

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, SEPTEMBER 10, 2013

Present: Ald. Fischman (Acting Chairman), Ald. Albright, Laredo, Schwartz, Crossley, Harney;
absent: Ald. Hess-Mahan; 1 vacancy; also present: Ald. Ciccone
Staff: Alexandra Ananth (Chief Planner for Current Planning), Daniel Sexton (Senior Planner)
Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#148-11(5) REQUEST FOR AN EXTENSION OF TIME in which to EXERCISE Special Permit/Site Plan Approvals #148-11(2) and #148-11(3) granted to Constantine Taleas, Trustee of Border Trust and Elm Trust on December 5, 2011 for an addition to an existing nonconforming structure consisting of a three-story mixed-use building with commercial space on the first floor and four dwelling units on the second and third floors at 8 BORDER STREET and 115-119 ELM STREET, West Newton, Ward 3; said EXTENSION will run from December 5, 2012 to December 5, 2013. Ref: Sec. 30-24(c)(4) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 5-0 (Harney not voting)

NOTE: Attorney Franklin Schwarzer of Schlesinger & Buchbinder explained that Mr. Taleas passed away shortly after this special permit was granted. Given his death and the real estate market at that time, the family encountered problems with financing; however, his daughters are confident they have the financing in place and can begin to exercise the special permit before it expires in December. Alderman Laredo moved approval of the extension, which motion carried unanimously.

#231-13 JAMES KOERT, CU, INC. d/b/a/ MyGym/DAN WOOLEY & JOHN FINLEY III, TRUSTEES c/o CREATIVE DEVELOPMENT CO., LLC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate a for-profit physical educational use for children at 30 OSSIPEE ROAD/70 LINDEN STREET, Ward 5, Newton Upper Falls, on land known as Sec. 51, Blocks 34 and 35, Lots 1 and 2 in a district zoned MANUFACTURING. Ref: Sec 30-24, 30-23 and 30-5(b)(2) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 5-0 (Harney not voting)

NOTE: The public hearing was opened and closed on August 13, 2013. Present were committee members Aldermen Hess-Mahan (Chairman), Albright, Crossley, Schwartz, Laredo, Harney, and Fischman; Alderman Yates was also present. Attorney G. Michael presented the petition. For the last eight years, the petitioner has operated MyGym in a space on Needham Street; however, he was unable to renew his lease. He is seeking to locate a for-profit educational use in a former office space in a Manufacturing Zone. Although a for-profit educational use is allowed by right in all other zoning districts, the use requires a special permit in a Manufacturing Zone. The gym

serves children ages 1-8. A maximum of 18 students are expected on-site at one time during the week and up to 24 students at one time on weekends. There will be a total of six employees, typically with three employees on-site at a time except for Friday evenings when the six employees meet to plan classes for the next week.

Mr. Peirce had provided a class schedule. Classes are approximately one hour. Classes between 9:00 and noon typically involve parent participation so customers will park. Classes between noon and 4:00 are typically drop-off. All classes usually end by 6:30 PM. One weekend night a month from 5:30 to 8:30 PM the petitioner offers a parents' night out, with special deals from local restaurants. Birthday parties, which are 1 ½-hour private events, are offered on weekends. Drop-off and parking for parties depends on the age of the children. During school vacations and in July and August there is a camp program. The camp program runs for three hours and is mostly drop-off. With 15 minutes between regular classes and 30 minutes between parties, there is never a problem with overlap.

The petitioner does not require a parking waiver. There are at least 178 parking spaces available between the commonly held lots for this site – 30 Ossipee Road and 70 Linden Street. The proposed use requires six parking spaces; the petitioner is proposing to provide 20 parking spaces. Several Aldermen observed that the Ossipee Street parking lot appeared almost full on several recent site visits. There are many on-street parking spaces including 27 metered spaces on Chestnut Street across from the building.

Public Comment:

Doris Gently, who owns 2-4 Shawmut Park, said she is not concerned about parking but traffic, particularly on weekends, she fears it will have a significant impact on the neighborhood. The current use is an office, with people arriving in the morning and leaving in the evening. She is afraid the proposed use will affect her ability to rent her two units in the future. She is also concerned that construction and renovation has already begun.

In an email, Jo-Louise Allen of Indiana Terrace said that several dozen employees of the 1200 Chestnut Street building and 79 Oak Street already park on her street all day. She fears this business will exacerbate the situation.

Jen Cole, 216 Elliot Street, spoke in favor of the petition. Both of her children attend classes and she walks them, not all parents drive.

Laurance Lee of Rosenberg, Freedman, & Lee spoke in favor of the petition. His child attends classes and there is no overlap. The petitioner runs a tight ship.

The construction activity observed by Ms. Gently is not related to this petition. The building owner is in the process of installing an elevator to make the building handicapped accessible. All work connected to this petition is interior and will not begin until a special permit is granted.

This evening, the Planning Department noted that, although the petitioner is not seeking and does not need a parking waiver, a dedicated group of at least 15 spaces on the parking deck immediately outside the entrance will be allocated for MyGym. The spaces will be identified with signage and pavement markings. In addition, at least two spaces for employees will be provided in the access controlled parking garage under the Ossipee Street parking deck. This should satisfy the parking needs. The petitioner will provide parents with a parking policy upon enrollment. The petitioner will also post on its website a simple map setting out the places for

parking and/or drop off and instructions to use those areas. Mr. Peirce confirmed the class schedule provided at the public hearing.

Alderman Crossley moved approval of the petition finding the site is an appropriate location for the proposed for-profit educational use; the proposed use will not adversely affect the neighborhood; and, access to parking is appropriate. The motion to approve carried 5-0, with Alderman Harney not voting.

#257-13 WELLS AVENUE BUSINESS CENTRE, LLC. requesting that the restriction adopted by Board Order #276-68(3), dated November 18, 1968, and subsequent amendments be further amended to reflect a waiver of use restriction to permit a day care center to operate at 145 WELLS AVENUE, Ward 8. *NOTE: Public Hearing not required.*

ACTION: HELD 5-0 (Harney not voting)

NOTE: This is a request to amend a restrictive covenant which was put into place instead of standard zoning controls for what is now known as the Wells Avenue Office Park. This type of zoning control through land restriction instead of standard zoning controls was not uncommon at the time, but is the only such instance in Newton. Unlike a special permit, an amendment to the 99-year deed restriction requires a simple majority vote and the Mayor's approval. Attorney Terrence Morris represented the petitioner. The petitioner, who recently purchased 145 Wells Avenue, wishes to locate a for-profit day care center in a portion of the building but must amend the deed restriction to allow the use, which is not a use enumerated in the deed.

Although a day care center does not require a special permit unless it cannot comply with the requirements of section 30-19 relative to parking or with the dimensional tables contained in section 30-15 the city requires an administrative site plan review pursuant to Section 30-5(a)(2) and (3). The petitioner met last week with the Planning Department and submitted a parking plan as required by 30-5(a)(3); however, a formal application for administrative site plan review has not yet been filed. Mr. Morris said the parking plan shows 28 parking spaces, where 21 spaces are required, but if the lot were re-striped it could actually provide 48 parking spaces. The Committee struggled whether it should approve the amendment to the deed restriction or wait until the administrative site plan review is completed. Although a copy of the application and site plan(s) must be given to each of the three aldermen representing the ward, the Board of Aldermen has no role in the administrative site plan review process. Mr. Morris pointed out that in 2012 an amendment to the deed restriction was approved prior to the administrative site plan review. There are no exterior modifications proposed to the building or site; however, the petitioner is anxious to begin the interior modifications.

Members were divided but ultimately deferred to Alderman Fischman and agreed 5-0 to hold the item until after the administrative site plan application is filed and a neighborhood meeting is held.

#218-13(2) FALLON DEVELOPMENT INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision to construct two single-family dwellings, including if necessary relief to locate the proposed rear house further away from the proposed rear lot line at 131 OTIS STREET, Ward 2, Newtonville, on land known as SBL 24, 12, 16, containing approximately 48,677 sq. ft. of land, in a district zoned SINGLE RESIDENCE 2. Ref: 30-24, 30-23, 30-15(r), 30-15(r) Table 4 Footnote 3 of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 5-0 (Harney not voting)

NOTE: The public hearing was opened and closed on August 13, 2013. Present were Aldermen Hess-Mahan (Chairman), Albright, Crossley, Schwartz, Laredo, Harney, and Fischman.

The petition was presented by attorneys Jason Rosenberg and Laurance Lee. The subject lot contained a single-family dwelling that was demolished by the previous owner who began constructing a new home which he abandoned leaving only a foundation and the skeleton of a partially framed house. The petitioner purchased the property and wishes to develop two single-family homes with garages on the site. The proposed homes both comply with the required dimensional standards. However, Lot 2, the rear lot, also needs a special permit to allow its frontage to be measured along the rear lot line of the front lot, Lot 1. The proposed front lot has approximately 19,322 square feet with 139 feet of frontage and the rear lot has approximately 29,905 square feet with 139 feet of frontage. The petitioner has utilized design features to lessen the appearance of mass and scale. The property is somewhat of a transitional buffer surrounded by some larger and some smaller lots. Homes to the east of the property and homes along Birch Hill Road and Walden Street are in a Single Residence 2 zoning district and are more modest homes on smaller lots; whereas homes and lots to the west are in a Single Residence 1 zoning district and are much larger. A small group of homes along Calvin Road to the southeast are located in a Multi-Residence 1 zoning district. Although the proposed homes comply with the required dimensional standards, the Planning Department expressed some concern about their size and scale in context with the neighborhood.

There are trees spread out over the property, many of which are situated along the property lines providing a buffer to adjacent properties. The petitioner plans to retain as many trees as possible. Since the topography of the site is quite steep; it varies from an elevation of 96 feet near Otis Street to an elevation of 123 feet at the rear of the property, the petitioner is proposing four retaining walls, all less than four feet in height, to accommodate the driveways. The landscaping plan indicates that different planting areas will be incorporated to screen the walls. Subsequent to the Planning Department's August 9, 2013 memo, the city's Tree Warden approved a Tree Preservation Plan.

The petitioner proposes keeping the existing curb cut for a driveway to Lot 2. That proposed driveway essentially follows the existing driveway. The driveway for Lot 1 is proposed via a new curb cut near the southeastern corner. The Planning Department had suggested the petitioner consider a shared driveway as is encouraged in the rear lot subdivision ordinance.

The proposed home on Lot 1 is a 2½-story colonial-style with a 3,264 square foot footprint and an FAR of .32 where .33 is the maximum allowed by right; it contains a total area of 6,218 square feet. The building height is 33.6 feet. The proposed home on Lot 2 is a two-story English cottage style designed to mimic a carriage house with a 3,652 square-foot footprint and contains 5,300 square feet. The FAR is .17, where .20 is the maximum allowed by right.

The building height is 27.2 feet. The roof line is designed to look like a 1.5-story house, with the other half story subsumed in the roof line.

Public comment:

Stephen Goldfinger, 33 Birch Hill Road, who is the direct abutter to the east of the property, supports the project. He has been looking at the eyesore left by the previous owner - a 22-foot ugly skeleton of a structure that looms next to his property – for two years. The petitioner has met with the neighbors and has responded very well to all their concerns. In particular, the petitioner walked both properties and has addressed the question of landscaping relative to protecting views from both sides.

Communications in support of the petition:

Ruy Cardoso and Alice Cunningham, 123 Otis Street, are somewhat concerned about blasting and excavating, which the neighborhood endured from work performed by the previous owner, and noise during construction, issues they have discussed with the petitioner, but leave it to the committee to strike the appropriate balance between any restrictions and timely completion of the project.

Lew Bednarczuk, 148 Highland Avenue/149 Otis Street, has been looking at an eyesore for two years and would rather see controlled development including the screening landscaping including evergreens and maples so as not to worry about future impact on his property. The petitioner was accommodating in that he agreed to move the proposed house on Lot 2 ten feet farther away from the lot line and designed it significantly lower than the previous house that was under construction.

Nancy Slamin, 134 Otis Street, was present this evening but had to leave, wrote that she has spoken with and met the petitioner on the site to discuss her concerns about privacy and trees. The petitioner has addressed her concerns and has been most willing to hear the concerns of the neighbors.

An email from *Arthur & Judy McCaffrey*, 156 Otis Street, urged the committee to vote against the petition because it violates the zoning integrity, is too large for the neighborhood, has buildings that are commercial size, violates the character of the district, is exploitive for private profit, will have negative consequences for residents, sets a dangerous precedent, is bad for property values, will bring construction noise/pollution, street parking, and dynamiting.

Any construction will involve blasting; however, there will be no rock processing on the site. The Associate City Engineer recommended that the petitioner consider installing a sidewalk along length of the frontage. This will be beneficial to pedestrians and help with stormwater management. The committee asked the Planning Department what other properties in the neighborhood could be subdivided and provide an adjacent lot comparison.

This evening, the Planning Department reported that the petitioner submitted a Tree Management Plan. A Construction Management Plan (CMP) was also submitted. The CMP has been vetted by the neighbors. It appears the petitioner and neighbors have over the course of four meetings resolved any lingering issues. The extent of ledge on-site is not exactly known, but additional tests will be performed. The petitioner explained that his blasting contractor only sets half of the allowable charge to moderate the blasts. It is unlikely blasting should be more than two weeks. Detailed blasting conditions include the standard pre- and post-blasting surveys

of surrounding properties. The petitioner will install a concrete sidewalk with granite curbing along the Otis Street frontage.

The Planning Department explained that it appears there are four other neighborhood properties eligible for subdivision, two of which could be by right. However lots at 156 and 170 Otis Street contain an intermittent stream and 297 Lowell Avenue contains an historic church, making subdivisions unlikely. The Planning Department also prepared an Adjacent Lot Comparison chart.

The committee reviewed a draft special permit board order and Alderman Albright moved approval of the petition with the findings contained in draft #218-13(2), dated September 16, 2013. The motion to approve carried 5-0, with Alderman Harney not voting.

#236-13 CHARLES RIVER COUNTRY CLUB petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING USE to expand the existing clubhouse loggia by approximately 427 sf; to add a Bag Room (approximately 1,080 sf) adjacent to the 1st fairway; to expand the props shop (approximately 43 sf), to expand the second floor Pub over the props shop by approximately 951 sf, and to fill in on each of three levels at the left of the building (approximately 819 sf), all of which proposed changes will bring the building interior up to current regulations and codes, making it more accessible, and define separation of users and service providers at 483 DEDHAM STREET, Ward 8, on land known as Sec 83 and 84, Blocks 34, 35, 36, Lots 1 and 4, containing approximately 6,466,022 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)a), 30-21(b), 30-8(b)(5) of the City of Newton Rev Zoning Ord, 2012 and special permit nos.136-10, 261-96, 48-87, 36-74, and #108006.

ACTION: APPROVED 5-0 (Harney not voting)

NOTE: The public hearing was opened and closed on August 13, 2013. Present were Aldermen Hess-Mahan (Chairman), Albright, Crossley, Schwartz, Laredo, Harney, and Fischman. The petition was presented by Attorneys Jason Rosenberg and Laurance Lee. The Charles River Country Club is a legally nonconforming golf club that has existed since 1921. The petitioner is proposing a number of relatively modest expansions/renovations consisting mostly of infill development to expand the existing clubhouse by filling in structural recesses in the building and increasing the size of the front patio to provide sixteen seasonal seats via the loggia. The existing clubhouse will be expanded by approximately 3,320 square feet. The petitioner is not proposing to increase the club's membership or the number of seats in the Pub Room. There is no change proposed to parking or to site circulation. The nearest residence is 700 feet away. The Planning Department has no particular concerns with this petition. Alderman Crossley spoke for all committee members when she expressed her pleasure that the caddy shack has finally been removed. She complimented the proposed design.

Public Comment:

David Cherney, 15 Country Club Road, is not opposed to the petition but, as he has testified at prior public hearings, remains concerned about runoff onto Country Club Road and Arnold Road. Serious erosion is a problem.

This evening, the Planning Department confirmed that the Associate City Engineer reviewed the proposed expansions and since they will be constructed over existing impervious surfaces agreed there should be no impact the current drainage system. Also, on August 20, city staff met on-site with the petitioner's representative to assess the drainage, particularly the drainage on the club's property and along Dedham Street and Country Club Road. The Associate City Engineer observed that the runoff generated by the club's access drive appears to be adequately contained by the storm drain within the club's parking lot and the three storm drains on Dedham Street. He believes the erosion along Country Club Road is likely caused by a lack of curbing, not runoff from the club. The city is in the process of installing granite curbing along a portion of Country Club Road. The Associate City Engineer believes the new curbing should ameliorate the existing problems.

The petitioner provided to the Planning Department a preliminary Construction Management Plan, a final of which will be submitted with the application for a building permit.

The committee reviewed a draft special permit board order prepared by the Planning Department. The draft incorporates all relevant conditions from prior special permits: #108006 from 1923, #159-60, #36-74, #526-78, #654-80, #116-82, #435-82, #509-87, #48-87, #261-96, #440-02, #308-05, #301-08, and #136-10.

Alderman Crossley moved approval of the petition finding that the amendment to the site plan, which includes the extension of the existing clubhouse, is acceptable and the proposed additions will not be substantially more detrimental to the neighborhood than the existing nonconforming structure as they are intended to improve internal circulation in the clubhouse only; the closest residential abutters is 700 feet; there will be no increase in membership. The motion to approve carried 5-0, with Alderman Harney not voting.

The meeting was adjourned at approximately 11:00 PM.

Respectfully submitted,

Mitchell Fischman, Vice Chairman