timothy F. Sullivan, 70, whose modest home at Bellevue and Howe Avenues became a castle unsuccessfully stormed by his more opulent neighbors, collapsed and died there yesterday. The Daily News reported.

“Regarded as a figure of fun by the curious, Mr. Sullivan displayed a courteous and intelligent demeanor to those who really bothered to make his acquaintance. He had a retentive memory for people and names and was well-versed in Newport annals.”

Timmy did not go quietly, however. In 1968, as the city was getting ready to build America's Cup Avenue in the midst of its huge downtown redevelopment, a proposal came up to name a small park after him. While calling him “a quiet and retiring individual,” The Daily News editorial board did not think it would appropriately honor the late Mr. Sullivan.

“At heart he shied away from the public and sought the cloaks of privacy,” read the editorial in the March 30, 1968, Daily News. “The kids should let him have his privacy, even in death.”

Without her brother, Julia Sullivan, then 75, was unable to care for herself and was soon taken in by the Sisters of St. Joseph. The Sullivan house finally was torn down in 1963. Julia died in 1969 and the Sullivan property was purchased by Mr. and Mrs. John Slocum, who owned the abutting property to the north.

The lot that once housed Bellevue Avenue's most colorful (though now empty) its story fading into city annals.

• Joe Baker

“Then & Now” is a weekly feature produced in cooperation with local historical societies.



William Francis Galvin
Secretary of the Commonwealth of Massachusetts



Corporations Division

Business Entity Summary

ID Number: 562454457

[Request certificate](#)

[New search](#)

Summary for: LEO BUTERA LANDSCAPING, INC.

The exact name of the Domestic Profit Corporation: LEO BUTERA LANDSCAPING, INC.

Entity type: Domestic Profit Corporation

Identification Number: 562454457 **Old ID Number:**

Date of Organization in Massachusetts:
04-26-2004

Date of Voluntary Dissolution: 04-28-2011 **Last date certain:**

Current Fiscal Month/Day: 12/31

The location of the Principal Office:

Address: 26 ELM STREET
City or town, State, Zip code, NEWTON, MA 02465 USA
Country:

The name and address of the Registered Agent:

Name: LEOPOLDO BUTERA
Address: 26 ELM STREET
City or town, State, Zip code, NEWTON, MA 02465 USA
Country:

The Officers and Directors of the Corporation:

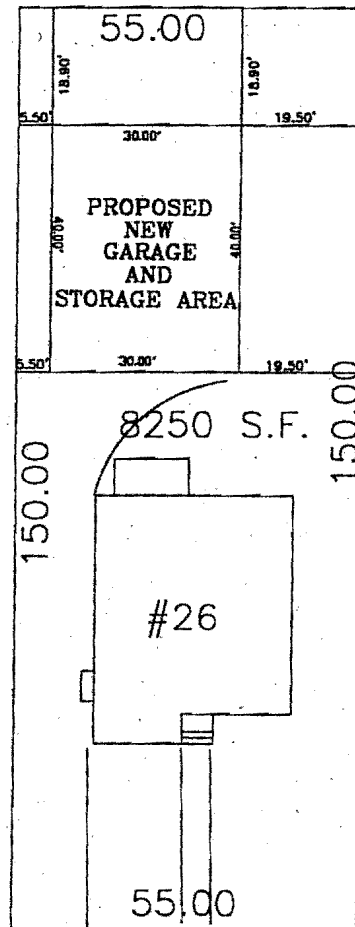
Title	Individual Name	Address
PRESIDENT	LEOPOLDO BUTERA	26 ELM STREET NEWTON, MA 02465 USA
TREASURER	LEOPOLDO BUTERA	26 ELM STREET NEWTON, MA 02465 USA
SECRETARY	LEOPOLDO BUTERA	26 ELM STREET NEWTON, MA 02465 USA
DIRECTOR	LEOPOLDO BUTERA	26 ELM STREET NEWTON, MA 02465 USA

Business entity stock is publicly traded:

The total number of shares and the par value, if any, of each class of stock which this business entity is authorized to issue:

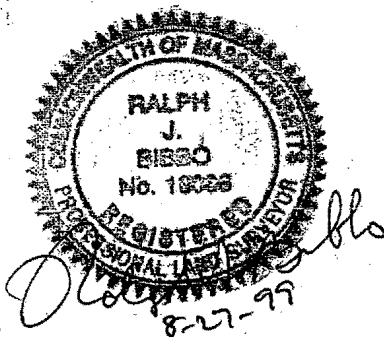
VIII. ZONING PLAN EXAMINERS NOTES	
DISTRICT	
USE	
FRONT YARD	
SIDE YARD	SIDE YARD
REAR YARD	
NOTES	

IX. SITE PLAN - For Applicant Use



LOT AREA 8250 S.F.
LOT COVER 29.9 %
OPEN SPACE 53 %

PLAN SHOWING LOCATION OF
PROPOSED GARAGE
AT
26 ELM STREET
NEWTON, MASSACHUSETTS
SCALE: 1 INCH = 30 FEET JULY 27, 1999



ELM STREET



EXISTING HOUSE
26 ELM STREET
NEWTON, MA.

SCALE: 1 IN = 20 FT

JUL 30, 2012

FEB 27, 2014

JULY 20, 2014

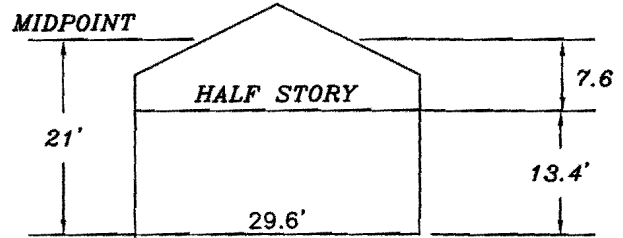
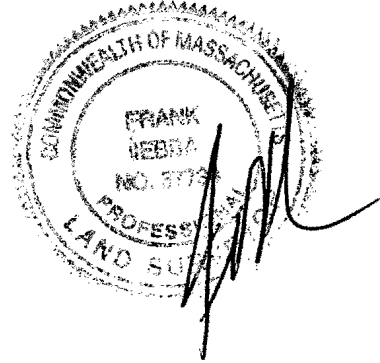
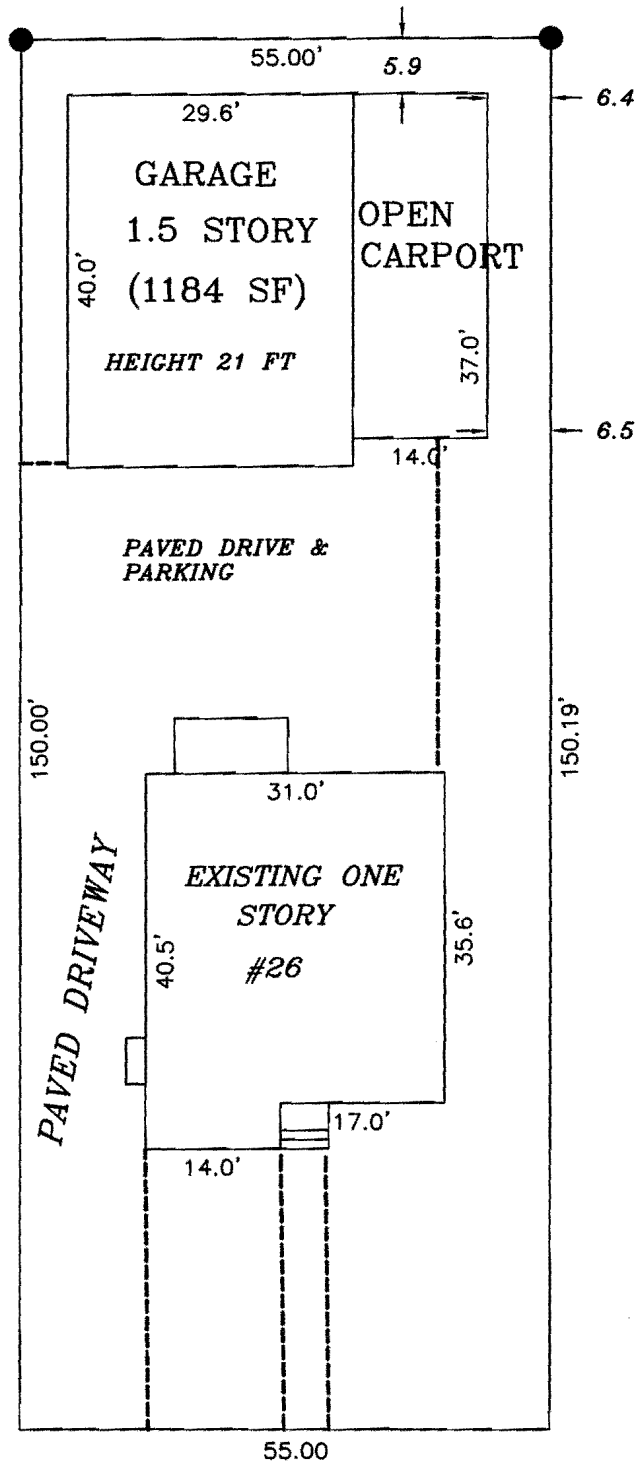
LEOPOLDO & MARIA
BUTERA

LOT B

8250 SQ. FT.

MR 1

LOT COVER: 36 %
OPEN SPACE: 37 %
FAR: .294



GARAGE FLOOR AREA: 1184 SF

FLOOR AREA ABOVE: 560 SF
(HEIGHT GREATER THAN 7'-2")

GARAGE IS 1.5 STORIES BASED ON
CITY ORDINANCE AT TIME OF CONSTRUCTION

GARAGE COMPLIES WITH CITY ORDINANCE
IN EFFECT AT TIME OF CONSTRUCTION

ELM STREET

ESSEX ENG. & SURVEY
PO BOX 620622 NEWTON LOWER FALLS
MA. 02462-0622

617-797-7342
FRANK.IEBBA@GMAIL.COM

ZONING

§ 30-15

- d) A nonprofit trust or corporation having as its primary purpose the maintenance of open space.

No building permit shall be issued in accordance with this subsection (k) until said designated open space shall have been conveyed to and accepted by one or more of the above and in the event that said open space shall not have been conveyed to the city and/or the Newton Conservation Commission, a restriction, enforceable by the city, ensuring the permanent maintenance of said land as open space, shall have been recorded.

- (6) In granting a special permit in accordance with this subsection (k), the board of aldermen may designate one of the options specified in subparagraph (5) above, which shall be utilized and may designate that the public shall have a right of access to the land so set aside or any part thereof.
- (7) Notwithstanding the above, the board of aldermen may give permission for further reductions in or the waiver of minimum lot frontage, setbacks and side and rear yards if it finds that such reductions are consistent with the purposes of this ordinance and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants, walls, fencing and areas of aesthetic or ecological interest; provided, however, that such further reductions shall not be exercised so as to permit the construction of attached dwellings within single residence districts. (Rev. Ords. 1973, §24-13; Ord. No. 206, 4-19-77; Ord. No. 272, 5-15-78; Ord. No. 284, Pt. XIV, 6-19-78; Ord. No. T-173, 9-16-91; Ord. No. U-28, 9-7-94)
- (l) Notwithstanding the lot area per unit set forth in Table 1 below, in all Multi-Residence 1 and 2 Districts, new buildings may be constructed and existing buildings may be altered, extended or reconstructed to provide living quarters for two families, provided that each dwelling unit has a minimum lot area of three thousand (3,000) square feet.
- (m) In no residence district shall an accessory building be nearer to any lot line than five (5) feet. Such distances shall be measured to that portion of the principal or accessory building nearest the lines, including outside vestibule or porch, and in the case of side lot lines, but not rear lot lines, steps and bulkheads.
- (n) Underground structures including, but not limited to, basements or parking facilities, may be located within the applicable setback distance, provided that any portion of the underground structure which is visible above ground must conform to the applicable setback distance.
- (o) With regard to the density and dimensional controls of this section, the portion of any lot within the Floodplain/Watershed Area as delineated in subsection G of section 22-22 of the Revised Ordinances, as amended, may be used to meet the area and yard requirements for the district in which the remainder of the lot is situated, provided that portion does not exceed twenty-five (25) percent of the minimum lot area requirement.
- (p) For lots which on August 3, 1987 were undeveloped and which prior to said date were in single and separate ownership and were not available for use in common or in connection with a contiguous or adjacent lot and which have a lot area less than 10,000 square feet, the as-of-right building height shall be one story or twelve (12) feet. By special permit, the building height may be two stories or twenty-four (24) feet. As of right floor area ratio shall be .50 and by special permit the maximum floor area ratio may be .75. Allowed uses shall be restricted

SECTION 30-15 TABLE 1—DENSITY & DIMENSIONAL CONTROLS IN RESIDENCE DISTRICTS AND FOR RESIDENTIAL USES

ZONING DISTRICT	MINIMUM REQUIRED LOT AREA	LOT AREA PER UNIT ¹	FRONTAGE	SET BACKS:			TOTAL FLOOR AREA RATIO	BLDG. HEIGHT ²	MAXIMUM NUMBER OF STORIES	MAXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
				FRONT	SIDE	REAR					
SINGLE RESIDENCE 1											
Single Dwelling Units	25,000	25,000	140	40	20	25	-	36	3	15%	70%
Lots created before 12/7/53	15,000	25,000	100	25	12.5	25	-	36	3	20%	65%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	3 acres	25,000	140	40	25	25	-	36	3	15%	70%
Single Family Detached (30-15(k))*	5 acres	15,000	50	15	7.5	15	-	36	3	20%	65%
SINGLE RESIDENCE 2											
Single Dwelling Units	15,000	15,000	100	30	15	15	-	36	3	20%	65%
Lots created before 12/7/53	10,000	15,000	80	25	7.5	15	-	36	3	30%	50%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	2 acres	15,000	100	30	25	25	-	36	3	20%	65%
Single Family Detached (30-15(k))*	5 acres	10,000	50	15	7.5	15	-	36	3	30%	50%
SINGLE RESIDENCE 3											
Single Dwelling Units	10,000	10,000	80	30	10	15	-	36	3	30%	50%
Lots created before 12/7/53	7,000	10,000	70	25	7.5	15	-	36	3	30%	50%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	1 acre	10,000	80	30	25	25	-	36	3	30%	50%
Single Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	3	30%	50%
MULTI-RESIDENCE 1											
Single & Two Family Dwellings	10,000	5,000	80	30	10	15	-	36	3	30%	50%
Lots created before 12/7/53 ³	7,000	5,000	70	25	7.5	15	-	36	3	30%	50%
<i>Special Permits:</i>											
Attached Dwellings (30-9(b)(5))	15,000	4,000	80	25	25	25	-	36	3	25%	50%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	3	30%	50%

(continued on next page)

CITY OF NEWTON

IN BOARD OF ALDERMEN

April 23, 1997

ORDINANCE NO. V-111

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, as amended, be and are hereby further amended as follows:

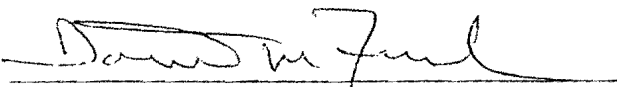
1. Substitute for the existing height definition in Section 30-1 the following:

Height. The vertical distance from grade plane to the average height of the highest roof surface. Not included in such measurements are 1) cornices which do not extend more than five feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.

2. Amend the building height limitation in Section 30-15, Table 1 to 30 feet.
3. Add a definition of *Grade plane* to Section 30-1:

Grade plane: A reference plane representing the average of finished ground level adjoining the building at all exterior walls.

Approved as to legal form and character



Daniel M. Funk
City Solicitor

CITY OF NEWTON
IN BOARD OF ALDERMEN

April 23, 1997

ORDINANCE NO. V-113

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, as amended, be and are hereby further amended as follows:

1. Amend the maximum number of stories allowed in the column headed MAXIMUM NUMBER OF STORIES in Section 30-15, Table 1, from 3 to 2 1/2 in all residential districts except for *Garden Apartments*, *More than Two Dwelling Units on a Lot*, and *Residential Care Facility*.

2. Add to Section 30-1 a definition for *Half story*:

A story directly under a sloping roof where the area with a ceiling height of 7'3" or greater is less than 2/3 the area of the story next below.

3. Add to Section 30-15, density and dimensional requirements, a new subsection (q) as follows:

(q) Any residential structure that is replacing a previously existing three-story residential structure shall be allowed three stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

4. Add a subscript 4 to the column headed MAXIMUM NUMBER OF STORIES and add a Footnote #4 to Section 30-15, Table 1, as follows:

Allow three stories by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

Approved as to legal form and character



Daniel M. Funk
City Solicitor

CITY OF NEWTON

IN BOARD OF ALDERMEN

December 6, 1999

ORDINANCE V-273

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, as amended, be and are hereby further amended as follows:

1. Delete the existing text of subsection 30-15(m) and substitute therefor the following:
 - (m) Except as provided in this subsection or where section 30-18A or section 30-21 provide otherwise, unless a variance is granted in accordance with the requirements and procedures set forth in this ordinance, in every residence district, accessory buildings shall conform to the following requirements:
 - (1) An accessory building shall be no nearer to any side or rear lot line than five (5) feet, and no nearer to any front lot line than the distance prescribed in Table 1 of Section 30-15 for a single-family or two family dwelling on the lot in question.
 - (2) The maximum height of each accessory building shall not exceed eighteen (18) feet. No space above this maximum height shall be habitable or comprise a dwelling unit, as defined in section 30-1, without the grant of a special permit by the board of aldermen in accordance with section 30-24. Habitable space, for purposes of this subsection, includes any available space which is used, or designed, arranged or constructed as living space, which need not include all components of a full dwelling unit.
 - (3) An accessory building shall have no more than one and one-half (1 ½) stories.
 - (4) The ground floor area, as defined in section 30-1, of an accessory building shall not exceed seven hundred (700) square feet.
 - (5) If the accessory building is a garage, unless a special permit is granted in accordance with the requirements and procedures set

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DEC 17 1999

MAYOR'S OFFICE

forth in sections 30-8(b)(7), 30-15, 30-19, and 30-24, for each dwelling unit:

- a) There shall be no more than one (1) garage, whether or not it is located in an accessory building;
- b) A garage shall provide for not more than three (3) automobiles;
- c) The ground floor area of a garage shall not exceed seven hundred (700) square feet.

Accessory structures, other than accessory buildings as referenced above, must conform to the applicable setback requirements for the principal building under section 30-15, Table 1. Measurements under this section shall be made from the lot line to that portion of the accessory building or accessory structure nearest the lines, including an outside vestibule or porch. Such measurements are also made from the lot lines to steps or bulkheads in the case of front and side lot lines, but not in the case of rear lot lines.

Approved as to legal form and character



DANIEL M. FUNK
City Solicitor

Under Suspension of Rules

Readings Waived and Approved

22 yeas 1 nay (Ald. Sangiolo) 1 absent (Ald. Tattenbaum)

EXECUTIVE DEPARTMENT

Approved: November 8, 1999



(SGD) EDWARD G. ENGLISH
City Clerk



(SGD) DAVID B. COHEN
Mayor

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DEC 17 1999

MAYOR'S OFFICE

SIGNIFICANT ISSUES FOR CONSIDERATION:

First: The site is an appropriate location for the proposed addition of the accessory structure. The proposed addition provides a shaded area on the southerly side of Mr. Butera's property that he can use for residential accessory outdoor activities, including preparing his seedling tomato plants for planting, sorting harvested tomatoes before taking them inside for canning, other horticultural activities and passive recreational activities, all accessory uses in a multi-residence 1 zoning district.

Second: The proposed addition will not adversely affect the neighborhood. In fact, we are submitting a list of Mr. Butera's neighbors that support his petition of this Special Permit. A copy is attached as Exhibit 8.

Third: Looking at 26 Elm Street, in hindsight in 2014, it is not unexpected that there would be a different interpretation of what happened.

i) Mr. Butera applied for and received a building permit to construct a 30 foot by 40 foot accessory building to be used as a garage and for the storage of his landscape business equipment. The reason he built the accessory building was to move his trucks and equipment inside. This fact was a known fact at the time. There is no reason to believe that the Building Department did not know what he was doing, how big his building was or that there was some type of conspiracy to allow him to evade the building and zoning laws in effect at the time.

ii) Mr. Butera was born in Italy in 1938. He has a 10th grade education. While he can understand English, his speech is heavily accented and he has limited ability to read and write English. He is smart enough to establish and run a successful business for over 45 years, but he is not a builder and is not experienced in the intricacies of building and zoning laws.

iii) Mr. Butera did not write the various restrictions we now see on his building permit application. He has no memory of being told they were added to the application. If they were added at the time of the application or at the time of the issuance of the building permit, why were they not included on the actual building permit?

Fourth: Administrative Determinations in the Zoning Review Memorandum

Administrative Determination 2: Newton Zoning ordinance, Table I, §30-15 states the building height in a MR-1 Zone is 36 feet. The plans filed with the Building Permit Application, and accepted by the Building Department, show a proposed building height of 26' 2".

The Planning Department, in paragraph 2 of the Administrative Determinations attached to the Public Hearing Memorandum, Attachment C, Zoning Review memorandum, says

the then building height restriction was 22 feet. I did not find any amendment to Table I reducing the height from 36 feet to 22 feet.

Finally, according to Mr. Iebba, former City Engineer, in 1999 the height of a building was measured to the mid-point of the roof elevation. That is 21 feet, one foot less than the height limitation of 22 feet.

Administrative Determination 3: The second floor contains 560 square feet with a ceiling height above 7 feet 3 inches, that is less than $\frac{2}{3}$ of the ground floor area. See Ordinance V-113, April 23, 1997. In 1999, this accessory building was considered a 1½ story building.

Administrative Determination 4: In 1999, it was permissible to have a garage in an accessory building. Ordinance V 273, Revising §30-15(m), enacted December 6, 1999, after the Butera Building Permit was issued, is the section that limits a garage to 700 square feet.

However, this amendment also allows a garage to be located within or as part of an accessory building. The 700 feet referred to is a reference to that portion of the accessory building that was allowed for garage use. It is not a limitation on the size of the building.

Further, why would the Building Department issue a Building Permit if the plans submitted with the application did not conform to the then current building & Zoning Codes?

Administrative Determination 5 & 6: Because of the size and shape of the Lot, the petitioner seeks a waiver of opens and lot coverage requirements or, in the alternative, a recommendation that a variance be granted for the same.

Expiration of Statute of Limitation: Assuming the accessory structure may exceed some present density and dimensional controls, and further assuming they did not comply to existing density and dimensional controls in effect on September 3, 1999, the Statute of limitations has expired and the City can not use a back door practice to require the Petitioner to correct those problems by demanding he get a variance.

Peter F. Harrington

We support the petition of Leo Butera for a Special Permit to keep the roof extension on the side of his garage and to confirm the legality of his garage.

Name

Street Address

Ellen Krugberg 106 River St., W. Newton MA

Antonio Bondero 19 Elm St North

~~Michael...~~ 517 Elm St

Jynda Barma 29 Elm St

Richard C Bain 29 ELM ST.

Michelle Inglis 22 ELM ST.

Nicholas Falkoff 31 Elm St

ANTON RICHARDSON 38 ELM ST

Christa Taranto 4 Elm St W. Newton

Christa Taranto 38 Elm St W. Newton

46 near Elm St.

C. Tom Ayer 51 Elm St Newton MA

Galene Ayer 51 Elm St Newton MA

21 ELM ST, NEWTON MA

38 Elm St W. Newton

36 Cherry St W. Newton

89 ELM ST W. Newton

32 Elm St W. Newton

Christine Butera 32 Elm St Newton, MA 02465

LEE Bagley 106 River St. Newton

10/14/2014

City of Newton



Property ID: 33034 0017
Address: 14-16 COTTAGE PL 14
Owner: NICHOLSON TOREY J



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Because of different update schedules, current property assessments may not reflect recent changes to property boundaries. Check with the Assessors' Office to confirm boundaries uses at the time of assessment.

