INTER-OFFICE CORRESPONDENCE – FENCE APPEAL

At its April 14, 2021 meeting, the Urban Design Commission (UDC) approved a request for an exception to the fence ordinance for an existing fence, set at the front property line, along Washington Street at varying heights.

The property located at 431 Washington Street is within a Business 2 district. The applicant has installed the following fence:

   a) <u>Front Lot Line</u> – The applicant has added a fence, set at the front property line, at varying heights (6'-6", 8'-10", 11'-9"), 121.64 feet in length.

Portion of the existing fence along the front property line, for a length of 110.85 feet, appears to be consistent with the fence criteria outlined in §5-30(e) of the Newton Code of Ordinances.

The following portion of the existing fence along the front property line, appears to be not consistent with the fence criteria outlined in §5-30(e) of the Newton Code of Ordinances:

   • Two columns, 2'-10" in length with a height of 11'-9"
   • Brick wall, 7'-10" in length with a height of 8'-10"

The fence was denied by the Commissioner of Inspectional Services as noncompliant with the fence ordinance, and the petitioners appealed the decision to the UDC, which is authorized to approve limited fence exceptions.

According to §5-30(e)," *Regulation of Perimeter Fences in Nonresidential Zoning Districts: The height of perimeter fences located in nonresidential zoning districts including fences erected by the City of Newton in the public use districts shall not exceed eight (8) feet in height except as necessary for athletic facilities such as, but not limited to softball diamonds or tennis courts which may be permitted at heights in conformance with established recreation standards.."*

According to §5-30(b), " *Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twenty-four (24) inches.*"

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City's Fence Ordinance. The proposed fence, however, must be found to comply with the *"requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise."* The UDC must also determine whether the

"desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."

The petitioner claimed a hardship based on the following reasons – *"The existing wall was built in accordance with the approved special permit and building permit plans".*

At the meeting, the UDC reviewed materials submitted by the petitioner and heard petitioner's argument. The UDC commented that this fence/wall was already approved as part of the building permit and the submitted plans that nobody commented on and allowed the applicant to build it, and after the fence was built, ISD commented that a fence permit is required for this fence. This is clearly a financial hardship and the appeal should be granted. This fence was obvious on the approved plans and wasn't something that would have been difficult to determine. The UDC also commented this is an exemplary project, the way it steps down and transitions into the neighborhood, it is a good example for future reference.

Mr. Kaufman moved the motion to grant the appeal for the fence and posts along Washington Street as shown on the approved plans. Mr. Winkler seconded the motion. All the members present voted, with a 7-0 vote, Michael Kaufman, John Downie, Visda Saeyan, Carol Todreas, James Doolin, Robert Linsky, and William Winkler in favor and none opposed. The motion was granted.