

CITY OF NEWTON
IN BOARD OF ALDERMEN
LAND USE COMMITTEE AGENDA
TUESDAY, NOVEMBER 12, 2013

7:00 PM
Aldermanic Chamber

The following item, approved by the Board of Aldermen on December 3, 2012, was the subject of an appeal by the Greater Boston Chinese Cultural Association to Massachusetts Land Court on December 20, 2012; on January 30, 2013 the Land Court remanded the item for a new public hearing. The public hearing was opened on October 15, 2013 and continued to this evening.

- #190-12 YOUNG INVESTMENTS, LLC/NEWTON COMMUNITY SERVICE CENTER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing 2-story building and construct a 3-story (36.5') multi-family structure with 13 units (with a 1.47 FAR), 996 sq. ft. of office space on the first floor, an 18-stall below grade parking garage, a retaining wall greater than 4 feet in height in the setback, and to waive 11 parking stalls and certain parking dimensionals at 429 CHERRY STREET, Ward 3, WEST NEWTON, on land known as SBL 33, 12, 12, containing approximately 13,398 sq. ft. of land in district zoned Business 1. Ref: Sec 30-24, 30-23, 30-15 Table 3, 30-11(d)(8), 30-5(b) and (b)(4), 30-19(d)(1), (d)(11), 30-19(h)(3), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.
- #315-13 CHRIS MURPHY & MARY DURR petition to AMEND special permit #332-90, which allowed one parking stall in the front yard, in order to construct a retaining wall of more than four feet in the front setback in order to provide 2 parking stalls in the front setback at 36-38 HIGH STREET, Ward 5, Newton Upper Falls, on land known as SBL 51, 6, 7, containing approximately 3,810 sf in a district zoned MULTI RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-19(g)(1) and (m), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012 and special permit #332-90.
- #330-13 DONNY & RAQUEL SANTANGELO petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to connect an existing two-family dwelling to an existing detached garage with living space above, which will increase the Floor Area Ratio from .47 to .56, where .48 is the maximum allowed by right, at 3-5 MILTON AVENUE, Ward 4, West Newton, on land known as SBL 44, 14, 70, 71, containing approximately 6,962 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-15 Table A and 30-15(u) of the City of Newton Rev Zoning Ord, 2012.

- #331-13 MANOJ & VAISHALI SHINDE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a ±17-foot retaining wall greater than four feet in height within the front setback at 287 KENRICK STREET, Ward 7, NEWTON, on land known as SBL 72, 37, 18, containing approximately 11,141 sq. ft. 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.

After the public hearings, the Committee will hold a working session in Room 222 to discuss the following items and any of the above items that are ready for discussion:

- #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.*
- #213-12(3) REQUEST FOR EXTENSIONS OF TIME in which to EXERCISE special permits #213-12 and #213-12(2) granted on November 5, 2012 to construct two single-story commercial buildings with an aggregate total gross floor area of 19,200 sq. ft.; to permit retail/service uses including restaurant uses containing up to 150 seats; to waive 20 parking stalls and certain dimensional requirements and associated fencing and lighting requirements for parking facilities greater than five stalls; to waive one required loading dock facility; and to allow a freestanding sign and the number of secondary signs and dimensionals at 49, 55, 71 NEEDHAM STREET, Ward 5; said EXTENSION will run from NOVEMBER 5, 2013 to NOVEMBER 5, 2014.

Respectfully submitted,

Ted Hess-Mahan, Chairman

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.

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OF COUNSEL
ROBIN GORENBERG

October 16, 2013

Alderman Hess-Mahan
Chairman
Land Use Committee
Board of Alderman
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

re: Board of Alderman Order #213-12 (1) and #213-12 (2)
49-71 Needham Street Newton

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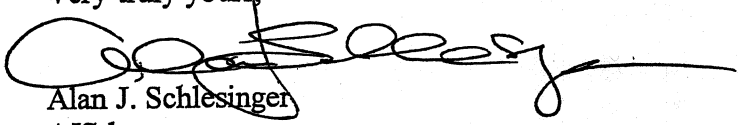
Dear Alderman Hess-Mahan,

The Board Orders for the Needham Street Shoppes were issued on November 5, 2012. Pursuant to Zoning Ordinance Section 30-24 (c) (4) Needham Street Village Shops, LLC requests an extension of time for exercise of the special permits.

The extension of time is requested because the Petitioner has acquired both of the parcels at 49-55 and 71 Needham Street. However the former owner of 71 Needham Street known as International Bicycle has experienced delay in relocating to its new premises across the street. As a result of this delay the Petitioner has been unable to commence construction on the property but expects to do so in the winter of 2013-2014.

In accordance with Section 30-24 (c) (4) a waiver of public hearing is requested.

Very truly yours,


Alan J. Schlesinger
AJS:imp

Cc: Linda Finucane
Alexandra Ananth