

CITY OF NEWTON
IN BOARD OF ALDERMEN
LAND USE COMMITTEE REPORT
TUESDAY, MARCH 16, 2010

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

#376-08(3) JAN SPIRO request for an EXTENSION OF TIME in which to EXERCISE SPECIAL PERMIT/SITE PLAN APPROVAL #376-08, granted on February 17, 2009, for a rear lot subdivision to construct a new single-family home to the rear of an existing single-family home at 296 WARD STREET, Ward 7, Chestnut Hill; said extension will run from February 17, 2010 to February 17, 2011. Ref: Sec 30-24(c)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0 (Harney not voting; Schnipper recused)

NOTE: The petitioner and her attorney, Alan Schlesinger, were present this evening. Chapter 40A allows two years in which to exercise a special permit; the City of Newton ordinance allows one year with the option to extend the time for an additional year, whether the one year has expired or not. Mr. Schlesinger explained that the downturn in economic conditions during the past year has made the project temporarily impracticable. Ms. Spiro is continuing to work with design professionals to achieve an optimum LEED or similar designation for her new house because she wishes to create a home both environmentally and financially sound. She hopes that what appears to be an upturn in the real estate market will continue and allow her to begin construction within the next year. Alderman Albright moved approval of the extension, which motion carried 6-0, with Alderman Harney not voting and Alderman Schnipper recused because she is an abutter.

#16-10 DIKRAN PANOSSIAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING USE to legalize a 13th apartment (unit 1-H) in an existing legal nonconforming 12 unit multi-family dwelling, including a waiver of two parking spaces, at 548 CENTRE STREET/48 HOLLIS STREET, Ward .1, NEWTON CORNER, on land known as Sec 72, Blk 6, Lot 14A, containing approx 15,320 sf of land in a district zoned MULTI RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21(a)(2)a), 30-21(b), 3-19(d) and (m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HELD 8-0

NOTE: A complete report will be provided when the Committee takes action on this item.

#43-10 FENG HUA CHOW/BLOOMINGDALE'S, INC./FEDERATED DEPARTMENT STORES, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a waiver of 11 parking spaces in order to convert approximately 2500 sf of existing space in Bloomingdales Department Store into a 50-seat Japanese restaurant at 225 BOYLSTON STREET, Ward 7, CHESTNUT HILL, on land known as Sec 65, Blk 8, Lot 99B, containing approx 190,368 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(d), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 8-0

Public Hearing

The public hearing on this petition was opened and closed on March 9, 2010. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Albright, Crossley, Merrill, Schnipper, Fischman, Blazar, and Harney. Alderman Danberg was also present.

Walter Adams of WBA Associates in Wellesley represented the petitioners, Judy Chow and David Chang, who own and operate a Japanese restaurant at 43 Waltham Street in Lexington. They are seeking a special permit for a waiver of the 11 parking spaces required to convert approximately 2500 sq. ft. of space currently used for storage by Bloomingdales into a 50-seat restaurant, *Daikanyama@Bloomingdale's*. The proposed restaurant will be located on the street floor across from *40 Carrots*, an existing by-right restaurant. Although it has been retail space and is currently storage space, it was designed to be leased space, with interior access from Bloomingdale's and exterior access from the parking lot. Completely independent from Bloomingdale's, it will serve lunch and dinner seven days a week, when Bloomingdale's is open and after it closes.

Although Federated Department Stores owns both ends of the mall, which contain both Bloomingdale's stores, the center of the mall and the parking structure are located on a separate lot under separate ownership and managed by Simon Properties. The parking demand is calculated for the entire mall, which has 2,105 parking spaces. A parking survey done on Saturday through Tuesday the week before Christmas 2009 indicated between 182 and 206 spaces available at various times of the day. The petitioners anticipate that most of the patrons will be mall and Bloomingdale's shoppers, with no increase in parking demand since the parking will be shared.

Because Bloomingdale's contemplated a separate entity in this space a 50 square foot tenant sign was approved as part of a prior special permit (#258-06) for new signage. Contemporary signage below the existing black canopy above the door is designed to clarify that separateness. Six external down lights will be installed beneath the canopy to provide lighting to the entrance and the sign.

There was no public comment.

Working Session

This evening the Committee reviewed the Planning Department working session memorandum. The memorandum confirmed the proposed installation of the down

lighting under the existing canopy at the exterior entrance/exit of the restaurant. The Urban Design Commission will review the sign.

The Committee clarified that the exterior entrance/exit is handicapped accessible with an existing curb cut in front of the building (regulations require it be within 300 feet of the building). A second egress reviewed and approved by the Inspectional Services Department, will be created in a portion of an existing interior stairwell.

The Committee agreed with Alderman Crossley that the proposed restaurant and signage were attractively designed and that it would bring additional evening activity to the site. Alderman Schnipper moved approval of the 11-space parking waiver, with the findings and conditions contained in the draft board order dated April 5, 2010.

#388-09 MARCUS LANG INVESTMENTS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to create a rear lot subdivision including a change of grade/combination of walls/berms in excess of 4 feet within setbacks in order to construct two single-family dwellings with a shared driveway on GODDARD STREET, Ward 8, on land known as Section 83, Block 33, Lot 30, containing approximately 23,797 sf of land in a district zoned SINGLE RESIDENCE 3. (Ref: Sec 30-24, 30-23, 30-15(r), 30-19(f)(1) and (2) and 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0-3 (Albright, Blazar, Harney abstaining)

Public Hearing

The public hearing was opened and closed on January 12, 2010. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Fischman, Blazar, Albright, Crossley, Schnipper, and Harney. Alderman Merrill was absent. Alderman Linsky was also present.

Attorney G. Michael Peirce, 60 Walnut Street, Wellesley, represented the petitioners. The petitioners are seeking a special permit to subdivide an undeveloped 23,797 square-foot lot situated on Goddard Street between Winchester and Christina Streets in order to create two lots to construct a single-family house with an attached garage on each lot. A shared driveway, customary in rear lot subdivisions, will minimize the amount of impervious surface. Relief is also sought to locate three retaining walls in excess of 4 feet in the setbacks.

Currently, the lot is wooded and has a rather steep right to left slope. Although the proposed homes are larger than the neighborhood average, the proposed massing and siting are compatible with the neighborhood. There are many other lots with 10,000 square feet in the neighborhood, particularly to the rear along Charlemont Street. The proposed houses would meet all dimensional and parking requirements. The front house is 3,573 sq. ft. and 29.57 feet in height on a 10,500 sq. ft. and the rear house is 3,179 sq. ft. and 29.56 feet in height on a 13,297 sq. ft. lot. The square footage of each house includes 450 sf. ft. of attached garage space.

The petitioners' engineer Verne Porter said the petitioners have agreed to replace the existing sidewalk with a new concrete sidewalk and the existing concrete curbing with granite curbing. The site is over 100 feet outside the wetlands protection buffer area of the Christina/Goddard Swamp. Drainage is designed to a 100-year storm event and will be contained on-site. Utilities will be underground; however, Mr. Porter noted that existing utility poles have to remain on Goddard Street to service the rest of the neighborhood.

The three proposed retaining walls in excess of 4 feet are located near the garage at the northeast corner of the site and will have no impact on any abutting property. Re-grading is necessary to level the site for construction of the houses and to minimize the existing slope in the rear. A Construction Management Plan will be part of the special permit. Among other mitigations, the CMP includes hours of construction, erosion control such as siltation barriers and hay bales, and wheel wash for trucks leaving the site.

Several Aldermen expressed concern about the size of the proposed houses. The Planning Department's January 8 memorandum included a *Neighborhood Comparison Chart of 47 Goddard Street and Vicinity*. The chart indicates that the average year of construction for houses on Goddard and Charlemont Streets is 1947 and the *average* lot size and house size are 12,973 sq. ft. and 2,069 sq ft., respectively. The proposed rear house is 160 feet from the street. There are no houses adjacent to the proposed rear house, which is set at the bottom of a large hill. Houses to the rear on Charlemont Street are 15-20 feet higher. The distances from the proposed rear house to the rear abutters at nos. 38, 42, and 46 Charlemont Street are 158, 161, and 174 feet, respectively. The unusual topographical features would have to be taken into consideration for any development on this site. The by-right alternative is a very large single-family house in the center of the site, which would not be in keeping with the neighborhood.

Proposed landscaping appears more than adequate. A substantial number of trees (36) will need to be removed in order to construct the two houses. The petitioner proposes to replace the 36 trees with 153 trees, a mixture of native trees, ornamental trees, and evergreens as well as shrubs, and flowerbeds. The tree ordinance requires the petitioners to either replace the number of caliper inches removed or contribute to the tree fund.

Alderman Fischman was concerned that the grade of the first 25 feet of the driveway is 15% and then drops to 8-10%. He asked that cross sections showing the relationship of the topography of the proposed houses to each other and the abutting properties be provided for the working session. Alderman Albright wanted to know if any other lots in the neighborhood could be subdivided. Alderman Crossley asked if the petitioners had considered constructing to the stretch code.

Public comment:

Beth Freiburger, 151 Ridge Avenue, Newton Centre, is a past president of the Newton Conservators, who visits the Christina/Goddard Swamp as part of the Conservators inventory of wetlands. She is concerned about the loss of wildlife and open space and the disruption of a charming old neighborhood.

Brian Washburn, 151 Ridge Avenue, Newton Centre, said the lot is vacant because it is unbuildable. One house would be more appropriate.

Johannes Fruhauf, 42 Charlemont Street, said he preferred that only one house be built. Two houses will alter the character of the neighborhood. Development of this lot will result in the loss of woods and wildlife. A single house would cause less disruption to the neighborhood. Mr. Fruhauf submitted a petition signed by 25 households in the neighborhood opposed to the petition.

Nancy Sharby, 38 Charlemont Street said she has been approached by builders interested in purchasing her property and questioned the public benefit of the proposed subdivision. Goddard Street is used as a cut through and traffic will be exacerbated by the addition of two homes.

Lucille Hackim, 37 Goddard Street, a musician who works out of her home, said that development of the lot would entail the loss of wildlife and additional traffic in the neighborhood.

Henry Finch, an architect who lives at 153 Windsor Road, Waban, said a second house is inconsistent with the neighborhood.

Yaun Shiaw-Shyuan, 86 Goddard Street, lives in a 1400 sq. ft. house and does not see the need for larger houses, particularly in this neighborhood.

Dan Miller, 54 Goddard Street, was concerned that approval of this petition would open the door to other subdivisions in the neighborhood.

Mark Schwartz, one of the petitioners, said that the proposed sizes of the houses are appropriate to the site, modern construction and needs of today's families. He pointed out that Charlemont Street has two houses that are larger (5300 sq. ft. and 7000 sq. ft) than the two proposed. In response to Alderman Crossley's question relative to the stretch code, Mr. Schwartz explained that he is a "green-designated" realtor and that he will construct to the stretch code and if feasible install geothermal heating.

Emails from neighbors at 22, 33, 42, and 48 Goddard Street echoed the concerns of the speakers and expressed concerns about the reduction in property values, increased traffic, exhaust fumes, and the impact on wetlands.

Mr. Peirce and the Committee agreed that a site visit prior to a working session would be helpful. Subsequent to the hearing, several committee members and staff attended a site visit on February 4.

Working Session

The Committee this evening reviewed the Planning Department working session memo with Mr. Solomon-Schwartz. The petitioners provided the cross sections requested at the public hearing. In response to Alderman Fischman's concern about the grade of the driveway and his suggestion that the front grade be dropped and the rear grade be raised, the petitioners agreed to lower the grade of the first 25 feet of the driveway 1-2 feet, which will knock up to 3% off the 15% grade.

Alderman Crossley suggested that the proposed landscaping was more than adequate, possible overplanted. She recommended that the petitioners seek the advice of city Tree Warden Marc Welch as to whether the trees and shrubs are likely to survive to maturity if installed as shown on the landscaping plan. The petitioners indicated that some of the plantings were intended to screen the driveway and to reflect plantings already along abutters' property lines. However, if Mr. Welch determines the proposed planting plan is unfeasible or unsustainable, the petitioners will make a cash contribution to the tree fund.

The several candidates for rear lot subdivisions in the neighborhood are:

- 55 Goddard Street, adjacent to the proposed subdivision, has enough area and although a considerable portion of the rear lot is in a wetlands buffer zone, it is possible to construct a house if it meets Conservation Commission criteria for construction in or near wetlands.
- 72 Charlemont Street would have enough lot area for a subdivision, but the existing house would have to be partially demolished because it is too large and would exceed the maximum Floor Area Ratio for the front lot.
- 122 Christina Street has 22,512 sq. ft., which is large enough for a subdivision.
- 38 Charlemont Street has 16,812 sq. ft. and is in common ownership with an adjacent 4,500 sq. ft. lot, but even if combined as one lot, it would not be large enough to subdivide.

Alderman Albright said that although the two proposed houses are larger than many other houses in the neighborhood, the larger lot sizes contribute to higher Floor Area Ratios and only a few houses on Goddard Street have attached garages, which also contribute to higher Floor Area Ratios. Alderman Schnipper opined that the by-right option of a large single-family house is far less in keeping in character with the neighborhood. The reality is that nobody builds tiny houses anymore. The petitioners confirmed that exterior heating/cooling units would be located away from property lines, screened and buffered.

Alderman Harney noted the emails and testimony in opposition. The neighborhood for years has enjoyed the benefit of the open space of this lot and the proposed subdivision will affect the neighborhood. He remains unconvinced that this is an appropriate location for these two houses.

Alderman Fischman said that perhaps this subdivision is a more benign use than a large single-family house with a swimming pool and an active backyard.

Alderman Merrill feels the owners have a legal right regarding the use of their property. The addition of two single-family houses will not alter the impact of the 3500 cars a day already travelling on Goddard Street.

The petitioners submitted a construction management plan. The Committee discussed possible hours of construction and ultimately agreed that 7:00 AM to 7:00 PM, Monday through Friday and 8:00 AM to 5:00 PM on Saturday were reasonable, noting that the Noise Ordinance allows Saturday construction until 7:00 PM.

Alderman Merrill moved approval of the petition, with the findings and conditions enumerated in the draft board order dated April 5, 2010. The motion to approve carried 5 in favor, none opposed, with Aldermen Albright, Blazar and Harney abstaining.

#388-09(2) EXTENSION OF TIME IN WHICH TO ACT on #388-09: MARCUS LANG INVESTMENTS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to create a rear lot subdivision including a change of grade/combination of walls/berms in excess of 4 feet within setbacks in order to construct two single-family dwellings with a shared driveway on GODDARD STREET, Ward 8; said EXTENSION will run from April 12 through May 12, 2010.

ACTION: EXTENSION OF TIME APPROVED 7-0 (Harney not voting)

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#59-10 ALD. HESS-MAHAN proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to require that all plans, maps, photographs, and other documents and exhibits required to be filed with applications for special permits/site plan approvals and/or presented at public hearings and working sessions of the Land Use Committee must also be submitted in electronic form in order to facilitate compliance with recent amendments to the Open Meeting Law regarding recordkeeping requirements.

ACTION: APPROVED 8-0

NOTE: Alderman Hess-Mahan explained that he docketed this in anticipation of the new open meeting law, which becomes effective July 1, 2010. As of that date, all documents submitted relative to an item as part of the record will have to be listed in and maintained as part of the “minutes” of the meeting. Electronic copies will make it easier for storage and to disseminate information and material to aldermen and citizens. The Committee voted 8-0 to approve the rules change, which will be taken up in the Programs & Services Committee.

The meeting was adjourned at approximately 11:15 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman