



## City Council Actions

### In City Council

**Monday, February 1, 2016**

**Present:** Councilors Albright, Auchincloss, Baker, Blazar, Brousal-Glaser, Ciccone, Cote, Crossley, Danberg, Fuller, Gentile, Harney, Hess-Mahan, Kalis, Lappin, Laredo, Leary, Lennon, Lipof, Norton, Rice, Sangiolo, Schwartz and Yates

**The City Council discussed and voted the following items on Second Call:**

#### **Referred to the Land Use Committee**

**#416-12(6) Petition to restripe existing parking lot to create 5 parking stalls, instead of 4 stalls**  
**MAIN GATE REALTY LLC** petition to AMEND Special Permit/Site Plan Approval for a Change in Nonconforming Use #416-12(3), granted August 12, 2013, which limited two existing tenant spaces to office, low parking demand/turnover service, or retail uses, in order to restripe an existing parking facility to create five parking stalls, where four currently exist, and to waive the dimensional requirements for the parking stalls at 242-244 COMMONWEALTH AVENUE, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a district zoned MULTI-RESIDENCE 1. Ref: 7.3, 7.4, 7.8.2.C.2, 5.1.7, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Land Use Hearing Closed; Approved as Amended 6-1 on 01/12/16**

**Land Use Approved the Withdrawal Without Prejudice of the waiver of the parking stall dimensional requirements 8-0 on 01/19/16**

***Item Postponed on January 19 to Date Certain of February 1, 2016***

**Approved 24 yeas**

**Clerk's Note:** This item and the following were discussed together, please see the notes below for details.

#### **Referred to the Land Use Committee**

**#416-12(7) Amend special permit #416-12(3) to permit more than 3 customers on site**  
**JULIA WILLIAMSON/WALLY ZAINOUN, MAIN GATE REALTY** petition to AMEND Special Permit/Site Plan #416-12(3), granted on August 12, 2013, with respect to EXTENDING a NONCONFORMING USE, to permit more than 3 customers for the service use on site at any one time and change the hours of operation of MODERN BARRE at 242-244 COMMONWEALTH AVENUE, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a district zoned MULTI-RESIDENCE 1. Ref: Sec 7-3, 7-4 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Land Use Hearing Closed; Approved as Amended 6-1 on 01/12/16**

***Item Postponed on January 19 to Date Certain of February 1, 2016***

**Motion to Amend Condition 19 and modify Finding #2 Denied 18 Nays, 6 Yeas (Councilors Baker, Gentile, Harney, Norton, Sangiolo, Yates)**

**Motion to Amend Condition #20 Denied 14 Nays, 10 Yeas (Councilors Baker, Brousal-Glaser, Ciccone, Danberg, Gentile, Harney, Hess-Mahan, Norton, Sangiolo, Yates)**

**Approved 20 Yeas, 4 Nays (Councilors Baker, Gentile, Harney, Norton)**

**Clerk's Notes:** The Chair of the Land Use Committee began the discussion by noting that #416-12(6) was partially withdrawn at the last meeting. The components of the permit that are still active include changing the parking situation and the paving of a sidewalk. The main changes to be discussed are in #416-12(7). A Special Permit for this property was approved by the board two years ago that limited the number of people that could be on site. After Modern Barre was open some problems were noted by Inspectional Services regarding the conditions in the Board Order, so a new petition was brought forward to rectify the issues. Many residents have been very concerned about parking and the intensity of use.

The language of paragraphs 13 and 14 of the prior Board Order are being changed. The prior Board Order limited the number of occupants at any one time and it was the very clear will of the Land Use Committee that this is the number of people allowed; period. If Modern Barre goes away and a new tenant comes in, there would be nothing to prevent someone coming back to the Land Use Committee seeking to modify the Special Permit. This Order is an unusual one because it has some basic conditions for the property and additional conditions for the Modern Barre Studio which apply only as long as this Studio remains in operation. It would then essentially revert back to the prior Board Order with some minor modifications. We are limiting the parking lot to four parking spaces which may only be used by employees and staff of the businesses. The landlord has agreed to repave a portion of Manet Road, along with additional plantings. Hours of operation have been delineated with a slight caveat that would allow Modern Barre to start at 6:15 in the morning. The vote in the Land Use Committee was 6-1 on both items.

It was noted that our ordinance provides for a non-conforming use extension. The Council, however, has to find that the extended use is not substantially more detrimental than the prior use. The prior Special Permit actually controls the site to which we are trying to make an extension. Part of the challenge of this project is that it arose because, as the Chair of Land Use indicated, the Inspectional Services Department was alerted to the new use. The Landlord leased this space but did not comply with the prior Special Permit which says there will be a total of three employees and three customers for a massage business. The Special Permit limited the legality of the operation. If the standard in the ordinance is followed, and this use is substantially more detrimental to the neighborhood the ordinance allows the Council to "impose conditions to protect the neighborhood." It does not give authority to ignore the condition because this is profitable for Modern Barre or profitable for the landlord.

Two amendments were offered, both designed to try to make this work on the site. This is a site that has not been a high impact use in the past. The Board Order says that now there will be an increase in customers from three an hour to twelve an hour. If this amendment prevails, that finding would need to be modified to whatever number is appropriate. Intensity and duration are what the two amendments are designed to deal with. One is to change the start time to seven o'clock which it is currently and to limit the number of customers to a total of nine as opposed to a total of eleven.

It was argued that nine participants would give ample room for Modern Barre to operate within its schedule and still have a reasonable class size, but also minimizes the degree of difficulty that the actual use will impose on the site. The Council Order states the petitioners are to park in legal neighborhood parking places and are encouraged to park on Commonwealth Avenue, but not required to do so. Even with six patrons, there are challenges. One amendment is to limit the start time to no earlier than seven o'clock and second to limit the total number of patrons to nine with one instructor, making a total of ten. There would be a modest modification in the finding if the number were changed from eleven to nine.

Several Councilors urged not to accept the amendments. In the past it was agreed that in Modern Barre there would be 6 people every single hour from 7 am to 10 pm. Modern Barre had requested 40 hours a week and this Board Order limits them to 30 classes a week.

It was felt by some that there is plenty of available parking.

It was also argued that the earlier start time is a service to the community, and the elimination of the morning hours would influence the viability of the business, it was suggested that the public welfare and convenience would be served by a fitness studio on Commonwealth Avenue. Others felt the earlier start time would be a burden on the neighborhood.

Concern was raised that the Council not impose restrictions that would be a problem for making this a sustainable business.

It was suggested that the Special Permit be approved for only a year to be looked at if it is a problem.

It was asked if this was an appropriate place for a fitness club.

Several Councilors were troubled by petitions that were asking for forgiveness and not permission. It was suggested that enforcement will be a problem. The only way it can be enforced is if neighbors monitor the operation and that is unfair to the neighborhood.

It was noted that the idea behind non-conforming uses is that they are supposed to wither away, but they don't and in fact this one is expanding. If there is a burden here, this is a lease situation with the landlord and not the fault of the tenant. It would seem adjustments could be made between the landlord and the tenant so the tenant could continue to operate successfully.

The City Council voted without discussion 24 Yeas to take the following actions:

**Referred to Programs & Services Committee**

Wednesday, January 20, 2016

- #23-16 Mayor's re-appointment of Sheila Mondshein to Human Rights Commission**  
SHEILA MONDSHEIN, 31 Green Park, Newton, re-appointed as a member of the HUMAN RIGHTS COMMISSION for a term to expire January 1, 2017 (60 days 3/19/16) [12/31/15 @ 2:11 PM]  
**Programs & Services Approved 7-0**
- #24-16 Mayor's re-appointment of Jane Brown to Human Rights Commission**  
JANE BROWN, 104 Atwood Avenue, Newtonville, re-appointed as a member of the HUMAN RIGHTS COMMISSION for a term to expire January 1, 2018 (60 days 3/19/16) [12/31/15 @ 2:11 PM]  
**Programs & Services Approved 7-0**
- #25-16 Mayor's re-appointment of Dianne Chilingerian to Human Rights Commission**  
DIANNE CHILINGERIAN, 89 Montrose Street, Newton, re-appointed as a member of the HUMAN RIGHTS COMMISSION for a term to expire January 1, 2018 (60 days 3/19/16) [12/31/15 @ 2:11 PM]  
**Programs & Services Approved 7-0**

**Referred to Programs & Services and Public Facilities Committees**

- #140-15 Request for updates on the purchase of the Aquinas Site**  
PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or the Executive Department provide updates on the progress of the potential purchase of the Aquinas site as well as short and long term plans for uses and operations at the site. [05/20/15 @ 8:53 PM]  
**Public Facilities Voted No Action Necessary 8-0 on 12/09/15**  
**Programs & Services No Action Necessary 7-0**

**Referred to Public Safety & Transportation Committee**

Wednesday, January 20, 2016

- #352-15 Providing the 2015 Annual Report on the work of Traffic Council**  
TRAFFIC COUNCIL CHAIR providing the Annual Report on the work of the Traffic Council for 2015 pursuant to Section 19-30(g) of the City of Newton Revised Ordinances 2012. [12/09/15 @ 5:03 PM]  
**Public Safety & Transportation No Action Necessary 7-0**

**Referred To Public Safety & Transportation And Finance Committees**

- #465-14 **Discussion regarding reducing the fee charged to residents for permit parking**  
ALD. SANGIOLO, GENTILE AND HARNEY, requesting a discussion regarding reducing the fee charged to residents for permit parking programs. [11/17/14 @ 12:40 PM]  
**Finance No Action Necessary 7-0 on 12/14/15**  
**Public Safety & Transportation No Action Necessary 7-0**

**Referred to Public Facilities Committee**

Wednesday, January 20, 2016

- #11-16 **National Grid petition for a grant of location for a gas main in Cherry Street**  
NATIONAL GRID petitioning for a grant of location to install and maintain 1,250' ± of 8" gas main in CHERRY STREET from the existing 8" gas main at River Street, southerly to the existing 3" gas main at Washington Street. [12/09/15 @6:56 PM]  
**Public Facilities Approved 6-0 (Lennon not voting)**

**Referred to Public Facilities and Finance Committees**

- #30-16 **Transfer from budget reserve to DPW for snow removal**  
HIS HONOR THE MAYOR, requesting authorization to transfer the sum of one million dollars (\$1,000,000) from Budget Reserve – Snow and Ice Removal Account to the following accounts:  
 Personnel Costs – Overtime  
 (0140110-513001)..... \$ 300,000  
 Rental Vehicles  
 (0140110-5273-5273) ..... \$700,000  
 [01/19/16 @ 11:41 AM]  
**Finance Approved 8-0**  
**Public Facilities Approved 6-0 (Laredo not voting)**

**Referred to Finance Committee**

Monday, January 25, 2016

- #355-15 **Appointment by the Mayor to the Trustee of the Cousens Fund**  
WILLIAM PAPPAS, 70 Prospect Street, West Newton, appointed as a Trustee of the Horace Cousens Industrial Fund for a term to expire on June 1, 2018. (60 days 02/19/16) [12/07/15 @ 1:16 PM]  
**Finance Approved 7-0 (Cicccone not voting)**
- #28-16 **Appt to Financial Audit Advisory Committee by the President of the Council**  
DAVID SPECTOR, 34 Lombard Street, Newton appointed as a member of the FINANCIAL AUDIT ADVISORY COMMITTEE for a term to expire on February 1, 2019. [01/08/15 @ 2:31 PM]  
**Finance Approved 8-0**

**#14-16 Mayor’s appointment of Charles Grillo as a Constable**  
CHARLES V. GRILLO, 1011 Washington Street, Newtonville appointed as a Constable for the City of Newton for a term of office to expire January 31, 2019. [12/28/15 @ 8:28 PM]  
**Finance Approved 8-0**

**#13-16 Mayor’s reappointment of Maria Rosen as a Constable**  
MARIA BIANCHI ROSEN, 41 Aspen Avenue, Auburndale reappointed as a Constable for the City of Newton for a term of office to expire December 6, 2018. [12/28/15 @ 8:28 PM]  
**Finance Approved 8-0**

**#29-16 Request to authorize a settlement for damages caused by a city vehicle**  
HIS HONOR THE MAYOR requesting authorization to appropriate and expend nine thousand three hundred sixty-two dollars and fifty-eight cents (\$9,362.58) from the Judgements and Settlements Account to cover the full and final settlement from damages caused by a City of Newton vehicle. [01/12/16 @ 1:57 PM]  
**Finance Approved 8-0**

**Referred to Public Facilities and Finance Committee**

**#30-16 Transfer from budget reserve to DPW for snow removal**  
HIS HONOR THE MAYOR, requesting authorization to transfer the sum of one million dollars (\$1,000,000) from Budget Reserve – Snow and Ice Removal Account to the following accounts:  
 Personnel Costs – Overtime  
 (0140110-513001)..... \$ 300,000  
 Rental Vehicles  
 (0140110-5273-5273) .....\$700,000  
 [01/19/16 @ 11:41 AM]  
**Public Facilities Approved 6-0 on 01/20/16**  
**Finance Approved 8-0**

**A motion to accept the following two items to the docket and refer them to the appropriate committees was Approved by voice vote.**

**Referred to Zoning & Planning Committee**

**#46-16 Resolution supporting House and Senate bills to increase number of housing courts**  
COUNCILOR HESS-MAHAN requesting a Resolution by the City Council to support House Bill H. 1656 and Senate Bill S. 901 for expansion of housing courts in the Commonwealth that would allow the City of Newton to pursue housing matters in a specialized court designed to specifically deal with housing issues and better protect its residents and more swiftly resolve violations. [01/29/16 @ 9:39 AM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEE**

**#47-16** **Transfer \$783,846 from various accounts for Auburndale Sq Traffic Improvements**  
HIS HONOR THE MAYOR, requesting authorization to transfer the sum of seven hundred eight-three thousand eight hundred forty-six dollars to fully fund the Auburndale Square Traffic Improvements as follows:

**From:**

Riverside-Auburndale Improvements.....	\$136,710
Repurposing Savings from Other Projects:	
Capital Project Fund Bond Balances Available	
for Appropriation .....	\$327,752
Unrestricted Capital Purposes .....	\$27,061
Bonded Capital Projects.....	\$13,752
June 30, 2015 Free Cash .....	\$278,571
<b>To:</b>	
Auburndale Square Traffic Improvements .....	\$783,846

[02-01-16 @ 11:53 AM]

**Public Hearings were assigned for the following two items:**

***Public Hearing assigned for March 15, 2016:***

**#31-16** **Special permit petition for 147 Newtonville Avenue**  
BECKY SEARLES & SEAN McNALLY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NON-CONFORMING STRUCTURE to remove an existing sunroom and replace it with a larger room with finished space above and additional basement space in an existing 3½-story nonconforming single-family dwelling with a nonconforming front setback at 147 NEWTONVILLE AVENUE, Ward 2, NEWTONVILLE, on land known as SBL 12-17-19, containing approx. 16,748 sf of land in a district zoned MULTI-RESIDENCE 1. Ref: Sec. 7.3, 7.4, 7.8.2.C.2, 3.2.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

***Public hearing assigned for February 17, 2016:***

**#38-16** **National Grid GOL petition for Eastside Parkway**  
NATIONAL GRID petitioning for a grant of location to install and maintain 70' ± of 6" gas main in East Side Parkway from the existing 6" gas main at 82 East Side Parkway to 76-78 East Side Parkway. [01/20/16 @ 6:43 PM]

**The City Council voted without discussion 22 Yeas, 2 Nays (Councilors Cote & Gentile) to take the following action:**

**Referred to Programs & Services Committee**

**#332-15** **Resolution to the Governor regarding the Pilgrim Nuclear Power Plant**

CITY CLERK reporting that the November 3, 2015 Non-binding Ballot Question asking that a resolution be sent by the City of Newton to Governor Charles Baker asking him to instruct the Nuclear Regulatory Commission (NRC) to revoke the operating license of the 42-year-old Pilgrim Nuclear Station, 38 miles from Newton in Plymouth, MA, because the safety of the public cannot be assured, was approved by the voters of Newton, 6,168 in favor and 2,819 opposed. [11/18/15 @ 11:03 AM]

**Programs & Services Approved 7-0**