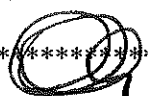


**RECEIVED**

*By City Clerk at 4:57 pm, Jan 29, 2016*

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: January 29, 2016  
TO: All Members, City Council  
FROM: Ouida C.M. Young, Associate City Solicitor  
RE: Special Permit/Site Plan Approval Applications  
#412-12 (6) & (7)  
242-244 Commonwealth Avenue

\*\*\*\*\*\*\*\*\*\*


On January 22, 2016, David Olson sent out a draft Order on the above referenced Special Permit/Site Plan Approval applications. I had also sent the Council a memorandum dated January 16, 2016, which discussed Condition ##12, and the alternate language for Conditions #13 and #14, a copy of which is attached for your information.

Since then several additional edits have been proposed for the draft Order. To help the discussion on Monday evening, I have added the edits to the draft Order in both a red line version and clean copy. Please note that except for "scrivener" edits, the additional edits will need to be discussed by the Council and offered as amendments.

Thank you.

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: January 16, 2016  
TO: All Members, City Council  
FROM: Ouida C.M. Young, Associate City Solicitor  
RE: Special Permit/Site Plan Approval Applications  
#412-12 (6) & (7)  
242-244 Commonwealth Avenue

\*\*\*\*\*\*\*\*\*\*

As you know, a draft Order for the above referenced Special Permit/Site Plan Approval applications was sent out in the Friday packet. Since that time, two points have been raised regarding the draft Order.

First, the current Special Permit controlling use of the Site allows a low-impact office, retail or a service use and includes a restriction capping the number of employees or customers that can be on-site at the same time to 3 employees/3 customers as to the service use only. "Low-impact" was defined as not generating more than 20 vehicles trips per hour.

The owner has agreed to further restrict the number of vehicle trips per hour for any use operating at the Site to 12 per hour. See Condition #12. However, the attorney representing the owner has questioned whether the Land Use Committee ("LUC") also intended to modify the current Special Permit regarding the number of customers or employees that can be on-site at the same time if there is no Fitness Studio operating at the Site.

The LUC clearly intended to modify the number of customers/employees that could be on-site at the same time with a Fitness Studio operating on-site. The new limitation of a total of 4 customers/employees on-site at the same time appears in Condition #21 of the draft Order. However, the owner's attorney believes that the LUC did not intend to modify the existing Special Permit to apply the restriction of 3 customers/3 employees to any use that occurs on the Site regardless of whether a Fitness Studio is operating at the Site.

As noted in a memorandum sent to the Council by the owner's attorney, applying this restriction to any use operating at the Site, not just a service use, is unacceptable.

Accordingly, alternative language limiting the restriction just to a service use appears immediately above Conditions ##13 and 14.

Second, while the second first floor tenant will be capped at a total of 4 customers/employees on-site at one time, the mix is slightly changed. The total of 4 may be 2/2 or 1/3 - employee to customer. See Condition #21.

Finally, please note that the revised plan reference appears in Condition #1. Thank you.

#416-12(6) and (7)  
242 -- 244 Commonwealth Avenue

CITY OF NEWTON  
IN CITY COUNCIL

February 1, 2016

ORDERED:

That the City 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 the following AMENDMENT to SPECIAL PERMIT/ SITE PLAN APPROVAL to amend the site plan approved by Order #416-12(3) to reconfigure the rear parking lot and to change the landscaping and fencing and the ALTERATION of a NONCONFORMING USE granted by Order #416-12(3) by changing the operational controls applicable to a fitness studio service use, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The applicant's proposed changes and enhancements to the site plan approved under Order #416-12(3), which consist of a reconfigured rear parking lot, landscape plantings, and a screened/fence enclosure for trash receptacles, will minimize off-site impacts and enhance the visual appearance of the site.
2. 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 applicant has agreed to certain stipulations regulating the daily intensity of these uses. (§7.8.2.C.)
3. The extension of the nonconforming use on the site through the modified operational controls for the fitness studio service use 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)
4. The applicant's proposed construction of a sidewalk extension along a portion of property frontage off Manet Road is a public benefit to the City that will enhance the safety of pedestrians and improve vehicular circulation in the immediate neighborhood.

1-22-2016 draft, includes alternate conditions ##13 & 14  
Revised 1-29-16

PETITION NUMBER: #416-12(6) and (7)

APPLICANT(S): Main Gate Realty, LLC (hereinafter "MGR"); use of the term "MGR" in this Order shall include MGR, its successors and assignees) and Julia Williamson (hereinafter the "Fitness Studio operator and any successor engaged in the same service use)

LOCATION: 242-244 Commonwealth Avenue, on land known as Section 61, Block 13, Lot 11, containing approximately 7,452 square feet of land

OWNER: Main Gate Realty, LLC(hereinafter "MGR"); use of the term "MGR" in this Order shall include MGR, its successors and assignees

ADDRESS OF OWNER: 242 Commonwealth Avenue  
Chestnut Hill, MA 02467

TO BE USED FOR: Reconfiguration of Parking Lot and Expanded Operational Controls for Fitness Studio Service Use

EXPLANATORY NOTES: §7.8.2.C., to amend an existing site plan approved in Order #416-12(3), to reconfigure the rear parking lot and add landscaping; and to further amend an existing special permit, Order #416-12(3), to permit more than three customers and change the allowed hours of operation for the Fitness Studio Service Use.

ZONING: Multi-Residence 1 district

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #419-12(6)&(7) are null and void.

Approved subject to the following conditions:

***Conditions associated with this Special Permit/Site Plan Approval, Board Order #416-12(6):***

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:

1-22-2016 draft, includes alternate conditions ##13 & 14

Revised 1-29-16

- a. Proposed plot plan titled "242-244 Commonwealth Ave., Chestnut Hill, MA – Proposed Plot Plan", prepared by Peter Nolan & Associates, LLC., dated January 15, 2016.
  - b. Ground Floor Plan, 242 Commonwealth Avenue, unsigned and unstamped, created by Jay C. Walter, AIA, dated October 17, 2010.
2. All trash and recycling areas on-site shall be maintained in a sanitary condition at all times. The collection/emptying of such receptacles shall only occur on weekdays between 8:00 a.m. and 5:00 p.m.
3. The first floor of the building shall not be occupied by more than two separate tenants, and shall be limited to office, service or retail uses with low parking demand/turnover.
4. The basement level shall not be rented ~~to~~for another tenant, or used by MGR in any way, including as an office of any type or for storage, but such level may be used as storage only by the first floor tenant spaces, tenants provided that any office furniture or equipment which may be stored by a first floor tenant is clearly in storage and not arranged in a manner that would allow the basement level to be used as an office.
5. The on-site parking facility, with four (4) designated parking stalls, shall be used for employee parking only, designed to prohibit tandem parking configurations, with one (1) space having an increased width, and assigned to specific tenants as follows: two (2) parking stalls for each of the first floor tenants.
6. No parking for customers shall be allowed in the on-site parking facility for any use at any time. Customers shall utilize legal on-street parking in the surrounding neighborhood, and are encouraged to park along Commonwealth Avenue or the carriageway.
7. No operation of any business on the site is allowed between 10:00 p.m. and 7:00 a.m.
8. There shall be at least 15 minutes between scheduled appointments for any office or service use occupying the first floor tenant spaces, so that new customers are not arriving before the previous customers have left.
9. Prior to July 29, 2016, MGR, at its sole expense, shall have installed the site improvements as shown on the site plan approved under Condition #1.
10. MGR shall maintain all landscaping and features on the site in good condition. Any plant materials that become diseased or dies shall be replaced on an annual basis with similar materials.
11. Any future change in tenants shall require a building permit from the Inspectional Services Department showing that the proposed use by the new tenant complies with the conditions in this Special Permit.
12. ~~If in the future the~~ Conversion of either first floor tenant space is to a more intensive use that generates more than 12 hourly vehicle trips is prohibited without an amendment to this special permit. ~~MGR shall be required to amend this special permit.~~

**Conditions in current Special Permit authorizing a service use at the Site:**

*No more than three (3) customers for any service use shall be allowed on-site at any one time.*

*No more than three (3) staff members for any service use are allowed on-site at any one time during operating hours.*

**Draft conditions in proposed Special Permit applying the restrictions on numbers of on-site customers and employees to any office, retail, or service use at the Site.**

13. *No more than three (3) customers for any use shall be allowed on-site at any one time.*
14. *No more than three (3) staff members for any use are allowed on-site at any one time, during operating hours.*
15. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until MGR has:
  - a. recorded a certified copy of this 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 order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the City Engineer that confirms the receipt and approval of designs and plans for the sidewalk extension proposed along Manet Road.
  - d. Obtained a written statement from the Department of Planning and Development that confirms plans submitted with any building permit are consistent with plans approved in Condition #1.
16. No Final Inspection/Certificate of Occupancy for the vacant tenant space pursuant to this Special Permit/Site Plan Approval shall be issued until MGR has:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered land surveyor certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in digital format by a licensed surveyor.
  - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing, and parking areas.

**Conditions solely associated with Special Permit/Site Plan Approval, Board Order #416-12(7):**

Notwithstanding any of the foregoing conditions which may be in conflict, the following conditions shall apply solely to the Fitness Studios Service Use, and to the entire site to the extent applicable:

17. The Fitness Studio Service Use shall have a class schedule not to exceed 30 classes per week, including showcases and other similar events.
18. The Fitness Studio Service Use shall maintain at least a 15 minute gap between scheduled classes so as to minimize the number of clients on-site at any one time.
19. The class sizes in the Fitness Studio Service Use shall be limited to one (1) instructor and up to eleven (11) clients, and the average number of clients per class within any given week shall not exceed 9, said average being calculated on the basis of the actual number of classes for such week. The Fitness Studio operator agrees to compile weekly attendance records containing only the number of clients attending each class and voluntarily make such records available for review by the Commission of Inspectional Services or his designee to confirm compliance with this Condition #19. To the extent permitted by the Massachusetts Public Records Law, any such records received by the Commissioner of Inspectional Services or his designee shall be considered confidential commercial information, voluntarily provided and exempt from public disclosure, but such records may be used with regard to enforcement of the conditions in this Special Permit.
20. The hours of operation for the Fitness Studio Service Use shall be 7:00 a.m. to 9:30 p.m. Monday-Friday with no more than two (2) 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.
21. For so long as a Fitness Studio Service Use operates at the site, the Fitness Studio Service Use shall not exceed the level of intensity authorized by Conditions #17-22, and the second first floor tenant shall have no more than four (4) persons, which may consist of either one (1) employee and three (3) customers or two (2) employees and two (2) customers, on site at any one time during operating hours, which reflects the level of intensity that exists for such second first floor tenant as of the date of this Special Permit.
22. The changes to the operational controls governing the Fitness Studio Service Use shall expire one (1) year following the date of approval unless extended by the City Council upon petition which extension may be granted without public hearing unless the City Council shall vote to require a public hearing. If in the future an extension is not granted by the City Council, Conditions #17 through #22, above, shall be null and void, and any subsequent use of the tenant space occupied by the Fitness Studio Service Use and the second tenant space shall comply with all the current and applicable requirements of the Newton Zoning Ordinance and Conditions #1 through #14.

1-22-2016 draft, includes alternate conditions ##13 & 14  
Revised 1-29-16

#416-12(6) and (7)  
242—244 Commonwealth Avenue

CITY OF NEWTON  
IN CITY COUNCIL

February 1, 2016

ORDERED:

That the City 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 the following AMENDMENT to SPECIAL PERMIT/ SITE PLAN APPROVAL to amend the site plan approved by Order #416-12(3) to reconfigure the rear parking lot and to change the landscaping and fencing and the ALTERATION of a NONCONFORMING USE granted by Order #416-12(3) by changing the operational controls applicable to a fitness studio service use, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The applicant's proposed changes and enhancements to the site plan approved under Order #416-12(3), which consist of a reconfigured rear parking lot, landscape plantings, and a screened/fence enclosure for trash receptacles, will minimize off-site impacts and enhance the visual appearance of the site.
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Revised 1-29-16

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11. Any future change in tenants shall require a building permit from the Inspectional Services Department showing that the proposed use by the new tenant complies with the conditions in this Special Permit.
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1-22-2016 draft, includes alternate conditions ##13 & 14  
Revised 1-29-16

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