



Land Use Committee Report

City of Newton

In City Council

Tuesday, May 30, 2017

Present: Councilors Laredo (Chair), Schwartz, Lennon, Lipof, Crossley, Cote, Harney, Auchincloss

Also Present: Councilors Yates, Norton, Sangiolo, Albright

City Staff: Associate City Solicitor Bob Waddick, Director of Planning & Development Barney Heath, Chief Planner for Current Planning Alexandra, Commissioner of Public Works Jim McGonagle, Senior Planner Neil Cronin

Request for a Consistency Ruling relative to Board Order #40-15 at 95 Elm Street (Paddy's). Requesting a change to locate seats outside seasonally.

Note: Senior Planner Neil Cronin presented the request for a consistency on behalf of the petitioners at 95 Elm Street (Paddy's). The petitioner seeks to locate 17 seats outdoors seasonally, which differs from their previously approved plan to locate 17 seats outdoors on a rooftop patio. Committee members were in agreement that the change was consistent with the previous approval and noted that ground level seating might be less intrusive than rooftop seating.

Request for a Consistency Ruling relative to Board Order #19-15 at 131-181 Needham Street (Newton Nexus). Requesting a review of changes to entryway signage and design.

Note: Senior Planner Neil Cronin presented the request to change the signage at the Newton Nexus site. A Committee member noted that the proposed signs are all made of the same materials, which can be considered decorative and will not likely compete with other signage in the neighborhood. Committee members were in agreement that the proposed changes were consistent with the originally approved plans.

#95-17 Change of Zone Petition for Washington Street

MARK NEWTONVILLE, LLC petition for a change of zone to Mixed Use 4 for (i) all of the land located at 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Terrace, 867 Washington Street, 857-859 Washington Street, 845-855 Washington Street and 245-261 Walnut Street, also identified as Section 21, Block 29, Lots 11, 12, 17, 18, 19A, 20 and 21, Ward 2, currently zoned Business 1 and Business 2, and (ii) a portion of the land located at 16-18 Washington Terrace, 869 Washington Street, 861-865 Washington Street, 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and a private way known as Bailey Place, also identified as Section 21, Block 29, Lots 10, 13, 14, 16, 19, and 22, Ward 2, currently zoned Business 1, Business 2, and Public Use, further described as follows:

Beginning at a point on the northerly line of Washington Street, thence

Along the northerly line of Washington Street, south 89 degrees - 04 minutes - 40 seconds west, a distance of 434.02 feet to a point; thence

Along the easterly line of Washington Terrace, north 01 degrees - 52 minutes - 35 seconds west, a distance of 188.53 feet to a point; thence

North 89 degrees - 04 minutes - 40 seconds east, a distance of 294.98 feet to a point; thence

North 05 degrees - 11 minutes - 33 seconds west, a distance of 52.46 feet to a point; thence

North 85 degrees - 43 minutes - 30 seconds east, a distance of 150 feet to a point on the westerly line of Walnut Street; thence

Along the westerly line of Walnut Street, south 04 degrees - 12 minutes - 48 seconds east, a distance of 231.99 feet to a point of curvature; thence

Along a curve to the right having a radius of 17.00 feet, a central angle of 93 degrees - 17 minutes - 28 seconds, an arc length of 27.68 feet, a chord bearing of south 42 degrees - 25 minutes - 56 seconds west, a chord length of 24.72 feet to the point and place of beginning.

Containing 92,907 square feet, or 2.13 acres, more or less.

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

#96-17 **Special Permit Petition for Washington Street**

MARK NEWTONVILLE, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights not exceeding 60 feet and five stories, total gross floor area not exceeding 235,000 square feet incorporating not more than 160 residential units, not exceeding 46,000 square feet of commercial space, not exceeding 2,500 square feet of community space, not less than 350 onsite parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal services, and street level office; to allow FAR of not more than 2.50, lot area per dwelling unit of approximately 581 square feet,

reduction of the overall non-residential parking requirement by 1/3, 1.25 parking stalls per residential unit, and free standing signs; to grant waivers of not more than 97 parking stalls and of the height setback and facade transparency and entrance requirements; to grant waivers of certain parking facility design standards including dimensional requirements for parking stalls, parking stall setback requirements, entrance and exit driveways, interior landscaping, interior planting area, tree plantings, bumper overhang, lighting of one foot candle, curbing and surfacing, wheel stops, guard rails, bollards, and maneuvering space for end stalls; and to grant waivers as to number, size, location, and height of signs and number and dimensions of required loading bays, at 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street, 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, an unnumbered lot on Bailey Place, and the private way known as Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, containing approximately 2.84 acres of land part of which is in a proposed Mixed Use 4 District and the remainder of which is in the existing Business 2 and Public Use zones. Ref.: Sections 4.2.2.A.2; 4.2.2.B.1; 4.2.3; 4.2.5.A.2; 4.2.5.A.3; 4.2.5.A.4.c; 4.2.5.A.6.a; 4.2.5.A.6.b; 4.2.5.A.6.c; 4.4.1; 5.1.4.A; 5.1.4.C; 5.1.8.A.1; 5.1.8.A.2; 5.1.8.B.2; 5.1.8.B.6; 5.1.8.D.2; 5.1.9.B.1; 5.1.9.B.2; 5.1.9.B.3; 5.1.9.B.4; 5.1.10.A.1; 5.1.10.B.5; 5.1.12; 5.1.13; 5.2.13.A; 7.3; and 7.4 of Chapter 30 of the City of Newton Revised Zoning Ordinances, 2015.

Action: Public Hearing Closed; Land Use Approved 5-1-2 (Harney Opposed, Cote, Schwartz abstaining)

Note: Director of Planning and Development Barney Heath announced that the Planning and Development Board will continue the public hearing, discussion and vote on the request to rezone the Orr Block at their regularly scheduled meeting on June 5, 2017. The Land Use Committee Chair reviewed protocol and stated his intent to continue work on the Draft Board Order after the petitioner's presentation and public comment.

PETITIONER'S PRESENTATION

Attorney Stephen Buchbinder, with offices at 1200 Walnut Street, elaborated on the request to provide some flexibility in the Board Order with regard to number of residential units, as presented in Deputy City Solicitor Ouida Young's memo dated May 26, 2017. While the petitioner is seeking a development with 160 units, the petitioner is prepared to reduce the density to 140 units based on ongoing discussions with abutting homeowners. If the petitioner

can come to an agreement with abutters on Foster Street that if no appeal is made to the special permit or zone change, the petitioner would exercise the special permit allowing for development of 140 units. The petitioner anticipates that a 160 unit project is likely to be appealed and will expend more resources than a project with reduced density.

Based on feedback from the abutters, the garage ramp has been relocated to the westerly portion of the site, adjacent to Washington Terrace. The loading dock would be moved next to the garage ramp. The trash room has been relocated to the eastern side of the site, closer to Foster Street, with the entrance facing away from Foster Street. The change in plan results in the reduction of the curb cut across from the Post Office loading dock and seven parking stalls. The 140 unit development additionally results in 3,305 sq. ft. of additional commercial space due to the relocation of the trash room and loading dock. Because the west portion of the site was previously on stilts, the ground beneath it is captured in the new plan. Chief Planner for Current Planning Alexandra Ananth confirmed that the changes could not be made independently of one another.

PUBLIC COMMENT

Mary Castro Summers, 171 A. Lowell Avenue, questioned where there is space for children who live at the development to play.

Aaron Grau, Kenrick Street, is an avid supporter for the project. He believes that the proposed development will be an asset to the community, creating opportunity, fiscal and aesthetic benefits. He urged Committee members to vote in favor of the petition.

Barbara Anderson, 853 Washington Street, believes that Washington Place is a great opportunity. She noted that the petitioner met with her to ensure that her housing needs were met at the start of the project. She thinks the affordability and enhanced streetscape design will be beneficial to the community.

Doris Ann Sweet, 281 Lexington Street, is in favor of the proposal. She noted that the development can be a showcase of what the MU4 zone can be.

Ann Cohen, 50 Court Street, believes that the creation of the buffer zone is an inappropriate way to proceed. She does not think the renderings have been accurate to scale and hopes a scaled down project can be created.

Nancy Zollers, 154 Oliver Road, has been impressed with the Council and developer to incorporate feedback. She noted that the Comprehensive Plan calls for dense, mixed use development in villages.

Lynn Weissberg, 5 Alden Road, believes the developer has been responsive to public comment and comment from Councilors. She believes the project is a good example of MU4 and thinks it will be a good development.

James Pacheco, 48 Circuit Ave, stated that there are unforeseen traffic and congestion issues. He believes the creation of the buffer zone is a way of avoiding protecting abutters' rights. He does not believe the development is in the best interest of the City and does not want this development to set a precedent. He urged Committee members to vote no.

Susan Flint, 543 Centre Street, supports the proposed development. She noted that the Orr Block needs updating and believes the development can revitalize the area. She noted young professionals can have affordable housing, near the commuter rail and have access to Boston.

Lois Levin, 497 Chestnut Street, believes that the petitioner's team is capable and caring. She noted that the area is walkable and transit oriented and the proposed development will contribute to the improved streetscape. She expects that people will use shared vehicles and does not believe that the area will be congested.

Marcia Johnson, 39 Bemis Street, is thankful for Foster Street neighbors & Korff for reengaging in dialogue. She is confident that the MU4 zone was well conceived and is appropriate at this site. She noted that the MU4 zone affords the opportunity to address 21st century lifestyles and interests and urged Councilors to vote in favor of the project.

Fran Godine, 19 Crofton Road, supports the project. She believes it fulfils the goals of the MU4 district and Comprehensive Plan. She noted that the buildings and uses are perfect for the location and believes that the enhancements will help connect the two sides of Newtonville. She noted that the proposed development will help provide housing options for those looking to downsize.

Sarah Ecker, 68 Prospect Park, supports the project and believes that it fits with the City's Comprehensive Plan. She noted that the housing supply in the region is not keeping up with the demand. She thinks that multi-unit housing located close to public transportation is a responsible decision. She noted that the retail and commercial space will contribute to a more lively neighborhood.

Peter Bruce, 11 Claflin Place, believes that the buffer strip will be used for traffic circulation. He noted that the strip is directly adjacent to the abutters and the historic district. He noted that there is no real buffer and the strip will not protect abutters from the noise and traffic. He believes that the buffer zone is an attempt to circumvent state law and urged Committee members to vote against the rezoning.

Kathleen Kouril Grieser 258 Mill Street, believes that the buffer strip is a way of circumventing the law. She does not believe it is right to approve the proposal and allow the Foster Street

abutters spend resources trying to appeal it. She noted that there is not enough affordable housing, the proposal underestimates school enrollment and retail will cannibalize tax base. She does not believe that the Board Order should be written to allow for the petitioner's discretion in building up to 160 units.

Robert Smith, 40 Foster Street, spoke on behalf of 5 property owners on Foster Street & one additional property owner on corner of Lowell. They have been trying to reach an agreement with the petitioner. He noted that they are supportive of redevelopment, affordable housing and the 140 unit option. They are strongly opposed to the inclusion of the 160 unit option in the Board Order.

With regard to the protest petition, Mr. Smith noted that the purpose of the state statute is to protect the interest of abutters and require additional scrutiny for zone changes. He believes that the resubmission of the same project that was previously withdrawn is a zoning scheme. The abutters believe the creation of the buffer strip is a violation of their rights and that the tactic undermines the intent of the state statute.

The abutters' requests for the Board Order include the following:

1. Saturday Construction terminates at 1:00pm
2. The Construction Liaison Committee starts prior to demolition
3. Traffic Impact Analysis includes Lowell Avenue and Page Road

Paul Zarchin, 24 Frederick Street, is opposed to the proposed project. He does not think it is appropriate to approve other developments before has seen the impacts of the Austin Street development.

Helen Nayar, 75 Grove Hill, noted that taxes have been going up because of student increases. She doesn't believe it is realistic that seniors can sell their homes and afford to live at Washington Place. She noted that out of 804 units in four dense developments in the City there are 275 students representing 34%. The projections for Washington Place are 15% which she believes is an underestimation. She noted that taxes continue to rise and urged Councilors to reconsider dense development.

Dianne Sanborn, 48 Circuit Avenue, is not against redevelopment or affordable housing but is opposed to the size and scale of the proposed development. She has concerns about the impacts of the shadows on the neighborhood and believes that the petitioner should build within the current guidelines.

Patrick Slattery, 221-227 Walnut Street, thanked Councilors for the amount of work done with the project. He noted that the petition is exactly the same as the previous petition and does not believe that the buffer strip protects abutters. He believes that the intensity of use is the same and would like the Law Department to clarify what constitutes a buffer. He remains concerned

about the shadows on abutting properties. He noted that because the project is constantly evolving, he does not know all the details.

Jackie O'Toole, 17 Turner Terrace, thanked Councilors for their attention to detail. Ms. O'Toole believes that the proposed development is too large. She noted that the zoning laws exist for a reason and does not believe it is appropriate to rezone property after property owners have purchased it under a specific zoning.

Ann Duvall, 33 Madison Avenue, asked Committee members to consider what the wall of buildings will look like from West Newton to Newton Corner. She believes the proposed development is too large.

Kenneth Roberts, 252 Cabot Street, is thankful for efforts of Council members and City staff. He noted that he grew up at the site and change in the building is emotional for his family. He stated that he would not be supportive unless he felt that the proposal was better than the existing conditions. He believes that the proposed development will help promote vibrant life and opportunities for the community, particularly young professionals who have not been present at many meetings.

Thomas Kraus, 480 Walnut Street, Vice President of the Newtonville Area Council, Mr. Kraus noted that revised recommendations have been submitted with regard to the \$700,000 for consideration in the Board Order. He noted that he and his wife are personally excited to see revitalization efforts in Newtonville.

Dana D'Agostino, 359 Cabot Street, submitted the attached handout. After discussions with City staff and the developer, she performed an independent analysis of the school enrollment projections. She estimates that the educational expense increase will be approximately \$319,000/year, resulting in a negative fiscal impact for the City.

John, 75 Walker Street, is in support of the project. He noted that Walker Street may be impacted by cut through traffic and suggested that a light be installed there.

Susan Reisler, 11 Claflin Place, reminded Councilors that 3,100 people signed a petition opposed to the petition.

Tarik Lucas, 36 Central Avenue, questioned why there is so much controversy over this project. He noted that he is not opposed to new development at the site of the Orr building, but he doesn't understand why a compromise cannot be made between abutters, the City and the developer.

Tamara Bliss, 9 Lewis Street, strongly supports the rezoning & special permit petition. Ms. Bliss noted that there are two groups of individuals being left out of Newton due to lack of housing

options (younger & older). She noted that the sale of a house could reduce expenses and help afford housing opportunities in Washington Place.

John Sisson, 45 Greenlawn Avenue, asked that the City Council compare the parking requirements with other communities and noted that not all communities require as much parking as Newton. He noted the project proposed now is much better than what was proposed in 2016 and commended the efforts involved.

Kathleen Hobson, 128 Dorset Road, noted that turnover in single family residences is the greatest factor in increasing number of students. Ms. Hobson believes the 20 unit loss resulting from the approval of the 140 unit plan is a detrimental change. She believes the City should maximize the potential of the development and approve the 160 unit option.

Fred Arnstein, 7 Briar Lane, speaking as President of Neighbors for a Better Newtonville, noted that the group is not opposed to development at the site, but is opposed to rezoning.

Pamela Guy, 7 Briar Lane, noted that as a senior citizen with changing health needs and mobility concerns, she needs a car more than ever. She believes that the added density will create added traffic congestion.

Alison Conant, 68 Brookside Avenue, believes the proposed development is too large as proposed for the Garden City and urged Councilors to vote no against the rezoning.

With a motion from Councilor Auchincloss to close the public hearing, Committee members voted 8-0 in favor of the motion. Councilor Auchincloss moved approval and the Committee resumed review of the draft Board Order.

BOARD ORDER REVIEW

The Chair noted that the Board Order needs additional editing to include a more directive tone. A Councilor expressed concern related to allowing different site plan options in the Board Order for exercise by the petitioner. Ms. Ananth confirmed that the Chestnut Hill Board Order was written to allow between 80 and 100 units. Most Committee members were supportive of allowing some discretion in the Board Order but were in agreement that the petitioner's discretion should be limited and range(s) should be specified. With regard to different development options, it was confirmed that the two site plans (140 unit/160 unit) are mutually exclusive.

A Committee member expressed concern related to the impact on the pedestrian plaza in the reduced 140 unit site plan. Because parking is reoriented, there are parking stalls that break up the pedestrian plaza. Committee members were in agreement that the pedestrian plaza is an important feature of the project and that cutting into it could be detrimental to the pedestrian experience. Councilors questioned whether the change impacting the pedestrian

plaza is necessary. The petitioner confirmed that parking stalls can be relocated to the underground garage to avoid cutting into the pedestrian plaza. A Committee member asked that the petitioner provide revised elevations for the west portion of the site.

In response to requests from abutters to limit the hours of Saturday construction, the petitioner indicated the intent to work on Saturdays from 8:00 am – 5:00 pm. Committee members discussed whether Saturday construction should be prohibited after 1:00 pm. Councilors acknowledged that limiting Saturday construction hours could extend the duration of the project construction up to 20%. Committee members were in agreement that extension of the construction phase of the project would be detrimental to the neighborhood and to small business hours. 7/8 Committee members were supportive of having Saturday construction from 8:00 am – 5:00 pm. Councilors requested that the draft order be further refined with respect to the parameters of evening interior construction.

Committee members requested that a condition be created to ensure that snow is removed off-site.

In response to abutters' requests to form the Liaison Committee prior to demolition, Associate City Solicitor Bob Waddick noted that because exercise of the special permit occurs when a building permit is issued, the creation of the Liaison Committee prior to demolition is not enforceable.

Committee members noted that Foster Street and Page Road should be included on the post construction traffic study.

After review of the conditions, Councilors continued review of the following schedules attached to the Order which are referenced as attachments in "Explanatory Notes".

Schedule A – Relief Sought

Schedule B – Plans

Schedule C – The Engineering memo; will be removed and referenced in the Board Order

Schedule D – Provides an overview of the offsite mitigation funds (\$700,000) for Newtonville improvements

It was noted that the lists of proposed improvements drafted by the Planning Department and Newtonville Area Council were not aligned. Some Ward 2 Councilors determined that it might be more appropriate to defer the decision on how to spend the \$700,000 pending additional information about the City's Newtonville enhancement plan. They discussed options to form a working group or to have each offsite improvement return to Land Use for approval. The Law Department has concerns about the creation of a working group of unelected officials

making the decisions related to specific improvements, but noted that it would not be possible to require the petitioner to return to the Land Use Committee for individual appropriations. They determined that the two major categories for improvement are:

- A. Streetscape and street beautifications initiatives in the vicinity of the project including the bridge

and
- B. Transportation Enhancements for all travel modes including bikes, pedestrians or elements related to the Newtonville Train Station

Committee members discussed whether bike lanes should be prioritized as part of the improvements. Councilors noted that while bicycle accommodations can be costly, having them in village centers is an important goal. Committee members requested that Commissioner of Public Works Jim McGonagle provide a cost estimate for the proposed bicycle accommodations.

Committee members suggested that the Board Order specify that the developer shall allocate no less than \$700,000 for streetscape and street beautification or for transportation enhancements which projects should be directed by the Planning Department in consultation with the NVAC. Some Councilors were not comfortable with a lack of defined mitigation efforts and noted that the petitioner should be following through on specific commitments made as part of the review process. Committee members were generally in agreement that without knowing what the Newtonville enhancements as part of the City's efforts, the specific projects cannot be determined. Committee members were in agreement that they are looking for some flexibility without eliminating the Council's control. Attorney Waddick confirmed that he would review possible solutions to include Council review at a later stage.

Committee members reviewed several proposed improvement projects proposed. It was noted that there was a discrepancy in some projects being included as mitigation projects that had initially been included as part of the petitioner's presentation. Ms. Ananth confirmed that work immediately adjacent and at the intersection is included as part of the project and work on the opposite side of Walnut Street, and Washington Street is additional. Committee members expressed concern about work in the intersection being misrepresented and the petitioner confirmed that they would review details of the project.

Schedule E – TDM Subsidy Program; to be rewritten as directions to the petitioner. It was confirmed that the City's preference is to allow the petitioner to maintain control of the funds and program management. Committee members expressed concern that the developer would increase rent as a way to generate the funds lost from the subsidy program. Committee members requested that the incentive be offered not only as a rent credit, but a direct payment to the resident. A Councilor requested that the Planning Department study results of the program.

Schedule F – Transportation Demand Management Plan; A Councilor asked that the TDM Plan include a provision that the petitioner has the ability to expand the number of EV charging stations pending additional demand.

Schedule G – List of Off-site improvements that are included as part of the project; to be removed and referenced in the Board Order

Schedule H – Includes the Inclusionary Housing Plan; to be referenced and removed as a schedule

Councilors agreed that the Council Order should be drafted carefully before it goes to the full Council. The Chair noted that to allow for additional time to comment and provide feedback on the draft Board Order and outstanding items, the item will be postponed to June 19, 2017. Councilors were in agreement that all outlying questions should be answered prior to recommendation to the Full Council. With Councilor Auchincloss' motion to approve the request to rezone, the Committee voted 6 in favor, with Councilor Harney opposed and Councilor Cote abstaining. With the motion to approve the special permit petition, Committee members voted 5 in favor, with Councilor Harney opposed and abstentions from Councilors Cote and Schwartz. It was confirmed that the Chair will facilitate changes to the draft Council Order and communicate feedback from Councilors to Law and Planning staff. The Committee adjourned at 10:50 pm.

Respectfully submitted,

Marc C. Laredo, Chair