

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, APRIL 6, 2010

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

#16-10      DIKRAN PANOSSIAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING USE to legalize a 13<sup>th</sup> 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:    APPROVED 8-0

NOTE: Public Hearing

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

Attorney Samuel Shriro, 50 Union Street, Newton Centre, presented the petition. Two years ago, the petitioner purchased a basement condominium marketed as “two units in one.” The condominium consists of a 2-bedroom unit and a 315 square-foot studio unit, separated by a common hallway. Each unit contains a kitchen and bathroom and is rented separately. There is one deeded parking space for the condominium.

In 1984, prior to being converted to condominiums, the city determined the structure, constructed circa 1952, was a legally nonconforming *12-unit* apartment building. The illegal 13<sup>th</sup> unit was not included in that determination. In 1985, a special permit to legalize the 13<sup>th</sup> unit was granted to the condominium association with the condition that it be “offered for sale to the City of Newton” for use by the Newton Housing Authority as an affordable housing unit. The special permit was never recorded at the Registry of Deeds, therefore it was never exercised; however, the unit continued to exist through several prior owners before being purchased by the petitioner. The petitioner wishes to sell both units but the only way to do so is to split them. Legalization of the 13<sup>th</sup> unit requires a waiver of two parking spaces because there are only 13 spaces on-site (one of the 12 units has 2 deeded spaces). The petitioner has approached both the Newton

Housing Authority and the condominium association and neither is interested in acquiring the unit.

Alderman Fischman requested that the petitioner provide the Law Department with a copy of the master deed. He also asked that the Newton Housing Authority document its disinterest in the unit.

Public comment

Pat O'Connor of 80 Newtonville Avenue spoke in opposition to the petition because many people, including residents of 48 Hollis/548 Centre Streets, park on Newtonville Avenue making it difficult for her to back out of her driveway particularly when a car is parked across the street. In addition, many people ignore the winter parking ban, preferring to pay the \$5 ticket, which she feels is no deterrent.

Working session March 16

Harvey Epstein of the Newton Housing Authority provided a letter stating that the NHA is not interested in acquiring the unit for affordable housing, as it would not be applicable to "our affordable housing protocol." Ms Young suggested the administrative costs to the NHA for such a small unit would likely outweigh the benefit of its acquisition. The petitioner discussed with the Planning Department the possibility of offering an affordability deed restriction, but since deed restrictions also have an administrative cost and have to be re-recorded, the Planning Department suggested a cash contribution to the fund for inclusionary zoning. The petitioner offered to pay \$2500 to the fund upon the sale of the 13<sup>th</sup> unit. Ms. Young reminded the Committee that this petition does not fall under section 30-24(f), the inclusionary zoning ordinance, because it is only one unit. Any contribution from the petitioner would be voluntary, not required. Ms. Young reviewed the master deed and confirmed that it was amended in 1984 to reflect the 13<sup>th</sup> unit.

Mr. Shriro said his client is under water and cannot refinance. He needs to sell both units. Estimated sales prices are approximately \$260,000 for the bigger unit and \$100,000 for the 13<sup>th</sup> unit. Several Committee members felt the payment to the inclusionary zoning fund should be a percentage of the sales price of the 13<sup>th</sup> unit. Other members suggested the petitioner contact private non-profit housing groups such as CAN-DO. Mr. Shriro said his client might offer to contribute more than \$2500, but he was not sure about tying it to the sales price. He would need to confer with his client, who was not present this evening.

Currently, one person, a tenant at will who pays \$700-\$800 per month, rents the unit. Several Committee members were troubled that if this petition were not approved it would not only displace the current tenant and eliminate an already affordable unit but eliminate its future availability as well. Ms. Young said that if the petition is not approved the kitchen would have to be removed. Separation of a unit by a common hallway is a building code violation. If the 13<sup>th</sup> unit remained part of the larger unit, the only legal use would be storage space. A future owner could re-convert it into an illegal

unit, which would be a zoning enforcement issue. If the condominium association purchased the unit, it could use it as a laundry or common space. Mr. Shriro reiterated that the condominium association is not interested in purchasing it.

Previous tenants have either not had cars or have rented parking spaces offsite. The Planning Department feels the waiver of two parking spaces is appropriate given the unit's location near public transportation in Newton Corner. The petitioner has offered to pay \$200 to the city to fund the purchase and installation of a bike rack. The Planning Department recommended that it be installed in the lobby, but the lobby is too small. Mr. Shriro suggested that it could be placed outdoors near the building, subject to the condominium association's approval.

The item was held to allow the Planning Department and the petitioner the opportunity to determine if there are any viable options for obtaining an affordable unit.

#### Working session April 6

Subsequent to the March 16 working session, the petitioner met with Housing Development Planner Rob Muollo and Housing Programs Manager Trisha Guditz of the Planning & Development Department. This evening the Committee reviewed the affordability options they discussed with the petitioner:

- Owner sells unit and contributes 12% of the sales price to city's inclusionary zoning fund.
- Owner agrees to cash payment of less than 12% to the inclusionary zoning fund.
- Owner agrees to donate the unit to a nonprofit, unit is deed restricted; owner receives tax credit. CAN-DO is not interested in the unit. Advocates Inc., a Framingham-based nonprofit, is potentially interested but they would need more time before proceeding.
- Owner agrees to deed restrict the unit and sell to an income-eligible first-time homebuyer. Mr. Muollo indicated a studio unit is not desirable for most of the prospective clients he works with. Presently, there is only one first-time homebuyer in the city's inventory who is single.
- Owner deed restricts unit but sells on open market to a buyer who will rent it to an income eligible tenant.

The Planning Department concluded and the petitioner agreed that the best option is a contribution of 12% of the sales price of the 13th unit to the inclusionary zoning fund. The Committee agreed this would be reasonable given the history of the unit. Alderman Merrill, putting aside his initial concern about the waiver of two parking spaces, moved approval of the petition finding that it would involve no changes to the exterior of the building; the voluntary contribution of 12% of the sales price of the 13<sup>th</sup> unit would be a public benefit; the waiver of two parking spaces is appropriate because on-site parking for two additional spaces does not exist; the 315 square-foot unit is unlikely to attract more than one inhabitant; the neighborhood is close to and well served by public transportation; and, the contribution of \$200 for a bike rack in the neighborhood will support alternative transportation. Alderman Albright suggested and the Committee

concurred that a condition requiring the petitioner to sell the property within two years be included in the special permit. Alderman Merrill and other members of the Committee felt this was a reasonable amount of time for the market to rebound and voted 8-0 to approve the petition.

#45-10      DELUXE STATION DINER/AMERICAN COMPANIES petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate a 90-seat restaurant and waive 18 parking spaces at 70 UNION STREET, Ward 6, NEWTON CENTRE, on land known as Sec 61, Blk 36 Lot 11A , in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(d), (d)(9), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION:    APPROVED 8-0

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

Presenting the petition were attorney Michael Field, a resident of Hammond Street with offices at 183 State Street, Boston; applicants/restaurateurs Don & Daryl Levy; Chief Operating Officer and Vice President of Project Management & Development Boston Development Group/American Companies John Meunier; architect Joseph LaGrasse; and consultant Lou Mercuri of Parking Horizons.

The subject of this petition is the historic railroad station on Union Street in Newton Centre. Designed by the firm of Henry Hobbs Richardson, it was built in 1896 and is listed on the National Register. It is one of three remaining depots of the original twelve designed by Richardson's firm for the Boston and Albany Railroad. The Boston Development Group/American Companies has a long-term lease from the MBTA and until recently, it sublet the building to Starbucks. The lease applies only to the building and its interior; the exterior of the building and adjacent east and west parcels are owned and controlled by the MBTA. Petitioners Don & Daryl Levy, who wish to sublet the building from Boston Development/American Companies, have owned various retail operations for over 40 years and for the past ten years have operated the Deluxe Town Diner on Mount Auburn Street in Watertown. They are seeking a special permit to open a restaurant containing more than 50 seats (90 seats) and to waive the 18 required parking spaces. The proposed 90-seat restaurant has a parking requirement of 34 parking spaces including four spaces for the proposed 12 employees on the largest shift. The previous use has a parking credit of 16 spaces, which leaves a shortage of the 18 spaces for which they are seeking a waiver.

The original Fredrick Law Olmsted designed landscaping surrounding the station and on the two adjacent parcels has deteriorated and been changed over time. The petitioners are proposing to spend/contribute \$25,000 for restoration of the Olmsted landscaping and street amenities. They are working with a group of volunteers from the area who are researching the original Olmsted plan. Included in street amenities are a stroller parking

area, planters, benches along the building, new trash containers, and a newspaper box enclosure area. The petitioners plan to use the existing lighting and revise the existing signage.

There is no on-site parking. A parking study plan prepared by Planning Horizons for the petitioner surveyed 14 parking areas containing 364 public parking spaces within an approximate 3 1/2-minute walk of the site. Surveys were done at breakfast, lunch, later afternoon, and dinner hours in January and February of this year. Surveys were primarily limited to short-term spaces. Breakfast and dinner operations will have a limited impact on the parking demand. Dinner counts showed wide parking availability. Lunch hour is busier, but many patrons will walk from local businesses and counts show that the average number of spaces available during lunch over a 3-day period was 43 spaces. Previous studies of Newton Centre parking have indicated that there is sufficient parking to accommodate additional parking waivers. The petitioners expect that like the Watertown location, one-half of weekly sales will occur on weekends, when ample parking is available. Studies also indicate that the demand for parking spaces does not exceed 70% of the supply at peak times. The Planning Department expressed some concern that most of these areas have one-hour parking meters and that the spaces surveyed will be inadequate to meet the actual demand at certain times. Adding more long-term spaces and meters could alleviate these concerns. Recently, the Newton Traffic Council implemented a live parking area directly in front of the site to facilitate MBTA passenger pickup/drop-off and reduce double parking between 4:30 and 6:30 PM. Initially, the petitioners proposed a take-out/pick-up window facing the live parking area, but they have decided to eliminate the window in response to the concerns of the Planning Department. The petitioners anticipate that many patrons will be local residents who will walk and T commuters. The petitioners submitted a Parking Management Plan. They propose to lease 6 spaces for employee parking: 4 spaces behind 93 Union and 2 spaces from the city through the permit-parking program. Twelve parking spaces will be available behind 93 Union Street nights and weekends. Initially, the petitioners considered offering T passes to their employees, but it is too expensive; however, they have agreed to contribute to the purchase and installation of a bike rack(s) to encourage bicycling. There is no room on-site for a dumpster. Trash will be wheeled in 2-wheelers across the street to a compactor located behind 93 Union Street. Starbucks disposed of its trash the same way.

The Board received approximately 18 letters from Newton Centre merchants, business owners, and residents in support of the petition. A letter from the Economic Development Commission also voiced its support.

**Public comment:**

Al Blankenship, 8 Varick Hill Road, said he often goes to the Deluxe Town Diner in Watertown. The food is good and is reasonably priced.

Leslie Gabriel lives and works in Newton Centre. She owns the Wellfleet Collection on Union Street. The Centre needs a shot in the arm. It is very empty, particularly since foot traffic has declined with the closing of Starbucks. Competition is healthy and good.

Stephen Weisberg, who owns 65-73 Union Street, agreed that the Centre needs a shot in arm. His building has no parking, he parks in a city lot. People manage in whatever way they can relative to parking. The depot is a much more suitable space for this type of use than for retail. He patronizes the Deluxe Town Diner in Watertown.

Neil Solomon, 109 Allerton Road, one of the owners of Johnny's Luncheonette, a similar business, has worked 6-7 days a week in Newton Centre for the past 16 years. He had a different perspective relative to traffic, pickup/drop off/pedestrian safety/strollers/children/and cars circling for parking. The city has granted more parking waivers in the past three months than in the last 20 years. Johnny's has 10 parking spaces in the rear; employees use those spots as well as using the T, biking, etc. Johnny's has 88 seats. This past Sunday at shift change, there were 28 employees. Johnny's has two 8 cubic-foot dumpsters, picked up twice a week. It generates two 30-gallon grease pails. There were 15 delivery trucks last Friday. What about double parking on Union Street. Many spaces in the Cypress Street lot are 12-hour spaces; short-term spaces are to the rear of the lot, most on-street spaces are 1-2 hours.

Judy Solomon, 109 Allerton Road said that traffic is problem. It is not fair to compare a diner to Starbucks, which served mostly drinks and did not generate the same amount of trash as a 90-seat restaurant. Truck deliveries could be a problem.

Louis Darienzo, 160 Warren Street, is delighted. He joined a group of volunteers last fall to clean up around the train station. He has been to the Olmstead museum in Brookline and has researched online for the original landscaping plan. He could not find the plan for this particular station, but the group is working with a landscape architect pro bono to design appropriate landscaping. The depot is the jewel of Piccadilly Square. He is totally in support of the petition. The petitioners raised the possibility of seeking federal stimulus money or a grant to restore the station landscaping

Kim Meston, who owns Karma at 57 Union Street, has spent 15 years working and owning her own business in Newton Centre. She supports the petitioner and feels it is important to encourage businesses to be successful.

Daphne Collins, Chair of the Economic Development Commission, referenced the EDC's letter of March 5 in which she reported that the EDC had voted unanimously to support this petition. With over 40 years in retail and 10 years running a successful diner in Watertown, the petitioners will replicate the same model in Newton. There is no need to reinvent the wheel relative to parking in Newton Centre; existing parking studies indicate that only 70% of the spaces are utilized in the busiest times.

George Mansfield, 312 Lake Avenue, Newton Highlands, believes the proposed use is very appropriate for the building and site, it is a multi-modal site and as such an ideal candidate. He pointed out that the landscaping at the Newton Highlands depot has been restored as a condition of a special permit on that site. He trusts the Board of Aldermen to address issues such as deliveries and trash. He suggested that perhaps business owners/employees would commit to not feeding short-term meters.

Jane Aransky, 336 Elliot Street, has known the Levy's for 40 years. They are successful, experienced business owners who will bring new life to Newton Centre.

Jessica Brooks, 1574 Centre Street, enthusiastically supports the proposed use.

Ron Blau, 111 Wood End Road, said a good restaurant contributes to a lively area. Its presence and hours of operation will also contribute to public safety in the area.

A representative from Boston Development Group/American Companies said that vitality in Newton Centre could be greatly improved. All their tenants support this petition. In addition to foot traffic, the street would benefit from having an occupied building particularly at night. Trash will be in a compactor, which holds much more than a typical dumpster. If it needs to be emptied daily, it will be. All businesses get deliveries, including ongoing FedEx and UPS, most food deliveries happen in early morning before anyone is on the street.

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At this evening's working session, the Committee discussed the \$25,000 the petitioners have proposed for landscaping improvements. The petitioners are working on getting MBTA acceptance of landscaping improvements to its adjacent land east and west of the depot, which is not included in the petitioners' lease. If the MBTA agrees, \$12,500 of the \$25,000 that the petitioners have agreed to spend on landscaping will be used to landscape these lots and the remaining \$12,500 will be used for amenities around the building itself, including benches, planters, bike rack(s), and stroller racks. The petitioners and members of the ad hoc landscaping committee of volunteers have not been able to locate the original Olmstead landscaping plan, but they have found plans for two other stations on the same line. This will enable the use of similar plants and design. The Planning Department recommended that should the petition be approved, a final landscaping plan be submitted for review and approval prior to the issuance of a building permit.

Alderman Crossley expressed concern about the building itself. It is a beautiful H.H. Richardson building. Who is responsible for maintenance? John Meunier, a vice president from Boston Development/American Companies, said that his company has an agreement with the MBTA to repair and maintain the building. For example, portions of the slate roof need repair, but this type of work must be coordinated with the MBTA because gaining access from the tracks entails shutting down the T service. He expects the roof repairs and exterior painting will be completed by the end of this year. There are 13 years left on the Boston Development/American Companies' lease with the MBTA, it

plans to sign a concurrent lease with the Levy's and is currently engaged in negotiating with the MBTA an additional 7 years, for a 20-year lease.

The Committee discussed the practicality of wheeling trash across the street to the rear of another building where the trash compactor is located in the alley next to Sabra Restaurant. Mr. Meunier explained that three full-service restaurants currently use the compactor (Starbucks also used it). The compactor has a sensor that is triggered when it is full and it is emptied as needed. The size of the compactor could easily be doubled. Mr. Levy said that the diner would have a garbage disposal for wet trash. He anticipates 3-4 bags of dry trash a day. Mr. Levy's son owns a recycling business and will pick up recyclables several times a week.

Since the proposed hours of operation are 6:00 AM to 11:30 PM, most deliveries will be early in the morning before Union Street becomes crowded with parked cars and T commuters being dropped off. Although there are some residential abutters on Herrick Road, any impact should be negligible. Committee members noted that the Board of Aldermen recently approved a mixed-use project on Herrick Road that includes apartments and a restaurant and that this area of Newton Centre has an urban flavor, with a certain amount of lively street bustle.

Alderman Schnipper said she was disappointed at the elimination of the take-out window. It would present an economic opportunity for the petitioners and be a convenience for patrons, particularly those using the T. Alderman Harney felt a bit differently, he wondered if it would contribute to double and triple parking and cars being left running. Alderman Blazar believed the petitioners should be given the option to have or not have a take-out window. The petitioners said the original purpose of the take-out window was to offer coffee and light breakfast for morning commuters, not as an all-day operation. Another possibility the petitioners would like to explore is a take-out window below on the trackside of the building. The Committee ultimately agreed to allow the option of a take-out window on the trackside of the building and to allow a take-out window in front that could operate between the hours of 6:00 AM and Noon.

Alderman Blazar moved approval of the petition finding that the site is an appropriate location for a restaurant with more than 50 seats; it will increase the liveliness of a portion of the Newton Centre business district; the waiver of 18 parking spaces is appropriate because literal compliance is impractical as the building is a former railroad station; parking counts and studies show that there is sufficient parking within a reasonable walking distance; the leasing of 6 parking spaces will free metered parking spaces for use by others; landscaping improvements and other proposed street amenities will enhance the area; the reuse of the currently vacant building is a benefit to the public because it will help preserve an architecturally historic building and grounds and contribute to the safety of the area.

The Committee voted unanimously to approve the petition with the findings above and the conditions included in the draft board order dated April 20, 2010.



Class 2 Auto Dealer License Renewal

#314-09      LOS ANGELES AUTOBODY, INC.

41 Los Angeles Street

Nonantum

ACTION:      APPROVED 7-0 (Crossley not voting)

Class 2 & 3 Auto Dealer License Renewal

#330-09      TODY'S SERVICES INC.

1362 Washington Street

West Newton

ACTION:      APPROVED 8-0

NOTE: Both of these licenses are renewals for 2010. Both have held licenses for many years and have submitted the required \$25,000 bonds. Tody's has a Class 3 license as well as a Class 2 because Tody's also deals with junked autos. Alderman Merrill moved approval of both licenses, which motion carried 8-0.

The meeting was adjourned at approximately 10:30 PM.

Respectfully submitted,

Ald. Ted Hess-Mahan, Chairman