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James Freas  
Acting Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: January 12, 2016  
Land Use Action Date: March 29, 2016  
City Council Action Date: April 4, 2016  
90-Day Expiration Date: April 12, 2016

DATE: January 8, 2016

TO: City Council

FROM: James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Daniel Sexton, Senior Planner

SUBJECT: **Petition #416-12(6)**, MAIN GATE REALTY LLC, 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.

**Petition #416-12(7)**, JULIA WILLIAMSON/WALLY ZAINOUN, MAIN GATE REALTY, 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.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision-making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent working session.



**242-244 Commonwealth Ave**

### **EXECUTIVE SUMMARY**

The property located at 242-244 Commonwealth Avenue consists of a 7,452 square foot lot improved with a small legally nonconforming commercial building and a legally nonconforming surface parking lot in the rear. The current commercial tenants are service uses, which are not allowed uses in a Multi-Residence 1 district; however, the property owner obtained special permit approval via Board Order #416-12(3) to allow service, office, and retail uses on the first floor of the building, as well as waivers to the parking requirements. The applicants for these project amendments are requesting relief to amend the previous approval to:

#### **Petition Amendment #416-12(6)**

- Reconfigure the rear parking lot in order to create five parking stalls, where four currently exist, perpendicular to Manet Road
- Waive of the dimensional requirements for parking stall width

#### **Petition Amendment #416-12(7)**

- Modify Condition #5, to permit more than 3 customers for a service use any one time
- Modify Condition #4, to change the allowable hours of operation

The Planning Department notes that these project amendments were originally filed in June and July of 2015 with a greater amount of relief requested, and have been extensively reviewed. As such, the following analysis has been focused on the concerns raised by the Land Use Committee, Planning Department, and public at the last continued public hearing.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the City Council should consider whether:

- The literal compliance with the dimensional controls for the width of parking stalls is impracticable and would be in the public interest due to the size and shape of the existing lot. (§5.1.7 and §5.1.13)
- The change in operational controls for the fitness studio, a service use allowed on-site per special permit #416-12(3), to allow longer hours of operation and an increase in the maximum number of customers from the allowed three (3) to eleven (11), will not be substantially more detrimental to the neighborhood than the previous operational controls for the use as the petitioner has agreed to certain stipulations regulating the daily intensity of these uses. (§7.8.2.C)
- The extension of the nonconforming use on the site through the modified operational controls for the fitness studio on the first floor as developed and operated will not adversely affect the neighborhood, as there is adequate parking along Commonwealth Avenue or the carriageway for customers to park. (§7.3.3.C.2)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located at the corner of Commonwealth Avenue and Manet Road. The subject property is directly adjacent to single- and multi-family residences, and some similar neighborhood businesses (**ATTACHMENT A**). The site is also proximate to the Boston College campus, which is less than a quarter mile away to the east, and Manet Road Reservoir across Commonwealth Avenue. The subject property and most of the properties in the immediate neighborhood are zoned Multi-Residence 1, but there are pockets of properties zoned Single Residence 2 and Multi-Residence 2 (**ATTACHMENT B**).

### B. Site

The property consists of 7,452 square feet of land and is improved with a small one-story legally nonconforming commercial building and a legally nonconforming surface parking lot in the rear. The building's first floor is approximately 1,257 square feet and has had commercial uses for many years. It is divided into two tenant spaces containing 447 square feet and 318 square feet respectively, with 492 square feet of common area. In 1973, a special permit (BO #194-73) permitted the extension of the existing nonconforming office use to also allow for retail use on one side of the building. In 2012, another special permit was approved (BO #416-12) permitting office and retail uses on either side of the building, legalizing four parking stalls within the front setback for the parking lot at the rear of the site, and permitted a free-standing sign. The special permit approval granted via Board Order #416-12 was further modified by Board Order #416-12(3) to allow service uses on the site as well.

## III. PROJECT DESCRIPTION AND ANALYSIS

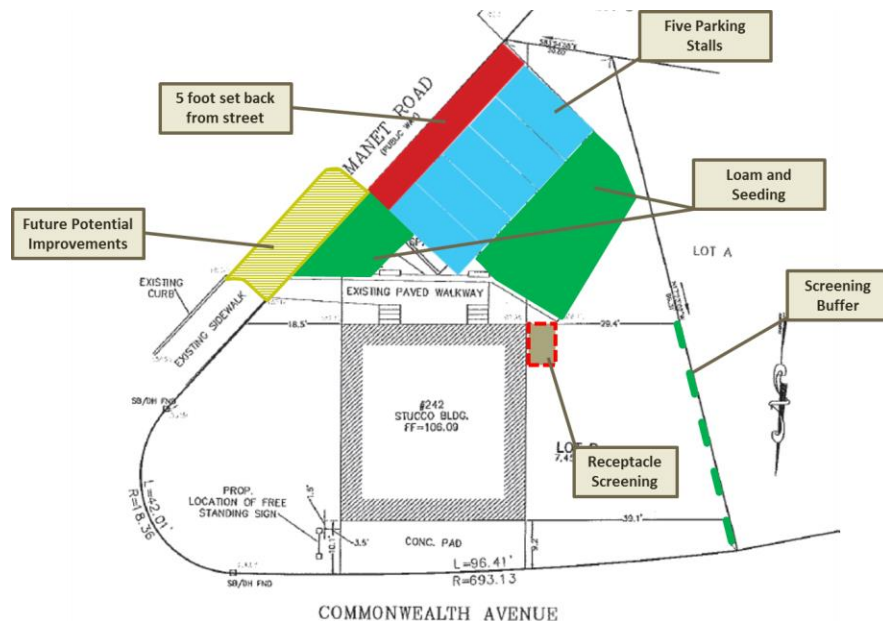
### A. Land Use

The property owner obtained special permit approval via Board Order #416-12(3) to allow service, office, and retail uses, which are not allowed uses in a Multi-Residence 1 district, on the first floor of the current building. These project amendments will not change or extend the existing nonconforming uses allowed on the site.

### B. Building and Site Design

The applicants for the proposed project amendment requests are not proposing any external or internal alterations to the building. The #416-12(6) project amendment application does, however, propose to modify certain aspects of the site design. The most significant change proposed includes the reconfiguration of the parking lot at the rear of the site in order to create five parking stalls, where four currently exist. The

proposed parking lot configuration positions parking stalls closer to Manet Road, and orientates the stalls perpendicular to the street. The remaining portions of the existing parking lot will be replaced with lawn. The applicant is also proposing to plant a row of mixed plantings, as screening, along a portion of the property line abutting the adjacent property at 252 Commonwealth Avenue. Further, the existing trash receptacles will be screened by plantings or a sight-obscuring fence to minimize the visual impact of this site area. The applicant has indicated that further upgrades to the property may be considered under a subsequent amendment request. The applicant desires to show the surrounding neighborhood and City Council that the site can operate in a manner that is compatible with the surrounding residential neighborhood.



The Planning Department notes that the applicant for the #416-12(6) project amendment has not agreed to the construction of a sidewalk extension. The Planning Department believes a sidewalk extension would provide a significant public benefit to the surrounding neighborhood, given the residential character of the immediate area. Should the Committee decide the construction of a sidewalk extension along Manet Road is appropriate, the Planning Department, based on conversations with the Engineering Division of Public Works, recommends a sidewalk extension consisting of concrete panels and granite curbing.

C. Parking and Circulation

As discussed above, the applicant for the #416-12(6) project amendment is proposing to reconfigure the parking lot at the rear of the site. The proposed parking lot will increase the number of parking stalls provided on the site from four to five. The reconfigured parking lot will position the proposed parking stalls closer

to Manet Road, and orientate the stalls perpendicular to street. To accommodate the proposed five stalls, the applicant is requesting a waiver of the dimensional control for parking stall width, which would be reduced from nine feet to eight feet.

Additionally, the applicant has indicated that two parking stalls within the reconfigured parking lot will be assigned to each of the first floor tenants and one space will be used by property owner. These assigned stalls will be used by employees only. Parking for customers of the establishments on-site will be accommodated along Commonwealth Avenue and the carriageway.

The Planning Department notes that the reconfigured parking lot layout has been reviewed by the City's Transportation Division of Public Works, and has been found to be a significant improvement over the existing conditions. The Planning Department is not concerned with the relief requested to reduce the parking stall width. In terms of the neighborhood's on-street parking capacity, the Planning Department believes nearby on-street parking can support the anticipated parking demand for the existing and expanded uses.

D. Operational Controls and Intensity

The applicant for the #416-12(7) project amendment is proposing to modify the operational controls applicable to the current fitness studio operating out of one of the first floor tenant spaces. The proposed operational changes include:

- Maximum 36 classes per week
- Maximum of two employee on-site at any given time
- Maximum class size of 11 clients per class
- Hours of operation: 7:00 a.m. to 9:30 p.m. Monday-Friday with no more than three classes beginning as early as 6:15 a.m.; 8:00 a.m. to 5:00 p.m. on Saturday; and 9:00 a.m. to 5:00 p.m. on Sunday.

The Planning Department also notes a commitment of the property owner to further restrict the rental of the first floor of the building to no more than two separate tenants, limited to low parking demand/turnover office, service, or retail uses. If the future conversion of either first floor tenant space is to a more intensive retail use, such as a convenience store or any similar use that generates more than 20 hourly vehicle trips, the property owner agrees to a stipulation requiring the further amendment of this special permit. No other stipulations governing the permitted commercial uses on the site are proposed.

The Planning Department believes that the proposed operational controls above will allow the permitted commercial uses of the site to operate in a manner similar to the currently permitted uses, while giving the surrounding neighborhood an expected level of activity. These controls combined with the site improvements will help mitigate the commercial activities on the site.

In terms of the intensity of present and future uses of the site, the Planning Department provides the following intensity projections to illustrate: (1) What can occur on-site per the previous special permit; (2) What future potential intensity may occur based on maximum occupancy of approved and proposed uses; and (3) The intensity projections are based on current and expected operational data. The data below should be used as a forecast and not fact, and the Planning Department notes that the activity of any business will vary.

**Table 1: Permitted Intensity per SP #416-12(3)**

Establishment Location	Max Occupants	Max Occupants / Day <sup>1</sup>	Max Occupants / Week <sup>2</sup>
242 Commonwealth Ave. <sup>3</sup>	3 employees / 3 customers	48	336
244 Commonwealth Ave. <sup>3</sup>		48	336
Basement Level	<i>No Tenants Allowed</i>		
<b>Total Occupancy of Site</b>		<b>96</b>	<b>672</b>

1. Based on hours of operations between 7:00 a.m. to 10:00 p.m.

2. Based on a 7-day work week

3. Based on the occupancy of the two first floor tenant spaces by service uses.

**Table 2: Maximum Intensity with Approved/Proposed Uses**

Establishment Location	Max Occupants	Max Occupants / Day	Max Occupants / Week <sup>4</sup>
242 Commonwealth Ave. <sup>1</sup>	2 employees 11 clients per class	67 <sup>2</sup>	469
244 Commonwealth Ave. <sup>3</sup>	3 employees / 3 customers	48	336
<b>Total Occupancy of Site</b>		<b>115</b>	<b>805</b>

1. Based on the petitioner's proposed schedule of 36 classes per week.

2. Based on an average of the maximum number of occupants per day.

3. Based on the petitioner's present level of occupants and hours of operations.

4. Based on a 7-day work week.

**Table 3: Intensity Based on Actual/Proposed Uses**

Establishment Location	Max Occupants	Max Occupants / Day	Max Occupants / Week <sup>4</sup>
242 Commonwealth Ave. <sup>1</sup>	2 employees Avg. 9 clients per class	Avg. 57 <sup>2</sup>	399
244 Commonwealth Ave. <sup>3</sup>	2 employees / 2 customers per hour	18	126
<b>Total Occupancy of Site</b>		<b>75</b>	<b>525</b>

1. Based on the petitioner's proposed schedule of 36 classes per week.

2. Based on an average of the maximum number of occupants per day.

3. Based on operational information obtained from Ruana Designs, which has reduced employees / clients / hours of operation.

4. Based on a 7-day work week.

As indicated above, the projected maximum weekly occupancy is slightly higher than what is allowed presently on-site under the previous special permit, as amended. The Planning Department believes the projections presented in *Table 3: Intensity Based on Actual/Proposed Uses* to be a more accurate representation of the potential impact of the uses on the surrounding neighborhood. It is important to note that the weekly occupancy projections for the proposed fitness studio, based on the average limit of nine clients per class and two employees, is slightly higher than the level of intensity allowed presently for service uses.

#### IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**ATTACHMENT A**) provides an analysis of the proposal with regard to zoning. The applicants are seeking the following reliefs:

##### Petition Amendment #416-12(6)

- §7.3, §7.4, and §7.8.2.C.2, to amend an existing special permit, Board Order #416-12(3), to reconfigure the rear parking to create five parking stalls;
- §5.1.7 and §5.1.13; to reduce the minimum parking width dimension from nine feet to eight feet;

##### Petition Amendment #416-12(7)

- §7.3, §7.4, and §7.8.2.C.2, to modify the operation controls for an existing service use to permit more than 3 customers for a service use any one time and change the allowable hours of operation.

#### V. PETITIONER'S RESPONSIBILITIES

The Planning Department believes the applicants have provided responses to all the concerns/questions previously raised. The Planning Department is supportive of the site enhancements and operational stipulations proposed by the applicants. The Planning Department, however, encourages the applicant for the #416-12(6) project amendment to consider constructing a sidewalk extension along Manet Road. In terms of the on-street parking capacity in the immediate neighborhood, the Planning Department believes nearby on-street parking can support the anticipated parking demand for the existing and proposed uses. Should the Committee determine these uses are appropriate, the Planning Department recommends that the Committee consider certain conditions.

#### **ATTACHMENTS:**






**Attachment A:** Land Use Map  
**Attachment B:** Zoning Map

# Land Use Map 242-244 Commonwealth Avenue

*City of Newton,  
Massachusetts*

## ATTACHMENT A

### Legend

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Nonprofit Organizations
-  Vacant Land



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 - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 Feet

Map Date: July 06, 2015







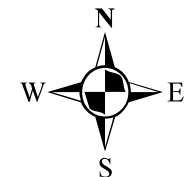


# Zoning Map 242-244 Commonwealth Avenue *City of Newton, Massachusetts*

## ATTACHMENT B

### Legend

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 2
-  Public Use



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