

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JANUARY 11, 2011

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Fischman, Blazar, Crossley, Merrill, and Harney; absent: Ald. Schnipper  
City staff: Eve Tapper (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board, and David Norton (Zoning Enforcement Agent)

Auto License Renewals for 2011

#1-11 FROST MOTORS, INC.

624 Washington  
Newtonville 02460 (Class 2)

ACTION: APPROVED 6-0 (Harney not voting)

#3-11 AUBURNDALE SERVICE CENTER, LLC d/b/a AUBURNDALE MOBIL

2105 Commonwealth Avenue  
Auburndale 02466 (Class 2)

ACTION: APPROVED 6-0 (Harney not voting)

#5-11 PARAGON GLOBAL PARTNERS, INC.

259 Walnut Street  
Newtonville 02460 (Class 2)

ACTION: APPROVED 6-0 (Harney not voting)

#6-11 REGAN INC.

2066 Commonwealth Avenue  
Auburndale 02466 (Class 2)

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: These licenses are renewals and all paper work is in order. Upon a motion by Alderman Albright, the Committee voted 6-0, with Alderman Harney not voting, to approve them for 2011.

*A public hearing was opened and closed on the following item:*

#350-10 PR REALTY TRUST, PEGGI ROBART, TRUSTEE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NONCONFORMING STRUCTURE to expand an existing two-family dwelling into a three-family dwelling; to waive one parking space; and, to waive the required driveway access of 12 feet at 175 ALLERTON ROAD, Ward 6, on land known as SBL 52, 24, 6, containing ≈8,530 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. REF: Sec 30-24, 30-23, 30-21(a)(2)b, 30-21(b), 30-19(d)(2), (g)(3) and (m) of the City of Newton Rev Zoning Ord.

ACTION: HEARING CLOSED; ITEM APPROVED 6-0 (Harney not voting)

NOTE: Attorney Terrence Morris represented the petitioner. Mr. Morris explained that the petitioner is seeking a special permit to convert an existing legally nonconforming two-family

dwelling to a three-family dwelling. In the early 1950s, this neighborhood, which is comprised of many two-family homes, was zoned from a general-residence district to a single-residence district, which rendered all the two-family homes legally nonconforming. Mr. Morris submitted information listed in the Polk City Directories indicating that this home, which was constructed in 1910, was occupied in 1931 by two families and a real estate office. At some point between 1931 and 1942/1943, when the property was purchased by the petitioner's former father-in-law Winslow Robart, the basement real estate office was converted to a third apartment. An affidavit attesting to the existing unit in 1942/1943 was provided from Mr. Robart, who has since passed away. Mr. Morris emphasized that this petition did not stem from a complaint, but from the petitioner's application for a building permit to upgrade electrical service. Prior permits have been issued by the City. There are no changes proposed to the interior or exterior of the building.

Currently, there are eight parking spaces on-site; six spaces are required. The proposed site plan eliminates three spaces and shows five dimensionally conforming spaces, three outdoor and two in an existing garage. The petitioner is seeking a waiver for one parking space. The proposed parking reconfigures the existing arrangement and will decrease the impervious surface, increasing open space on the site from 34% to 43%. Since the existing driveway is 9.3 feet wide at its narrowest, relief is sought for a waiver from the minimum 12 feet required. There is substantial existing screening along the perimeter of the property. Mr. Morris was amenable to the Planning Department's suggestion to retain the parking space closest to the garage and remove instead the space nearest the garage to allow better maneuvering space.

**Public comment:**

Alan Lobovits, 168 Allerton Road, an 18-year resident, believes there is a fundamental error in legalizing post facto a unit that has been used for so many years. The area is zoned for and obviously intended for single-family residences. It is the height of irony to approve a 3-family residence. The property could be sold tomorrow to an investor.

Philip Klein, 169 Allerton Road, who bought his home 2 years ago, said the subject property is well maintained, but the petitioner's tenants are not particularly friendly. He feels like he is living next to a parking lot. He prefers a two-family to enhance and preserve the character of the neighborhood instead of a rooming house character.

Petitioner Peggi Robart said that by all accounts, the house has been used as a three-family for most of its existence. Ms. Robart has lived and raised her two children, who are now in college, at 175 Allerton Road since 1983. The property was part of her divorce settlement and she now lives in the 715 square-foot, one bedroom basement apartment. She tries to find tenants she likes and who will not be disruptive to the neighborhood. She wishes to remain in the house and someday have her children and their families live there. She asked that her neighbors let her know if they are disturbed by things like the motion detector lighting.

Subsequent to the hearing, the Committee received an e-mail from Heather and Richard Forrest, 154 Allerton Road, who said they were unable to attend the public hearing. They are opposed to

granting the permit on two grounds: the expansion to a 3-family will lower property values and because street parking is already crowded and unsightly at that end of the street they are concerned about the addition of 1 or more new vehicles.

At the working session, in response to a question as to whether a special permit could run with the owner instead of the land, Ms. Young said that absent agreement from the owner, no. Alderman Albright was concerned with forgiveness v. permission. Aldermen Blazar said he was fine with the petition, but that some neighbors are concerned with precedent. Relative to precedent, each application for a special permit stands on its own. Alderman Crossley would hate to lose a unit of this nature, noting that although the public process can be painful, the silver lining is that approval will provide a legal, safe, small housing unit of the type the city needs. The Chairman pointed out that the standard to expand/extend a nonconforming use/structure is whether it is substantially more detrimental than the existing use/structure. This unit has existed for over 70 years, which differs from a petition to create a new unit in an unfinished basement.

Alderman Merrill moved approval of the petition with the findings and conditions contained in the draft special permit board order dated January 18. The petitioner will submit a revised site plan showing the change in the parking. Alderman Merrill's motion carried unanimously, 6-0, with Alderman Harney not voting.

Request for a Consistency Determination re condition 2 of special permit 13-08, granted to Tennant Ventures, LLC on March 17, 2008 for a 2-story commercial building with first-floor retail and/or office and second-floor office and associated parking waivers (15 spaces) at 1149-1151 Washington Street, West Newton, to allow a personal trainer use on the first floor with a maximum of 4 employees (3 trainers and 1 receptionist) and 15 clients.

The condition is as follows:

*2. Nineteen on-site parking spaces shall be provided for use by the approved office/retail uses; 34 parking spaces are required by the Zoning Ordinance and a waiver of 15 spaces is granted through this special permit based on low demand for parking and proximity to a variety of transportation options. To assure future uses are similar in their demand for parking, the following uses shall not be permitted to occupy the subject property: restaurant, retail food establishment, drug store, hair salon/barbershop/spa, laundromat, dry cleaning, public assembly, convenience store, liquor store, grocery store, high volume discount retail store, high turnover medical office such as pediatrician or dentist, or any other uses for which the aggregate number of parking spaces for all uses in the office building required by the Zoning Ordinance exceeds 34 spaces. Potential uses that exceed this demand will not be allowed unless a further parking space waiver is approved.*

NOTE: Attorney Jason Rosenberg represented the Tennant's, who own the subject building and whose insurance business is located on the second floor. The Tennant's have been unable to lease the first-floor space since completing the building in 2008. In January 2009, they requested a consistency determination to lease the space to an oral surgeon. The then Land Use Committee reported to the Commissioner of Inspectional Services through the Planning Department that it had no problem with that type of use; however, the oral surgeon ended up not leasing the space.

Now, a potential tenant, Moria Lanier, owner/operator of *GreatestAge* Fitness, a personal training facility targeting men and women 50 years and older, wishes to lease the space, but again, although he has the authority to make such determination, the Commissioner of Inspectional Services has asked for the Committee's input. Mr. Rosenberg submitted photographs taken of the parking lot at various times. There are 19 parking spaces on-site, 15 spaces were waived in the special permit. It appears that no more than 3 or 4 spaces are usually occupied. Mr. Rosenberg noted that the owners may at some point return to amend the special permit, but in the meantime they need to lease the space. The difficulty this condition has created for the owners was discussed recently when the Committee was deliberating the petition for the mixed use building at 152 Adams Street, whose special permit includes a much shorter, more specific list of prohibited businesses.

The Committee agreed that this proposed use was not inconsistent with the intent of the condition and asked Ms. Tapper to convey this to the Commissioner of Inspectional Services.

The meeting was adjourned at approximately 10:45 PM.

Respectfully submitted,

Ald. Ted Hess-Mahan, Chairman