

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH, 22, 2011

Present: Ald. Hess-Mahan (Chairman), Ald. Merrill, Albright, Blazar, Crossley Schnipper, and Harney; absent: Ald. Fischman

City staff: Alexandra Ananth (Senior Planner) Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board), David Norton (Zoning Enforcement Agent)

#46-11 122 SHORNECLIFFE ROAD LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct two retaining walls greater than four feet in order to construct a new by-right garage below grade outside the front setback, (to replace an existing legally nonconforming garage located within the front setback) at 122 SHORNECLIFFE ROAD, Ward 7, Newton, on land known as SBL 72, 34, 2, containing ≈10,702 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this item was opened and closed on March 15, 2011. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Albright, Fischman, Schnipper, Blazar, Crossley, and Harney.

Architect Tref LaFleche presented the petition. The petitioner wishes to demolish an existing one-car garage located in the front setback and is seeking a special permit to construct a new 631-square foot, two-car garage which will be attached underground to the basement of the existing single-family house. The petitioner is currently constructing a by-right addition to the rear of the house.

Because the site slopes steeply to the street the proposed garage will be built below grade into the slope. Although a portion of the garage is above grade and in the side setback, the Commissioner of Inspectional Services has determined that because the garage is connected to the house below grade and is not visible to the street, it is considered an accessory structure and conforms to the 5-foot side setback requirement. The garage will appear detached when viewed from the street. Although the proposed garage is attached to the main house, Floor Area Ratio does not apply because it is below grade. The slope of the property requires the construction of two retaining walls greater than four feet in the front setback to provide access to the garage. The proposed grade change from the street is approximately 10 feet to the house. A new stairway from the driveway leading to a new walkway to the front of the house is also proposed. The petitioner proposes to plant lawn on top of the garage. There are no changes to the landscaping and no trees will be removed.

Alderman Fischman wanted to know if the petitioner had met with his neighbors. Mr. LaFleche said the petitioner had contacted neighbors many months ago. Alderman Schnipper recalled that

she and the other Aldermen from Ward 7 had been contacted as well. Alderman Fischman asked the petitioner to provide a list of the neighbors who were contacted. In response to Associate City Engineer John Daghlian's memorandum dated March 8, 2011, Mr. Lafleche said that percolation tests could not be conducted because of the snow; however, all runoff will be retained on-site. He noted that although Shornecliffe Road was reconstructed within the last two years, it has no storm drains.

The petitioner has reduced the driveway curb cut to the maximum 20 feet. The Planning Department suggested in its March 11, 2011 memorandum that the petitioner consider narrowing the driveway as well. Mr. Lafleche said that the driveway is 22.5 feet wide and the proposed garage doors are 18 feet in width. A reduction in the driveway width would create a safety issue and limit the ease in exiting cars.

There was no public comment.

At this evening's working session, the Committee reviewed the Planning Department working session memorandum dated March 18, 2011. The petitioner will comply with all the Engineering Division's requirements and perform percolation tests within 20 feet of the proposed systems to confirm the design assumptions. A trench drain in front of the proposed garage will collect runoff to a retention system beneath it. Revised drainage plans will be submitted to the Engineering Division prior to the issuance of a building permit. Attached to the Planning Department's memorandum was a memorandum from LDA Architecture dated March 17, 2011 listing the names and addresses of individuals invited to an open house at the subject property on October 10, 2010. No objections were raised by any attendees or invitees.

The petitioner reiterated his preference to not narrow the driveway to 18 feet. When exiting a car it should be onto a hard surface. In addition to the 18-foot garage doors, there is a "man door" to provide access/egress to the garage. The driveway is short in length. It can accommodate two cars outside the garage. There is a proposed planting bed next to the stairs and landing to the left of the driveway. Reducing the width of the driveway would mean relocating a narrower planting bed to the shady side of the driveway and leave very little walking space between cars. Alderman Schnipper pointed out this street has a parking restriction on Boston College game days and that the driveway should be wide enough to accommodate parking for guests as well as allow enough space to comfortably get children, bundles, etc. in and out of a car. Ultimately, the Committee agreed with the petitioner that there was no need to decrease the width of the driveway, particularly since the planting bed provides an area of softscape.

Finally, the Committee discussed the roof of the garage, which will require a safety fence. Several members expressed concern about the weight load from the proposed 14 inches of sod/loam. If the special permit specifies lawn on top of the garage that would preclude a patio or other plantings if the lawn turns out to be impracticable. The Committee agreed that flexibility should be allowed for other ground cover/plantings.

Alderman Schnipper moved approval of the petition finding that the proposed retaining walls of approximately 10.5 feet in the front setback will not have any adverse impact on the abutters; drainage will be contained on-site; the location is appropriate because the garage is located below grade to appear detached from the house, reducing the mass of the structure as viewed from the street; and the new garage will replace a garage located in the front and side setbacks. Alderman Schnipper's motion was approved unanimously, 7-0.

#351-10 JON B. HOLLINGSWORTH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to permit a 2-story detached garage of more than 700 sq. ft (982 sq. ft.) and allow 2 dormers to be located two feet from the vertical plane of the side wall of the garage at 373 LEXINGTON STREET, Ward 4, on land known as SBL 41, 17, 12, containing ≈10,030 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-15(m)(5)c), (t)(3), (m)(3) of the City of Newton Rev Zoning Ord, 2007.

ACTION: DORMERS APPROVED 5-0-2 (Albright and Blazar abstaining)
 GARAGE OF MORE THAN 700 SQ.FT. DENIED 5-0-2 (Albright and Blazar abstaining)

N.B. The 90-days in which the Board of Aldermen has to act on this petition are up April 5, 2011.

NOTE: The public hearing on this item was opened and closed on January 11, 2011. Present at the hearing were Aldermen Hess-Mahan (Chairman), Albright, Fischman, Blazar, Crossley, Merrill, and Harney; Alderman Schnipper was absent.

The petitioner was represented by attorney Terrence Morris. The subject property contains a legally nonconforming two-family structure circa 1880, which the petitioner has renovated and restored. Early in 2007, the petitioner sought advice from the Inspectional Services Department about constructing a garage for the two-family residence. The petitioner was informed that a garage in excess of 700 square feet requires a special permit, but he had an option to build two garages, each containing up to 700 square feet, or a larger garage that was both fire separated and structurally isolated at the center, creating "separate buildings" for purposes of the Building Code. Subsequently, in June of 2007 the petitioner obtained a building permit to construct a detached 4-car garage with a firewall in the middle to provide parking for the two-family residence. The footprint of the permitted garage was approximately 990 square feet, broken up by the firewall. The garage, although designed and built architecturally in character with the restored residence, was not built according to the plans associated with the building permit. The petitioner is seeking a special permit to legalize the garage as built, which is noncompliant in a number of respects.

- The garage does not contain a firewall or structural divide and is in excess of the 700 square feet allowed by-right. It contains two bays, not four.
- The garage has four dormers, two of which are located two feet from the vertical plane of the side wall of the structure where three feet is required in accordance with Sec. 30-15(t). Although there were no restrictions on the placement of dormers in effect at the

time of the issuance of the building permit, the plans submitted for the building permit did not show any dormers.

- The height of the garage exceeds the 18-foot limit for accessory structures. It appears that a significant amount of gravel has been placed around the garage in an attempt to bring the height into compliance. However, a recent survey still shows the height at 20.05 feet. Also, based upon the interpretation of the Commissioner of Inspectional Services, the second level of the garage has a floor area of more than two-thirds of the floor below (862 square feet), which makes the building a two-story structure. Accessory structures are allowed only 1.5 stories, with no provision for a special permit waiver.

The petitioner has represented that he submitted revised plans of the “as-built” garage to the Inspectional Services Department as an amendment to the original building permit plans. The Inspectional Services Department has no record of receiving any revised building plans. There is no indication in the permit file that updated plans were submitted. This petition is part of a court ordered settlement between the petitioner and the city executed on August 10, 2010. The settlement provides that the petitioner seek a special permit and/or variances to legalize the zoning violations. If the special permit and/or variances are denied, the petitioner may appeal the decision(s) or must bring the structure into full compliance.

The Planning Department memorandum dated January 7, 2011 notes that the petitioner in an attempt to comply with the City’s definition for half story has dropped the 8-foot ceiling height in portions of the second floor to 6 feet 11 inches. Although the definition does not differentiate between framed and finished ceiling height, the intent of the ordinance is to regulate bulk, height, and mass as viewed from the exterior. The Commissioner of Inspectional Services has determined that dropping the ceiling for compliance violates the half story definition. The Planning Department in questioning the intended use of the noncompliant second story recommends restricting it to storage use only.

The same memorandum of January 7, 2011 notes that in addition to the approximately 982 square-foot garage, there are 5 surface parking spaces. The Planning Department recommends removing 3 of those spaces to increase green space on the site.

In response to a question about providing a copy of the settlement agreement, Mr. Morris said that the agreement was filed with the Clerk Magistrate and was not germane to the relief sought. The dormers are essential architectural elements of the garage, which is more reminiscent of a carriage house. If the dormers are removed, it will not be a particularly attractive building. Mr. Morris said the upstairs space in the garage is not wired or plumbed.

The petitioner must also seek and receive a variance from the Zoning Board of Appeals for the height and number of stories or bring the structure into full compliance.

Public testimony

Jeffrey Romard, son of the owner of 369-371 Lexington Street, said that the petitioner had not consulted with neighbors before constructing the garage. He believes the garage contains two

stairwells as well as plumbing. He also believes the petitioner has been running a business out of the subject property.

Ellen Widen, 206 Melrose Street, which is to the rear of the subject property, said the structure was clearly meant to be an apartment, not just a garage.

Theresa Sorrentino, 377 Lexington Street, said there is a history to this property. Mrs. Sorrentino believes there are four apartments in the main house. She asked about the amount of open space. Many cars are parked on-site. How many gas or electric stoves in the house? Could the number indicate the number of units? She also believes the garage is intended for an apartment.

Mr. Morris objected to the demonization of his client, noting that one of the speakers was a former business associate with whom his client had a falling out. He pointed out that the house was not the subject of this petition and reiterated that the garage was not designed for residential use.

At this evening's working session, the Chairman reported that he, Aldermen Albright, Crossley, Harney, and Fischman visited the site on February 17. Zoning Enforcement Agent Dave Norton reported that he had inspected the residence, which is not the subject of this petition, and confirmed that it is a two-family, not a four-family.

The petitioner presented an alternative plan showing a firewall through the center of the existing garage and two one-story additions, one on each side, to bring the square footage of each garage up to 700 square feet. Mr. Morris said that if the petitioner is forced to install a firewall, it will destroy an upper porch on the rear of the garage. The addition of the one-story wings with decks on top will create outdoor space for the residents. Ultimately, the petitioner plans to convert the property into two condominiums. Mr. Morris confirmed that an application for relief for building height and a two-story accessory structure has been filed with the Zoning Board of Appeals for a hearing on April 26.

The Planning Department in its working session report dated March 18, 2011 recommended that the request for relief for the dormers as constructed be granted. The dormers are architecturally compatible with the residence and neighborhood and removing two of them will destroy the symmetry of the building. The Planning Department remains concerned about the use of the second story space and recommends its use be restricted to storage.

The petitioner has also submitted a proposed Grade Plane Plan showing additional proposed re-grading within a 6-foot grading envelope around the garage which will raise the average grade; however, it is not clear if this will make the height of the garage compliant under the existing interpretation of average grade. The Planning Department is concerned that the elevation of the garage floor is 99.23, three feet below the proposed average grade, which has already been raised once, and that any additional alteration may affect drainage to and from the property. The petitioner indicated that a three-foot retaining wall will need to be added along the southern

property line at the garage to contain runoff on the property. Should the special permit be approved, the Engineering Division will have to review the revised Grade Plane Plan prior to the issuance of a building permit. A revised site plan shows that two of the five outside parking spaces have been removed, leaving three surface spaces.

When asked about the addition of approximately two feet of gravel in front of the garage doors, Mr. Morris said it was the result of plowing snow this winter. Mr. Morris and several co-docketers have filed an item pending in the Zoning & Planning Committee to amend the way average grade plane is calculated. Zoning Enforcement Agent Dave Norton noted that the grading will be determined by the Zoning Board of Appeals.

In general, Committee members were troubled by the history of the garage, but not so much by the dormers. The Chairman listed the following options:

- Deny all relief requested;
- Approve all relief requested
- Grant relief for size of garage
- Grant relief for the two dormers
- Approve the alternative plan presented by Mr. Morris this evening which shows the two by-right additions. Although the additions shown on the plan could be constructed by-right, the petitioner would still need special permit relief for the dormers.

The Committee felt it could not approve a plan that differed from what was already built and had not been part of what was presented at the public hearing.

Alderman Albright said that history aside, the garage is not out of character with what might be found on similar properties in the city. She said that although presently there is no water/sewer line to the garage it appeared that the second floor could be converted into living space. Mr. Norton explained that if the second floor were to be used for habitable space, the Building Code requires fireproofing between the ceiling and floor. He also explained that if the petitioner were to install the firewall, it had to be solid with no door. Essentially, the firewall creates two buildings so that if one should burn, the other would stand. Alderman Blazar said he was uncomfortable that the garage was not constructed in accordance with the plans submitted and approved with the building permit.

Alderman Merrill moved that the relief requested for the two dormers on the rear façade of the garage be approved because the dormers were permitted prior to the existing “dormer ordinance” and are consistent with the size, scale, and design of the garage; he moved that the relief for a detached garage of more than 700 square feet be denied because as constructed there is a substantial change from the garage permitted; the original building permit was predicated on the separation of floor space, which can still be done without changing the footprint of the building; the interior stairwells eliminated two parking spaces, leaving on two spaces, not the four permitted, necessitating additional surface parking and removing a compelling reason and justification for the size of the garage.

The motion to approve the two dormers was approved 5-0-2, with Aldermen Albright and Blazar abstaining. The motion to deny a garage of more than 700 square feet carried 5-0-2, with Aldermen Albright and Blazar abstaining.

The meeting was adjourned at approximately 10:05 PM.

Respectfully submitted,

Alderman Ted Hess-Mahan, Chairman