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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: December 3, 2021
MEETING DATE: December 9, 2021
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #293-21

967 Washington Street, 92 and 96 Walker Street

Petition #293-21, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a 28-unit three-story multi-family dwelling with underground parking, to waive 26 parking stalls and to alter and extend a non-conforming front setback at **967 Washington Street, 92 and 96 Walker Street**, Ward 2, Newtonville, on land known as Section 21 Block 33 Lots 1-3, containing approximately 34,210 sq. ft. of land in a district zoned MULTI RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.6, 7.8.2.C.2, 5.1.4, 5.1.13 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on September 21, 2021 and November 9, 2021 on this petition. This memo reflects additional information addressed to the Planning Department as of December 2, 2021.

Background

The subject site at the corner of Washington and Walker streets is comprised of three Multi Residence 3 (MR3) zoned lots totaling 34,210 square feet. The property is improved with a one-story mixed commercial building; a single-family dwelling built in 1910; and a two-family dwelling built in 1920.

The petitioner proposes to replace the existing structures on the property with a three-story, 28-unit, multi-family dwelling with 30 parking stalls in an underground parking garage. Per Section 3.4.1 of the

Newton Zoning Ordinance (NZO), a special permit is required to allow a multi-family dwelling in the Multi Residence 3 district. As proposed, the project requires additional zoning relief to alter and extend a nonconforming setback along Washington Street and to waive 26 required parking stalls.

Also, petitioner would be required to provide inclusionary zoning units. Of the 28 proposed units, four units (15%) must be affordable to households earning 50-80% of the Area Median Income (AMI) and one (2.5%) must be available to those earning up to 110% of the AMI. Lastly, as the development would include the construction of a building totaling 20,000 square feet or more of gross floor area, it would be required to meet the sustainable development requirements established by Sec. 5.13.

UPDATE

Inclusionary Zoning

In its previous memo on this petition the Planning Department noted that at that time petitioner had not submitted an Inclusionary Housing Plan (IHP) for review by the Planning Department's Housing staff. Housing staff has now reviewed the material and confirmed the applicable calculation (and mix) of the project's required inclusionary zoning units and fractional cash payments.

ATTACHMENT(S)

Attachment A DRAFT Order

CITY OF NEWTONIN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a multi-family dwelling (§3.4.1), alter and extend a nonconforming front setback (§3.2.6, §7.8.2.C.2), and waive 26 parking stalls (§5.1.4, §5.1.13) as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site in a Multi-Residence 3 district is an appropriate location for the proposed three-story, twenty-eight -unit dwelling with thirty parking stalls given its location in a multi residentially-zoned neighborhood and it would replace a commercial use (§7.3.3.C.1)
2. The proposed three-story, twenty-eight -unit dwelling with thirty parking stalls, as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2)
3. There will be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
5. The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy, including through some or all of the following: (a) minimizing operating energy; (b) minimizing the use of fossil fuels; (c) installing three electric vehicle charging stations and charging infrastructure for three additional possible charging stations. Also, the Petitioner is designing the project to be LEED Gold certifiable. (§7.3.3.C.5)
6. Granting the requested exceptions to literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) regarding the required number of parking stalls is in the public interest due to the site's location near transit and neighborhood amenities. (§5.1.13)
7. The proposed altered and extended nonconforming front setback will not be substantially more detrimental than the existing nonconforming use to the

neighborhood as the resulting front setback will be more conforming than the existing front setback (§3.2.6, §7.8.2.C.2)

PETITION NUMBER: #293-21

PETITIONER: Rogers & Company, Inc.

ADDRESS OF PETITIONER: 859 Emerson Gardens Road
Lexington, MA 02420

LOCATION: 967 Washington Street, 92 and 96 Walker Street, Ward 2,
Newtonville, on land known as Section 21 Block 33 Lots 1-3,
containing approximately 34,210 sq. ft. of land in

OWNER: David H. Boyajian et al.

ADDRESS OF OWNER: 92 Walker Street
Newton, MA 02460

TO BE USED FOR: A multi-family dwelling consisting of 28 dwelling units, including
ground-floor units, and a below grade garage

EXPLANATORY NOTES: Special permit per §7.3.3: To

- allow a multi-family dwelling (§3.4.1)
- alter and extend a nonconforming front setback (§3.2.6, §7.8.2.C.2)
- waive 26 parking stalls (§5.1.4, §5.1.13)

ZONING: Multi Residence 3 (MR3)

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with
 - a. A site plan entitled "Zoning Plan, Newton, Massachusetts, Showing Proposed Conditions at #967-979 Washington Street and #92 & #96 Walker Street," prepared by VTP Associates, dated April 23, 2021, as revised through **June 11, 2021**

b. A set of architectural Plans entitled, “Multi-Family Residence, 967 Washington Street, 92 and 96 Walker Street- Special Permit Submission” prepared by Meyer and Associates, dated **September 19, 2021** , consisting of the following sheets:

- i. Site Plan (A0-1)
- ii. Site Plan (A0-2)
- iii. Landscape Plan (A0-3)
- iv. Basement Plan (A2-0)
- v. First Floor Plan (A2-1)
- vi. Second Floor Plan (A2-2)
- vii. Third Floor Plan (A2-3)
- viii. Roof Plan (A2-5)
- ix. Exterior Elevations (A4-1)
- x. Exterior Elevations (A4-10)
- xi. Exterior Elevations (A4-2)

2. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City’s Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
3. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	IZ Units	1 BR	2 BR	3 BR
Tier 1		0	3	0
Tier 2		0	2	0

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

4. The Petitioner shall provide a fractional cash payment of \$57,823.92. in accordance with the City’s Inclusionary Zoning Ordinance, §5.11, prior to the issuance of a certification of occupancy.
5. The Petitioner shall ensure one of the five Inclusionary Units is an accessible unit.
6. Monthly housing costs (inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner’s association fees, hazard insurance, and 1 parking space) must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Zoning Ordinance § 5.11.4.D.2.

7. Prior to commencing any pre-sale or pre-marketing activities, the Petitioner must submit an Affirmative Fair Housing Marketing & Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development. The Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. The units will be affirmatively marketed and leased through a lottery. The nature and extent of the local preference scheme included in any final AFHMP submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preferences for Inclusionary Units in a project in effect at the time of such submission to DHCD.
8. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and if applicable DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
11. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
12. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for vertical construction of the Project.
13. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
14. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
15. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.
16. Parking stall(s) shall be **sold** separately from the cost of a unit, provided, however that the

cost of one parking stall shall be included in the price of an Inclusionary Unit. Prior to the issuance of any certificate of occupancy for a market-rate unit (temporary or final), the Petitioner shall provide evidence of such separation to the Director of Planning and Development.

Further, the Petitioner shall implement in perpetuity the terms of the Transportation Demand Management (TDM) Plan as described in a memorandum entitled "967 Washington Street: TDM Plan" from Terrence P. Morris, Esq., dated October 20, 2021 on file with the Department of Planning and Development and the City Clerk's Office.

17. All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.
18. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance.
19. The Petitioner shall comply with all applicable sustainable design provisions of the Revised Ordinances.
20. The Petitioner shall make payments in the aggregate amount of **\$294,909.00** to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
 - a. **\$147,454.50** at the issuance of any Building Permit for the Project.
 - b. **\$147,454.50** at the first dwelling unit certificate of occupancy (temporary or final) in the Project
21. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
22. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition permit, the petitioner shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity prior to demolition, and plan for preventing pest migration off-site during demolition and construction.

- b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Planning and Development Department, Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of any temporary certificate of occupancy, the Pest Control Operator shall file a final report with the Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site and neighborhood assessment.
 - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final) ,the petitioner shall offer rodent abatement services on an as needed basis for all direct abutters, subject to owner authorization of such properties and a waiver of liability.
23. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Revised Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
24. Prior to the issuance of any building permit for the Project the petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, the Commissioner of Public Works, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
- a. 24-hour contact information for the general contractor of the project.
 - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and delivery vehicles and equipment, and location of any security fencing.
 - d. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using

- dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
- e. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - f. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
 - g. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties;
26. The Petitioner shall implement the following measures in order to mitigate and reduce significant vibration impacts caused by construction equipment:
- a. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project, with owner approval and at no charge to the owners. Subject to owner approval, photos must be taken both inside and outside prior to construction to set a baseline of existing conditions.
 - b. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor) so that the funds are available for payment of valid claims for damage caused by vibration impacts to private property within 250 feet of the project. Claims shall be administered in conjunction with a responsible third party approved by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages.
 - c. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
 - i. Measurements of static ground vibration prior to construction.
 - ii. Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV).
 - iii. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
 - iv. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
 - v. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.

- d. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation or building permit.
 - e. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
 - f. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
 - g. The Petitioner shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
 - h. Following construction, the Petitioner shall re-inspect all homes, with approval of the owners, subject to the pre-construction survey to determine any damages caused by vibration. The Petitioner shall maintain records of all complaints it receives for vibration-related damages. All claims submitted to the mitigation fund shall be fully administered prior to the issuance of the final certificate of occupancy for the Project. Any monies remaining in the fund upon issuance of the final certificate of occupancy shall be retained by the Petitioner.
25. The Applicant shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
26. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the Development Parcel. All repair work shall be done prior to the issuance of the final certificate of occupancy for the final dwelling unit in the Project, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
27. *Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.*

28. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.
29. No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
 - b. Submitted the cash fractional payment in accordance with Condition #4.
 - c. Submitted the payments required in accordance with Condition #19.
 - d. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer.
 - e. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with Condition #21.
 - f. Submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with Conditions #2-13, and §5.11.8 of the Zoning Ordinance.
 - g. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate LEED Gold certifiability.
 - h. Complied with all applicable tree preservation provisions in accordance with Chapter 21 of the Revised Ordinances.
30. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Amended and Restated Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division, final as-built survey plans in digital format.
 - c. Submitted the payments required in accordance with Conditions #19-20.

- d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with **Conditions #2-13**.
 - e. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
 - f. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units within such building. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed within such building.
 - g. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
 - h. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
 - i. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units. -
 - j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED certifiability of the subject building have been satisfied.
31. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, and/or benches provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping, fencing, signage and parking areas.