

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 19, 2011

Present: Ald. Hess-Mahan (Chairman), Ald. Fischman, Crossley, Schnipper, Albright, Harney, Blazar, and Merrill; also present: Ald. Fuller, Gentile, Lappin, and Baker  
City staff: Alexandra Ananth (Senior Planner), Linda Finucane (Assistant Clerk of the Board), Eve Tapper (Chief Planner for Current Planning), Ouida Young (Associate City Solicitor)

#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:      APPROVED 8-0

NOTE: The public hearing on this item was opened and closed on April 12, 2011, after which a brief meeting was held to identify issues the Committee wanted addressed for working session. *Please see excerpt from the April 12 report (ATTACHMENT A).* Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Crossley, Blazar, Fischman, Albright, and Harney. Alderman Schnipper was absent. Alderman Sangiolo was also present.

The Committee held a site visit on May 5. On June 24 Mr. Norwitz, members of the Planning staff, several Aldermen, and abutters attended a neighborhood meeting to discuss potential mitigation. On July 13 the petitioners' architect submitted revised plans in response to comments at the April 12 meeting and the June 24 neighborhood meeting.

On April 12, several committee members had asked why the basement was not included in the gross floor area for calculating FAR. For single-family residences, a basement is defined as a space in which at least half of the distance between the floor and ceiling falls below the average grade plane adjacent to the structure. The distance between the floor and ceiling of the subject property is 7 feet and it falls 3.5 feet below the average grade plane, which qualifies the space as a basement. The lot slopes towards the rear property line. The entire foundation at the front façade is below grade, but a large portion of the rear façade is above grade so the house presents as two-stories from the street and three-stories from the rear. The architect's plans indicate and the Inspectional Services Department has confirmed that the basement will be 3.5 feet below the average grade plane, qualifying it as a "basement."

Since the by-right addition exceeded the threshold of an addition of at least 400 square feet in impervious coverage, it required review by the City's Engineering Division. In its review the

Division determined that a dry well to contain surface runoff should be installed on the west side of the house; the petitioners have done so and no additional review is required.

Committee members had a number of questions about the grading of the property around the rear foundation and asked for a plan showing the final grade as it relates to the structure. The site visit was helpful and a plan has been submitted showing the contours of the east side of the residence remain almost unchanged. The petitioners propose some fill on the west side, which will bring up the grade surrounding the foundation. In addition, a small retaining wall of approximately one foot will extend from the northeast corner of the foundation. The remaining steep slope at the rear of the property will not be altered, but landscaping will be installed to prevent erosion.

At the site visit the petitioners were undecided how they would provide access to the door on the east side of the house because of the steep grade on that side. Options included a series of small by-right retaining walls or a wood deck with a staircase. The petitioners have decided to install a deck and landing. This option minimizes the amount of grade change required.

The petitioners have submitted a landscape plan, mostly for the rear slope. Abutters on both sides of the property have indicated they do not want screening along the property lines because it would impede their "panoramic" views of the golf course.

Finally, although the rear deck shown on the site plan is a by-right portion of the project, the petitioners have agreed to decrease its width from 15 feet to 12 feet to reduce its impact on the neighbors' view of the golf course.

Alderman Harney said he was uncomfortable about how this petition proceeded. There were two architects and a builder involved who should have known the rules. The by-right portion is big, but it is already built. Having said that, he allowed it was not a bad project and the petitioners' offer to reduce the size of the deck was appreciated by the neighbors.

He moved approval finding that the proposed increase in FAR from .4196 to 468 is consistent with the size, scale, and design of other structures in the neighborhood; the proposed addition is located over an existing foundation and conforms to lot coverage and open space; the addition will have minimal impact as viewed from the street and abuts a wooded area and golf course to the rear; the reduction in the size of the deck will minimize impact on abutters.

Alderman Harney's motion to approve carried unanimously, 8-0.

#7-11            CHARLES RIVER COUNTRY CLUB, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND A NON CONFORMING USE to create a short game practice area for its members and guests in a currently unimproved portion of an existing golf course (no buildings or structures are involved) at 483 DEDHAM STREET, Ward 8, on land known as SBL 83, 36, 4, containing ≈6,446,022 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)a) of the City of Newton Rev Ord, 2007, and special permit board order #261-96.

ACTION:        DENIED 5-3 (Hess-Mahan, Albright, and Crossley opposed)

NOTE: The public hearing was opened on February 15, 2011; however, the petitioner's attorney Stephen Buchbinder submitted a letter requesting that it be continued to March 15, 2011 to allow additional time for dialogue between the club and its neighbors to continue. Mr. Buchbinder did not present the petition and there was no public testimony.

Public Hearing – March 15:

Present were Aldermen Hess-Mahan (Chairman), Merrill, Albright, Fischman, Schnipper, Blazar, Crossley, and Harney; Aldermen Lappin, Ciccone, and Lennon were also present.

Mr. Buchbinder and landscape designer Andrea Kelley, engineer Verne Porter and several officials from Charles River Country Club presented the petition. Founded in 1921, the golf course was designed by well-known golfer and course designer Ronald Ross, who between 1900 and 1948 designed over 600 courses nationwide. (Mr. Ross is buried in Newton Cemetery.) The Club is a legal nonconforming use which predates zoning. It has been the subject of several previous special permits. The Club is seeking to amend the most recently approved site plan and extend the nonconforming use by creating a short game practice area. Many clubs are adding these practice areas for serious golfers. It is not the Club's intention to attract new membership (membership is limited by charter to 156 members). The area proposed for the short game, just west of the clubhouse parking lot, close to the north lot line shared with the abutting The Gables Condominium, was formerly the driving range until 1983 when it was relocated closer to the main clubhouse. Currently, the area is lightly wooded. Approximately 300 x 260 feet, the proposed short game area consists of three fairways, two greens and a sand trap. There would be no driving range shots, only controlled shots. There is an existing practice green but it is small, landlocked by the parking lot and a stand of trees, and blocked by the first tee. The Club looked at other areas, but because they involve either topographical, wetlands, or tree removal issues, it chose this location, which also has the advantage of being near the first tee and the clubhouse. It anticipates that six golfers would be the maximum number using the area at once. The most intense hours of use would be 7:00-10:00 AM weekends for members to warm up before hitting the course, and then again in late afternoon.

Mr. Buchbinder and his clients have met with the Board of Trustees of The Gables to listen to their concerns about the visual impact, safety, and noise of the proposed short game area. Residents of The Gables already have a problem with golf balls landing on their property and are concerned that the proposed short game area will exacerbate the situation. The Club has offered to install a net along the property line between the properties, although Landscape designer Andrea Kelly cautioned that a net would require removing a number of trees and shrubs (it could

not be installed higher than the tree canopy) and would be difficult to maintain. The Gables is not keen on a net; it would be visible when the trees are bare. The Club is proposing 79 additional trees and shrubs to supplement the existing substantial landscaping between the properties. Another concern of The Gables is noise from mowing machinery.

There is an existing 30-foot wide city water easement which separates the proposed new short game course from The Gables. The distance from the proposed short game to The Gables is approximately 129 to 143 feet. When asked about tournaments and whether lack of a short game would impact events, the Club said no, but it would enhance the course.

**Speakers:**

Alan Green, 403F Dedham Street, who built The Gables and resides there, said he prefers nothing be done, but is not sure if that is reasonable. The first parking lot was more of an encroachment and he recognizes that a 100' setback line is plenty of land to create a short game. He asked if the Club was proposing any lights. (The Club is not proposing to light the area.)

Attorney William Shaevel, 141 Tremont Street, Boston, representing 66 residents of The Gables and 37 residents of Ledgebrook Condominium at 289 Nahanton Street distributed a booklet in which he enumerated his clients' concerns, which include safety issues relative to errant golf balls striking residents walking on the pathway on The Gables property adjacent to the Club, golfers talking loudly, the odor of cigar smoke, and noise from the swimming pool which is 400' from The Gables property line. Ledgebrook Condominium is concerned about precedent. Will the Club seek additional development along its perimeter? Mr. Shaevel questioned whether adequate drainage studies had been done; what about an acoustical study?

Mark Harmon, 437A Dedham Street, a member of the Board of Trustees of The Gables whose condominium abuts the golf course, reiterated the problems with golf balls, noise, and smoke, and expressed concern about chemicals used on the grass.

Carl Franzblau, 435A1 Dedham Street, echoed Mr. Harmon's concerns. Mr. Franzblau disputed the distance to the proposed short game practice area represented by the Club; he said the actual distance is closer to 90 to 100 feet if measured to the decks, not the buildings. Residents like to enjoy evenings and weekend mornings on their decks and the short game area would be intrusive.

Sheldon Grosser, 435B2 Dedham Street, has had a golf ball through his window and found other balls in the backyard and on his deck. He questioned whether the proposed short game practice course would be used by only six people at a time.

Janet Appel, 401A Dedham Street, said that by 11:00 AM she hears noise from the pool. The Club uses bull horns for pool races and ignores other restrictions as well. This is an issue of residents v. golfers.

That concluded the public hearing.

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Subsequent to the Public Hearing, a number of communications were received from Mr. Shaevel, the speakers listed above and several other residents of The Gables opposing the petition and several communications were received in support of the petition.

Working Session June 7

Aldermen Albright, Crossley, Fischman, Harney, and Hess-Mahan visited the site on June 2. Mr. Buchbinder, Mr. Shaevel, Associate City Solicitor Ouida Young and Chief Planner for Current Planning Eve Tapper attended along with various representatives of the Club and The Gables. After reevaluating alternate areas, given the challenges of topography, ledge, and wetlands and the number of trees (approximately 1000) that would have to be removed, the Club reiterated that the proposed location, close to the clubhouse, pro shop, and first tee, is the best locale for the proposed short game practice area. Since the public hearing the Club revised the design and orientation of the short game practice area to move it farther away from the property line shared with The Gables. The size of the area has been reduced. The sand traps (a second trap has been added) have been relocated so that shots out of the traps will be aimed away from The Gables. The proposed landscape buffer has been increased as well.

The Club had submitted to the Planning Department a list of other clubs and the size of their practice areas. In its memorandum dated June 3, 2011 the Planning Department noted that a brief perusal of the list appears to show that the proposed practice area is on the high side of the spectrum for size (but comparable to Wellesley's new short game practice area), it has a typical number of bunkers, and that most practice areas are located within 200 yards of the clubhouse

Subsequent to the site visit, the Club agreed to restrict the use of the proposed short game from 8:00 AM to dusk. The Club believes that the proposed short game course will be quiet because of the type of controlled shot being practiced by serious golfers. The Club has committed to supervising the area and has agreed to not mow the grass in this area prior to 9:00 AM or after dusk; it will be watered by non-impact sprinklers. The Club is willing to institute a no-smoking policy at the proposed short game area. Finally, the Club has agreed to not use the short game practice area when it has tournaments held primarily for non-club members; it will limit its use to members and their guests. The Club reaffirmed its willingness to install a safety net along the northerly perimeter of the proposed short game practice area. It feels that a net would deter errant golf balls from landing on the property of The Gables. The Gables reaffirmed it is not interested in a net. Several members of the Committee suggested that a net would be an environmental hazard. In addition to the proposed landscaping, the Club is willing to installing a fence not to exceed six feet in height along the same perimeter. Members of the Committee generally felt that a six-foot fence would not be useful in blocking noise or golf balls. The proposed dense plantings would be a better buffer.

The Club suspects that many of the errant golf balls may originate from the caddy shack. Whether or not this petition is approved, the Club will relocate the caddy shack farther from The Gables. A letter from Engineer Verne Porter stated and review by the City's Engineering Division confirmed that the proposed short game practice area will not have an adverse effect on the existing drainage pattern and that the proposed practice area is not located within the 200-

foot riverfront or the 100-foot buffer to the bank. There is no increase in impervious surface proposed.

A video provided by the Club to the Planning Department showed a clip of a typical shot on a short game practice area. Mr. Shaevel objected because his clients had no opportunity to respond. Ms. Young said that the clip was "visual chalk" in response to oral testimony given at the hearing.

Several members of the Committee who were unable to visit the site on June 2 asked that another site visit be arranged to allow them to tour the site and see the area proposed for the short game practice area as well as the alternative locations ruled out by the Club. The Chairman noted that the location of the proposed short game practice area is the one that is the subject of this petition; however, the Committee agreed to hold the item so other members could visit the site. In response to a question about standards for granting this special permit Ms. Young stated that the standard is that the proposed extension of the nonconforming use is not substantially more detrimental than the existing use.

The Club agreed to a further extension of time to September 21, which extension the Committee approved unanimously. The item was held.

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#### Working Session July 19

The Club has not submitted any new information since the June 7 working session. The Chairman noted that the site visit on June 21 was attended by Aldermen Blazar, Fischman and Schnipper. Members of the Committee summarized the issues, which are location/proximity of the proposed short game practice area to The Gables, noise, safety, and the relationship between the Club and The Gables.

Several Committee members said they are not troubled by noise, but more so by the proximity of the walking path and the different levels of expertise of the users of the proposed short game practice area. The Club has attempted to address safety concerns by flipping the orientation of the proposed short game practice area so that shots will not be hit toward The Gables. Mr. Shaevel had submitted a proximity chart of other short game practice areas which, if accurate, was more compelling to some members. The Committee acknowledged there is a financial advantage in living next to a vast expanse of green and homes located right on fairways are more expensive and sustain their value because of their location. When asked what the area would be used for if this special permit were not approved, the Club said it would probably be used for additional surface parking. Several members suggested that the sound measurements in the Cavanaugh Tocci noise study submitted by Mr. Shaevel do not rise to a level to be considered. The so-called buffer area where the short game practice area is proposed is not a legally required buffer, but simply an area that has functioned as such since the driving range was moved in 1983. The Club now has agreed to close the short game practice area when it holds tournaments.

Alderman Merrill felt that the Committee should protect the interest of the home owners; Alderman Fischman was concerned about the intensification of use in what has served

essentially as a buffer. He doesn't believe that a parking lot carries as serious issues. Alderman Blazar said it is impossible to determine if the proposed use would be substantially more detrimental while the caddy shack remains in its current location. He said he could not support the petition because noise from the pool is bad and this proposed short game practice area will increase the problem. For example, the Club agreed to notify The Gables when it has swim meets, but does not always do so. Alderman Crossley felt that moving the caddy shack and installing a net would allay safety concerns. Alderman Albright wondered why the caddy shack has not yet been moved. Alderman Lappin said the proposed short game practice area is too close to the residences. Alderman Harney said that although he had supported the Club's previous petitions, he could not support this one.

The Chairman suggested a straw vote on a motion to approve the petition, which motion failed 3 in favor (Albright, Crossley, and Hess-Mahan) and 5 opposed (Blazar, Fischman, Harney, Merrill, and Schnipper).

Alderman Fischman moved to deny the petition finding that granting the special permit/site plan approval and extension of nonconforming use for a short game practice area would be substantially more detrimental than the existing use because of its proximity to residences and the impact/intensification of use in an area that has served as a natural buffer to the adjacent residential area. Alderman Fischman's motion to deny the petition carried 5 in favor with 3 opposed (Albright, Crossley, and Hess-Mahan).

#161-11      W/S DEVELOPMENT ASSOCIATES LLC petition for a CHANGE of ZONE from BUSINESS 1 to BUSINESS 4 for land shown as a cross-hatched area on a plan entitled "Plan of Zoning Change Chestnut Hill Shopping Center, Newton Mass.", by Feldman Land Surveyors, dated May 23, 2011 and known as Sec 63, Blk 37, Lots 18A, 22, 25, 26, and 27, containing ≈20 acres of land at 1-55 BOYLSTON STREET, Ward 7, Chestnut Hill.

ACTION:      APPROVED 7-0 (Merrill not voting)

#161-11(2)      W/S DEVELOPMENT ASSOCIATES LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND a NONCONFORMING USE/STRUCTURE to replace an existing 1-story retail portion of a building at 33 BOYLSTON STREET, Ward 7, Chestnut Hill, with a 3-story building and related site improvements including sidewalks, landscaping and parking; allowance for restaurants greater than 50 seats; parking and coordinated improvements to the Frontage Road/Carriage Way contiguous to the site for sidewalk, crosswalk, parking, lighting, access, and landscaping improvements, on land known as Sec 63, Blk 37, Lots 18A, 22, 25, 26, and 27, containing ≈20 acres of land in proposed BUSINESS 4 district. Ref: 30-11I, 30-11(d)(9), 30-11(d)(12), 30-11(j), 30-11(k); 30-15 Table 3; 30-19I(2), 30-19I(3), 30-19(d)(18), 30-19(f), 30-19(h), 30-19(i), 30-19(j), 30-19(l), 30-19(m); 30-20(f), 30-20(l); 30-21(a)(2), 30-21(b); 30-23, 30-24, of the City of Newton Rev Zoning Ord, 2007.

ACTION:      APPROVED 6-0-1 (Fischman abstaining; Merrill not voting)

#161-11(3) CHESTHILL SHOPPING CENTER LLC petition for a CHANGE of ZONE from PUBLIC USE to BUSINESS 4 for land containing ≈1.72 acres of land, located in Ward 7 in Chestnut Hill, shown as Parcels A and B on a plan entitled "Zoning Change Chestnut Hill Shopping Center, Newton, Mass" by Feldman Land Surveyors, dated May 23, 2011.

ACTION: APPROVED 7-0 (Merrill not voting)

#161-11(4) CHESTHILL SHOPPING CENTER LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for improvements to sidewalks and to Frontage Road/Carriage Way landscaping, parking layout, lighting and access for the Frontage Road/Carriage Way, a portion of Boylston Street along the frontage of the Chestnut Hill Shopping Center, on land shown as Parcels A and B on "Plan of Zoning Change Chestnut Hill Shopping Center, Newton, Mass." By Feldman Land Surveyors dated May 23, 2011 in a proposed BUSINESS 4 district. Ref: Sec 30-19(m), 30-23, and 30-24 of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0 (Merrill not voting)

NOTE: On June 7 the Committee at the request of the Planning Department agreed that an outside consultant be engaged at the petitioner's expense pursuant to Article X of the Rules & Orders of the Board of Aldermen and Ordinance Sec 22-4, to review a traffic letter submitted by Ron Muller & Associates, dated May 19, 2011, and a Shared Parking Study performed by VPNE Parking Solutions LLC, dated May 20, 2011, submitted by the petitioner. The City engaged McMahon Associates, Inc. to perform the peer review.

#### Public Hearing – June 21

These four items were heard together on June 21, 2011. Item nos. 161-11 and 161-11(3), petitions for changes in zone, were heard in conjunction with the Planning & Development Board. The Committee closed the hearing; the Planning & Development Board continued the zone change petitions until July 11, when it voted to recommend approval of the rezoning.

*Please see ATTACHMENT B.*

Present at the public hearing were Aldermen Hess-Mahan (Chairman), Schnipper, Fischman, Crossley, Blazar, Albright, Merrill, and Harney. Aldermen Fuller and Yates were also present. Planning Board members: Joyce Moss (Vice Chairman), Leslie Burg, Doug Sweet, David Banash, and Stuart Snyder

The petition was presented by Attorney Frank Stearns of K&L/Gates; Bob Frazier, Senior Vice President of WS Development Associates; and Richard Askin, Director of Retail Design WS Development Associates. The petitioner is proposing a number of changes to this 20-acre site which consists of eight parcels with four commercial structures. It contains a 1950's era shopping center which the petitioner wishes to upgrade. Currently the site supports a mix of seven commercial uses including a new Star Market, a movie theater, office/medical spaces, restaurants, and retail including the former Macy's building. There is a shared surface parking lot to the rear of the site abutting Hammond Pond that contains 1,319 parking spaces (130 of which are located in Brookline). The site fronts on the frontage road/carriageway on Boylston Street/Rte. 9. Relief sought includes rezoning the site from Business 1 and Public Use to



Business 4, which includes portions of the frontage road/carriageway, to construct a new 3-story, mixed-use building on a portion of 33 Boylston Street; additional restaurant uses with more than 50 seats; a 1/3 reduction in the total number of required parking stalls for an integrated development with three or more uses; a waiver of 590 parking spaces; potential improvements to frontage road/carriageway (for which the petitioner is currently negotiating a long-term lease with the Massachusetts Department of Transportation (MassDOT); various waivers relating to parking in setbacks, interior landscaping, loading; future valet parking; other related site improvement including reconfiguration of parking stalls, changes to sidewalks, landscaping and lighting; signage, and construction within 300 feet of a great pond. The proposed new building at 33 Boylston Street would replace the existing one-story structure that currently contains Century Bank and City Sports.

The petitioner intends to relocate its corporate office from Brookline to the third floor of the proposed new building. The new building is 50 feet in height plus rooftop mechanicals. The new building would maintain approximately the same setbacks along the carriageway, it projects into the rear parking area and has an approximately 1/3 larger footprint than the existing structure. A pedestrian bridge is proposed to connect the second floor of 33 Boylston to 27 Boylston Street. The petitioner has submitted conceptual building and façade improvements for 55 Boylston Street as well as a proposed new deck for restaurant use at 27 Boylston Street. The proposed plan reorients the site towards Boylston Street.

The petitioner's proposal anticipates the most intensive mix of possible uses. The tenant uses have and continue to evolve, with less emphasis on retail. The proposed mix of uses means peak parking demands will vary. The petitioner's traffic study acknowledges that the projected demand will exceed the parking supply roughly forty hours per year, although because the site is so large and self-contained it is unlikely parking will spill over onto residential streets. If the petitioner is successful in lease negotiations with MassDOT, then 60 to 100 additional spaces would be provided on frontage road. The petitioner is seeking a waiver to provide managed or valet parking during the peak period(s). The frontage road would remain one way.

The allowed by-right uses in a Business 4 and Business 1 zones are the same. Special permit uses in a Business 4 zone also are the same as those allowed by special permit in the Business 1 zone except that a Business 4 zone allows for building height up to 96 feet *by special permit* and a total FAR of 3.0. In a Business 1 district the maximum height allowed *by special permit* is 36 feet. In both districts any building over 20,000 sq. ft. requires a special permit and any building over 10,000 sq. ft. requires site plan review. In addition, a Business 4 zone would be eligible to use the Planned Multi Use Business District (PMBD) overlay as well.

The petitioner was asked to address the following issues for the working session: (*Please see ATTACHMENT C for the petitioner's responses. Note that all the referenced attachments are included, but were attached to the Planning Department memorandum of July 15, 2011.*)

- why is the petitioner seeking to rezone the entire site, not just the affected lots
- clarify similarities/differences between uses in Business 1 and Business 4 districts
- clarify the scope of jurisdiction over the carriageway improvements between the City, MassDOT, and the petitioner.

- McMahan Associates' questions about the alternative alignment of the frontage road that creates a new entrance median break from Boylston Street westbound into the frontage road and its impact on internal queuing in the carriageway and functioning of median breaks
- Planning Department's suggestion to add a bike path or multi-purpose bike/pedestrian path on- and/or off-site.
- on-site stormwater management to protect Hammond Pond
- sustainable design commitments/LEED
- long-term master plan for the site
- existing condition of the property edge bordering Hammond Pond and public access to the Pond
- promoting customers to park once and access multiple locations
- Parking Management Plan and a Travel Demand Management Plan (TDM)
- access for people with disabilities

**Public comment:**

Jane Sender, 47 Kingswood Road, President of the Newton Conservators, raised two issues: stormwater runoff and public access. Hammond Pond is filling in. The parking lot is the access to the pond and she suggested that it would be a lost opportunity if the Committee doesn't take a hard look before approving this special permit.

Janice Kahn, 63 Crestline Road, Brookline, representing the Chestnut Hill Alliance, said that various groups began visioning decades ago and some of those visions are being implemented, e.g., the plaza at the new Star Market. The Alliance is generally pleased, but they would like better access to the Pond and perhaps a boardwalk. She is opposed to valet parking because of concerns about safety given her experience with how some valets drive.

Both the Economic Development Commission and the Newton Needham Chamber of Commerce submitted letters supporting the petition.

*Working Session – July 19*

Ms. Ananth reviewed with the Committee the petitioner's responses to issues raised at the public hearing. Discussion ensued about the frontage road/carriageway. The road is owned by MassDOT and even with a lease it retains permit jurisdiction over curb cuts onto Boylston Street/Rte. 9. The petitioner's plans include stop signs, directional signage, and angled parking, which will act to slow cars. The petitioner is not proposing any additional curb cuts, but plans to alter and relocate the existing curb cuts by relocating an entrance to the site before the new building and moving an exit further east to enhance the building's commercial viability. There will be two entrances and one exit. Alderman Baker was concerned that slowing down traffic on the carriageway could create a bottleneck area. He is afraid that queuing could cause a backup onto Rte. 9. Ms. Ananth said that the stop signs will create gaps as will the signal at Tully Street to allow entry to the frontage road/carriageway. The petitioner's traffic engineer and the peer reviewer agreed that post-occupancy monitoring should be done at the new intersection.

Alderman Baker said there are many appealing aspects to the petition, but he is not persuaded about the parking. It was pointed out that with multiple uses there are short windows of time with peak demands. Until fairly recently it was a given that a vast parking lot - even if all the spaces were never used - was necessary to attract customers because they would see empty spaces. However, awareness developed about the harm and environmental costs such as increased runoff, pollution of ground water, the heat effect, etc. a sea of asphalt begot. It is becoming more the standard to plan for actual needs and manage the peak requirements. For example, there is a two- to three-hour peak window around the last weekday before Christmas, the last Saturday before Christmas, and Black Friday. Alderman Baker concurred that the management component is key. He is concerned about the future development of the Macy's building.

Alderman Fischman suggested getting rid of the angled parking on the frontage roadway and widening the sidewalk instead to promote pedestrian activity. The petitioner said the angled spaces are important, particularly since it plans smaller stores to attract small retailers for whom visibility and parking is vital. Besides there are three large trees in a pocket park that the petitioner wishes to retain; Legal Seafoods has outdoor seating; and, The Cottage, a new restaurant, may want to offer the amenity of outdoor dining. Alderman Crossley is pleased the City is discussing shared parking. It is in the best interest of the petitioner to do it well for future development of the site. The petitioner has agreed to join the 128 Business Council, which runs a shuttle bus. The petitioner has agreed to provide free valet parking to customers when the parking lot is anticipated to be over 90% full.

Alderman Fuller, who is a former President of the Chestnut Hill Neighborhood Association, wants to ensure public access to Hammond Pond. Given the addition of the frontage road/carriageway spaces, she asked if the petitioner would consider removing parking spaces near Hammond Pond to create a safer area for people to fish. The petitioner pointed out that three parking spaces were removed in order to install the bio retention area at Hammond Pond, but it would consider other proposals relative to water quality improvements and work with the City and State to implement improvements. (In 2003 the City was awarded a \$150,000 grant from the Mass Department of Environmental Protection to improve Hammond Pond; that same year the City accepted from the owners of the shopping center an easement to install and maintain stormwater management facilities associated with the Hammond Pond Stormwater Project; then a special permit was granted for removal of the three parking spaces for the City to install the bio retention cells (maintained by the petitioner) which infiltrate runoff from the central portion of the parking area prior to entering the Pond. The petitioner has installed a Vortechnic Unit and underground detention basin which treats runoff from the eastern portion of the site, as well as deep sump catch basins. In addition, Star Market committed \$150,000 for additional stormwater improvements to Hammond Pond as part of its special permit in 2003.)

Snow is and will continue to be stored at the far corner of the site near the former Macy's. In 1998 the City installed a sand filter, which the petitioner maintains. The petitioner has agreed that if the parking lot is anticipated to be over 90% full, snow will be trucked off-site. The Conservation agent has confirmed that the sand filter is working well and is not concerned about runoff from the snow storage area into the Pond.

The petitioner reiterated the impracticability of installing bike/pedestrian lanes in the parking lot. Several members of the Committee asked whether the petitioner would make a financial contribution towards bike lanes, e.g., the Department of Public Works is working with MassDOT to create bike lanes on Hammond Pond Parkway. Ms. Young explained that there is nothing relevant in this petition to require a contribution from the petitioner for bike lanes on Hammond Pond Parkway.

Alderman Baker said he is not comfortable rezoning the entire site. Ms. Young said that limiting the zoning to portions of the site could create serious problems and a potential risk for a challenge of spot zoning. It functions as and has been treated by the owners and the City since its creation as an integrated site. The Committee must decide whether the whole site is an appropriate location for a Business 4 zone.

Alderman Fischman noted that McMahon Associates had recommended a "...greater level of review prior to approving.... Ms. Ananth acknowledged that perhaps the Planning Department's concerns about parking were initially overstated. It since has softened its stance and believes that ongoing monitoring is the best way to address any parking management and queuing concerns. Alderman Hess-Mahan pointed out that the petitioners had included essentially duplicate requests for relief from the number of parking spaces required (590) and relief under Sec. 30-19(18(d) for a 1/3 reduction in the total number of required parking stalls for an integrated development with three or more uses. The Committee preferred the concept of shared parking. It saw no need to waive the number of spaces and grant the 1/3 reduction since the end result is the same. The petitioner agreed to withdraw without prejudice the request for a waiver of 590 parking spaces.

Alderman Schnipper moved approval of both zone changes and both special permits with findings and conditions contained in the draft special permit board order(s) dated August 8, 2011. Alderman Schnipper's motion to approve #161-11, #161-11(2), #161-11(3), and #161-11(4) carried unanimously, 8-0

#161-11(5) **REQUEST TO WITHDRAW WITHOUT PREJUDICE** the request in special permit petition #161-11(2) to waive the *number* (590) of parking stalls required at 33 BOYLSTON STREET, Ward 7, Chestnut Hill.

ACTION: APPROVED 7-0

The meeting was adjourned at approximately 11:45 PM.

Respectfully submitted,  
Ald. Ted Hess-Mahan, Chairman

**ATTACHMENTS:**

- A. Excerpt from 4/12/11 Land Use report re #80-11
- B. Planning & Development Board July 11, 2011 minutes re #161-11 and #161-11(3)
- C. Petitioner's Response to Public Hearing Comments Chestnut Hill Shopping Center (#161-11) Public Hearing June 21, 2011

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 Day 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](http://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 moved to close the hearing, which motion carried unanimously.

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The Committee held a brief scoping session to flush out any questions it needed addressed 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 asked for 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. He said no additional grading was planned and pointed out that the site had not yet been backfilled to the final grade. Noting the cost involved for additional plans, 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. The Committee asked for clarification re the definition of "basement."

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



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**CITY OF NEWTON, MASSACHUSETTS**  
**Planning and Development Board**

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**MEETING MINUTES**

July 11, 2011

**Full Members Present:**

David Banash  
Leslie Burg  
Tabetha McCartney  
Joyce Moss  
Doug Sweet  
Scott Wolf

**Alternate Members Present:**

Howard Haywood  
Eunice Kim

**Staff Present:**

Candace Havens, Director of Planning, ex-officio member  
Trish Guditz, Housing and Rehabilitation Program Manager  
Ouida Young, Associate City Solicitor

**Public Present:**

Bill Renke  
Frank Stearns  
Bob Frazier  
Josephine McNeil  
Michael Lepie

T. McCartney, Chair, called the meeting to order at 7:30 p.m.

**Planning Board**

- 1. Public Hearing and Action:** Continuation of public hearing held June 21, 2011 for #161-11 W/S DEVELOPMENT ASSOCIATES LLC petition for a CHANGE OF ZONE from BUSINESS 1 to BUSINESS 4 for land shown as cross-hatched area on a plan entitled Plan of Zoning Change Chestnut Hill shopping Center, Newton Mass.", by Feldman Land Surveyors, dated May 23, 2011 and known as Sec. 63, Blk 37, Lots 18A, 22, 25, 26, 27, containing ~20 acres of land at 1-55 BOYSTON STREET< Ward 7, Chestnut Hill and #161-11(3) CHESTNUT HILL SHOPPING CENTER LLC petition for a CHANGE OF ZONE from PUBLIC USE to BUSINESS 4 for land containing ~1.72 acres of land, located in Ward 7 in Chestnut Hill, shown as Parcels A and B on a plan

Setti D. Warren  
Mayor

Candace Havens  
Director  
Planning & Development  
Ex-officio member

Kathleen Cahill  
Community Development  
Senior Planner

**Members**  
Tabetha McCartney, Chair  
Joyce Moss, Vice-Chair  
David Banash  
Leslie Burg  
Howard Haywood  
Doug Sweet  
Scott Wolf

1000 Commonwealth Ave.  
Newton, MA 02459  
T 617/796-1120  
F 617/796-1142

www.newtonma.gov

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entitled "Zoning Change Chestnut Hill Shopping Center, Newton, Mass" by Feldman Land Surveyors, dated May 23, 2011.

J. Moss chaired this portion of the meeting and called for comments of the proposed rezoning. D. Banash expressed concerns about the cumulative effects of new development along Route 9, particularly with regards to traffic impacts and expressed his interest in a master plan or vision for the area. He also expressed interest in formalizing access to Hammond Pond to ensure public use. L. Burg agreed that continued access to the Great Pond is desirable and so is a master plan, but didn't want to see the project review process held up due to lack of a master plan. D. Sweet also concurred with these interests and asked about the public right to access the pond.

O. Young pointed out that rezoning with exchanges of value for zoning action run afoul of contract zoning regulations and could be challenged. She stated that rezoning requests cannot be conditional; they must be approved or not. However, she noted that the Board could act on the zoning request and also provide other comments for consideration to the Board of Alderman. She further stated that there must be a logical nexus between the special permit being requested and the action being requested of a developer. Regarding access to the pond, she noted that the right to use is subject to public regulation in that it is a "Great Pond" but that the question of access, "All persons shall be allowed reasonable means of access to such ponds for the purposes aforesaid" at any particular point on a great pond is trickier. She also suggested that since there is not likely a "rational nexus" between the special permit(s) that will be sought and improved access to Hammond Pond, it would be risky for the City to require that improved access for individuals be included in the special permit.

D. Banash questioned the extent to which there was a public right of access on the petitioner's property on Hammond Pond, despite the above, whether if it did exist it was sufficient for the public's enjoyment generally or for persons with disabilities, and that to the extent not in violation of principles of "contact zoning" or other legal prohibitions the city should seek more express access for such purposes in the subject petition. If it is not appropriate to insist on any such concessions in the context of a zoning change, he said that the question should be reexamined in the context of the specific special permit for which the petitioner applies.

C. Havens explained that a family recently offered to fund some improvements to the pond and the DCR is currently undertaking a study of the water quality and environmental concerns that will dictate how and where changes can occur. She considered that project proposal to be distinct from the shopping center proposal, though the respective proponents would, at some point, benefit from collaboration. She also pointed out that the vegetation alongside the pond has an ecological purpose in that it filters run-off before it enters the pond. She considered the *Comprehensive Plan* to be an appropriate guide to

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assessing whether the rezoning is fitting and concluded that there is consistency with its goals.

B. Frazier stated that the developer will continue to cooperate in allowing access to the pond, as the owners of the property have done for many years, even if the access is unrelated to the business use of the property [the person who I recall said that was the owner's rep, not the attorney. It might be useful to identify those roles in the minutes]

F. Stearns reiterated the long history of such cooperation and the owners' long history of stewardship of the pond, which they intend to continue. He also saw the Comprehensive Plan as functioning as a master plan for the area.

D. Banash requested that the petitioner provide a plan showing which parcels were registered land and unregistered land relative to the issue of the public's right of access.

J. Moss recalled the Comprehensive Advisory Committee discussing the different aspects of implementation and that master plans would likely follow adoption of the *Plan* itself. While she also would like to have seen a master plan for this area, she felt a timely response the petition is needed. She reiterated that the purview of the Board is to vote on the rezoning request and believes rezoning of the entire site is most appropriate, given surrounding zoning and existing conditions. Outside of the rezoning request, she wanted to convey her concerns to the Board regarding traffic, parking and run-off. While she appreciated the shared parking analysis, she had concerns about over-parking of the site, particularly at the holidays.

L. Burg was reassured by the statements made by the petitioners that continued access will not be a problem.

D. Sweet also wanted to make sure the concerns of people with disabilities would be taken into consideration with development of the center and access to the Great Pond.

F. Stearns explained that the rezoning of the carriageway was needed to allow for private use in what is now a public use zone. It also is intended to reconcile two zones in which the development takes place.

D. Sweet made a motion to close the public hearing, seconded by L. Burg (5-0).

L. Burg made a motion to approve the rezoning from BU1 to BU4, seconded by D. Sweet (5-0).

C. Havens moved for approval of the rezoning of the carriageway from PU to BU4, seconded by D. Sweet (5-0).

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The Board also wished to forward the following comments to the Board of Aldermen to consider in its deliberations:

- 1) Access for people with disabilities should be considered in design of the project.
- 2) The adequacy of parking should be carefully evaluated with special consideration given to management at peak season.
- 3) Access to the Great Pond should be continued and enhanced, if possible, consistent with the approval of key governing bodies, such as the Conservation Commission.

The meeting was adjourned at 9 p.m.

**PETITIONER'S RESPONSE TO PUBLIC HEARING COMMENTS  
CHESTNUT HILL SHOPPING CENTER (#161-11)  
PUBLIC HEARING JUNE 21, 2011**

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CITY CLERK  
NEWTON, MA 02459  
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1. Comment: Address the justification for the Change of Zone to Business- 4 and whether it should be for entire Shopping Center Site or for limited 33 Boylston Street/Carriage Way Project Area.

*RESPONSE: The change of zone for the entire 20 acre +/- site (excluding an unimproved 22,569 sq foot parcel in the SR-1 zone fronting on Hammond Street) promotes the uniformity requirement of the Zoning Act, MGL. C. 40A (See Sylvania v. City of Newton 544 Mass 428). Also, the site is operated holistically and thus should be in the same zoning district rather than different zoning districts. The Board of Aldermen recently recognized this principle in its change of zone approval for Chestnut Hill Square. The Petitioner has presented the transportation demand management and the shared parking analysis site wide, not based on carving up of a portion of the site. The Height Context Plan also presented at the public hearing puts the height of the proposed building into the context of the heights of all the other existing buildings on the site. The placement of the proposed building on the site is also consistent with the setbacks of the existing site buildings. All of these consistencies, together with the reasons below, support having the entire business section of the property treated uniformly in the Business-4 zone.*

*The site is distinguishable visually and in it uses from many of its surrounding parcels of land and the Great Pond, and has been treated as separate and distinct historically by the City and surrounding neighborhoods, dating back to its creation in the late 1940's. The rezoning of the site would not be a singling out of a parcel of land for different treatment from that accorded to similar surrounding land indistinguishable from it in character. By contrast, the approach of only rezoning the project area to Business -4 is a singling out of a distinct area for different treatment which risks challenge as "spot zoning." Also, the project area is not presently subdivided into its own legal lot and the city has consistently treated the site as one lot, and, thus, has consistently in each special permit ignored the interior lot lines on this site regarding zoning regulation for the very reason that the site is owned and operated as one mixed use center. The project area was created only for purposes of the special permit scope. The parking permits are site-wide. The Board structured the Star Market Special Permit the same way. If the Planning and Development Board and the Board of Aldermen choose to support this project they should not do so in a manner which subjects the approval to a spot zoning legal challenge by a third party. There is a substantial relation between the requested change of zone and the furtherance of the general objectives of the Zoning Act, MGL. C. 40A, and the City's Comprehensive Plan discussed below.*

*Thus, there is a reasonable basis for the rezoning; it is not arbitrary or unreasonable and it would have a substantial relation to the public health, safety, morals and general welfare. The decision of the Board of Aldermen, acting as a legislative body, after advice from the Planning and Development Board, to rezone the site from Business 1 to Business 4 would be justified because there are rational bases substantiating the decision. Also, legislative acts enjoy the*

*Business -4 zone allows greater height and FAR than in the Business 1 zone, but in both zones any building greater than 20,000 sf (as is proposed) requires a special permit and any buildings greater than 10,000 sf requires site plan review. Furthermore, in both zoning districts any new building or change in use requires compliance with the Zoning Ordinance's parking requirements. Thus, there is the same City review and approval process for this project and future projects whether the site is in the Business 1 or Business 4 zone. Moreover, the uses in the Business 1 and Business 4 zones which are allowed by right or by special permit are identical. This project complies and will comply with the use (by right and with a Special Permit for restaurants over 50 seats) and dimensional requirements of the current Business 1 zone, except for height.*

3. Comment: Address the scope of jurisdiction over the Carriage Way improvements between City of Newton and Mass DOT.

*RESPONSE: The Petitioner has been designated to get exclusive, long term lease rights to the Carriage Way. The Petitioner will be able to make pedestrian and vehicular improvements to the Carriage Way. MassDOT will continue to own the Carriage Way and will retain its regular permit jurisdiction over curb cuts onto the state highway system.*

*The Petitioner presented the site plans with 5 alternatives as follows:*

*Sheet C5.1 depicts the Building Project by itself with no associated changes to the Frontage Road.*

*Sheet C5.2 depicts the Frontage Road project by itself with no building project and no changes to the Boylston Street median breaks.*

*Sheet C5.3 depicts doing the Frontage Road project by itself but is "Alt # 1" because it includes changes to the Boylston Street median breaks.*

*Sheet C5.4 depicts doing the Building Project and the Frontage Road project together as an integrated project with no changes to the Boylston Street median breaks.*

*Sheet C5.5 depicts doing the Building Project and the Frontage Road project together as an integrated project including changes to the Boylston Street median breaks (Alt # 1).*

*For the alternatives that involve alteration of the Frontage Road (C5.2, C5.3, C5.4 and C5.5) the Petitioner will secure MassDOT permission. The Petitioner will evidence such permission before implementing the Frontage Road improvements. If the Building Project and the Frontage Road project are done together (C5.4 or C5.5), the Board of Aldermen have authority to grant a special permit and site plan review because some of the created parking spaces will straddle the lot line and a parking waiver type approval is required for that under NZO sec. 30-19. If the Board of Aldermen wants to add the Frontage Road parking spaces to the Site's parking supply ("C" in the city's formula under NZO sec 30-19), then a special permit is required. These sec 30-19 elements are confirmed in the Zoning Review Memorandum from the CZCO dated May 27, 2011 contained in the Planning Department's Public Hearing Memorandum.*

4. Comment: McMahon Peer Review raised questions about the alternative Carriage Way alignment that creates a new entrance median break from Boylston Street westbound into the Carriage Way and the effect of any internal queue in the Carriage way on the functioning of the median breaks.

*RESPONSE: This median break exists today and the Carriage Way improvements simply propose to provide better alignment, clearly defined travel lanes, and implement traffic control to improve the safety of this location. While there is no traffic control today, leading to conflicts between traffic on and entering the Carriage Way, the proposed improvements will place Carriage Way traffic under STOP control and allow Boylston Street westbound entering traffic the right of way. This is necessary to assure that traffic will not back up onto Boylston Street westbound.*

*McMahon Associates, Inc. commented that this proposed traffic control could have an adverse effect on the adjacent Carriage Way intersection with the driveway to 33 Boylston Street. There are several reasons why this condition will not occur. The analysis model used to calculate the projected level of service (LOS) at this location does not take into consideration the effects of the nearby traffic signal at the Boylston Street and Tully Street intersection. This traffic signal serves to break up the flow of traffic on Boylston Street and creates long gaps in the flow of traffic entering the Carriage Way. These gaps will be used by traffic proceeding through the STOP sign on the Carriage Way and resulting in delays and queues much shorter than as modeled. Another reason is that the analysis model is not applicable to a situation where through traffic (Carriage Way) has to yield to traffic from a side street (Boylston Street entrance). If the geometry in the model were reversed to reflect the Boylston Street entrance as the main road and the Carriage Way as the side street, then in fact desirable levels of service are predicted for the Carriage Way (LOS B during both weekday PM and Saturday midday peak hours) with maximum queue lengths of two to three vehicles, well within the tolerance of the Carriage Way and consistent with the traffic calming objectives of the site plan.*

5. Comment: Consider adding to the Site Plan an element of a bike path or multi-purpose bike/pedestrian path.

*RESPONSE: The Petitioner supports safe access to the Property by persons traveling on bicycle. As noted in the Planning Department's Public Hearing memorandum, there are safety concerns with an active bike lane through an active parking lot. The Petitioner will install additional bike racks in the project area. The Petitioner is aware of conceptual ideas and plans by others to create public access enhancements to Hammond Pond on property owned by the Commonwealth of Massachusetts DCR. The Petitioner is being very careful to make sure that the design and implementation of this special permit project not interfere with or impede in any way such ideas, plans or other off site improvements by others related to Hammond Pond. In that regard, the Petitioner will continue to cooperate with the City of Newton as part of such long range planning and will consider bicycle and walking paths as part of its planning.*

6. Comment: Address stormwater management on the Site to validate that neither the Project nor the property are causing environmental degradation of Hammond Pond.

**RESPONSE:** *This comment is addressed in a separate narrative entitled Stormwater Improvements; Ongoing Cooperation with City; and Ongoing Voluntary Maintenance*

7. Comment: Demonstrate the commitments being made regarding the Building and/or the Site design that make a "significant contribution to the efficient use and conservation of natural resources and energy."

**RESPONSE:** *The Proponent submitted a Sustainable Design memorandum dated June 15, 2011 with its special permit application. This response to comment supplements that memorandum. The proposed building design and site improvements as originally submitted to the City as a part of this application does indeed address and incorporate important sustainable design features. However, towards appropriately advancing both the clarity and quality of this proposal, the design team now further delineates its key design choices.*

Site Improvements - Surface Materials

*It has been suggested that 'surface materials' as installed within the project's site improvements area be selected with attention to both qualitative and sustainable design aspects. This would include: 1) use of higher quality materials towards an enhanced pedestrian experience; and, 2) use of lighter-colored, semi-reflective materials towards reducing "heat island effect". Please refer to the drawing entitled: "Illustrative Diagram of Surface Materials".*

>Site Landscaping

*It is worth recalling that this property is an existing older shopping center but with substantial and generally mature landscaping, including certain specimen trees and quality plants. This represents a fortunate opportunity to supplement and improve what is already worthy within the existing natural landscape. The proposed new landscaping has been reviewed in detail with the City's tree warden and we understand that his input has been harmoniously incorporated into the proposed design.*

*The landscape areas within the limits of work boundary include new trees, planter beds, shrubs and flowers. The areas bordering the buildings and/or sidewalks are designed in concert with the architectural elevations and retail storefronts. Landscape areas away from buildings which are typically located within parking areas serve to reduce scale, break-down, and screen asphalt pavement into smaller areas. Landscaping also serves to visually define travel ways and provide shade upon the parked surfaces. Landscaping materials are selected with several goals in mind, including: scale, seasonal variety, color, and co-habitability.*

>Pedestrian Sidewalks

*The basic sidewalk pallet will be greatly improved as compared to existing conditions. Materials and amenities would include: scored white concrete (field), special pattern & band design (accent; typically brick or concrete pavers), and new curbing (typically granite or pre-cast). The use of accent paving creates a visual effect of appropriate pedestrian scale upon an otherwise relatively long and wide sidewalk, and within open pedestrian plazas.*

*Sidewalks also include: trees, planter beds, pedestrian scaled lampposts w/ banners, tree grates, large planter-flower pots, and public seating (benches and/or chairs).*

*An important side benefit of using these lighter, brighter materials, together with trees, plants, and selective building canopies adjacent, is to provide a significant measure of reflectance and shade. This all contributes to reduced heat gain on this site.*

*>Pedestrian Crosswalks*

*Pedestrian crosswalks located at key crossing points will be constructed of special paving materials, typically unit pavers, stamped & colored concrete, and/or banding material. The visual clarity afforded by a material other than asphalt provides clarity and therefore safety for pedestrians crossing vehicular travel lanes.*

*>Porous Paving*

*Porous paving provides a surface that allows stormwater runoff to infiltrate through a monolithic surface material, or through gaps maintained by a spaced unit paver system. Infiltrated runoff may travel through filter material and ultimately into the subsurface. This practice promotes recharge of the groundwater and improved water quality of any runoff that may not infiltrate and be collected in the sub-drain system.*

*>Impervious Paving - Special*

*The majority of vehicular surface area is monolithic pervious paving. The site design calls for use of standard asphalt within most of the vehicular parking area and circulation lanes, as located within the project boundary (i.e., the vehicular areas around 33 Boylston St, and within the carriageway).*

*However, some limited and specific areas would be paved with a non-standard asphalt that is not typical "black asphalt", rather, a special "colored asphalt" that is mixed with colored stone aggregate (e.g., North Shore rose stone) and/or color mix-additives. These specific areas could include some parking stall surfaces to visually coordinate with nearby porous paving treatment. Another possible location would be select driving lanes, such as the driving aisle located between 33 and 27 Boylston Street. This area has been referred to as a "woonerf"-like area, and such visual treatments define these spaces as special and distinct. The final design configuration of these feature materials requires further design study to ensure effective design purpose, practical means of installation, and long term maintenance practices incorporated into a final design. A potential side benefit of "colored asphalt" is that as compared to typical black asphalt, there is a potential to reduce "heat island effect".*

*Building Design*

*The corporate offices of WS Development that would be located within 33 Boylston Street can be designed to meet or exceed the minimum requirements of LEED Silver for commercial interior (CI) fit-up.*

8. Comment: Put the current Project into a context of the Petitioner's more long term Master Plan vision for the Property.



*RESPONSE: The Petitioner presented at the public hearing and at all the other neighborhood and commission meetings (EDC, Urban Design, Conservation, Disabilities, Chestnut Hill Association) the evolution of the modernization of the center. The presentation included a description of the Star Market project (2003); the petitioner's contributions to the City's Hammond Pond Phase 1 project (2007); the Cottage Restaurant special permit (2009) and the recent parking lot improvements (sidewalks, crossings, Fire Lane, etc.). This project represents the next phase of that modernization. The proposed building is in scale with existing buildings at the site. The proposed uses are complementary uses to existing uses at the site and to the Shared Parking model. The Petitioner is aware that there is community interest in the re-occupancy of the Macy's building. The Petitioner is also aware of the level of community interest in activation of public access to Hammond Pond. The Petitioner will continue to cooperate with the community and the city as its plans evolve.*

9. Comment: Address the existing condition of the Property edge bordering Hammond Pond and the public's access to Hammond Pond.

*RESPONSE: The special permit project area does not extend back to the edge of the Pond. The parking lot improvements have been carefully designed to provide no net loss of on site parking supply. The Planning Department's Public Hearing Memorandum notes its strong support for use of a shared parking model to increase the density of the site without building new surface parking and without having excessive surplus of parking during non peak periods. As part of this balance, it is important to maintain the existing parking spaces along the Pond edge that are outside of the special permit project area. Further, the Petitioner reconfirms its voluntary commitment to the city of Newton to maintain the city's existing stormwater management infrastructure presently located in the site parking lot. That maintenance commitment is described in more detail in response to the Stormwater question # 6 above.*

*The Petitioner views the adjacency of the Pond as a mutual benefit to both the public and the Shopping Center. The Petitioner expects that as it continues to improve and upgrade the Center, its tenants and customers as well as the public will continue to use the Center parking lot as a means of access to enjoy the Pond and the adjacent DCR reservation. The petitioner voluntarily brought this special permit project before the city Conservation Commission even though the work is outside the jurisdictional buffer zone. The Conservation Commission issued a Negative Determination of Applicability and endorsed the Proponent's construction mitigation plan to prevent any erosion or other runoff issues affecting Hammond Pond.*

10. Comment: Address ideas to promote customers and visitors to park once and access multiple locations both on site and in the regional neighborhood.

*RESPONSE: The Petitioner just completed a set of sidewalk, crosswalk and other pedestrian improvements within the site and, with the consent of the Commonwealth of Massachusetts DCR, to the area of Hammond Pond Parkway near the site entrance. The Petitioner agrees to supplement these improvements by making way finding signage that informs visitors of available walking routes to other nearby properties. As provided for in the*

*petitioner's TDM Plan, the petitioner will maintain its participation in the Route 128 Business Council whose primary mission is the development of transit management including shuttle buses. In addition, the Petitioner believes strongly that the activation of the Carriage Way with the significant capital investments in sidewalks, crosswalks, landscaping, traffic calming and other street scape improvements along Boylston Street side of the property will have a spill over effect of increasing utilization of the existing locations for protected pedestrian crossing of Boylston Street (@ Hammond Street and at Tully Street).*

11. Comment: Provide the proposed TDM and Parking Management Plans.

*RESPONSE: Copies Attached*

12. Comment: Describe the elements of the Project that support access by persons with disabilities.

*RESPONSE: The Property is required by zoning to have 16 HC parking stalls. As confirmed by the Zoning Review Memorandum, the Proponent's Site Plan shows 33 HC parking stalls, double the amount that is required. Further, the Proponent agrees to add some HC stalls to the Carriage Way layout based on input received from the Mayor's Commission on Persons with Disabilities. The Proponent further agrees to meet with the Mayor's Commission with final design drawings to continue the positive dialogue about important access issues. In that regard, the Petitioner and architect will consult a specialized consultant to assure that the final site and building design meets all the requirements of the Americans with Disabilities Act and related handicapped accessibility Code requirements.*