

Memorandum

To: Council Colleagues

From: Councilor Baker

Subject: Petitions 416-12(6) and 416(7) relating to Commonwealth Avenue Nonconforming Commercial Uses in a Residential Zone – possible amendments

Date: January 29, 2015

These items have been postponed to sort out language issues with the draft Council Order, which received a favorable recommendation from the Land Use Committee.

Subject to some possible further amendments refining the special permit draft Council Order prepared by the Law Department and the Chair of the Committee, which improves it, I expect to offer at least two amendments which are not the recommendation of the Land Use Committee. These are in my view important to meet the standard within our ordinance that the extension of the nonconforming use at the site not be substantially more detrimental than the existing use (set out in a 2013 special permit):

1. That condition 19 of the draft Order be amended to limit the maximum number of clients to 9 rather than 11.
2. That condition 20 of the draft Order be amended to change the earliest start time by replacing 6:15 a.m. with 7:00 a.m., which is the time in the current special permit.

There may be another amendment relating to screening, but it is still being sorted out.

This special permit was amended as recently as August, 2013 and allowed a massage therapy business from 7 a.m. to 10 p.m. with a limit of 3 customers on site at any one time and a similar limit of 3 staff members at any one time. It is the enforcement of this 2013 special permit because of the current use of the site by the new tenant that has led to these petitions for further amendment. The operative special permit is dated August, 2013, but also references a prior one from February, 2013. Please find both special permit Board Orders attached.

I expect to have more specifics on Monday, but I wanted to provide this early notice.

Thank you.

CITY OF NEWTON

IN BOARD OF ALDERMEN

February 19, 2013

ORDERED:

That the Board, 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 extend a nonconforming use for office and/or retail uses, a free-standing sign and a four stall parking facility as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. That allowing office and/or retail uses at this location would not be substantially more detrimental to the neighborhood than the existing nonconforming use because all of these uses would generate approximately the same traffic and parking demand as earlier uses of the site.
2. That literal compliance with the parking regulations that prohibit parking in the setback is impracticable due to the size and shape of the lot and the location of the building which has been on the lot since before parking regulations were enacted in the City.
3. That replacing an existing sign with a free-standing sign is appropriate based on the use, architecture, and location of the project.

PETITION NUMBER: #416-12

PETITIONER: Main Gate Realty

LOCATION: 242-244 Commonwealth Avenue, Ward 7, on land known as Section 61, Block 13, Lot 11, containing approximately 7,452 sq. ft. of land

OWNER: Wally Zainoun

ADDRESS OF OWNER: 11 Carter Drive, Natick, MA 01760

TO BE USED FOR: Establishing retail and/or office uses as allowed nonconforming uses on the site.

CONSTRUCTION: Interior changes only; Wood frame construction with stucco façade and tile roof

EXPLANATORY NOTES: Section 30-21(b) to extend the existing nonconforming uses of office and retail to permit the use of the entire building for office and/or retail uses; Section 30-19(g)(1) and (g)(3) and Section 30-19(m) to permit a four-stall parking facility in a required front setback with a 63 foot drive width where 20 feet is the limit; Section 30-20(e)(4) and Section 30-20(l) to erect a freestanding sign of up to 15 square feet.

ZONING: Multi-Residence 1 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 the plans entitled:
 - a. Certified Plot Plan, 242 Commonwealth Avenue, signed and stamped by Peter Nolan, Professional Land Surveyor, dated October 25, 2012.
 - b. Plan for Proposed Standing Sign, by Garrity Carved Signs Company, January 14, 2013.
2. The building cannot be used for more than two tenants, limited to office and/or retail uses.
3. The petitioner shall stripe the lot with four conforming parking stalls, one of which is 12 feet wide to accommodate a possible unsigned handicapped stall, prior to issuance of a building permit or any interior space being occupied.
4. The petitioner may install one freestanding sign as described above, not larger than 15 square feet in area, pending review of the Urban Design Commission.
5. No retail use is allowed between the hours of 10:00 p.m. and 7:00 a.m.
6. No building permit shall be issued or interior space occupied pursuant to this special permit/site plan approval until the petitioner has:
 - a. Recorded a certified copy of this board 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 board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Submitted a revised site plan signed and stamped by a Registered Land Surveyor or Professional engineer showing compliance with Condition 3. and submitted for review by the Planning Department

- d. Obtained a written statement from the Planning Department that confirms that any building permit plans are consistent with plans approved in Condition #1 and 6.c. above.

Under Suspension of Rules
Readings Waived and Approved
23 yeas 0 nays 1 vacancy

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen 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 February 21, 2013. 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 Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen 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 Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

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

CITY OF NEWTON

IN BOARD OF ALDERMEN

August 12, 2013

ORDERED:

That the Board, 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 AMENDMENT to SPECIAL PERMIT/ SITE PLAN APPROVAL #416-12 to allow for a massage therapy business, or a similar personal service business that meets the conditions described herein, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. The Board finds that allowing a massage therapy use or a similar low parking demand/turnover service business at this location would not be substantially more detrimental to the neighborhood than the previous use because the use would generate approximately the same traffic and parking demand as earlier uses of the site.

PETITION NUMBER: #416-12(3)

PETITIONER: Main Gate Realty

LOCATION: 242-244 Commonwealth Avenue, Ward 7, on land known as Section 61, Block 13, Lot 11, containing approximately 7,452 sq. ft. of land

OWNER: Wally Zainoun

ADDRESS OF OWNER: 11 Carter Drive, Natick, MA 01760

TO BE USED FOR: Establishing a massage therapy business as an allowed nonconforming use on the site

CONSTRUCTION: Interior changes only; Wood frame construction with stucco façade and tile roof

EXPLANATORY NOTES: Section 30-21(b) to extend the existing nonconforming uses of office/retail to permit the use of half of the building for massage therapy, or a similar personal service business that

meets the conditions described herein; Section 30-24 to amend the existing special permit (BO 416-12) to allow a massage therapy use on site.

ZONING: Multi-Residence 1 District

This special permit supersedes all prior special permits, and consolidates and incorporates herein those conditions and provisions from such prior special permits that remain applicable, are still in full force and effect and are set forth in this special permit. Any conditions in such prior special permits not set forth in this special permit are null and void.

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 plans entitled:
 - a. Certified Plot Plan, 242 Commonwealth Avenue, signed and stamped by Peter Nolan, Professional Land Surveyor, dated December 04, 2012.
 - b. Ground Floor Plan, 242 Commonwealth Avenue, unsigned and unstamped, created by Jay C. Walter, AIA, dated October 17, 2010.
 - c. Site Plan with Proposed Parking Layout, 242 Commonwealth Avenue, unstamped, created by Jay C. Walter, AIA, dated October 17, 2010.
2. The building cannot be rented to more than two separate tenants, limited to office, low parking demand/turnover service, or retail uses.
3. The petitioner shall allocate 2 parking stalls in the rear of the building for each use.
4. No operation of the business is allowed between the hours of 10:00 p.m. and 7:00 a.m.
5. No more than 3 customers for the service use shall be allowed on-site at any one time.
6. No more than 3 staff members for the service use are allowed on the site at any one time during operating hours.
7. There shall be at least 15 minutes between appointments for the service use so that new customers are not arriving on-site before the previous customers have left.
8. No building permit shall be issued *or interior space occupied* pursuant to this special permit/site plan approval until the petitioner has:
 - a. Recorded a certified copy of this board 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 board 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.
9. 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 surveyor, architect or engineer certifying compliance with Condition #1.

Under Suspension of Rules

Readings Waived and Approved

22 yeas 0 nays 1 absent (Alderman Fischman) 1 vacancy

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen 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 August 14, 2013. 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 Board of Aldermen

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