

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE AGENDA

TUESDAY, OCTOBER 8, 2013

7:00 PM
Room 222

- #189-12(2) REQUEST FOR AN EXTENSION OF TIME in WHICH TO EXERCISE SPECIAL PERMIT/SITE PLAN APPROVAL #189-12, granted to ROX DINER/NORMAN CUBELL, TRUSTEE on September 24, 2012 for a restaurant with greater than 50 seats (an increase from 38 seats to 61 seats) and for a waiver from the 8 parking stalls required for such expansion at 335 WALNUT STREET, Newtonville, Ward 2; the EXTENSION will run from September 24, 2013 to September 24, 2014.

NOTE: Special Permit attached.

Consistency Determination: Special Permit #376-08, granted on February 17, 2009, to Jan Spiro for a rear lot subdivision and construction of a single-family home at 296 Ward Street. Please see attached letter from Alan Schlesinger, dated September 19, and memorandum from the Commissioner of Inspectional Services, dated October 2.

- #141-13(2) ZION YEHOASHUA & NIKZUN GORDON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to re-grade an existing driveway to make it less steep by rebuilding existing retaining walls within the setback at a maximum height of 12 feet and to provide 2 parking spaces within the front setback at 74 NEWTONVILLE AVENUE, Newton, Ward 1, on land known as SBL 12, 21, 25 containing approx. 10,021 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-19(g)(1), 30-19(m), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.

- #179-13 BEECHER TERRACE HOMES, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct single-family attached dwelling(s) containing 5 units and to waive the 10-foot driveway setback requirements and for a retaining wall greater than 4 feet located within a setback at 22 and 26 BEECHER TERRACE, Ward 6, on land known as SBL 65, 8, 46 and 47, containing a total of 32,826 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-9(b)(5), (a), (b), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.
(10-31)

- #229-13 NEEDHAM CHESTNUT REALTY, LLC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and for a NONCONFORMING STRUCTURE to demolish an existing single-story building of approximately 14,084 sf and construct a new single-story building containing approximately 7,140 sf to be used for retail and restaurant purposes and to waive certain dimensional requirements such as minimum aisle width, lighting, loading dock, interior landscaping, etc. at 170 NEEDHAM STREET, Ward 8, on land known as SBL 83, 28, 2 containing approx. 24,422 sf of land in a district zoned MIXED USE 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-13(b), (b)(1) and (5), 30-19(m), 30-19(h)(3), (j)(1), (l) of the City of Newton Rev Zoning Ord, 2012.
- #237-13 SEVENTY FIVE to SEVENTY SEVEN AUBURN ST. TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to reconfigure an existing two-family dwelling into three units with a 2-car garage and to construct two additional attached dwelling units with 2-car garages at the rear for a total of five units at 75-77 AUBURN STREET, Ward 3, Auburndale, on land known as SBL 33, 6, 42, containing approximately 31,437 square feet of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-15 Table 1, 30-9(b)(5), (b)(5)(a) and (b)(5)b), of the City of Newton Rev Zoning Ord, 2012.
- #259-13 CYPRESS DEVELOPMENT, LLC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING USE/STRUCTURE to allow the expansion of a legal nonconforming thee-family dwelling and to locate 1 parking stall 6 feet from the side lot line at 43-45 HIGH STREET, Newton Upper Falls, Ward 5, on land known as SBL 51, 8, 5, containing approximately 25,618 square feet of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)a), 30-21(b), 30-9(b)(5)a) and b), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

Respectfully submitted,

Ted Hess-Mahan, Chairman

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Joel Reider at 617-796-1145 or jreider@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

CITY OF NEWTON

IN BOARD OF ALDERMEN

September 4, 2012

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT for a restaurant with greater than 50 seats and for a waiver of up to eight parking stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

- 1) The site (Business 1 zone) is an appropriate location for a restaurant with up to 61 seats, and is consistent with the *2007 Newton Comprehensive Plan*, which supports viable businesses that contribute to the vitality of Newton's village centers.
- 2) A waiver for up to eight required parking stalls is appropriate given the site's proximity to public transportation and the availability of parking within the village at the peak hours of operation. The petitioner submitted a parking study which supports this finding.
- 3) Literal compliance with parking requirements is impracticable due to the size of the site which cannot accommodate additional on-site parking.
- 4) There will be no adverse effects on parking, traffic, and circulation in the Newtonville commercial district or on adjacent residential streets as a result of this petition.

PETITION NUMBER: #189-12

PETITIONER: Rox Diner, Paul Louderback, John Fortin – (restaurant owners); Norman Cubell, Trustee (property owner)

LOCATION: 335 Walnut Street, Newton, MA 02460
Containing 15,855 square feet

OWNER: Norman Cubell, Trustee

ADDRESS OF OWNER: 180 Winchester Street,

Brookline, MA 02446

TO BE USED FOR: Restaurant with up to 61 seats and 11 employees

CONSTRUCTION: Existing masonry building, no new construction

EXPLANATORY NOTES: Section 30-11(d)(9) for a restaurant with greater than 50 seats; Section 30-19(c)(3), 30-19(d)(13), 30-19(m) to waive eight required parking stalls

ZONING: Business 1 District

Approved subject to the following conditions:

1. The petitioner may operate a restaurant with a maximum of 61 seats and up to 11 employees on the largest shift.
2. The petitioner agrees to make a donation of \$2,500 to the City to be used by the City for parking improvements and/or pedestrian accessibility or circulation improvements in the Newtonville vicinity to help mitigate parking impacts on the neighborhood.
3. The petitioner shall develop a parking management plan for its employees that encourages employees to arrive at the site via public transportation or carpooling, or to use the long-term parking available in the Newtonville area.
4. Any dumpsters relating to the subject property will be maintained and kept closed by the petitioner so that they are clean and the area is free of debris and odors.
5. Any changes to signage shall be subject to review by the Urban Design Commission and approval of the Director of Planning and Development.
6. The petitioner shall use best efforts to recycle all materials used in connection with the restaurant.
7. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. recorded a certified copy of this Board Order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
8. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. contributed \$2,500 to the City to be used for pedestrian, bicycle, and vehicular safety and improvement projects within the Newtonville Village Center.

Under Suspension of Rules
Readings Waived and Approved
23 yeas 0 nays 1 absent (Alderman Baker)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on September 6, 2012. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

**SCHLESINGER AND
BUCHBINDER, LLP**
ATTORNEYS AT LAW
1200 WALNUT STREET
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OF COUNSEL
ROBIN GORENBERG

September 19, 2013

Alderman Ted Hess-Mahan
Chairman, Land Use Committee
Board of Aldermen
City of Newton
1000 Commonwealth Ave.
Newton, MA 02459

RECEIVED
NEWTON CITY CLERK
2013 SEP 20 AM 11:56
David A. Olsen, Clerk
Newton, MA 02459

Re: 296 Ward Street Newton, Board Order #376-08
Consistency Determination

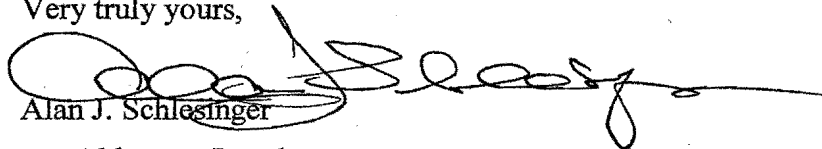
Dear Alderman Hess-Mahan;

Petitioner Jan Spiro requests an opportunity to appear before the Land Use Committee at your convenience in order that the Commissioner of Inspectional Services can have the Committee's advice as to consistency of certain plan revisions at the new house at the rear of 296 Ward Street.

Since the special permit for the rear lot subdivision was originally approved the technology of energy efficient housing has evolved significantly, and Ms. Spiro would like to use a panelized construction system and slightly re-orient the house for greater passive solar exposure. The farmhouse style, aggregate square footage and concept remain the same, but there are minor variations in the footprint for the orientation and some stylistic changes from the panelized construction. The architect will be available to explain the proposed changes.

Ms Spiro will contact her neighbors as to the proposed revisions.

Very truly yours,


Alan J. Schlesinger

cc: Alderman Laredo
Linda Finucane
Commissioner Lojek
Alexandra Ananth
Ouida C.M. Young

Inspectional Services Department

City of Newton
Massachusetts

Inter-Office Correspondence

TO: Land Use Committee

FROM: John D. Lojek, Commissioner of Inspectional Services

DATE: October 2, 2013

RE: 296 Ward Street, Consistency Ruling

RECEIVED
Newton City Clerk
2013 OCT -2 PM 4:17
DAVID A. OLSON, CMC
Newton, MA 02459

I have asked that this petition for a consistency ruling be forwarded to the Land Use Committee due to the changes proposed in the approved plans. While I do not see that the changes are significant in terms of the location and massing of the home, I am not privy to any design criteria or other considerations the Land Use Committee may have discussed before forwarding this for Special Permit.

I look forward to your comments and suggestions, if any, before approving this petition as consistent with the original special permit considerations.

CITY OF NEWTON

IN BOARD OF ALDERMEN

February 17, 2009

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, that the application meets the criteria established in §30-24(d) (1)-(4), and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN for a rear lot subdivision in order to construct a new single-family home behind an existing single-family home as recommended by the Land Use Committee and for the reasons given by the Committee therefor through its Chairman Alderman George E. Mansfield:

1. The development of an additional single-family home is appropriate given that the existing lot is significantly larger than most of the adjacent properties.
2. The scale and height of the proposed building is comparable to the heights of existing buildings in the neighborhood.
3. The proposed plan ensures the convenience and safety of vehicles and pedestrian movement within the site and in relation to adjacent streets by use of a shared driveway and ample space for turnaround of vehicles.
4. The proposed house and driveway will be adequately screened from adjacent premises with landscape screening and fencing.
5. The proposed construction will avoid major topographical changes and tree removal by partially locating the footprint of the building in an area currently devoted to a tennis court.
6. The proposed construction will reduce the amount of impervious surface on the property by removing an existing tennis court and by constructing a building and driveway whose combined footprint is smaller than the tennis court.
7. The proposed drainage system shall meet the standards for a 100-year storm event.
8. The proposed design for the additional house will make a significant contribution to the conservation of energy and natural resources through use of high performance insulation, triple-glazed windows, and an efficient air source heat pump HVAC system.

9. The petitioner intends to preserve views and open space at and maintain neighborhood character by limiting future development at 296 Ward Street (Lot 1) by means of a deed restriction.
10. The construction of an additional single-family residence in a neighborhood of single-family homes is consistent with the 2007 *Newton Comprehensive Plan* by maintaining the character of the existing neighborhood.

PETITION NUMBER: #376-08

PETITIONER: Jan Spiro

LOCATION 296 Ward Street
Newton, MA

OWNER: Jan Spiro

ADDRESS OF OWNER: 296 Ward Street
Newton, MA 02459

TO BE USED FOR: Single family home on rear lot subdivision

CONSTRUCTION: Wood frame

EXPLANATORY NOTE: §30-15(r)(2)a) allows the Board of Aldermen to approve a rear lot subdivision; §30-23 allows for Board approval of proposed site plan and related alternations and development on both lots; §30-19(f)(1) and (2), §30-19(h)(4), and §30-19(m) allow the Board of Aldermen to grant a waiver of the 20-foot driveway requirement and a technical waiver from providing parking on-site; §30-15(r)(2) and §30-24(d) allow Board of Aldermen approval of a special permit to allow a new rear lot and related alterations and development of both lots. §30-23 allows site plan approval in conjunction with special permits

ZONING: Single Residence 2

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans entitled

- a. Set of plans for 296 Ward Street, prepared by Everett M. Brooks Company, 49 Lexington Street, West Newton, MA 02465:
 - i. "Site Plan of Land in Newton, MA, 296 Ward Street," Sheet 1, dated September 15, 2008, and revised December 16, 2008, signed and stamped by Michael S. Kosmo, Professional Engineer and by Bruce Bradford, Professional Land Surveyor
 - ii. "Site Plan of Land in Newton, MA, 296 Ward Street," Detail Sheet 1, dated September 15, 2008, and revised December 16, 2008, signed and stamped by Michael S. Kosmo, Professional Engineer and by Bruce Bradford, Professional Land Surveyor
 - iii. "Site Plan of Land in Newton, MA, 296 Ward Street," Detail Sheet 2, dated September 15, 2008, and revised December 16, 2008, signed and stamped by Michael S. Kosmo, Professional Engineer
 - iv. "Sketch to Accompany Proposed Rear Lot Subdivision," Sheet 1, dated December 16, 2008 signed and stamped by Bruce Bradford, Professional Land Surveyor
 - v. "Sketch to Accompany Proposed Rear Lot Subdivision," Sheet 2, dated November 26, 2008, revised December 11, 2008 signed and stamped by Bruce Bradford Professional Land Surveyor
 - vi. "Silt Fence Location," dated January 26, 2009
 - b. Set of Plans for New Residence at Spiro Residence, 296 Ward Street, Newton, MA, prepared by Byggmeister, 667 Sawmill Brook Parkway, Newton, MA 02459, and Steven Baczek Architect, 46 Glenmere Circle, Reading, MA 01867, dated November 18, 2008; stamped and signed by Steven Baczek, Registered Architect:
 - i. Sheet A-1, "First and Second Floor Plans"
 - ii. Sheet A-2, "Front Rear Building Elevations"
 - iii. Sheet A-3, "Left and Right Side Elevation"
 - c. Landscape plan for 296 Ward Street, dated December 15, 2008; prepared by Christie Dustman, landscape architect, 1408 Centre Street, Roslindale, MA 02131
2. The proposed house on the proposed rear lot shall be equipped with a sprinkler system.
 3. The petitioner shall replace any dead or damaged portions of the landscape screening elements and latticescreening panels on an annual basis.
 4. The construction of a fence along the property line between the subject property and 31 Grant Avenue shall be permitted but not required. Any such fence shall be installed within two years of the date upon which final occupancy of the new structured is granted.

5. Without an amendment of the Board Order, any addition, reconstruction or new construction of the existing house on Lot 1 shall be limited to the footprint (including decks and porches) of the existing house as shown on the approved site plans plus additional areas limited to expansions in the footprint which are (i) not more than 15% of the existing footprint (including decks and porches) and (ii) not more than 20 feet in any direction. Any such addition, reconstruction or new construction shall also conform to the zoning applicable to Lot 1 at the time of such addition, reconstruction or new construction.
6. Without an amendment of the Board Order, no accessory building of more than 100 sq. ft. may be constructed westerly of the existing house on Lot 1.
7. The approved Operations and Maintenance Plan for storm water management shall be attached to this Board Order and recorded with the Middlesex County Registry of Deeds.
8. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. recorded a certified copy of this Board Order for a special permit/site plan approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. filed a copy of such recorded Board Order with the City Clerk, the Inspectional Services Department, the Department of Planning and Development and the Engineering Division of the Department of Public Works.
 - c. conducted a fire flow test for the sizing of the fire suppression system water feed that is witnessed by the Fire Department
9. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. submitted to the Law Department for review and approval appropriate language to establish an easement for the driveway providing access to the rear and recorded all necessary easement agreements with the Registry of Deeds for the Southern District of Middlesex County.
 - b. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by the City Engineer certifying that driveways, sidewalk, parking area, and drainage systems have been constructed to the standards of the Department of Public Works.
 - c. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and registered engineer certifying compliance with Condition #1.
 - d. filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that the finished grades and final construction details of the driveways,

parking area, and drainage systems have been constructed to standards of the City Department of Public Works.

- e. submitted to the City Engineer final as-built, record site engineering, utilities, grading and drainage plans in both digital format and hard copy.
 - f. submitted to the City Engineer, proof of the Operations and Maintenance Plan recorded with the Registry of Deeds.
 - g. submitted to the Director of Planning and Development, final as-built plans in digital format.
 - h. filed with the City 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.
10. Notwithstanding the provisions of Condition #9.h. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of landscaping provided the petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site improvements to ensure their completion.

Under Suspension of Rules

Readings Waived and Approved

21 yeas 0 nays 2 absent (Aldermen Gentile and Harney) 1 recused (Alderman Schnipper)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on February 19, 2009. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen