

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

OCTOBER 2, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Merrill, Albright, Laredo, Fischman, Crossley, Harney, and Schwartz

City staff: Derek Valentine (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board of Aldermen)

#208-12 BRAE BURN COUNTRY CLUB petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL for an EXTENSION OF A NONCONFORMING USE/STRUCTURE #270-97 to expand an existing clubhouse and adjacent landscaping including an outdoor terrace and to convert an outdoor temporary tent structure into a permanent pergola with an increase of 32 seats for seasonal dining at 326-358 FULLER STREET, Wards 4 and 5 which property includes Section, Block, and Lot nos. 53, 40, 13; 53, 29, 1; 43, 45, 27; 32, 27, 1; 43, 44, 7A; 53, 40, 12; 53, 31, 26; 53, 31, 25 containing approximately 8,417,219 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Special Permit #270-97 and Sec. 30-8(b)(5) and 30-21(b) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 8-0

NOTE: The public hearing was opened on September 11 but immediately continued to October 2 because notification was sent only to abutters of the lot that is the subject of the petition, not to abutters of the other lots that comprise the Club. The petition was presented by Attorney Laurance Lee. The petitioner is proposing a 397 square-foot expansion of the existing Grille Room. There are 156 seats in the Grille Room and lounge; the number of seats will remain the same. It will allow the existing seating to be rearranged to create more space between tables. The new terrace for outdoor dining includes converting an existing temporary tent structure, which has been on-site since at least 1988, into a permanent pergola with fabric covering. The proposed outdoor terrace area will have 32 seats for seasonal use from April to November. There is no proposed increase in club membership.

There are no changes proposed to the parking or site circulation. The parking lot contains 179 parking spaces. The petitioner submitted a Parking Management Plan that indicates the Club uses valet on-site parking for large events. A landscaping plan shows that the new additions blend into the existing landscape. The Planning Department noted that the nearest residential abutters are well over 200 feet away from the proposed outdoor terrace. There will be no spillover of light from the terrace or pergola.

Lucille McEvoy of 28 Day Street, one of the neighbors who did not receive notice of the September 11 hearing, is concerned about an iron post/split rail fence along Fuller Street. There is a 10-12-foot drop onto the Club's property where trash collects and the fence is in disrepair

and an eyesore. The petitioner had a sparsely attended neighborhood meeting prior to filing the petition; however, as a result of a conversation with Ms. McEvoy, the petitioner last week cleaned up the litter and has agreed to repair the fence, (although there is a question of whether it is actually owned by the City) and maintain the area on a regular basis. Ms. McEvoy said this was encouraging. She had no comments relative to the proposed petition.

In working session, the question arose whether the fence could be replaced with a different material. It could, but Fuller Street is a Scenic Road and any changes to fences, walls, etc. must be approved by the Planning Board and there is the question of actual ownership. The Chairman pointed out that not only is its ownership in question, there is no nexus between the fence and the petitioner's proposal. The petitioner has agreed to replace any rotted wood rails and to maintain the existing fence.

Alderman Crossley moved approval of the petition finding that the expanded clubhouse and outside seating areas are not inconsistent with the *Comprehensive Plan* and the amendment to special permit #270-97 will not be substantially more detrimental to the neighborhood because there is no increase in parking/traffic; any façade changes are minor and complement the style of the existing building; and the alterations and use are distant from residential neighbors. Alderman Crossley's motion carried 8-0.

#232-07(5) HESS CORPORATION petition to AMEND Special Permit/Site Plan Approval/Extension of a Nonconforming Use #232-07, granted on December 17, 2007 for the conversion of a full service gasoline selling station to a self-service gasoline selling station and retail convenience store, to revise an existing free standing sign at 2370 COMMONWEALTH AVENUE, Ward 4, Auburndale on land known as Sec 41, Blk 9, Lot 1A in a district zoned MULTI-RESIDENCE 2. Ref: Special Permit #232-07, Sec 30-24, 30-23, and 30-20(1) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 8-0

NOTE: The public hearing was opened and closed on September 11. Attorney Stephen Buchbinder represented the petitioner. The petitioner wishes to alter the previously-approved freestanding sign to include a "Dunkin' Donuts Express" sign. The square footage of the sign will remain the same. The Urban Design Commission has reviewed and approved the sign. The special permit granted to Hess Corporation in 2007 for a gas station and convenience store was very specific relative to signage. The special permit itself prohibits the addition of a Dunkin' Donuts or other fast food chain concession on the site; however, it does not prohibit the sale of such products. The petitioner currently sells self-serve coffee. A van will deliver the donuts two or three times a day. There should be no increase in traffic. The sale of donuts will accommodate customers already buying gas and coffee. The only change the petitioner is seeking is to add "Dunkin' Donuts Express" to the sign. There was no public comment.

This evening, Alderman Harney reported that although this had been a somewhat contentious petition in 2007, the neighborhood is very pleased with its new neighbor. The petitioner maintains the landscaped gateway island on Commonwealth Avenue beautifully and the business is an asset to the community. Alderman Harney moved approval of the petition finding that the

proposed amendment to the sign is consistent with the intent of the existing special permit and with the character of the neighborhood. Alderman Harney's motion carried 8-0.

#209-12 ABBY GORDON petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE by expanding an existing nonconforming garage further into the rear setback at 56 EXETER STREET, Ward 3, West Newton, on land known as SBL 32, 29, 1, containing approximately 23,462 sq. ft. in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 1 of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 8-0

NOTE: The public hearing was opened and closed on September 11. The petitioner's property is located on the corner of Exeter Street and Commonwealth Avenue. In the 1940's, when the house was constructed, there was no clear method of defining which property line on a corner lot qualified as a rear lot line. Subsequently, the zoning ordinance was amended to define what constitutes a rear lot line. This rendered the lot nonconforming with respect to rear lot line setback. In 1996, a building permit was issued in error for a further expansion within that rear setback, rendering the lot noncompliant. The house meets all other dimensional requirements. The petitioner is seeking a special permit for a 194 square-foot addition to an existing two-car attached garage that will further encroach into the rear setback increasing the nonconforming rear setback. The petitioner is seeking to legalize the 1996 addition as well. The proposal is to expand the garage to accommodate an additional bay for storage. The existing gable end will be extended and the building exterior treatment will be consistent with the home and include slate roofing and wood siding. The site has significant landscaping.

The Committee received two letters in support of the petition: One from 55 Exeter, the house on the other corner of Exeter and Commonwealth and one from 1489 Commonwealth Avenue, next door.

In working session, Mr. Valentine explained that although the 10-year statute of limitations had passed relative to the issuance of the building permit in 1996, the petitioner wishes to formally legalize the addition through the special permit process. The main door to the house is on Exeter Street. The garage and proposed addition are on Commonwealth Avenue, the east side of the property; the side lot line is actually the rear lot line.

Alderman Laredo moved approval finding that the proposed expansion of the nonconforming garage and the 1996 addition which is nonconforming will not be substantially more detrimental to the neighborhood as the addition is modest and well-screened with existing landscaping, and the *Comprehensive Plan* encourages the adaptation of historic homes to meet the needs of today's families. Alderman Laredo's motion carried 8-0.

#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. **(10/31/12)**

ACTION: APPROVED 6-1-1 (Hess-Mahan opposed; Schwartz abstaining)

NOTE: The public hearing on this item was opened and closed on June 12, 2012. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Albright, Fischman, Crossley, Merrill, and Schwartz. The petition was discussed and held in a working session on July 17. The petitioners agreed to an extension of time in which to act on the petition until October 31, 2012.

June 12: The petition was presented by attorney Jason Rosenberg, who explained that the petitioners purchased this property in 2009 with plans to raze the existing house and replace it with a new 7,074 square foot house. The petitioners and their architect designed the proposed house in accordance with the Floor Area Ratio (FAR) requirements that were in effect prior to October 15, 2011. However, under the new FAR the proposed house has an FAR of .28 where .26 is allowed by right. The proposed house complies with all other dimensional requirements. The design is French Eclectic with a stucco façade and mansard roof. There are a number of casement windows and two rooftop dormers. The house is 2.5 stories with living space in the basement, the first and second floors, and the half story within the mansard roof. The building height is 35.2 feet where 36 feet is allowed by right. Parking is provided in a two-car garage and circular driveway. The petitioners wish to be able to accommodate family members from out of the country who come on extended visits.

The petitioners are proposing extensive landscaping using native species and large mature specimens. The rear of the lot abuts Conservation land. The petitioners are proposing a retaining wall within the buffer area of the vegetated wetland. As of the June 12 public hearing, the Conservation Commission had continued its hearing after requesting the petitioners consider moving the wall farther from the wetland. The proposed wall undulates with the topography, at different heights. Mr. Rosenberg likened the lot to a peninsular, surrounded by Charles River Country Club and Conservation land. The Associate City Engineer has reviewed the drainage, which will be contained on the site.

Although the lot contains 25,000 square feet and the abutting Conservation land at the rear creates a visual extension of the property, several members of the Committee expressed concern about the mass of the house. They asked for clarification as to how the half story above the second floor contributes to the FAR calculation.

The Planning Department recommends that the building be scaled back or that an alternative roof configuration be considered as the mansard roof contributes substantially to the overall mass of the house, particularly from the street. The petitioners could build the house by right if the project were reduced by 580 square feet.

There was no public comment, but two communications were received in support of the petition. Richard Salter, 42 Stephen Place supports the petition. He believes it is a beautiful house and it should fit in well with the other homes on the street. He states that the change in law put their plans in jeopardy and that is an unfortunate circumstance for anyone. Alan & Sylvia

Greenbaum, 185 Countryside Road, diagonally across the street from the site, have lived in the neighborhood for 30 years and support the petition.

The July 17 working session was attended by Aldermen Hess-Mahan (Chairman), Crossley, Laredo, Albright, Harney, Fischman, Schwartz, and Merrill; Aldermen Lennon and Kalis were also present.

Mr. Valentine explained that the half story above the second floor contributes to the FAR calculation for the structure. Due to the mansard roof, all of the living space on this floor will be counted in the FAR. 22% of the floor area counted toward FAR is under the mansard roof. This space would not have been included in the FAR calculations prior to October 15, 2011. The petitioners provided a revised landscape plan in response to the Planning Department and Conservation Commission's comments. Nine 4 to 4.5 caliper Greenspire lindens have been added to the plan along the street frontage, which intent is to mitigate the mass of the house from the street. The plantings will be at least as tall as the house, which is slightly less than 36'. The full-grown size of this species is 40-50'. The Conservation Commission has approved an amended site plan, which the petitioners have submitted. The Planning Department recommends that the petition be denied. By reducing the house by 580 square feet, the petitioners could essentially construct the same house by right. For example, the covered porches on the rear of the house are a prerogative. The Planning Department believes that this regularly-shaped conforming lot in this district does not seem to meet the intent of Sec. 30-15(u)(2), which allows the Board of Aldermen to waive the FAR requirements, which historically has been interpreted to allow for some flexibility under extenuating circumstances, mostly for small additions to existing houses on constrained lots.. Several members of the committee noted that nowhere in the ordinance does it refer to extenuating circumstances; the ordinance lacks any guidelines. This is a large lot with a number of large homes around it. The lot can support a house of this size. The proposed house is linear, as opposed to spreading over the lot, close to its neighbors.

However, the majority of Committee agreed that it was not prepared to vote this evening. The petitioners were asked to submit a streetscape and several members suggested a site visit.

This evening, October 2, the Chairman reported that a site visit was held on July 26. The lot was and remains staked out. Several members of the Committee observed the context of the neighborhood: four or six houses are very large and two to three houses are of equal or greater square footage. An adjacent property is for sale and is likely a teardown. The Committee after some discussion concluded that although the mansard roof is a factor, it is an efficient design, not sprawling all over the site.

The Chairman disagreed that this house is the same size as others in the neighborhood. He believes that, absent unusual circumstances concerning the size, shape or topography of the lot, homeowners generally should be required to comply with the FAR when adding to existing homes or building new ones. Otherwise, having FAR serves no purpose. He reiterated his concern that allowing the petitioner to demolish a house that complies with FAR and grant a special permit to build a new home that exceeds FAR by a significant amount will increase the average and median FAR in the neighborhood. In the future, this may result in FAR creep. In

his opinion, the proposed house is in derogation of size, scale, and design of the other houses in the neighborhood.

Alderman Fischman, noting that Alderman Lappin supports the petition, moved approval finding that the proposed FAR of .28 where .26 is the maximum allowed by right is consistent with and not in derogation of the size, scale or design of other structures in the neighborhood; the lot abuts a large wetland area to the rear creating the perception that the lot is larger. The motion to approve carried 6-1-1 with Alderman Hess-Mahan opposed and Alderman Schwartz abstaining.

The meeting was adjourned at approximately 9:00 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman