



**City of Newton, Massachusetts**  
Department of Planning and Development  
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Ruthanne Fuller  
Mayor

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

|                           |               |
|---------------------------|---------------|
| Public Hearing Date:      | March 6, 2018 |
| Land Use Action Date:     | May 8, 2018   |
| City Council Action Date: | May 21, 2018  |
| 90-Day Expiration Date:   | June 4, 2018  |

DATE: March 2, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #91-18**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Board Orders #273-14(2) and #40-07(3) to amend the site plans at **5-7 and 11-19 Elm Street**, Ward 3, West Newton, on land known as Section 33, Block 23, Lot 09 and Section 33, Block 23, Lot 16, containing approximately 26,320 sq. ft. of land in a district zoned Multi Residence 2. Ref: §7.3.3, and §7.4, of Chapter 30 of the Newton Revised Zoning Ordinance, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Public Hearing/Working Session.



**5-7 Elm Street**

## EXECUTIVE SUMMARY

The property located at 5-7 Elm Street consists of two lots totaling 26, 320 square feet in the Multi-Residence 2 (MR-2) zone in West Newton. The petitioner received a special permit and a request to rezone one of the two lots to construct four Single-Family Attached Dwellings in February of 2015 (**Attachment A**). The petitioner received two extensions of time from the City Council before obtaining a building permit in December of 2017. The four Single-Family Attached Dwellings were accessed via an easement over the adjacent property at 11-19 Elm Street formerly owned by the petitioner. The petitioner seeks to abandon this easement and provide access to the four Single-Family Attached Dwellings from Elm Street via an existing curb cut. This change requires an amendment to Board Order #273-14(2) to amend the site plan. Additionally, the property at 11-19 Elm Street is governed by a special permit (Board Order #40-07(3)). The petitioner requires an amendment to this special permit to amend the site plan because a connecting driveway between the two properties is no longer proposed.

The Planning Department is not concerned with the requests to abandon the easement and retain the existing curb cut at the southeast corner of the site. The curb cut and the driveway have existed for a number of years serving the prior two-family dwelling and are de minimis changes to the site plan. Staff believes the approved landscape plan will have to be amended to allow for the existing driveway to remain and allow proper sight lines for vehicles exiting the site. Also, the easement connecting the two sites should be officially abandoned with a recorded document. Staff suggests the petitioner provide a revised landscape plan and proof of such abandonment prior to the issuance of an amended building permit, should the petition be approved.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendments to Council Orders #273-14(2) and #40-07(3). (§7.3.3.C.1.)
- The site, due to the amendments to Council Orders #273-14(2) and #40-07(3), as developed and operated will adversely affect the neighborhood. (§7.3.3.C.2.)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendments to Council Orders #273-14(2) and #40-07(3). (§7.3.3.C.3.)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4.)

II. PROJECT DESCRIPTION AND ANALYSIS

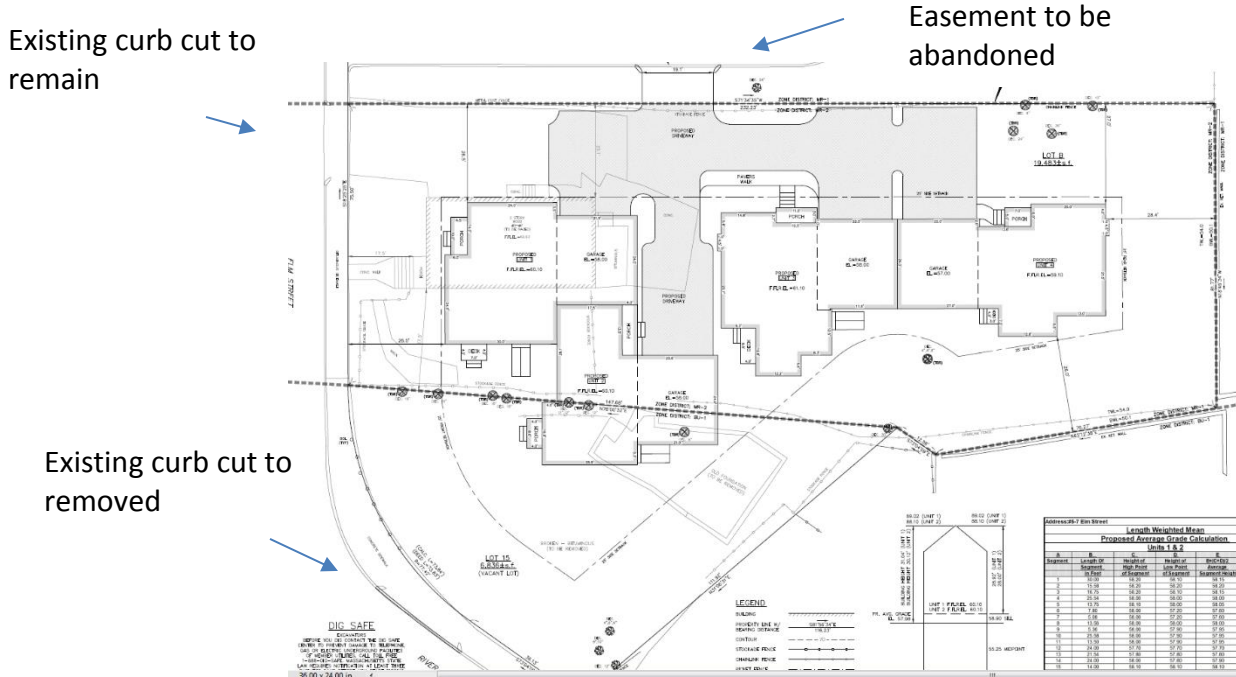
A. Land Use

The principal use of the site is and will remain multi-family.

B. Building and Site Design

The petitioner is not proposing any changes to the structures on site. The petitioner is proposing to retain the existing curb cut at the southeast corner of the site at 5-7 Elm Street to provide access to the dwellings. The curb cut will be reduced from 19 feet to 16 feet wide and will provide access to a 55-foot long by 16-foot wide driveway. If approved, the Engineering Division will require this driveway apron to be updated to comply with the Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB) standards concerning slope and/or materials.

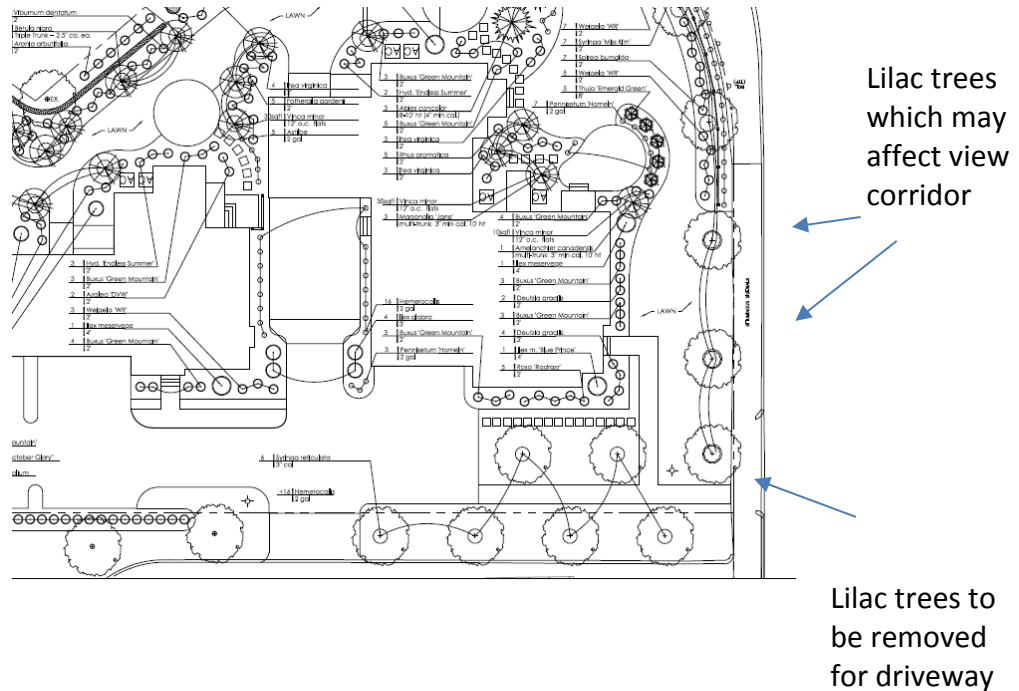
In 2014, before the special permit was pursued, the site was comprised of two lots accessed from Elm and River Streets via separate curb cuts. At that time, the petitioner owned the property to the south at 11-19 Elm Street which consists of Single-Family Attached Dwellings. The petitioner created an easement allowing access to the new development at 5-7 Elm Street over the adjacent lot at 11-19 Elm Street. In doing so, the petitioner proposed to remove the existing curb cuts on Elm Street, which became a condition of approval in the Board Order dated February 17, 2017.



The petitioner seeks to abandon the easement between the two lots and retain an existing curb cut leading to a proposed driveway accessing the four Single-Family Attached Dwellings at 5-7 Elm Street. The Planning Department is not concerned with this change to the site plan; the petitioner is still required to remove the remaining curb cut at 5-7 Elm Street per Board Order #273-14(2). Staff suggests a condition requiring the petitioner to formally abandon the easement and provided staff with a copy of the recorded document(s) prior to receiving an amended building permit, should the petition be approved.

C. Landscaping

The landscape plan approved by Board Order #273-14(2) proposed three lilac trees in the location of the planned driveway. Staff suggests the petitioner use best efforts to relocate these trees elsewhere on site. Three lilac trees immediately to the north along with additional plantings towards the bend in Elm Street may affect the sight lines of vehicles exiting the proposed driveway. Staff suggests these lilac trees be moved out of this view corridor and the petitioner provide further details on the height and spread of these plantings to ensure proper visibility. The petitioner should provide an updated landscape plan prior to the issuance of an amended building permit, should this petition be approved.



### III. TECHNICAL REVIEW

#### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment B**). Based on the Memorandum, the petitioner is seeking the following relief:

- Amend Board Orders #273-14(2) and #40-07.

#### B. Engineering Review

The petitioner has a valid building permit for the four Single-Family Attached Dwellings. The request to retain the existing driveway from Elm Street is a de minimis change from the previously approved site plan. The Engineering Division will review and approve the sidewalk along the entire frontage of the property as well as the upgraded driveway apron prior to the issuance of an occupancy permit.

### IV. PETITIONER'S RESPONSIBILITIES

The petitioner should provide further details regarding the relocation of plantings regarding the planned driveway and view corridor at the public hearing or prior to being scheduled for a working session.

### **ATTACHMENTS:**

- Attachment A:** Board Order #273-14(2)  
**Attachment B:** Zoning Review Memorandum, dated January 25, 2018  
**Attachment C:** DRAFT Council Order #91-18  
**Attachment D:** DRAFT Council Order #40-07(4)



Bk: 68981 Pg: 439 Doc: DECIS  
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#273-14(2)

CITY OF NEWTON

IN BOARD OF ALDERMEN

February 17, 2015

2015 FEB 19 PM 3:19  
RECORDED & INDEXED

ORDERED:

That the Board, 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 construct four attached dwelling units, and to allow a driveway in the side setback, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Marc Laredo:

Property Address: 5-7 Elm Street, Newton  
Property Address: 114 River Street, Newton

1. The specific site is an appropriate location for the proposed four-unit attached dwelling because the site is a corner lot located in a dense neighborhood with several other multifamily and attached dwellings. (§30-24(d)(1))
2. The proposed use, as developed and operated will not adversely affect the neighborhood, as the site plan meets all required setbacks and the requirements for lot coverage and open space, and provides for landscaping around all of the property lines. The proposed use will result in the improvement of an empty commercial lot, which currently detracts from the neighborhood. (§30-24(d)(2))
3. There will be no nuisance or serious hazard to vehicles or pedestrians, as the proposed project will result in the removal of two curb cuts and the improvement of the sidewalk at the corner of Elm Street and River Street. (§30-24(d)(3))
4. Access to the site over streets and through the driveway of the abutting property at 11-19 Elm Street is appropriate for the types and number of vehicles involved. The use of the driveway at 11-19 Elm Street for access will minimize the amount of impervious surface on the site and eliminate the curb cuts into the site. (§30-24(d)(4))
5. The waiver of the required setback from the side property line for the proposed driveway is in the public interest, as it will allow for greater open space on the site. (§30-9(b)(5)(a), and (b))

PETITION NUMBER: #273-14(2)

PETITIONER: Nicore Construction Corp.

LOCATION: 5-7 Elm Street and 114 River Street, on land known as SBL 33, 23, 9 & 15, containing approximately 26,290 square feet of land.

TITLE REF. Recorded Book 63616 Page 206 (5-7 Elm Street)  
Recorded Book 66402 Page 154 (114 River Street)

PLEASE RETURN TO:  
FIDELITY NATIONAL TITLE INSURANCE COMPANY  
133 FEDERAL STREET, 3RD FLOOR  
BOSTON, MA 02110 17-0033 KC

Attest  
  
City Clerk of Newton, Mass.

OWNER: Nicore Construction Corp. and Anthony Bonadio

ADDRESS OF OWNER: 102 Newton Street  
Newton, MA 02468

TO BE USED FOR: Attached Dwellings


CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §30-9(b)(5), to allow attached dwellings; §30-9(b)(5)(a) and (b), to locate a driveway within ten feet of a side lot line


ZONING: Multi-Residence 2 District

Approved subject to the following conditions:

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 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.
2. The petitioner shall file an Approval Not Required plan to merge the two lots at 57 Elm Street and 114 River Street.


A True Copy  
Attest  
  
City Clerk of Newton, Mass.

3. All new landscaping and fencing shall be maintained in good condition and shall be replaced with similar materials as necessary.
4. The petitioner shall close all existing curb cuts and remove any bollards located along the frontage of the property.
5. The petitioner shall repair or replace the sidewalk along the frontage of the property, as deemed necessary by the City Engineer. 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.
6. The petitioner shall submit to the City Clerk, Law Department, Department of Inspectional Services and the Department of Planning and Development, a recorded access easement from the property owner of 11-19 Elm Street allowing the petitioner to pass, including by vehicle, over the driveway and side yard at 11-19 Elm Street.
7. 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.
8. No parking shall be allowed in either the site's driveway to the new units, or the driveway of 11-19 Elm Street.
9. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Board 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 5:00 p.m. on weekdays, and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
  - 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 truck route(s) that minimize travel on local streets.
  - f. 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.
  - g. 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.

A True Copy  
Attest  
  
City Clerk of Newton, Mass.



- h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - i. A plan for rodent control during construction.
10. 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. Filed final engineering plans for review and approval by the City Engineer, including plans for repairing or replacing the sidewalk along the frontage of the property. 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.
  - d. Submitted a Construction Management Plan in accordance with Condition #9.
  - e. Submitted a recorded access agreement to the Law Department, City Clerk, Department of Inspectional Services and the Planning Department in accordance with Condition #6.
  - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
11. No Final Inspection and/or 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 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.
12. Notwithstanding the provisions of Condition #11e. 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  
Attest  
  
City Clerk of Newton, Mass.

and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

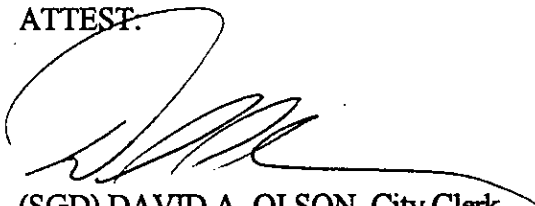
Under Suspension of Rules

Readings Waived and Approved

17 yeas 6 nays (Aldermen Baker, Blazar, Danberg, Harney, Sangiolo, and Yates)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on February 19, 2015. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



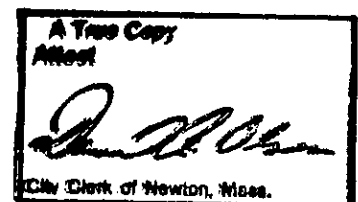
(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 2/19 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen





Ruthanne Fuller  
Mayor

Attachment B

**City of Newton, Massachusetts**  
Department of Planning and Development  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

**Date:** January 25, 2018

**To:** John Lojek, Commissioner of Inspectional Services

**From:** Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, Chief Planner for Current Planning

**Cc:** Michael Lundberg, President, Nicore Construction Corp  
Terrence P. Morris, Attorney  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Acting City Solicitor

**RE:** Request to amend Special Permits #273-14(2) and 40-07(3)

| Applicant: Nicore Construction Corp              |  |
|--|--|
| <b>Site:</b> 5-7 Elm Street and 11-19 Elm Street | <b>SBL:</b> 33023 0009 and 33023 0016            |
| <b>Zoning:</b> MR2 and MR1                       | <b>Lot Area:</b> 26,320 square feet (5-7 Elm St) |
| <b>Current use:</b> Attached dwellings           | <b>Proposed use:</b> No change                   |

### BACKGROUND:

The petitioner received a special permit in 2015 to construct four attached dwelling units on two merged parcels. Although the site was serviced by several existing curb cuts, the petitioner proposed to provide access to the property by an easement over the existing driveway of the adjacent parcel at 11-19 Elm Street, another attached dwelling project approved in 2007 under common ownership. At the time, none of the units at 11-19 Elm Street had been sold or occupied. The units are now all occupied, with two units owned by families with young children for whom the vehicular traffic activity to 5-7 Elm Street over the access easement creates a safety concern. As such, the petitioner requests amendments to both special permits to allow for a separate driveway to be constructed to serve the units at 5-7 Elm Street.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Terrence P. Morris, attorney, dated 1/2/2018
- Site Survey, signed and stamped by Joseph R. Porter, surveyor and Marc Besio, engineer, dated 6/6/2014, revised 11/18/2014, 11/28/2014, 1/27/2017, 5/5/2017, 12/19/2017
- Zoning Plan, signed and stamped by Joseph R. Porter, surveyor and Marc Besio, engineer, dated 6/6/2014, revised 11/18/2014, 11/28/2014, 1/27/2017, 5/5/2017, 12/19/2017
- Amended Easement Plan, prepared by VTP Associates, dated 12/15/2017

- Special Permit #273-14(2), dated 2/17/2015
- Special Permit #40-07(3), dated 2/17/2015

**ADMINISTRATIVE DETERMINATIONS:**

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1. Special Permit #273-14(2) authorized the construction of four attached dwelling units, as well as for a driveway in the side setback. The special permit allowed for the project site to gain its access via an easement from the adjacent parcel’s existing driveway, so as to minimize paving and maximize open space. This easement also required an amendment to the special permit for 11-19 Elm Street (Order #40-07(3)), to allow for a modification to the site plan and increased vehicular traffic. Due to safety concerns for children now living in the units at 11-19 Elm Street, the petitioner requests an amendment to the existing special permits and site plans for both properties to eliminate the access easement on the existing driveway at 11-19 Elm to utilize an existing curb cut servicing 5-7 Elm Street to create a separate driveway for those units.
  2. The petitioner received relief to allow for a driveway in the side setback in Special Permit #273-14(2), as the driveway coming from the adjacent parcel passed over the property line, citing the former section 30-9(b)(5)(a), now found in section 6.2.3.B.2. The relief required is the same, but the configuration is changing. To the extent that the new driveway configuration requires relief again, a special permit per section 6.2.3.B.2 is required.
1. See “Zoning Relief Summary” below:

| Zoning Relief Required |  |                 |
|------------------------|--|-----------------|
| Ordinance              |  | Action Required |
|                        | Request to amend Special Permits #273-14(2) and 40-07(3) |                 |
|                        |  |                 |

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Board, 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 a driveway has existed in this location serving to the prior two-family dwelling. (§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) to retain an existing curb cut and construct a driveway at the southeast corner of the site.

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.
  - 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, and December 19, 2017.
  - 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 and December 19, 2017.
  - 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. 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. Recorded a certified copy of this Council 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 abandonment easement document to the City Clerk, Department of Inspectional Services and the Planning Department.
  - d. 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.
  - e. 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.
  - f. 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.
  - g. 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.
3. Notwithstanding the provisions of Condition #2. 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):***

4. 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.
5. The petitioner shall file an Approval Not Required plan to merge the two lots at 5-7 Elm Street and 114 River Street.
  6. All new landscaping and fencing shall be maintained in good condition and shall be replaced with similar materials as necessary.
  7. 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.
  8. 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.
  9. The petitioner shall submit to the City Clerk, Law Department, Department of Inspectional Services and the Department of Planning and Development, a recorded access easement from the property owner of 11-19 Elm Street allowing the petitioner to pass, including by vehicle, over the driveway and side yard at 11-19 Elm Street.
  10. 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.
  11. No parking shall be allowed in either the site's driveway to the new units, or the driveway of 11-19 Elm Street.
  12. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Board 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, and between the hours of 8:00 a.m. and 7:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.



- 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 truck route(s) that minimize travel on local streets.
  - f. 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.
  - g. 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.
  - h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - i. A plan for rodent control during construction.
13. 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. Filed final engineering plans for review and approval by the City Engineer, including plans for repairing the sidewalk along the frontage of the property. 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.
  - d. Submitted a Construction Management Plan in accordance with Condition #9.
  - e. Submitted a recorded access agreement to the City Clerk, Department of Inspectional Services and the Planning Department in accordance with Condition #6.
  - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
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 #11e. 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.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Board, 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 amendment to the previously approved SITE PLAN (Board Order #40-07) for 11-19 (formerly 13) Elm Street 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 (formerly 13 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 allowing an access driveway to a four-unit development at 5-7 Elm Street/114 River Street.

CONSTRUCTION: None

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 #273-14(2) 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.