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**Barney S. Heath**  
Director

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**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** May 4, 2018  
**MEETING DATE:** May 8, 2018  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner  
**CC:** Petitioner

In response to issues raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

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**PETITION #91-18**

**5-7 and 11-19 Elm Street**

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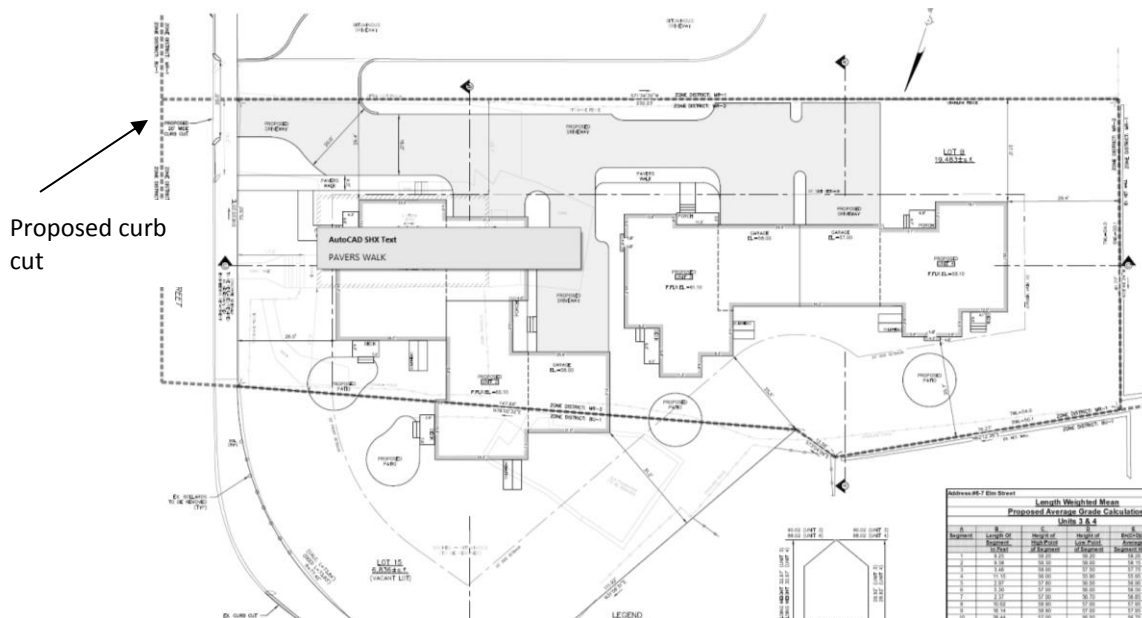
Special Permit/Site Plan Approval to amend Board Orders #273-14(2) and #40-07 to amend the site plans.

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The Land Use Committee (The "Committee") opened the public hearing on this petition Tuesday, March 6, 2018, and closed the public hearing. This memo reflects revised materials submitted by the petitioner as of May 3, 2018.

The petitioner is seeking a special permit to amend Board Orders #273-14(2) and #40-07 to amend the site plan. Board Order #273-14(2) allowed the development of four townhouse units at 5-7 Elm Street provided that access to those units be over the adjacent parcel at 11-19 Elm Street which is a five-unit townhouse development approved by Board Order #40-07.

The petitioner submitted revised plans which combine the existing curb cuts of both developments into one, 20-foot wide curb cut leading to a "Y" driveway separately serving each development. The petitioner will be closing the existing curb cut at 11-19 Elm Street as part of this redesign and installing sidewalk which will be installed to the standards of the Engineering Division along with the remainder of the sidewalk along the 5-7 Elm Street frontage.



**ATTACHMENTS:**

**Attachment A:** DRAFT Council Order #40-07(5)  
**Attachment B:** DRAFT Council Order #91-18

CITY OF NEWTON

IN CITY COUNCIL

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 amend Board Order #40-07(3) to modify the curb cut and driveway on site, and to remove an access easement allowing for a driveway to the abutting site at 5-7 Elm Street, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the amendment to Council Order #40-07(3) because a planned connecting driveway between the two sites will be removed, thereby removing future pedestrian-vehicle conflict. (§7.3.3.1)
2. The site, due to the amendment to Council Order #40-07(3), as developed and operated will not adversely affect the neighborhood. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendments to Council Order #40-07(3). (§7.3.3.3)
4. Access to the site over streets is appropriate for the types and number of vehicles involved. (§7.3.3.4)

PETITION NUMBER: #40-07(4)

PETITIONER: Nicore Construction, Corp. and Anthony Bonadio

LOCATION: 11-19 Elm Street, on land known as SBL 33, 23, 16

OWNER: Nicore Construction, Corp. and Anthony Bonadio

ADDRESS OF OWNER: 102 Newton Street  
Southborough, MA 01745

TO BE USED FOR:	Removal of Easement over the existing driveway and side yard of 11-19 Elm Street to a shared curb cut and driveway with the development at 5-7 Elm Street.
CONSTRUCTION:	Site Work Only
EXPLANATORY NOTES:	§7.3.3 and §7.4 to amend a portion of the previously approved site plan for 11-19 Elm Street to abandon an access easement over the existing driveway and side yard to the site located at 5-7 Elm Street
ZONING:	Multi-Residence 1 District

Approved subject to the following conditions:

1. A portion of the site plan and landscape plan approved by Board Order #40-07, shall be amended to allow an access easement over the existing driveway and side yard to provide an access driveway to a proposed four-unit development at 5-7 Elm Street/114 River Street. The site plan and landscape plan shall be amended consistent with the plans entitled:
  - a. Easement Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated December 15, 2017.
2. Except as amended by this Board Order, all other conditions of Board Order #40-07(3) shall remain in full force and effect.
3. No Building Permit for the development of 5-7 Elm Street approved by Board Order #91-18 shall be issued until the petitioner has recorded a certified copy of this Board Order with the Registry of Deeds for the Southern District of Middlesex County and filed a certified copy of such recorded notice with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.

CITY OF NEWTON

IN CITY COUNCIL

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 amend Board Order #273-14(2) to amend the site plan, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the amendments to Council Order #273-14(2) because direct access will be provided to the four Single-Family Attached Dwellings from Elm Street. (§7.3.3.C.1.)
2. The site, due to the amendments to Council Order #273-14(2), as developed and operated, will not adversely affect the neighborhood because the proposed shared driveway consolidates the access points onto Elm Street. (§7.3.3.C.2.)
3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from the amendments to Council Order #273-14(2) because adequate sight distances will be provided. (§7.3.3.C.3.)
4. Access to the site over streets is appropriate for the types and number of vehicles involved. (§7.3.3.C.4.)

PETITION NUMBER: #91-18

PETITIONER: Nicore Construction Corp.

LOCATION: 5-7 Elm Street, on land known as SBL 33, 23, 9 & 15, containing approximately 26,290 square feet of land.

OWNER: Nicore Construction Corp., Anthony Bonadio

ADDRESS OF OWNER: 102 Newton Street  
Newton, MA 02468

TO BE USED FOR: Curb cut and asphalt driveway on Elm Street

CONSTRUCTION: Asphalt

EXPLANATORY NOTES: §7.3.3 and §7.4 to amend Board Order #273-14(2), which allowed the construction of four townhouse style units, to construct a shared curb cut and driveway between 11-19 and 5-7 Elm Street.

ZONING: Multi-Residence 2 District

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #91-18 are null and void.

Approved subject to the following conditions:

***Conditions associated with this Special Permit/Site Plan Approval, Order #91-18:***

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. Area Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated December 26, 2017, revised April 30, 2018.
  - b. Zoning Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, and Marc Besio Professional Engineer, dated June 9, 2014 revised November 18, 2014, May 5, 2017, December 19, 2017, and April 30, 2018.
  - c. Topographic Proposed Site Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, and Marc Besio Professional Engineer, dated June 9, 2014 revised November 18, 2014, November 28, 2014, January 27, 2017 December 19, 2017, and April 30, 2018.
  - d. Detail Sheet 1, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, and Marc Besio Professional Engineer, dated June 6, 2014 and revised November 18, 2014.
  - e. Detail Sheet 2, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, and Marc Besio Professional Engineer, dated June 6, 2014.
  - f. Detail Sheet 3, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, and Marc Besio Professional Engineer, dated November 28, 2014.
  - g. Amended Easement Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated December 15, 2017.

2. Prior to the issuance of a building permit, the petitioner shall submit to the City Clerk, Law Department, Department of Inspectional Services and the Department of Planning and Development, a recorded document(s) from the property owners at 11-19 and 5-7 Elm Street outlining ownership, maintenance, and further responsibilities of the shared driveway.
3. Prior to the issuance of a building permit, the petitioner shall submit to the City Clerk, Law Department, Department of Inspectional Services and the Department of Planning and Development, a recorded abandonment of easement document for the easement approved by Board Order #273-14(2).
4. Prior to the issuance of a building permit, the petitioner shall submit signed and stamped engineering drawings of the shared curb cut and "Y" driveway for review and approval. The removal of the existing curb cuts and proposed sidewalk shall also be reviewed and approved by the City Engineer.
5. 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 board order for the approved Special Permit/Site Plan 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. Submitted a recorded agreement to the City Clerk, Department of Inspectional Services and the Planning Department in accordance with Condition #2.
  - d. Submitted a recorded abandonment easement document to the City Clerk, Department of Inspectional Services and the Planning Department in accordance with Condition #3.
  - e. Filed final engineering plans for review and approval by the City Engineer, including plans for the proposed shared curb cut and the removal of the two existing curb cuts in accordance with Condition #4. A copy of such written approval shall be filed with Clerk of the Board, the Commissioner of Inspectional Services, and the Director of Planning and Development.
  - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
6. No Final Inspection and/or Occupancy Permit for the buildings 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 Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land 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. 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.
- 7. Notwithstanding the provisions of Condition #6. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

***Conditions incorporated from Board Order #273-14(2):***

- 8. 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. Area Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated June 10, 2014.
  - b. Existing Conditions Site Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated March 12, 2014.
  - c. Topographic Proposed Site Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated June 6, 2014 and revised November 18, 2014.
  - d. Zoning Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated June 9, 2014 and revised November 18, 2014.
  - e. Detail Sheet 1, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated June 6, 2014 and revised November 18, 2014.
  - f. Detail Sheet 2, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter Professional Land Surveyor, dated June 6, 2014.
  - g. Planting Plan, prepared by Ryan Associates, dated October 13, 2014, revised on November 4, 2014, and November 21, 2014.
  - h. Layout and Lighting Plan, prepared by Ryan Associates, dated October 13, 2014 and revised November 21, 2014.
  - i. Architectural Plans, prepared by Space Craft Architects, Inc., dated November 21, 2014 consisting of eight (8) sheets.
  - j. Easement Plan, prepared by VTP Associates Inc., signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated August 29, 2014.
- 9. All new landscaping and fencing shall be maintained in good condition and shall be replaced with similar materials as necessary.

10. The petitioner shall close the curb cut that once serviced the property at 114 River Street and remove any bollards located along the frontage of the property.
11. The petitioner shall repair the sidewalk along the frontage of the property. The details of such construction shall be included in the final engineering plans and shall be approved by the City Engineer, which shall make the final determination on acceptable material for the sidewalk.
12. The petitioner shall submit a final lighting plan to the Planning Department for review and approval. All exterior lighting fixtures shall be residential in size and type.
13. No parking shall be allowed in either the site's driveway to the new units, or the driveway of 11-19 Elm Street.
14. No Final Inspection and/or Occupancy Permit for the portion of the building 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 Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land 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 Stormwater 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.
15. Notwithstanding the provisions of Condition #14e. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.