

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JANUARY 6, 2009

Present: Ald. Mansfield (Chairman), Ald. Albright, Merrill, Brandel, Hess-Mahan, and Sangiolo; absent: Ald. Fischman and Vance; also present: Ald. Baker  
City staff: Candace Havens (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Chief Committee Clerk)

Request for a Consistency Determination re special permit #162-07 granted on August 13, 2007 to Bell Atlantic Mobile of Massachusetts d/b/a Verizon Wireless and Nonantum Post #440 Inc. for a stealth flagpole wireless structure in a parking lot island and accessory equipment in the basement of an existing building; and outside at the rear of the American Legion Post #440 at 295 CALIFORNIA STREET, Ward 1, Nonantum.

NOTE: Special permit #162-07 was granted to Bell Atlantic Mobile of Massachusetts d/b/a Verizon Wireless and Post 440 for the installation of a stealth flagpole containing 3 wireless antennas and a GPS antenna, an emergency generator, and two condenser units with ancillary equipment in the basement area of Post 440 at 295 California Street, Nonantum. Present this evening from Post 440 were Francis Parisi and Chief Financial Officer Robert Peruzzi. The Post wishes to lease space in the flagpole to MetroPCS for the installation of three additional antennas (at a height of approximately 40-50') and ancillary equipment to be located in the basement in a separate room next to the Bell Atlantic/Verizon equipment room. A finding in the special permit notes the potential of co-location on the site for two additional wireless installations as encouraged in Section 3-18A, the City's wireless communication equipment ordinance. Initially, the Post 440 was advised to pursue the additional installation through the administrative site plan review process, but upon further scrutiny, the Planning Department noted that the special permit conditions refer only to the Bell Atlantic/Verizon equipment. The current Committee is comprised of a different membership, but the Chairman, who was a member of the previous Committee, said it was his expectation that a co-locator would seek an amendment to the special permit. He acknowledged that the then-committee had focused extensively on landscaping and the height of the flagpole and the size of the golden ball topping it off, not on co-location. Alderman Albright felt the end result would not change whether it was a consistency ruling or an amendment to the special permit. She noted that this was a good example of co-location, putting the rather large flagpole to additional use. Alderman Brandel felt that co-location was originally contemplated, if not clearly spelt out, and asked what would be gained by sending them through the special permit process. Alderman Merrill agreed. Ms. Havens was asked to convey to the Commissioner of Inspectional Services the essence of the Committee's discussion.

#211-07(2) REQUEST for a ONE-YEAR EXTENSION OF TIME in which to EXERCISE Special Permit #211-07 granted on October 15, 2007 to CEC OAK REALTY, LLC for various parking waivers including dimensionals and setbacks, perimeter and interior screening; lighting; and loading bay and for permission to use the entire basement for purposes other than storage, amending Board Orders #504-84 and #7-89, in connection with renovations to an existing parking facility in an existing building at 109 OAK STREET, Ward 5, NEWTON UPPER FALLS; said extension will run from October 15, 2008 to October 15, 2009. Ref: Sec 30-24(c) (4) of the City of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 3-0-1 (Brandel abstaining; Hess-Mahan, Sangiolo not voting)

NOTE: A letter from Attorney Stephen Buchbinder seeking this extension of time was attached to this evening's agenda. CEC originally had two principals, Dr. Ann Helmus and Dr. Rafael Castro, but differences between them resulted in Dr. Castro purchasing Dr. Helmus' interest. Additionally, the anticipated cost of the proposed improvements increased significantly beyond the original estimate for the work. Dr. Castro believes the work can be completed by the end of this summer. Alderman Merrill motioned to grant the one-year of extension of time, which motion carried 3-0-1, with Alderman Brandel abstaining because he was not familiar with the project and wished to speak with Mr. Buchbinder.

##377-08 BABAK VEYSSI petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing single-family dwelling and to construct four single-family attached dwellings in two structures including waivers from the side and rear setbacks; from locating a driveway within 10 feet of a side/rear lot line; to alter the contours of the land by more than 3 feet; and to AMEND Condition #2 of Special Permit #485-83 in order to allow an easement over an existing driveway for The Farm at Chestnut Hill, at 107 FLORENCE STREET, Ward 8, Chestnut Hill, on land known as Sec 82, Blk 4, Lot 78, containing approximately 31,483 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-15 (Table 1), 30-19(m), 30-9(b)(5)(a) and (b), 30-5(b)(4), of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0-1 (Sangiolo not voting)

NOTE: This petition was the subject of a public hearing that was opened and closed on November 18, 2008. At the hearing, the petitioner's representative Attorney Terry Morris was asked to:

- provide a site plan demonstrating the ability of fire vehicles to reach the site in the event that cars park in front of the proposed garages;
- show where guests will park and how any guest overflow will be accommodated;
- confirm whether or not blasting will be necessary;
- provide a landscape plan that shows trees to be removed.

City staff was asked to

- arrange a site visit; to confirm the grade changes associated with the installation of the wall proposed around the front perimeter of the property to confirm if and where there are proposed grade changes over three feet;
- coordinate consultation with the Director of Urban Forestry to establish with the petitioner steps needed to comply with the Tree Preservation Ordinance;
- provide the Committee with a copy of the original board order for *The Farm*.

The proposed dwellings are clad in brick veneer and a stucco-like texture with seam metal roofs and metal handrails around the exterior balconies to be compatible with *The Farm*. The Planning Department has suggested additional detailing, with final submittal to and review by the Planning Director. The proposed driveway is located approximately 80 feet from Florence Street. Proposed ample landscaping and preservation of two 28-caliper inch trees, one at the rear and one at the front, will help ensure adequate screening between the new dwellings, the street, and abutters. Both entrances are on property owned by *The Farm* and the petition includes a request to waive the lighting requirements to retain the residential character of the existing lighting. *The Farm* has agreed to grant the petitioner an easement across its property for a driveway to access the subject property. The petitioner will close the existing curb cut on Florence Street.

At this evening's working session, Ms. Havens informed the Committee that the petitioner had submitted a plan showing adequate Fire Department access to all four dwelling units even with cars parked in front of the garages. The Fire Department has reviewed and approved current plans and requires signage directing first responders up the driveway that leads to *The Farm* and the subject site. The petitioner said there would be language in the condominium documents prohibiting parking of cars in the driveway to this and *The Farm* properties. During the site visit on December 22, when the site and stakes the petitioner put to define the location of the driveway were covered with snow, the Planning Department noticed that snow banks made it impossible to park on the north side of Florence Street where parking is currently unrestricted. The Planning Department suggested that the condominium association plow that side of Florence Street to accommodate potential overflow parking. After discussing this possibility and upon the advice from Associate Solicitor Ouida Young, the Committee agreed that it is not appropriate for a private entity to plow city streets.

The proposed maximum grade changes in excess of three feet are located adjacent to Unit 1, a maximum fill of five feet, at the proposed driveway, a maximum cut of eight feet, and along the rear wall, another maximum cut of five feet. The existing stonewall at the front of the property should not be affected by any re-grading. Utilities will be underground.

The petitioner expects to blast to remove ledge and agrees to the City's standard blasting conditions, including pre-and post photographs.

The petitioner believes the property is exempt from the Tree Preservation Ordinance, but has agreed to comply with its intent. The eleven trees slated for removal qualify as “protected trees” with a combined caliper of 186 inches. The petitioner has submitted a revised landscape plan indicating a total of at least 345 caliper inches of trees to be planted on-site, exceeding the required replacement planting.

The Committee discussed the installation of a footpath to the street to encourage residents to walk to nearby stores and restaurants. The petitioner said that the demographic of residents is unlikely to walk. The petitioner would like to retain the rural ambiance, but finally agreed to install and maintain a stone dust path. The petitioner also agreed to install an asphalt sidewalk on the frontages of the site, *The Farm*, and abutting properties, westerly connecting to the existing asphalt sidewalk at 85-87 Florence Street. A construction management plan will be submitted prior to the issuance of a building permit.

The Committee considered a suggestion that the special permit contain a condition to protect the site and existing dwelling in the current downturn of the economy. The petitioner was not entirely adverse to such a condition, but explained that a non-refundable deposit would be required and construction would not begin until two units were sold. Alderman Brandel felt this was a dangerous precedent. The Chairman suggested linking the demolition permit for the existing house to the new building permit. Ms. Young cautioned that the Committee should look carefully at linking permits. Alderman Hess-Mahan felt such a condition to be arbitrary. On a straw vote, a condition to link the permits failed 3-3, with Albright, Mansfield, and Merrill in favor and Brandel, Hess-Mahan, and Sangiolo opposed.

Alderman Brandel moved approval of the petition with the conditions set in the draft board order, finding that the proposed nonconforming structure with reduced side and rear setbacks is appropriate to the site, which is irregularly shaped and has varying topography, and will not adversely affect abutters or the immediate neighborhood; the site is surrounded by multi-family and commercial uses and is an appropriate location for the four-unit residential use and structures; design and materials of the attached dwelling units are in keeping with surrounding developments and appropriate for the neighborhood; the addition of a sidewalk across the frontage of the site to connect to an existing sidewalk to the west will enhance pedestrian access throughout the neighborhood; access to the four units will not pose any vehicular or pedestrian safety concerns, as the site's curb cut on Florence Street will be closed and all traffic will enter and exit the site from *The Farm at Chestnut Hill* at 99 Florence Street; drainage of the site has been designed for the City's 100-year storm event and proposed grade changes in excess of three feet will not cause any adverse impacts on abutters; plans include retention of mature vegetation supplemented with new plantings that is sufficient to screen the site and structures from view from the street and *The Farm*; the petitioner has offered a cash contribution for affordable housing in accordance with Section 30-24(f)(4); the project is consistent with the Newton Comprehensive Plan as it is located in an area where there is potential for additional housing and is within walking distance of numerous dining and shopping options.

**THE FOLLOWING LICENSES WERE APPROVED 6-0**

Massachusetts classifies Auto Dealer licenses into three categories: A Class 1 license holder must be a recognized agent of a motor vehicle manufacturer with which it has a signed contract. A Class 2 dealer buys and sells only used vehicles; and Class 3 deals in for junk vehicles. The criteria for issuing a license are whether it is the applicant's principal business, he/she is a "proper person," and has available a "suitable place of business." In 1995, the City accepted and implemented by ordinance its right to deny, revoke, or suspend certain licenses for failure to pay municipal taxes or charges. In March of 2003, a law went into effect requiring all Class 2 auto dealers to post with the city or town in which they are licensed a \$25,000 bond or equivalent proof of financial responsibility for the benefit of a person who purchases a second-hand vehicle and suffers subsequent losses because of the dealer. The following licenses were approved because they meet the licensing criteria, have no outstanding zoning complaints, and owe no money to the City of Newton.

**Class 1**

- #403-08 CLARK & WHITE INC.  
777 WASHINGTON STREET  
NEWTONVILLE
- #404-08 CLAY NISSAN OF NEWTON INC  
431 WASHINGTON STREET  
NEWTON CORNER
- #405-08 FROST MOTORS INC.  
399 WASHINGTON ST  
NEWTON CORNER
- #406-08 FROST MOTORS INC.  
d/b/a FROST PREOWNED  
624 WASHINGTON ST.  
WEST NEWTON
- #407-08 VILLAGE MOTORS GROUP INC.  
d/b/a HONDA VILLAGE  
371 WASHINGTON STREET  
NEWTON CORNER

**Class 2**

- #408-08 MAP DEVELOPMENT & INVESTMENTS  
d/b/a ALBEMARLE MOTORS INC.  
175 NORTH STREET  
NEWTONVILLE
- #410-08 AUTO EUROPA INC.  
38 RAMSDELL STREET  
NEWTON HIGHLANDS

- #414-08 TRAVIS CORPORATION  
d/b/a THE CAR STORE  
19 ROLLING LANE  
CHESTNUT HILL
- #415-08 NEW ENGLAND MOTOR MART INC  
1221-1229 WASHINGTON STREET  
WEST NEWTON
- #416-08 NEWTON TRADE CENTER  
103 ADAMS STREET  
NONANTUM
- #417-08 OLD TIME GARAGE LTD.  
1960 WASHINGTON STREET  
NEWTON LOWER FALLS 02162
- #418-08 BOSTON AUTO BROKERS, LLC  
50R TOWER ROAD  
NEWTON UPPER FALLS
- #419-08 RADOSLAV STAMBOLIEV AUTO SALES  
304 WATERTOWN STREET  
NONANTUM
- #420-08 R.S. SERVICE INC.  
361 WASHINGTON STREET  
NEWTON CORNER
- #421-08 ROBERT'S TOWING INC.  
926R BOYLSTON STREET  
NEWTON HIGHLANDS
- #423-08 CITY OF NEWTON  
1000 COMMONWEAL TH AVENUE
- CLASS 3**
- #424-08 ECHO BRIDGE SALVAGE INC  
16-24 MAGUIRE COURT  
NEWTONVILLE
- #425-08 SCHIAVONE BROTHERS INC.  
16-24 MAGUIRE COURT  
NEWTONVILLE
- #376-08 JAN SPIRO petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision in order to construct a new single-family home to the rear of an existing single-family home, including a waiver of the 20-foot driveway requirement and a technical waiver from providing parking on-site, at 296 WARD STREET, Ward 7, Chestnut Hill, on land known as Sec 73, Blk 42, Lot 10, which contains an approximate total of 39,382 sf of land , proposed Lot 1 containing approximately 21,321 sf and proposed lot 2 containing approximately 18,061 sf, in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-15(r)(2), 30-19(f)(1) and (2), 30-19(h)(4), and 30-19)m) of the City of Newton Rev Zoning

Ord, 2007 and 30-17 (certification from ISD and/or Engineering re the garage being located below the grade of the sidewalk).

ACTION: HELD 5-0 (Sangiolo not voting)

NOTE: The petitioner wishes to continue working with the neighbors to revise landscape screening. A complete report will follow when the item is voted out of Committee.

#376-08(2) AGREEMENT TO EXTENSION OF TIME in which to ACT on petition #376-08 for a rear lot subdivision in order to construct a new single-family home to the rear of an existing single-family home, including a waiver of the 20-foot driveway requirement and a technical waiver from providing parking on-site, at 2096 WARD STREET, Ward 7, Chestnut Hill; said EXTENSION will run from February 16 to March 20, 2009.,

ACTION: APPROVED 5-0 (Sangiolo not voting)

#384-08 DAVID CHODRIKER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to eliminate the use of a garage beneath an existing single family home and relocate parking for two vehicles on a new driveway within the front setback at 5 STAFFORD ROAD, Ward 6, NEWTON CENTRE, on land known as Sec 64, Blk 25, Lot 9, containing approx 7,911 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-19(g)(1), 30-19(m), and 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HELD 6-0

NOTE: The petitioner is considering alternatives to the three-foot grade change and the location of the proposed ramp. A complete report will follow when the item is voted out of Committee.

The meeting was adjourned at approximately 11:35 PM.

Respectfully submitted,

George E. Mansfield  
Chairman