



## Land Use Committee Report

### City of Newton In City Council

**Tuesday, February 2, 2016**

Present: Councilors Laredo (Chair), Lennon, Auchincloss, Cote, Harney, Schwartz; absent: Councilor Crossley and Lipof; also present: Councilors Gentile, Sangiolo, Leary, Hess-Mahan, Albright

Staff: Ouida Young (Associate City Solicitor), Robert Waddick (Assistant City Solicitor), Alexandra Ananth (Chief Planner), and David Olson (City Clerk)

**Request for a Consistency Ruling relative to the Chestnut Hill Shopping Center LLC ("the Street").** The Chestnut Hill Shopping Center LLC, as required by Special Permit #161-11(2), condition 16, requests an alteration to the existing first floor lobby to provide clearance for two new escalators.

**ACTION:**       **The Land Use Committee was in favor.**

**NOTE:**       Ms. Ananth explained that this is a site governed by a Special Permit. A tenant is being relocated. The Container Store is moving from 27 Boylston Street to 55 Boylston Street. The basic change is the widening of a doorway to accommodate this tenant. The location is 55 Boylston Street at the rear of the building facing the pond. The proposal is to bump out this space in line with existing façade along with adding a double door. The container store currently occupies 27,000 sq. ft. presently and will occupy 25,000 sq. ft. in the new location. Basically this is tenant relocation and a minor change to the doors.

**#480-14(4)   Petition to expand Turtle Lane Playhouse and construct second building for a mixed-use project**

STEPHEN VONA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to change one nonconforming use to another by restoring and expanding an existing structure known as the Turtle Lane Playhouse with office space above, to provide a mixed-use building with an addition containing 4 dwelling units at street level and above and a second building containing a 16-unit multi-family dwelling with a below grade parking garage for 27 cars at 283 MELROSE STREET, Ward 4, Auburndale, on land known as SBL 41, 14, 10 containing approximately 43,783 sf of land currently zoned MULTI-RESIDENCE 1 *or in the alternative in a proposed MIXED USE 4 DISTRICT*. Ref: Sec. 7.3, 7.4, 7.8.2.C, 4.4.1, 4.2.2.B.1, 4.2.5.A.1, 4.2.5.A.6.b, 5.4.2, 5.1.4, 5.1.13, 5.1.4.C, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

***Public Hearing Opened on January 12 and continued to February 2, 2016***

**ACTION:**       **Public Hearing continued to February 23, Land Use Held 6-0**

**NOTE:**       Attorney Morris noted that the formal presentation was completed at the last meeting. The Board Order included in the packet was responded to by Mr. Kaplan who

represents the neighbors and abutters. Attorney Morris also reviewed this with an effort to reach a consensus on all the language changes in order to make the Committee deliberations simpler, it was then submitted back to the Committee as well as to Ms. Ananth and Mr. Kaplan. Attorney Morris said that whether or not the hearing is closed, he feels the discussion of the Board Order will help highlight whether any additional information is needed. What was not agreed to in the Board Order is still there for discussion. One important provision agreed to is a two- year look back provision which was proposed by neighbors. It is recognized that historically there has been a three-year look back and that would be comfortable.

Ms. Ananth explained to develop the site as proposed, the petitioner is asking to make changes including one non-conforming use to another, seeking relief for a building with three stories, determine the required front, side and rear setbacks for the multi-family building because that is not a use allowed in the zone. There is a request for a retaining wall in excess of four feet in the setback to support the ramp that goes down to the parking garage; to allow the reduction from two to one and a quarter parking stalls per dwelling unit for the residential units and to waive some lighting requirements for the parking facilities. The criteria to consider is that the extension of a non-conforming use will not be substantially more detrimental than the existing non-conforming uses to the neighborhood. The standard Special Permit guideline includes that the site is an appropriate location for the proposed project, the use is developed and operated to not adversely affect the neighborhood, no nuisance or serious hazards to vehicles or pedestrians, access to the site over streets is appropriate for the types and numbers of vehicles involved. The long term maintenance of the premises will contribute to the efficient use and conservation of natural resources and energy. Literal compliance with the parking requirements is not practical due to the location, size, width, depth and shape or grade of the lot or such exceptions would be in the public interest or in the interest of safety or the protection of environmental features.

Councilor Schwartz questioned the surrounding buildings, especially towards Commonwealth Avenue as far as height in relation to the proposed building. Ms. Ananth responded that the existing structure is 35 ft. high and it would remain at that height if the new addition does not go higher than the peak and the residential building has a peak of 33 feet. Those heights are very consistent with surrounding residences.

Barbara Zeles, 267 Melrose Street, direct abutter to the north, said that the Newton demographic study notes that 21% of the housing on the north side of Auburndale is composed of five or more units and 16% of the houses are two to four units. There is quite a bit of multi-family housing in this neighborhood. Ms. Zeles requested denial of the request for a third story on the proposed residential building and to establish reasonable setbacks at the corner of Melrose and Ash Street.

David Herlihy, 14 Staniford Street, Auburndale – Noted that the developer and attorney have accepted the vast majority of the requests of the abutters. The concerns have been more than adequately addressed in good faith by the developer. The design of the project is

outstanding and the type of housing, accessibility as well as the location make it a prime example of a community development here. Units are small and accessible and in line with current and future housing needs in Newton and the three affordable units are a real bonus in a project that is not 40B. The density of the project is similar to the density in the immediate neighborhood which consists primarily of two family and multi-family homes. The developer has cut back significantly from the original proposal eliminating a restaurant, retail shop, several housing units in response to community feedback. The developer has made more than half a dozen major reductions in the size, scope and density of this project to accommodate concerns of opponents. Each change will require significant expense, including architectural plans and approvals, engineering review and believes the time has come to support the wishes of the community and respectfully requests a vote to conclude public comment and vote for the proposal as it is.

Rich Kaplan, 12 Woodbine Street - representing his family and a representative of over thirty households, belonging to the community group composed of concerned residents and primarily Auburndale Community Members. Contrary to what Mr. Herlihy just said the neighborhood has been working very hard to try and work out the conditions recently and have come a long way and progressed on the conditions to be imposed on the property. It would do no one any good to rush this through with the most important critical phase of this whole project which is the conditions to be imposed on it. The as-of-right here would be 8 units, now there is a proposal of 20 units. Abutters are very concerned about the height. They would like a 4 unit reduction. That is one of the major issues. The abutters would like the third floor taken out of the residential building; the rest of the group would like to see the four rental units taken out of the theatre building and have the elevation look like what Mr. Vona said at the beginning. The building could be a little bit smaller, save the trees and make it greener and have the appearance similar to, and maintained as it has been, for a hundred years. The Special Permit review of a three year look back would be fine. Hours of operation are important and think there is some misunderstanding regarding 11 o'clock and that can be worked out. There should be some sort of specs incorporated into the order; the number of units is an issue, the number of vehicles per resident, number of summer camper participants, landscaping and limiting the number of events at any given time and lastly the parking issue. If there are matinees on Wednesdays, the prime parking available will be in Auburndale Square. If the limited parking is taken up by the theatre patrons, it will hurt the merchants and should be dealt with by the Traffic Council.

Chair Laredo explained that this is a quasi-judicial body which means acting essentially like judges. What neighbors and abutters think about a particular project is important, however, this is not a negotiation between abutters and the petitioner that is signed off on; the views of the petitioner and abutters are taken into account but ultimately it is the decision of the Land Use Committee and the Council to approve or not approve a petition, when to include or not include particular conditions. Chair Laredo does not mean to diminish the importance of the role of neighbors in this process but it is not a negotiation. It is the duty of the Land Use

Committee under the statute to act as essentially judge-like individuals when collective judgment on a petition is passed.

Ann Whiting, 187 Melrose Street - Speaking on behalf of her mother questioned what, by right; does this parcel of land have to build? When it is said that the developer has been generous, cutting down and cutting back, what has really happened here is the developer has over-reached. The developer hoped that neighbors would not object and that City Councilors would be asleep at the wheel. The speaker, who has worked in real estate, noted that when you take a one acre parcel of land and want to change the zoning, keep the theatre, add a function facility, a restaurant, office buildings, 30 condominiums with under-ground parking, that in her opinion, is over-reaching. If this was the initial plan with 16 units, no theatre, no restaurant, it would be massive in this site. At this point, the developer has been given more than what was fair. It was an over reach to begin with. This is a residential neighborhood and it is hoped that consideration will be given that when this project was introduced, it was massive and an over development request of the site.

Marie Caruso, 278 Melrose Street - This is currently a dense neighborhood and adding more units will just add to the density. Discussion regarding use of the municipal lot at the end of Melrose Avenue and people leaving the theatre late at night is not conducive to a residential neighborhood. There could be up to 200 people exiting the theatre, not all going down Melrose Avenue, but it will change the atmosphere of the neighborhood. Ms. Caruso would like to see the number of units reduced and consideration given to the neighborhood.

Peter Robinson, 210 Melrose Street - Mr. Robinson has lived at this address for 37 years. He has been a member of the Friends of Turtle Lane for some time and worked with the abutters and neighbors in that group and wanted to emphasize how far everybody has come in this process; not only Mr. Vona, but the neighbors and abutters. In his opinion, the decision should not be rushed when it is very close to everybody agreeing to a package that can be unanimous and without controversy and understands this is a quasi-judicial body. He feels it would be good for the community to take advantage of the expertise and relationship Mr. Kaplan has built in working on the draft conditions with Atty. Morris and the neighbors in this process.

Theresa Cassidy, Ash Street, Auburndale - Stated she was a direct abutter and wanted to agree with Mr. Kaplan. She still thinks 16 units is huge and hopes a vote will be postponed and discussions continued.

Marion Zelis, 267 Melrose Street – Stated that a great feature of her home is the large southern exposure that fills her house with sunlight and warmth. The third floor on the residential building will take away sunlight for several months of the year, specifically during the late fall, winter, and early spring. It would eliminate the solar heating benefits and raise heating bills. It would also reduce the privacy of abutting homes. The existence of the third floor will have a huge impact on the daily lives of abutters. She would prefer the removal of the

third story of the residential building because of the daily impact it will have on the quality of life.

Councilor Gentile, 99 Aspen Avenue - He wants to be sure that the full scope of the project is understood. The current site is 43,000 sq. ft. There is currently a lawsuit between the developer and the owners to the north. It is extremely important that it is clear to everybody what the by-right option is. The petitioner can reopen the existing theatre, though some would argue that use has been abandoned or if the site remains at 43,000 sq. ft., they could build eight units, if it were to go to less than 40,000 sq. ft., then six units could be built. (Either or, not both.) The free-standing building is 140 ft. long, it is an uninterrupted wall of building, and it abuts the property owned by the Zelis family. The front of the building is 56 ½ feet wide and towards the end it is 38 ½ feet wide, 17,400 sq. ft. of building and the intent is to house 16 units. Building A is the existing theatre, 6,688 sq. ft. The developer is proposing to add an addition of 6,337 ft. in addition to the 6,688 from the existing theatre. This is built in order to develop the four units of rental housing. The current building is set back considerably from the sidewalk that is out front. At its closest point, the setback is around 85 to 95 feet and as far as 120 feet as the sidewalk widens out. The set back today provides for a good size front yard as it has done for the last 165 years when it was first built as a single family home. If this proposal is approved as is, the open space in front of the building goes away and the new setbacks are 10.67 ft. to Melrose and 12 ¼ ft. to Ash Street. This is more than just the number of units. This is about the site plan. In conclusion, as proposed we have a 40,000 sq. ft. lot with two buildings that total 30,437 sq. ft. In addition there are 24 surface parking spaces. There is a 10,000 sq. ft. underground parking garage. The neighbors are being very realistic. The developer has been asked to remove four units. Councilor Gentile said his preference, and the preference of others, would be to remove Plan B in the four rental units and to leave the open space in the front of the existing building as it has always been.

It was the intent of Chair Laredo not to close the Public Hearing. He said if there were a number of open issues after discussion, there will be no vote.

Atty. Morris said there is some room for movement in reducing the number of units. These units now average less than 900 sq. ft. per unit and thought that was a benefit because it was serving an element of the housing market that is not met in Newton. The building was brought close to the sidewalk to try to match the commercial building across the street.

The architect for this project explained that the design of the addition to the theatre is to bring it out to the street. It was the intent to get the sweep of the curve on the corner. Ms. Ananth thought it was a slightly awkward transition from the new residential building and it seemed high for the residential uses. In her opinion, it was the one awkward piece in a building that otherwise was positive. The architect felt it was not inconsistent with Auburn Street and the elements that are flanking the square.

Councilor Schwartz questioned what was in the top story and the response was a one and half story, cathedral ceiling space within the top floor unit.

President Lennon questioned combining the units. Councilor Gentile had asked that there be consideration to remove the four units in the front yard. Mr. Vona, explained that this project was developed to provide entry level size affordable units. There has been an attempt to keep the units not at the standardized size units. Staying within the same footprint, it could be possible to change the 16 unit building into a 14 unit building.

A comment made by Councilor Gentile is that the restoration of the theatre is a very good thing; not only for Auburndale but the entire City. He continued to say the fairest thing for all would have been a two story building; removing the top floor. He understands that there would not be enough support for that and the next best option would be to preserve the open space. These are small units and there is a definite need for them. He asked that the setbacks be preserved and the 4 rental units be eliminated.

Ms. Ananth went over the proposed Board Order. Councilor Sangiolo would like to see a dedicated formalized Liaison Committee. Chair Laredo suggested some changes in hours could be a plus for the community. He would not like an intensity of use but this is a resource and would like it used in a positive manner. Clarification was asked for how the liquor license, etc. would be handled. Chair Laredo made the suggestion of having an acoustical engineer involved in the soundproofing plans. There was discussion regarding language that would state completion be done by a certain period of time that could be enforceable. Chair Laredo said that no Certificates of Occupancy be issued at all until the theatre is at a certain point. Councilor Sangiolo and Councilor Harney met with neighbors and noted they were adamant about not having any outdoor use. With any Special Permit, people can come back with amendments and that may be the case but that was a condition that was felt very strongly about. Chair Laredo said to weigh the best interest of the project and while the neighbors and abutters views are very important, they are not the only consideration. Councilor Albright had a question concerning the construction hours. Since this is near a residential neighborhood; there was question whether the construction hours should be 7 to 5 instead of 7 to 7. Chair Laredo said this would seem to be only three to four months a year. It was suggested that this be discussed with the abutters and the petitioner. Councilor Auchincloss referred to the condition that dealt with no outdoor operations or functions. He felt that was very restrictive for all the future permeations that might occur. He was questioning whether approval could be granted on a one time basis. Councilor Sangiolo said that issue was discussed and when she and Councilor Harney met with neighbors they reiterated that they did not want any outdoor use. Chair Laredo said while neighbors and abutters views are very important, they are not the only consideration.

Committee will meet again on February 23<sup>rd</sup> for further discussion on this item.

**Referred to Land Use and Finance Committees**

**#356-15      Request for CPA funding for two units of affordable housing at 10-12 Cambria Road**

COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of four hundred seventy-one thousand one hundred seventeen dollars (\$471,117) from the Community Preservation Fund to the Planning & Development Department for a grant to Citizens for Affordable Housing Development in Newton (CAN-DO), to create two units of permanently affordable rental housing at 10-12 Cambria Road, as described in the proposal submitted to the Community Preservation Committee in October 2015.

**ACTION:      Land Use Approved 6-0**

**NOTE:**      Jane Sender, Vice-Chair of the Community Preservation Committee, was present. This money was requested to rehabilitate a two-family home on Cambria Road for affordable housing. Councilor Cote explained this was a project from CAN-DO. He stated that no issues have come up and would like to see this move forward. Ms. Sender explained how this amount of support compares to previous projects and how that works out with our housing strategy. She said this project is a little more financially responsible than the previous project. It is \$390,205 per unit as opposed to the previous project which was \$482,014. Josephine McNeil was present and explained all the needs would be covered. Councilor Albright noted that with the exception of the recent Austin Street project, CAN-DO continues to be the only creator of affordable housing in Newton. This is the type of affordable housing that is the most acceptable to everybody in the city.

Respectfully submitted,

Marc C. Laredo, Chair