

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH 18, 2014

Present: Ald. Laredo (Chairman), Ald. Albright, Cote, Lennon, Lipof, Crossley, Schwartz, and Harney

Staff: Stephen Pantalone (Senior Planner), Ouida Young (Associate City Solicitor) William Forte (Zoning Enforcement Agent), Linda Finucane (Assistant Clerk of the Board)

#55-14 NONANTUM NEIGHBORHOOD ASSOCIATION requesting a temporary license pursuant to Sec 30-6(k) of the City of Newton Ordinances to hold NONANTUM VILLAGE DAY on Sunday, June 1, 2014. Ref: 30-6(k) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 7-0 (Harney not voting)

NOTE: Sec. 30-6(k), which waives the Site Plan Approval process set out in Sec. 30-23, allows the Board of Aldermen to grant a temporary license for use of certain city-owned land, structures, or buildings. The committee was joined by Theresa Sauro and Lisa DiFelice from the Nonantum Neighborhood Association. In its third year, this community-building event continues to grow. This year it will be dedicated to a Nonantum veteran returning home from Afghanistan. The Association has already obtained the necessary permits from Parks and Recreation, DPW, and the Police departments. Committee members who enjoyed the event the past two years were disappointed to learn there would be no dunking tank this year. The committee, upon a motion from Alderman Lennon, voted unanimously to approve the temporary license.

The Public Hearing was opened on February 11, 2014, continued to March 4, and continued to this evening:

#23-14 ALBERT PINKHASOV petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for walls of more than 4 feet in the setback at 78 LOVETT ROAD, Ward 8, Newton Centre, on land known as SBL 82, 15, 97, containing approximately 16,004 square feet of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 6-2 (Harney, Lennon opposed)

NOTE: Please refer to the March 4, 2013 Land Use Committee report (attached) for prior discussion. This evening the committee was joined by the petitioner and Al Todesco of AJT Supplies who installed the wall. Mr. Todesco previously provided a letter in which he indicated that approximately 40% of the walls would need to be removed to bring the wall into compliance with the side setbacks. This would be very expensive and likely compromise the integrity of the walls; it would also include removing a significant number of pavers as well. Associate City Engineer John Daghlian noted that the existing walls are built to specifications and removal of a portion and/or reconstruction could cause erosion and drainage issues that do not currently exist.

Mr. Todesco explained that the purpose of the wall was to improve ongoing erosion, which it has done.

At the last meeting, after reviewing a proposed landscape plan that consisted primarily of arborvitae on two of the walls, the committee suggested that additional landscaping be added. Mr. Todesco, whose company does a lot of landscaping, agreed that three rows of arborvitae are rather formal. He suggested that a mix of birch trees, boxwoods, moss, and other spreading plantings would provide a more naturalized cover. Mr. Pantalone noted that the Planning Department had consulted with the Parks & Recreation Department, which also suggested replacing some of the arborvitae and adding low deciduous and cascading plants to soften the walls. If the special permit is approved the Planning Department could review and approve a final landscape plan.

Although unrelated to the relief being sought, the spillover of light from the petitioner's property was what triggered the discovery of the setback violation. Mr. Forte said there are two lights on the house, one on each corner, and two coach lanterns on the sides of the garage as well as a light above the garage doors. The abutters across the street testified that light also spills out from the windows in the garage doors. The petitioner has purchased new lights and purchased shades for the garage windows. Mr. Forte noted that the light above the doors is considered an egress light, which is required by code; however, there are ways to diffuse the lighting, such as changing the angle or using opaque shades. Mr. Forte will meet with the petitioner and the neighbors to confirm there is no light pollution and will review any proposed new lighting; however, he pointed out that everyone is entitled to residential-type lighting.

There was no additional comment and the public hearing was closed.

In working session, the committee struggled with whether it would support this petition if it were not already built. Alderman Lennon said he was not sure he could support a wall so close to the property lines. It appears a conscious choice was made to locate it in the setbacks. If the portions of the wall in the setbacks were removed, then the house would block the rest of the wall. He perhaps could support a 10-foot setback, but not 1.5 feet and 3 feet.

Alderman Crossley believes that the wall, which is buried into the hillside, if sensitively landscaped will blend in and work.

Alderman Lipof said the reality is the wall exists, it was constructed to specifications and denial may cause drainage problems. The wall was constructed to specifications. He noted that the immediate abutters are not opposed

Alderman Albright was not sure if she would or would not support the petition; however, there appears to be no sense in denying it now because of the potential consequences.

Alderman Harney believes this type of situation — petitioners seeking relief after the fact — happens too often. The neighbors across the street have to look at the wall. He can't support the petition.

Alderman Schwartz suggested the committee focus on the fence. If the visibility of the wall is an issue perhaps a solid fence across the driveway would work better than the open iron fence proposed.

The Chairman said that Alderman Albright's point was well taken. Although he still struggled, the committee has an obligation to focus on the merits of the petition in front of it based on legal standards not anything else.

The committee reviewed a draft special permit prepared by the Planning Department. In reviewing the draft, the committee decided that if there was substantial landscaping the wall would not have to be blocked with a solid fence, an open fence could provide a more natural view. Alderman Lipof moved approval of the petition finding that given the slope of the rear of the site, it is an appropriate location for a wall greater than four feet in the setback, which will allow usable open space; the wall will be partially screened by landscaping and fencing and will not adversely affect the neighborhood; and, although the existing contours of the land have been altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. The findings and conditions approved are enumerated in the draft special permit dated April 7, 2014. The motion to approve carried 6-2, Aldermen Harney and Lennon opposed.

The meeting was adjourned at approximately 8:45 PM.

Respectfully submitted,

Marc C. Laredo, Chairman

CITY OF NEWTON

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LAND USE COMMITTEE REPORT

TUESDAY, MARCH 4, 2014

Present: Ald. Laredo (Chairman), Ald. Albright, Cote, Crossley, Harney, Lennon, and Lipof;
absent: Ald. Schwartz; also present: Ald. Lappin
Staff: Stephen Pantalone (Chief Planner), Alexandra Ananth (Chief Planner for Current Planning), William Forte (Zoning Enforcement Officer), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board of Aldermen)

Public Hearing was opened on February 11, 2014 and continued to March 4:

#23-14 ALBERT PINKHASOV petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for walls of more than 4 feet in the setback at 78 LOVETT ROAD, Ward 8, Newton Centre, on land known as SBL 82, 15, 97, containing approximately 16,004 square feet of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.

ACTION: PUBLIC HEARING CONTINUED TO DATE TO ~~BE DETERMINED~~ MARCH 18

NOTE: The following individuals were present at the public hearing on February 11: Aldermen Laredo (Chairman), Albright, Cote, Crossley, Harney, Lennon, Lipof, and Schwartz; Aldermen Fuller and Norton were also present.

Staff: Alexandra Ananth (Chief Planner for Current Planning), Stephen Pantalone (Senior Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board), Zoning Code Enforcement Officer William Forte.

In 2013, after demolishing a circa 1966 single-family dwelling, the petitioner constructed a new by right 2 1/2-story single-family dwelling with an attached two-car garage. The petitioner also constructed a retaining wall consisting of three tiers, which was not shown on the plans provided for the building permit. When the Inspectional Services Department (ISD) responded to a complaint from an abutter about light spillover from the petitioner's property, the inspector saw the retaining walls and notified the petitioner that he was in violation of the Zoning Ordinance because the walls, although built in three sections, each with a height of just under four feet with a total vertical height of 11 feet and 7 inches, were constructed within three feet of the side lot lines where 15 feet is the minimum setback in a Single Residence 2 zoning district. The walls are within 18 inches on the south side of the lot and within three feet on the north side of the lot. The walls are located 20 feet from the rear lot line, where 15 feet is required, so there is no violation of the rear setback requirement. As of this date, the Associate City Engineer is awaiting additional information to complete his review of the drainage and infiltration systems. The Planning Department has asked the petitioner to submit a professionally designed landscape

plan to mitigate the visual impact on neighboring properties; it suggests a combination of fencing and plantings to screen those portions of the wall.

The Planning Department noted there is a substantial amount of paving on the site. The driveway is on the north side of the site and accesses the attached garage and the patio. Although the site plan shows a fence separating the driveway from the patio, currently there is no fence. To avoid violating the open space requirement, the petitioner must install a perpendicular fence between the driveway and the patio area shown on the site plan to prevent parking on the patio.

The petitioner said that although his surveyor told him the walls were outside the setback, he accepts full blame. It was a misunderstanding; it was never his intention to violate the ordinance. He is concerned about the cost of removing the walls if the special permit is not granted.

Chief Zoning Code Officer William Forte confirmed that a light ordinance complaint triggered the zoning violation. The original plan submitted to ISD showed one wall less than four feet starting at the man-made slope at the rear of the property. Mr. Forte said it did not appear to be a willful violation and the petitioner responded immediately when he learned of it. The walls appear to be intended as an ornamental landscape feature. Because of the walls in the setbacks and the amount of paved area ISD would not issue a Certificate of Occupancy, but subsequently issued a temporary Certificate of Occupancy and the petitioner is presently living in the home.

Public Comment:

Sandra Segal, 81 Lovett Road, which is across the street, is a 47-year resident. The materials of the walls, including a small wall at the front of the property, are orange-color and look commercial. The petitioner altered the grade at the rear to accommodate the new house, which unlike the previous house, is not centered on the lot. The walls are an eyesore, the rear ones look like a stadium. She is concerned about stabilization and drainage issues. She would like the rear and front walls removed or at least reconstructed with more aesthetically pleasing materials. She initiated the complaint for the light overspill from the eight outside lights and the interior garage lights. The lights illuminate her home and disturb her tranquility. Her daughter Donna Segal predicted the petitioner will live there two years and then sell the property.

Mildred Levitt, 75 Lovett Road, also across the street, submitted a letter in which she strongly urged that the rear and front walls be removed. They detract from the aesthetic of the street and could ultimately decrease the value of her home.

Issues raised in committee:

- Were the walls properly engineered? Do all walls over 10 feet require a structural engineer?
- Delineation of parking? Does the increase in paving affect open space or lot coverage?
- Is there an increase of more than 400 square feet of impervious area?
- Retention of water on the site/drainage?
- Were tiers below four feet an attempt to circumvent ordinance?
- How *do* builders know about the ordinance?

Subsequent to February 11, the petitioner provided a packet of information which contained letters from the construction supervision, the surveyor, and himself explaining the string of events that led to the construction of the walls. The surveyor admitted there was miscommunication between the petitioner and himself. The retaining wall was meant primarily to enlarge the backyard. A letter from Albert Todesca of AJT Supplies, who installed the walls and provided the landscape plan, estimates the cost to restore the backyard and make the walls fit inside the setbacks would be approximately \$95,000 at least. Because the walls are an interlocking system a portion of the walls would have to be taken down and re-built. Additional information in the packet includes the original plan submitted to ISD, the original estimate and actual cost of the walls.

The petitioner's surveyor/engineer provided stormwater calculations to the Engineering Division. A memo from the Associate City Engineer was on the table this evening. The petitioner also provided an affidavit dated February 7, 2014 from the structural engineer attesting that the retaining walls were built to product specifications. The Associate City Engineer visited the site in February and observed that the walls appeared to be stable. The plan indicates that a dry well is proposed along with a trench drain at the junction of the driveway and the patio. Drainage calculations and collection of the increased runoff is properly designed for the city's 100-year storm event. The Associate City Engineer noted that additional soil testing will be required for verification of the design and the petitioner will need to submit an operations and maintenance plan for long term maintenance of the drainage improvements. He also noted that walls over three feet high need a safety fence. The Engineering Division and the Inspectional Services Department will continue to monitor the walls through the final certificate of occupancy process.

The petitioner submitted a rudimentary landscape plan, showing vegetation and arborvitaes on the retaining wall and one tree on the south side of the house. The plan shows fencing from the house to the site property line on the south side of the property and fencing across the paved area on the north side of the property to ensure that the open space requirement is met. The proposed fencing is of a decorative type of black metal, but provides limited screening. The Planning Department suggests that the petitioner plant an additional tree on the northeastern corner of the site. Several committee members remarked that the site was heavily treed prior to the new construction. The petitioner explained that quite a bit of vegetation was removed, but much of it was overgrown shrubs and weed trees.

The petitioner has removed the light above the garage (he provided a copy of the order for its removal). The petitioner likes to work in his garage at night and has ordered blinds for the garage windows. Mr. Forte informed the petitioner that a permit from ISD is necessary for any electrical work. The committee noted that the light violation is not really relevant to the special permit.

The committee struggled with the petition. Should the petition be considered as if it were not built instead of a fait accompli seeking forgiveness? Was it a communications issue more than anything? Are the walls the result of poor professional advice, not necessarily the petitioner's fault? Were the tiers to circumvent the ordinance? Can the setback violations be

corrected by moving the walls in, but not necessarily removing all the walls? Will more damage occur if the walls are taken apart? It appears it was a series of errors. ISD, albeit by accident, did catch the discrepancy. Obviously, it is unrealistic to expect ISD to visit sites every day.

If the petitioner is granted a special permit, then he can be required to provide reasonable mitigation. Would removal of pieces of the walls destroy the integrity of the entire system? When asked if there is a mechanism for fines in this situation, Ms. Young explained there is no civil enforcement provision for this type of violation. There is however a provision for a \$300 per day fine, but that involves filing a complaint in criminal court, often a difficult and lengthy process, and all other avenues must be explored before doing so. However, in this case a criminal complaint is not an option because the petitioner is seeking a special permit to remedy the violation. Oftentimes, a special permit with conditions is a better alternative.

Public Comment

William Roesner, 72 Fuller Street, a member of the Historical Commission, said this was an amateur's attempt – the house, designed for a flat site, doesn't recognize the natural topography of the existing site. In his opinion, it is part of an investment venture that went wrong. The petitioner should be made to stand the expense for correcting his mistake.

A Winchester Street resident, an abutter to a by-right project on Upland Avenue that generated major drainage problems, said there had been assurances from the city that this type of project would not fall between the cracks. Why does the city not inspect projects early in the process?

Donna Segal, 81 Lovett Road, said the process began in November with a complaint from her mother about light trespass. The petitioner has been living there since September with no permanent Certificate of Occupancy.

Rena Getz, 192 Pine Ridge Road, reminded the committee of another by-right project on Turner Terrace, which also caused water issues on abutting properties. She pointed out that docket item #11-12 re implementation and enforcement of sec. 30-5(c)(1), leaving land in a usable condition to prevent runoff to or from abutting properties, was filed as result of that project and is pending in the Zoning & Planning Committee. Ms. Getz provided an excerpt from the Zoning & Planning Committee's report dated March 27, 2013.

David Gordon, 89 Lovett Road, said it doesn't appear this was intentional. We all have to depend on professionals. The price the petitioner quoted to remove the wall is not out of line with that type of work. The walls exist; safety is the most important factor. The lot was previously very overgrown and looks much better now.

The petitioner submitted letters in support of the project from Raviv & Gil Chalamish, 70 Lovett Road, who have no issue with the walls, which they find aesthetically pleasing, and from Hank Abbott, 108 Lovett Road, who said that the petitioner is hardworking and he and his family will be a wonderful addition to the neighborhood.

The committee discussed whether or not it wanted the petitioner's surveyor or landscape contractor to come to the next meeting. Can the walls be safely reduced to remove them from the setbacks? The committee agreed that it would like Albert Todesca, who provided the landscape plan and the estimate to remove a portion of the walls, to attend the next meeting. The committee asked the petitioner to provide a landscape plan with additional landscaping and more variety than just arborvitaes. The committee also asked that additional information be provided relative to the amount of pavement on the site and the number of trees that were removed. The committee voted to continue the public hearing to a date to be determined.

N. B. The public hearing will be continued on March 18, 2014.