

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 10, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Laredo, Crossley, Merrill, Fischman, Albright, Harney, and Schwartz; also present: Ald. Fuller, Rice, Lennon, and Swiston
City staff: Derek Valentine (Senior Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

Public Hearings were held on the following items:

#139-12 NED CHESTNUT HILL LLC/DANA J. KATZ, TRUSTEE for DK REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a freestanding sign and for a secondary principal sign for which the dimensional limits would be waived at 176 BOYLSTON STREET, Ward 7, Chestnut Hill, on land known as SBL 82, 2, 18, containing approximately 45,240 sq. ft. of land in a district zoned BUSINESS 1 and 4. Ref: Special Permit #505-98 and Sec 30-24, 30-23, 30-20(f)(1), (2), (9) and 30-20(l) of the City of Newton Rev Zoning Ord, 2007. (*The public hearing was opened on June 19 and continued to July 19, 2012.*)

ACTION: HEARING CLOSED; APPROVED 8-0

NOTE: The public hearing was opened on June 19 and continued to this evening because the owner of the adjacent 74 Boylston Street property was concerned the sign would block his tenant's sign and wanted his tenant, Barnes & Noble, to have an opportunity to review its location. To address that concern, the petitioners have moved the sign back 6'. Barnes & Noble is satisfied with the relocation.

Attorney Timothy Sullivan of Goulston & Storrs and William Cronin Senior Vice President of New England Development represented the petitioners. The petitioners wish to relocate an existing freestanding sign, formerly used to identify Omni Foods Supermarket, from the site of the Chestnut Hill Square development to 176 Boylston Street to be used to identify Miltons clothing store, which is setback a considerable distance from Route 9. Currently, the direct site line from Route 9 is a wall sign over Miltons' front door, but the Chestnut Hill Square development will obscure the wall sign. In addition, there is a second wall sign on the side of the building. However, since the existing sign over the front door is considered a principal sign and the proposed freestanding sign is considered a principal sign, the petitioners are seeking relief for two principal signs and to amend the site plan approved in special permit #505-98 granted to Miltons to extend a nonconforming structure. Although the Omni Foods sign was physically located on the Chestnut Hill Square site, Miltons is on a separately-owned parcel. A sign package was approved for Chestnut Hill Square as part of its special permit.

The sign, which has been temporarily relocated with prior permission from the Commissioner of Inspectional Services, is 34.55 square feet in area, less than 10 feet in any

linear direction, and 13.25' in height. The sign was reviewed and approved by the Urban Design Commission. It is proposed to be internally illuminated. The proposed internal illumination is red and requires the approval of the Chief of Police to ensure the red will not be a hazard or distraction to motorists. Please see attached letter.

There was no public comment.

In working session, the committee reviewed a draft board order. Mr. Cronin noted that the proposed condition relating to the completion of landscaping originally installed as part of special permit #505-98 was perhaps unrealistic because the subject site is also torn up because of construction and the petitioners may be unable to complete it by the suggested date of October 1, 2012. Ms. Young pointed out that a boilerplate condition included in all special permits allows a bond, letter of credit, etc. to be filed in an amount not less than 135% of the value of the remaining work to ensure completion of landscaping. She suggested in this case that it be linked to a certificate of compliance to be issued by the Commissioner of Inspectional Services, not the usual certificate of occupancy provision since a sign doesn't require a certificate of occupancy.

Alderman Laredo moved approval of the petition finding that a second principal sign is appropriate because Miltons is setback from a busy highway with visibility that will be further impeded by the new Chestnut Hill Square development; the sign already exists and is being moved approximately 85'; a number of other businesses on Route 9 have freestanding signs; a freestanding signs allows motorists to identify sites before they are upon them. The motion to approve the petition carried 8-0.

#174-12 ELLIOT SCHILDKROUT & TERRY ROSENBERG petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a detached garage within the front setback and to allow a dormer wider than 50% of the length of the exterior wall of the story next below at 164 CHESTNUT STREET, Ward 3, West Newton, on land known as SBL 32, 45, 14, containing approximately 15,085 sq. ft. of land in a district zoned Single Residence 1. Ref: Sec 30-24, 30-23, 30-15(m)(1), 30-15 Table 1, 30-15(t) and (t)(1) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; WITHDRAWN WITHOUT PREJUDICE 8-0

NOTE: The petitioners wish to continue discussions with one of their direct abutters. Their attorney submitted a letter requesting to withdraw the petition without prejudice; however, since the petition had been noticed, the public hearing was opened to allow public comment. There was none and the hearing was closed. The Committee voted unanimously to approve withdrawal without prejudice.

#177-12 COPLEY MANAGEMENT & DEVELOPMENT CORP. for NEWTON 457 LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NONCONFORMING STRUCTURE and USE to allow the expansion of an existing nonconforming multi-family dwelling use from 24 to 25 units, including an expansion of nonconformity re lot area per unit; extension of a nonconforming structure in the side setback; increase in the nonconforming lot coverage; a decrease in the nonconforming amount of open space; to allow a parking facility partially located on a different lot than the principal use served; to waive parking stall dimensional requirements; and to waive two parking stalls at 457 CENTRE STREET, Ward 1, Newton Corner, on land known as SBL 12, 13, 12, containing approximately 9,457 sq. ft. of land in a district zoned Multi Residence 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-9(d)(1), 30-15 Table 1, 30-19(d)(2), 30-19(f)(1) and (2), 30-19(g), 30-19(m) of the City of Newton Rev Zoning Ord, 2007

ACTION: HEARING CLOSED; APPROVED 8-0

NOTE: The petitioner was represented by attorney Jason Rosenberg. This multi-unit apartment building was constructed circa 1905 and originally contained twelve units. Units were gradually subdivided and by 1938 it contained 24 units. Built prior to zoning, the building is virtually nonconforming in all respects. The petitioner is seeking a special permit to locate an additional unit in the basement. The building has a basement with three floors above. There is no elevator. Currently, the basement contains a laundry room, boiler, and utilities, as well as three studio units and one 1-bedroom apartment; the first floor contains six 1-bedroom units and one studio; the second floor contains five 1-bedroom units and one 2-bedroom unit; the third floor contains six 1-bedroom units and one studio. Plans include renovating the basement apartments and the laundry room, and creating a storage area for bicycles. When the basement is renovated it and the common areas will be sprinklered; at that time sprinkler mains will be installed to allow the other apartments to be sprinklered, which will be done when tenants turn over and apartments become vacant and are renovated. Mr. Rosenberg provided a letter from him to Assistant Chief Chagnon and Deputy Chief Castro outlining the life safety improvements already made by the petitioner and the subsequent agreements that resulted from two meetings with the Fire Department. All apartments will be sprinklered within 7.5 years of the issuance of the initial building permit for the improvements, regardless of tenant turnover.

The proposed unit will be handicapped adaptable, a Type 2A accessible dwelling unit as classified by CMR 521 of the Massachusetts Building Code, i.e., wide doorways and halls, and suitable heights for specific kitchen appliances and bathroom fixtures that will allow the unit to be adapted to accommodate a person with ambulatory needs. If the unit is rented by a tenant with ambulatory needs, the owner would then be responsible for providing and installing the necessary appliances and fixtures. Basement renovations include proposed window wells on the south side of the building (abutting Eaton & Mackay Funeral Home) and on a portion of the front of the building. These "light wells" will allow installation of larger windows to bring more light into the basement units. The petitioners propose to enclose and incorporate three rear porches into the three adjacent units, which will result in two studios becoming 1-bedroom units and one 1-bedroom unit becoming a 2-bedroom unit. Balconies will be added off of the enlarged units and five additional balconies will be added on other units at the rear of the building. Ultimately,

the building will contain 21 one-bedroom apartments, 3 two-bedroom apartments, and should the special permit be approved, one 2-bedroom handicapped adaptable apartment.

The building is accessed by a 12'3" wide driveway most of which is on adjacent land at 12-20 Richardson Street. The prior owner of 457 Centre Street was granted a special permit in 1999 to add a 12' wide driveway and 5 parking spaces for which access was provided via an easement with the developer of 12-20 Richardson Street condominiums. The driveway provides access from Richardson Street to the 5 parking spaces as well to the dumpster for 457 Centre Street. The petitioner is now seeking relief not addressed in the 1999 special permit to locate part of a parking facility on the adjoining property; to waive the requirement for 2 additional parking spaces for the proposed new unit; and to legalize the 5 dimensionally noncompliant parking spaces.

A proposed 5' adjoining flat non-parking area will create one compliant 12' wide HP space close to Richardson Street. If the adaptable apartment is occupied by a disabled person the space will be made available on an as-needed basis by posting proper signage. If there is a change in tenancy and the space is not needed the signage will be removed. The rear of the building and basement unit will be accessed by a handicapped ramp.

Alderman Crossley asked about the materials that will be used to enclose the porches. The petitioner said no final decision has been made. The porches, a later addition to the building, are constructed with steel and although there is a full foundation care must be taken to not overburden the structure. Alderman Crossley said the enclosed porches do not appear on the rendering to integrate well with the building. The Chairman noted that the committee is not a design review board. Aldermen Laredo and Albright also wanted a better sense of what the porches are going to be enclosed with. Alderman Fischman asked about the proposed transformer pad. The petitioner said it is to provide upgraded electrical service. It is quite small and located at the rear of the building. In response to whether a handicapped ramp would be built regardless of the outcome of this petition, the petitioner said yes, it would.

There was no public comment.

In working session the committee discussed the materials that would be used to enclose the porches. The petitioner's architect said he shared the aesthetic concern. The enclosed porches are an appurtenance on the rear of a masonry building. The material needs to be a lightweight. Possibilities include a Hardie cement panel system or zinc or metal cladding. A zinc shingle system is a more costly but more aesthetic system. Alderman Crossley suggested the south side of the enclosure might benefit from a different window treatment. Alderman Schwartz asked if the petitioner had considered adding a second adaptable unit. The petitioner said no, the basement can accommodate one unit but the rest of the building is not accessible. Alderman Albright asked if the unit would be marketed as being handicapped adaptable and suggested that if that were not the case the petitioner do so.

Alderman Merrill, who is very familiar with this building as he lived on Richardson Street when he was a child and one of his teachers lived in this building for many years as did his sister, moved approval of the petition finding that increasing the number of units from 24 to 25

and expanding the nonconformity as to lot area per unit are not substantially more detrimental to the neighborhood because there is no physical expansion of the structure and all the units are modest in size; extending the nonconforming side yard setback is not substantially more detrimental because it is the result of enclosing porches which are already there and cannot be viewed from Centre Street; the increase in the nonconforming lot coverage and decrease in the amount of open space are not substantially more detrimental because they are the result of window wells mostly below grade which will be landscaped; the dimensional waivers for parking spaces and allowing parking on a different lot than the principal use are appropriate since compliance is impracticable because of the size and location of the lot; and the waiver of two parking spaces is appropriate since compliance is not possible because of the size and shape of the lot and the site is located near public transit.

The petitioner was amenable to a condition that the materials used to enclose the porches will be reviewed and approved by the Director of Planning & Development. The committee agreed to include a condition that the size of the windows in the enclosed porches may be modified upon review and approval by the Director of Planning & Development without seeking an amendment to the special permit. The petitioner also agreed to advertise the handicapped adaptable unit as such.

The motion to approve carried unanimously, 8-0.

The meeting was adjourned at approximately 11:15 PM.

Respectfully submitted,
Ted Hess-Mahan, Chairman