

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, FEBRUARY 23, 2010

Present: Ald. Hess-Mahan (Chairman), Ald. Fischman, Albright, Blazar, Schnipper, Crossley, and Harney; absent: Ald. Merrill
City staff: Ben Solomon-Schwarz (Senior Planner), Ouida Young (Associate City Clerk), Linda Finucane (Assistant Clerk of the Board)

#542-03(3) HIS HONOR THE MAYOR submitting for approval City Telecommunications Specialist Maurya Sullivan as the Remediation Fund Administrator pursuant to condition 2.H. of special permit #542-03 granted on November 1, 2005 to Clear Channel et al. for five radio transmission towers with ancillary equipment at 750 Saw Mill Brook Parkway.

ACTION: APPROVED 6-0 (Harney not voting)

NOTE: The Chairman introduced Ms. Sullivan to the committee. Ms. Sullivan is an attorney and the city's telecommunications specialist/planner whose position includes overseeing telecommunication installations and cable contract negotiations. In 2004, the Board of Aldermen denied a special permit petition from Clear Channel et al. ("the petitioners") to replace two AM radio towers with five shorter AM radio transmission antennas. The petitioners sued the city and subsequently in 2005 Land Court annulled the denial because it was in excess of the Board's authority and remanded the petition to the Board for approval. As part of the approval, the petitioners agreed to certain conditions, one of which was that the petitioners would establish a remediation fund of \$100,000 to cover the costs of providing parts and/or service for any radio frequency interference (RFI) remediation resulting from radio frequency emissions (RFE).

The special permit includes a map of the remediation zone (RZ), which contains 1800 homes, and defines "initial" and "permanent" phases. (The Federal Communications Commission [FCC] requires proof of performance measurements to obtain an FCC license. If these measurements indicate that any of the stations exceed the bounds of the RZ shown on the map, the RZ may be extended.) During the initial phase, the petitioners are required to provide technical information and assistance, as well as certain parts such as filters, and/or electronic devices to replace/modify electronic equipment, etc. The initial phase begins when the FCC grants program test authority (PTA) to any station and continues for 3 years from the date the FCC last grants PTA to any station, which is when the initial phase terminates. The initial phase began in March 2009.

At the conclusion of the initial phase, the permanent phase begins and continues as long as a radio station(s) continues to broadcast from the site. During the permanent phase,

the RFI remediation the petitioners will provide within the RZ consists only of technical information and assistance to complainants with RFI issues. The petitioners at their discretion may still provide filters, devices, etc., but are not required to do so. If the petitioners' engineers determine that the technical information and assistance or parts provided by the petitioners are unlikely or unable to correct the RFI in question, the petitioners may refer the complainant to the remediation fund for additional assistance.

The committee was reminded that although abutters had presented anecdotal testimony relative to health issues, that FCC regulations preclude health considerations as long as the licensee(s) continues to operate within its approved frequency.

Alderman Albright made a motion to approve Ms. Sullivan's appointment as the remediation fund administrator, which motion carried unanimously.

#17-10 MICHAEL G. PRATT & TRUDY L. GOOD petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE to add a two-story addition to the rear of an existing single-family residence, increasing the Floor Area Ratio, and to demolish an existing garage and construct a carport on the south side of the lot at 51 HILLSIDE AVENUE, Ward 3, WEST NEWTON, on land known as Sec 32, Blk 3, Lot 5, containing approx 7,160 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(a)(2)b) and 3-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing for this petition was opened and closed on February 9, 2010. Architect Peter Sachs represented the petitioners. Mr. Sachs said the petitioners, who have three children, are seeking a special permit to add a bedroom and a mudroom to the rear of the existing single-family house, which will increase its size from 2,355 sf to 2,810 square feet. The existing house, a two-story Tudor Revival house with clapboard siding, is legally nonconforming with respect to Floor Area Ratio (FAR). The proposed addition will increase the nonconforming FAR from .33 to .39, but the house conforms and will continue to conform to all other dimensional requirements. The petitioners also propose to demolish an existing garage and build a detached carport. When asked why the carport appeared to be 3 feet from the setback, Mr. Sachs explained that because a carport is open sided and not considered a structure an overhang may project two feet into the setback, however, the supporting column must and does meet the 7.5-foot setback requirement. Mr. Sachs noted that the proposed project will result in a slight increase of open space.

Letters in support of the petition from abutters at 45 and 55 Hillside Avenue were submitted to the committee. There was no public comment.

At this evening's working session, the committee agreed that approval of this 455 square-foot addition would give flexibility to the family and allow them to remain in their home

and that although the proposed increase in the FAR was at the high end it was well within range of other houses in the neighborhood. Alderman Albright moved approval of the petition, which motion carried unanimously, with the findings and conditions contained in the draft board order.

#15-10 STEVEN E. & MERLE WINER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct an attached garage to an existing single-family residence at 1 BILLINGS PARK, Ward 7, NEWTON, on land known as Sec 72, Blk 8, Lot 21, containing approx 8,496 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: 30-24, 30-23, 30-21(a)(2)b), 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this petition was opened and closed on February 9, 2010. Architect Alan Mayer presented the petition. This brick, Queen-Anne house is located at the corner of Billings Park and Church Street in a National Register District. The petitioners have carried out extensive restoration since purchasing it two years ago. They obtained a building permit to construct a one-story *detached* two-car garage; however, they would prefer a one-story attached garage, which requires a special permit because it will increase the Floor Area Ratio (FAR) of the already legally nonconforming house from .36 to .43. The proposed garage is approximately 555 square feet, 17.2 feet high. (30 feet is allowed), with a side setback of 15.1 feet (7.5-foot minimum is required). Exterior materials consist of clapboard with wood garage doors and a faux slate roof.

Direct interior access/egress to the garage will be through a door cut into the existing basement-story exterior wall. Exterior access/egress is from Church Street, where the petitioners propose to close and relocate an existing curb cut and create a concrete turnaround so they do not have to back out onto Church Street. This plan also preserves an existing 100-year old maple tree.

Although the by-right detached garage is much closer to the west abutter, the petitioners plan to buffer the driveway with native plantings such as inkberry rhododendron, holly, Christmas tree fern, and azaleas. The committee understood that the petitioners had not submitted a formal landscaping plan pending a determination whether the garage would be attached or detached, but asked to see a conceptual landscaping plan for the working session.

Alderman Fischman asked why there are two windows on the front of the garage and why so high? Mr. Mayer explained that the windows break up the façade. The hip roof at a 12/12 pitch matches the existing roof on the house, existing gables and dormers, etc. The detached garage is essentially the same design, but approximately 8 feet closer to property line.

Public comment:

Mary Muse, of 287 Marlboro Street, Boston, spoke on behalf of her mother who has lived at 82 Church Street for 60 years. Currently, the kitchen faces a grass area. Will it look at

a wall? She is concerned about the height. The land slopes and sometimes there is water in her cellar after heavy rain/snow. What about water runoff?

Alderman Crossley asked Mr. Mayer about the drainage. Mr. Mayer said that all roof drains on the house are tied into an underground water system and that the roof drains on the proposed garage will be tied into the same drywell system to contain any additional runoff.

The McCanns of 9 Billings Park were represented by their son-in-law who said their main concern is the height of the garage because the house itself is three stories high on sloping land, it appears the one-story garage proportion is same size. They have no problem with an attached garage or the proposed design and materials, which are in keeping with the house. They also understand not wanting to back out onto Church Street.

The Chairman pointed out that the petitioners have a by-right building permit for a detached garage, which is fundamentally the same design, but closer to 82 Church Street. A special permit is required to build an attached garage because of the FAR. The committee asked the petitioners to talk with the abutters prior to the working session.

At this evening's working session, the committee reviewed a landscape sketch provided by the petitioners. The petitioners met with the abutter at 82 Church Street and agreed to install landscape plantings along the property line. The abutter and petitioners agreed that low landscaping is preferable to trees that would overhang the property. Mr. Winer, who is on the Board of the New England Wildflower Society, said existing and future landscaping consists of native plants that require few resources to sustain. The committee viewed the new location of the curb cut and confirmed with the petitioners that a drywell will contain all the runoff on the property. The committee agreed that the petitioners should consult with the abutter before installing the final landscaping and that the petitioners should be able to obtain a temporary occupancy permit prior to the final installation of the landscaping so they could actually use the garage if weather did not permit such installation. Alderman Schnipper made a motion to approve the petition, which motion carried 7-0, with the findings and conditions included in the draft board order.

#18-98(2) KENMORE REALTY CORPORATION petition to AMEND SPECIAL PERMIT #18-98, granted on 4/6/98 for a 65-seat restaurant (Lumiere) and a waiver of 18 parking spaces, by increasing the number of seats from 65 to 88 (into the space formerly occupied by West Newton Liquors) and permitting accessory parking on an off-site lot (Newton Community Service Center) at 1293-1297 WASHINGTON STREET, Ward 3, WEST NEWTON, on land known as Sec 33, Blk 11, Lot 13, containing approx 12,047 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23,

30-11(d)(9), 30-19(f)(3) and 30-19(m) of the City of Newton Rev Zoning Ord, 2007, and special permit #18-98.

ACTION: APPROVED 6-0-1 (Fischman abstaining)

NOTE: Attorneys Laurance Lee and Jason Rosenberg represented the petitioners, owner of Lumiere Michael Leviton and property owner Kenmore Realty. The Board of Aldermen granted a special permit in 1998 to permit the operation of the Lumiere restaurant with 65 seats. That special permit included relief for the restaurant to serve alcohol (relief that is no longer required) and an 18-space parking waiver. The Board restricted the use of a maximum of 32 seats during lunch hours and permitted the use of all 65 seats for dinner service. Mr. Leviton wishes to expand his restaurant by leasing the adjacent retail space (formerly occupied by West Newton Liquors). He plans to add 23 seats and remodel the existing restaurant to connect the two spaces. There will be 56 seats in the existing space and 32 seats in the new space for a total of 88 seats. The petitioners' attorneys said the average customer spends 2-3 hours per visit and that customers often visit other business such as the West Newton Cinema. The 32-seat restriction during lunch hours will remain; all 88 seats will be utilized during dinner. The proposed expansion requires 5 additional parking spaces.

This special permit seeks to amend a prior special permit by expanding the number of seats in a restaurant and to permit accessory parking within 150 feet of the boundary line of a business district and within 500 feet of the lot on which the principal use (the restaurant) is located [section 30-19(f)(3)].

Currently, Lumiere has 7 spaces in the rear of the building, all day (previously Lumiere had 5 spaces, but now has the 2 spaces formerly assigned to West Newton Liquors) and exclusive use of 14 spaces in rear after 5:30 PM. Initially, the petitioners were proposing to lease 10 additional spaces from Newton Community Service Center (NCSC) but are now proposing to lease the 5 additional parking spaces that are required. The NCSC is around the corner from the restaurant at 492 Waltham Street. It is anticipated that these 5 spaces will be used mainly by employees. The petitioners have submitted a letter of intent from NCSC to lease the 5 additional spaces after 6:00 PM. A question arose as to whether the NCSC lot is lighted. In the event the off-site parking is no longer available, the petitioners are proposing that the special permit include a condition authorizing the Commissioner of Inspectional Services and Director of Planning and Development to approve suitable replacement off-site parking spaces presented by the petitioners. The committee suggested signage to let customers know that that other parking is available as well. Mr. Leviton will note additional parking on Lumiere's website, on the phone greeting, menu, and with a sign on reception desk.

In response to suggestions from several Aldermen and the Planning Department, the petitioners have agreed to enliven the front façade with flower boxes and/or perhaps artwork in the windows. Mr. Leviton noted that heavy curtains are necessary to reduce the glare of headlights from the number of cars converging at this point in the Square. The petitioners have offered to purchase a bike rack and replace two missing city trees on the Washington Street sidewalk. The Chairman asked about replacing the sidewalk itself, which has been torn up by the utility companies.

The petitioners submitted a petition and several individual letters in support of the petition.

Residential abutter Jane Pipik of 30 Webster Street is not opposed to the petition, but said she can hear bottles being thrown away in the middle of the night and dumpsters being emptied, particularly in spring/summer when windows are open. The Police Department trash is picked up at 6:00 AM. The Chairman said he would talk with the Police Chief because dumpsters within 500 feet of a residential district are not supposed to be emptied before 7:00 AM. Mr. Leviton said he doubts the sound of bottles is from his restaurant because *Lumiere* closes at 11:00 PM weeknights and 12:00 AM weekends and everyone is gone well before 2:00 AM. Perhaps the sound of bottles is from people going through recycling bins to find returnable bottles.

This evening, Mr. Solomon-Schwartz told the committee that the petitioners have agreed to contribute \$1,200 for the purchase and installation of two street trees and \$400 for the purchase and installation of bike racks in the vicinity of West Newton Square. Mr. Solomon-Schwartz confirmed that the NCSC lot is illuminated with motion lights and from a light pole on the property line of the abutting CVS parking lot. The petitioners have stated that they typically dispose of trash before midnight and that it is collected in conformance with the noise ordinance, after 7:00 AM. The petitioners do not want to replace the sidewalk along Washington Street because Nstar and/or Keyspan will be doing additional work and will have to open it up again.

The committee had a lengthy discussion concerning the façade. Committee members were in total agreement that *Lumiere* is a wonderful asset to city, particularly West Newton Square. However, some members thought the façade presented as too austere. Some suggested artwork in the windows, others suggested paintings on the windows, others planters, and yet others suggested different colored curtains. Currently, each window has *Lumiere* stenciled on each window, which Mr. Leviton will replicate on the windows of the new space. He reiterated that diaphanous curtains do not effectively obstruct the glare of headlights that intrude on his customers' dining experience. He does not own the building, but has agreed to install window box plantings as long as the Commissioner of Public Works does not object.

Alderman Crossley moved approval of the petition with the findings relating to the location of off-site parking and expansion of the restaurant contained in the draft board order. Mr. Solomon Schwartz pointed out special permit board order #18-98 has been incorporated with its conditions into the new draft, #18-98(2). The committee voted 6-0-1, with Alderman Fischman abstaining, to approve the petition. A condition of the special permit will provide for occupancy of the existing seats prior to completion of the expansion.

#7-10 KAYNAM HEDAYAT petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE to construct a new front porch to an existing single-family residence at 49 PHILMORE ROAD, Ward 7, NEWTON, on land known as Sec 73, Blk 15, Lot 8, containing approx 9,694 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this petition was opened and closed on February 9, 2010. The petitioner said he has a problem with water runoff in the front of his house. Temporary repairs have not been successful. The purpose of the proposed covered porch is to retain the runoff. (A neighbor added the same type of portico, but larger.) He began this process in April 2009. After obtaining a variance from the Zoning Board of Appeals, he was told the house was already legally nonconforming because the front setback is 23.4 feet not the required 25 feet and that he needed instead a special permit to reduce the front setback further. The petitioner submitted a petition in support of the project signed by ten neighbors. There was no public comment.

At this evening's working session, the committee agreed that this petition certainly appeared to be de minimis and that it was an example of what the Zoning Task Force had grappled with in its discussions relative to amending the existing de minimis provisions of chapter 30. Ald. Schnipper moved approval of the petition, which carried unanimously, with findings that decreasing the already nonconforming front setback is appropriate in the context of this neighborhood; it will not significantly change the amount of impervious area; and it will mitigate existing drainage problems.

#14-10 DONALD & JILL EURICH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE/USE to locate a home business in a detached barn; to locate two tandem parking spaces within the side setback; and, to waive five parking spaces at 7 WALNUT STREET, Ward 2, NEWTONVILLE, on land known as Sect 21, Blk 22, Lot 4, containing approx 32,716 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-12(a)(2)b), (b), 30-8(c)(9), (11)d), 30-19(d), (g)(1), (4), and (m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this petition was opened and closed on February 9, 2010. Attorneys Jason Rosenberg and Laurance Lee represented the petitioners. The petitioners purchased this property which consists of a single-family house, barn, garage, and swimming pool, in 1992. They have renovated the house and planned to restore the barn. Mr. Eurich is an architect and in March 2009, they filed an application for a special permit to restore and expand the legal nonconforming barn and to locate a architectural home business in the barn, a detached accessory structure. The proposed plans for partial demolition, reconstruction, and expansion were submitted to the Historical Commission and approved by staff. However, during the interior renovation, the petitioners'

contractor discovered evidence of a previous fire and determined that the barn had to be demolished and did so without proper approvals. The city issued a “stop work order” and the Historical Commission took punitive action, which consisted of a fine and an order to rebuild a replica of the demolished barn. The petitioners re-constructed the barn, which they still wish to expand. In December 2009, the petitioners went before the Historical Commission again and received approval for the plans contained in this special permit petition.

The existing barn is a legally nonconforming structure with respect to the side setback (2.7 feet existing; 5 feet required) and maximum building size (700 square feet allowed; 900 square feet existing footprint; 1,108 square-foot footprint proposed with an additional 85 square-foot deck). The proposed addition is to the rear of the barn. The petitioners anticipate having only one employee and few clients, since most client meetings take place off-site, and are seeking a waiver for 5 of the 7 parking spaces required for the home business. (Two parking spaces for the existing house are provided in a garage on the site.) Committee members generally concurred about the parking required for the number of clients/employees anticipated, but commented on the lack of on-street parking in the area.

The petitioners propose to extend an existing circular driveway along the northwest side of the house, with a gravel drive to contain the 2 parking spaces for the home business. The Fire Department would prefer the petitioners pave all the way back to the barn. However, the Planning Department suggested sprinklering the barn to minimize the paved area. The petitioners have indicated there is no plan to use the barn for an accessory apartment. Attorney Rosenberg said that an architectural home business is a low traffic generator and that the petitioners are amenable to conditioning the special permit to limit the particular home office use.

Alderman Crossley asked how far along the re-construction was and if the petitioners would be willing to meet the stretch code? Mr. Eurich said that the north, east, and west sides were complete, the south wall is temporary pending the outcome of the special permit petition. The interior rough work is completed, but not the finish work. He noted that there is other work on the property ongoing under a by-right building permit. In respect to the stretch code and the potential cost, he will respond for the working session.

The committee received several letters in support of the petition and one opposed. There was no public comment.

For this evening’s working session, the petitioners submitted a revised site plan showing the existing driveway extended with geo block –grass pavers – and seeded with grass along the west side of the existing house. This will allow Fire Department access to the barn without paving all the way up to it. The petitioners have agreed to sprinkle the barn. The 2 parking spaces for the home business have been relocated behind the existing house. These proposed parking spaces are to be geo block and seeded with grass. All

grass pavers will be kept clear of snow and remain accessible. The parking spaces will be screened from the street by the house and their relocation saves existing landscaping and preserves a signature copper beech tree.

Mr. Eurich submitted a letter in which he stated his support for the stretch code; however, he said it is too costly for him to meet, given the cost of the project to date and the Historical Commission's requirement for the reuse of certain architectural elements in the reconstructed barn, i.e., the old barn doors and one large casement window, which will always thermally underperform. Although historical "trumps" the stretch code, Alderman Crossley expressed her disappointment, feeling that there is lost opportunity to save energy resources.

The committee, after questioning whether a condition relative to the installation and maintenance of landscaping was necessary, ultimately agreed it wasn't and struck the requirement from the draft board order. The Associate City Engineer had suggested in his January 20 memorandum that the petitioners install a concrete sidewalk in front of the house, which is currently gravel and asphalt. The petitioners indicated that they had paid for the installation of a sidewalk fifteen years ago, but the city had never installed it. Alderman Schnipper said she would speak with the Commissioner of Public Works.

Alderman Albright made a motion to approve the petition with the findings and conditions included in the draft special permit board order, which motion carried unanimously

2010 Auto License Renewals

#310-09 ENZO's AUTO SALES Class 2
10 Hawthorn Street
Nonantum

ACTION: APPROVED 6-0 (Schnipper not voting)

#312-09 JACOB and ASSOCIATES Class 2
1232 Washington Street
West Newton

ACTION: APPROVED 6-0 (Schnipper not voting)

#313-09 ROBERT LEONE Class 2
14 Beech Street
Newton

ACTION: APPROVED 6-0 (Schnipper not voting)

#325-09 VELOCITY MOTORS INC. Class 2
14 Hawthorn Street
Nonantum

ACTION: APPROVED 6-0 (Schnipper not voting)

NOTE: These licenses, all renewals, were approved because they meet the statutory licensing criteria, i.e., are proper persons with suitable places of business, have no

outstanding zoning complaints and owe no taxes to the City. All Class 2 dealers have posted a \$25,000 bond with the City. Alderman Albright moved approval of the four licensed, which motion carried 6-0.

The meeting was adjourned at approximately 10:30 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman