

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, DECEMBER 11, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Crossley, Laredo, Fischman, Schwartz, and Harney; absent: Ald. Merrill; also present: Ald. Lennon and Danberg  
Staff: Alexandra Ananth (Senior Planner), Linda Finucane (Assistant Clerk of the Board), Robert Waddick (Assistant City Solicitor)

#306-12      EVELYN P. GREENSPAN TRUST, PAUL I. FEINBERG, TRUSTEE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive the dimensional requirements, lighting, curbing, surface and maintenance requirements for an existing nonconforming 18-stall parking facility ~~or alternatively to waive the required five additional parking stalls required~~ for a change of use at 35-41 LINCOLN STREET, Ward 5, Newton Highlands, on land known as SBL 52, 8, 18, containing approx. 15,000 sq. ft. of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(c), 30-19(d), 30-19(h), 30-19(j), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION:      APPROVED 6-0 (Laredo recused)

NOTE: The public hearing was opened and closed on November 13, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Fischman, Schwartz, Harney, and Crossley.

Mr. Feinberg, who has owned the property since 1985, presented the petition. The property consists of a single-story commercial building containing six retail spaces with a noncompliant 18-stall parking lot behind it. A women's clothing store vacated a space in May of 2010. Mr. Feinberg said that after making adjustments to the rent and spending a considerable amount of money to create a "vanilla box" attractive to tenants he finally has the opportunity to lease 1400 square feet of the space to a hair salon and the remaining 200 square feet to Bank of America for an ATM. The hair salon is an established business in Wellesley with an established clientele. The closing of Baker's Best was a major loss to Newton Highlands. There are a significant number of vacancies and one of the effects is a decrease in foot traffic.

The prior retail business had three employees; eventually, the hair salon expects to have up to 15 people on the largest shift. A 1967 building permit was issued showing a layout for nine parking stalls; sometime between 1967 and 1985 the lot was restriped with 18 stalls, which reflects the current use. The proposed new uses require 41 parking stalls. Using the parking requirement formula, with the parking credit the building has a parking requirement of 14 stalls. The petitioner is seeking to legalize the 18-stall parking lot. If the dimensional waivers are approved, the property will have 18 legal spaces as opposed to the nine spaces shown on the 1967 plan. The Planning Department noted that if this is approved, the special permit should include a condition that specifies that the property owner may change the tenant mix as long as the total parking demand for all of the uses in the building does not exceed 41 stalls. Alternatively,

should the Committee not choose to approve the 18-stall lot, the petitioner is proposing to restripe the parking lot to conform to the 1967 plan for nine dimensionally compliant stalls and is seeking a parking waiver for the additional five stalls.

The petitioner submitted a parking study of the immediate neighborhood (including the Hartford Street municipal lot) which identified 114 available public short-term spaces on Lincoln and Hartford Streets. This appears to indicate that the parking demand can be met for the new uses. The petitioner said that there hasn't been a problem with the parking, the tenants work together to accommodate one another. They police the lot and he has never had to have anyone towed.

There are no changes proposed to the exterior of the building; there no changes proposed to the existing landscaping. Currently the parking lot is fenced with a stockade fence that belongs to an abutting dental office and a chain link fence that belongs to The Woman's Club of Newton. Alderman Fischman noted that the fence bordering the Workshop for the Woman's Club is in disrepair. The petitioner said he had at his cost this past summer hired an arborist and landscaping company to remove dead trees on the Club's property and remove weeds and vines that engulfed the chain link fence; this was subsequently confirmed in writing by a former member of the Club's board.

Public comment:

*Srdjan Nedeljkovic*, President of the Newton Highlands Neighborhood Area Council sent an email on behalf of the Council. The Council has been working on a comprehensive parking plan in Newton Highlands. In summary, Mr. Nedeljkovic reported that the Council supports the petition for the noncompliant spaces but believes it should be subject to lighting and surface maintenance requirements.

*Groot Gregory*, 296 Lake Avenue, who is also a member of the Newton Highlands Neighborhood Area Council, met with the petitioner and supports the petition. He explained that although it did not formally survey 20% of the service area, the Council is in general supportive. *Jennifer Land* from Wellesley, a friend and client of salon owner Matt Carlson, said he has a good and loyal clientele.

*Steve Reilly*, 28 Woodbine Terrace, supports the petition. He said Mr. Carlson is employing a Newton architect and Newton contractors.

*George Mansfield*, 312 Lake Avenue, said his position is not aligned with that represented by members of the Area Council. The Council did not survey 20% of the service area. Besides Baker's Best, a number of other businesses have closed so the parking data may not be a good representation of parking needs. It doesn't appear there is any short-term parking for the ATM. He suggested setting aside one space for its use. He also suggested that the petitioner should be required to submit a Transportation Demand Management Plan - as 15 employees seems rather a high number.

The petitioner submitted affidavits from Jeffrey Mann, owner and operator of Highland Opticians, who has been a tenant of the petitioner for 30 years and from Michael Haiminis, who with his wife owns and operates Village Kids. They have been tenants for 25 years. Both report

that the parking lot works well for everybody and both agree they would like the 18 spaces to remain.

Mr. Carlson said he wants to locate his business in Newton Highlands and clarified that he expects to have only 5 employees to begin with.

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This evening, Ms. Ananth reported that the petitioner had submitted a Transportation Demand Management Plan. The new salon will start with five employees, the owner and one employee will commute together, two employees will park in the remaining stalls and one will use public transportation. The salon owner will consider subsidizing T passes for employees.

Although neither of the fences in the rear belongs to the petitioner, he will continue to remove weeds and debris from them. There is no room for any landscaping. At the suggestion of the Planning Department the petitioner will ensure that the one handicapped stall is up to current standards and that the dumpster be kept closed and the area kept clear of debris. Although the parking lot does not abut a residential area, the existing lighting is minimal and residential in character but sufficient. The parking is only for employees, not customers.

Alderman Crossley moved approval of waiving the dimensional requirements for the existing noncompliant 18-stall parking lot, finding that the existing configuration has worked well since at least the 1980s and that literal compliance with the requirements is impracticable because the site predates the parking ordinance; waivers will help maximize the number of spaces available for employees; and, a parking study shows there appears to be sufficient parking within reasonable walking distance of the site. The motion to approve carried 6-0, with Alderman Laredo recused.

#164-06(4) WHOLE FOODS MARKET GROUP, INC. petition to AMEND the site plan approved in SPECIAL /SITE PLAN APPROVAL and EXTENSION of a NONCONFORMING STRUCTURE #164-06(3) granted on April 4, 2007 in order to remove five parking stalls and to construct an addition to an existing nonconforming structure at 916 WALNUT STREET, Ward 6, on land known as SBL 62, 4, 12, containing approximately 37,870 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 3 of the City of Newton Rev Zoning Ord, 2012 and Special Permit #164-06(3).

ACTION: APPROVED 7-0

NOTE: The public hearing was opened and closed on November 13, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Laredo, Fischman, Schwartz, Harney, and Crossley.

Vaclav Talacko, P. E. from Hancock Engineering presented the petition. The petitioner wishes to construct an addition of approximately 1,351 square feet containing new refrigeration facilities to the east of the existing building. The proposed addition is in conjunction with ongoing by-right interior work that will move office facilities into the existing unfinished basement to make room for an expanded sales floor and reconfigure space at the front of the store to provide café

seating for patrons. The basement will also contain administrative offices, other back-of-the-house functions, employee amenities, and bathrooms. Currently, there are temporary refrigeration containers located where the addition is proposed. The addition will eliminate five existing parking stalls. In 2007 the Board granted a special permit to Whole Foods to allow parking on a noncontiguous lot and related parking facility relief. Although this petition is limited to the proposed changes taking place only on 916 Walnut Street, it is a proposed modification to the approved site plan and an expansion of a nonconforming use.

Other than the removal of the five parking stalls, the parking and circulation will not change. There is no addition of impervious area and no impact on the drainage. The total number of parking stalls required with the expanded use is 95; there are 120 stalls on site. The existing landscaped beds will remain the same, but the petitioner will freshen up and augment the landscaping along Beacon and Walnut Streets.

Alderman Crossley asked how the construction will be managed. General contractor Rob Harrison explained that the proposed addition should take approximately 10 weeks (30 weeks for the entire project). Contractors are parking and will continue to park at a satellite location. Peak shopping hours are 4:00 p.m. to 7:00 p.m.; there is a detail police officer from 3:30 p.m. to 7:30 p.m. Construction hours will be weekdays from 7:00 a.m. to 3:00 p.m., but probably no Saturdays.

The prior special permit contains a condition requiring Whole Foods to annually send a letter to all Ward 6 Aldermen and to abutters and abutters to abutters within 300 feet of the site seeking comments from the Ward 6 Aldermen and/or residents of the neighborhood related to any issues, concerns, or complaints as to the manner of operation of its business. The condition also includes provisions to remediate any such issues. Whole Foods Team Leader Karen Franczyk said she had been at the store for one year and was not aware of the special permit.

Alderman Rice said that the Newton Highlands Neighborhood Area Council has lots of interaction with Whole Foods and it is a good neighbor. The parking situation is much better and the police detail is a significant improvement.

*Public comment:*

*George Mansfield*, 312 Lake Avenue, said that Whole Foods provides the only grocery services on the south side of the city. He is concerned about the number of parking waivers granted in Newton Highlands and although Whole Foods has 25 more spaces than it requires, it is sometimes difficult to park. Initially, when Whole Foods opened it had a tremendous impact on the neighborhood because of parking issues, but he acknowledged that the satellite parking and the police detail has worked out well. He still remains disappointed that Whole Foods will not consider opening up pedestrian access from its parking lot to Walgreens.

*Groot Gregory*, 296 Lake Avenue, a member of the Newton Highlands Area Council, supports the petition.

*A resident of 930 Walnut Street* said Whole Foods is a great neighbor, but he is concerned about the sound from the temporary refrigerator containers and noise during construction.

*The daughter of Huang Zhao Wen and Woon Ting*, 1062 Beacon Street, said her parents do not want any more landscaping. Whole Foods' landscapers blow leaves onto their property – who will be responsible if there is more landscaping? She said they are concerned that shrubs obscure the site line at Beacon Street.

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This evening, Ms. Ananth noted that a letter was sent by Whole Foods Team Leader Karen Franczyk on December 3 to the Ward 6 Aldermen and abutters to abutters within 300 feet of the property pursuant to condition 8.b. of special permit #164-06(3). So far, there have been no responses to the letter. The petitioner submitted a draft Construction Management Plan, which will include 24-hour contact information. The petitioner is proposing to add a stop sign and pedestrian crossing sign at both exit lanes and will trim vegetation at the Beacon Street lane to improve pedestrian safety.

As to the pedestrian access at the corner of Beacon and Walnut Streets, the petitioner and its engineer believe this would result in an unsafe condition by pedestrian traffic being directed to a vehicle travel lane in a busy parking lot. The alternate and safer way is to follow the sidewalk on Walnut Street then walk along the front of the store to the main entrance: a route only 60 feet longer. About 1/3 of the site drains along the north curbing to a stormceptor catch basin located immediately to the south of the proposed pedestrian opening. The proposed opening would divert flow away from this catch basin out onto the sidewalk at the corner of Beacon and Walnut Streets causing potential flooding and freezing during winter months. Finally, the path would have to overcome an elevation difference of 10 inches between the back of the sidewalk and the parking lot over an approximate 6-foot length, resulting in a grade of about 14% which exceeds the ADA allowable 5% for a ramp.

Alderman Schwartz moved approval finding that the expansion of the nonconforming structure will not be substantially more detrimental to the neighborhood since this is a small expansion and that despite the loss of five parking spaces the property still has sufficient parking to meet the parking requirements. The motion to approve carried 7-0.

#307-12      WMACH, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NONCONFORMING USE to add over a three-year period three restaurants with more than 50 seats including 1,731 sq. ft. of outdoor patio seating on the existing 20-foot sidewalk; waive ~~300~~ 111 parking spaces ~~and one loading dock~~; erect three additional signs all in excess of 100 sq. ft. for the restaurants facing Boylston Street and a fourth sign over the entrance of the Mall; ~~pop out the Boylston Street façade 5,726 sq. ft. within the existing footprint; add 2,223 sq. ft. of outside restaurant patio seating; relocate the ring road in front of the mall to accommodate the pop outs and outdoor seating;~~ and make physical improvements to the Boylston Street façade and the Boylston Street parking lot at 199 BOYLSTON STREET, Ward 7, Chestnut Hill, on land known as SBL 65, 8, 1, containing approximately 324,691 sq. ft. of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-20(f)(2) and (1), 30-19(c), 30-19(d)(10), 30-

19(d)(13), ~~30-19(d)~~, and 30-19(m), 30-11(d)(9), ~~30-11(k)~~, ~~30-21(b)~~ of the City of Newton Rev Zoning Ord, 2012.

**ACTION:** APPROVED AS AMENDED 7-0

**NOTE:** The public hearing was opened and closed on November 13, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Laredo, Fischman, Schwartz, Harney, and Crossley.

The petition was presented by attorney William Shaevel. The buildings on each end of the Mall are owned by Bloomingdales. The middle of the Mall is owned by a separate owner, who initially, sought a special permit/site plan approval to add over a three-year period three restaurants with more than 50 seats; to waive 300 parking spaces and one loading dock; erect three additional signs all in excess of 100 sq. ft. for the restaurants facing Route 9/Boylston Street and a fourth sign over the entrance of the Mall; pop out the Boylston Street façade 5,726 sq. ft. within the existing footprint; add 2,223 sq. ft. of outside restaurant patio seating; relocate the ring road in front of the Middle Mall to accommodate the pop-outs and outdoor seating; and make physical improvements to the Boylston Street façade and the Boylston Street parking lot of the Chestnut Hill Mall. The Mall has not undergone a major facelift since its construction in 1972. With all the changes on Route 9, the owners wish to renovate it to meet current market needs and remain competitive. Currently, there is more of a demand for restaurant space as opposed to retail use, uses that have different parking demands. Retail use is heaviest in the day and restaurant in the evening. All of the proposed changes are to the Middle Mall. Currently, there are 2,121 parking spaces on the site. A parking/traffic study submitted by the petitioner indicates that the lot is for most of the year underutilized. For the convenience of patrons, restaurants typically offer valet service. Although the petitioner requires only a waiver of 91 parking stalls, it sought a waiver of 300 stalls to allow flexibility relative to the types of tenants and the potential turnover. The petitioner also is seeking new signage for the proposed new restaurants.

Issues raised by Aldermen at the hearing included traffic, a shuttle service, drainage and grease traps, and a Transportation Demand Management Plan (TDM). There was no public comment.

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This evening, Ms. Ananth reviewed with the committee a revised request from the petitioner. Subsequent to the public hearing, the petitioner submitted new plans and is no longer seeking the relief initially requested. The number of parking stalls to be waived has been reduced from 300 to 111, the 91 required and 20 additional stalls for flexibility; the “bump out” and proposed ring road relocation have been eliminated; the proposed amount of outdoor seating space has been reduced from 2,223 sq. ft. to 1,731 sq. ft. (the loading dock waiver is not required). The petitioner is now seeking relief to permit restaurants over 50 seats; to waive up to 111 parking stalls (which will be applicable only to the restaurant uses within the Middle Mall); to approve a sign package that includes secondary signs larger than 50 square feet. The petitioner has added a drop off area/fire lane to both on north and south sides of the Middle Mall. Mall management will encourage tenants to subsidize the cost of public transportation for employees and designate convenient parking for carpools, van pools and alternative fuel vehicles, and bicycles. The petitioner has agreed to make an equitable contribution to an area shuttle service between the

Mall and other major developments along Route 9 and the Newton Centre MBTA Green Line Station or an alternative multi-modal hub. Hours of its operation will be determined later. The petitioner will implement a Transportation Demand Management Plan. The proposed restaurant space when re-analyzed as stand-alone restaurant space indicated that there would be a net addition of 986 trips over the day with a PM peak of 75 new trips at the peak hour (65 in and 14 out) and a weekend peak of 124 new trips at the peak hour (79 in and 45 out).

At the Engineering Division's suggestion the petitioner has agreed to install four new hoods at existing catch basins in the south parking area to improve drainage and storm water runoff. The existing Mall restaurants have under the sink grease traps that the petitioner reports have been inspected and appear to work well and are cleaned regularly. The existing systems will be supplemented with exterior grease traps if the existing restaurants are expanded. When new restaurants are added exterior grease traps will also be installed. The Planning Department suggests that if the petition is approved a condition be included to require that proof of regular cleaning and maintenance be submitted to the city.

The committee noted that pedestrian safety would be enhanced by delineating a pedestrian crosswalk from the parking area across the ring road to the entrance of the Middle Mall, particularly since the proposed outdoor patio seating will be located under the canopy that runs along that portion of the façade. The petitioner agreed to delineate a path with stamped concrete or another material that if the petition is approved would require final review/approval by the Planning Department.

Alderman Laredo moved approval of the petition as amended with the findings and conditions enumerated in the draft special permit dated December 17, 2012. The motion to approve carried 7-0.

#### 2013 Auto License Renewals

- #360-12      BAYSTATE CHRYSLER JEEP DODGE RAM  
777 Washington Street  
Newtonville 02460 (Class 1)  
APPROVED 7-0
- #367-12      ENZO'S AUTO SALES  
10 Hawthorn Street  
Nonantum 02458 (Class 2)  
APPROVED 7-0
- #377-12      NEWTON TRADE CENTER  
103 Adams Street  
Nonantum 02458 (Class 2)  
APPROVED 7-0
- #380-12      R.S. SERVICE, INC.  
361 Washington Street  
Newton Corner 02458 (Class 2)  
APPROVED 7-0

#383-12      VELOCITY MOTORS, INC.  
14 Hawthorn Street  
Nonantum 02458 (Class 2)  
APPROVED 7-0

NOTE: These license renewals meet all the licensing criteria.

The meeting was adjourned at approximately 9:20 P.M.

Respectfully submitted,

Ted Hess-Mahan, Chairman