

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 1, 2011

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

#313-10 PRESIDENT LENNON in conjunction with Newton Wellesley Hospital recommending the appointment of the following individual to the Newton Wellesley Hospital Neighborhood Council pursuant to condition 29 of special permit #470-04 for terms concurrent with the 2010-2011 Board of Aldermen:

(D) Debra Sallaway
10 Bonaire Circle
Newton 02462 (new appointee)

ACTION: APPROVED 7-1 (Schnipper)

NOTE: Ms. Sallaway joined the committee. Condition 29 requires the membership of the council to consist of one resident or property owner from Longfellow Road, Bonaire Circle, Beacon Street, across Washington Street or Walsingham Street, and Dorset Road, as well as a designee of the hospital's president, two aldermen, one each from Ward 4 and 5, and a representative from the Department of Planning & Development. Out of the four homes on Bonaire Circle Ms. Sallaway's is the only one not owned by the hospital. The council is supposed to hold two meetings annually. Ms. Sallaway has attended council meetings, but not as a member and this evening represented that the council does not always meet twice a year. Frustrated with what she perceives as a lack of communication between the hospital and neighbors, she envisions her role as the eyes and ears of the neighborhood and being able to apprise residents on surrounding streets of what the hospital is planning. She used as an example the hospital's proposed installation of solar panels, which she only learned of by accident. She has misgivings about the hospital's long-term plans for the three houses it owns on Bonaire Circle. Alderman Harney strongly supports this appointment and moved approval, which carried 7-1, with Alderman Schnipper opposed.

#250-10(2) REQUEST FOR A ONE-YEAR EXTENSION OF TIME in which to EXERCISE SPECIAL PERMIT #250-10, granted to Historic Chestnut Street, LLC on December 6, 2010, to extend a nonconforming structure by renovating an existing building and constructing an addition to create three residential units and to waive one parking space at 1012-1022 CHESTNUT STREET, Ward 5, Newton Upper Falls. Ref: Sec. 30-24(c)(4) of the City of Newton Rev. Zoning Ord, 2007.

ACTION: APPROVED 8-0

NOTE: Attorney G. Michael Peirce represented the petitioner. Mr. Peirce explained the petitioner had obtained financing for the three-unit build out at 1022 Chestnut Street, but has not yet succeeded in financing the remaining three units at 1012-1018. (The structure known as the red barn has been converted to commercial space on the ground floor and remains a residential use on the second floor.) Alderman Crossley complimented the work done so far. She acknowledged the difficulties that the economic climate coupled with the unexpected costs often encountered in old buildings such as these (the property is circa 1850) create, and moved approval of the one-year extension of time, which carried 8-0.

#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: APPROVED 8-0

NOTE: The public hearing was opened and closed on this petition September 13, 2011. Attorney G. Michael Peirce represented the petitioners. The petitioner is seeking a special permit to increase the seating from 48 by-right seats to 103 seats and for an associated parking waiver of 8 spaces. The proposed additional 55 seats would be located in a separate function room, which the petitioner wishes to use Thursday through Sunday evenings. The only access to the restaurant is at the rear over the city-owned Union Street pathway.

The petitioner relocated from Brookline to Newton in 2005 into the basement space formerly occupied by Princeton Test Preparation. One of the reasons the petitioner was attracted to the Newton location was it had a separate space for a future function room that would allow her to accommodate private functions such as Bar Mitzvahs, Bat Mitzvahs, and weddings, without having to close the restaurant portion of her business. However, because the restaurant is located in the basement there were significant access issues and the petitioner had to spend a considerable amount of money on the installation of an elevator, ramping, and outside access to bring the property into compliance with the requirements of the State Architectural Access Board.

There is no on-site parking. Under the parking requirement a number of required parking stalls are considered grandfathered to this site. The prior test use was calculated as having a parking demand of 30 spaces. The existing 48-seat restaurant required 18 spaces, which utilized only a portion of the grandfathered spaces. In most cases, the type of events the petitioner anticipates accommodating in the 55-seat function room will involve a number of family members coming in one vehicle. The petitioner submitted a parking study which involved surveying over 7 days 400 parking spaces in Newton Centre, including the municipal "triangle" lot and curbside metered spaces. The study indicated on average there were 69 parking spaces available during the times the survey was taken. At no time was it less than the 8 spaces sought in the waiver.

Two speakers at the hearing spoke in favor of the petition; Boris, a 5-year patron, said this is not a party place, but a venue that allows many people in the area, whether Russian or not, to experience the cultural and gastronomical resources of that country. Barbara Parnell of 305C Winchester Street, who participates in an artistic exchange program with Russia, agreed. A petition in containing numerous signatures in support was submitted as well.

At this evening's working session, the committee discussed proposed mitigation. Initially, the Planning Department suggested a general condition relative to pedestrian and parking-related improvements in Newton Centre. After additional meetings with the petitioner, the Planning Department recommended and the petitioner agreed to make an annual contribution of \$1000 for five years, for as long as she continues to exercise the special permit or whichever occurs first. The money would be used by the city for pedestrian and/or landscaping improvements on Union Path. The path is not only used by patrons of the restaurant, but by hundreds of other people a day. For example, the city could use the money to ensure the path is cleared of snow.

Alderman Harney said he would support the petition, but commented that Newton Centre could reach a saturation point with parking waivers. Alderman Danberg pointed out the types of restaurants recently granted parking waivers by the Board required parking in the evening when most of the stores are closed. In her opinion, the biggest issue in Newton Centre is traffic, not parking. The proposed hours of the additional 55-seat function room are 6:00 PM to closing, which is midnight under its license. In response to a question about who will "police" the function room as to the number of seats being used, Mr. Peirce explained that it is a Licensing Board function. Licensing Board members periodically conduct unannounced visits to all of the establishments licensed in the city. The Inspectional Services and Health Departments also conduct periodic inspections.

Alderman Blazar moved approval of the petition with the findings and condition included in the draft board order dated November 7, 2011.

REFERRED TO LAND USE AND PROGRAMS & SERVICES COMMITTEES

#474-08(2) ALD. HESS-MAHAN & VANCE proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to conform with a proposed amendment to Chapter 30 re transfer of the special permit granting authority to the Zoning Board of Appeals and/or the Planning & Development Board for projects that are not classified as Major Projects pursuant to Article X.

ACTION: NO ACTION NECESSARY 8-0

NOTE: Alderman Hess-Mahan said he and Alderman Vance had docketed this item and a companion item in Zoning & Planning Committee, a proposed amendment to Chapter 30 to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board special permit granting authority for projects not classified in Article X of the Board Rules as *major projects*. Since assuming the chairmanship of the Land Use Committee, he has worked to reduce the time it takes citizens to go through the special permit process. The committee agreed the process is much improved. This term many if not most petitions were turned around the night of the public hearing, which is how the Zoning Board of Appeals functions in most cases other than 40B projects. However, the standards for granting

variances are very strict and are supposed to relate to a hardship to the land whereas the special permit granting authority has much broader discretion in granting special permits. Different bodies acquire different expertise, which is not a bad thing. Alderman Albright noted that it cannot be stressed enough that the special permit granting authority acts as a quasi-judicial body, not as a legislative body.

Currently, the Planning Department does not write zoning review or public hearing/working session memos for the Zoning Board of Appeals (or the Planning & Development Board); however, if so-called minor petitions were handed off to either body, the Planning Department would still need to write those memos as it does for the Board of Aldermen, making it unlikely there would be any significant time reduction.

Alderman Crossley reiterated, as she and Alderman Schnipper have a number of times over the course of this term, that amending the *de minimis* ordinance may alleviate the burden for minor petitions. The Commissioner of Inspectional Services had suggested this be one of the things the 30-15 Task Force take up, but when the Task Force began to look at examples it became more complex and was put aside when the Commissioner prioritized more urgent problems he wished the Task Force to concentrate on.

The Chairman moved No Action Necessary on the item. The committee, noting that it could re-docket this or a similar proposal if anyone felt strongly about doing so, agreed unanimously.

REFERRED TO LAND USE & FINANCE COMMITTEES

#276-10 **ALD. FULLER, CROSSLEY, DANBERG, LINSKY** requesting a review of guidelines for mitigation fund provisions to maximize the use of such funds on behalf of the city together with mechanisms by which the city can better track such funds to ensure they are used in a timely fashion.

ACTION: **REFERRED TO 2012-2013 Board of Aldermen**

NOTE: Alderman Fuller joined the committee. This item was docketed because of a situation that resulted in special permit mitigation funds being returned to the developer of the Residences on Route 9 (docket #201-10) The special permits included language requiring the city to use the money within five years from the date of the issuance of the certificate of occupancy for any building within the development. The city used a portion of the drainage mitigation funds for a design and installation study for drainage improvements. The study determined it was physically impossible to locate the proposed sedimentation chamber within an existing easement on an abutting property and when an alternate design was proposed, the owners of the abutting property opposed it. A portion of the traffic improvement funds were used for in-house design of a traffic calming project at Jackson and Daniel Streets, but the work was not completed until 2009. Ultimately, the city had to return \$43,466.26 of the \$75,000 it had received in mitigation funds.

Alderman Fuller explained this is an audit control situation. The issues are tracking, clarity/specificity in board orders, deadlines and flexibility. She asked the committee to refer the item to the new Board and the committee agreed. It also suggested she might arrange a meeting with relevant departments and interested members of the committee to address the issues.

The meeting was adjourned at approximately 9:00 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman