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By City Clerk at 2:44 pm, Jan 29, 2016

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James Freas
Acting Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: January 29, 2016
MEETING DATE: February 2, 2016
TO: Land Use Committee of the City Council
FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
CC: Petitioner

In response to questions raised at the Land Use Committee public hearing, and/or staff technical reviews, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

PETITION #480-14(4)

283 Melrose Street

Request for Special Permit/Site Plan Approval to restore and expand an existing structure known as the Turtle Lane Playhouse with office space above, to provide a mixed use building with an addition containing four dwelling units at street level and above, and a second building containing a 16-unit multi-family structure with a below grade parking garage for 27 cars.

The Land Use Committee (the "Committee") held a public hearing on January 12, 2016, which was held open so that the petitioner could respond to questions/concerns that were raised in the Planning Department's memorandum and at the public hearing by the Committee and the public. This memo reflects additional information submitted by the petitioner and additional analysis completed by the Planning Department.

Zoning Relief

The petitioner is requesting to extend a nonconforming theater use and to allow a multi-family use and new multi-family building with a total of 20 residential units between the two buildings, some office space and associated parking waivers. The criteria for considering the request to allow the extension of a nonconforming use is that the proposed use(s) will not be substantially more detrimental than the existing nonconforming use is to the neighborhood.

In order to help mitigate the impacts of the project the applicant has worked with many of the surrounding neighbors to develop a strong set of operational conditions that are included in the

attached draft Order should the Council choose to approve this project. Parking for the 20 residential units will be met in the 27 stall garage located underneath the proposed new multi-family structure and the Planning Department has no concerns with the parking for this use which has a parking ratio of 1.35 stalls per unit, which is considered sufficient for a multi-family project with small unit sizes and proximate access to transportation and services. This ratio does not include 4 guest parking stalls that are located at grade adjacent to the multifamily building. For comparison purposes the Austin Street Project has a parking ratio of 1.25 stalls per unit. The theater use has a parking requirement of 70 stalls, but is considered grandfathered and does not technically need to provide more parking than existed (18 stalls). The applicant is proposing 20 stalls on site for the theatre use and it is also expected that theatre patrons will park in the Auburndale Commuter Parking lot and in existing surrounding parking lots which appear to be able to support the proposed number of vehicles during most times. The Planning Department recommends the petitioner include information and a map with suggested or preferred parking areas on their website with ticket information so that patrons are able to locate parking as easily as possible and with minimal circulation and disruption to the neighborhood. The neighborhood has expressed concerns about parking when theater productions or events will conflict with the hours of the nearby Korean Church and when productions or events conclude in the late evening hours. The Planning Department believes that many of the conditions in the draft Order should help to mitigate neighborhood concerns.

Landscaping

The petitioner submitted a landscape plan dated January 12, 2016 which shows a six foot high solid board fence on the north and west property lines. New street trees are proposed on Melrose Street. The Planning Department recommends that some of the proposed deciduous trees on the north property line be changes to evergreen trees to help soften the mass of the proposed multi-family building and that one additional evergreen tree be added near the western property line.

Comprehensive Plan

The Planning Department believes that there are benefits to this project which advance certain goals of the *Comprehensive Plan*, including the restoration of the Turtle Lane Playhouse, which is a unique and valuable cultural asset to the City, and the diversification of the City's housing stock by providing smaller, accessible residential units near transportation and services. The site occupies a transitional location between the commercial center of Auburndale's village center and the surrounding residential neighborhood which also contains a number of active church uses. This project provides an infill development proximate to public transportation and amenities meeting the principals of smart growth (p. 1-3). The Planning Department believes that the mix of theatre and housing will contribute to the character and vitality of Auburndale Village.

Land Use Alternatives

The site is zoned Multi-Residence 1 which allows for single-family and two-family detached structures on 10,000 square foot lots. Based on the lot size it is conceivable that a developer could locate 3-4 two family houses on the lot. Setback requirements for new lots are 30 feet for the front, 10 feet for the side, and 15 feet for the rear (minimum). A special permit could also be sought for attached dwellings in this zone. Attached dwelling have a minimum lot area per unit of 4,000 square feet however, it is unlikely that the maximum number of units allowed would be approved. Attached

dwellings require 25 foot setbacks on all sides although this is a waivable requirement by special permit. It is also conceivable that a developer might seek a comprehensive permit for a multi-family structure which is not allowed by special permit except under the provision to extend a nonconforming use. Finally, it should be noted that a change in zone could also be requested but would need to be approved by a 2/3 vote of the City Council. Educational, religious and daycare uses are allowed in any district subject to parking requirements and reasonable dimensional regulations.

Phasing of the Project

The Planning Department recommends that the petitioner be required to complete the entire project in one phase and that Certificates of Occupancy for the residential building be contingent on the completion on the theatre use.

ATTACHMENTS:

Attachment A: Draft Board Order

CITY OF NEWTON
CITY COUNCIL

February 15, 2016

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow for the change of one nonconforming use to another to restore and expand the existing structure known as the Turtle Lane Playhouse with office space above, to expand the building with an addition containing four (4) dwelling units and to construct a multi-family building containing sixteen (16) residential units with a below grade parking garage for 27 cars, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The extension of a nonconforming use will not be substantially more detrimental than the existing nonconforming use to the neighborhood as the theatre use has existed at the site for many years and all parking for the residential units will be accommodated on site. (§7.8.2.C.2.)
2. The specific site is an appropriate location for the proposed project, as the site is located in a mixed use neighborhood proximate to the village center and public transportation, and the project will allow for the preservation of the theatre use. (§7.3.3.C.1.)
3. The proposed project, as developed and operated, will not adversely affect the neighborhood, as there is sufficient parking on the site for the proposed office and residential uses, and sufficient proximate parking in the neighborhood for the theatre during peak occupancy. The theatre use has operated at the site for approximately 30 years, and the addition of a residential use to the site will not significantly increase traffic in the surrounding neighborhood. (§7.3.3.C.2.)
4. There will be no nuisance or serious hazard to vehicles or pedestrians. The site plan meets the dimensional requirements for driveway width, aisle width and parking stalls, and the Engineering Division has reviewed the site for grading and drainage, including the garage ramp. The petitioner will provide a new pedestrian sidewalk along the frontage of their property to improve pedestrian access. (§7.3.3.C.3.)

5. Access to the site over streets is appropriate for the types and numbers of vehicles involved, as the site is proximate to major roads and the interstate highway. The Fire Department has reviewed and approved the site plan for emergency access. (§7.3.3.C.4.)
6. The proposed construction of the building will meet or exceed the building code as it relates to energy efficiency, will utilize efficient lighting, and will utilize recycled building materials to the extent practicable. The proposed site plan will improve storm water quality and groundwater recharge as required by the Massachusetts Department of Environmental Protection and the City of Newton's Department of Public Works and will be in conformance with the City's storm water policy. For these reasons the proposed project will contribute significantly to the efficient use and conservation of natural resources and energy. (§7.3.3.C.5.)
7. The proposed project, which will allow an aggregate building size in excess of 20,000 square feet of gross floor area, will provide modestly sized dwelling units, including affordable and accessible units, is proximate to Auburndale Village center and the commuter rail, and will assist in the preservation of the existing theatre use. (§4.2.2.B.1)
8. The proposed project requires waivers for certain dimensional requirements including to allow a building with three stories and to determine the required front, side and rear setbacks for the nonconforming uses. These waivers are appropriate, as the building height will be in keeping with the neighborhood, and the setbacks are appropriate for the proposed structures. (§3.2.3. and §3.2.2.A.3.)
9. The construction of a retaining wall in excess of four feet in the setback, which will support the garage entrance, will not impact the neighborhood, as it will be minimally visible from abutting properties and the public way. (§5.4.2.B.)
10. Literal compliance with the parking requirements is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or such exceptions would be in the public interest or in the interest of safety or protection of environmental features. The reduction from 2 to 1.25 parking stalls per dwelling units is appropriate given the size of the units and the proximity to a village center and transportation options and will promote the use of public transportation, bicycling and walking. (§5.1.4. and §5.1.13.)
11. The proposed lighting plan is sufficient to safely light the site with minimal impact to abutters. (§5.1.10.A.)

PETITION NUMBER: #480-14(4)

PETITIONER: Stephen Vona

LOCATION: 283 Melrose Street, on land known as Section 41, Block 14, Lot 10, containing approx. 43,783 square feet of land

OWNER: Stephen Vona

ADDRESS OF OWNER: 77 Oldham Road
Newton, MA 02458

TO BE USED FOR: To preserve the existing theatre building, to construct an addition to the existing building to be used for four residential units, and to construct a new multi-family dwelling with 16 units.

EXPLANATORY NOTES: §7.8.2.C.2. to allow an extension of a nonconforming use; §3.2.3. to allow a building with three stories; §3.2.2.A.3. to determine the required front, side and rear setbacks of the multi-family structure; §5.4.2.B. to allow a retaining wall in excess of four feet in the setback; §5.1.4. and §5.1.13. to allow the reduction from 2 to 1.25 parking stalls per dwelling units; 5.1.10.A. to waive the lighting requirements for the parking facility.

ZONING: Multi Residence 1

Approved subject to the following conditions:

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions remain applicable. Any conditions in prior special permits not set forth in this special permit are null and void.

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:
 - a. Civil Plans, prepared, stamped and signed by Peter J. Nolan, Professional Land Surveyor, consisting of the following sheets.
 - i. 1 – Site Grading Plan last revised on 11/21/15
 - ii. 2 – Site Utility Plan last revised on 11/21/15
 - iii. 4 – Detail Sheet last revised on 11/21/15
 - iv. 5 – Watershed Map last revised on 11/23/15
 - v. 6 – Watershed Map last revised on 11/23/15

- vi. 8 – Garage Ramp Profiles dated 11/21/15
- b. Architectural Plans, prepared by Schnee Architects, Inc., dated 7/27/15, consisting of the following eighteen (18) sheets:
 - i. A101B – Overall Site Plan dated 7/27/15
 - ii. A111A – Bldg C Elevations dated 7/27/15
 - iii. A111 – Bldg A, B Elevations dated 7/27/15
 - iv. A111B – Elevations dated 6/9/14
 - v. A101 – Overall First Level dated 7/27/15
 - vi. A103 – Building A/B – Level 1 dated 7/27/15
 - vii. A104 – Building A/B – Level 2 dated 7/27/15
 - viii. A105 – Building A/B – Level 3 dated 12/3/2014
 - ix. A106 – Building A/B – Roof dated 12/3/14
 - x. A107 – Building C – Parking dated 7/27/15
 - xi. A108 – Building C – Level 1 dated 7/27/15
 - xii. A109 – Building C – Level 2 dated 7/27/15
 - xiii. A109B – Building C – Level 3 dated 7/27/15
 - xiv. A110 – Building C – Roof Ridge dated 7/27/15
 - xv. A112A – 3D View dated 7/27/15
 - xvi. A112B – 3D View dated 7/27/15
 - xvii. A112C – 3D View dated 7/27/15
 - xviii. A101-L - Site Lighting Plan dated 1/6/15
- c. Planting Plan dated 1/10/2016

Double check all plans and dates

2. The theatre and events use shall be limited to no more than 200 patrons/attendees, and all staff shall be encouraged to park off-site during large productions and events.
3. The theatre will post a parking map on their ticketing website indicating preferred parking areas including the commuter parking lot, municipal lots, and lots that are not utilized or are underutilized on evening and weekend hours in order to minimize unnecessary vehicular circulation and disruption to nearby residents.
4. The theatre will complete a parking study approximately one year after reaching standard operational capacity to measure the impact of the theatre use on the surrounding neighborhood. The theatre will meet with the director of Planning and Development and the City Traffic Engineer to discuss the results of the study and any parking changes that should be made through Traffic Council.

5. The theater operator agrees to an annual meeting with Councilors and abutters to review operations and neighborhood concerns as necessary.
6. The hours of operation of the proposed theatre, including theatre shows and special events such as weddings, corporate events, and recitals shall be limited to Wednesday through Saturday, 7:00 pm to 11:30 pm and Sunday from 12:00 pm to 10:00 pm. Mondays and Tuesdays will be closed for public events but may include general business operations and rehearsals. Summer camp shall be allowed during July and August, Monday through Friday from 8:00 am to 5:00 pm. The number of students shall be limited to 30 students.
7. No alcohol shall be served within one hour of the end of any event. This condition shall not apply to theatre rehearsals and similar events which are not open to the public and do not generate significant vehicle trips.
8. The theatre operator agrees to employ and pay for a parking attendant and/or police detail as needed for large events.
9. With the exception of summer camp operations, there shall be no outdoor operations or functions, no tent events, music or consumption of alcohol outside on the premises.
10. The theatre use is restricted to theatre productions and special events but shall not include use as a public bar, nightclub, or rock concert venue.
11. The theatre agrees to allow some reasonable and free access to the building for community events that do not conflict with productions or events.
12. The theatre building shall be properly soundproofed and windows shall be kept closed during events.
13. Trash pickup and deliveries shall be limited to the hours of 9:00 am to 5:00 pm to the extent practicable.
14. Snow shall be stored on site or removed so as not to limit available parking or negatively impact abutters.
15. Any exterior lighting shall be shielded so as not to impact abutters.
16. The property and all landscaping shall be maintained in first class condition. Proposed changes to the above referenced landscape plan shall be reviewed and approved by the Director of Planning.
17. Contact information for the theatre operator and property manager shall be available on the theatre's website.
18. Prior to the issuance of a building permit for any of the residential units the petitioner shall submit an Inclusionary Housing Plan evidencing compliance with the City's Inclusionary Zoning Ordinance, to the Director of Planning and Development for review and approval.
19. Prior to the issuance of a building permit for the construction of the 16 unit multi-family building the petitioner shall submit evidence to the City's Law Department evidencing resolution of the adverse possession claim.

20. Prior to any Certificates of Occupancy the petitioner shall construct, at its sole expense, a new ADA compliance granite sidewalk along its frontage on Melrose Street. The petitioner shall work with the City's Planning Department and the Transportation Division and Engineering Division of the Public Works Department to determine the final design of the sidewalk and to find an alternative location for the Business Permit Parking Stalls currently located along such frontage during construction.
21. The petitioner shall work with the City's Planning Department, the Transportation Division and Engineering Division of the Public Works Department, the Fire Department, and the Board of Alderman to design a new pedestrian crossing on Melrose Street at the north side of the traffic circle, and to modify the existing island adjacent to where the crosswalk would be located, as necessary. The petitioner shall pay for the cost to design and implement the new pedestrian crosswalk and all work shall be completed prior to any certificates of occupancy
22. Any modifications to the uses proposed under this special permit, which include the theatre, residential and office uses shall require an amendment to this special permit.
23. If the theatre use is terminated and another uses operates in its place, the parking waiver/grandfathered parking stalls associate with the theatre use shall cease. Any future use of the theatre space shall comply with the parking requirements or shall amend this special permit to allow for waiver.
24. Prior to the issuance of any building permit the petitioner shall submit a final Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the Department of Public Works. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Board Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. The proposed schedule of the project, including the general phasing of the construction activities.
 - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck

and construction vehicles before exiting the site.

- f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
- g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
- h. A plan for rodent control during construction.

25. 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 Order for the approved Special Permit/Site Plan Approval 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plans.
- d. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 and that the petitioner is in compliance with all relevant conditions of this Order.
- e. Submit evidence to the Planning and Law Departments that the adverse possession law suit has been resolved with no change to the site.

26. No Final Inspection/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 architect or engineer 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 paper and digital format by a licensed surveyor.
- c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
- d. Incorporated the approved Operations and Maintenance Plan for Storm water Management on file with the City Clerk's Office into the Master Deed, which shall be recorded in conjunction with the completion of the construction of such special permit, proof of which shall be submitted to the Engineering Division.

- e. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
 - f. Obtained a written statement from the Planning Department that confirms the petitioner has complied with the inclusionary housing requirements and all relevant conditions of this Order.
27. Notwithstanding the provisions of Condition #26e. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.