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James Freas  
Acting Director

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## PUBLIC HEARING/WORKING SESSION MEMORANDUM

**DATE:** November 27, 2015  
**MEETING DATE:** December 1, 2015  
**TO:** Land Use Committee of the Board of Aldermen  
**FROM:** James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner of Current Planning  
Daniel Sexton, Senior Planner  
**RE:** Information for Working Session  
**CC:** Petitioners

In response to questions raised at the Land Use Committee public hearings and/or staff's technical reviews, the Planning Department is providing the following information for the upcoming continued public hearing and/or working session. This information is supplemental to staff analysis previously provided at the public hearing.

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### PETITION #416-12(4) AND (5)

242-244 COMMONWEALTH AVENUE

Proposal to amend #416-12(3), to allow office and storage space in the basement and re-stripe an existing parking lot to create five parking stalls, and to waive the dimensional requirements for the proposed parking stall; and a proposal to amend #416-12(4) to permit more than 3 customers for the service use on-site at any one time and change the hours of operation.

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The Land Use Committee (Committee) held public hearings on July 13, 2015, October 13, 2015, and November 17, 2015, which were held open so that the petitioners could respond to concerns/questions that were raised at the public hearing by the Committee and public. In response to the most recent series of comments/questions, the legal counsel for the petitioners provided further information to clarify the two proposals (**ATTACHMENT A**). Based on this supplemental information, the Planning Department provides the following analysis:

**Petition Modifications.** The property owner has decided to request the withdrawal of the portion of Petition #416-12(4) pertaining to the legitimization of an office use in the basement level. The remaining elements of the amendment request concerning the reconfiguration of the rear parking lot to create five parking stalls and the waiver of the minimum width requirement for parking stalls, which reduces the parking stall width from nine feet to eight feet, are still being sought.

The Planning Department has no concerns with the proposed changes to Petition #416-12(4). The Planning Department believes that the reconfigured parking lot will improve interactions between pedestrians and vehicles along Manet Road, and enhance the visual appearance of the site from abutting properties.

**Site Improvements.** The property owner has indicated in the supplemental information a willingness to construct the site improvements indicated below as part of the modified petition request:

- Reconfigure the rear parking lot by:
  - positioning the proposed five stalls (dimensionally 8' x 19' and a five foot set back from the street) perpendicular to the Manet Road; and
  - removing bituminous paving from behind and to the northeast of the proposed parking lot, and replace it with loam and seed;
- Plant a row of mixed plantings, as a screening buffer, along a portion of the property line abutting the property at 252 Commonwealth Avenue; and
- Install screening or a fenced enclosure around the trash receptacles.

The property owner has indicated that further upgrades to the property may be considered under a subsequent amendment request. The property owner desires to show the surrounding neighborhood and Board of Aldermen that the site can operate in a manner that is compatible with the surrounding residential neighborhood.

The Planning Department notes that the supplemental information provided did not speak to the previously discussed sidewalk extension. The Planning Department encourages the property owner to be prepared to speak to this topic at the meeting. Should the Committee decide the construction of a sidewalk extension along Manet Road is appropriate, the Planning Department, based on conversations with the Engineering Division of Public Works, recommends a sidewalk extension consisting of concrete panels and granite curbing.

**Operational Controls.** The operational controls proposed to govern the commercial uses on the site:

Service Uses allowed under Petition #416-12(3) (i.e. Ruana Design)

- No changes are proposed to the operational controls governing this type of use

Petition Amendment #416-12(4)

- Parking:
  - two parking stalls will be assigned to each first floor tenant in the reconfigured parking lot, and are to be used by employees only; and
  - customer parking will be accommodated along Commonwealth Avenue and the carriageway
- No other changes are proposed to the operational controls governing the permitted uses

Fitness Studio – Modern Barre (Petition #416-12(5))

- Maximum 36 classes per week
- Maximum of one employee per class

- Maximum class size of 11 clients per class (*a change to the supplemental information previously presented*)
- Hours of operation: 7:00 a.m. to 9:30 p.m. Monday-Friday with no more than three classes beginning as early as 6:15 a.m.; 8:00 a.m. to 5:00 p.m. on Saturday; and 9:00 a.m. to 5:00 p.m. on Sunday.

In addition, the property owner has agreed to further restrict the rental of the first floor of the building to no more than two separate tenants, limited to low parking demand/turnover office, service, or retail uses. If the future conversion of either first floor tenant space is to a more intensive retail use, such as a convenience store or any similar use that generates more than 20 hourly vehicle trips, the property owner agrees to a stipulation requiring the further amendment of this special permit. No other stipulations governing the permitted commercial uses on the site are proposed.

The Planning Department believes that the proposed operational controls above will allow the permitted commercial uses of the site to operate in a manner similar to the currently permitted uses, while giving the surrounding neighborhood an expected level of activity. These controls combined with the site improvements will help mitigate the commercial activities on the site.

**Use Intensity.** Based on questions raised regarding the intensity of present and future uses of the site, the Planning Department provides the following intensity projections to illustrate: (1) What can occur on-site per the previous special permit; (2) What future potential intensity may occur based on maximum occupancy of approved and proposed uses; and (3) The projected occupancy based on current and expected operational data. The data below should be used as a forecast and not fact, and the Planning Department notes that the activity of any business will vary.

**Table 1: Permitted Intensity per SP #416-12(3)**

Establishment Location	Max Occupants	Max Occupants / Day <sup>1</sup>	Max Occupants / Week <sup>2</sup>
242 Commonwealth Ave. <sup>3</sup>	3 employees / 3 customers	48	336
244 Commonwealth Ave. <sup>3</sup>		48	336
Basement Level	<i>No Tenants Allowed</i>		
<b>Total Occupancy of Site</b>		<b>96</b>	<b>672</b>

1. Based on hours of operations between 7:00 a.m. to 10:00 p.m.  
 2. Based on a 7-day work week.  
 3. Based on the occupancy of the two first floor tenant spaces by service uses.

**Table 2: Maximum Intensity with Approved/Proposed Uses**

Establishment Location	Max Occupants	Max Occupants / Day	Max Occupants / Week <sup>4</sup>
242 Commonwealth Ave. <sup>1</sup>	1 employee 11 clients per class	58 <sup>2</sup>	406
244 Commonwealth Ave. <sup>3</sup>	3 employees / 3 customers	48	336
<b>Total Occupancy of Site</b>		<b>106</b>	<b>742</b>

1. Based on the petitioner's proposed schedule of 36 classes per week.
2. Based on an average of the maximum number of occupants per day.
3. Based on the petitioner's present level of occupants and hours of operations.
4. Based on a 7-day work week.

**Table 3: Intensity Based on Actual/Proposed Uses**

Establishment Location	Max Occupants	Max Occupants / Day	Max Occupants / Week <sup>4</sup>
242 Commonwealth Ave. <sup>1</sup>	1 employee Avg. 9 clients per class	Avg. 47 <sup>2</sup>	329
244 Commonwealth Ave. <sup>3</sup>	2 employees / 2 customers per hour	18	126
<b>Total Occupancy of Site</b>		<b>65</b>	<b>455</b>

1. Based on the petitioner's proposed schedule of 36 classes per week.
2. Based on an average of the maximum number of occupants per day.
3. Based on operational information obtained from Ruana Designs, which has reduced employees / clients / hours of operation.
4. Based on a 7-day work week.

As indicated above, the projected maximum occupancy is only slightly higher than what is allowed presently on-site under the previous special permit, as amended. The Planning Department believes the projections presented in *Table 3: Intensity Based on Actual/Proposed Uses* to be a more accurate representation of the potential impact of the uses on the surrounding neighborhood. It is important to note that the weekly occupancy projections for the proposed fitness studio, based on the average limit of nine clients per class and one employee, is slightly less than the level of intensity allowed presently for service uses on the site. The Planning Department has not provided a projection of the potential occupancy for the permitted office or retail uses in *Table 1: Permitted Intensity per SP #416-12(3)*, as the previous special permit, as amended, does not stipulate operational conditions restricting these uses.

**Recommendation.** The Planning Department believes the petitioners have provided responses to all the concerns/questions raised. The Planning Department is supportive of the site enhancements and operational stipulations proposed by the petitioners; however, encourages the petitioner's to consider constructing a sidewalk extension along Manet Road. In terms of the neighborhood's on-street parking capacity, the Planning Department believes nearby on-street parking can support the

anticipated parking demand for the existing and proposed uses. Should the Committee determine these uses are appropriate, the Planning Department recommends that the Committee consider certain conditions.

**ATTACHMENTS**

**ATTACHMENT A:** Supplemental Information for Petition #416-12(4):

- Email Correspondence from Michael Peirce, Esq., dated November 25, 2015

**G. MICHAEL PEIRCE, ESQ.**

ATTORNEY AT LAW

November 25, 2015

**IN HAND DELIVERY**

Chairman Marc C. Laredo  
Land Use Committee  
Newton Board of Aldermen  
Newton City Hall

Re: 416-12(4)/Main Gate Realty, LLC/request for partial withdrawal without prejudice

Dear Chairman Laredo:

I am writing on behalf my client Main Gate Realty, LLC to respectfully request permission to withdraw that aspect of the pending petition which relates to our request to be permitted to occupy a 250 square foot portion of the basement in my client's building for use as an office, with no employees and no ability to receive clients. Based upon discussions at various of the hearings we have concluded that there may not be sufficient support in the Committee to make the finding required by §7.C.2 of the Zoning Ordinance. We are not requesting withdrawal of the parking space dimensional waiver which would allow five (5) spaces to be located in the parking facility.

Additionally, in response to a number of points raised during the hearing process, we are committing, if conditioned by the Board of Aldermen, to implement the following site improvements (along with implementing the previously discussed aspects of site operation):

- install a mixed vegetative buffer along a portion of the westerly property line, to a length and at a height designed to provide additional screening for the first floor windows of the house at 252 Commonwealth Avenue;

- install fencing or screening for the small rubbish storage area at the southwest corner of the building;

- restripe the parking facility to accommodate five (5) 8' x 19' parking stalls, located in parallel, perpendicular to Manet Road, set back five (5) feet from the property line;

- take up the existing asphalt located behind those spaces, and replace with loam and seed;

- take up the existing triangular portion of asphalt located northeast of what will be the space closest to the corner and replace it with loam and seed.

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Chairman Marc C. Laredo  
November 25, 2015  
Page 2

We would expect to work with the planning department to establish a final landscape/site plan that would be implemented next year, once the weather breaks and all of these improvements can be effected.

It would be my client's plan if, as we and many of the professionals have concluded, the increased use of Modern Barre does not result in any detriment to the neighborhood, that we would return later next year and revisit our proposal to allow limited landlord use of a small portion of the basement for office use. As materials we have filed during the hearing process have indicated, prior owners of the property had for many years made use of basement office space without incident or complaint, even at times when the upper floor was occupied. We would appreciate your kind attention to this request to withdraw and will be available to answer any questions at the December 1<sup>st</sup> meeting.

Very truly yours,



G. Michael Peirce