

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 11, 2011

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

#148-11(2) CONSTANTINE TALEAS, TRUSTEE OF the BORDER TRUST 06 u/d/t dated May 1, 2006 and CONSTANTINE TALEAS, TRUSTTEE of the ELM TRUST 06 u/d/t dated November 20, 1996 petition for a Special Permit/Site Plan Approval and to extend a Non-Conforming Structure to combine three legally nonconforming lots into one conforming lot and to extend the legally nonconforming structure at 115-119 ELM STREET by attaching a 3-story mixed-use building with commercial space on the first floor and 4 dwelling units on the second and third floors, which will increase both the Floor Area Ratio, height, and number of stories, and to waive 2 parking stalls and certain dimensional parking, screening, and lighting requirements at 8 BORDER STREET and 111 and 115-119 ELM STREET, Ward 3, West Newton, on land known as Sec 33, Blk 15, Lots 29, 30, 31, containing a total of ≈11, 044 sq. ft. of land in a district zoned Business 1. Ref: Sec 30-24, 30-24(f), 30-23, 30-21(b), 30-19(d), (h)(3), (i)(l), (j), and (m), and 30-15 Table 3 of the City of Newton Rev Zoning Ord, 2007.

ACTION: A PUBLIC HEARING WAS OPENED AND CLOSED AND THE ITEM HELD

#248-11 MARK SHOHAM petition for a Special Permit/Site Plan Approval to legalize an existing accessory apartment with associated landscaping/lighting/parking waivers at 308 HOMER STREET, Ward 6, on land known as SBL 64, 7, 33, containing ≈14, 881 sq. ft. of land in a district zoned Single Residence 2. Ref: Sec 3-24, 30-23, 30-8(d)(2), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: PUBLIC HEARING CLOSED; APPROVED 7-0

NOTE: Architect David Barsky presented the petition. The petitioner purchased this single-family property approximately seven years ago. He is seeking to legalize an existing 685 square-foot accessory apartment located in the rear portion of the walkout basement. The apartment has been rented on and off since approximately 1979 and was used previously for a home pediatric dental practice. The petitioner is also seeking a waiver from the required landscape screening of the parking area. A portion of the rear yard is fenced and the lot contains ample landscaping and mature trees. There is an attached two-car garage fronting on Homer Street. The garage provides two interior parking stalls and there is one exterior stall. There is a second curb cut on Walnut Street, which leads to a parking area in the rear of the house. There are no changes proposed to the house or the site.

The Planning Department recommended that the petitioner consider removing the Walnut Street curb cut. The petitioner prefers to keep the curb cut. It provides access to the rear of the house and is handy for unloading materials for do it yourself home and landscaping projects. It also provides convenient parking for a prospective tenant.

There was no public comment and the public hearing was closed.

After reviewing a floor plan (which is not part of the petition) the Committee concluded that keeping the Walnut Street curb cut makes sense because it provides direct access to the accessory apartment. If the curb cut were closed, it would be inconvenient to park in the Homer Street driveway and walk up the side of the house to the rear to enter and exit the accessory apartment. The Committee also took note of the fact that if the lot contained 119 more square feet, the petitioner would not need a special permit, but only need to go through the administrative review process

Alderman Merrill moved approval of the petition finding that the proposed accessory apartment involves no changes to the site or structure, pedestrian and vehicular access will not be adversely impacted; the waiver from the landscaping requirement is appropriate because the existing landscaping/fencing along the eastern and southern property lines screen the driveway; the accessory apartment is consistent with the housing goals of the *Comprehensive Plan*. Conditions include maintenance of the existing landscaping, submitting a yearly affidavit in accordance with Section 30-8(d)(2) certifying owner-occupancy of the property; and, stipulating in accordance with recently-approved Ordinance Z-95, that it is an accessory and subordinate use to an owner occupied single-family dwelling and may not be held in separate ownership from the principal structure/dwelling unit.

Alderman Merrill's motion to approve the petition carried unanimously, 7-0.

#264-11      MARK & LISA KOZAK petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow two parking stalls in the front setback at 119 FALMOUTH ROAD, Ward 3, West Newton, on land known as SBL 34, 47, 16, containing approximately 7,716 sq. ft. of land in a district zoned Single Residence 3. Ref: Sec 30-24, 30-23, 30-19((g)(1), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

**ACTION:**      PUBLIC HEARING CLOSED; APPROVED 7-0

**NOTE:** The petitioners wish to add a second parking space within the front yard setback of their home. The house is 27.5 from the front property line, making it impossible to locate an easily accessible additional parking stall outside the front setback, and the lot is only 58.75 feet wide, making it difficult to locate a second parking space elsewhere on the lot. The petitioners propose to increase the existing 10-x19-foot driveway along the east side of the property to a 22-foot wide driveway with a 20-foot curb cut. The existing front walkway will be incorporated into the proposed driveway. Although this would result in a small decrease in open space, the site would still conform to open space requirements. Proposed driveway material is semi-pervious concrete pavers. A number of other properties in the neighborhood, including the abutter to the east next

to the proposed driveway, have at least one parking space in the front setback. The petitioners propose to add a 4-foot fence between their driveway and the eastern abutters' driveway. The fence would extend to meet an existing 6-foot fence along the rest of their eastern property line. The existing front walkway area would be replaced with lawn.

There was no public comment and the hearing was closed.

In working session, Alderman Crossley moved approval of the petition finding that literal compliance with the provisions of the parking ordinance is impracticable because the lot is only 58.75 feet wide, making vehicular access to the rear difficult, and the 27.5 feet from the front property line makes provision of an easily accessible second parking space outside the front setback impossible; and although there is a slight increase in impervious surface, the open space is 75.2%, where 50% is required. Alderman Crossley's motion to approve the petition carried unanimously, 7-0.

#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:**      APPROVED 5-0-2 (Blazar and Merrill abstaining)

**NOTE:** Please see attached excerpt from the September 13 public hearing and working session.

The petitioner submitted on September 27, 2011 a list (attached) addressing concerns raised at the public hearing.

In summary, the petitioner has agreed to reduce the hours of operation. Proposed hours are now Monday through Saturday from 9:00 AM to 10:00 PM and Sunday from Noon to 8:00 PM. The 10:00 PM closing time coincides with the closing time of the pizza shop in the same block.

Trash will be picked up by a private contractor. A small roll-out dumpster for trash will be located in the fenced alley to the rear of the block alongside the dumpsters of the other tenants. Recyclables will be stored inside and picked up separately by the same private contractor.

The owner of the block has agreed to address the boarded up windows on the Irving Street side of the block by July 1, 2012. The owner wishes to have a cash flow from a fully tenanted building and is also concerned about performing masonry work during the winter.

The petitioner has agreed that employees would park across Commonwealth Avenue in front of the Newton Squash and Tennis Club, where there is underutilized on-street parking.

The petitioner has agreed to install and maintain two planters/flower boxes in front of his space.

Finally, the petitioner has agreed to a condition that at least 80% of the shelf spaces shall be dedicated to the sale of gourmet foods, fine wine and craft beer. The remaining percentage will be devoted to fine liquor and seasonal products. This restriction would run with the special permit and hopefully alleviates the concern expressed about the property turning into a typical package store.

Alderman Albright noted that the petitioner has been extremely accommodating and expressed her appreciation. Alderman Baker said he cannot support the petition. Although, he appreciates the 80% curb of the stock of beer and wine, and if it only were beer and wine it might be acceptable, the liquor is different. He believes the proposed use is a more intensive than the prior use. When asked, the petitioner said he has not yet chosen a name for the proposed business but will need to do so before going to the Licensing Commission. Alderman Baker suggested that the name not include "liquor."

Alderman Schnipper moved approval finding that the proposed use of a gourmet food and liquor store would not be substantially more detrimental to the neighborhood than the previous nonconforming use as the proposed use has the same parking requirements; involves no exterior changes to the building; will have hours of operation similar to at least one other tenant; trash and recycling will be managed by a private collector in accordance with the hours prescribed in the City's noise ordinance. The motion to approve carried 5-0-2, with Aldermen Blazar and Merrill abstaining.

The meeting was adjourned at approximately 10:45 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman

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.

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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

ADDRESSING CONCERNS REGARDING PETITION FOR SPECIAL PERMIT BY EASTERN  
BEVERAGE GROUP AT 543-545 COMMONWEALTH AVENUE

HOURS OF OPERATION:

To address concerns expressed by members of the Committee, the Petitioner has agreed to reduce the proposed hours of operation to Monday through Saturday 9:00 AM to 10:00 PM, and Sunday 12:00 PM to 8:00 PM. The 10:00 PM closing coincides with the closing time of the pizza store in the same building.

TRASH AND RECYCLING:

The Petitioner will hire the same private company, Barry Bros. Disposal LLC of Newton, for trash and recycling removal. There will be a dedicated rollout dumpster for the Petitioner's use to be located in the fenced back alley of the building along with other dumpsters for the other tenants of the building. Pickups will not occur before 7 AM.

Petitioner will recycle all cardboard boxes. Cardboard boxes will be broken down, tied and will be stored in the basement until its weekly removal.

Petitioner will recycle all bottles. Bottles will be rinsed out before recycling pursuant to sanitary codes. Empty bottles will be stored in the basement until its weekly removal.

BOARDED WINDOWS FACING IRVING STREET

Although this is not a part of the petition, the Landlord of the building has agreed to replace the boarded windows with bricks. The Landlord is currently seeking bids from contractors and the work will be completed as soon as feasible.

EMPLOYEE PARKING

To address one abutter's concern, Petitioner will instruct its employees (which will be no more than three during the largest shift) to park across the street on Commonwealth Avenue in front of the Newton Squash and Tennis Club, which parking spaces are typically unused.

BEAUTIFICATION

Petitioner has agreed to decorate the sidewalk area immediately fronting the façade of the store with plantings such as flower boxes to be located within the property lines and so long as the plantings do not interfere with access by the Department of Public Works or other City departments.

RESTRICTIONS ON PERMIT



The Petitioner's business model focuses on the retail sale of gourmet foods, wines, liquors and craft beer. The Petitioner understands the Committee's concerns about the future use of the package store liquor license, therefore, the Petitioner has agreed to include a restriction in the special permit that 80% of the shelf space shall at all times be dedicated for sale of gourmet foods (such as gift baskets, cheeses, and the like), fine wine, and craft beer (such as microbrew and local beers, not beers such as Budweiser). The Inspectional Services Department will have the right to inspect the premises during business hours to ensure compliance. This restriction runs with the special permit and the land, therefore, any future owner of the business will be bound.