



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 14, 2015
Land Use Action Date: September 10, 2015
Board of Aldermen Action Date: October 5, 2015
90-Day Expiration Date: October 13, 2015

DATE: July 10, 2015

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner Current Planning
Daniel Sexton, Senior Planner

SUBJECT: **Petition #416-12(4)**, MAIN GATE REALTY, LLC., to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL for a CHANGE in NONCONFORMING USE granted under #416-12(3) in August 12, 2013, which limited two existing tenant spaces to office, low parking demand/turnover service, or retail uses, in order to allow office and storage space in the basement and to re-stripe an existing parking lot to create five parking stalls, where four currently exist, and to waive the dimensional requirements for the parking stalls at 242-244 COMMONWEALTH AVENUE, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a district zoned MULTI-RESIDENCE 1. Ref.: Sec 30-24, 30-23, 30-21(b), 30-19(h)(2)a) and (m) of the City of Newton Rev. Zoning Ord.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision-making process of the Board of Aldermen. 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 Board of Aldermen will want to consider in its discussion at a subsequent public hearing or working session.



242-244 Commonwealth Ave.

EXECUTIVE SUMMARY

The property located at 242-244 Commonwealth Avenue consists of a 7,452 square foot lot improved with a small legally nonconforming commercial building and a legally nonconforming surface parking lot in the rear. The current commercial tenants are service uses, which are not allowed uses in a Multi-Residence 1 district; however, the petitioner obtained special permit approvals via Board Orders #194-73 and #416-12(3) to allow service, office, and retail uses on the first floor of the building, as well as waivers to the parking requirements. The petitioner is now proposing to legitimize an office use in a portion of the basement level for a personal real estate business. In order to allow the office use in a portion of the basement level, the petitioner is requesting an amendment of the previous special permits to allow the extension of a legal nonconforming use on the site. Furthermore, since the proposed office use requires the creation of one new parking stall, the petitioner is also seeking a special permit to waive the parking stall width requirement to allow the restriping of the existing four-stall parking lot to provide five stalls, each dimensionally noncompliant in width.

The petitioner has indicated that a majority of the real estate business is conducted by phone, email, or at a given property, and does not generate a significant amount of customer traffic. Based on numerous visits to the site, staff noted a significant amount of available on-street parking in the surrounding neighborhood, especially along the carriage road portion of Commonwealth Avenue. As such, the Planning Department does not expect the number of clients or parking demand associated with the office space to have a significant impact on the surrounding neighborhood. Furthermore, since it appears some commercial use may have occurred in the building's basement level previously, the relatively small office space proposed may be an appropriate low impact use for the site and surrounding neighborhood. For these reasons, the Planning Department does not believe the extension of nonconforming use into the basement level of the commercial building will be substantially more detrimental than the existing nonconforming uses on the site.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Board should consider whether:

- The extension of the nonconforming uses at this location would not be substantially more detrimental to the neighborhood. (§30-21(b))
- The literal compliance with the dimensional controls for parking stalls in the Newton Zoning Ordinance (NZO) is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§30-19(h)(2)(a) and §30-19(m))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located at the corner of Commonwealth Avenue and Manet Road. The subject property is directly adjacent to single- and multi-family residences, and some similar neighborhood businesses (**ATTACHMENT A**). The site is also proximate to the Boston College campus, which is less than a quarter mile away to the east, and Manet Road Reservoir across Commonwealth Avenue. The subject property and most of the properties in the immediate neighborhood are zoned Multi-Residence 1, but there are pockets of properties zoned Single Residence 2 and Multi-Residence 2 (**ATTACHMENT B**).

B. Site

The property consists of 7,452 square feet of land and is improved with a small one-story legally nonconforming commercial building and a legally nonconforming surface parking lot in the rear. The building's first floor is approximately 1,257 square feet and has had commercial uses for many years. It is divided into two tenant spaces containing 447 square feet and 318 square feet respectively, with 492 square feet of common area. In 1973, a special permit (BO #194-73) permitted the extension of the existing nonconforming office use to also allow for retail use on one side of the building. In 2012, another special permit was approved (BO #416-12) permitting office and retail uses on either side of the building, legalizing four parking stalls within the front setback for the parking lot at the rear of the site, and permitted a free-standing sign. The special permit approval granted via Board Order #416-12 was further modified by Board Order #416-12(3) to allow service uses on the site as well.

III. PRIMARY PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner obtained special permit approvals via Board Orders #194-73 and #416-12(3) to allow service, office, and retail uses, which are not allowed uses in a Multi-Residence 1 district, on the first floor of the current building. The petitioner is proposing to extend the legally nonconforming office use to a portion of the basement level. The portion of the basement level to be occupied by the proposed office use was finished by a previous owner of the property, and never formally legitimized for any commercial use.

The proposed office space will be used by the petitioner for a personal real estate business. The petitioner does not expect the office space will generate a significant amount of customer traffic and there will not be any additional employees beyond the petitioner.

B. Building and Site Design

The petitioner is not proposing any external or internal alternations to the building. To accommodate an additional parking stall, the petitioner is proposing to restripe the existing parking lot at the rear of the site.

C. Parking and Circulation

The petitioner is proposing to restripe the existing four-stall parking lot, which is legally nonconforming with stalls located in the required front setback, to provide five stalls. The new parking stall is needed to meet the parking requirements of the proposed office use and the current service uses, for a total of five parking stalls per the Newton Zoning Ordinance. As proposed, each parking stall will be dimensionally noncompliant, as the parking stall widths will be reduced from nine feet to eight feet in width.

The petitioner has indicated that a majority of the real estate business is conducted by phone, email, or at a given property, and does not generate a significant amount of customer traffic. Based on numerous visits to the site, staff noted a significant amount of available on-street parking in the surrounding neighborhood, especially along the carriage road portion of Commonwealth Avenue. As such, the Planning Department does not expect the number of clients or parking demand associated with the office space to create a parking problem in the neighborhood.

IV. COMPREHENSIVE PLAN

The *Newton Comprehensive Plan*, adopted in 2007, asserts that Newton's economic development success depends upon the City succeeding as both an attractive residential living environment and as a desirable location for business, and identifies that "Newton thrives when it optimizes the interaction between its residential and commercial constituents"¹. The proposal furthers other goals of the *Newton Comprehensive Plan* as it generally supports developments and uses that foster active neighborhoods and contribute to the community's livability. The proposed use do not appear to negatively impact the surrounding neighborhood.

V. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal with regard to zoning. Based on this review, the petitioner is seeking a Special Permit/Site Plan Approval for the following relief:

- §30-21(b), to amend an existing special permit, Board Order #416-12(3), to allow extension of an office use to the basement; and

¹ *Newton Comprehensive Plan, adopted 2007, page 6-1*

- §30-19(h)(2)(a) and §30-19(m) to allow reduced parking stall width.

VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS

ATTACHMENT A: Land Use Map

ATTACHMENT B: Zoning Map

ATTACHMENT C: Zoning Review Memorandum, dated June 3, 2015

Land Use Map 242-244 Commonwealth Avenue

*City of Newton,
Massachusetts*

ATTACHMENT A

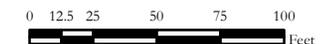
Legend

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Nonprofit Organizations
-  Vacant Land



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: July 06, 2015

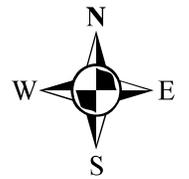


Zoning Map 242-244 Commonwealth Avenue *City of Newton, Massachusetts*

ATTACHMENT B

Legend

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 2
-  Public Use



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CITY OF NEWTON, MASSACHUSETTS
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Map Date: July 06, 2015





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ATTACHMENT C

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Acting Director

ZONING REVIEW MEMORANDUM

Date: June 3, 2013

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: G. Michael Peirce, Attorney
Wajdi Zainoun, Applicant
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to amend Special Permit #416-12(3) to allow for office use of the existing basement, to amend the site plan to restripe the parking and to waive stall dimensional requirements

Applicant: Wajdi Zainoun	
Site: 242-244 Commonwealth Avenue	SBL: 61 13 11
Zoning: MR1	Lot Area: 7,452 square feet
Current use: Retail/office	Proposed use: Same

BACKGROUND:

The property at 242-244 Commonwealth Avenue consists of a 7,452 square foot lot improved with a small commercial building and surface parking lot. Originally used as an office, the use of the site has changed a number of times over the years. Several special permits have been issued for the site, allowing for office, retail and service uses, which are nonconforming in the MR1 district, as well as parking waivers.

The building currently has two tenants on the first floor; an interior design business and a fitness studio. The basement had been finished by the previous owner for office use. The applicant seeks to legitimize the basement space for his personal office.

The applicant seeks to amend the most recent special permit, Board Order #416-12(3), to allow the owner's use of the basement for an office. The applicant also seeks to restripe the nonconforming parking facility to provide for five stalls, where four are now permitted on the approved site plan.

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

- Zoning Review Application, prepared G. Michael Peirce, attorney, dated 4/17/2015
- Site Plan, signed and stamped by Peter Nolan, surveyor, dated 4/8/2015
- Board Order #416-12(3), dated 8/12/2013
- Board Order #416-12, dated 2/19/2013
- Plot Plan, signed and stamped by Peter Nolan, surveyor, dated 10/25/12
- Existing Basement Floor Plan, dated 12/9/2014

ADMINISTRATIVE DETERMINATIONS:

1. The existing service uses are in conformance with the conditions of Board Order 416-12(3), which allowed for extension of nonconforming commercial uses within the Multi-Residence 1 district. The use of the basement space for an office and storage extends the nonconforming use of the site, and requires a special permit
2. Board Order 416-12 allowed for four parking spaces within the front setback to accommodate the office and retail use. The applicant is proposing 250 square feet of office space in the basement, with the remaining 250 square feet in the basement will be used as storage for the owner. The additional 250 square feet of office space requires an additional parking stall, which the applicant intends to create by restriping the lot.
3. The applicant proposes to restripe the parking lot to create five stalls, where four currently exist. The stalls will measure 8 feet in width. Section 30-19(h)(2)a) requires that stalls measure at least 9 feet in width. A special permit per Section 30-19(m) is required.
4. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-21(b)	Amend existing special permit (Board Order 416-12(3)) to allow a basement office.	S.P. per §30-24
§30-19(h)(2)a), 30-19(m)	To allow reduced parking stall width	S.P. per §30-24