

**H. Mager Walker & Kathleen J. Walker**

71 Newtonville Ave Newton Corner, MA 02458

5/20/14

Board of Alderman  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: Request for Special Permit – Petition #141-13(3)

Dear Members,

We shared some of our concerns at the 5/13/14 public hearing regarding the project being proposed by the petitioner Nikzum Gordon of 72 Newtonville Avenue. However, we have several additional questions and comments to the Land Use Committee prior to moving towards the working session of considering this Request for Special Permit.

1. ***What is “special” about this request?*** – We question whether the information provided by the petitioner adequately supports the *special* request. The petitioner puts forward several examples of properties on Newtonville Avenue (i.e. 68 and 130 Newtonville Ave) that have similar retaining walls with parking within set back. What is not provided is that neither of these examples to our knowledge has or ever had “existing” adequate parking in “garaged space” within their structures like that is present in the petitioner’s structure. It would seem that the examples cited were created to provide off street parking where none existed. That would seem to meet the litmus test of a special request. Providing relief from the mere inconvenience of a very common sloped driveway does not.

2. ***Supporting Documentation Lacking:*** The petitioner has provided engineering drawings on the proposed retaining wall and drainage systems. We are not engineers, so we would defer comment to the City's Engineering Dept. as to whether the information contained therein is sufficient to meet the City's requirements. However, after reviewing the engineering drawings, it did not seem clear to us what the existing grade condition of current full driveway was and what would the grade of parking resulting from completion of proposed project. The petitioner's engineer who was present at the 5/13/14 public hearing seemed from his comments to indicate there would still be a sloped grade even after completion of work. This then begs the question, why would the petitioner expend such considerable resources in undertaking a project that really does not create the desired result (i.e. a level driveway)? Further review of the documentation failed to reveal any information regarding the specifications and detail of the modular stone product that is being proposed for use. What is the product? What does it look like? Is there no brochure or specs on this product? It seems reasonable to think so. Do the provided engineering drawings support the manufacturer's recommended installation specifications and vice versa? Also, there is no architectural detail provided about proposed railing that is to be installed on top of retaining wall. Like the rest of photos depicting proposed scope of work, it appears the petitioner just grabbed an image from an off the shelf home hobbyist software library and pasted it into a photo of the house. Certainly, this would not meet the standard for professional support material typically provided for similar special permit request.

3. ***Property Improvement Enriching Neighborhood?*** – Beyond the technical review, we believe that the evaluation on whether to grant the special permit should consider whether the proposed project would not only meet the petitioner's individual needs. But, also blend in with the existing structures that populate the immediate neighborhood and hopefully improve upon it. We believe in and support projects that are planned and executed with not just the singular aim of addressing one individual's

desire. But, also in a process that lends sensitivity to its surrounding environment and their occupants.

The petitioner's structure mirrors those constructed around the same time at 80 and 82 Newtonville Avenue. All were sited on lots with considerable slope. Their "split level" design helps compensate for a sloped lot and allows for a full 2 car garage and is very common. Although not perfect or unique in design, these homes address the challenges of their site, are very functional, blend in well with much older structures in the neighborhood and in many ways are the quintessential suburban home of their time. The owners of these homes have over the years made improvements to their structures. For example, the previous owner of the petitioner's *own structure* installed a well-designed terraced walkway and steps that eloquently connects the structure to both the top and bottom of driveway. This was an indication to us that the previous owner recognized this was an appropriate compromise to creating safe travel that was desired and accepting the inherent conditions of the structure's site. As mentioned in the 5/13/14 public hearing. That owner lived safely with 3 children without incident in this structure for 15 years. No different from the owners that proceeded him no doubt. He seemed to have clearly recognized that these structures "*are what they are*" in many ways and don't pretend to be anything else. It was clearly a 'win-win' for both the owner and the neighborhood.

Refusal to accept or recognize these inherent conditions and embarking on a journey to go beyond what is reasonable (i.e. the petitioner's request), is wrought with problems and would most likely never achieve the desired result. Taking on such a task would seem to require a *unique set of skills and a history* of creatively addressing design challenges and *successfully executing such tasks*. The petitioner offers no support that they, their engineers or contractors possess such unique skills or performance history. However, demonstrating excessive stubbornness, arrogance and lack of

sensitivity to other's concerns, the petitioner wishes to undertake just such a task!

#### **4. Detailed Construction Management Plan or Standard Boilerplate**

**Template?** The petitioner has submitted what is referred to as a "Construction Management Plan". Once again, we find the documentation lacking and representative of the superficial and cursory approach that the petitioner has exhibited throughout this process.

**a. Project Schedule:** No detailed project schedule (i.e. Microsoft Project or other similar project management tool) is provided. This is customary for competent and experienced construction professionals. Such a detailed document would provide much desired specific information for all interested parties regarding the specific timing of tasks and component phases of the project. It would also communicate confidence to all interested parties that the petitioner or his/her contractors are up to the task.

**b. Adherence to City Ordinances -** The petitioner makes a lot of promises to adhere to the common city ordinances related to conducting a project of this scope. Unfortunately, Zion Yehoshua, the primary contact for the project put forward by the petitioner as being the *"superintendent on site each day to direct the operation and coordinate the activities of sub=contractors"* has shown in the past a reckless disregard to adhere to such ordinances. As detailed in the 5/20/14 Working Session Memo from the Planning Dept. to the Land Use Committee, the petitioner and/or Mr. Yehoshua has been issued two citations in past 2 years for code violations and property destruction caused on adjacent properties. Further, a review of police logs will reveal that there has been a consistent level of complaints since 2012 from multiple adjacent property owners about the petitioner's failure to adhere to the various city ordinances specifically referenced in the "Construction Management Plan"! The one outlier is Mr. Gary George (*a resident, not property owner at 80 Newtonville Avenue*). His recollection of recent history of the

petitioner at the 5/13/14 public hearing and subsequent 5/14/14 letter to the Land Use Committee leaves us baffled. We would just categorize his comments as a severe economy of the truth. We submit that a polling of the other above mentioned adjacent property owners would no doubt suggest we are generous with our characterization of Mr. George's comments.

- c. *What about Phase 2?*** – During the 5/13/14 public hearing, the petitioner referenced that they would replace the existing garage doors as part of repurposing of the garage space. However, there was no time table or architectural plans provided for this work to be completed. It would seem to us that the two scopes of work are integrally linked to each other. Are we to assume that the retaining wall can be built without commitment to complete the work related to the garage repurposing? Would it not be reasonable that the special permit for the retaining wall not move forward until it is properly linked to the garage repurposing project?

We appreciate the opportunity to share our sincere comments and questions regarding the petitioner's request. It is not without significant effort to do so. We are also saddened that it was indeed necessary. Unfortunately, in our opinion it appears that the petitioner's approach would be a "text book case on how not apply for a special permit". None the less we believe "*experience is true*" and the knowledge gained from experience provides the basis for how we make the decisions that are fair and best for the future of Newton.

We trust you will agree with us in declining the petitioner's request for special permit.

Sincerely,

H. Mager Walker and Kathleen J. Walker