

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 13, 2013

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Crossley, Schwartz, Laredo, Fischman, and Harney; 1 vacancy

Staff: Stephen Pantalone (Senior Planner), Alexandra Ananth (Chief Planner for Current Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#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:      APPROVED 7-0

NOTE: The committee discussed and held this item on September 10, 2013 so the petitioner could file the Application for Administrative Site Plan Review and the Planning Department could call a neighborhood meeting. At the neighborhood meeting, one owner expressed some trepidation because both his and the petitioner's driveways are opposite one another, but they have worked out that issue to avoid conflicting movements. After completing its review, the Planning Department determined that there is sufficient parking (over 30 stalls) to accommodate the up to 70 students and 12 employees proposed for the daycare. The Planning Department has no concerns and believes the use will not have any negative impact on the office park. In response to Alderman Fischman, the petitioner will satisfy any lighting requirements. Ms. Young noted that there is a lot of latitude in the Administrative Site Plan Review process, with for-profit educational/daycare treated similar to Dover uses, with few specific criteria. Alderman Laredo said that daycare is always welcome and at this location it can provide a benefit to people within the office park. Alderman Albright suggested that in light of the recently-proposed 40B project, which if it goes forward will also require an amendment to the deed restriction, the committee be given a refresher course on allowed and disallowed uses enumerated in the deed restriction and the various amendments to it. Alderman Fischman asked the Planning Department to provide the committee with a copy of the Planning Department's Administrative Site Plan Review memorandum. Unlike a special permit, an amendment to the 99-year deed restriction requires only a simple majority vote and the Mayor's approval. Alderman Fischman moved approval, which carried unanimously.

#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 Needham Street Village Shops, LLC 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,

NOTE: APPROVED 7-0

NOTE: Attorney Franklin Schwarzer from Schlesinger & Buchbinder explained that Needham Street Village Shops has been waiting for International Bicycle, the former owner of 71 Needham Street, to relocate, which it is doing this week. Needham Street Village Shops expects to obtain a building permit and begin construction shortly. Alderman Crossley moved approval of the extensions, which carried unanimously.

#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.

ACTION:      PUBLIC HEARING CLOSED; APPROVED 7-0

NOTE: The petitioners are proposing to construct a two-tiered retaining wall approximately 12 in height at the highest point to provide two new side-by-side parking stalls in the front yard setback of their circa 1890's two-family home. If granted, the two spaces will eliminate the need for two vehicles to be parked on High Street, which is narrow and curves sharply at that point. The street is aptly named for its topography and many of the houses on its downhill side, most of which were constructed in the late 1800's, have similar off-street parking configurations. The previous owner was granted a special permit in 1990 for two off-street parking stalls, although one of those spaces partially blocks the sidewalk. The proposed wall will be reinforced concrete with a natural stone veneer. Pavers will be used on the surface of the parking area and a three-foot walkway is shown behind the smaller wall. The Planning Department noted that although neighboring properties have created similar parking areas, none have required such a significant retaining wall; however, the subject property appears to be located on one of the steepest slopes in the neighborhood. The Planning Department suggested that the petitioners consider adjusting the location or reducing the width of the new curb cut to provide a buffer between the driveway and a nearby fire hydrant. Although no landscaping plan was submitted, the petitioners indicate that plantings, most likely shrubs, will be installed at the base of the retaining wall to soften the effect and provide visual screening as well as stabilize the slope. The petitioners currently live at 24-26 Sullivan Avenue, where they did something similar wall five years ago. The petitioners reported that the abutter at 17 Sullivan Avenue to the rear was in favor of the project. The Upper Falls Historic District Commission reviewed and approval the plans on February 15, 2013. The city's Engineering Division expressed concern about runoff onto High Street. The committee questioned the Open Space calculations, i.e., could there really be 67.7% existing open space with a proposed reduction to 56.5%, where 50% is the required percentage?

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

In working session, the petitioners agreed to adjust the curb cut to protect the existing fire hydrant next to the proposed new driveway. They will also meet the city's requirements to retain all runoff on-site. After discussing whether the Open Space calculations were in error, the

committee decided that if the proposed improvements cause noncompliance with the open space requirement of 50%, the petitioner will need to seek a variance from the Zoning Board of Appeals.

Alderman Crossley moved approval of the petition finding that amending the site plan by creating retaining walls greater than four feet and providing two additional parking spaces in the front yard setback will not be detrimental to the public welfare; the proposed retaining walls will not adversely affect the neighborhood and all runoff will be contained on-site; the proposed exceptions to the parking requirements to permit two parking spaces in the front setback are appropriate, as literal compliance is impracticable due to the grade of the lot. The creation of two off-street parking stalls for the two-family house eliminates a nuisance for the home-owners, and will not create nuisance or serious hazard to vehicles or pedestrians in the neighborhood. Alderman Crossley's motion carried unanimously.

*Clerk's note: Please see the attached email from engineer Chris Sparages.*

#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.

ACTION:      PUBLIC HEARING CLOSED; APPROVED 7-0

NOTE: In September 2012, the petitioners received a building permit to construct a new single-family dwelling. The plans approved for the by-right dwelling did not include a retaining wall along the west side of the driveway; however, towards the end of construction the petitioner built a retaining wall to retain a slope adjacent to the driveway. The retaining wall exceeds at one point the dimensional controls for a retaining wall in the setback. A Temporary Certificate of Occupancy was issued to the petitioner on September 5, 2013 to allow the petitioners time to either reduce the height of the wall or obtain a special permit. Since the area has been re-graded and the landscaping and sprinkler system have been installed, the petitioners are seeking a special permit to legalize the wall as constructed. Although the Planning Department is concerned with granting of special permits after the fact, it acknowledges that the retaining wall as constructed is well within the site and does not appear to cause a hazard or be a nuisance to the immediate abutters.

The petitioners' engineer William Drexel from Northwest Engineering Services acknowledged that the retaining wall was not on the original plans. However, there was a subsequent plan that showed the wall at the proper height; however, the landscaping company that constructed the wall during the last phase of the project stepped the wall which when the stairs were constructed resulted in the wall being slightly over four feet (up to five feet) in several areas. The committee expressed its displeasure about relief being sought after the fact. Mr. Shinde said this was not intentional. He wishes to legalize the wall because of the expense involved if he has to rip out the wall, the sprinkler system, and the landscaping.

Nadine Brody, 294 Kenrick Street, said she was not opposed to the wall, but complained she had received no notice of the demolition of the prior house or construction of the new one. She also said that she had problems with the same landscaping company and had fired them.

In working session, Mr. Pantalone explained that if the special permit is granted, the petitioner will have to obtain a building permit, submitting plans showing specifically how the

wall was constructed and with what materials. The committee concurred with the Planning Department that the location of the wall although in the setback is well into the site.

Alderman Laredo moved approval of the petition finding that the retaining wall, which exceeds the four foot height limit for retaining walls in the front setback, will not adversely affect the neighborhood because its location is internal to the site with the highest part of the wall set back the farthest from the street; the retaining wall will not be a nuisance or serious hazard to vehicles or pedestrians in the neighborhood. Alderman Laredo's motion carried unanimously.

The meeting was adjourned at approximately 10:30 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman

Send reply to: <csparages@wsengineers.com>  
From: "Chris Sparages" <csparages@wsengineers.com>  
To: <dsexton@newtonma.gov>  
Copies to: "'Murphy Durr'" <murphydurrproperty@gmail.com>  
Subject: FW: 36-38 High Street - Open Space Calculation  
Date sent: Wed, 13 Nov 2013 13:59:27 -0500  
Organization: Williams & Sparages

Dear Dan,

As a follow-up to our last conversation....you asked me about an existing parking space in front of the building and whether this was included in the calculation for "Open Space." We did not realize that this was a parking space. When you add this fourth space to the "Open Space" calculations in the proposed condition, it yields a total Building, Parking, Structures area of approximately 1,839 square feet. When you divide this number by the lot area and subtract it from 100 percent, it yields an "Open Space" value of 51.7 percent. I copied Mary Durr, the property owner, on these emails, which prompted Mary to contact me. She wants to make sure that there are no outstanding items leading up to the upcoming vote of the Aldermen. I would appreciate it if you could confirm this for Mary. She does not want any loose ends at the upcoming hearing.

Thank you.

Chris Sparages, P.E.

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