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Setti D. Warren
Mayor

Barney Heath
Director

**ZONING BOARD OF APPEALS COMPREHENSIVE PERMIT PUBLIC HEARING
MEMORANDUM**

DATE: September 23, 2016

MEETING DATE: September 29, 2016

TO: Zoning Board of Appeals

FROM: Barney Heath, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning

COPIED: Mayor Setti D. Warren
Dan Violi, Chair, Newton Housing Partnership
Councilors from Ward 5

SUBJECT: **Application #1-16, Waban AMA Realty Ventures LLC, applying to the Zoning Board of Appeals** for a comprehensive permit pursuant to G.L. c. 40B, §20-23, as amended, to construct ~~48~~ 8 rental units including ~~38~~ 6 market rate units and ~~10~~ 2 affordable units on land located at 1521 Beacon Street in Newton, MA, Ward 5, Section 53, Block 34, Lot 04, containing approximately ~~70,335~~ 31,250 square feet of land area in a Single Residence 2 (SR2), Zoning District.

The purpose of this memorandum is to provide the Zoning Board of Appeals, the City Council and the public with technical information and planning analysis which may be useful in the comprehensive permit decision-making process. 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 hearings that the Zoning Board of Appeals will want to consider in its discussion at a subsequent public hearing.



**1521 Beacon Street (view
from Short Street)**

EXECUTIVE SUMMARY

In January 2016, the Applicant, Waban AMA Realty Ventures LLC, submitted a request for a comprehensive permit pursuant to Massachusetts General Laws Chapter 40B, Sections 20 through 23, to create 48 rental units on an approximately 70,335 square foot parcel currently improved with a former church. The site, a through lot with frontage on both Short Street and Karen Road in Waban, is located in a Single Residence 2 (SR2) zoning district and is surrounded by single-family residences.

On January 26, 2016, the Zoning Board of Appeals opened and continued the public hearing on this application. A second hearing held on February 28, 2016, was also held open. On June 28, 2016, the Applicant submitted a revised conceptual site plan layout with a number of significant changes to the proposed project and site plan. Notably, two single-family lots with frontage on Karen Road have been carved out of the parcel, reducing the size of the project site to 31,250 square feet. It is assumed that these single-family lots will be developed consistent with the City of Newton Revised Zoning Ordinances and will therefore not be subject to the purview of the Zoning Board of Appeals. The conceptual site plan indicated that the remaining portion of the site would be developed with a total of eight townhouse units, located in three separate 2.5 story buildings that would be accessed from Short Street via five separate curb cuts. The Planning Department had concerns with the number of curb cuts and the July 14, 2016 hearing was continued to September 29, 2016.

On September 14, 2016, the petitioner again submitted revised plans. The site plan remains consistent with the previous submission for 8 townhouse units in three separate buildings with frontage on Short Street. The most recent set of plans includes two options for the driveways. One option maintains the five separate curb cuts and the second option reduces the number of curb cuts to two, utilizing a semi-circular style driveway. The Planning Department prefers the second option as it allows for more screening at the front property line and minimizes the number of pedestrian and vehicular conflicts.

The Planning Department notes that all eight (8) of the units should qualify for inclusion on the City's Subsidized Housing Inventory. However, the Planning Department remains concerned that the height of the structures exceeds the height of surrounding buildings, building materials are not specified on plans and unit sizes are not specified on plans. Should the Board choose to approve this project the Planning Department recommends a condition that the units shall comply with the maximum building height as set forth in the City of Newton's Revised Zoning Ordinances. The Applicant should also provide information on the deed restricted units, including and their unit size, layout and target income levels. Finally, the Planning Department would recommend that the landscape plan include a better mix of evergreen and deciduous trees in order to provide more year round screening of the property from abutters. Subject to satisfactory resolution of the above issues the Planning Department recommends approval of this project with conditions.

The Applicant submitted a Revised List of Zoning Relief Sought which the Planning Department has redlined (**Attachment A**).

A draft Decision with Conditions is attached for discussion (**Attachment B**).

I. Zoning Board of Appeals

The ZBA is required to render a decision, based on a majority vote within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the ZBA and the Applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the ZBA has been submitted.

The ZBA may dispose of the application in one of the following ways:

- approve a comprehensive permit on the terms and conditions set forth in the application; or
- deny a comprehensive permit as not consistent with local needs; or
- approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials that address matters of local concern, and:
 - a. in the aggregate do not make the building or operation of such project uneconomic; and
 - b. are consistent with local needs.

ATTACHMENTS

Attachment A: Applicant's List of Zoning Relief Sought (redlined by Planning Department)

Attachment B: Draft Decision with Planning Department's recommended conditions

LIST OF RELIEF SOUGHT – 1521 BEACON STREET

The Applicant requests that the Zoning Board of Appeals grant a comprehensive permit in lieu of the following permits, licenses and approvals without which the Project could not be constructed as proposed, and the denial of which in many instances would render the Project uneconomic within the meaning of M.G.L. c. 40B, §20. References herein are to the Revised Ordinances of Newton 2014, as amended, of which Chapter 30 is the City of Newton Zoning Ordinance dated November 1, 2015, revised April 25, 2016, and Ordinance No. A-78 (approved June 20, 2016) (the “Zoning Ordinance”).

ZONING ORDINANCE

1. Use
The Applicant seeks a comprehensive permit in lieu of a variance and/or special permit from the provisions of Sec. 3.4.1 to permit the premises to be used for eight townhouse units in three buildings (3 units, 2 units and 3 units, respectively) in a Single Residence 2 District.

2. Affordable Housing
Sec. 5.11 of the Zoning Ordinance, provides requirements for participation in affordable housing programs for private developments granted by special permits involving increases in density. The Applicant’s program of affordability will provide that ~~20%~~ 25 % of the dwelling units in the project (2 units) will be available for rent to persons or families of low income as defined by the regulations of MassHousing from time to time. To the extent that Sec. 5.11 might be applicable to the project, a comprehensive permit is requested in lieu of a special permit under Sec. 5.11 in order to conform the affordability elements of the Applicant’s program to the requirements of the Zoning Ordinance.

3. Density and Dimensional Controls
The Applicant seeks a comprehensive permit in lieu of such variances or special permits as may be required from or under Sections 3.1.2 and 3.1.3 for construction of the project in a Single Residence 2 District including without limitation the following waivers from the dimensional requirements of Sections 3.1.2 and 3.1.3 for single dwelling units:

Zoning Category	Required	Proposed Option A	Need Waiver (Y/N)	Proposed Option B	Need Waiver (Y/N)
Minimum Lot Area	10,000 SF	31,250 SF	N	31,250	N
Lot Area Per Unit	15,000 SF	3,907 SF	Y (Sec. 3.1.3)	3,909 SF	Y (Sec. 3.1.3)
Frontage	80 feet	273 feet	N	273 feet	N
Front Setback	25 feet	30.25 feet	N	42.1	N
Side Setback	7.5 feet	15 feet	N	15 feet	N
Rear Setback	15 feet	39 feet	N	27.8 feet	N
Floor Area Ratio	.33	.64	Y(Sections 3.1.3 and 3.1.9)	.64	Y(Sections 3.1.3 and 3.1.9)

Building Height (Apartment Bldg)	36	38.4	Y(Sec.3.1.3)	38.4	Y(Sec.3.1.3)
Maximum Number of Stories	2.5	2.5	N	2.5	N
Maximum Building Lot Coverage	30%	29.69%	N	29.87%	N
Minimum Open Space	50%	57.24%	N	50.72%	N

Comment [AA1]: The Planning Department recommends this waiver not be approved.

4. Parking Requirements

The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Sec. 5.1.13 in order to waive the requirement that two parking units be provided for each dwelling unit in accordance with Sec. 5.1.4.A. The six market rate units will each have two parking stalls per unit and the affordable units will have one stall per unit. The Applicant further seeks any other relief which may be necessary or appropriate and may be granted by the Board of Aldermen under Sec. 5.1.13 in order to conform the waivers sought to the plan submitted.

5. Site Plan Approval

The Applicant requests a comprehensive permit in lieu of site plan approval required under Sec. 7.5 in connection with special permits granted under Sec. 7.3.

6. Garages

The Applicant seeks waivers from the provisions of Sec. 3.4.4.C (requirement of living space over garages) and Sec. 3.4.4.E.1 (length of garage walls relative to length of building overall).

NON-ZONING ORDINANCES

1. Tree Ordinance – Revised Ordinances §21-80 et seq.

~~Revised Ordinances §21-80 et seq. provide a requirement for a permit and the payment of fees for removal of trees from the property under certain circumstances. To the extent that any permit or fee payment would otherwise be required under Revised Ordinances §21-80 et seq., the Applicant requests a waiver of such permit and fees.~~

The Planning Department recommends that this waiver not be approved.

2. Demolition Delay – Revised Ordinances §22-50

Revised Ordinances §22-50 provide for a review by the Newton Historic Commission and the possible imposition of a demolition delay of historically significant buildings. To the extent the existing building may be deemed to fall within the jurisdiction of the Newton Historic Commission under revised Ordinance §22-50, a comprehensive permit is sought in lieu of a determination of the Newton Historic Commission that such structures or features are not preferably preserved.

3. Light Ordinance

~~Revised Ordinances §20-23—20-28 provide limitations on installation of light sources which do not conform to the criteria stated. §20-26 provides for waivers to be granted by the Planning and Development Board. To the extent that any light source may not conform to the requirements of §20-24 or that the requirements of that section may be inconsistent with Sec. 5.1.10.A of the Zoning Ordinance, the Applicant seeks a comprehensive permit in lieu of any waiver requested under §20-26.~~

~~The Planning Department recommends that this waiver not be approved.~~

4. Consent of the Planning Board

To the extent any consent or review of the Planning Board is required under Planning Board rules, a comprehensive permit in lieu of such approval is sought.

5. Curb Cut Permit

~~The applicant requests a comprehensive permit in lieu of any sidewalk crossing permits or consent of the Commissioner of Public Works to the extent necessary to comply with the requirements of Revised Ordinances §26-65.~~

Comment [AA2]:

~~The Planning Department recommends that this waiver not be approved.~~

6. Utility Connection Permits

~~The applicant seeks a comprehensive permit in lieu of such local approvals as are required to (i) open streets, (ii) make utility connections for water, sewer, gas, electric, cable or other utilities from time to time.~~

~~The Planning Department recommends that this waiver not be approved.~~

7. Additional Relief

The Applicant seeks a comprehensive permit in lieu of all other permits, licenses or approvals as may be issued by the City of Newton as necessary to conform the relief sought to the plans filed with this Application as the same may be amended from time to time. Included within the relief sought are all ancillary, subsidiary, usual, customary or necessary local permits, approvals or licenses in lieu of which the Board may grant a comprehensive permit to the extent necessary to conform the relief granted to the plans submitted herewith as amended from time to time.

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Setti D. Warren
Mayor

ZONING BOARD OF APPEALS

DECISION

Pursuant to G.L. c. 40B, the Board, after a public hearing and findings of fact including, but not limited to the facts stated herein, on motion of XXX, and seconded by XXX, the Board voted X in favor (XXX) and X opposed (XX) to grant a comprehensive permit to the Applicant to construct eight (8) residential units, two of which shall be affordable for households earning up to 80% of the average median income. The comprehensive permit is granted subject to the following conditions of approval (the "Conditions") and waivers and exceptions:

FINDINGS

1. The Board finds that the Applicant has complied with all rules and regulations of the City of Newton as they pertain to the application for a comprehensive permit.
2. The Board finds that the Applicant is qualified pursuant to 760 CMR 56.04 in that:
 - a. the Applicant is a limited dividend corporation as that term is defined in 76 CMR 56.04(1) (a);
 - b. the Applicant has a funding commitment from a subsidizing agency as evidenced by the Project Eligibility Letter from Massachusetts Housing Finance Agency dated July 23, 2015;
 - c. the Applicant has site control as evidenced by the quitclaim deed from The Roman Catholic Archbishop of Boston, recorded at the Southern Middlesex Registry of Deeds at Book 8682, Page 461 on January 21, 2014;
- ~~3. The project as proposed does not meet the purpose or intent of Chapter 40B as it proposes to build a 39 foot high single family home totally 4,275 square feet not including an~~

~~attached garage, two 3,480 square foot single family homes with attached garages and a duplex with two affordable units of 1,600 square feet on a 27,000 square foot lot.~~

4. The Applicant has provided evidence that a regional need for low and moderate income housing exists.
5. As conditioned by the decision of this Board, the proposed development is consistent with local needs.

CONDITIONS

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this comprehensive permit shall be located and constructed consistent with the Plan entitled "1521 Beacon Street, Newton, Mass., Proposed Layout Plan – Option B", prepared by Verne T. Porter, Jr., P.L.S., 354 Elliot Street, Newton, Mass. dated August 23, 2016 as modified by the additional provision that the height of the structures shall be limited as dictated in the following conditions.
2. The units shall comply with the maximum building height as set forth in the City of Newton's Revised Zoning Ordinances.
3. The project shall comply with the Tree Preservation Ordinance.
4. There will be no freestanding signage on site.
5. Prior to the issuance of any building permits, the Applicant shall submit a complete set of architectural plans including elevations, signed and stamped by an architect, dimensioned site plans, engineering plans, storm water drainage plans, landscaping plans, utility plans, signed and stamped by a professional engineer, consistent with the August 26, 2016 Plans submitted to the Board entitled "1521 Beacon Street - Townhouses, View of Short Street Facades – Option 2, prepared by Prellwitz/Chilinski Associates Inc, 221 Hampshire Street Cambridge MA 02139.
6. Except as expressly waived in this comprehensive permit decision, the Project shall comply with all Newton ordinances and other local rules and regulations, including the payment of all applicable permit fees.
7. Copies of all state and federal permits and approvals related to the Site or the Project shall be submitted to the City's Department of Planning and Development as well as the Law

- Department for review to ensure consistency and compliance with this comprehensive permit decision.
8. The two deed restricted units shall be affordable to households earning up to 80% (or 50%???) of area median income, adjusted for household size. The units shall be deed restricted in perpetuity, or for as long as the Project does not comply with zoning.
 9. The marketing and resident selection process for the affordable units shall be consistent with the “Guidelines for Uniform Local Resident Preferences in Affordable Housing”, prepared by the City’s Fair Housing Task Committee (Revised March, 2012). That process is consistent with the provisions of Newton Zoning Chapter 30 Section 5.11., and is intended as a standard provision for all Newton housing programs. The plan shall be reviewed and approved by the Planning Department and the Law Department.
 10. Before any site clearing, grading, demolition or construction may begin on site, the Applicant shall submit a municipal lien certificate that shows all taxes, assessments and betterments have been paid in full and there are no outstanding liens on the property.
 11. All construction and demolition activity shall be limited to 7AM-6PM Monday through Friday excluding holidays, unless extended with the approval of the Commissioner of the Inspectional Services Department.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY BUILDING PERMIT.

12. No Building Permit shall be issued pursuant to this Comprehensive Permit until the Applicant has:
 - a. recorded a certified copy of this Decision at the Middlesex County (South) Registry of Deeds and submitted copies of the recorded Decision with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development;
 - b. submitted evidence of Final Approval by the subsidizing agency and executed a Regulatory Agreement in a form approved by the City’s Law Department;
 - c. submitted final site and building plans and material samples, which shall include all required information for building code review and approval;

- d. submitted evidence of compliance with all conditions listed in the MassHousing letter of Project Eligibility/Site Approval dated July 23, 2015;
- e. submitted a Construction Management Plan (CMP) to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development for review and approval. The CMP shall include a 24-hour contact number for the site supervisor/general contractor;
- g. submitted a revised final landscape plan to the Tree Warden and the Director of Planning and Development for review and approval that includes a better mix of evergreen and deciduous trees in order to provide more year round screening of the property for abutters; and,
- h. obtained a written statement from the Department of Planning and Development that confirms that the building permit plans are consistent with plans approved in Condition #1.

CONDITIONS RELATED TO CONSTRUCTION

- 13. The Applicant shall make every effort to utilize building materials and systems that comply with the NStar “Energy Star” standards, and at a minimum, all new appliances installed shall meet the NStar “Energy Star” standard.
- 14. The Applicant shall make every effort to reduce water use on the site, and at minimum, all new water fixtures shall have “Water Sense” labels.
- 15. A utility plan shall be submitted showing that all utilities from the street into the property are installed underground, and located in accordance with the approved plans.
- 16. During construction periods of significant removal or delivery of materials to or from the site, the Applicant will arrange for necessary traffic control and appropriate signage.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY OCCUPANCY PERMITS

- 17. No building or structure, or portion thereof subject to this Comprehensive Permit shall be occupied nor shall any Certificate of Occupancy be issued until:

- a. the Applicant shall have filed with the ZBA Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect and registered land surveyor certifying that the site and buildings have been constructed consistent with plans submitted to the Board and on file with the Clerk of the Zoning Board of Appeals.
- b. there shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
- c. there shall have been filed with the Board's Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing and parking areas.
- d. prior to the issuance of any certificates of occupancy, the Applicant shall submit the language for the proposed deed restrictions to the City of Newton Law Department for review and approval.
- e. the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Applicant shall first have filed with the Director of Planning and Development a letter of credit or other security in a form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the remaining landscaping to secure installation of such landscaping.

ONGOING CONDITIONS

18. The project shall remain a rental development so that all of the units are eligible for inclusion on the City's Subsidized Housing Inventory.
19. The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.

20. If requested by the Engineering Division of Public Works the Applicant shall reconstruct the sidewalk and curbing along the property frontage.
21. No exterior lighting shall trespass onto abutting properties, and all exterior lighting fixtures shall be residential in scale and shall be shielded or diffused as necessary.
22. In accordance with 760 CMR 56.04(8), copies of cost certifications shall be submitted to the City of Newton Department of Planning and Development and Law Department within 6 months of the issuance of a final Certificate of Occupancy to determine whether any funds in excess of the profit limitations of the subsidizing agency are payable to the City.
23. In accordance with 760 CMR 56.02 & 56.05(13), the subsidizing agency or its designated monitoring agent shall provide information on the status and enforcement of the use restriction deed riders for the affordable units in the Project.
24. Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this comprehensive permit shall lapse and become void if construction pursuant to a building permit has not begun within three years of the date on which it is filed with the City Clerk. The Applicant shall use its best efforts to secure a building permit within one year and an occupancy permit within eighteen months of issuance of this comprehensive permit, so that all units remain continuously eligible for inclusion on the City's Subsidized Housing Inventory.
25. This comprehensive permit, and all conditions herein, shall run with the land and be binding on any successors or assigns, including the condominium association. In the event that this Project, the comprehensive permit or any of the obligations therein are sold, transferred, sub-contracted or otherwise made the obligation(s) of an entity other than the original Applicant, Waban AMA Realty Ventures, LLC, the successor or subcontractor shall be bound by all of the terms and conditions of this comprehensive permit.