AUG 2 0 2014

### TO THE HONORABLE BOARD OF ALDERMEN, CITY OF NEWTON

The undersigned hereby makes application for permit to erect and use, to alter and use, or to make such uses as may be hereinafter specified of building or buildings, at the location and for the purpose hereinafter specified under the provisions of Chapter 30 of the Revised Ordinances, 1995, as amended, or any other sections **Please Reference Sections**: §30-24, §30-15(m)(c)5), §30-15, Table 1, §30-15 (m) (2) and §30-15 (m) (3).

Petition for:

☑ SPECIAL PERMIT/SITE PLAN APPROVAL

EXTENSION OF NON-CONFORMING USE

SITE PLAN APPROVAL ONLY

Located as follows:

Street and Ward

26 Elm Street, West Newton

Ward 3

Section(s)

33

Block(s)

24

Lot(s)

Approximate square footage

e of lot

8,250 square feet

Approximate square footage of open roof 518 square feet

To be used for:

open roof

Construction:

wood frame

Explanatory remarks: see attached narrative

Land referred to here is located in a Single Residence C Zoning District

The undersigned agrees to comply with the requirements of the Zoning Ordinance and rules of the Land Use Committee of the Board of Aldermen in connection with this application.

Petitioner

Leopoldo Butera, 26 Elm Street, West Newton, MA

Signature

Attorney of Record

Address and Telephone

Peter F. Harrington

505 Waltham St., West Newton, MA 02465

617-558-7722

Signature of

Owner of Property

le plus to

Leopoldo & Maria Butera, 26 Elm Street, West Newton, MA

PLANNING AND DEVELOPMENT DEPARTMENT'S ENDORSEMENT

## 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. Buttera 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 $5 - 2$    |
| 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 and 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.

# 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.

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David A. Olson, CMC