

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 24, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Merrill, Fischman, Crossley, Laredo, and Harney; absent: Ald. Schwartz; also present: Ald. Rice, Yates, Lappin, and Kalis
Staff: Alexandra Ananth (Senior Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#137-12 NSTAR ELECTRIC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a retaining wall of four feet or more in height in the setback in order to replace existing transformers and add additional accessory equipment at 48 ELLIOT STREET, Ward 5, Newton Upper Falls, on land known as SBL 51, 29, 38, containing approximately 158,000 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec 30-24, 30-23, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: *The following is an excerpt from the June 19, 2012 Land Use Committee Report*

The public hearing was opened and closed on June 19, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Albright, Merrill, Harney, Laredo, Schwartz, and Crossley.

NSTAR was represented by Associate Project Manager Duane Boyce, James Curtis and Matthew Lenzi. The 158,000 square-foot site contains an NSTAR substation, transformers, and related equipment. NSTAR is expanding its facilities to enhance capacity of power to Newton and surrounding communities. Four existing transformers will be retired and replaced in phases to avoid disruption to service. Most of the site is level, but it drops off steeply behind the location of one of the transformers at the northeast portion of the site that abuts abandoned railroad tracks owned by the MBTA. NSTAR is seeking a special permit to expand an existing retaining wall on that portion of the site to create a level area for the new equipment. The proposed wall is approximately 11 to 13 feet in height (it varies with the topography) and approximately 370 feet in length. It will have a fence on top.

There was no public comment.

Alderman Schwartz noted the proximity and the possible visual impact of the proposed wall on the abandoned railroad tracks for which the city is currently negotiating a potential long-term lease with the MBTA for a bicycle/pedestrian path. Alderman Crossley asked why the equipment could not be located on the flat portion of the property. How big is the equipment? Can the retaining wall be moved back? It was noted that if the retaining wall were pulled back 3.5 to 4 feet, it would not require a special permit. Mr. Boyce explained that transformers need enough room around them to allow equipment to access – and in the future to move and replace

–them. However, he is not a substation designer and was uncomfortable addressing questions relative to the design and placement of the equipment. Alderman Crossley would like to know how equipment is accessed on smaller sites. Several Committee members suggested that NSTAR might provide some mitigation, such as cleaning up the weedy overgrowth along the spur and installing new plantings. Although it was pointed out that planting trees is probably impracticable because of the steep slope. Still, Aldermen Schwartz and Crossley encouraged NSTAR to work with the City to enhance the future bicycle/pedestrian path.

The Committee agreed it was not prepared to vote the petition. It suggested the Planning Department meet with NSTAR representatives to address questions that arose this evening prior to the next working session. Alderman Laredo moved to hold the petition, which motion was approved 7-0.

July 24, 2012 This evening, the Chairman reported that he and Aldermen Laredo and Yates had visited the site with Ms. Ananth and representatives from NSTAR. NSTAR had staked out the property line and it was clear that planting would be impracticable; very little would thrive. NSTAR met with the City Tree Warden who has approved removal of some trees for which NSTAR will make a \$50,000 contribution to the City's tree fund. Some of these funds can be used toward pruning and weeding the affected area.

In response to whether the wall could be pushed back further from the property line, NSTAR explained it is necessary to be able to extract and replace a transformer without disturbing the operation of the remaining transformers. The layout must take electrical clearances and equipment dimensions into consideration.

Since the last meeting, the MBTA has agreed to enter a 99-year lease with the City for the railroad property. Alderman Crossley explained that the rail trail group doesn't want trees, but would like to get rid of the invasive species that are choking out everything else. She was part of a contingent of volunteers that spent a considerable amount of time working along the tracks pulling out invasives. She suggested planting something like Summersweet, a native ground-cover shrub. Alderman Laredo agreed it makes sense to get rid of the invasive species. John Zicko, Manager of Substation Design Engineering was not sure if there is enough room to access the approximate 3'.7" between the wall and the rail trail to allow planting, but he will speak with NSTAR's Vegetation Management division. He was agreeable to a condition that NSAR will work with the Planning Department to install and maintain appropriate plantings. Alderman Fischman asked about the color of the wall. The final color has not yet been determined, but it is likely to match the existing wall on other portions of the site, which is a grey Redi-Rock segmented block wall. NSTAR agreed to a condition that would leave flexibility to the Planning Department relative to the color.

Alderman Crossley moved approval of the petition with the findings and conditions enumerated in draft special permit board order #137-12 dated August 13, 2012. Relevant conditions in special permit # 43-09 will be incorporated into the draft board order. The motion to approve carried 6-0, with Alderman Harney not voting.

#162-12 G AND B REALTY TRUST, JOHN M. O'HARA & KARL J. O'HARA, TRUSTEES petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NON-CONFORMING STRUCTURE in the front setback; to increase the number of seats from 90 to 120; and, to waive the 7 additional required parking stalls for an existing restaurant at 1181-1189 WALNUT STREET, Ward 6, Newton Highlands, on land known as SBL 52, 36, 1, in a district zoned BUSINESS 1. Ref: 30-24, 30-23, 30-21(b), 30-19(c) and (d)(13) and 30-19(m), 30-11(d)(9), of the City of Newton Rev Zoning Ord, 2007 and Special permit #188-94.

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: The public hearing was opened and closed on July 10, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Laredo, Crossley, Merrill, Fischman, Albright, Harney, and Schwartz; Aldermen. Fuller, Rice, Lennon, and Swiston also were present.

The petitioner was represented by attorney Stephen Buchbinder. The petitioner operates O'Hara's, a 90-seat restaurant which it wishes to expand into an adjacent 663 square-foot former retail space. A special permit was granted in 1994 to expand the restaurant from 74 seats to the current 90 seats. The petitioner is seeking to expand the number of seats to 120. There is no on-site parking because the building predates adoption of the City's parking ordinance. The site has a number of grandfathered parking credits. A 120-seat restaurant with 3 additional employees requires 46 parking spaces. The combined parking credit for the existing restaurant and retail space is 39 spaces. The addition of 30 seats and 3 more employees require a waiver of 7 parking stalls.

The petitioner is proposing a slight expansion, 11'9" long by 3'8" wide, at the rear that will protrude into the setback along Floral Street, for which relief is required to expand a nonconforming structure. Currently, there is a bulkhead in the setback; the bulkhead will be removed and interior stairs will be installed instead. The addition will provide better circulation from the existing restaurant to the new space. The existing entrance is on Walnut Street. A second entrance is proposed at the corner of Walnut and Floral Streets. There is a service entrance that is accessed by a driveway at the rear of the building. The expansion along the rear into the setback on Floral Street will reconfigure the service entrance to face Floral Street.

The petitioner submitted a parking study that provides an analysis of on-street and municipal lot parking available within a 2.5 minute walk from the site at peak lunch and dinner hours – Noon to 1:00 p.m. and 6:30 p.m. to 8:00 p.m. There are a number of on-street metered spaces and the Hartford Street municipal parking lot. The study indicates that on average there are 27 available parking spaces in the area during the peak lunch hour and 53 spaces available during the peak dinner hour. However, most lunchtime patrons walk from nearby businesses and residences. The petitioner has agreed to post in the restaurant and on its website and menus information directing patrons where to park in the evenings.

Architect Donald Lang explained that there are two levels of the restaurant. The bar is on the lower level and the restaurant is on the upper level. The upper level will be expanded to provide handicapped access on both levels. The new hallway in back will allow access to both bar and

dining, providing similar amenities on both levels. The new second entrance at the corner of Walnut and Floral Streets will accommodate people with mobility impairment. The petitioner had to obtain a waiver from the Architectural Access Board (ABB) because only one entrance of the two is accessible. A handicapped bathroom will be provided in the expanded portion.

The Planning Department noted in its memo dated July 7, 2012 that special permit #188-94 included a condition that required the petitioner to “line and designate by signage the parking spaces at the rear of the building.” The proposed plan indicates it is a loading area. Alderman Fischman visited the site and noted that the driveway was clogged with a truck and parked cars. The dumpster was overflowing. What was the intent of the striping in the 1994 special permit? Mr. Buchbinder said that the restaurant is undergoing by-right renovations and the overflowing dumpster is a result of that debris. As to the intention of the 1994 Land Use Committee, it appears it wanted to create parking for employees; however, the driveway cannot be used for permanent parking. If there are cars parked there it is usually short term, since it needs to be free for deliveries and to allow access to the dumpster.

Alderman Schwartz is pleased with the proposal. The loss of Baker’s Best has affected the vitality of the Highlands. Alderman Rice said that although the Newton Highlands Neighborhood Area Council has long considered parking an issue, with two MBTA stops and the number of neighborhood people who walk to the restaurant, parking should not be a problem.

Mr. Buchbinder had submitted letters from Joseph Hartin, owner of Highland Auto Services 1186 Walnut Street, Daniel Huang owner of Orchid Cleaners and Sarah Geick owner of CoCo Nail & Spa located at 1185 Walnut Street, all of whom either currently provide or have offered to provide off-hours parking for O’Hara’s. Alderman Harney asked if there were any written agreements, to which Mr. Buchbinder replied no, Mr. Hartin closes at 4:00 PM and has been providing 17 spaces for several years, but a written agreement would tie his hands should he wish to sell his business. It is the same with the Walnut/Floral Street parking, which has 12 spaces. In addition, the Board received letters supporting the petition from the Newton Highlands Neighborhood Area Council and the Newton highland Community Development Corporation.

Mr. Buchbinder also submitted a petition signed by 806 people in favor of the expansion. The individuals below spoke in support; there we no speakers in opposition.

William Fitzpatrick, 140 Dedham Street

Seana Gaherin, co-owner of Dunn-Gaherin’s, 244 Elliot Street

Dick Westin, 1489 Centre Street

Barbara Darnell, 296 Lake Avenue

Resident of 1129 Walnut Street

Resident of 1489 Centre Street

William Zollo, 21 Floral Street

Elizabeth Gerlach, 73 Fisher Avenue

Resident of 50 Cochituate Road

David Montanari, 51 Hartford Road, President
Newton Highland Community Development
Corporation

Joe Baren 35 year resident

Resident of 10 Boylston Road

Glen Rosen, 66 Fisher Avenue

All the speakers praised the restaurant as a popular family establishment that welcomes children, and is for many within walking distance of their homes. Everybody agreed it needs more seats to reduce the waiting time for a table, which sometimes can be an hour. Everybody commended the owners for their community involvement. Speakers who drive there testified that they never had a problem finding parking. Among the speakers was Rob Caruso, Co-chairman of the Commission on Disabilities. Mr. Caruso expressed surprise that the petitioner had gone directly to the AAB instead of through the Commission on Disabilities, but he will review the waiver it granted. He is pleased that O'Hara's is going to be made accessible and hopes the petitioner's other establishment in West Newton is next. He suggested the restaurant petition the Traffic Council for an HP space between the two front entrances.

This evening, the Committee reviewed with Ms. Ananth conditions of the previous special permit. The Planning Department recommended and the Committee agreed that the condition for striping the rear driveway for 5 parking spaces should be eliminated. The dimensions of the spaces are nonconforming and the driveway is used for deliveries and accessing the dumpster. The petitioner may use the spaces for employee parking, but those spaces were not included in the parking calculations either then or now. The petitioner will repave the driveway and upgrade an existing fence. The petitioner has agreed to keep the dumpster closed and maintain sanitary conditions and has provided established hours of trash pickup. The petitioner also provided a sample notice re parking availability that will be posted on the website and menus. In addition, the petitioner has offered to contribute \$2,500 to be used by the City for parking improvements and/or pedestrian accessibility or circulation improvements in the Newton Highlands vicinity to help mitigate parking impacts on the neighborhood.

Alderman Merrill moved approval of the petition with the findings and conditions contained in draft special permit board order #162-12 dated August 13, 2012, which motion carried 6-0, with Alderman Harney not voting.

#175-12 KF REALTY ASSOCIATES petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a CHANGE IN NONCONFORMING USE to locate a 92-seat restaurant in a portion of an existing legally nonconforming retail storefront at 148 CALIFORNIA STREET, Ward 1, NONANTUM and 171 WATERTOWN STREET, Watertown, on land known as SBL 11, 12, 11, containing a total of approximately 523,642 sq. ft. of land in a district zoned Manufacturing. Ref: Sec 30-24, 30-23, 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: The public hearing was opened and closed on this item on July 10, 2012. Present were Aldermen Hess-Mahan (Chairman), Laredo, Crossley, Merrill, Fischman, Albright, Harney, and Schwartz. Aldermen Fuller, Rice, Lennon, and Swiston also were present.

The petitioner was represented by Frank Stearns of KL Gates, LLP. The site is a shopping center that straddles the Newton/Watertown border. Currently it contains a Stop & Shop, a gym, a CVS, Papa Gino's, a bank, and other retail and services uses. It is zoned Manufacturing, which doesn't allow retail or restaurant uses by-right, although it's been decades since a manufacturing use occupied the site. The petitioner wishes to locate a 92-seat Japanese restaurant in a portion of a building that formerly housed a Blockbuster Video store (the remainder of the building

contains a dentist's office, a use allowed by right). The building is located on the Newton portion of the property with most of the parking lot located on the Watertown portion. The petitioner is seeking a special permit to convert one legally nonconforming use to another legally nonconforming use. There is ample parking. Alderman Albright recognized there is no place to install landscaping but suggested that potted plants placed outside the restaurant would add a bit of green in a sea of asphalt.

There was one speaker. Joanne Zegarelli, 90R Los Angeles Street, whose property abuts the site, is opposed. She has health issues and difficulty sleeping. There is already a problem with deliveries, CVS loading and unloading, and traffic at all hours of the night.

A communication was received from the Town of Watertown in which it stated that it has been conducting traffic counts on Watertown Street and nearby side streets and working with residents and abutters including the owner of the subject property on potential improvements to Watertown Street and at the Watertown Street entrance to the site. Watertown expressed no objection to the proposed restaurant.

This evening, the Planning Department reported that the petitioner has agreed to a condition that there will be no servicing or loading between the hours of 9:00 p.m. and 8:00 a.m. In addition to placing ornamental plants outside the entrance of the restaurant, the petitioner has agreed to plant eight 5' to 6' tall hemlocks along the fence in the area behind 90R Los Angeles Street from an existing gate to the wooded area. The initial assumption of eight employees on the largest shift has been revised to eleven employees on the largest shift to ensure the restaurant has the option to increase the number of employees while still complying with the number of parking spaces required. Hours of operation and a condition relative to hours for deliveries are included in the Common Victualler license.

Subsequent to the public hearing, Alderman Lennon met with Ms. Zegarelli, the residential abutter at 90R Los Angeles. She also met with the owner of the shopping center. The owner will speak with all tenants about dumpster utilization late at night. In response to Ms. Zegarelli's concerns about this petition, the petitioner has agreed to plant the aforementioned hemlocks, post inside and place on menus a notice asking that patrons be respectful of residential neighbors, and agreed to meet with Ms. Zegarelli to discuss any concerns related to the operation of the restaurant. Alderman Lennon will continue to work with Ms. Zegarelli to address issues not associated with this petition.

Alderman Merrill moved approval of the petition with the findings and conditions included in draft special permit #175-12 dated August 13, 2012, which motion carried 6-0, with Alderman Harney not voting.

#92-12 GOLDEN DEVELOPMENT CORP./JEAN E. GREER REVOCABLE TRUST
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision and to increase the Floor Area Ratio requirement from the maximum of .24 to .36 to construct two single-family dwellings at 112-116 DEDHAM STREET, Ward 5, Newton Highlands, on land known as SBL 83, 5, 17, containing approximately 38,075 sq. ft. of land in a district zoned Single Residence 3. Ref: Sec. 30-24, 30-23, 30-15(r), of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0-1 (Albright, Crossley abstaining)

NOTE: *The following is an excerpt from the Land Use Committee report of June 5, 2012. Please note that any attachments referred to in this portion of the report are not attached but are available online at www.ci.newton.ma.us under Board of Aldermen/Current Special Permits or under Standing Committees/Land Use/Agendas Reports*

The public hearing was opened on May 15 and continued to June 5 pending the Associate City Engineer's review of the plans. Present were Aldermen Hess-Mahan (Chairman), Laredo, Fischman, Albright, Crossley, and Schwartz; absent: Ald. Harney and Merrill; also present: Ald. Lappin, Kalis, and Rice

The petition was presented by Attorney Terrence Morris and Lou Wolfeson proprietor of Golden Development Corporation. The entire site consists of approximately 64,750 square feet and contains an existing two-family home and a barn with a residential unit and an office. A one-year demolition delay placed on both buildings expired in September 2011 and both buildings will be demolished. The site was previously the subject of a controversial proposal which was withdrawn. Golden Development Corporation has a signed agreement with the prior petitioner and has created three smaller lots through an approval not required (ANR) subdivision. The petitioner also could create four by-right house lots through a conventional subdivision and five lots through the special permit process but has chosen to seek a special permit for four lots because it makes the lots more buildable and requires less alteration to the existing grade than the conventional subdivision. Access to all four lots would be provided by a common driveway from an existing curb cut on Dedham Street; the driveway ends in a hammerhead and follows the configuration and contours of the existing driveway, which precludes alterations to the grade.

A special permit for a rear lot subdivision allows proposed lot frontage to be measured along the rear line of the lot in front of the proposed rear lot. The petitioner is seeking a special permit to subdivide Lot 1, which contains approximately 38,075 square feet, to create Lot 4, which would consist of 15,033 square feet, leaving 23,042 square feet in Lot 1. The petitioner is also seeking a special permit to exceed the maximum Floor Area Ratio (FAR) on the proposed new lot. The maximum FAR allowed for rear lots in a Single Residence 3 District is .24; the petitioner is proposing an FAR of .36.

The Planning Department stated in its memorandum of May 11 that it had no concerns with the density of four single-family lots, but recommended reducing the height and scale of the proposed 2.5-story, 5,452 square-foot house to keep more in scale with neighboring homes. Although it acknowledged that a .36 FAR on the rear lot is close to what would be allowed if this

were a by-right lot, it pointed out that rear lots require a lower maximum FAR just as they require greater setback requirements to lessen the impact on abutting properties. Mr. Morris pointed out that the calculations in the Planning Department's neighborhood FAR comparison are based on the Assessor's database, which is not necessarily accurate since areas counting towards FAR in the new FAR ordinance are not included. Mr. Morris suggested that a number of the 17 surrounding neighborhood properties are well below their potential build out. The proposed house on Lot 4 meets all setback requirements; its proposed height is 32.7 feet to the ridge with a peak elevation of 186.6. The height exceeds the average height of abutting properties but because of the topography it is actually less than surrounding homes. A conventional subdivision would move the houses on Lots 4A and 3 closer to the abutters on Shady Hill Road. The existing three-lot ANR subdivision could support houses of approximately 8,000 square feet.

The petitioner has submitted a planting plan, but has not provided a landscape plan. Mr. Wolfeson said the subject property has a number of trees and is surrounded by a natural buffer, of hemlocks, white pines, and a variety of other enclosures which include stockade fencing, a brick wall, and a white vinyl fence – which he will continue if that abutter prefers. Compressors are located well away from abutting properties and screened. A tree removal/preservation plan will be submitted to the city. The Planning Department suggested the petitioner consider installing a sidewalk along the entire length of the property frontage since it is located with walking distance to the Countryside Elementary School. The petitioner needs to submit a construction management plan.

The Associate City Engineer has not yet reviewed the plans. The petitioner's engineer explained that the conventional four-lot plan places the house on the rear lot house five feet from the rear lot line. Whereas the three-lot ANR plan has no house fronting on Dedham Street. Both plans add slightly more impervious surface to the site than the proposed plan and have a narrow single driveway up to a flat area at the top of the site which would require significant modification of the grade. There is a considerable amount of ledge on the site. Currently, all water runs off to Dedham Street. The proposed plan employs catch basins to retain water on the site. A water main will connect Ledgewood Road to a fire hydrant on the proposed hammerhead turnaround. An additional fire hydrant will be installed on Ledgewood Road. The homeowners' association will be responsible for maintaining the drainage. There is sufficient on-site space for snow storage. Alderman Crossley asked about stormwater calculations and stormwater management. Is a federal permit required with a long-term maintenance plan because the site exceeds one acre? Will the ledge, some of which is exposed, be a challenge to managing stormwater? Would the petitioner be willing to mitigate mass by constructing beyond the energy code?

The petitioner's presentation included a photo of a similar house of 4,500 square feet that Golden Development built on Upland Road. When Alderman Albright asked about the apparent discrepancy between the square footage of the house on Upland Road and the proposed house, Mr. Morris explained that the old FAR calculations did not include attic space. Alderman Albright said this is why she is not comfortable using the Assessor's database. She also is not comfortable equating sustainability with mass.

Alderman Fischman asked if blasting will be necessary. The petitioner is not sure but will have more information for the working session. In response to a question from Alderman Fischman, the petitioner would agree to a condition prohibiting any access/egress through Ledgewood Road. Alderman Fischman suggested the petitioner consider switching the houses so that the larger house would be built on Lot 1 facing Dedham Street.

Alderman Kalis wondered about setting a precedent with an increase in the FAR. Also, the neighborhood is concerned about water runoff. The Chairman explained that in the case of rear lots prior to 2011 there was no provision to even allow for an application to exceed the FAR. As for runoff, it is likely that an overall improvement would result from water being managed on the site.

Public comment included the following:

Lee Bardin, 62 Rachel Road, a life-long resident and contractor said the petitioner could not sell 8,000 square-foot houses. Water mitigation is important. The houses should be built to the allowed FAR. There is no parking at Countryside Elementary School. Where will construction vehicles park?

Julie Vasil, 1361 Walnut Street, appreciates the condition re access/egress on Ledgewood Road. She asked if a condition relative to pest control for when the barn and house are demolished could be included as well. She also wished to confirm that the petitioner is willing to extend whatever fence or wall exists on an abutting property.

Marcel Lachenmann, 60 Stony Brae Road, said he is generally not opposed. Four lots are better than five, although the other three lots are important as part of context so all four lots should be looked at. The size and scale of the project remain his concerns. Flipping the houses on Lots 1 and 4 is an interesting idea. Will this create an opportunity for subsequent owners to build out? What about the number of children in the Countryside Elementary School? What about parking? There are only two car garages for each house. Parking on Dedham Street should be discouraged. What about lighting? What about ground-mounted transformers for undergrounding utilities? What about the existing tenants?

Bob Nealon, agent for the seller said the existing tenants have lived in the main house for 40 years and are friends of the owner who is helping them relocate. The other tenants in the main house are young working professionals. The tenants in the unit in the barn were made aware of the proposed project before they rented the apartment.

Because the committee did not have a memorandum from the Associate City Engineer, the public hearing was continued until June 5, 2012.

On June 5, the public hearing was continued. Present were Aldermen Hess-Mahan (Chairman), Crossley, Laredo, Fischman, Harney, and Schwartz (absent: Ald. Albright and Merrill). Alderman Lappin was also present.

- Two emails (attached) were received from abutters at 44 Stony Brae Road and 111 Dedham Street.
- Jonathan Vershbow of 24 Shady Hill Road read a statement, attached.
- David Oliver, 1377 Walnut Street, concurred with Mr. Vershbow's comments.

- Lee Bardin, 62 Rachel Road, sent an email and also spoke again reiterating his testimony of May 22.
- Marcel Lachenmann, 60 Stony Brae Road, also spoke again reiterating his comments of May 22.
- Susan Richman, 14 Ledgewood, expressed some concern about landscaping and where contractors would park during construction.
- Several committee members reported receiving an email from an individual on Dedham Street asking if the petitioner would install a new sidewalk to Countryside Elementary School. The petitioner has agreed to install a new sidewalk along the frontage of the subject property.

The petitioner submitted a Construction Management Plan to the Planning Department, which has not yet had the opportunity to review it. The petitioner also submitted a turning template for the hammerhead to ensure adequate Fire Department access. The Associate City Engineer's memo (attached) was received on May 24, but since the petitioner's engineer did not receive the memo until yesterday, a written response (attached) was submitted this evening. The committee had difficulty with the various landscaping elements and asked the petitioner to prepare a full-sized complete landscaping plan incorporating all the elements including a planting list, fencing, etc. The size of the proposed house on the proposed fourth lot remains a concern. The consensus of the committee was that it was not prepared to vote this evening. Alderman Fischman moved to hold the petition, which motion carried unanimously. The Committee asked that following be provided for the next working session:

- A full landscape plan
- A cross section of the area behind lot 4 and, because the houses on lots 1 and 4 appear to be out of scale, a cross section of the houses in scale
- A Construction Management Plan for review by the committee and the Planning Department
- Confirmation of the turning template submitted this evening.

July 24, 2012 This evening, the Committee reviewed the landscaping plan. The petitioner submitted a tree removal plan for Lots 1 and 4. Eight protected trees totaling 116 caliper inches (a protected tree is one that is over eight caliper inches) will be removed. The petitioner also submitted a landscape plan for Lots 1 and 4. The plan includes fencing and screening for mechanical equipment. Lot 1 plantings include four blue spruces and a magnolia tree. Lot 4 plantings include a mix of hemlocks, white pines, blue spruces and arborvitae and a six-foot white vinyl fence along the easterly property line to an existing fence and hemlocks on the abutter's property.

At the request of the Planning Department the petitioner overlaid a "bus 45" turning template on the hammerhead to ensure there is sufficient turn-around room for emergency vehicles. The Fire Department has approved the site plan. All utilities will be underground.

The petitioner submitted two cross sections through the site showing the proposed dwellings in relation to the street and abutting properties. The petitioner submitted and the Planning Department reviewed a Construction Management Plan. Because the site has ledge, the City's standard blasting provision has been added. The petitioner also agreed to prohibit contractor

parking on Dedham Street from 8:00-8:30 a.m. and from 2:45-3:15 p.m., pickup and drop off times at Countryside School.

Alderman Crossley, whose Ward this is in, moved approval of the petition but explained she would not be supporting it this evening. She commended the Planning Department for its work. She believed the previous proposal for this site was excellent and consistent with the Comprehensive Plan but cannot find so in this case. While appreciating the relevance of the topography and how it can mitigate the appearance of size from different vantages, she is troubled by the size of the proposed dwelling. The petitioner is asking for a very large increase in FAR that is out of context with the neighborhood. She is unable to reconcile with what the primary finding is supposed to be, i.e. consistency. Of the proposals for additional size so far, this in her opinion is the least consistent with its surroundings.

Alderman Fischman appreciated her comments, some of which he shared, but most of which he didn't. The front houses on Lots 2 and 3, although not part of this petition, would not be seen from Dedham Street because of the elevation, existing wall, trees, and foliage. They look over the playground at Countryside School. Lot 1 is configured with a large front yard and has greater side and rear setbacks than required. The example of the proposed house has greater delineation of mass in the front. The house on Lot 1 was moderated down, .24 FAR on 23,000 square feet. However, the Lot 4 elevation is where the mass is, although it has a greater setback than as of right. The existing house to rear of Lot 4 is angled and actually set back further than those on either side of it. But the mass on rear of the proposed house on Lot 4 is significant and has a wall effect which there has been no effort to moderate. From a marketing point of view it is unlikely that anyone would build 8,000 square-foot dwellings. He is concerned about the sidewalk not linking to Walnut Street, which concern Aldermen Kalis and Rice share as well. The existing sidewalk is a patchwork of concrete, gravel, and grass, and is a safety issue, particularly in winter.

Alderman Albright said the FAR is confusing. This is the third petition for an FAR waiver for new construction under the new calculations. Consistency doesn't apply. What are the criteria for approval? Alderman Laredo was torn as well, an almost 50% increase in FAR on one lot is a huge increase for new construction. On the other hand it offers benefits and controls that the by-right plan doesn't. What is unique about the site? He also is having trouble finding appropriate criteria.

Alderman Lappin supports the petition. She believes it is by far a better petition than the previous one for this site that was for sixteen units and included underground parking that would have involved substantial blasting and created a considerable increase in neighborhood traffic. This petitioner has worked with and responded to the neighborhood. Alderman Kalis agreed. He was involved in the prior petition and believes this is a better plan that fits in with the community.

The Chairman shared Alderman Crossley's sentiments concerning the previous proposal for this site. However, he is not enamored with the by-right alternative subdivision. The by-right alternative would create another curb cut on Dedham Street and create a cul-de-sac. None of the houses in the conventional subdivision would have direct access to Dedham Street, whereas Lot

3 in the proposed subdivision does. He thinks it is a mistake to prohibit access/egress through Ledgewood Road since such access would integrate the proposed subdivision into the larger neighborhood. The house proposed on Lot 4 has been pulled away from the abutter as far as possible as has the house on Lot 1. The petitioner has made an effort to treat both as rear lots. Currently, all water runs off the site; the proposal retains water on-site and will help alleviate water issues downhill. He believes the proposal is consistent with and not in derogation of the size, scale, and design of other houses in the neighborhood and will support the petition.

Alderman Crossley said although the alternative subdivision would create an additional curb cut and cul-de-sac it would be extremely difficult to do, involving more site disturbance, removal of more ledge, and require retaining walls. The design of the proposed house is not being mitigated to compensate for the size. There are neither standards nor guidance for granting FAR waivers for new construction.

Mr. Wolfeson agreed it is a struggle to understand the new FAR. He pointed out the example he presented at the public hearing of the 4,500 square-foot house he built at the corner of Upland Avenue and Willard Street, which is essentially the same house proposed for Lot 4. That house has an FAR of .30, however under the new FAR it is .36. The subdivision as proposed has two houses with a .38 FAR and two at .24. He has tried to accommodate the neighbors by moving the houses as far away from them as possible and limiting the FAR on Lot 1 to .24 where .36 is allowed by right. Mr. Morris pointed out this is a truly unique rear lot subdivision, unlike the conventional rear lot subdivision that involves constructing a new house behind an existing house, this proposal in effect creates a new neighborhood.

In discussing proposed findings and conditions the Committee returned to the sidewalk issue. The petitioner has agreed to install a sidewalk along the frontage of the site, but is hesitant about installing a sidewalk to Walnut Street. There are questions of costs and who will perform the work, as well as a question of liability. He would not be averse to making a contribution toward completing and/or repairing the sidewalk. The Chairman pointed out that the petitioner is installing a sidewalk in front of his own property, but there is no nexus between the petition and extending and/or repairing the sidewalk to Walnut Street. Certainly, the petitioner is free to contribute towards an extended sidewalk, but it should not be a requirement.

Ultimately, the reasons articulated by the Chairman and Mr. Morris that in essence the proposal is unique because it is not a typical rear lot subdivision in that it actually creates a new neighborhood appeared persuasive and the petition with the findings and conditions enumerated in the draft special permit board order was approved by a vote of 5-0-2, with Aldermen Albright and Crossley abstaining.

The meeting was adjourned at approximately 9:40 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman