

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, FEBRUARY 14, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Laredo, Crossley, Fischman, Harney, Schwartz, and Merrill, and Harney; absent: Ald. Albright; also present: Ald. Rice

City staff: Alexandra Ananth (Senior Planner), Ouida Young (Associate City Solicitor), Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#388-11 KOUZINA, INC./DTS TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive the 9 parking stalls required to increase from 20 to 46 the number of seats in an existing restaurant at 1649 BEACON STREET, Ward 5, Waban, on land known as SBL 53, 29, 2A, containing approximately 54,198 square feet of land in a district zoned BUSINESS 1. Ref: Sec. 30-24, 30-23, 30-19(d)(13), and 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 4-0 (Schwartz, Merrill, and Harney not voting) (DRAFT BOARD ORDER ATTACHED.

NOTE: This petition was the subject of a public hearing on January 10 and a working session on January 24, 2012, which report is available on www.ci.newton.ma.us under Board of Aldermen/Committees/Land Use. It was held on January 24 because of questions about the number of spaces, aisle width, turning radii, and the configuration of the three handicapped parking spaces shown on the plan prepared by Neponset Valley Survey Associates that was submitted with the petition. The committee asked staff to take another look at the plan, which shows what appear to be between 71-76 parking spaces, but it is difficult to determine the exact number because the lot is not striped. The Planning Department had recommended the spaces be striped. Initially, the landlord was resistant to striping the parking lot, but has since consented to let the tenant stripe it; the tenant has agreed to do so prior to April 15, 2012. If the special permit is approved, the Commissioner of Inspectional Services will review a new proposed conditions plan to ensure the spaces are dimensionally compliant and the general layout is as optimal as possible. Ms. Ananth explained that striping the lot will create a baseline for future determinations, but will not affect the number of spaces required by this tenant.

Alderman Crossley, noting that it was unfortunate the tenant had to pay for the striping, moved approval of the petition, finding the waiver of 9 parking spaces appropriate because the parking is shared and there appears to be ample parking available, particularly during peak evening hours; there is on-street parking available in close proximity to the restaurant; the site is located across the street from the MBTA Green Line; literal compliance is impracticable because of multiple users with no spaces dedicated to any one tenant, and the petition is consistent with the 2007 *Comprehensive Plan*, which supports viable businesses in the village centers. Conditions include submittal and review of a proposed conditions plan relative to striping the parking lot and providing the required handicapped spaces. The motion to approve carried 4-0, with Aldermen Schwartz, Merrill, and Harney not voting.

Public hearings were held on the following items:

#9-12 KUROSH MIZRAHI petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate an accessory apartment in an existing detached structure and to waive the required screening for the associated parking at 1099 WALNUT STREET, Ward 6, Newton Highlands, on land known as SBL 52, 9, 11, containing approximately 13,618 square feet of land in a district zoned Single Residence 2. Ref: Sec 30-24, 30-23, 30-8(d)(2), 30-8(d)(1)(h) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 7-0 (DRAFT BOARD ORDER ATTACHED).

NOTE: The lot contains a single-family circa 1918 Victorian-style residence with a 1,450 square-foot carriage house located to the rear of the property. The petitioner obtained a building permit in the mid-1980's to make repairs to the carriage house. Three generations of the petitioner's family have lived here for many years and family members have occupied the carriage house off and on. It is not occupied presently because it is the subject of an enforcement order by the Inspectional Services Department for not having the proper permits. The petitioner wishes to legalize the use as an accessory apartment, renovate the interior, and upgrade the kitchen and bathrooms. Proposed changes to the exterior involve new siding and roofing.

The Fire Department requested and the petitioner has agreed to widen the driveway from 10 to 14 feet. The petitioner will submit a revised site plan to reflect the change. The single-family and the accessory use require a total of three parking spaces. There are three spaces on-site; however, the plan indicates they are only 18 feet in length, where 19 feet is required. Since it appears there is no obstacle to meet the requirement, dimensionally correct parking spaces also should be shown on the revised site plan. Since the site is surrounded by a wood stockade fence, the petitioner is requesting relief from the requirement for landscape screening of the accessory unit's parking.

Alice Kuhner of 14 Hillside Road, the abutter closest to the carriage house, who at present is living in Germany, stated in an email that she would be happy to see the property renovated in a proper manner. She is concerned about a linden tree on their common east property line. A portion of the tree has fallen on her property and the person she hired to trim it said the tree is diseased. The petitioner has agreed to remove the tree if necessary.

Andy Levine and Lisa Monahan of 1105 Walnut Street both spoke in favor of the petition. They have lived next door for 11 years and said they could not ask for a better neighbor. The petitioner works on his house all the time; besides, they pointed out, almost everybody's property could use some work.

In working session, Alderman Fischman asked if the driveway could accommodate vehicles turning around to drive out instead of backing out on to Walnut Street. Ms. Ananth said there is enough room and that is how it is done currently and since the petitioner has agreed to widen the driveway from 10 to 14 feet, the Planning Department doesn't see the need to add more paving

on the site. Although portions of the fence belong to abutters, the petitioner has agreed to maintain and/or replace the existing stockade fence around the property, unless no fencing is desired by an abutter(s). Alderman Laredo asked what would happen if a neighbor wanted a more elaborate fence. The chairman suggested that a condition relative to the fence include language to stipulate a fence of "like kind."

Alderman Schwartz moved approval of the petition finding the proposed use will not adversely affect the neighborhood because the structure already exists and no significant exterior alterations are proposed; it ensures that an existing carriage house will be preserved and adapted for reuse as a dwelling, while contributing to the diversity of housing options available in the city; and, a waiver from the required screening is appropriate since literal compliance is not practicable or necessary due to the existing fence which surrounds the property and screens all vehicles from abutting properties.

#105-09(3) YANPING SUN request for an EXTENSION OF TIME IN WHICH TO EXERCISE special permit petition #105-09(2), granted on December 6, 2010 for an accessory apartment in an existing single-family dwelling at 87 WOODWARD STREET, Ward 5, Newton Highlands. Sec 30-24(c)(4) City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: Dr. Sun was granted a special permit on December 6, 2010 for an accessory apartment. Section 30-24(c)(4) allows one year to exercise a special permit, but it provides that an additional one-year extension may be granted by the Board of Aldermen given that G.L. chapter 40A allows two years. She explained that Mr. Ben Abrams, an engineer and close friend who helped her through the permitting process, passed away in the past year. She renewed the lease with a medical colleague who has been renting the house and has children in Newton schools. She has not yet engaged a contractor. Although section 30-24(c)(4) gives the option of holding a public hearing for an extension of time, it has not been the usual practice of the committee to do so. However, since the original special permit petition drew quite a bit of attention from the neighborhood, Aldermen Crossley and Rice wanted to speak with the neighbors and give them the opportunity to comment. Alderman Rice reported that he had spoken with the abutters and that they were fine with the extension. The committee received no written comments and nobody was present this evening. The hearing was closed, and Alderman Fischman moved approval of the one-year extension of time, which motion carried 7-0. The committee stressed to Dr. Sun that she had until December 6, 2012 to exercise the special permit, i.e., move into the house and comply with all other conditions contained in the special permit or the permit would expire and in that case she would have to begin the process anew.

The meeting was adjourned at approximately 9:50 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman

CITY OF NEWTON

IN BOARD OF ALDERMEN

February 21, 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/SITE PLAN for a parking waiver of up to nine 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 waiver of up to nine parking stalls is appropriate for the following reasons:
 - a. The site includes a shared parking lot where recent counts submitted by the tenant indicate there appears to be sufficient available parking spaces, particularly during peak evening dining hours.
 - b. The site is located directly across the street from the MBTA Green Line Station.
 - c. In addition to the shared parking lot there is on-street parking available on Beacon Street and on Windsor Road in close proximity to the restaurant.
 - d. Literal compliance is impracticable because on-site parking is a shared resource for multiple uses with no parking spaces dedicated to any one use.
2. The expansion of a restaurant use in this location is consistent with the 2007 *Newton Comprehensive Plan*, which supports strengthening viable businesses that contribute to the vitality of Newton's village centers.

PETITION NUMBER: #388-11

PETITIONER: Kouzina, Inc. (tenant)/DTS Trust (property owner)

LOCATION: 1649 Beacon Street, Section 53, Block 29, Lot 2A
containing approximately 54,198 square feet of land

OWNER: DTS Trust

ADDRESS OF OWNER: 251 Harvard Street, Suite 12, Brookline, MA 02446

TO BE USED FOR: Restaurant with up to 46 seats

CONSTRUCTION: Add additional tables and seats only to restaurant use

EXPLANATORY NOTES: §30-19(d)(13) and 30-19(m) to allow for a waiver for up to nine required parking stalls; and §30-24(d) for special permit approval

ZONING: Business 1 District

Approved subject to the following conditions:

1. All site features associated with this special permit/site plan approval shall be located and constructed consistent with the following plans:
 - o "Existing Basement Floor Plan & Proposed First Floor Layout" dated May 19, 2011, not signed or stamped but prepared by DLA Architecture 1643 Beacon Street, Suite 22, Waban, MA
2. The tenant may operate a restaurant/bar with a maximum of 46 seats and up to five employees on the largest shift.
3. With the property owner's consent, the tenant has agreed to stripe the parking lot prior to April 15, 2012 unless an extension is permitted by the Commissioner of Inspectional Services due to unavoidable circumstances. Prior to the issuance of a permit to stripe the lot, the petitioners shall submit a proposed conditions plan to the Commissioner of Inspectional Services and the Director of Planning and Development for review and approval. The plan shall be reviewed for compliance with handicapped parking regulations and shall optimize the number of dimensionally compliant parking stalls in accordance with the regulations of the City's Zoning Ordinance Section 30-19(h) in so far as is practicable.
4. The tenant shall place signage in the restaurant and on its website indicating that parking is available behind the building in the rear shared parking lot.
5. Any dumpsters relating to the tenant's restaurant will be maintained and kept closed by the petitioner so that they are clean and the area is free of debris and odors.
6. Hours of operation shall not exceed 11 a.m. to midnight, Monday through Friday and 9 a.m. to midnight on Saturday and Sunday.
7. The tenant shall use best efforts to recycle all materials used in connection with the restaurant.
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 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.
 - c. obtained a statement from the Director of Planning and Development that all plans are consistent with Condition #1.
9. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
- a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.

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February 21, 2012

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action 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, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure, and to waive required screening, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan.

The Board finds that:

- 1) The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
 - a. The structure already exists and no significant exterior alterations are proposed.
 - b. Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
- 2) The waiver from required screening is appropriate since literal compliance with this requirement is not practicable or necessary due to the existing board fence which surrounds the subject property and effectively screens all vehicles from abutting properties.
- 3) The proposed conversion on an existing carriage house to an accessory apartment is consistent with the intent of the *Comprehensive Plan* for the following reasons:
 - a. It preserves an historic carriage house and maintains neighborhood character in keeping with the City's preservation goals.
 - b. It adds to the number of units and diversity of the City's housing stock, consistent with the City's housing goals.
 - c. It encourages efficient reuse of the City's existing housing stock.

PETITION NUMBER: #9-12

PETITIONER: Kurosh Mizrahi

LOCATION: 1099 Walnut Street, Ward 6, on land known as Sec 52, Blk 9, Lot 11, containing approx. 13,817 sf of land

OWNER: Kurosh Mizrahi

ADDRESS OF OWNER: 1099 Walnut Street, Newton, MA 02461

TO BE USED FOR: Accessory Apartment in a detached structure

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Section 30-8(d)(2) to allow an accessory apartment in a detached structure; and Section 30-8(d)(1)h) to waive required screening

ZONING: Single-Residence 2 District.

Approved, subject to the following conditions:

1. The carriage house and areas of the subject property directly related to the uses approved and relief granted through this Special Permit shall be consistent with the following plans:
 - a. City of Newton, MA, Special Permit Plot Plan, Kurosh Mizrahi, 1099 Walnut Street, Newton, MA, stamped and signed by Allen F. Paige, Registered P.E., and dated April 30, 2010
 - b. Architectural Plans, 1099 Walnut Street, prepared by J.W. Melick Design, Worcester, MA, dated 11/30/09 and Revised 10/20/11
2. Prior to the issuance of a building permit the petitioner shall submit a revised site plan for review and approval to the Fire, Planning and Development Department, and the Engineering Division of the Department of Public Works, indicating that the driveway will be widened from 10 to 14 feet, showing three 9 by 19 foot parking stalls, and detailing any changes to the curb cut and increase in pervious surface.
3. The Petitioner shall maintain fencing of like kind on the south side of the subject property unless no fencing is desired by immediate abutters.
4. The petitioner shall maintain all landscaping on the subject property and shall keep the property free of junk and debris.

5. The property must be owner-occupied and the owner must submit a yearly affidavit attesting to this condition per Section 30-8(d)(2) of the Newton Zoning Ordinance. The principal dwelling and the accessory dwelling shall not be held in separate ownership, and the owner must live in either the accessory apartment or the principal dwelling.
6. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
 - a. Recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
 - b. Filed a certified copy of such recorded notices with the Clerk of the Board, the Inspectional Services Department and the Department of Planning and Development.
 - c. Submitted a revised site plan for review and approval to the Fire, Planning and Development Department, and the Engineering Division of the Department of Public Works, in accordance with Condition #2.
7. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
 - a. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered engineer or surveyor certifying compliance with Condition #1.
 - b. The accessory apartment shall have been brought into compliance with all applicable building and safety codes.