



Land Use Committee Report

City of Newton In City Council

Tuesday, September 13, 2022

Present: Councilors Lipof (Chair), Kelley, Bowman, Downs, Greenberg, Laredo, Lucas, and Markiewicz

Also Present: Councilors Crossley, Humphrey, and Wright

City Staff Present: Senior Planner Michael Gleba, Chief Planner Katie Whewell, Planning Associate Cat Kemmett, and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at the following link <https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-1058>. Presentations for each project can be found at the end of this report.

#311-22 Request to allow retaining walls exceeding four feet within a setback at 10 Elberta Terrace

JOHN UMINA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow retaining walls greater than 4' within side and rear setbacks at 10 Elberta Terrace, Ward 4, Newton, on land known as Section 41 Block 17 Lot 19, containing approximately 15,787 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved Pending Second Call 7-0; Public Hearing Closed 9/13/22

Note: At the public hearing on July 12, 2022, the petitioner was asked to address outstanding concerns expressed by abutters regarding erosion safety and stability of a hill adjacent to the proposed retaining wall.

Since that time the petitioners have submitted additional information including a revised site plan and evidence of a proposed Easement Agreement between the petitioners and abutter Henri Beaino of 232 Melrose Street. These materials can be found at the following link:

<https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-2446>

Senior Planner Michael Gleba presented updates to the proposed plans as shown in the following link:

<https://www.newtonma.gov/home/showdocument?id=90665&isPublished=False&t=637988529418022405>

Mr. Gleba noted that it is Planning's understanding that an extended arm of the proposed wall would be constructed. The rest of the wall would remain unchanged. This would be submitted at the time of a building permit being issued, as the extended section of the wall does not require relief but is the subject of the aforementioned Easement Agreement between the petitioners and an abutter.

Public Comment

HENRI BEANO of 232 Melrose Street, Newton, thanked the Committee for facilitating conversations between the petitioner and abutting neighbors.

Mr. Beaino noted that he is pleased with the proposed Easement Agreement but requested that approval of the proposed wall be contingent on fulfilling the agreement.

Mr. Beaino thanked Councilors for helping to facilitate conversations with the petitioners.

DANNY KALOUPEK, 230 Melrose Street, noted support for the wall. Mr. Kaloupek's concern is to make sure the wall and the work that's related to the wall in terms of this the soil that's being restored inside it conforms to a separate settlement agreement that was reached pursuant to a lawsuit. Mr. Kaloupek believes documents and plans on file haven't been updated to reflect the actual terms of the settlement agreement.

Atty. Temple noted this had been addressed at the previous public hearing and reiterated that the City cannot be the arbiter or the enforcement arm of that settlement agreement. The petitioner needs to make sure it meets the terms of the settlement agreement.

Councilor Comments

Councilors discussed the possibility of approving the petition subject to second call.

It was noted that as submitted, the current revised plan is unreadable and does not appear to contain a stamp. The Committee needs to see this in plan view, not as a photo.

The revised plan does not appear to incorporate the extended arm, or jog, of the wall.

The petitioner was requested to submit a legible engineer-stamped plan incorporating the agreed-upon revisions.

Councilor Markiewicz motioned to close the public hearing which carried unanimously. Councilor Markiewicz motioned to approve the petition subject to second call, pending review of a legible plan in good order. The Committee reviewed the draft findings and conditions as shown in the attached presentation. With that, the Committee voted 7-0 in favor of approval, with Councilor Kelley abstaining.

#389-22 Request to alter and extend nonconforming rear setback at 6 Rotherwood Road

JOHN AND LISA BUTTS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story rear addition, vertically extending the nonconforming rear setback at 6 Rotherwood Road, Ward 6, Newton, on land known as Section 62 Block 16 Lot 50, containing approximately 8990 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.1.3, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed: 9/13/22

Note: Architect Joe Barbado of Feinmann Inc., represented the petitioners and presented an orientation of the property as well proposed plans, general site information and landscape plans which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/90726/637989201421683138>

The petitioners are proposing a two-story addition that would replace an existing nonconforming deck in the rear of the home.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90669&isPublished=False&t=637988530363217492>

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Councilor Comments

Committee Members expressed support for this petition. It was noted that the project is modest in nature and will be confined to the current footprint of the home.

Councilor Bowman motioned to close the Public Hearing which carried 8-0. Councilor Bowman motioned to approve the petition. Committee Members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 8-0.

#390-22 Request to exceed FAR and further reduce nonconforming open space at 58 Valentine Park

SARAH AND PATRICK CAMMARATA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze and replace a one-story sunroom with a 2.5-story addition, as well as raze and replace an enlarged detached garage, exceeding allowable FAR, further reducing nonconforming open space, and to allow dormers exceeding 50% of the width of the wall next below at 58 Valentine Park, Ward 3, Newton, on land known as Section 32 Block 40 Lot 04 containing approximately 12,025 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, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 8-0; Public Hearing Closed: 9/13/22**

Note: Attorney Laurance Lee of Rosenberg, Freedman and Lee, LLP, with offices at 246 Walnut Street, Newton, represented the petitioners and presented an orientation of the property as well proposed plans, general site information and landscape plans which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/90724/637989200604441363>

The Atty. Lee presented a plan to raze the existing nonconforming detached garage and replace it with another conforming detached garage. The plans additionally call for removing the existing enclosed screen porch and replace it with a two-story addition resulting in a net increase of 1,200 square feet of structure.

Chief Planner Katie Whewell presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90671&isPublished=False&t=637988530741995>
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Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Councilor Comments

Committee Members questioned why for such a large lot, was the open space number so low? Atty. Lee noted that the lot is in an SR 1 (Single Residence 1) Zone, which is the most restrictive, as well as the current landscaping conceals structures that count against open space.

An additional question regarding the new material used on the exterior of the dwelling. Looking at the elevation plans, a different material was represented. Project Architect Walter Hutcheson, of Noury-Ello Architects, responded that the current material is a vinyl siding and will be updated to a painted cedar shingle.

Councilor Kelley motioned to close the Public Hearing which carried 8-0. Councilor Kelley motioned to approve the petition. Committee Members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 8-0.

#313-22 **Petition to extend a nonconforming detached accessory structure and further increase nonconforming FAR at 34 Westbourne Road**
SEAN ZHENG petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing garage and construct a new detached garage, further increasing nonconforming FAR, further extending a nonconforming side setback in a detached garage and further extending and reducing a nonconforming rear setback in a detached garage at 34 Westbourne Road, Ward 7, Newton, on land known as Section 73 Block 44 Lot 12, containing approximately 7640 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, 3.4.3.A.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 8-0; Public Hearing Closed 9/13/22**

Note: The petitioner Sean Zheng was present. However, due to the simplicity of the project Mr. Zheng deferred to the Planning Department and Senior Planner Michael Gleba's presentation.

Mr. Gleba presented an orientation of the property as well proposed plans, general site information, the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90673&isPublished=False&t=637988531702558349>

The petitioner is proposing to raze and replace an existing detached garage with another detached garage slightly larger increasing the nonconformity.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Councilor Comments

Councilors expressed support for the project citing the small scale of the project and its noninvasiveness with respect to neighbors. The question was asked if the petitioners were simply constructing a garage large enough to accommodate two vehicles in it. Mr. Zheng responded in the affirmative.

Councilor Laredo motioned to close the Public Hearing which carried 8-0. Councilor Laredo motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 7-0.

#391-22 **Request to allow signs exceeding 10 square feet at 333 Nahanton Street**
JEWISH COMMUNITY CENTER OF GREATER BOSTON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to replace two existing nonconforming signs with three signs, exceeding the maximum number and size of principal wall signs at 333 Nahanton Street, Ward 8, Newton, on land known as Section 83 Block 35 Lot 4Z, containing approximately 28.1 acres of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 5.2.7, 5.2.13.A of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 8-0; Public Hearing Closed 9/13/22**

Note: Bob Christopoli, with I.D. Sign Group represented the petitioner. Mr. Christopoli briefed the proposed plans for the petition which included removing the existing signage on the front of the building and give it a more aesthetic look. The new signage is replacing the existing signage and will be considered the principal wall sign for the building. The proposed sign measures 107 square feet in sign area.

Chief Planner Katie Whewell presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90667&isPublished=False&t=637988529790684359>

Ms. Whewell noted that the Urban Design Commission (UDC) recommended approval of the proposed sign and that the Planning Department agrees with this recommendation. Planning cited that the institutional use justifies the size of the signage proposed and it serves as a helpful way finding the entrance of the building.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Councilor Comments

Councilors expressed support for the petition.

Councilor Lucas motioned to close the Public Hearing which carried 8-0. Councilor Greenberg motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 8-0.

#414-22 Request to further extend nonconforming FAR, side setback and accessory building separation at 35 Bracebridge Road

ANDREA ROMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze and construct a new detached garage as well as replace the rear deck further extending nonconforming FAR, further reducing and extending a nonconforming a side setback for an accessory structure and further reducing nonconforming separation between the accessory and principal buildings at 35 Bracebridge Road, Ward 6, Newton, on land known as Section 64 Block 16 Lot 16, containing approximately 11,425 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, 3.4.3.A.1, 3.4.3.A.2 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 9/13/22

Note: Richard Levy, of RBL Architects, and Project Designer for the proposed project represented the petitioner. Mr. Levy briefed general site information.

The petitioner is proposing to raze and replace an existing garage with another garage that is wider by about two feet and slightly longer to gain some storage space. This project will further extend nonconforming FAR and increase the existing footprint.

Chief Planner Katie Whewell presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90663&isPublished=False&t=637988529095032297>

Ms. Whewell noted that while the Planning Department typically recommends new construction comply with the setbacks, however the site is configured in such a way that an alternate location of the proposed garage would result in an increase in paving via an extended driveway to move the proposed garage further into the site.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Councilor Comments

When reviewing the orientation and site plans, the Committee questioned whether the existing and proposed garage abuts public land. Ms. Whewell described the situation regarding the abutting land as “publicly zoned, privately owned.” The abutter to the right of this property has agreed to keep the land vacant as it provides access to the aqueduct by walking along the treeway on this abutting land.

Councilor Bowman motioned to close the Public Hearing which carried 8-0. Councilor Downs motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 8-0.

#254-22 Petition to allow marijuana retailer at 1185 Chestnut Street

NUESTRA, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retail marijuana establishment, to allow parking within the side setback, to waive perimeter screening requirements, to waive lighting requirements, to waive the 500 ft. buffer for an existing kindergarten, and to waive the 25% façade transparency requirement at 1185 Chestnut Street, Ward 5, Newton, on land known as Section 51 Block 45 Lot 09, containing approximately 17,091 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 6.10.3.D, 4.4.1, 5.1.8.A.1, 5.1.13, 5.1.9.A, 5.1.13, 5.1.10, 6.10.3.F.1, 6.10.3.F.15 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved Pending Second Call 8-0; Public Hearing Closed 9/13/22**

Note: Attorney Phil Silverman, of Vincente Sederberg, LLP, represented the petitioner. Atty. Silverman presented an update since the petition was last before the Committee. An orientation of the property was presented as landscape plans but were not submitted at the time this report was published.

It was previously discovered that the abutting property, Happy Child Daycare Center additionally serviced kindergarten children. Due to this revelation Massachusetts law as well as Newton Municipal ordinances state that a retail marijuana establishment must have a 500-foot buffer with a school.

Atty. Silverman noted that he has been in contact with the owner of Happy Child Daycare Center and that both parties have a working relationship. It was also noted by Atty. Silverman that the 500-foot buffer could be reduced if it is determined that there will not be an adverse impact from the establishment.

Atty. Silverman went on to describe future landscape efforts that will serve as an additional barrier between the establishment and Happy Child Daycare Center.

Atty. Silverman additionally cited a meeting the petitioners had with the Upper Falls Area Council where the Council supported the petition with a 7-1 vote.

Atty. Silverman was followed in presentation by Civil Site Engineer Tony Capachietti of Hayes Engineering.

Mr. Capachietti briefed a transportation demand management plan that involved providing subsidies to employees for MBTA passes, as well as additional incentives for those who walk or bike to work including reimbursements for walking or running shoes and bicycle repairs. There will also be a bicycle repair station on site.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=90661&isPublished=False&t=637988528693776808>

Public Comment

CINDY PAYSNER, 1175 Chestnut Street, spoke on behalf of another neighbor who could not be in attendance (Mr. Michael Sullivan) and asked if his letter could be read for the record. The letter was referenced during Councilor Comments.

DR. CHARLES VERGE, 1175 Chestnut Street, had objections with waiving the 500-foot buffer with the Happy Child Daycare Center. Dr. Verge referenced his career as a family and child advocate as a clinical psychologist and cited the potential effects on school-aged children.

OLGA RAMIRO BAN, 1160 Chestnut Street, voiced her opposition to the petition. She currently has two children attending the Happy Child Daycare Center. She noted traffic concerns as well as the safety of several children who play in a park 0.1 miles away from the site.

Councilor Comments

Committee Members noted that traffic increases would not be an issue citing similar concerns with previous retail marijuana establishments that proved unfounded.

Committee Members additionally questioned the landscape plan of the petition as the plan calls for Creeper Vines on the side of the building to soften the edge. However, it was stated in Committee that Creeper Vines are an invasive species of plant and may have an adverse effect on the area by pushing out native plant.

Councilor Downs motioned to close the Public Hearing which carried 8-0. Councilor Kelley motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval subject to Second Call 8-0 to review the traffic and transportation information from the engineers prior to the next full City Council meeting.

The Committee adjourned at 9:00 p.m.

Respectfully Submitted,

Richard Lipof, Chair