



Land Use Committee Agenda

City of Newton In City Council

Tuesday, February 8, 2022

7:00 PM

The Land Use Committee will hold this meeting as a virtual meeting on Tuesday, February 8, 2022 at 7:00 pm. To view this meeting using Zoom use this link: <https://us02web.zoom.us/j/82628567308> or call 1-646-558-8656 and use the following Meeting ID: 826 2856 7308

#28-22

Petition to request a 12-unit multi-family dwelling at 383-387 Boylston Street

BARBARA AND GERALD BARATZ REVOCABLE TRUSTS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a three story, 12-unit multi-family dwelling with an FAR of 1.5 and 36' in height, ground floor residential use, a building with more than 20,000 sq. ft., to alter and extend a nonconforming side setback, to waive six parking stalls, to reduce the width of parking stalls, to reduce the driveway width for two-way traffic, to allow a loading facility which may impede traffic, and to allow a retaining wall greater than four feet in height within the setback at 50 Jackson Street/383-387 Boylston, Ward 6, Newton, on land known as Section 65 Block 11 Lot 04, containing approximately 14,866 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 7.8.2.C.2, 5.1.4, 5.1.8.B.1, 5.1.8.D.1, 5.1.12.D.5, 5.1.13, 5.4.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

#425-20(2)

Request for an extension of time for Special Permit #425-20 at 146 Langley Road

BOGDAN AND MARIA PILAT petition for an EXTENSION OF TIME to January 19, 2023 to EXERCISE Special Permit #425-20 to construct an addition to accommodate an internal accessory apartment in excess of 1,000 sq. ft., extending the nonconforming front setback and to construct a three-car rear garage at 146 Langley Road, Ward 6, Newton Centre, on land known as Section 61 Block 41 Lot 02, containing approximately 10,312 sq. ft. of space in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 6.7.1.D.2, 3.2.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

- #55-21(2) Request for an extension of time for Special Permit #55-21 at 12 Cochituate Road**
ALAN TAYLOR petition for an EXTENSION OF TIME to March 15, 2023 to EXERCISE Special Permit #55-21 to further extend the nonconforming FAR by constructing a second story addition within the existing footprint at 12 Cochituate Road, Ward 6, Newton Highlands, on land known as Section 54 Block 31 Lot 02, containing approximately 7,650 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2, 7.8.2.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.
- #291-21(2) Request for Extension of Time to Exercise Special Permit #319-19 at 15-21 Lexington Street**
DANTE CAPASSO/PICARIELLO REALTY TRUST/DSP REALTY TRUST petition for an EXTENSION OF TIME to December 16, 2022 to EXERCISE Special Permit Council Order #319-19 to allow a 24-unit multi-family dwelling with a below grade parking garage and surface stalls 51,870 sq. ft. of land at 15-21 Lexington Street, Ward 4, West Newton, on land known as Section 41 Block 35 Lots 2-5 in a district zoned SINGLE RESIDENCE 3 (to be rezoned to MU3). Ref: Sec. 7.3.3, 7.4, 3.4.1, 5.1.8.B.2, 5.1.13, 5.1.8.B.6, 5.1.9.A, 5.1.9.B, 5.1.10.A.1 of the City of Newton Revised Zoning Ord, 2017.
- #25-22 Petition to further increase nonconforming FAR and further extend a nonconforming two-family use at 22-24 Milo Street**
JESSICA DOWLING petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct dormer additions in the attic level which will further extend the nonconforming two-family dwelling and will further increase the nonconforming FAR of 22-24 Milo Street, Ward 3, Newton, on land known as Section 44 Block 04 Lot 4A, containing approximately 6106 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.
- #80-22 Petition to increase nonconforming FAR and lot coverage at 162 Middlesex Road**
ALAN FLINT AND CHRISTINE GRECO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct side and rear additions, increasing the nonconforming FAR and nonconforming lot coverage of 162 Middlesex, Ward 7, Newton, on land known as Section 63 Block 33 Lot 10, containing approximately 15,308 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.
- #29-22 Petition to allow a drive-in business and associated perimeter parking and lighting waivers at 940 Boylston Street**
MILDRED K. MCMULLEN, TRUSTEE OF MIL MAC TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze a portion of the existing building and reconfigure the existing parking to allow for a construction of a drive-in and relief for a free-standing sign at 940 Boylston, Ward 5, Newton, on land known as Section 51 Block 26 Lot 03, containing approximately 12,060 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 4.4.1, 6.4.11, 5.1.9.A, 5.1.13, 5.2.13, 5.10.A of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

- #120-22** **Discussion with Planning and Development regarding the revised inclusionary zoning provisions**
DIRECTOR OF PLANNING AND DEVELOPMENT requesting a discussion regarding the revised inclusionary zoning provisions as they relate to local preference and Council Order #426-18 (Northland).
- #121-22** **Class 2 Auto Dealer License**
KG MOTORS LLC
1235 Washington Street
West Newton, MA. 02465
- #122-22** **Class 2 Auto Dealer License**
NEWTON TRADE CENTER ASSOCIATES INC
103 Adams Street
Newton, MA. 02458
- #123-22** **Class 2 Auto Dealer License**
NEW ENGLAND MOTOR MART, INC
1211 Washington Street
West Newton, MA. 02465

Respectfully Submitted,

Richard A. Lipof, Chair

27
January 24, 2022

rec'd via email 1/27/22

RECEIVED

2022 JAN 27 AM 11:56

City of Newton
Office of the City Council
1000 Commonwealth Ave
Newton, Ma 02459
attn.: Jennifer Breslouf

CITY CLERK
NEWTON, MA, 02459

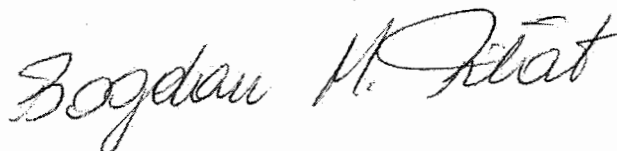
Dear Chair Richard Lipof and City Councilors,

Decision on our petition #425-20 to allow accessory apartment and extend front setback at 146 Langley Road, petitioner name Bogdan and Maria Pilat will expire next month and we would like to ask for extension of Council Order .

The decision notice was recorded with the Middlesex South District Registry of Deeds on February 16, 2021 in Book 76972, Page 92 and returned to Clerk Office at City Hall.

Thank you for your kind consideration.

Sincerely,



Bogdan Pilat and Maria Pilat
146 Langley Road
Newton, MA 02459



2021 00034557

Bk: 76972 Pg: 92 Doc: DECIS
Page: 1 of 4 02/18/2021 02:23 PM

#425-20
146 Langley Road

CITY OF NEWTON

IN CITY COUNCIL

January 19, 2021

RECEIVED
2021 FEB 23 AM 11:50
CITY CLERK
NEWTON, MA 02459

RECEIVED
CITY CLERK
2021 JAN 21 PM 12:15
DAVID A. OLSON, CMC
NEWTON, MA 02459

ORDERED:

Grant : Feb 10, 2021

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow an oversized accessory apartment and to further extend a nonconforming front setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed oversized accessory apartment due to its location in the Multi Residence 1 zone with nearby multifamily residential uses. (§6.7.1.D.1; §7.3.3.C.1)
2. The proposed accessory apartment will not adversely affect the neighborhood because the bulk of the addition to accommodate the accessory apartment is within the footprint of the existing structure and will not be visible from the street. (§6.7.1.D.1; §7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because parking for the existing two units and accessory apartment is contained on site. (§6.7.1.D.1; §7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§6.7.1.D.1; §7.3.3.C.4)
5. The proposed extension of the nonconforming front setback is not substantially more detrimental than the existing nonconforming setback is to the neighborhood because it is contextual with other setbacks in the neighborhood. (§3.2.3; §7.8.2.C.2)

PETITION NUMBER: #425-20

PETITIONER: Bogdan and Maria Pilat

Record Owners

A True Copy
Attest
nhlsen
City Clerk of Newton, Mass

LOCATION: 146 Langley Road, on land known as Section 61, Block 41, Lot 2, containing approximately 10,312 square feet of land

OWNER: Bogdan and Maria Pilat

ADDRESS OF OWNER: 146 Langley Road
Newton, MA 02459

TO BE USED FOR: Two-Family Dwelling with an internal accessory apartment

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §6.7.1.D.1, and §7.3.3, to allow an oversized internal accessory apartment and §3.2.3, and §7.8.2.C.2 to further extend the nonconforming front setback

ZONING: Multi Residence 1

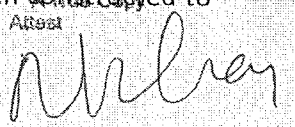
50583-542

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. Plot Plan showing proposed conditions at 146 Langley Road, signed and stamped by Antoni Szerszunowicz, Professional Land Surveyor, dated December 3, 2020;
 - b. Architectural Plans and Elevations, signed and stamped by Nazeih R. Hammouri, dated December 14, 2020 consisting of the following seven (7) sheets.
 - i. Level 1 Floor Plans, existing and proposed, showing Units 1 and 3
 - ii. Level 2 Floor Plans, existing and proposed, showing Units 2 and 3
 - iii. Roof Plan
 - iv. North and South Elevations
 - v. East Elevations
 - vi. West Elevations
 - vii. Garage Plans showing front and north elevation, floor plan and section, dated November 18, 2020
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. The Petitioner and the accessory apartment must at all times comply with all applicable rules for accessory apartments set forth in Section 6.7 of the Newton Zoning Ordinance. The accessory apartment cannot constitute its own unit within a condominium.
4. The accessory apartment must be held in common ownership with the principal dwelling unit, Unit 1, in accordance with Section 6.7.C.1 of the Newton Zoning Ordinance.

Attest
City Clerk of Newton, Mass

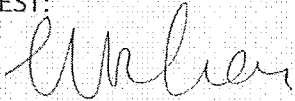
5. The owner of the principal dwelling unit (Unit 1) to which the accessory apartment is accessory to shall occupy either the principal unit (Unit 1) or the accessory apartment and shall file an annual affidavit with the Commissioner of Inspectional Services attesting to this fact prior to July 1 of every year. These requirements shall be included in the master deed if the two-family dwelling is converted into a condominium.
6. In the event the two-family dwelling is converted into a condominium, a copy of the Master Deed shall be submitted to the Department of Planning and Development and the Law Department for review to determine consistency with this Special Permit prior to recording.
7. In the event ownership of the principal dwelling unit (Unit 1) being held in common ownership with the accessory apartment changes, the new owner(s) shall notify the Commissioner of the Inspectional Services Department at which time the Commissioner shall conduct a determination of compliance with this decision and all applicable codes.
8. The petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
9. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - 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, including the as built FAR of the structure.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.

Attest

City Clerk of Newton, Mass

Under Suspension of Rules
Readings Waived and Approved
20 Yeas 0 Nays 2 Vacancies

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on January 21, 2020. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:




(SGD) DAVID A. OLSON, City Clerk
acting Clerk of the City Council

I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on January 21, 2020 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
acting Clerk of the Council

A True Copy
Attest

City Clerk of Newton, Mass

Alan E. Taylor & Darlene M. Bojrab
12 Cochituate Road
Newton Highlands, MA 02461

RECEIVED
2022 JAN 25 PM 3:17
CITY CLERK
NEWTON, MA. 02459

25 January 2022

Councilor Richard Lipof,
Chair, Land Use Committee
Newton City Council
1000 Commonwealth, Avenue
Newton, MA 02459

Re: 12 Cochituate Road: Board Order #55-21
Extension of Special Permit

Dear Councilor Lipof,

On March 15, 2021, the City Council granted a Special Permit for the above-referenced property, our home. The City Clerk certified the Decision, noting that all appeals had been exhausted. The Decision and certification were then recorded in the Registry of Deeds on 19 January 2022.

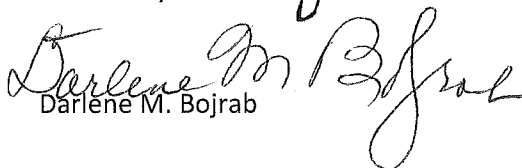
I request an extension of time in which to exercise this Special Permit until 15 March 2023. This request is being made pursuant to Section 7.3.2.E of the zoning ordinance, which provides that "[t]he City Council may extend the period of time granted under this subsection for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon".

The reason for this request and basis for the good "cause" is the protracted effort to secure a building over the past year of upheaval supply chain and labor scarcity. We are in negotiations now with a qualified builder who projects construction some time this fall. Thank you for your attention to this matter.

Sincerely,



Alan E. Taylor



Darlene M. Bojrab



2022 00009801

Bk: 79553 Pg: 271 Doc: DECIS
Page: 1 of 3 01/19/2022 08:31 AM

RECEIVED

2022 JAN 25 PM 3: 12

#55-21

12 Cochituate Road

CITY OF NEWTON

IN CITY COUNCIL

March 15, 2021

CITY CLERK
NEWTON, MA. 02450

RECEIVED
2021 MAR 17 AM 11:05
CITY CLERK
NEWTON, MA. 02450

ORDERED:

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming floor area ratio (FAR) from 0.48 to 0.52 where 0.42 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed expanded structure with a floor area ratio of 0.52, where 0.48 exists and 0.42 is the maximum allowed by right, would be consistent with and not in derogation of the size, scale and design of other structures in the neighborhood given the locations of the additional floor area above existing living space and on the rear of the attic level and because the height of the dwelling would not be increased. (§3.1.9)
2. The extension of the dwelling's nonconforming floor area ratio of from 0.48 to 0.52, where 0.42 is the maximum allowed by right, would not be substantially more detrimental than the existing nonconforming floor area ratio to the neighborhood given the locations of the additional floor area above existing living space and on the rear of the attic level. (§7.8.2.C.2)

PETITION NUMBER: #55-21

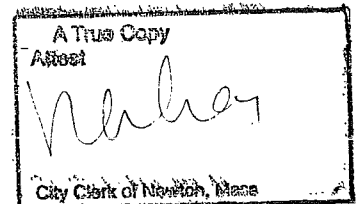
PETITIONER(S): Alan E. Taylor

LOCATION: 12 Cochituate Road, Ward 6, Newton, on land known as Section 54 Block 31 Lot 2, containing approximately 7,650 sq. ft. of land

OWNER(S): Alan E. Taylor

ADDRESS OF OWNER(S): 12 Cochituate Road
Newton, MA 02461

BK. 78867
P. 53



TO BE USED FOR: Single-Family Residence

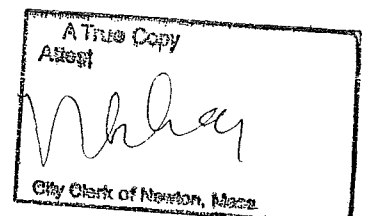
CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to further extend nonconforming FAR (§3.1.3; §3.1.9; §7.8.2.C.2)

ZONING: Single Residence 2 (SR2) district

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 "12 Cochituate Road, Newton, MA, Certified Plot Plan," prepared by Ron Natoli, P.L.S., signed and stamped by Ronald J. Natoli, Professional Land Surveyor, dated January 24, 2008, as revised through September 4, 2020.
 - b. A set of plans entitled "Proposed Add'n & Revovat'ns, 12 Cochituate Road, Newton Highlands, MA, prepared by Alan E. Taylor Associates, signed and stamped by Alan E. Taylor, Registered Architect, dated November 11, 2020:
 - i. Basement & Roof Plans (A1)
 - ii. 1st & 2nd Floor Plans (A2)
 - iii. Elevations (A3)
 - iv. Elevations (A4)
 - v. Sections (A5)
 - c. A document entitled "Floor Area Ratio Worksheet, 12 Cochituate Road, Newton Highlands indicating a proposed "Total gross floor area" of 3,698 square feet (*please note: this number is incorrect- it should read 3,968 square feet*) and a proposed "FAR" (floor area ratio) of 0.52, signed and stamped by Alan E. Taylor, Registered Architect.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:



- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and certifying compliance with Condition #1, including the as built FAR.
- b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.

Under Suspension of Rules

Readings Waived and Approved

21 Yeas 0 Nays 2 Vacancies 1 Absent (Councilor Norton)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on March 17, 2021. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) NADIA KHAN

Acting Clerk of the Council

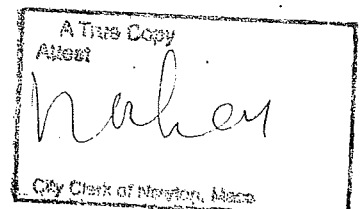
I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on March 17, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) NADIA KHAN

Acting Clerk of the Council



Jennifer Breslouf

re: 2nd Extension Request #291-21(2)

From: Neil Cronin
Sent: Monday, January 24, 2022 11:53 AM
To: G. Michael Peirce
Cc: Jennifer Breslouf
Subject: RE: special permit extension question

RECEIVED
2022 JAN 24 PM 3:30
CITY CLERK
NEWTON, MA. 02459

Hi Michael, Jenn Breslouf (copied) is the Land Use Clerk. Please send the request to her. -Neil

From: G. Michael Peirce <mpeirce@gmpeircelaw.com>
Sent: Monday, January 24, 2022 11:42 AM
To: Neil Cronin <ncronin@newtonma.gov>
Subject: special permit extension question
Importance: High

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Good morning. I had started to work with Nadia to again have this matter extended...and then she (sadly!) moved on.

At that time she was going to look into whether it was even needed, given the statute and some rulings by the governor due to COVID.

I also took a close look at the document and it seems to have internal inconsistencies.

As my client is actively engaged in moving the process forward I want to be sure that this does not slip by.

Can you assist me, or point me in the proper direction? I understand that Nadia's position has been filled: should I be working directly with that person? Name? Contact email?

Thanks.

Michael

G. Michael Peirce, Esq.
Newton Wellesley Executive Office Park
60 Walnut Street
Wellesley, MA 02481
Tel: 781-239-0400
Fax: 877-243-0405

G. MICHAEL PEIRCE, ESQ.

ATTORNEY AT LAW

October 29, 2021

IN HAND DELIVERY

Nadia Kahn, Assistant City Clerk
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: 15-21Lexington /Council Order #291-21

Dear Ms Kahn:

I am writing pursuant to Condition 1.a./b. of the above-referenced council order. Please be advised that Council Order # 291-21 was recorded in the Middlesex South Registry on October 21, 2021, in Book 78963, Page 225. A copy of the document, as recorded, is enclosed.

Very truly yours,


G. Michael Peirce

Cc: Neil Cronin, Senior Planner
Dante Capasso (via e-mail)

Newton Wellesley Executive Office Park
60 Walnut Street, 4th Floor • Wellesley, Massachusetts 02481
Tel: 781-239-0400 Fax: 877-243-0405
mpeirce@gmpeircelaw.com



2021 00231155

Blk: 78963 Pg: 225 Doc: DECIS
Page: 1 of 2 10/21/2021 01:26 PM

#291-21

CITY OF NEWTON

CITY COUNCIL

September 9, 2021

RECEIVED
NEWTON CITY CLERK
2021 SEP 13 PM 1:30

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action 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, hereby grants a ONE (1) YEAR EXTENSION OF TIME IN WHICH TO EXERCISE SPECIAL PERMIT/SITE PLAN APPROVAL #319-19 granted on December 16, 2019 to December 16, 2021

PETITION NUMBER: #319-19 74117/1AD

PETITIONER: Dante Capasso

ADDRESS OF PETITIONER: 5 Ionia Street
Newton, MA 02466

LOCATION: 15-21 Lexington Street, Ward 4, West Newton, on land known as Section 41 Block 35 Lots 2-5, containing approximately 51,870 square feet of land

OWNER: Picariello Realty Trust / DSP Realty Trust

ADDRESS OF OWNER: c/o Dante Capasso
5 Ionia Street
Newton, MA 02466
CAPASSO-CITYLINE LLC -

TO BE USED FOR: A 24-unit multi-family development with associated garage parking.

- EXPLANATORY NOTES:
- Special permits per §7.3.3:
 - to reduce parking stall depth (§5.1.8.B.2, §5.1.13)
 - to waive the perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13)
 - to waive the interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13)

A True Copy
Filed
nhay
City Clerk of Newton, Mass.

- to waive the minimum intensity of outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13)

ZONING: Multi-Residence 3 (MR3)

1. No building permit shall be issued in pursuance of Special Permit/Site Plan Approval #316-19 until:

- a. The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Council Order granting this one-year extension of time to October 21, 2021 with the appropriate reference to the book and page of the Petitioner's title deed or notice of lease endorsed thereon.
- b. A certified copy of such recorded notice shall have been filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

Under Suspension of Rules

Readings Waived and One-year Extension of Time Approved
23 Yeas 0 Nays 1 Absent (Councilor Gentile)

The undersigned hereby certifies that the foregoing copy of the decision of the City Council granting a ONE-YEAR EXTENSION OF TIME to December 16, 2021 IN WHICH TO EXERCISE SPECIAL PERMIT/SITE PLAN APPROVAL #319-19 is a true accurate copy of said decision.

ATTEST:



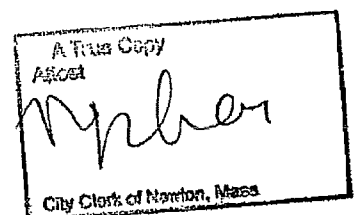
(SGD) NADIA H KHAN, Acting City Clerk
Acting Clerk of the City Council

I, Nadia H. Khan, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on September 22, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) NADIA H KHAN, Acting City Clerk
Acting Clerk of the City Council



G. MICHAEL PEIRCE, ESQ.

RECEIVED
ATTORNEY AT LAW INSPECTIONAL SERVICES
NEWTON, MA

20 FEB 28 PM 1:58
February 28, 2020

IN HAND DELIVERY

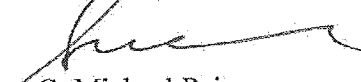
John Lojek, Commissioner of Inspectional Services
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: 15-21 Lexington Street/#319-19

Dear Commissioner Lojek:

I am writing pursuant to Condition 27. a. and b. of the above-referenced board order. Please be advised that this board order was recorded at the Middlesex South District Registry of Deeds on February 11, 2020, in Book 74117, Page 93. A copy as recorded is attached hereto.

Very truly yours,


G. Michael Peirce

Cc: Barney Heath, Director of Planning
Nadia Kahn, Land Use Committee Clerk
Dante Capasso

CITY CLERK
NEWTON, MA, 02459

2020 FEB 28 PM 1:43

RECEIVED

Newton Wellesley Executive Office Park
60 Walnut Street, 4th Floor • Wellesley, Massachusetts 02481
Tel: 781-239-0400 Fax: 877-243-0405
mpeirce@gmpeircelaw.com



2020 00020820

Bk: 74117 Pg: 93 Doc: DECIS
Page: 1 of 11 02/11/2020 02:27 PM

11-11

#319-19
15-21 Lexington Street

CITY OF NEWTON

IN CITY COUNCIL

December 16, 2019

RECEIVED
CITY CLERK
2019 DEC 19 PM 1:01

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); grant exceptions to certain parking facility requirements so as to allow reduced parking stall depths (§5.1.8.B.2, §5.1.13) and to waive perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13), interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13), and minimum intensity requirements for outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed twenty-four-unit dwelling as it is located on street with a mix of uses and adjacent to commercial uses. (§7.3.3.C.1)
2. The proposed twenty-four unit dwelling as designed, developed and operated will not adversely affect the neighborhood as it is located on street with a mix of uses and adjacent to commercial uses. (§7.3.3.C.2)
3. The proposed twenty-four unit dwelling as designed, developed and operated will not create 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 planning building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy as it will have features including high efficiency electric heat pumps to handle the heating and cooling of the building, Energy Star-rated appliances and two electric vehicle (EV) charging stations; further a buffer of mature trees will be maintained pursuant to the project. (§7.3.3.C.5)
6. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§5.1.13)

g Michael Pearce
60 Walnut St. Fl. 4
Wellesley, MA 02481

A True Copy
Attest

City Clerk of Newton, Mass.

(11)

7. The Council finds that the requested exceptions to parking facility perimeter landscape requirements for the south and rear of the site are appropriate in light of the fact that the property immediately abutting the site in those locations is heavily landscaped with mature plantings which were installed pursuant to Special Permit # 19-06 (the second office park special permit) and under the terms of that special permit, as incorporated from Special Permit # 194-99 (the first office park special permit) the owners of the office park property, or their successors and assigns, are responsible for maintenance of all landscaping in good condition and, at least annually, are required to replace plant material that dies, is damaged or is diseased.

PETITION NUMBER: #319-19

PETITIONER: Dante Capasso

ADDRESS OF PETITIONER: 5 Ionia Street
Newton, MA 02466

LOCATION: 15-21 Lexington Street, Ward 4, West Newton, on land known as
Section 41 Block 35 Lots 2-5, containing approximately 51,870
square feet of land

OWNER: Picariello Realty Trust / DSP Realty Trust

ADDRESS OF OWNER: c/o Dante Capasso
5 Ionia Street
Newton, MA 02466

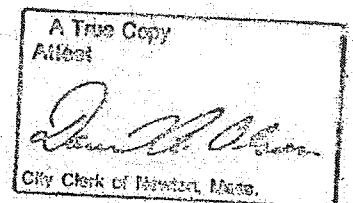
TO BE USED FOR: A 24-unit multi-family development with associated garage
parking.

EXPLANATORY NOTES: Special permits per §7.3.3:
- to reduce parking stall depth (§5.1.8.B.2, §5.1.13)
- to waive the perimeter screening requirements for the outdoor
parking facility (§5.1.9., §5.1.13)
- to waive the interior landscaping requirements for the outdoor
parking facility (§5.1.9.B, §5.1.13)
- to waive the minimum intensity of outdoor lighting of the parking
facility (§5.1.10.A.1, §5.1.13)

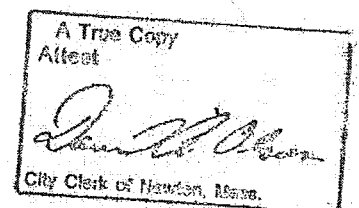
ZONING: ~~Multi-Residence 3~~ (MR3)

n/r 67708/460
34965/76

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 set of engineering plans entitled "Site Plan of Land in Newton MA, 15-21 Lexington Street," prepared by Everett M. Brooks Co., ,consisting of the following sheets:
 - i. Existing Conditions (Sheet 1 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019 and Bruce Bradford, Professional Land Surveyor on October 30, 2019;
 - ii. Proposed Layout (Sheet 2 of 4), dated October 30, 2019, as revised through November 12, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on November 12, 2019 and Bruce Bradford, Professional Land Surveyor on November 12, 2019;
 - iii. Proposed Utilities and Grading and Drainage Plan (Sheet 3 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019;
 - iv. detail sheet (Sheet 4 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019.
 - b. A set of architectural plans entitled "CityLine, 15 & 21 Lexington, Newton, MA," prepared by Reisen Design Associates, signed and stamped by Erik P. Miller, Registered Architect, dated November 12, 2019, consisting of the following sheets:
 - i. Project Cover Sheet & Drawing List (G-0);
 - ii. Front Elevation (A-1);
 - iii. Left Side Elevation (A-2);
 - iv. Rear Elevation (A-3);
 - v. Right Side Elevation (A-4);
 - vi. Basement Plan (A-5);
 - vii. 1st Floor Plan (A-6);
 - viii. 2nd Floor Plan (A-7);
 - ix. 3rd Floor Plan (A-8);
 - x. Roof Plan (A-9);
 - xi. Site & Parking Plan (L-1).
 - c. A Landscape Plan entitled "Landscape Plan for : 15-21 Lexington Street, Newton MA 02465," prepared by The Garden Artisan Co., Antonio Mariano MCLP, consisting of the following sheets:
 - i. untitled key sheet (P1);
 - ii. A Side Right (East) (P2);
 - iii. A Side Left (East) (P3);
 - iv. B Side (South) (P4);
 - v. C Side (West) (P5);
 - vi. D Side (North) (P6);
 - vii. C Side Rear Boarder (*sic*) (P7).

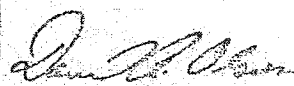


- d. A photometric plan entitled "Project: 15-21 Lexington Ave, Location: Newton, MA," prepared by Illuminate, dated August 29, 2019.
- 2. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include five (5) affordable housing units (the "Inclusionary Units"), as follows:
 - a. Four (4) of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
 - b. One (1) of the residential units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Unit").
- 3. 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.
- 4. 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:

	Studio	1BR	2BR
Tier 1 Units Inclusionary Units	1	2	1
Tier 2 Inclusionary Units	0	1	0

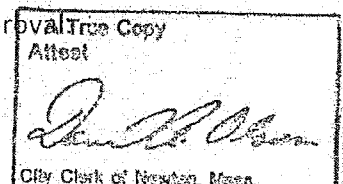
The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

- 5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
- 6. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
- 7. Prior to the issuance of any building permits for the vertical construction of the Project, the

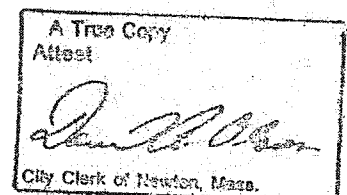

 City Clerk of Newton, Mass.

Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and 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. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.

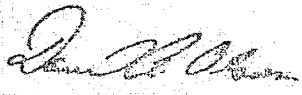
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner and the City 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 Tier 2 Inclusionary Unit in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Tier 1 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 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.
16. With the exception of those spaces associated with the Inclusionary Units, charges for parking stalls shall be separate and in addition to ("unbundled") from rent and other charges for residential tenants.
17. All exterior lighting fixtures shall be residential in scale and not cause light pollution, and shall be subject to review and approval by the Director of Planning and Development before any Building Permit may be issued pursuant to this Special Permit/Site Plan Approval.



18. The Petitioner shall contribute funding towards the City's Inflow and Infiltration Reduction Program to cover improvements to the sanitary sewer system at a 4:1 replacement ratio. The contribution shall be based on a formula of flow rate x number of bedrooms x 4 x \$19.77. The flow rate shall be set by the City Engineer based upon the actual flow rate anticipated from the proposed fixtures, to be submitted by the petitioner. The payments shall be made as follows:
- Prior to the issuance of any building permit, the first payment shall be submitted. The first payment shall be 50% of the total payment calculated above.
 - The second and final payment shall be determined by the actual water and wastewater flow into the City's sewer system from the stabilized project, defined as 95% occupancy or within 2 years following the Project's final Certificate of Occupancy, whichever comes first. This payment will be based on the actual flow per day per bedroom for one month, which may be a number different to that used above to calculate the initial payment. The City Engineer will review and approve the methodology used to measure and calculate the actual flow per day per bedroom. The actual flow per bedroom per day will be applied to the number of bedrooms at \$19.77 per gallon multiplied by a ratio of 4:1. Once the Project is at 95% occupancy, the Petitioner shall notify the City Engineer and promptly undertake measurement of the actual flow. If the project does not achieve 95% occupancy before two years from the final Certificate of Occupancy, the petitioner shall notify the City Engineer and undertake measurement of the actual flow and the second payment will be prorated to reflect 95% occupancy.
 - The second payment shall be due within 30 days of the date the City accepts the calculation of the amount of the second payment as set forth above. In making the second payment, the Petitioner shall receive a credit for the first payment and shall pay the balance, if any. The Petitioner shall not be entitled to receive any refund of the first payment in the event that the calculation of the amount of the second payment shows that the petitioner has overpaid it's I&I payment.
19. All new residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the new units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.
20. 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
21. The Petitioner shall consult with an independent sustainability building professional/LEED Associate on the design and construction of the building, and achieve and/or implement the following measures which shall be incorporated into the Project:

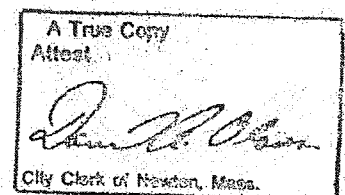


- a. the majority of the exterior façade will be composed of durable low maintenance materials (such as brick and cementitious panels) that will increase the longevity and minimize maintenance in the future;
 - b. only LED lighting will be used throughout the project;
 - c. high efficiency electric air source heat pumps shall be used to handle the heating and cooling of the building in order to reduce fossil fuel use;
 - d. all HVAC and appliances shall be electric, and appliances shall be "Energy Star"-rated (or functional equivalent), (except that domestic hot water equipment may utilize natural gas as an energy source);
 - e. all residential units will be thermally and acoustically separated with individual thermostats and have separate utility meters;
 - f. exterior building insulation and air barriers shall be continuous;
 - g. the underground parking garage will be outfitted with two (2) electric vehicle (EV) charging stations. in addition, conduit will be installed to facilitate future installation of EV charging stations for all garage parking stalls;
 - h. drought tolerant and indigenous plants will be the predominant species installed in the landscape;
 - i. roof areas shall be mapped so as to consolidate rooftop HVAC equipment and penetrations to the greatest degree possible to maximize potential for solar PV installation, and, ensure the roof is solar ready;
 - j. a rooftop solar energy system shall be installed that, as a minimum, satisfies the building's common areas' electric demand;
 - k. fundamental commissioning tests shall be performed to assure continuous air, vapor and water barriers.
22. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
- a. installing rooftop solar photovoltaic panels to offset building electrical usage;
 - b. installing parking canopies with solar panels to offset building electrical usage;
 - c. installing additional exterior insulation beyond Stretch Code requirements;
 - d. maximizing the use where appropriate for low embodied carbon materials and rapidly renewable materials;
 - e. commissioning HVAC systems at substantial building completion.
23. 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

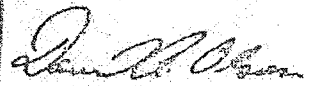
review and
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City Clerk of Boston, Mass.

approval. Said stormwater management system shall be designed to capture 100% of runoff generated in 1% storm condition for all impervious areas of the project. 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.

24. 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.
25. 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, and the City Engineer. The Construction Management Plan shall be consistent 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. Hours of construction; construction shall be limited to between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services. The petitioner shall consider local traffic and pedestrian activity in determining hours and routes for construction vehicles.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - d. 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 construction and delivery vehicles and equipment, and location of any security fencing.
 - e. 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.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. 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.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. A plan for rodent control during construction.

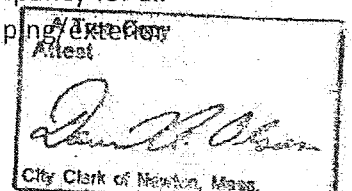


- i. The CMP shall also address the following:
 - safety precautions;
 - construction materials,
 - parking of construction workers' vehicles,
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties;
 - proposed method of noise and vibration control.
26. The petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
27. No building permit shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has:
 - a. Recorded a certified copy of this Council order with the Middlesex South Registry of Deeds.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.8. of the Zoning Ordinance.
 - e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approvals shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
 - f. Submitted a final plan of land, to the Engineering Division of Public Works in accordance with Condition #24.
 - g. Submitted a final Construction Management Plan (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, the City Engineer, and the Director of Transportation.
28. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the

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City Clerk of Newton, Mass.

public way. In such case 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.

29. Prior to the issuance of any Certificate of Occupancy pursuant to this Special Permit/Site Plan Approval, the Petitioner, City, and DHCD will enter into, and record at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department and DHCD, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
30. No occupancy permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the Petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer 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 paper and digital format.
 - c. 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 project site have been constructed to standards of the City of Newton Public Works Department.
 - d. 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, final landscape features and fencing consistent with the plans referenced in Condition 1.
 - e. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Conditions #8 and #9.
 - f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex District Registry of Deeds, as appropriate.
 - g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed. The petitioner shall complete and occupy at least one Inclusionary Unit for every five market rate units completed and occupied.
31. Notwithstanding the provisions of Condition #31(d) above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping.



hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.

32. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased and/or dies shall be replaced on an annual basis with similar material.

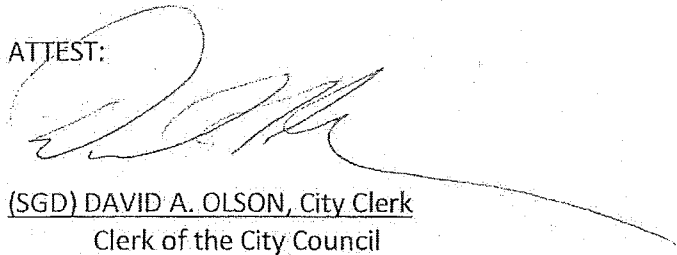
Under Suspension of Rules

Readings Waived and Approved

21 Yeas 1 Nay (Councilor Auchincloss) 1 Recused (Councilor Lipof) 1 Absent (Councilor Ciccone)

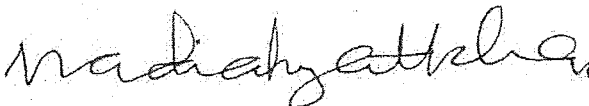
The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on December 18, 2019. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

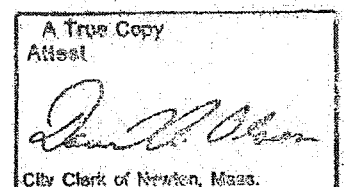
ATTEST:


(SGD) DAVID A. OLSON, City Clerk
Clerk of the City Council

I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on December 18, 2019 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:


(SGD) DAVID A. OLSON, City Clerk
Assistant Clerk of the Council





Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

DATE: February 4, 2022

TO: Councilor Lipof, Chair, Land Use
Members of the Land Use Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Amanda Berman, Director of Housing and Community Development
Neil Cronin, Chief Planner
Eamon Bencivengo, Housing Development Planner
Jonah Temple, Assistant City Solicitor

RE: **Requesting amendment to Local Preference Requirement for Northland Housing Project**

CC: Jonathan Yeo, Chief Operating Officer

On Monday, November 1, 2021, the City Council voted unanimously to amend the City’s Inclusionary Zoning Ordinance to reduce the percentage of units subject to Local Preference criteria from 70% to 25%. This decision came after fifteen months of discussion, research, and analysis of the City’s Local Preference Policy and its potential impact on people of color who are not already residents of Newton.

The Northland project will provide 140 units of affordable housing – the largest number of Inclusionary Units to be provided by any one project in the City’s history. While the Special Permit Board Order was approved in 2019, the project’s local preference plan must be approved by DHCD prior to the commencement of any marketing of the units. City staff tend to work with the project sponsor on the review of the marketing and tenant selection plan prior to submitting it to DHCD, which will likely take place approximately 4-6 months prior to marketing any of the units in the project. With the City’s amended Local Preference Policy now in place, it makes sense that a project, particularly of this size, would utilize the new percentage requirement of 25%, rather than 70%.

Planning staff has spoken to the principals at Northland about this consistency request and they have no objection to this change.

Request for a Consistency Ruling

On December 29, 2021, Planning Director Barney Heath requested a consistency ruling from Commissioner John Lojek that such a change in the percentage of the local preference requirement for the Northland project represents a non-material change that can be granted administratively.

On January 5, 2022, Commissioner Lojek responded to this request and deferred the question to the Land Use Committee.

Given the City Council's clear support for reducing the local preference percentage for Inclusionary Zoning projects combined with the fact that the Northland project has yet to apply for a building permit or submit an Affordable Fair Housing Marketing and Resident Selection Plan (AFHMP) to the City or the Department of Housing & Community Development (DHCD) for review and approval, Planning staff believes it is appropriate for Northland to utilize the lower local preference requirement. The 140 affordable units at the Northland project represent a significant increase in Newton's affordable housing stock, and the reduced local preference requirement offers a substantial opportunity to provide greater housing choice to a diverse population throughout Newton and the surrounding region.

The following attachments provide greater detail on the City's Local Preference policy and the newly adopted change to the percentage requirement.

ATTACHMENTS:

- Newton Housing Partnership 9/21/21 recommendation letter re: 25% Local Preference Policy
- Amendment to Local Preference Policy language in Inclusionary Zoning Ordinance
- Staff presentation from 7/26/21 ZAP Mtg.
- "Local Preference in Affordable Housing: Analysis of Data from Recent Rental Developments, June 2021" – Barrett Planning Group report to the City of Newton Department of Planning & Development: [click here to download report](#)



Ruthanne Fuller,
Mayor

Barney Heath,
Director
Planning & Development

Members:

Lizbeth Heyer, Chair
Mark Caggiano
Eliza Datta
Chuck Eisenberg
Josephine McNeil
Marva Serotkin
Albert Simmons
Stephen Tise

1000 Commonwealth Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1142

www.newtonma.gov

CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

September 21, 2021

Honorable Mayor Ruthanne Fuller
Newton City Hall
1000 Commonwealth Ave
Newton, MA 02459

Chairwoman Deborah Crossly
Newton City Council

Dear Honorable Mayor Fuller and Chairwoman Crossley,

On behalf of the Newton Housing Partnership, I thank you for your continued leadership in calling for an end to racism in Newton and challenging each of us to take anti-racist action to eliminate barriers that prevent Newton from being a city that is welcoming and accessible to all. I also want to thank you for continuing to evaluate how to address the impact of Newton's local housing preference on our efforts to ensure that Newton is truly an inclusive and accessible community to people of all racial, ethnic and cultural backgrounds and to consider changes to advance this important goal.

In July 2020 the Partnership identified the "up to" 70% local preference in our Inclusionary Zoning Law as a significant racist barrier with a discriminatory effect that must be changed. At that time, we wrote that while the intent of this provision to house local residents is on the surface a compelling policy, because of Newton's predominantly white population (approx. 82%), imposing a high local preference perpetuates a racist housing system that gives significant preferential access to white households, while drastically limiting opportunities for people of color to move to Newton. As such, we suggested that the local preference be eliminated.

Since our July 2020 recommendation, the Partnership has continued to evaluate our recommendation, aided by Judy Barrett's report which further underscored the importance of lowering or eliminating the preference. Barrett's report found that *"While this study was limited in scope, the data and findings of this report indicate that Newton's local preference policy is benefitting one racial/ethnic group over others (White, local preference applicants), creating a disparate impact on other groups, particularly Black/African Americans. When viewed through the lens of inclusion and the City's obligation to affirmatively further fair housing for all protected classes, the policy does not appear to support those values. As noted above, however, continued assessment of the procedures for tenant selection for affordable housing units across the City may shed light on additional barriers to fair housing and equity."*

Based on Barrett's findings, the Partnership continues to strongly recommend that the City revise its local preference rules to address the City's obligation to affirmatively further fair housing for all protected classes and address the additional barriers to tenant selection via the following actions:



Ruthanne Fuller,
Mayor

Barney Heath,
Director
Planning & Development

Members:

Lizbeth Heyer, Chair
Mark Caggiano
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F 617/796-1142

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CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

1. Reduce the local preference from 70% to 25%. The Partnership came to this recommendation based on the following factors:
 - a. We evaluated local demographic data to identify a percentage that addressed local housing needs, while meaningfully reducing the local preference to mitigate the discriminatory effect and affirmatively further fair housing outcomes. HUD Comprehensive Housing Affordability Standard (CHAS) data indicates that 24% of all Newton households have incomes at or below 80% of AMI; 29% of all households are cost burdened (paying > 30% of their income for housing costs) and 24% of low-income households are cost burdened. A 25% local preference would help to ensure that this local need it met.
 - b. Racial rebalancing is an important tool that is preserved and arguably strengthened by setting Newton's local preference at 25%. Racial rebalancing allows for the addition of non-local applicants in a local preference pool if the pool of minority applicants is lower than the Metropolitan Statistical Area (MSA) % of minority households, which in the case of the Newton MSA is 27%. Setting the lower local preference pool below 27% would minimize the impact of racial rebalancing by decreasing the overall opportunity for minority applicants to be selected since more minorities would be in both the local and non-local pools. Note that we chose 25% rather than 27% because the percentage of minorities in the MSA will inevitably fluctuate.
 - c. We considered the impact of lowering the local preference on local households with disabilities and concluded that because only 2 of 9 affordable accessible units in Barrett's report went to qualified households, this suggests that income is the likely barrier, not local access. The average Social Security Disability Income (SSDI) annual payment is \$13,500 and the highest SSDI payment for disabled retirees is \$37,700, while a 1, 2 or 3-person household must earn approximately \$70,000, \$80,000 or \$90,000 respectively to afford an 80% AMI local preference unit to not be rent-burdened. This alarming income barrier suggests the need for other policies to support housing affordability for local residents with disabilities such as marketing accessible units to people with disabilities on the Newton Housing Authority's Section 8 wait list and making sure project sponsors are listing available units on the Mass Access Registry and new Housing Navigator system where people with rent subsidies seek housing opportunities.
2. Adopt policies that prohibit project sponsors from discriminating during the tenant selection process, for example by more closely monitoring owner screening processes. The City could also adopt policies or programs that would help to eliminate additional barriers that some people of color face after winning the lottery, such as bad credit or prior evictions, that can prevent a selected resident from being able to move in. The Partnership is considering such policies and programs and will provide recommendations soon.



Ruthanne Fuller,
Mayor

Barney Heath,
Director
Planning & Development

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CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

For these reasons, reducing Newton's local preference to 25% would both continue to serve local need and remove discriminatory barriers to affirmatively further fair housing. This bold action would ensure that people of color have greater access to housing in Newton by opening the doors of our affordable units more broadly and send a strong message that Newton will not perpetuate policies that keep non-white people out of our City.

Thank you for considering our recommendation and for inspiring each of us to take anti-racist action to make Newton truly accessible and welcoming to all.

Sincerely,

Lizbeth Heyer
Chair, Newton Housing Partnership

CC:
Newton City Council President Susan Albright
Newton City Council

City of Newton Inclusionary Zoning Ordinance Updated Local Preference Policy - 2021

5.11.8. Inclusionary Housing Plans and Covenants

- A. The applicant must submit an inclusionary housing plan for review and approval by the Director of Planning and Development prior to the issuance of any building permit for the project. The plan must include the following provisions:

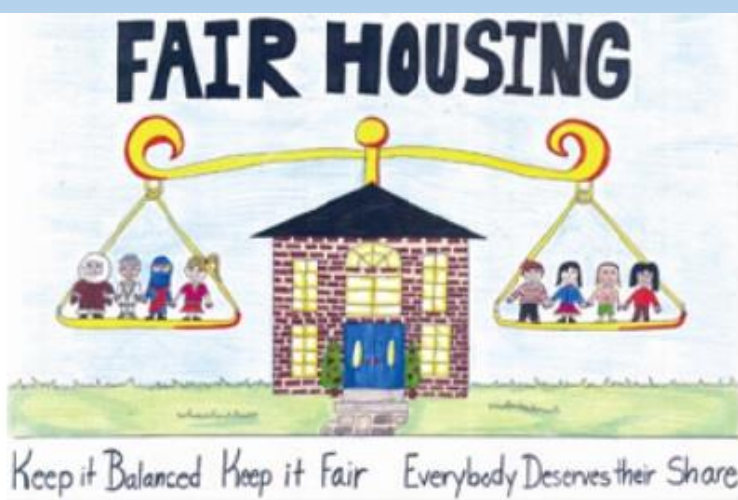
- B. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the inclusionary units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.

- C. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Section III., Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and:
 - 1. To the extent permitted by law, such plan must provide for a local preference for 25% of the Inclusionary Units in a project and at least one of the local preference units must be a fully accessible unit;

 - 2. Where a project results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference must be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project;

 - 3. Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; and

 - 4. Prior to the marketing or otherwise making available for rental or sale any of the units in the development, the applicant must obtain the City's and DHCD's approval of the AFHMP for the Inclusionary Units.



Newton's Local Preference Policy Analysis and Recommendations

ZAP Meeting
July 26, 2021

The City of Newton
Planning & Development Department

A Year of Discussion & Analysis

- **Newton Housing Partnership July 2020 Vote**
 - Voted to adopt 0% local preference policy for Riverside to “send a strong message that Newton will not perpetuate policies that keep non-white people out of our City.”
- **WestMetro HOME Consortium’s FY21-25 Analysis of Impediments to Fair Housing Report**
 - Obligation of each consortium community to take affirmative action to ensure that people of color, and other protected classes, have equal access to housing in that community
- **Fair Housing Committee Analysis of Lottery Results**
- **Barrett Planning Group’s Analysis and Report**

What is Local Preference?

- Authorized by the State through Chapter 40B
- Newton's policy lives in the Inclusionary Zoning ordinance
- Allows for up to 70% "local preference" in a project*
 - Current residents
 - Municipal employees
 - Employees of local businesses
 - Households with children attending Newton schools
- **Example: 20 affordable units in a project:**
 - 14 affordable units designated as "local preference units" (0.7 X 20):
 - Offered first to those who qualify as local preference applicants
 - 6 affordable units designated as "general pool" units:
 - Offered to all applicants, including local preference and non-local preference applicants

The Barrett Report

- **Newton’s racial makeup, households (2019 ACS data)**
 - 83% White
 - 12.4% Asian
 - 2.4% Black or African American
 - 1.3% “Other”
 - 1% Two or more races
- **Lottery results from three recent rental developments**
 - TRIO / Washington Place
 - 28 Austin Street
 - Hancock Estates
- **71 affordable units (61 leased) - 1,157 total applications**

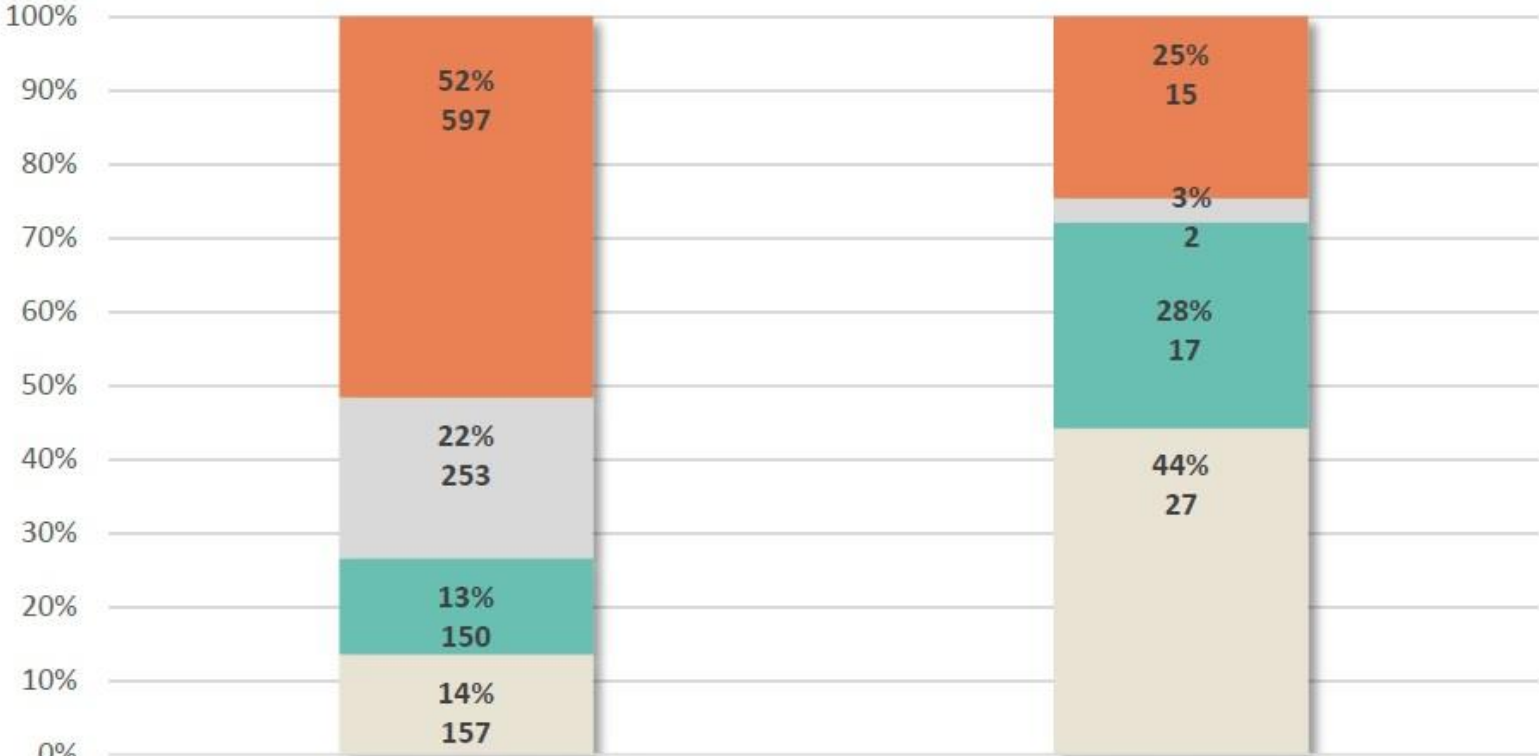
Applicants	Initial Lease-Ups
27% Local Preference	72% Local Preference
73% Non-local Preference	28% Non-local Preference

The Barrett Report

Local Preference Applicant Pool	LP Tenants (44/61)	Non-local Preference Applicant Pool	Non-LP Tenants (17/61)	General Applicant Pool	General Pool Tenants
51% White	61% White	30% White	12% White	35% White	47.5% White
49% Minority	39% Minority	70% Minority	88% Minority	65% Minority	52.5% Minority

The Barrett Report

Applicants and Initial Lease-Ups Across All Case Studies



TOTAL APPLICANTS (1,157)

INITIAL LEASE UPS (61)

LOCAL: White, Non-Hispanic

LOCAL: Racial/Ethnic Minority

NON-LOCAL: White, Non-Hispanic

NON-LOCAL: Racial/Ethnic Minority

The Barrett Report

❖ Accessible Affordable Units

- 9 accessible affordable units across 3 projects that were analyzed
- Only 4 were initially lease to tenants with disabilities
- Further study needed to understand these results
- Pricing of these units may still be too high for people with disabilities


The Barrett Report

➤ Key Findings

- The community that benefits the most from Newton's local preference policy is **White, non-Hispanic local households**
- Selection rates were higher for White applicants in each of the researched developments than for minority applicants overall
- When split into local preference and non-local preference households, selection rates among local preference households were higher for White applicants than minority applicants;
- ... and among non-local preference households, selection rates were higher for minority applicants (specifically highest for Asian households in each case)
- The effect of local preference on households requiring accessibility features in their units is unclear and requires further study

Recommendations for Reducing Local Preference Requirement

- The identified correlation between Newton's 70% local preference policy and the percentage of minorities, particularly Black and African American applicants, that sign leases for these affordable units, as compared to their White, local-preference counterparts, sheds light on the **need to enact a change to the long-standing requirement.**
- The Newton Housing Partnership agrees – a lower percentage requirement is necessary. The partnership will continue to discuss a recommendation to lower the percentage to 35% or lower.

70%  **35% or lower**

Recommendations for Reducing Local Preference Requirement

- The need for further study into the effects of local preference and the lottery system altogether on people with disabilities is also a critical next step
- A reduction in the local preference policy should still require that **at least one accessible affordable unit** be designated as a Local Preference Unit
- Local preference is **not the only tool** that should be explored / amended to reduce the discrepancy in racial outcomes of the lottery processes, i.e. credit history, landlord references, pricing of affordable units

July 26 ZAP Mtg.

Questions / Comments?

Thank you!