

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, APRIL 12, 2011

Present: Ald. Hess-Mahan (Chairman), Ald. Merrill, Crossley, Blazar, Fischman, Albright, and Harney; absent: Ald. Schnipper; also present: Ald. Sangiolo
City staff: Derek Valentine (Senior Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

Public Hearings were held on the following items:

#337-05(2) NEW CINGULAR WIRELESS by AT&T MOBILITY/COMMONWEALTH HOUSE TRUST petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL/EXTENSION OF A NONCONFORMING STRUCTURE #337-05, granted on 12/19/05, for 6 wireless antennas on the façade of a rooftop penthouse behind a faux-brick stealthing, by adding 3 additional antennas (for a total of 9 antennas) and to extend the faux-brick stealthing at 209 COMMONWEALTH AVENUE, CHESTNUT HILL, Ward 7, on land known as SBL 63, 8, 20, containing approx 20,338 sf of land in a district zoned MULTI RESIDENCE 1. Ref: 30-18(A)(c), 30-24, 30-23, 30-21(b), 30-15 Table 1 of the City of Newton Zoning Ord, 2001.

ACTION: HEARING CLOSED; ITEM APPROVED 7-0

NOTE: The public hearing on this item was opened and closed this evening. Attorney Edward Pare of Brown Rudnick represented the petitioners. In 2005, the petitioners obtained a special permit to install 6 antennas on the façade of an existing penthouse behind a faux-brick fiberglass stealthing on the roof of this condominium building. Relief was granted for a wireless installation in accordance with §30-18A and in accordance with §30-21(b) to extend a nonconforming structure to a height of 38'. The ancillary equipment is also roof-mounted and enclosed by sound dampening screening. The petitioners are seeking to amend special permit #337-05 to add 3 more antennas, for a total of 9 antennas, which will allow AT&T to update its system to the new 4G LTE to provide better service to the Newton area. The additional antennas, one of which will be located on the front of the penthouse, will result in a slightly larger faux-brick penthouse but not increase its height. The ancillary equipment will remain on the roof. Although the building is located within the Commonwealth Avenue National Register Historic District, the Senior Preservation Planner determined that the additional antennas on top of this building would not detract from any historic resources.

Included in the petitioners' special permit submittal were:

- a letter dated 12/21/10 from the President of the Condominium Board of Trustees authorizing New Cingular Wireless/AT&T to obtain all necessary permits;

- a letter dated 1/11/11 from Reuter Associates, an acoustical consultant, stating that there will be no increase in exterior noise since the 3 additional antennas will not require any changes to the existing equipment;
- A letter dated 12/2/10 from Turning Mill Consultants, Inc. stating that the additional equipment will not compromise the structural integrity of the building;
- A report from Radio Frequency Engineer Kevin Breuer certifying that the facility complies with all applicable Federal, State, and local regulations, including, but not limited to the radio frequency emissions regulations set forth in the Federal Telecommunications Act of 1996.

There was no public comment; however, after the public hearing was closed, Irina Drogobetsky of unit 3B arrived and asked to speak. The Committee voted to reopen the hearing to allow her comments. Mr. Drogobetsky said she is concerned about the antennas because a resident on the fourth floor was recently diagnosed with cancer. Ms. Young explained that the Federal Telecommunications Act of 1996 prohibits local jurisdictions from taking health/safety concerns into consideration as long as the equipment functions in accordance with FCC standards. Ms. Young suggested she address her concerns to the condominium board of trustees. Attorney Pare noted that such certification was included in the special permit submittal, but offered to meet with Ms. Drogobetsky and other residents who had similar concerns.

In working session when asked whether it could be clad in metal similar to the upper story of the building instead of the faux-brick fiberglass, Cingular/AT&T's representative said no, radio frequencies can't penetrate metal. Although there is no indication of increased noise (the ambient noise and the building's air conditioning is louder than the noise from the equipment), the petitioner has offered to install additional sound dampening around the cooling equipment. Should this petition be approved, special permit #337-05 will be consolidated into the new special permit. Condition #7 in special permit #337-05 notes that in the event that the City issues a request for proposals to lease space on the City-owned tower on Waban Hill for commercial wireless communications, the petitioner shall submit a proposal and if approved shall remove the equipment from 209 Commonwealth Avenue. Cingular/AT&T is no longer interested in the Waban Hill site and the Committee was reminded that the Police and Fire Departments are opposed to leasing space to private providers because of public safety concerns.

Alderman Albright moved approval of the petition finding that the extension of the faux-brick stealthing will not be substantially more detrimental than the existing nonconforming faux-brick penthouse because there is no increase in height; the wireless equipment will be concealed and the faux-brick enclosure will blend in with the façade of the existing building; the antennas will be co-located with existing antennas, not installed on another building; the installation will not further detract from the historic resources of the Commonwealth Avenue National Register Historic District; it will provide greater wireless coverage; and, although no increase in noise is projected, the petitioners will install additional sound dampening around the ancillary equipment. Alderman Albright's motion to approve the petition carried 7-0

#61-11 NEW CINGULAR WIRELESS by AT&T MOBILITY/ANDOVER NEWTON THEOLOGICAL SCHOOL petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to add 3 antennas to an array of 6 existing antennas on a rooftop with ancillary equipment located inside an adjacent building at 216 HERRICK ROAD, Ward 6, on land known as SBL 65, 19, 45, containing approx. 871,960 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-18(A)(c) of the City of Newton Rev Zoning Ord, 2007 and special permit #722-86.

ACTION: HEARING CLOSED; ITEM APPROVED 6-0-1 (Fischman abstaining)

NOTE: The public hearing on this petition was opened and closed this evening. The petitioners were represented by Joan Costello of Cingular/AT&T. The petitioners wish to add 3 antennas to the 6 antennas which already exist on the roof of a building located in the center of the Andover Newton Theological School campus. Again, the proposed antennas will update AT&T's 4G LTE network to provide better service to the Newton area. The original array was installed under special permit #722-86. That special permit, which predated the Telecommunications Act of 1996 and the City's ordinance §30-18A, permitted 12 antennas, but because of improved technology 6 of them were removed in 2007. (A special permit is not required for removal.) Essentially, approval of this special permit would put back something that had been there. In addition, the petitioners propose to add additional ancillary equipment inside one of the adjacent campus buildings. There is no projected increase in noise from any of the equipment.

The petitioners included in their special permit submittal

- a letter dated 1/18/11 from Reuter Associates, an acoustical consultant, stating there will be no increase in exterior noise from cooling equipment which is located inside;
- a report from Radio Frequency Engineer Kevin Breuer certifying that the facility complies with all applicable Federal, State, and local regulations, including, but not limited to the radio frequency emissions regulations set forth in the Federal Telecommunications Act of 1996;
- a copy of the Cingular/Newton Theological School lease.

There was no public comment.

In working session, the Committee agreed that the existing array on the roof is quite ugly. Although, the Andover Newton Theological School campus is on the National Register, the building itself is not considered significant. At least one other carrier has equipment on the roof and there is a dish that may belong to the school. When asked if the array could be housed in a faux chimney, the Cingular/AT&T representative said it was impossible because of the roof design and the light-producing cupola which would have to be enclosed. The size of the panel antennas is approximately 6'x4'. Since the building is in the center of the campus there are no residential abutters and the site is well-screened and not visible to the residences. The petitioners agreed to work with the Director of Planning & Development to minimize the visual impact,

probably by painting the antennas to blend in with the sky; however, Cingular/AT&T noted it can only paint its own equipment.

Alderman Blazer moved approval of the petition finding that the installation is located in the middle of a campus, not visible to residences; there will no additional noise from the new ancillary equipment; and it will provide greater wireless coverage. Alderman Blazer's motion carried 6-0-1, with Alderman Fischman abstaining because he wished there were "some way of it not looking like a remote police station on Route 128."

#80-11 ERROL R. NORWITZ petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for an addition and a raised rear deck, increasing the non-conforming Floor Area Ratio from .4196 to .468, at 68 DAY STREET, Auburndale, Ward 4, on land known as SBL 43, 45, 13, containing approx. 8,030 square feet of land in a district zoned Single Residence 3. Ref: Sec 30-24, 30-23, 30-15 Table 1.

ACTION: HEARING CLOSED; **ITEM HELD 7-0**NOTE: The public hearing on this item was opened and closed this evening. The petitioner was represented by architect Peter Sachs. The petitioner is seeking a special permit to add a 2-story 389 sq. ft. addition containing a first-floor study and second-floor bedroom onto an existing single-family residence. The petitioner is in the process of constructing a by-right addition containing 748 sq. ft. Mr. Sachs explained that initially the petitioner and his original architect planned to construct the whole addition (approximately 1,137 sq. ft.), but were informed by the Inspectional Services Department that calculations for the total addition exceeded the allowable Floor Area Ratio (FAR) and that it would require a special permit. The petitioner chose to proceed with only the by-right portion of the addition which complies with the allowed FAR; subsequently, however, the petitioner decided to seek relief to complete the study/bedroom portion of the addition and hired Mr. Sachs to complete the design and navigate the special permit process. Mr. Sachs noted that the house is a stucco Tudor and that although the addition is currently covered in tarpaper, it will be a handsome renovation, finished in stucco to match the existing house.

The existing FAR including the by-right addition is .4196, the proposed FAR is .468. Although the FAR for a Single Residence 3 district is .35, the petitioner qualifies for a bonus of .07 because the proposed addition is on an existing structure over ten years old on a pre-1953 lot that meets the post-1953 setbacks. The allowed FAR is .42. The proposed addition would not make the property any more nonconforming relative to other dimensional controls. The topography on this side of the street slopes steeply from the front down to the Brae Burn Country Club golf course and a number of the houses are effectively three stories. Part of the by-right project included excavating and replacing the rear foundation that was structurally compromised. Mr. Sachs said that when this site is re-graded, the basement will remain a basement. The by-right and proposed addition are to the rear of the property with minimal impact on the street view. The proposed addition is on top of a section of the existing basement foundation located at the southeast corner of the property - the portion of the by-right addition that was excised because of the error in FAR calculation made by the previous architect. The rear of the site is heavily wooded with mature trees and visible primarily from the golf course.

Mr. Norwitz related that he, his wife, and three children had lived on Hope Street for seven years, relocated, then returned to Newton, and wanted to buy a house in the same area because they loved the neighborhood. They approached different owners and made an offer on the house prior to it being offered on the market. Mr. Norwitz said that he told the realtor, their next door neighbor at number 62 Day Street, prior to the purchase that the house would have to be enlarged to accommodate his family.

Public Comment:

Brian Redmond, 76 Day Street, the abutter adjacent to the south side of the property said the addition was a carbuncle and that the petitioner was being disingenuous. Mr. Redmond believes the addition(s) were done this way intentionally. He said he has an outdoor shower at the rear of his property and feels a loss of privacy. The addition impedes his view of the retention pond on the golf course. He urged the Committee to not reward this type of behavior.

Mary Lou Walsh, 62 Day Street, the abutter adjacent to the north side of the property, said she and her husband have lived here for over 30 years. The addition has impacted their view of the golf course. She and her husband assumed the house would be bumped out some, but not to the degree is now. She urged the Committee to visit the site. She submitted two photos of the rear of the property, which are on the City's website, <www.ci.newton.ma.us> on the Board of Alderman page under special permits, 60 Day Street.

David Walsh, 60 Day Street echoed his wife's comments. He noted that the subject house is substantially larger than others in the neighborhood.

Harry Hart, 69 Day Street, said the addition is an encroachment on the neighbors' view and that granting this special permit could set a precedent in the neighborhood.

Scott Miller, 1994 Beacon Street, the petitioner's contractor, explained that excavating the site was necessary to construct the new foundation, which is set seven feet into the ground with rebar to reinforce the whole building.

Jane Walsh, 100 Day Street, a 15-year resident spoke in support of the petition, saying that the petitioner and his family are dear friends and she welcomes them back to the neighborhood.

Alderman Harney suggested the Committee visit the site. Alderman Albright motioned to close the hearing, which motion carried unanimously.

The Committee planned to hold a brief scoping session to flush out any questions it would address at a working session. There was considerable discussion about whether additional drawings would be helpful. Aldermen Albright and Crossley felt that elevations showing the final grades and sections of each side of the house might help put the addition in relation to the site into better perspective. Alderman Fischman suggested a landscape plan showing plantings

to soften the foundation. Mr. Sachs reported that the neighbors did not want any large trees/shrubs. The Committee asked if any more grading was planned on the site. Mr. Sachs noted the costs involved with additional drawings. He said no more grading was planned and reiterated that the site had not yet been backfilled to the final grade. He suggested that chalking the grades might be useful. But both the Chairman and Mr. Sachs convinced the Committee a site visit would be the most helpful in its deliberations. The Chairman noted that a recent Land Court Case, Kenner vs. Zoning Boards of Appeals of Chatham, specified that view protection was not covered unless a provision re visual impact is specifically provided for in the zoning bylaw.

Ultimately, the Committee agreed to arrange a site visit and the petitioner agreed to notify the abutters so they may attend as well. The item was held 7-0 and will be taken up in working session in May.

The meeting was adjourned at approximately 10:40 PM.

Respectfully submitted,

Ald. Ted Hess-Mahan, Chairman