



Land Use Committee Report

City of Newton **In City Council**

Tuesday, January 23, 2018

Present: Councilors Schwartz (Chair), Lipof, Greenberg, Auchincloss, Kelley, Markiewicz, Crossley, Laredo

Also Present: Councilor Albright

City Staff Present: Associate City Solicitor Bob Waddick, Chief Planner Jennifer Caira, Senior Planner Neil Cronin, Planning Associate Valerie Birmingham

All Special Permit Plans, Memos and Application Materials can be found at http://www.newtonma.gov/gov/aldermen/special_permits/current_special_permits.asp. Planning Department Presentations for each project can be found at the end of this report.

#72-18 **Class 2 Auto Dealer License**
PARAGON EXPORTS
40 Summit Street
Newton, MA. 02458

Action: **Land Use Approved 8-0**

Note: It was stated that Paragon Exports owes a small amount in motor vehicle taxes, but noted that when they renew with the Registry of Motor Vehicles, they will have to first pay the remaining tax bill. There have been no reports of complaints at the site. Committee members did not express any concerns and voted unanimously in favor of the request.

#73-18 **Petition for an Extension of Time to Exercise #430-16 at 15 South Gate Park**
ANTHONY DEPASQUALE request for an EXTENSION of TIME in which to EXERCISE Special Permit #430-16, granted on February 6, 2017 to change a non-conforming clubhouse use to a 3-unit multi-family dwelling, locate parking within a front setback and allow a two way entrance/exit drive less than 20' at 15 South Gate Park, Ward 3, West Newton, said EXTENSION will run from February 27, 2017 to February 27, 2018. Ref: 7.4.5.D, 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 5.1.8.A.1, 5.1.13, 5.1.8.D.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Approved 8-0**

Note: Petitioner Anthony Depasquale presented the request for an extension of time to exercise Special Permit #430-16 at 15 South Gate Park. Mr. Depasquale stated that he is in the process

of finalizing structural and engineering documents and intends to file for a building permit at the beginning of February to begin construction in March, weather pending.

Committee members questioned what the delay in construction has been, noting that there have been some concerns from abutters relative to snow removal and vehicles parked at the site. Mr. Depasquale noted that he has been working on other projects and confirmed that he understands and has addressed the concerns of abutters. He stated that he plans to prioritize the project on South Gate Park in 2018. Committee members

Committee members questioned whether the extension of time can be limited to six months, to encourage timely construction, but agreed that one year extensions of time are standard. Committee members asked that the petitioner consider the concerns that were raised. Mr. Depasquale confirmed that he will be cognizant of the concerns raised by Committee members and will maintain a clean construction site. With a motion from Councilor Kelley to approve the extension of time, Committee members voted unanimously in favor.

Consistency Ruling relative to Board Order #147-79(2); Requesting a review of proposed changes to the Leventhal-Sidman Jewish Community Center at 333 Nahanton Street subject to Special Permit #147-79(2).

Note: It was noted that the petitioner has withdrawn the request for a consistency ruling and will pursue an amendment to the Special Permit.

#24-18 Special Permit Petition to extend nonconforming use at 4-6 Middle Street

ALFREDO CEDRONE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the nonconforming three-family use to allow four units, legalize noncompliant lot area per unit, waive perimeter screening requirements, waive lighting and surface requirements, to allow tandem parking, parking within the side setback, reduced aisle and driveway width at 4-6 Middle Street, Ward 1, Newton, on land known as Section 12, Block 1, Lot 15, containing approximately 11,297 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.2.6, 5.1.8.A.1, 5.1.13, 5.1.8.B.2, 5.1.8.C.1, 5.1.8.D.1, 5.1.8.E.1, 5.1.9, 5.1.10 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 6-0-2 (Auchincloss, Schwartz abstaining)**

Note: Attorney Terry Morris represented petitioner Al Cedrone in presenting the request for a Special Permit Petition for the extension of a non-conforming use at 4-6 Middle Street. In 1930 the structure at 4-6 Middle Street had three units and a commercial storefront. By 1974, the commercial storefront had been converted, without a building permit to a fourth unit. Because the fourth unit has been in existence for more than 10 years, it is legally nonconforming. In the process of renovating units at 4-6 Middle Street, it was determined that the petitioner required a Special Permit to legalize the fourth unit. Legalization of the fourth unit requires a waiver of lot area per unit in addition to parking waivers. Atty. Morris stated that there are currently eight parking stalls in tandem configuration with one entry and one exit. It was noted that operation has functioned successfully for decades. When reviewing the site, the petitioner explored the opportunity to locate a garage at the rear of the lot. To

meet minimum parking dimensions, a garage would need to be 1800 sq. ft., reducing open space on the lot to 30% (from the existing 46%). It was noted that although the property abuts Wiltshire Court, Wiltshire Court is a private way and the petitioner cannot use it as access to the site.

Senior Planner Neil Cronin reviewed the requested relief to

- extend the existing nonconforming three-family use to allow four units (§3.4.1 and §7.8.2.C.2);
- legalize the existing nonconforming lot area per unit per a Section 6 finding (§3.2.6 and §7.8.2.C.2);
- further decrease the nonconforming minimum open space (§3.2.6 and §7.8.2.C.2);
- allow parking within a setback, to allow a reduced stall depth, to allow a reduced aisle width, to allow a reduced driveway width, to allow tandem parking, to waive the perimeter screening requirements, and waive the lighting and surfacing requirements (§5.1.8.A.1, §5.1.8.B.2, §5.1.8.C.1, §5.1.8.D.1, §5.1.8.E.1, §5.1.9, §5.1.10, and §5.1.13).

In addition to the Council's criteria for consideration

- The proposed extension of the nonconforming three-family use to allow a four-unit dwelling is substantially more detrimental than the existing three-family use is to the neighborhood (§3.4.1 and §7.8.2.C.2).
- The proposed reduction in the lot area per unit is substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.2.6 and §7.8.2.C.2).
- The proposed reduction in the minimum required open space is substantially more detrimental than the existing open space is to the neighborhood (§3.2.6 and §7.8.2.C.2).
- Literal compliance with the requirements for parking facilities containing over five stalls, including parking in a setback, waivers to the stall dimensions, aisle width, driveway width, tandem parking, perimeter screening requirements, and lighting and surface requirements are impractical due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.8.A.1, §5.1.8.B.2, §5.1.8.C.1, §5.1.8.D.1, §5.1.8.E.1, §5.1.9, §5.1.10, and §5.1.13)

He demonstrated the location and photos of the site as demonstrated on the attached presentation.

The units are 1371, 1260, 747 and 811 sq. ft.

A Committee member noted that the existing structure has space that extends beyond the property line. .4' over the lot line in the front setback. Because the structure is in the front setback and the condition has existed since prior to zoning was established, it does not require additional relief.

Mr. Cronin noted that the Commissioner of ISD has determined that lot area per unit is a dimensional requirement related to structure and not the use, therefor the City Council may legalize the non-compliant lot area per unit via a Section 6 finding. This is independent from whether four lots should be allowed at the site. Committee members acknowledged that the standard for a section 6 finding is whether the proposed use is substantially more detrimental than the existing use. Committee members noted that there will be no change to the existing structure. The Public Hearing was opened.

With no member of the public wishing to speak, Councilor Greenberg motioned to close the public hearing which carried unanimously. Councilor Greenberg motioned to approve the petition. Committee members reviewed the draft findings and conditions. Committee members asked that the Law Department work with Planning to revise the language in the Board Order to make it more clear and requested that the Board Order to be circulated prior to the Council meeting on February 5, 2018. With a motion from Councilor Greenberg to approve the petition, Committee members voted 6-0-2 in favor with abstentions from Councilors Schwartz and Auchincloss.

#25-18 Special Permit Petition to increase non-conforming FAR at 45 Beethoven Ave

MATTHEW AND MICHELLE ZISOW petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a single story rear addition extending the nonconforming FAR to .43 where .35 is allowed and .41 exists at 45 Beethoven Avenue, Ward 5, Waban, on land known as Section 53, Block, 15, Lot 29, containing approximately 15,000 sq. ft. of land in a district zoned SINGLE RESEIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 8-0**

Note: Architect David Boronkay, 10 Wiltshire Road represented petitioners Matthew and Michelle Zisow in presenting the request to exceed the allowable FAR at 45 Beethoven Avenue by constructing a 247 sq. ft. rear addition. The proposed addition will enlarge the existing kitchen. Mr. Boronkay noted that the house was built prior to the adoption of FAR and as such 811 sq. ft. of attic space and 672 sq. ft. of basement space did not count.

Senior Planner Neil Cronin reviewed the requested relief to

- Further increase the nonconforming FAR (§3.1.3 and §3.1.9)

In addition to the Council's criteria for consideration

- The nonconforming FAR from 0.41 to 0.43, where 0.35 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.1.9 and §7.8.2.C.2).
- The proposed extension in the nonconforming FAR will be substantially more detrimental than the existing nonconforming FAR is to the neighborhood (§3.1.9 and §7.8.2.C.2).

Mr. Cronin demonstrated the location and photos of the proposed special permit as shown on the attached presentation. The Public Hearing was Opened. With no member of the public wishing to speak, Councilor Crossley motioned to close the public hearing which carried unanimously. Councilor Crossley motioned to approve the item. Mr. Boronkay confirmed that the proposed addition does not extend beyond the footprint of the existing deck and stated that the AC units will be recessed into the building. He noted that a new porch will extend 9' into the backyard, is aligned with the existing setback and will not encroach closer to the abutters. Committee members reviewed the draft findings and conditions and voted unanimously in favor of the petition.

#27-18 Special Permit Petition to extend non-conforming lot coverage at 1771 Washington St

HENSIN AND SANDY TSAO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story addition with family room and master bedroom, increasing the existing non-conforming lot coverage at 1771 Washington Street, Ward 4, Auburndale, on land known as Section 43, Block 39, Lot 10, containing approximately 15,021 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 3.1.3, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 7-0 (Lipof not Voting)

Note: Architect Anne Snelling-Lee represented petitioners Hensin and Sandy Tsao to present the petition to further extend the nonconforming lot coverage at 1771 Washington Street by constructing a two-story addition. Ms. Snelling-Lee presented the proposed changes on the attached presentation.

Mr. Cronin reviewed the requested relief to

- Further increase the non conforming lot coverage (§3.1.3)

In addition to the Council's criteria for consideration

- The proposed increase in the nonconforming lot coverage will be substantially more detrimental than the existing nonconforming lot coverage is to the neighborhood (§3.1.3 and §7.8.2.C.2).

It was noted that because the structure is older than 50 years, it required review by the Historic Commission. Planning Associate Valerie Birmingham confirmed that the house was found to be historically significant and noted that the proposed plans were approved administratively. The Public Hearing was Opened. No member of the public wished to speak. Councilor Markiewicz motioned to close the public hearing which carried unanimously. The Attached letters of support were submitted to the Committee and it was noted that the abutter that faces 1771 Washington Street is in support of the plans. Councilor Markiewicz motioned to approve the petition. Committee members did not express concerns related to the petition. It was noted that the addition will be constructed in the footprint of an existing deck. Committee members asked that the Planning Department provide clarification with regard to whether the deck counts toward lot coverage. Committee members voted 7-0 in favor of the petition, Councilor Lipof not voting.

#23-18 Special Permit Petition to allow three-unit multi-family at 19-21 Orchard Street

DAVID OLIVERI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow for a three-unit multi-family dwelling with basement level garage in excess of 700 sq. ft. and waivers to allow parking in the front setback, a driveway width in excess of 20', reduced parking stall depth and a retaining wall greater than 4' in a setback at 19-21 Orchard Street, Ward 1, Newton, on land known as Section 71 Block 16 Lot 1, containing approximately 12,320 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 3.4.2.C.1, 5.1.13, 5.1.7.B.2, 5.1.7.A, 5.1.7.C, 5.4.2.B of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved Subject to Second Call 5-0-1 (Laredo abstaining, Crossley, Markiewicz not Voting)

Note: Attorney Michael Peirce represented petitioners David Oliveri and Andrew Consigli. The request for a special permit is to replace the existing two-family dwelling at 19-21 Orchard Street with a three-unit dwelling. Mr. Consigli reviewed the existing and proposed conditions as shown in the attached presentation. Each 1700-1800 sq. ft. unit will have three bedrooms and additional basement space. The proposed structure will utilize the slope of the lot and will not exceed 31' (the height of the existing structure). Mr. Consigli noted that there will be pathway that leads to each unit.

It was noted that the proposed plans include benefits such as pushing the frontage further back from Orchard Street, meeting the 25' setback and creating better sight lines, the elimination of a curb cut to be replaced by an ADA compliant ramp, and a robust landscaping plan. The petitioner proposes to provide three enclosed parking spaces and three surface parking spaces at the site. It was noted that the proposed density is comparable to the neighborhood density. Atty. Peirce stated that while there have been some concerns relative to maneuverability of cars at the site, the petitioners have experience working in the neighborhood and recently renovated 131 Charlesbank Road. An existing curb cut will be reduced from 39' to 24' and will have three spaces rather than five.

Senior Planner Mr. Cronin noted that the petitioner was asked to consider a further reduction in the width of the 24' curb cut. Atty. Peirce stated that the petitioner believes that they need the 24' curb cut for turning, but will work with the Engineering Department to determine if the curb cut can be further reduced. Mr. Cronin noted that the petitioner was also asked to consider altering the east elevation for added presence on Charlesbank Road.

The Public Hearing was Opened.

Amanda Paglia, 138 Charlesbank Road, her parents own the property at 138 Charlesbank Road and are out of town. Although they met with the petitioner, they remain concerned about the impact of the proposed project on parking in the sidewalk, their view, privacy and landscaping. They hope to have the opportunity to voice their concerns at a subsequent hearing.

Mr. Consigli emphasized that he met with the abutter at the site and discussed the project with him.

Richard Belkin, Park Street, owns 169 Charlesbank Road. He commended the petitioners for the proposed plans and how they intend to improve the neighborhood. He requested that the petitioner include a 2.5" sitting wall for the neighborhood. He is pleased that the petitioners didn't push for two additional units

Terry, 127 Charlesbank Road, lives in one of the petitioners' developments. She noted that the petitioner has been very communicative with regard to landscaping during design of the proposal.

Ilana Snow, 131 Charlesbank Road, is grateful to the petitioner for working with her on the proposed plans. She noted that they have taken feedback thoughts into consideration even after sale of the property.

131 Charlesbank Road, reiterated that the developers are producing good quality work.

To address the concerns of the abutter at 138 Charlesbank Road, Committee members asked the petitioner whether a two week delay would be a hardship for the project. Mr. Consigli noted that two weeks would push progress and scheduling of the project further back. It was noted that the landscape plan currently includes screening and a white privacy fence. Committee members shared concerns that details of the landscape plan were not clear. Atty. Peirce noted that a landscape plan can be augmented and distributed to Committee members prior to the Council vote.

Councilor Lipof motioned to close the public hearing which carried 5-1 with Councilor Laredo opposed and Councilors Crossley and Markiewicz not voting. Committee members reviewed the draft findings and conditions. Committee members noted that allowing the third unit, triggers the requirement for additional relief. A Committee member noted that there should be a finding relative to the retaining wall in the setback. Councilor Lipof's motion to approve was amended to a motion to approve subject to second call. Committee members were in agreement that the petitioner should communicate with the abutter at 138 Charlesbank Road regarding the revised landscape plan which should also be submitted prior to the Council vote on February 5, 2018. Committee members voted 5-0-1 with an abstention from Councilor Laredo and Councilors Crossley, Markiewicz not voting.

#26-18 Special Permit Petition to allow attached dwellings at 20 Dale St/19 Simpson Terr
SCOTT ROSS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an addition, creating two attached dwelling units, allowing waivers to the lot area requirements and lot area per unit requirements, to reduce the side setback requirement, to reduce the lot coverage requirement, to allow a driveway within 10' of a side lot line and to allow parking within 20' of a side lot line at 20 Dale Street/19 Simpson Terrace, Ward 2, Newtonville, on land known as Section 22, Block 14, Lot 03, containing approximately 5,968 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 3.2.4, 6.2.3.B.2 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held to February 6, 2018**

Note: Petitioner Scott Ross presented the petition to construct an attached dwelling unit at 20 Dale Street. The petitioner hopes to remain at the site while constructing a second dwelling unit for his adult children. He reviewed the proposed changes to the structure and noted that there are a significant number of attached dwelling units on smaller lots in the neighborhood. Mr. Ross' presentation is attached. Mr. Ross noted that the proposed attached dwelling unit is built in a manner identical to if it were built as a two-family unit. The attached dwelling unit requires relief for the max lot area per unit.

Committee members questioned whether the proposal is an attached dwelling unit. Architect Peter Sachs noted that he worked with the Commissioner of Inspectional Services who determined that the plans reflect an attached dwelling unit because of the "key locked" design. Committee members shared concerns relative to the nature of the proposal. The Committee asked that the Law Department provide clarification regarding whether the requested relief can be granted through the Special Permit process. Councilor Laredo motioned to hold the item which carried unanimously.

#19-18 **Special Permit Petition to extend non-conforming use at 307-309 Lexington Street**
LESVOS PROPERTIES LLC./MARIA BANIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the non-conforming use to allow reconfiguration of the existing two-family dwelling into one unit and adding a second two-story attached dwelling unit at 307-309 Lexington Street, Ward 4, Auburndale, on land known as Section 41, Block 30, Lot 36 and Section 41, Block 30, Lot 37, containing approximately 15,216 sq. ft. of land in a district zoned SINGLE RESIDENCE 3.Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed 01/09/2018; Land Use Approved 8-0**

Note: Architect Peter Sachs presented updates to the petition presented on January 9, 2018. Mr. Cronin confirmed that the petitioner has submitted a revised landscape and site plan with screening for the abutters. It was confirmed that the second lot is not buildable. Committee members asked that the Board Order include a finding that the adjacent lot is not buildable. With a motion from Councilor Markiewicz to approve the petition, Committee members voted unanimously in favor.

Respectfully Submitted,

Greg Schwartz, Chair