



# **Land Use Committee Report**

## **City of Newton** **In City Council**

**Thursday, October 13, 2016**

Present: Councilors Laredo, Schwartz, Crossley, Harney, Auchincloss, Harney, Lennon; absent; Councilor Lipof.

City Staff Present: Deputy Solicitor Ouida Young, Senior Planner Neil Cronin.

**#262-16      Special Permit Petition to increase nonconforming setback at 112-114 Carlisle Street**

MICHAEL VAHEY & MOK JIANG PANG/CARLISLE STREET DEVELOPMENT, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE EXISTING NONCONFORMING FRONT SETBACK, by razing the existing two family dwelling, and construct a new, enlarged two family, further increasing the front setback, allowing a parking stall within 5' of a street, allowing a driveway entrance greater than 20' and reducing the required parking stall depth at 112-114 Carlisle St, Ward 6, Newton Centre, on land known as SBL 65008 0006, containing approximately 9,196 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref 7.3.3, 7.4, 3.2.3, 7.8.2.C.2, 5.1.7.B.2, 5.1.13, 5.1.7.A, 5.1.7.C of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      **Public Hearing Closed; Land Use Held 6-0. (Lennon not voting)**

**Note:**      The petitioner, Micahel Vahey presented the petition to remove an existing two-family, replacing it with an enlarged two-family. The location of the property is on a dead end road with a private way (Carlisle Place) on the Westerly border. The petitioner intends to utilize the property better, moving parking away from the Eastern edge of the property which borders Conservation land. While the Planning Department had some concerns about the massing of the proposed structure, the petitioner noted that FAR, building height and open space requirements are being met. He added that the Greek Revival style of the roofline helps in varying the roofline heights.

Senior Planner Neil Cronin reviewed the requested relief including the nonconforming setback and the request to allow a parking stall within 5' of the street. Because the house is a corner lot, the house has front setbacks on Carlisle Street and Carlisle Place. The petitioner confirmed that he did reach out to abutters and there was no opposition to the proposed changes. The petitioner noted that the span of the structure within the nonconformance is currently currently 25' and would be reduced to 22'.

The Public Hearing was opened. Seeing no comment, Councilor Schwartz motioned to close the public hearing which carried 7-0.

As part of the proposal, the petitioner includes two single car garages adjoining each unit. Councilors raised concerns about the amount of asphalt in front of the proposed garages. The

petitioner explained that his intent is to provide enough space so that a parked car on either garage side would not have to move to allow for a second car into the driveway. He noted that other homes in the neighborhood have similarly sized parking areas. In part, the relocation of the parking is to help eliminate people parking on the street and on conservation land. It was also suggested that because the driveway would be located on a dead end street, it would not affect many people.

The massing concerns from the Planning Department related specifically to the change in height in the roofline from 112 Carlisle to the garage and how it differs from 114 Carlisle to the garage. Mr. Cronin confirmed that the height differences are a design feature and the Planning Department is satisfied with how the design has been met. The petitioner noted that the mass is below the maximum building height and that the attic is not usable or habitable space and the windows would be decorative. The peak is less than 7'. Deputy City Solicitor Ouida Young confirmed that Carlisle Place (private way) should be restored to the condition it is in now because the private way owners are responsible for the costs of the project.

Councilor Schwartz motioned to approve the item. After further discussion, Councilors felt that improvements could be made to the plans relating to the setback and the parking at the site. As the house is unoccupied and there is no immediate urgency, Councilor Schwartz amended his motion to holding the item which carried 6-0.

**#289-15 (2) Request for a Consistency Ruling relative to Special Permit #289-15 at 136 Eastbourne Road to address a discrepancy in FAR calculations.**

**Note:** Mr. Cronin reviewed the request for the consistency ruling at 136 Eastbourne Road. When the petitioner applied for and received approval for the special permit in April 2016, the plans included a miscalculated FAR. When the petitioner went to Inspectional Services to apply for their building permit, it was determined that the FAR had not been counted correctly because of missed basement space. Because the plans had not changed and in an effort to accommodate the petitioner, Committee members felt that the proposal was consistent with the original request. Committee members did have concerns that the FAR is not calculated by the City prior to the building permit stage. Mr. Cronin confirmed that the Planning Department is evaluating how to calculate FAR sooner as a result of this finding.

**#216-16 Special Permit Petition to continue non-conforming use & FAR at 17-19 Pulsifer St**  
NANCY BOLANIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to add rear sunrooms to first and second floor, exterior stair from third floor to grade, a one car garage at the rear, replace the front porch and add two parking stalls at 17-19 Pulsifer Street, Ward 2, Newtonville on land known as SBL 22018 0003, containing approximately 7,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** Land Use Approved 6-0 (Lennon not voting)

**Note:** This item was approved by the Land Use Committee on September 27, 2016. Laurance Lee presented the request to modify the Council Order. A condition of the Council Order prohibits the petitioner from locating a deck on the third story of a rear deck. Atty. Lee requested that the Council Order be modified to allow decorative railings or improvements above the second story. The petitioner has modified the plans to remove a third story door onto the deck. Councilor Auchincloss motioned to approve the item as amended which carried 6-0.

**#287-16      Special Permit Petition to allow rear lot subdivision at 57 Adams Avenue**  
GENNARO AND GIUSEPPINA NICOLAZZO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to ALLOW A REAR LOT SUBDIVISION AND REDUCED FRONT SETBACK, dividing the lot and constructing a new single family on the rear lot while maintain the existing single family on the front lot at 57 Adams Avenue, Ward 4, West Newton, on land known as 44014 0012, containing approximately 22,122 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.1.10, 3.1.5, 3.1.10.B.3.a of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** Public Hearing Closed; Land Use Approved Subject to Second Call 5-0-1 (Schwartz abstaining; Lennon not voting)

**Note:** Attorney Terry Morris presented the petition on behalf of the petitioner to allow the subdivision of a lot and construction of a new single family at 57 Adams Avenue. The petitioner, Gennaro Nicolazzo is a known landscaper and neighbor and intends to preserve the neighborhood character and the homes he owns. The petitioner hopes to construct the rear single family in order to house his daughter, Maria Paniagua. Ms. Paniagua stated that the plan to locate the single family is in order to allow her and her husband to return to the City. She noted that they have made an effort to be respectful of the neighbors and neighborhood and the neighborhood has been receptive and supportive.

Mr. Cronin reviewed relief for the petition. A landscape plan was received by Mr. Cronin on October 13, 2016. While it had not been reviewed for the meeting, Mr. Cronin confirmed that he could review it and alert the Chair of any concerns prior to the October 17, 2016 Council meeting. While there was no Council Order, Attorney Young stated that the special permit petition is comparable to similar, recent petitions and fairly standard. The petitioner had concerns about delaying the project because of winter street opening restrictions.

Councilor Harney motioned to approve the item subject to second call and his motion carried 5-0 with one abstention from Councilor Schwartz.

**#288-16      Special Permit Petition to exceed FAR at 25 Stiles Terrace**  
ALEXANDER P. SHEYNER petition for SPECIAL PERMIT/SITE PLAN APPROVAL to INCREASE FAR by constructing a detached garage at 25 Stiles Terrace, Ward 7, Newton Centre, on land known as SBL 65004 0010, containing approximately 8,563 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:**        **Public Hearing Closed; Land Use Approved 5-0-1 (Laredo abstaining; Lennon not voting)**

**Note:**        Attorney Terry Morris presented the petition to construct a detached garage at 25 Stiles Terrace, increasing the floor area ratio from .39 to .52 where .42 is allowed by right. The petitioner purchased the home in 2014 with the intention of expanding the house and constructing a garage. To accommodate family in time for the school year, the family expanded the house first with the plan to construct the garage at a later date. Because the petitioner is hosting family, they require additional storage space and intend to use the second floor of the garage for this purpose.

Mr. Cronin reviewed the required relief for the petition. He stated that the rear of the property is steep. The petitioner has agreed to a decrease in the height of the dormer facing the Hammond Pond reservation and additional screening based on the recommendation from the Planning Department. Attorney Morris confirmed that if the garage were approved, the contractor would use industry standard shoring systems in conjunction with excavating the ground.

The public hearing was opened.

Jonathan Delatizky, 21 Stiles Terrace, is an abutting property owner. He has concerns about the density of the resulting construction. He noted that other neighborhood homes have much lower FARs. He also noted that the previous construction was lengthy and disruptive.

Renee Delatizky, 21 Stiles Terrace, noted that the homes on Stiles Terrace are close together and that the first construction took a year and a half.

Seeing no additional comment, Councilor Schwartz motioned to close the public hearing which carried 6-0.

A City Engineer reviewed the site and indicated that a drainage plan would be necessary. It was confirmed that no building permit would be issued prior to satisfying the Engineering requirements at the site to City standards. Councilors requested the addition of a construction management plan to help mitigate the concerns relating to the yard excavation.

Committee members questioned why the project was completed in two phases. The petitioner explained that the first construction was done in an effort to save time and move the family into the house as expeditiously as possible. There was some concern that the second floor of the garage could be turned into habitable space. The petitioner confirmed that he has no intention of creating living space above the garage. Attorney Morris noted that the 355 square foot area above the garage is lacking utilities necessary to create living space (heating, plumbing). Committee members requested that a condition prohibiting living space above the garage be included.

The contractor for the property, Peter Hughs, confirmed that code requires a certain height from the top stair in the garage to the ceiling, but that the dormer could be further reduced. Committee members requested that revised plans be submitted to the Planning Department. After a review of the Council Order, Councilor Schwartz' motion to approve carried 5-0-1 with one abstention from Councilor Laredo.

**#289-16 Special Permit Petition to extend nonconforming FAR at 35 Lenox Street**

JAMES BENINATI/35 LENOX STREET LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER EXTEND NONCONFORMING FAR by regrading the property to construct a two car garage in the existing basement space at 35 Lenox Street, Ward 3, West Newton, on land known as SBL 32047 0006, containing approximately 9,969 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 3.1.9.A.2, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** Public Hearing Closed; Land Use Approved Subject to Second Call 6-0 (Lennon not voting)

**Note:** The petitioner and developer for the property, James Beninati presented the petition to locate a two car garage, facing regent street under the existing structure at 35 Lenox Street. The driveway leading to the garage would have retaining walls that reduce in height as they reach the sidewalk. Mr. Cronin reviewed the requested relief for the petition.

The Public Hearing was opened.

Kate Flather, 334 Otis Street, has concerns about the proposed massing of the structure.

Wilma Stonestreet, 21 Lenox Street, has concerns that the retaining walls in the driveway could cause a safety issue for children and pedestrians and doesn't want approval of the project to set a precedent in the neighborhood.

Don McKenne, 21 Lenox Street, has concerns about the retaining walls creating safety issues and the mass of the structure.

Seeing no additional comment, the public hearing was closed by Councilor Cote's motion 6-0.

Committee members requested that the petitioner solicit feedback and include additional screening as part of the landscape plan and that the Council order reflect the request for the landscape plan. Additionally, Committee members requested that the petitioner submit a drawing demonstrating the height of the wall as it reaches the sidewalk to reduce sight line issues.

After a review of a draft Council Order, Councilor Cote motion to approve subject to second call carried 6-0.

**#290-16 Special Permit Petition modify existing Special Permit at Finagle a Bagel**

NEWTON-FAB, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER EXTEND NONCONFORMING USE and amend Special Permit #191-81(B) to allow an increase in bakery seating to 49 seats and waivers to signage at 47 Crescent St/77 Rowe St/Crescent St, Ward 4, Auburndale, on land known as SBL 44023 0016A, 44023 0016B, containing approximately 137,922 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: 7.3.3, 7.4, 7.8.2.C.2, 5.2.3, 5.2.8, 5.2.13.A of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** **Public Hearing Closed; Land Use Approved Subject to Second Call 6-0 (Lennon not voting)**

**Note:** Attorney Robert Allen, of Bob Allen Law in Brookline presented the petition on behalf of Newton Fab, LLC. to amend Special Permit 191-81(B) to allow up to 49 seats at Finagle a Bagel. As a result of the Chestnut Hill Finagle a Bagel location closure, the petitioner has seen increased demand to locate additional café and patio seating at the Crescent Street location. They no longer require the waivers to signage.

Mr. Cronin reviewed the requested relief to amend the original special permit, extend the nonconforming use and increase the number of seats to 49. The Public hearing was opened.

Allan Lynchman, owns the parking lot across the street and has an agreement with the petitioner to provide additional parking for Finagle a Bagel customers. The petitioner has also agreed to support the City in putting a crosswalk in for pedestrians in the area.

Councilor Auchincloss motioned to close the public hearing which carried 6-0. (Councilor Lennon not voting).

Attorney Young explained that because the restaurant at the site is actually by right, the amendment of the special permit will result in bringing the property more into conformance. The conditions are not changing from the 1981 special permit. After a review of the Council order, Councilor Auchincloss' motion to approve carried 6-0

**#308-16      Special Permit Petition to further increase nonconforming setback at 79 Kenwood Ave**

SURRENDRA DUDANI AND SHALINI SEN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE THE NONCONFORMING SETBACK by razing the existing 12'x22' detached garage and construct a 22'x22' detached garage, reducing the setback from 16.2' to 6.2' where 25' is required at Kenwood Avenue, Ward 6, Newton Centre, on land known as SBL 64 20 01, containing approximately 7,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.4, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** **Public Hearing Closed; Land Use Approved 5-0-1 (Crossley abstaining; Lennon not voting)**

**Note:** The petitioners Surrendra Dudani & Shalini Sen presented the request to raze their one car garage and replace it with a two car garage, increasing the nonconforming setback at 79 Kenwood Avenue. The petitioners explained that the garage could not be located closer to the house for three reasons. The reasons included that there is a boiler emitting exhaust on that side of the house, the space would be too narrow and collect snow and it would eliminate a majority of the yard space.

The public hearing was opened. Seeing no member of the public to speak, Councilor Schwartz' motion to close the public hearing carried 6-0.

The petitioners confirmed that the driveway would be remaining the same until the opening of the garage where it would increase. Because of the location of the driveway directly at the intersection of Kenwood Ave and Ashton Street, Councilors had concerns that the bushes on the property created unsafe conditions for drivers exiting the driveway. The petitioners stated that in the 10 years they have lived in the house, they have not had issues with line of sight exiting the driveway. Councilor Schwartz motioned to approve. After a review of the Council order, the motion carried 5-0-1 with Councilor Crossley abstaining.

**#310-16      Special Permit Petition exceed FAR at 20 Morton Road**

DAVID AND LOUISA WEST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to EXCEED FAR to raze an existing detached garage and rear porch and construct a two-car attached garage, family room and new first floor kitchen and master bedroom above the garage at 20 Morton Road, Ward 2, Newton Centre, on land known as SBL 24 43 18, containing approximately 8,705 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      Public Hearing Closed; Land Use Approved 6-0 (Lennon not voting)

**Note:**      Architect for the petition Peter Sachs presented the petition renovate the home including an attached garage and expanded living space. Mr. Sachs noted that community outreach has been done and the neighbors are in support of the project.

The public hearing was opened. With no one to comment from the public, Councilor Auchincloss motioned to close the public hearing which carried 6-0. After a review of the Council order, Councilor Auchincloss' motion to approve carried 6-0.

**#309-16      Special Permit Petition exceed FAR at 41 Woodlawn Drive**

LINDA AND DAVID GILLESPIE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to EXCEED FAR to construct an addition to the basement and first level without the retaining wall as required to keep the FAR within by right limits at 41 Woodlawn Drive, Ward 7, Chestnut Hill, on land known as 63 05 27, containing approximately 8,000 sq. ft. of land in a district zoned SNGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      Land Use Approved Withdrawal without Prejudice 6-0 (Lennon not voting)

**Note:**      After the Chair read the item into the record, Councilor Auchincloss motioned to approve the withdrawal without prejudice which carried 6-0.

The Committee adjourned at 10:40 PM.

**Respectfully submitted,**

**Marc C. Laredo, Chair**