

CITY OF NEWTON
CITY COUNCIL

March 7, 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 office space 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 and expansion of a nonconforming use will not be substantially more detrimental than the existing nonconforming use to the neighborhood as the theater use (which shall be the primary use of Building A) 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 transitional residential neighborhood proximate to the village center and public transportation, and the project will allow for the preservation of the theater 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 public parking on Auburn Street, Auburndale Village Center, and the City parking lots in the neighborhood, for the theater during peak occupancy. The theater use has operated at the site for approximately thirty (30) years, and the addition of residential and office uses to the site should not significantly increase traffic in the surrounding neighborhood. (§7.3.3.C.2.)
4. There should be no nuisance or serious hazard to vehicles or pedestrians, as the theater owner/operator will control traffic and parking during peak theater/event hours. 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 its 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, sized from approximately 662 sf to 1189 sf, including affordable and accessible units, is proximate to Auburndale Village center and the commuter rail, and will assist in the preservation of the existing theater 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 reinforced concrete retaining wall in excess of four feet in height 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. The reduction from 2 to 1.25 parking stalls per dwelling unit 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. An exception from the requirement of 2 parking stalls per dwelling unit is therefore in the public interest. Parking for the dwelling units will be located in the basement garage which has 27 parking stalls. An additional 24 surface parking stalls will be available for the theater/office uses and visitor parking, with the theater use being entitled to claim credit for 70 "grandfathered" parking stalls. The total combined office space has a parking requirement of 22 stalls. (§5.1.4. and §5.1.13.)

11. The proposed lighting plan is sufficient to safely light the site with minimal impact to abutters and a waiver from the lighting requirements for parking facilities is appropriate. (§5.1.10.A.)

PETITION NUMBER: #480-14(4)

PETITIONER: Stephen Vona, and his successors and assignees

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, and his successors and assignees

ADDRESS OF OWNER: 77 Oldham Road
Newton, MA 02458

TO BE USED FOR: To preserve the existing theater building (Building A), to construct an addition to the existing building to be used for office space (Building B), and to construct a new multi-family dwelling with 16 units (Building C).

EXPLANATORY NOTES: §7.8.2.C.2. to allow an extension and expansion 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 height in the setback; §5.1.4. and §5.1.13. to allow the reduction from 2 to 1.25 parking stalls per dwelling unit; 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, Collated Submission Set dated 2/23/16
 - i. 1 – Site Grading Plan last revised on 2/23/16

- ii. 2 – Site Utility Plan last revised on 2/23/16
 - iii. 3 – Drainage Profiles last revised on 2/23/16
 - iv. 4 – Detail Sheet last revised on 2/23/16
 - v. 5 – Watershed Map last revised on 2/23/16
 - vi. 6 – Watershed Map last revised on 2/23/16
 - vii. 7 - Fire Truck Turnong Plan last revised on 2/23/16
 - viii. 8 – Garage Ramp Profiles last revised on 2/23/16
- b. Architectural Plans, prepared by Schnee Architects, Inc., Collated Submission Set dated 2/23/16, consisting of the following twenty (22) sheets:
- i. A101B – Overall Site Plan dated 2/23/16
 - 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 2/23/16
 - vii. A104 – Building A/B – Level 2 dated 2/23/16
 - viii. A105 – Building A/B – Level 3 dated 2/23/16
 - ix. A106 – Building A/B – Roof dated 2/23/16
 - x. A107 – Building C – Parking dated 7/27/15
 - xi. A108 – Building C – Level 1 dated 2/01/16
 - 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. A111 – Building A, B Elevations dated 2/23/16
 - xvi. A112RVT – 3D View dated 2/23/16
 - xvii. A112B – 3D View dated 2/23/16
 - xviii. A112C – 3D View dated 2/23/16
 - xix. A112D - 3D View dated 2/23/16
 - xx. A101-L - Site Lighting Plan dated 1/6/15
 - xxi. Planting Plan dated 1/10/2016, with amended fencing plan
 - xxii. Revised Shadow Study Plan dated 01/08/2016
- c. Area Calculations for the Village at Turtle Lane dated 2/23/16

2. The theater use shall be the primary use of the Theater Building (the term “Theater Building,” as used hereunder, shall mean Building A) and the event use shall be an accessory use to the theater use. Each theater use or event use shall be limited to no more than two hundred (200) patrons/attendees, and the maximum seating capacity of the Theater Building shall not exceed two hundred (200). As used hereunder, the terms “theater” or “theater performances” shall mean live theatrical performances, live cabaret-styled performances, dinner theater events, and recitals; the term “event” shall mean business functions and milestone celebrations, such as weddings, confirmations, bar/bat mitzvahs, birthday parties and like celebrations, receptions, educational programs and seminars including indoor theater classes and an indoor theater camp during school vacation weeks and the summer. No more than two hundred (200) patrons/attendees shall be present in the Theater Building for any theater performance or event, and a theater performance and event shall not run simultaneously.
3. The theater owner(s) or operator(s) shall post a parking map on its ticketing website and in a clearly visible area on the premises directing patrons/attendees to preferred and appropriate permitted public parking areas, including the commuter parking lot, municipal lots, and public lots that should be utilized during evening and weekend hours to minimize unnecessary vehicular circulation and disruption to nearby residents. The parking map shall also denote private lots or other areas which are not to be utilized for parking by patrons/attendees.
4. The theater owner(s) or operator(s) shall complete at their cost a parking study approximately one year after theater/event uses are commenced in order to measure the impact of the theater/event uses upon the surrounding neighborhood. The scope of the parking study shall be reviewed and approved by the Director of Planning and Development and the City Traffic Engineer. The theater owner(s) or operator(s) shall meet with the Director of Planning and Development, the City Traffic Engineer, and Ward 4 Councilors to discuss the results of the study and any parking changes that should be requested from Traffic Council. The study shall be made available to the public in time for comment and input from the public to Traffic Council. The Planning Department shall notify the Land Use Committee of the City Council when the traffic study is completed.
5. The theater owner(s) or operator(s) shall meet with Ward 4 Councilors, abutters and neighborhood residents at least annually, or more often as may be necessary as determined by the Ward 4 Councilors, for the first two (2) years after the theater/event uses commence operation to review and address neighborhood concerns regarding the operation of these uses. The Ward 4 Councilors may work with abutters and concerned community residents to establish a formal neighborhood liaison group for this purpose and any meetings shall be open to the public.
6. The hours of operation of the Theater Building shall be as follows: theater performances and events shall be limited to Wednesdays, Thursdays and Fridays from 7:00 pm to 11:00 pm; Saturdays from 12:00 pm to 11:00 pm; and Sundays from 12:00 pm to 10:00 pm. Post-

production clean-up may occur after the closing times for theater performances and events set out in this condition, but only to the extent needed to complete such clean-up. The theater owner(s) or operator(s) may apply to the Licensing Commission for an exception to the closing times set forth in this condition when an unusual event or theater performance requires a later closing time, such as a theater performance or event which is extraordinary in length. The theater owner(s) or operator(s) shall file no more than two (2) applications for an exception to the closing times set forth in this condition every twelve (12) months, and a copy of any exception granted by the Licensing Commission shall be filed with the Commissioner of Inspectional Services. The Theater Building shall be closed for theater performances and events on Mondays and Tuesdays, provided, however, that theater uses such as rehearsals and preparations for performances, and business operations as well as camp/theater class activities as set forth in this condition, and community services events as set forth in condition #11 below may occur. Indoor day camps or classes for students of theater shall be permitted during school vacation weeks and during the months of July and August, on Mondays through Fridays from 8:00 am to 5:00 pm. The theater owner(s) or operator(s) shall provide a traffic circulation plan for drop-offs and pick-ups of campers/students for review and approval by the Director of Planning and Development.

7. Alcohol shall be offered for sale or served only for on-premises consumption. No alcohol shall be served later than 10:00 pm or within one hour of the end of any theater performance or event, whichever is earlier.
8. The theater owner(s) and operator(s) shall employ and pay for parking attendants and/or police details as needed or determined necessary by the Newton Police Chief, or his designee for this purpose, for a Large Production or Events, including the need to direct traffic to and from the site and designated parking areas. As used in this condition, the term "Large Production or Event" shall mean any theater performance or event for which there is a reasonable expectation of attendance by more than fifty percent (50%) of the seating capacity or attendance by more than one hundred (100) persons. Except for the disabled, staff (including performers, administrative personnel and service vendors) shall park off-site for a Large Production or Event, and shall be encouraged to park off-site for all other theater performances or events.
9. There shall be no outdoor operations, performances, or functions, no tent events, no outdoor rehearsals, no outdoor music, nor any outdoor consumption of alcohol. With respect to the Theater Building, there shall be no outdoor seating, except for up to two (2) picnic tables to be located as shown on a plan for this purposes to be utilized by employees and camp students and staff for lunch and snacks.
10. The theater use and event use shall not include use as a public bar, nightclub, a club or similar venue, nor any use that would result in a violation of the City's Noise Control Ordinance and as set forth in more detail in condition #12 below.
11. As a community service, the theater owner(s) or operator(s) shall provide some reasonable and free access to the Theater Building at times which do not conflict with theater productions or events for community-wide events, such as, but not limited to,

neighborhood meetings with Council members, meetings of the Auburndale Community Association, or like entities whose membership is open to all residents. The requirement for parking attendants and/or police details set forth in condition #8 above shall not apply to any community-wide event using the Theater Building pursuant to this condition #11.

12. The Theater Building shall be properly soundproofed and windows shall be kept closed during events and theater performances. The theater owner(s) or operator(s) shall comply with the City's Noise Control Ordinance and noise measurements shall be taken in accordance with the provisions of that Ordinance. In no event shall any noise pollution created by theater or event uses exceed 10 dB(A) above the ambient baseline. The petitioner or theater owner(s) shall develop and provide a soundproofing plan satisfactory to the City Engineer includes specifications for soundproofing materials to be used and installed and shall pay for an independent peer review of the soundproofing plan by an acoustical engineer chosen by the petitioner or theater owner(s) and the City Engineer. Prior to the issuance of a building permit for the Theater Building, the petitioner or theater owner(s) shall also pay for a report on the ambient baseline noise level prepared by an acoustical engineer mutually agreed upon by the petitioner or theater owner(s) and the City Engineer. For purposes of this condition "ambient" is defined in accordance with the Massachusetts DEP Policy on Noise Pollution as the background A-weighted sound level that is exceeded 90% of the time, measured during the times when the theater uses (including theater camps or classes) or events may be held pursuant to condition #6 above.
13. Trash pickup shall be confined to the hours of 9:00 am to 5:00 pm Mondays through Saturdays, and not on Sundays. Deliveries to the Theater Building shall be limited to Mondays through Sundays between the hours of 9:00 am to 5:00 pm. Deliveries by large trucks shall be on site.
14. Snow may be stored on site in piles not to exceed three (3) feet in height and shall not utilize any parking spaces for this purpose. Any snow that cannot be stored on site in accordance with the provisions of this condition shall be removed from the site and deposited in appropriate snow storage depositories and not on any surrounding streets or areas external to the site. Snow storage shall not limit available parking or negatively impact abutters, visitors, invitees, nor residents of the site.
15. The site shall be appropriately and adequately lighted and shielded with low impact but practical lighting so as not to adversely affect any abutters or the community, utilizing light sensors (sundown to sunrise) or timers but not motion sensors which could affect the abutters by irregular lighting. All site lighting shall comply with the City's Light Trespass Ordinance.
16. The site and all landscaping and fences shall be maintained in good condition and repair. Any proposed changes to the above referenced landscape plan shall be reviewed and approved by the Director of Planning and Development, with opportunity for input from the abutters or their designated representatives for this purpose. Any landscaping that dies or is diseased shall be replaced annually.

17. Contact information for the Theater Building owner, operator, and property manager shall be available on the theater's website and in a clearly visible location on the premises.
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 which leaves the site plan as approved unchanged. Any change in the site plan that results from the adverse possession claim shall be reviewed for consistency with the approved site plan by the Commissioner of Inspectional Services, and the City Council shall be notified that a consistency ruling has been requested. Any change to the approved site plan that is deemed inconsistent by the Commissioner of Inspectional Services shall require an amendment to the approved site plan by the City Council.
20. Prior to any Certificates of Occupancy the petitioner shall construct, at its sole expense, new ADA compliant granite curbing and concrete sidewalks along its entire frontage on Melrose Street and Ash 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 sidewalks, 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 City Council 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 island modifications, and all work shall be completed prior to any certificates of occupancy being issued.
22. Any modifications to the uses proposed under this special permit, which include the theater, events, residential and office uses shall require an amendment to this special permit.
23. If the theater or event use is terminated, the then owner of the Theater Building shall be required to apply to the City Council for a change of use; to the extent that another use is permitted, the parking waiver/grandfathered parking stalls associated with the theater use shall cease. Any future and different use of the Theater Building shall comply with the then existing parking requirements or the revised special permit may allow for a waiver or other conditions as may be determined appropriate in the new special permit process.
24. The special permit in respect to the theater/event uses shall be subject to City Council review and renewal upon an application for an extension of such special permit filed within twelve (12) months after the initial opening of the theater/event uses. If the special permit for the theater/event uses is renewed following the initial year of operation, such special permit shall be subject to review and renewal every three (3) years thereafter. All renewal

applications for the special permit for the theater/event uses shall permit the City Council to assess the impact of such uses upon the neighborhood; the adherence of such uses to the conditions for operation set forth in this special permit; and to allow for the revision of such conditions as needed to protect the neighborhood for adverse impacts from operation of theater/event uses. If not renewed in accordance with this condition, the special permit for the theater/event uses shall lapse.

25. The theater owner(s) or operator(s) of the Theater Building shall be responsible for keeping the site and adjacent streets clean and free of debris resulting from operation of the Theater Building or caused in any way by theater or event patrons/attendees.
26. All exterior dumpsters shall be located at least forty (40) feet removed from the nearest lot line in an area shown on a plan, and shall be properly screened with solid wood fencing or a concrete fence forming system which is harmonious to the architecture of the buildings on the site. Dumpsters for the residential building shall be located in the parking garage. All dumpsters shall be properly and regularly serviced, and shall be maintained in good order and condition.
27. The initial sizes of the dwelling units in Building C shall not be altered and shall be as set forth in the plans dated July 27, 2015.
28. 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 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, except that exterior construction shall end at 5:00 p.m. on such days; and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or legal holidays, or beyond the specified hours, except with prior written approval of the Commissioner of Inspectional Services (with due regard to the effects on abutters in each instance) as to exigent construction demands, such as but not limited to the need to work with concrete while it dries or critical path issues. When applicable, waiver of the City Noise Control Ordinance may also be required.
 - 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.
 - i. Identification and appropriate remediation of any asbestos or other hazardous materials that may be discovered.
29. No more than fourteen (14) temporary or final occupancy certificates shall be issued in respect to the residential units until the temporary occupancy permit for the Theater Building is issued. The withheld temporary or final occupancy certificates shall not include any affordable unit.
30. 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 pending adverse possession law suit has been resolved with no change to the site.
31. 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.
32. Notwithstanding the provisions of Condition #31e. 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 provided 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. All fences shall be installed prior to the issuance of any such temporary occupancy certificate.
33. The owner and petitioner agree to abandon any rights granted pursuant to Variance #54-78 upon the exercise of this special permit.