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#189-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 5, 2022
Land Use Action Date: June 14, 2022
City Council Action Date: June 20, 2022
90-Day Expiration Date: July 4, 2022

DATE: April 1, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Senior Planner

SUBJECT: **Petition #189-22**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Order #332-65 to waive parking stalls and allow single-level non-accessory parking at 858 Walnut Street, Ward 6, on land known as Section 64 Block 5 Lot 04, containing approximately 23,250 sq. ft. of land in a district zoned BUSINESS UNIT 2. Ref: Sec. 7.3.3, 7.4, 6.3.12.B.2.a, 5.1.4.A, 5.1.13, 4.4.1 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



858 Walnut Street

EXECUTIVE SUMMARY

The property located at 858 Walnut Street consists of a 23,250 square foot lot improved with a commercial building and surface parking to the rear. The site is in a Business 2 (BU-2) zone in Newton Centre. The petitioner is seeking to locate a religious use within the building. The religious use has a higher parking requirement from the previous personal service use, as such the petitioner requires a special permit for a parking waiver of five parking stalls. The property owner also requires a special permit to formalize a non-accessory parking agreement, which leases 39 of the 63 parking stalls to the market.

City Staff are unconcerned with the five-stall parking waiver and request to allow single-level, non-accessory parking. The religious use mainly operates on Saturdays, and other uses that utilize the shared parking are closed Saturdays. The lease agreement with the market has been in existence since at least the early 1990s and has presented no issue that the Planning Department is aware of. As such, the Planning Department is unconcerned with the request to allow single-level, non-accessory parking. When reviewing this petition with the Transportation Division of Public Works, Transportation staff suggested the applicant stay cognizant of any residential street parking restrictions and communicate any present and future restrictions to its members.

SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the five stall parking waiver and single-level non-accessory parking (§7.3.3.C.1).
- The five stall parking waiver and single-level non-accessory parking will adversely affect the neighborhood (§7.3.3.C.2).
- There will be nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3); and
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).
- Compliance with the required number of parking stalls 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)

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

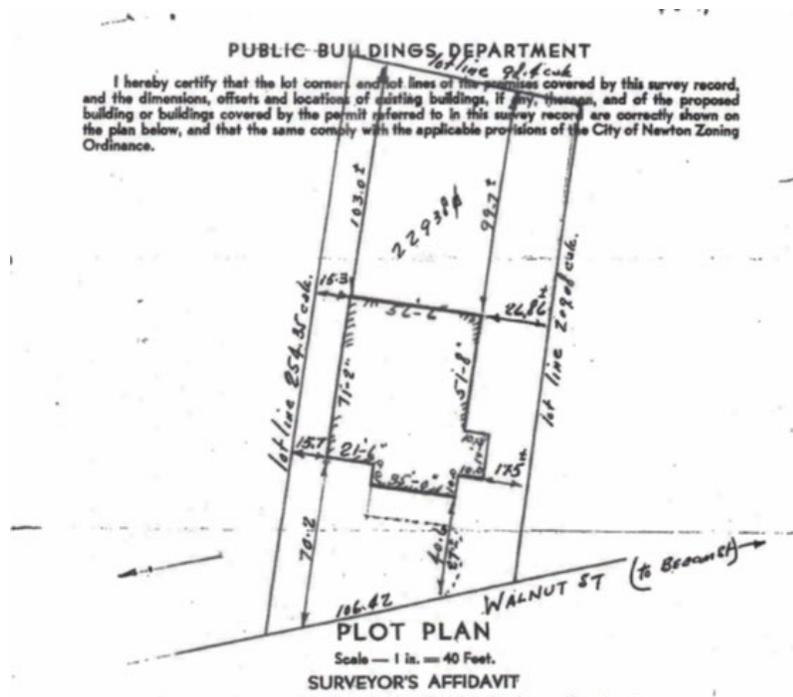
The subject property is located at Walnut Street in a BU-2 zone in Newton Centre. The BU-2 zone encompasses the properties along the east side of Walnut Street between Beacon Street and Brentwood Avenue (**Attachment A**). There are multi

residential zones to the north and east of the site, and an open space zone directly across the street to the west, the Newton Cemetery. The immediate neighborhood is comprised of a mix of land uses which include commercial uses along Walnut and Beacon Streets, as well as single and multifamily residential uses (**Attachment B**).

B. Site

The property consists of 26,250 square feet of land and is improved with a commercial building which consists of commercial space on the first floor and an unstaffed server room in the basement. The site features a circular driveway in the front of the building and porte cochère. The site has a downward slope from the front to the rear of the property. Behind the building is a shared parking facility of 63 parking stalls with the abutter at 860-865 Walnut Street.

Site Plan



II. PROJECT DESCRIPTION AND ANALYSIS

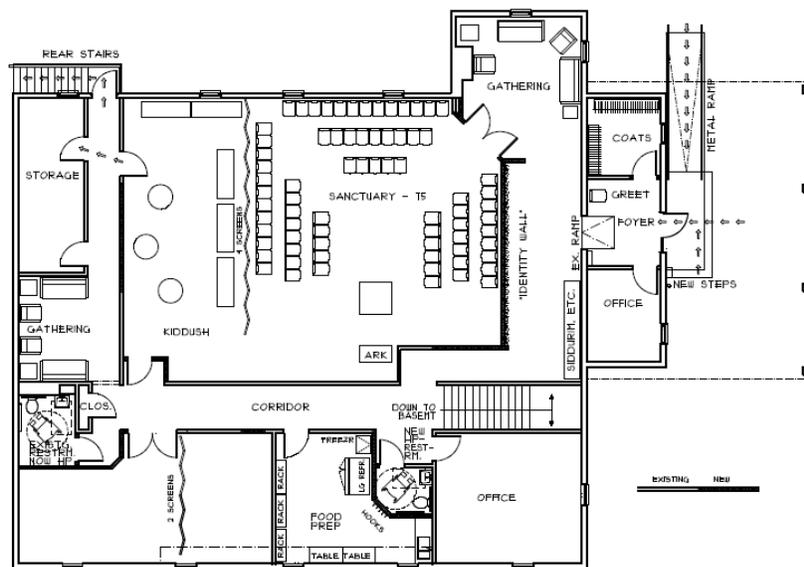
A. Land Use

The site will consist of the proposed religious use and existing unstaffed computer server room.

B. Site and Building Design

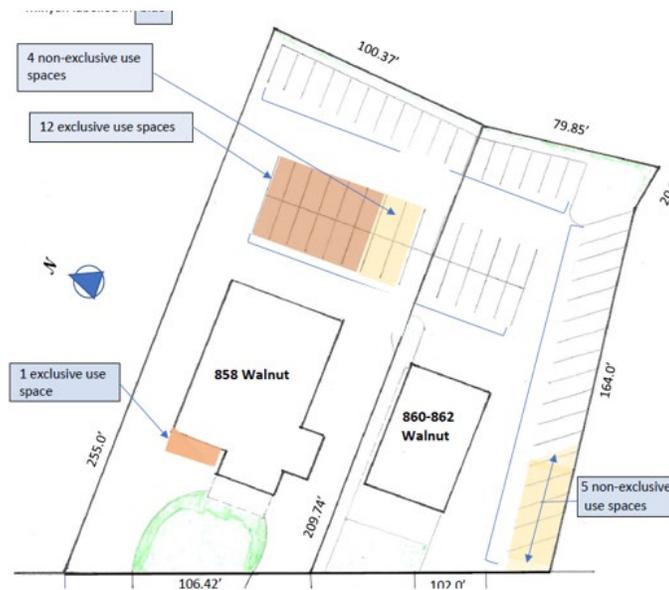
The petitioner is not proposing any alterations to the footprint and all modifications are internal to the building. The 4,575 square feet of space will consist of sanctuary seating for 75 people, office space, a multi-purpose room, food preparation space, storage, and gathering space. The basement consists of an unstaffed server room.

Proposed First Floor Plan



C. Parking and Circulation

There are 63 parking stalls between 858 Walnut Street and 860-862 Walnut Street. Utilizing the A+B-C formula in §5.1.3.B, the parking requirement is 19 parking stalls for both the proposed religious use and computer server room. Due to existing uses shared between 858 and 860-862 Walnut Street, and spaces leased to a market further south on Walnut Street, there are 14 spaces available for the religious use and unstaffed computer room. This requires a waiver of five parking stalls.



The religious use would operate only on Saturdays and religious holidays, which are fewer than ten times per year. The petitioner stated that some members of the religion choose to walk or bike to services instead of driving. The petitioner stated that a tenant at 860-862 Walnut Street will allow their members to utilize their five assigned parking stalls on Saturdays.

There is a long-standing lease agreement for 39 parking stalls on site between the property owner and a market further south on Walnut Street. The required parking waiver accounts for this agreement. To legitimize the lease agreement, the property owner requires a special permit to allow single-level, non-accessory parking.

Due the religious use only operating on Saturdays, and the availability of parking in the shared lot on the weekends when other uses are not open, the Planning Department is unconcerned with the parking waiver of five stalls. The site features a mix of uses and some of the tenants are closed on Saturdays, leaving the parking area available. The unstaffed computer room has a parking requirement of three parking stalls, which does not reflect that the use is unstaffed. The lease agreement with the market on Walnut Street has been in existence since at least the early 1990s and has presented no issue that the Planning Department is aware of. As such, the Planning Department is unconcerned with the request to allow single-level, non-accessory parking.

D. Landscaping and Lighting

The petitioner is not altering the parking facility. As such, relief for the landscaping and lighting requirements for parking facilities with more than twenty stalls is not required.

III. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment E**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

Zoning Relief Required		
Ordinance		Action Required
§6.3.12.B.1 §7.5.2	To review a religious institution use	A.S.P.R. per §7.5.2
§6.3.12.B.2.a §5.1.4.A §5.1.13	To waive 5 parking stalls	S.P. per §7.3.3
§4.4.1	To allow single-level non-accessory parking	S.P. per §7.3.3

B. Transportation Division of Public Works

Planning Staff reviewed the petition with the Transportation Division of Public Works. Transportation staff encouraged the applicant to stay up to date on residential street parking restrictions and communicate restrictions to its members.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

ATTACHMENTS:

- Attachment A:** Zoning Map
- Attachment B:** Land-Use Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Council Order

ATTACHMENT A

Zoning

858 Walnut St.

*City of Newton,
Massachusetts*

Legend

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 3
-  Business 1
-  Business 2
-  Open Space/Recreation
-  Public Use



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.525 50 75 100 125 150 175 Feet

Map Date: March 28, 2022



ATTACHMENT B

Land Use

858 Walnut St.

*City of Newton,
Massachusetts*

Legend

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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0 12.5 25 50 75 100 125 Feet

Map Date: March 28, 2022





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: November 9, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: 858 Walnut Street LLC, Applicant
Newton Center Minyan
Barney S. Heath, Director of Planning and Development
Jonah Temple City Solicitor

RE: Request to waive five parking stalls and to allow non-accessory parking

Applicant: 858 Walnut Street LLC	
Site: 858 Walnut Street	SBL: 64005 0004
Zoning: BU2	Lot Area: 23,250 square feet
Current use: Tutoring and unmanned server room	Proposed use: Religious institution and unmanned server room

BACKGROUND:

The property at 858 Walnut Street consists of 23,250 square feet improved with a two-story building constructed in 1955 and a surface parking facility. The petitioner proposes to locate a religious institution in a space formerly occupied by a tutoring center. No exterior changes to the building or parking facility are proposed.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Dahlia Rudavsky, submitted 9/23/2021
- Narrative, prepared by Dahlia Rudavsky, submitted 9/23/2021
- Letter dated 8/17/2020 from Alan Schlesinger, attorney, submitted 9/23/2021
- Parking Management Plan, dated 10/13/2020
- Parking Layout, prepared by David Galler Associates, architect, dated 10/11/1990

ADMINISTRATIVE DETERMINATIONS:

1. The Newton Center Minyan is subject to the administrative site plan review procedure per Sections 6.3.12.B.1 and 7.5.2 of the Newton Zoning Ordinance. This procedure governs the review of uses protected under MGL Chapter 40A, Section 3, also known as the “Dover Amendment”.
2. The applicant intends to introduce a religious institution, replacing the current tutoring center use. At the time the tutoring center began operation, the use was determined to be a personal service business for the purposes of parking, requiring one (1) parking stall per each 300 square feet of gross floor area and one (1) stall per each three (3) employees per section 5.1.4, providing a credit of 18 stalls. The petitioner proposes to introduce a 70-seat religious institution within the 4,575 square foot space with no employees. Per section 5.1.4.A, the proposed religious institution use requires one stall for every three seats, or 23 stalls.

There is an unmanned computer server room utilized by RCN in the 3,600 square foot basement. Per section 5.1.4.A, a telecommunications and data storage facility requires one stall per 2,500 square feet, and one stall per every four employees. Though unmanned, it can be assumed that the facility will have an occasional employee visit. The RCN server room requires three stalls.

There is a lease agreement between the property, the adjacent property at 860-862 Walnut Street (which are under common ownership), and the Whole Foods supermarket at 916 Walnut Street. This agreement dates back to when the Whole Foods property was occupied by a different supermarket tenant (Bread and Circus). The agreement allows the supermarket to use 39 of the 63 total stalls at the shared parking facility between the subject property and 860-862 Walnut Street reducing the parking available to the minyan and server room to 14 stalls.

The change of use from a tutoring service to a religious institution requires application of the formula found in section 5.1.3.B of $A-B+C$ =required parking. Per this section:

A = The number of off-street parking stalls required under section 5.1.4 for the proposed religious institution of one stall per every three seats. $70 \text{ seats}/3 = 23$ stalls required. In addition, three stalls are required for the RCN facility, for a total requirement of 26 stalls for the site’s proposed uses.

B = The number of off-street parking stalls required under section 5.1.4 for the previous tutoring service of one stall per every 300 square feet, plus one stall per every three employees at the busiest shift. $4,575 \text{ square feet}/300 = 16$. $6 \text{ employees}/\text{one per three employees} = 2$. In addition, three stalls are required for the RCN facility, for a total site requirement of 21 stalls required for the site’s previous uses.

C = The number of off-street parking stalls available for the site’s uses. There are 13 on-site stalls allocated to the religious institution and one stall allocated to the RCN facility for a total of 14 stalls available to the site’s uses. Other stalls on the premises are separately leased to Whole Foods.

$$A - B + C = 26 - 21 + 14 = 19 \text{ stalls}$$

With 19 stalls required and 14 available, a waiver of 5 stalls is required per sections 6.3.12.B.2.a, 5.1.4 and 5.1.13.

3. The existing parking facility is nonconforming with regard to stall dimensions, striping, lighting, and landscaping and has existed in its current condition and configuration for many years. It is accessed by a driveway on the northern property boundary, as well as a larger shared driveway with 860-862 Walnut Street, which is commonly owned. The parking is located behind the buildings and functions as one shared parking facility with 63 stalls, 31 of which are on the petitioner’s site.

No physical changes to the parking areas are proposed.

4. A lease agreement is in place between the Whole Foods Market and the subject property (and the adjacent 860-862 Walnut Street) for 39 of the 63 parking stalls (shared between the Walnut properties). The current agreement was formalized in 2008 by the owner of the subject property and Whole Foods, and has been renewed every five years since. The next expiration will be on December 31, 2022 and the petitioner and Whole Foods intend to renew the agreement. Per section 4.4.1, a special permit is required to formalize the single-level non-accessory parking.
5. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§6.3.12.B.1 §7.5.2	To review a religious institution use	A.S.P.R. per §7.5.2
§6.3.12.B.2.a §5.1.4.A §5.1.13	To waive 5 parking stalls	S.P. per §7.3.3
§4.4.1	To allow single-level non-accessory parking	S.P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of a SPECIAL PERMIT/SITE PLAN APPROVAL to waive five parking stalls and allow single-level, non-accessory parking as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the five-stall parking waiver and single-level non-accessory parking because the religious use operates when other uses on-site are closed and the single-level, non-accessory parking agreement has been in existence for over 30 years. (§7.3.3.C.1).
2. The five stall parking waiver and single-level non-accessory parking will not adversely affect the neighborhood because the use does not create additional parking demand during peak weekday hours, and the single-level, non-accessory parking agreement has been in existence for over 30 years (§7.3.3.C.2).
3. There will not be a nuisance or serious hazard to vehicles or pedestrians because the driveway locations are being maintained (§7.3.3.C.3); and
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved because the site is not being altered. (§7.3.3.C.4).
5. A waiver of five parking stalls is in the public interest because the use does not create additional parking demand during peak weekday hours. (§5.1.13)

PETITION NUMBER: #189-22

PETITIONER: 858 Walnut Street LLC

LOCATION: 858 Walnut Street, Section 64, Block 05, Lot 04 containing approximately 25,250 square feet of land

OWNER: 858 Walnut Street LLC

ADDRESS OF OWNER: 158 Greenwood Street
Newton, MA 02459

TO BE USED FOR: Establish religious use

CONSTRUCTION: Internal Modifications

EXPLANATORY NOTES: §4.4.1, §5.1.4, §5.1.4.A, §5.1.13, §6.3.12.B.2.a, §7.3.3 to
allow a parking waiver of 5 stalls, and to allow single-level,
non-accessory parking

ZONING: BU-2

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 the following plans:
 - i. "Plot Plan" dated January 15, 1958, signed and stamped by James G. Noonan
 - ii. Usage Plan (floor plans), Newton Minyan, 858 Walnut Street, dated March 4, 2022, prepared by Malcolm A. Blier
2. The parking waiver of five stalls shall only apply to the religious use, any change in use seeking to use the parking waiver, requires an amendment to this Council Order. Any change in ownership shall require the petitioner contact the Planning Department to ensure the site operations still justify the granted relief.
3. 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 for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County for both parcels.
 - 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.
4. 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 statements by a registered architect certifying compliance with Condition #1.