

CITY OF NEWTON
IN BOARD OF ALDERMEN
LAND USE COMMITTEE REPORT
TUESDAY, JUNE 12, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Fischman, Crossley, Merrill, and Schwartz; absent: Ald. Harney and Laredo; also present: Ald. Ciccone and Lennon
City staff: Alexandra Ananth (Senior Planner), Eve Tapper (Chief Planner for Current Planning), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

Public hearings were held on the following petitions:

- #91-12 PHILLIP E. KRET & PINAR KILICCI-KRET/WILLIAM S. ALBERT & MONICA MITRA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING USE and STRUCTURE to construct a rear addition, increasing the Floor Area Ratio from .72 to .76; maximum lot coverage from 32.5% to 33.4%; decreasing open space from 49% to 48%, on an existing two-unit condominium at 111 PLEASANT STREET, Ward 6, Newton Centre, on land known as SBL 64, 30, 16 and 16A, containing approximately 5,628 sq. ft. of land in a district zoned Single Residence 2. Ref: 30-24, 30-23, 30-21(b) of the City of Newton Rev Zoning Ord, 2007.
- #91-12(2) PHILLIP E. KRET & PINAR KILICCI-KRET/WILLIAM S. ALBERT & MONICA MITRA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING USE and STRUCTURE to construct a rear addition at 111 PLEASANT STREET, Ward 6, Newton Centre, which requires in addition to the relief requested in petition #91-12, for which a public hearing was opened and continued on May 15, 2012 to June 12, 2012, relief from the side yard setback requirements. Ref: Sec 30-21(a)b), 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 5-0 (Merrill not voting)

NOTE: The original petition was noticed for a May 15 public hearing; however, the petitioners needed additional relief which was not noticed for an extension into the side setback. That request, #91-92(2), was advertised and scheduled for this evening. The subject property is a two-family dwelling built in 1916 that has been converted into two condominiums. Both owners are co-petitioners who wish to add a two-story 8x15' addition to the rear of the structure to create additional bedroom space. The Krets purchased their condo in 1999 and wish to remain in the neighborhood. Currently, one of their children has to walk through another child's bedroom to reach his room.

The proposed addition will increase an already nonconforming use and structure with respect to lot coverage, minimum open space, Floor Area Ratio, and side yard setback and will be constructed above an existing covered porch. Various elements of the house will be

reconfigured, such as an existing bulkhead and shed will be removed from the east side of the structure and the bulkhead relocated to the north side. An existing covered stair located at the site of the proposed addition will be replaced in a different location. There are no proposed changes to the driveway or parking arrangement. No landscape screening is proposed as an existing fence surrounds most of the property.

The petitioners spoke with most of their neighbors; however, neighbors at 95 Pleasant Street and 100 Tyler Terrace were unresponsive and 117 Pleasant Street was just sold, and they have not yet met the new owners. There was no public comment and the hearing was closed.

In working session, it was noted that although the neighborhood is zoned Single Residence 2, there are a number of similar nonconforming two-family structures located on small parcels. The committee agreed that given the size of the site landscaping is impracticable.

Alderman Schwartz moved approval of the petition finding that the increase in the nonconforming FAR from .72 to .76 where .45 is allowed by right is appropriate because adjacent properties contain large, pre-existing multi-family homes on small lots; extending the nonconforming use, lot coverage, minimum open space and side setback is not substantially more detrimental because although the house is in a SR-2 district it is surrounded by similar two-family homes; the addition, located to the rear of the house, will not increase its bulk or mass when viewed from the street. Ald. Schwartz's motion carried 5-0, with Alderman Merrill not voting.

#118-12 ZORI & INBAL ROBINOVITZ petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a new single-family dwelling with a Floor Area Ratio of .28 where .26 is allowed by-right at 150 COUNTRYSIDE ROAD, Ward 8, on land known as SBL 83, 36, 39, containing approximately 25,000 sq. ft. of land in a district zoned Single Residence 1. Ref: Sec 30-24, 30-23, 30-15(u) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED

NOTE: This item will be reported when it is voted out of Committee.

#134-12 DAVID PUNCH/B&E BEACON REALTY, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive 11 parking stalls required for a proposed 48-seat restaurant at 753A-755 BEACON STREET, Ward 6, on land known as SBL 61, 27, 20, 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: HEARING CLOSED; APPROVED 5-0 (Merrill not voting)

NOTE: The petitioner was represented by attorney Laurance Lee of Rosenberg, Freedman & Goldstein. The petitioner, a partner and the chef at Ten Tables in Cambridge, wishes to open a 48-seat restaurant in the space formerly occupied by grocer/butcher John Dewars. A restaurant with less than 50 seats is a by-right use in the Business 1 district; however, this site has no parking. The prior use has a 9-space parking credit, but the proposed use requires a total of 19 parking spaces. The petitioner is seeking a special permit to waive the additional 11 parking spaces required for a 48-seat restaurant.

The petitioner submitted a Parking Survey, which was attached to the Planning Department memorandum dated June 12, 2012. The survey was taken on Wednesday through Friday, May 30 through June 1, from 5:30 PM to midnight. The survey appears to indicate sufficient parking within a 5-minute walk of the site. There are approximately 391 parking spaces in four municipal lots in close proximity to the site. The petitioner plans to open only for dinner, 5:30 PM to midnight, Monday through Sunday. He anticipates that approximately 85% of the patrons will be by reservations. Although he currently has no plans to open for lunch, he would like the option to do so but with only the number of seats allowed by right with the 9-space parking credit. The petitioner conducted a neighborhood meeting at which people were supportive of the petition.

Richard Kovalcik of 19 Chesley Road spoke in support of the petition. Deliveries and other activities of the restaurant will be no different from when it was John Dewars. (Mr. Kovalcik said he had not received a notice of the public hearing, but it was noted later that it was because his property is just beyond the 300-foot area required by law.)

The petitioner has offered to contribute \$2,000 to a mitigation fund that the Planning Department has recommended be created for Newton Centre pedestrian improvements, e.g. countdown signals, bump outs, etc. The fund does not yet exist, but the idea is to pool contributions to fund larger pedestrian improvements, beyond bike racks. Ms. Young concurs there is a nexus between granting a parking waiver and mitigations to enhance the experience and safety of pedestrians.

The Planning Department suggested that employee parking might be provided in the alley/passageway at the rear of the building. When Alderman Fischman visited the site he observed that the passageway appeared to be blocked with cars. Mr. Lee explained that although the co-petitioner owns the passageway to the middle, there are four other lots and owners who also have rights, of which one is an operational auto body shop. The multiple owners preclude any one owner's control. The petitioner's dumpster will be located in the passageway and be emptied once a week. The petitioner has agreed to arrange to recycle. Deliveries will be made through the front door. The petitioner explained that most deliveries are hand-carried or brought in on a hand cart.

Alderman Fischman asked if the Fire Department would need access to the building from the rear. It was pointed out that since the passageway was approximately 12 feet wide, it seemed unlikely. However, the Committee agreed to ask for confirmation from the Fire Department prior the full Board meeting as to whether or not it would need rear access. ***N.B. Please see attached June 15, 2012 memo from Assistant Chief Chagnon.***

Alderman Schwartz moved approval of the petition finding that this is a proper site for a 48-seat restaurant; the waiver of 11 parking spaces is appropriate because it is close to four municipal parking lots; parking counts indicate that the peak hours for the proposed restaurant are off-hours from other businesses in Newton Centre and there will be no adverse impact on residential streets; the proposed restaurant will add vitality to Newton Centre in accordance with the goals.

of the 2007 *Comprehensive Plan* and the 2008 *Newton Centre Task Force Report*. The motion to approve the petition carried 5-0, with Alderman Merrill not voting.

#136-12 TERRY O'REILLY'S PUB, LLC & MIDDLE EAST FOOD SERVICES, LLC/PICCLANG, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXPAND A NONCONFORMING USE to increase the number of seats in an existing restaurant to 99 seats and to waive the 19 parking stalls required at 47-61 LANGLEY ROAD, Ward 6, Newton Centre, on land known as SBL 61, 36, 6, containing approximately 10,037 sq. ft. of land in a district zoned BUSINESS 1. Ref: Special Permit #167-02 and Sec 30-24, 30-23, 30-19(c)(2), (d)(13), and 30-19(m) and 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 5-0 (Merrill not voting)

NOTE: The petitioners were represented by attorney Michael Magerer with offices at 109 Highland Avenue, Needham. The property is a multi-tenanted commercial building that includes *Sabra*, a Middle Eastern restaurant that has been on the ground floor for 35 years. In 2002 *Sabra* was granted a special permit to increase the number of seats from 51 to 77, but only after 6:00 PM Monday through Saturday and after 11:00 AM on Sundays. The petitioners are proposing to convert the restaurant into an Irish pub with 99 seats available at all hours. There is no on-site parking, so they need a parking waiver for the additional seats. The parking requirement for the proposed restaurant is 37 spaces, which is 19 spaces over the amount permitted prior to 6:00 PM by board order #167-02.

Mr. O'Reilly operates another restaurant in Norton. The concept is a family-style pub, opening at 11:00 AM, with anticipated peak hours from 6:00 to 8:00 PM, and a 1:00 AM closing. The proposed floor plan indicates 60 restaurant seats, a total of 26 seats around two separate bars and approximately 13 seats in an exclusive dining area. The two bars will cater to different patrons, one with television and the other with live music. The floor plan also indicates a space for standing room. The petitioners submitted a Parking Survey (attached to the Planning Department memorandum of June 12) which indicates there is ample parking within a ten minute walk. The petitioners expect to have at most – and it is probably an overestimate – ten employees on the largest shift. The petitioners also submitted a Transportation Management Plan (attached to the Planning Department June 12 memorandum). In response to the Planning Department's suggestion that the petitioners incentivize employees to utilize alternate forms of transportation, the petitioners have agreed to subsidize a percentage of employees' T passes. The site is located across the street from the Newton Centre Green Line stop and taxi stands. When asked whether the petitioners expected to have outdoor seating, Mr. Magerer said it had not been discussed, but certainly it would not be an option this summer because there is insufficient space, but it could be a future option.

The petitioners have offered an \$8,000 contribution to the mitigation fund that will be created for Newton Centre pedestrian improvements. An initial payment of \$4,000 will be followed by an additional \$4,000 over four years. It will be left to the city's discretion how to best spend the money.

Jonathan Kaplan representing the owner of the property said that tenants and other business owners are very excited about this proposed addition to Newton Centre. Mr. Magerer submitted ten letters of support from other businesses on Union Street, which include tenants/owners at nos. 50, 55, 77, 95, and 97.

Several committee members asked whether *Sabra* had closed or was still open. The committee was informed that the petitioners had begun work on the property. They had obtained a building permit and against the advice were proceeding at their own risk, which they are allowed to do. It was pointed out that they could open with the 77 existing as-of-right seats. Mr. Magerer said it was not done intentionally to beat the process, but Mr. O'Reilly was unaware the process in Newton differed from the process in Norton.

The committee asked about "standing room." Most bars have a certain amount of standing room in addition to seats. Ms. Young explained that the zoning ordinance does not address standing room. It is the Fire Department that regulates the number of persons that may occupy a space. Alderman Fischman asked if were appropriate to set the closing hour in the special permit. Ms. Young advised that it would not be prudent. Closing time is a function of the Licensing Board and there may be a discrepancy between that Board's statutory authority and the zoning ordinance.

Alderman Schwartz moved approval of the petition with the findings and conditions set forth in the draft special permit board order dated June 18, 2012. Alderman Schwartz's motion was approved 5-0, with Alderman Merrill not voting.

#135-12 DINO ROSSI/MARY VISCO petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a NONCONFORMING STRUCTURE along the frontage, but not closer to the lot line, and increase the Floor Area Ratio from .31 to .57, where .48 is allowed by-right, to enlarge a two family dwelling at 258 NEVADA STREET, Ward 1, on land known as SBL 14, 8, 16, containing approximately 11,122 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-15(u) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED

NOTE: This item will be reported when it is voted out of Committee.

Respectfully submitted,

Ted Hess-Mahan, Chairman

All documents not attached but referred to in this report are available at www.ci.newton.ma.us under "Current Special Permits"



CITY OF NEWTON, MASSACHUSETTS
FIRE DEPARTMENT HEADQUARTERS



Bruce A. Proia
Acting Chief

1164 Centre Street, Newton Center, MA 02459-1584
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230
FAX: (617) 796-2239 EMERGENCY: 911

Setti D. Warren
Mayor

June 15, 2012

Alexandra Ananth
Planning
Newton City Hall
1000 Commonwealth Ave
Newton Centre, Ma 02459

Re: 753-755 Beacon Street

RECEIVED
Newton City Clerk
2012 JUN 15 PM 12:01
David A. Olson, CMC
Newton, MA 02459

Dear Ms. Ananth

In regard to the proposed petition for 753-755 Beacon Street, the Fire Department has no concerns with the intended change of use from a butcher shop to a 48- seat restaurant.

We will be reviewing the proposed plan prior to issuing a building permit and inspecting the premises before occupancy.

If I can be of any further assistance please feel free to contact me.

Paul Chagnon
Assistant Chief, Newton Fire Dept.
617.796.2203
pchagnon@newtonma.gov