

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, SEPTEMBER 13, 2011

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

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

#209-11 CANDACE HAVENS recommending the appointment of GLORIA GAVRIS as the Boston College Chestnut Hill campus representative to the Boston College Neighborhood Council pursuant to condition #13 of special permit #101-93.

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: Ms. Gavris joined the Committee. She is the President of the Chestnut Hill Association and as such will serve as the Boston College Chestnut Hill campus representative to the Neighborhood Council, filling the position previously held by former Alderman Verne Vance. An attorney with a concentration in residential real estate practice, she sits on a number of non-profit boards of directors and was a member of the Economic Development Commission. The Committee thanked Ms. Gavris and was pleased to confirm her appointment.

Public Hearings were held on the following items:

#210-11 BONNIE & DAVID RISHIKOF petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND A NONCONFORMING STRUCTURE to construct a 2-story rear addition, increasing the Floor Area Ratio from .36 (as of 10/15/11, when .57 is allowed by right) to .6; add a shed dormer; reconfigure the exterior front landing and stairs in the front setback ~~and construct a retaining wall greater than 4 feet in the rear setback~~ of an existing single-family dwelling at 56 WALDORF ROAD, Ward 5, on land known as SBL 54, 47, 3, containing approx. 5,403 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-15(u)(2), 30-15(t)(1) and (3), ~~30-5(b)(4)~~ of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 5-0-2 (Blazar, Crossley abstaining)
WITHDRAWAL WITHOUT PREJUDICE FOR RELIEF TO CONSTRUCT A
RETAINING WALL GREATER THAN 4' IN THE REAR SETBACK
APPROVED 7-0

NOTE: Architect Timothy Burke and Mr. Rishikof presented the petition. The petitioners have three young children and like and want to remain in their neighborhood; however, the existing 1930's Tudor house is small and they wish to expand it by adding a two-story addition to the rear. The proposed addition includes a mud room, larger kitchen, first-floor bathroom and second-floor master suite, for which relief is necessary to increase the FAR from .36 (calculated under the new FAR effective October 15, 2011 (when the by-right FAR will be .57) to .6. Additional relief is sought to reconfigure the front landing and stairs, moving the front door and

a window to center the stairs to the new doorway, which will extend the front landing and stairs one more foot into the already nonconforming front setback and to locate on the rear of the half story above the second floor a shed dormer greater than 50% of the length of the exterior wall of the story next below with the sides of the dormer closer than 3 feet from the vertical plane of the intersection of the floor and main building end wall nearest the dormer. With the proposed addition the square footage of the house will increase from 1,595 to 3,253 square feet. The proposed retaining wall has been reduced to four feet, so the petitioners no longer need that relief.

The size of the addition triggered a review by the Engineering Division. Surface runoff will be collected in an on-site drywell system.

Alderman Crossley was troubled by the massing at the rear and suggested the addition might be done more sensitively to lessen the appearance of mass, particularly the layer of flat and hip roofs. Mr. Burke said he tried different designs but they made the attic bedrooms too small, as proposed one room is 9.5 x 13 feet and the other is 10 x 13 feet. He noted that the abutting property to the rear of the site fronts on Route 9 and is sited much higher, essentially looking over the subject property. That house has a by-right shed dormer on the rear.

The petitioners submitted ten letters of support from abutters at 19, 26, 27, 30, 40, 46, 51, 52, 65, and 69 Waldorf Road. There was no public comment and the public hearing was closed.

In working session, Alderman Crossley asked if there are separate criteria for granting relief for dormers. Ms. Young said no, the general criteria for granting a special permit enumerated in Sec. 30-24 apply. The Half Story/Dormer Subcommittee, which was chaired by Alderman Hess-Mahan and whose work led to a new ordinance regulating dormers, acknowledged the legitimacy of the low-cost and comparatively high functionality of the shed dormer which allows owners the option to expand existing homes. Goals of the subcommittee included allowing such dormers while still preserving the character of existing housing and preventing the appearance of an uninterrupted wall plane by requiring a roof line overhang or other architectural feature to differentiate the stories and/or the use of a skirt to break up the mass. One could argue that this particular proposal is not visible from the street and that the hip roof breaks up the roof, actually lessening the appearance of a three-story mass. The Planning Department memorandum of September 9 included a neighborhood comparison chart. The subject property with the proposed addition would be the largest in square footage and FAR. However, the Planning Department noted that the figures were a rough approximation of the actual FAR of the surrounding properties. The topography of this neighborhood is such that many of the homes have basements that would count towards FAR under the new ordinance effective October 15. Also, many of the homes have steeply pitched roofs which would have additional square footage counted in the attic. There was a brief discussion about the new FAR requirements and some issues that may be problematic e.g., the Planning department cannot provide accurate FAR for each home in a neighborhood. In this instance, it may be more helpful to calculate the FAR under the current calculation method, which means this house with the addition as proposed would have a FAR of .48. The Chairman suggested that including streetscapes as part of the special permit presentations might be helpful.

Aldermen Schnipper and Harney noted the importance of neighborhood, citing the Comprehensive Plan's goal that the housing stock should accommodate today's families and allow them to remain in their homes. Alderman Baker said it is not what brings the project to the table but its impact. He pointed out that another goal of the Comprehensive Plan is to preserve existing modest housing. One of the purposes of zoning is to maintain stable neighborhoods.

The existing façade is brick and stucco. There is a question of whether the brick, which is a somewhat unusual type, can be repaired without looking patched. The petitioners may end up painting it to match the rest of the house which will be clad in HardiPlank. The petitioners were asked to provide revised elevations showing façade materials. (*Note: Revised elevations were submitted on September 14, 2011.*)

Alderman Merrill said this is a reasonable proposal and moved approval finding that the expansion of the stairs and landing into the front setback by one foot is not substantially more detrimental since they are already in the front setback; the expansion of the nonconforming FAR is not in derogation of the size, scale, and design of other homes in the neighborhood and is located in the rear, not visible from the street; the proposed dormer will not adversely affect the neighborhood because it is located on the rear, not visible from the street, and adjacent to an existing structure with a similar shed dormer; and, it furthers the goal of the Comprehensive Plan by altering an existing twentieth-century home to accommodate the needs of today's family.

Alderman Merrill's motion carried 5 in favor, none opposed, with Aldermen Blazar and Crossley abstaining. A request to withdraw without prejudice the relief no longer needed for a retaining wall greater than four feet in the rear setback was approved unanimously.

#211-11 EASTERN BEVERAGE GROUP/EMK NEWTON CENTRE REALTY, LLC
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to
EXTEND/ALTER A NONCONFORMING USE from a retail market to a retail
liquor store with associated signage at 543-545 COMMONWEALTH AVENUE,
Ward 7, on land known as SBL 73, 45, 19, in a district zoned MULTI
RESIDENCE 1. Ref: special permit #166-99, Sec 30-24, 30-23, 30-21(b) of the
City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; HELD 7-0

NOTE: Attorney Laurance Lee and petitioner Anastasios Giannopoulos presented the petition. Mr. Giannopoulos owns Brookline Fine Wine & Gourmet, located at 27 Harvard Street in Brookline, a gourmet food and high end package store, which specializes in gift baskets. He wishes to open a similar store in Newton in a 1400 square-foot portion of space that was part of Gordon & Alperin, a kosher butcher that is downsizing. The space is located in a legally nonconforming commercial block that also contains a bakery and a pizza shop. The block is surrounded by residences. There is another legally nonconforming commercial block across the street. In 1999 the Board granted a special permit for the butcher to sell kosher wine and beer; however, the holder of that license allowed it to lapse. The petitioner is seeking a special permit to change from one nonconforming use to another nonconforming use because Massachusetts

case law has determined that a change from one type of liquor license, in this case beer and wine, to another, full liquor, constitutes a change in use under zoning.

Initially, the proposed hours of operation were 9:00 AM to 11:00 PM, Monday through Saturday and Noon to 8:00 PM on Sundays. The petitioner has amended the proposed hours to 9:00 AM to 10:00 PM, Monday through Saturday (Sundays hours remain Noon to 8:00 PM). There is no parking waiver associated with the petition. Signage would be within the existing sign band and consistent with the other signage on the building.

Each business has a small dumpster in the rear of the building. Trash is picked up once a week. The petitioner has a contract with a waste company that picks up recyclables as well as trash and there is room in back for additional small dumpster for the recyclables. Deliveries are usually once a week and would be through the front door from the carriage lane. The petitioner anticipates three employees on the largest shift, with an additional person to help when there is a delivery.

Mr. Lee sent notices to abutters to abutters within 300 feet of the subject property inviting them to a neighborhood meeting on September 7. Two abutters attended along with Alderman Fuller. Alderman Schnipper said she is troubled about allowing a full liquor license in a residential neighborhood particularly given its proximity to Boston College. What if the gourmet food element is not successful and the business shifts to a full package store? Aldermen Harney and Merrill share her concerns. Alderman Blazar wanted to know whether the proposed hours of operation are comparable to the other businesses. He noted that the butcher closes on Saturdays and at 5 or 6 PM. The bakery is not open on Mondays and also closes early in the evening. Alderman Merrill asked if there is a full liquor license available in the City. Mr. Lee said the petitioner has a purchase and sale agreement with a license holder who is willing to sell his license if the special permit is approved. As to the concern about people purchasing alcohol and consuming it outdoors at the pizza shop's café tables, Mr. Lee said the pizza shop has a beer and wine license, besides, the City does not allow outdoor drinking. The pizza shop is open until 10PM.

Mr. Lee said the petitioner is open to having a trial period for hours of operation. If a number of neighbors have problems with noise and/or traffic at certain hours Mr. Giannopoulos is willing, within the parameters of sustaining his business, to be flexible. Mr. Giannopoulos stressed that the store will offer high end wines, craft beers, liquors, cheese, and gourmet foods. He will not stock the types of beer usually consumed by students. He couldn't buy it in quantities to sell it as cheaply as stores with a broader consumer base. He does not sell lottery tickets in Brookline and will not do so in Newton either.

Public comment:

Samuel Katzman, 24 Irving Street, is one of the two neighbors who attended the neighborhood meeting. He is impressed with the good intentions of the petitioner, but the proposed hours of operation are a problem. Most people who will patronize this type of business will do so in the day or early evening. Cliental after that would likely be students. The Boston College shuttle

passes this block between its two campuses. Parking is a problem on certain days because of Temple Emmanuel and the corner of Irving Street and Commonwealth Avenue can become congested. He also is concerned about the stale smell from bottles returned for recycling.

(Mr. Giannopoulos said the law requires bottles to be rinsed out. Mr. Giannopoulos is willing to have employees park across the street near the Newton Squash and Tennis Club.)

Gordon Megrian, a 35-year resident at 564 Commonwealth Avenue (and owner of 565-567 Commonwealth) read the attached statement. That concluded the public hearing.

In working session, the Committee was joined by Alderman Baker, who is concerned about the proposed use. He said that Alderman Fuller had expressed concern about the proposed hours. He was troubled by what he felt was a premature draft approval board order attached to the Planning Department memorandum of September 9. The Chairman explained that it was a document for the Committee to work from and that virtually all the department's land use memoranda contain draft board orders for that purpose. Committee members asked if it were possible to allot a percentage of space to particular items. It became clear that the Committee was struggling with conditions around the proposed use and the possibility of somehow ensuring that the proposed business model would not be modified to something else over time. Ms. Young said that, if they were agreeable, she would meet with Messrs. Lee and Giannopoulos to attempt drafting language to address concerns expressed this evening. The Committee held the item 7-0

#212-11 MATTHEW S. & RENEE L. LEVIN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE to create a garage, an indoor basketball court and game room in an existing detached carriage house at 28 SARGENT STREET, Ward 7, on land known as SBL 73, 8, 10 containing approx. 46,990 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 30-24, 30-23, 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The petition was presented by Mr. Levin, Architect Michael Collins and Project Manager Dean Poritzky. The petitioners are seeking a special permit to expand an existing carriage house, which is nonconforming with respect to ground floor area, building height, and number of stories. The existing carriage house has a ground floor area of 1,282 square feet, where 700 square feet is allowed by right. It is 30.1 feet tall, where a maximum height of 22 feet is allowed by right. The proposal would increase the ground floor area from 1,282 square feet to 1,755 square feet. Calculations indicate that the carriage house qualifies as a nonconforming two-story structure.

The proposed 874 square-foot addition would be constructed on the west side of the carriage house. The interior contains a basketball half court, bathroom, and two-car garage on the first floor with recreational space on the second floor. New dormers are proposed on the east and west ends to provide additional head room for the second-floor space. The dormers mimic the style and dimensions of the existing dormer. The Senior Preservation Planner has reviewed and

approved the proposal administratively. The Historical Commission supports the reuse and preservation of historic carriage houses such as this one.

The east side of the carriage house has a stand of 40-foot mature trees that the petitioners do not want to lose. There are trees on the west side as well, but these were planted by the petitioners who will replant them elsewhere on the property. The abutter directly impacted is on the west side of the property at 48 Sargent Street. This abutter was granted a special permit in November of 2006 to expand and use an existing carriage house for a private garage exceeding 700 square feet. This proposal will bring the petitioners' carriage house 5.7 feet from the westerly lot line. The abutter's carriage house is approximately 8 feet from the petitioners' lot line. The petitioners spoke with the abutter who has no objection to their petition.

There was no public comment and the hearing was closed.

The Committee agreed the proposed addition is well designed and complements the existing carriage house. Alderman Schnipper moved approval finding that the proposed addition is not substantially more detrimental than the existing structure because it is well screened and will not have a significant visual impact on the surrounding properties; the addition is architecturally consistent with the existing architecture and preserves an historic carriage house. Alderman Schnipper's motion carried unanimously, 7-0.

#213-11 GALINA SLEZINGER/DAVID T. ZUSSMAN, TR. petition for a SPECIAL PERMIT to expand an existing restaurant to allow a portion of the restaurant to be used as a function room on certain evenings and to waive the parking requirements associated with a restaurant greater than 50 seats at 54-57 UNION STREET, Ward 6, Newton Centre, on land known as SBL 61, 36, 7, in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-11(d)(9), 30-19(d)(13), and 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED

NOTE: This item will be reported out when the Committee takes an action.

The meeting was adjourned at approximately 11:05 PM.

Respectfully submitted,

Alderman Ted Hess-Mahan
Chairman