

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: November 4, 2021

TO: Richard Lipof, Chair, Land Use Committee
Land Use Committee Members

FROM: Jonah M. Temple, Assistant City Solicitor

RE: 11 Florence Street – Rezoning Petition #304-21 & Special Permit Petition #305-21

The purpose of this memorandum is to briefly address the recent letters submitted to the Land Use Committee on behalf of the Residences at Chestnut Hill Condominium Trust concerning the above-referenced rezoning petition. The Law Department has reviewed the letters and finds no merit to the legal arguments they set forth.

First, on process, the City Council is acting in full compliance with state zoning law by holding public hearings on both the rezoning petition and the special permit petition at the same time. Both hearings have also been properly noticed in accordance with state law. As stated many times before, the Law Department does not view the fact that a proposed project is incompliant with current zoning requirements as a reasonable basis to delay a special permit public hearing where the petitioner has simultaneously requested a rezoning that, if granted, would allow the project to be built by special permit. There is no statutory or judicial authority that suggests zoning amendment and special permit requests cannot proceed in concert. Ultimately, the rezoning petition will be voted on prior to the special permit petition, and the special permit cannot be granted unless the zoning passes first. Moreover, it is a well-established City Council practice to hold public hearings at the same time on special permit and rezoning petitions that apply to the same land. Recent examples include the Riverside development, the Northland development, the Washington Place development, and the Sunrise development on Washington Street, as well as others.

Second, in response to the issue raised concerning “spot zoning,” rezoning the land as proposed by this petition will not constitute illegal spot zoning so long as there is a valid public purpose. The Law Department notes that the City Council has significant discretion to enact any zoning amendment that bears a rational relation to a legitimate public purpose and that zoning changes carry a strong presumption of validity. It is well within the City Council’s discretion to rezone specific parcels for specific projects. That is not “spot zoning.” All of the projects set forth in the preceding paragraph are examples of valid zoning changes for a particular project. Illegal spot zoning does not occur unless it is shown that a parcel was rezoned solely for the economic benefit of the owner of the land without any legitimate legislative goal. In other words, it is completely acceptable for a rezoning to further a particular project that benefits a developer if the amendment also serves the public welfare. As with all rezoning petitions, both the City Council and the Planning Board are currently holding public hearings on this petition and are in the process of evaluating whether the proposed rezoning advances a valid public purpose.

Please let me know if you have any questions. Thank you.