



## 26 Elm Street Special Permit Application ~ Narrative

### History:

Mr. & Mrs. Butera purchased 26 Elm Street in 1964 and have lived there continuously since then. During that time Mr. Butera has been self-employed in an occupation of installing, maintaining and improving decorative and functional organic and inorganic matter on real property, often referred to as a landscape gardener. He has been parking trucks and storing equipment on the premises since he acquired it. Mr. Butera dissolved his business and retired in April 28, 2011.

In the 1960's, it was common practice for business entrepreneurs and professionals to bring their work motor vehicles home each day and park them on their driveway or in the yard. This included automobiles and trucks. It was considered an accessory use that was proper and usual in a residential district. These entrepreneurs included the:

Milkman	Knife & Scissor Sharpener	Vegetable Seller	Ragman
Electrician	Plumber	Carpenter	Ice Cream Vendor
Contractor	Landscape Gardner	Deliveryman	Salesmen
Lawyers	Medical Doctors	Surveyors	Municipal Employees
Avon Sales	Fuller Brush Sales	Mary Kay Sales	Electrolux Sales

It was also common practice for the same individuals to keep their business records at their place of residence, as well as do planning, billing and miscellaneous telephone contact with customers. It was also common practice for the same individuals to keep or store business equipment, advertising material, advertising samples and sales products at their residences.

The overnight parking or storage, at the place of residence of the owner, of a vehicle used in the commerce or business of the owner is a practice that pre dates the adoption of the Newton Zoning Ordinance. In Newton, the adoption of a Zoning Code in 1922 did not restrict or prohibit this practice and, as cited above, was not restricted until August 13, 1987.

In the late 1999 a dispute arose concerning Mr. Butera's rights to use 26 Elm Street for the parking and storage of his trucks and equipment. This matter was resolved by an unwritten agreement that Mr. Butera would apply for a Building Permit for an accessory building, construct the building and move his trucks and equipment into the garage.

On September 30, 1999 Mr. Butera obtained Building Permit 1314-99 to construct a 1½ story garage with proposed dimensions of 30' X 40'. It is this building that is referred to as being non-compliant in the attached Zoning Review Memorandum.

In 2000 Mr. Butera completed paving in his driveway and yard. A Building permit was not required at that time to complete such work.

In 2002 or 2003 Mr. Butera attached a roof extension to the garage. He is seeking a Special Permit to for this roof addition.

RECEIVED  
NEWTON CITY CLERK  
2011 JUL 20 PM 3:23  
D. J. O'SON, CLERK  
NEWTON, MA 02459

## 26 Elm Street Special Permit Application ~ Relief Requested

### **Relief Requested:**

Aside from the variance relief the Planning Department has cited as required, the Petitioner seeks the following relief from the Board of Aldermen:

1. **Section 30-15(m)(2). Open Roof** Permission to leave an existing open roof attached to the Southerly side of the garage.
2. **Section 30-15(m)(2). Garage Roof** The Petitioner's plan filed with his building permit application in 1999 showed a gambrel roof design. Attached is a copy of the roof design submitted. The Petitioner constructed a hip roof. As a result, the Petitioner's building is and the petitioner is "Non-compliant". The change in design does not materially impact the garage or the neighborhood. The Statute of Limitations concerning enforcement of this discrepancy by bringing a criminal complaint in the Newton District Court has expired. The petitioner would like to amend the Building permit to the extent of filing an as built plan of the roof. Section 30-15(m)(2).
3. **Section 30-15(m)(3). Building Height** The height of the building, at the time of construction, was measured to the mid point of the roof slope. The attached plan shows that point to be 21'. This did not exceed the building height allowed in 1999. The building is 1½ stories according to 1999 standards.
4. **Section 30-15(m)(5)(c). Building Area** The Petitioner's plan filed with his building permit application in 1999 shows a proposed new garage & storage area of 40.00' by 30.00' [1,200 square foot building]. Attached is a copy of the floor plan submitted with the building permit application. There is a wall shown dividing the parking area from the storage area. This was a permitted building in 1999. The wall was not constructed and the petitioner's building is "Non-compliant". The Statute of Limitations concerning enforcement of this discrepancy by bringing a criminal complaint in the Newton District Court has expired. The petitioner would like to amend the Building permit to the extent of filing an as built plan floor plan.

RECEIVED  
Newton City Clerk  
2014 AUG 20 PM 3:23  
David A. Olson, OMC  
Newton, MA 02459