

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, FEBRUARY 10, 2009

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

#15-09 BERNARD R. O'KANE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to expand a NON-CONFORMING STRUCTURE to connect an existing detached garage to an existing single-family dwelling in order to create a bedroom and handicapped bathroom and to locate one additional parking space within the front setback at 185 HARVARD CIRCLE, Ward 2, NEWTONVILLE, on land known as Sec 22, Blk 22, Lot 2, containing approx 5,303 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 3-21(a)(2)b, 30-21(b), 30-19(g)(1), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: A PUBLIC HEARING WAS OPENED AND CLOSED.

#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: APPROVED 4-0-3 (Mansfield, Merrill, Sangiolo abstaining)

This is a request for a special permit to locate a second parking space within the front setback and for a grade change of more than three feet to construct a ramp and stairway providing access to a below-grade storage area, to be converted from a current below-grade garage. The single family house at the corner of Pleasant and Stafford Streets was originally built in 1950 as a ranch with a one-car garage under, accessed by a steep driveway sloping down from the street. Other than this slope, the 7,911 sq. ft. lot is generally level. About eight years ago, a developer re-built this house as a 2 ½ story structure, but retained the original garage. The petitioners purchased the property in 2006. They have found that the steep driveway grade does not provide safe and convenient access to the garage, and are presently using the garage only for storage of children's bikes, toys and lawn equipment, etc. They propose to fill the driveway and widen the paved area to create a level space for parking two cars. The former garage space, which is at basement level, would then be converted permanently to storage, and

to access it the petitioner proposed to lower the grade on the eastern side of the house to create a 4-ft. wide ramp connecting to the front of the house and a stairway connecting to the rear, both serving a new, below-grade entrance door. A brick walkway was proposed to connect the ramp to the street.

At the public hearing on December 9, 2008, the petitioners' attorney explained that the proposal would add 100 sq.ft. of paved driveway. However, the proposal would also allow the petitioner to remove a graveled area behind the house created by a former owner and currently used for parking with access by a curb cut on Pleasant St. He explained that this was an unsafe egress because of the location of adjacent utility poles, the curve in Pleasant St., and the level of traffic on that street, especially at drop-off and pick-up times at the nearby Mason-Rice School. The petitioner proposed to remove the driveway apron here, as well as the gate in his fence, and plant grass both on the berm and his lawn. He also proposed to plant two new street trees on Stafford Rd. with the City Forester's approval and agreed to add granite curbing to protect them, to help screen the proposed parking spaces in the setback..

The petitioner's attorney also explained that the grade change requested is minimal and will require only one retaining wall, the existing foundation serving as the wall on the opposite side. He said that this cut would not be visible from neighboring property or the street, since it is screened by an existing hedge and that the petitioner would accept a condition requiring maintenance of this hedge. The grade change also requires the relocation of two ground-mounted HVAC units which would be moved to the Pleasant St. (west) side of the house. The Planning Department asked that these be screened with evergreen shrubs.

The petitioners' engineer reported that the existing drywell served by a trench drain at the foot of the driveway was working well, with no water table concerns, since no water was present six feet below basement level. He proposed to add similar trench drains connected to this drywell between the new parking stalls and the sidewalk. He also proposed a 4' x 6' stone area for infiltration at the foot of the proposed ramp. He said the petitioner does not want to use permeable pavement, since there is very little increase in impervious area..

Natalie and Robert Sawyer of 11 Stafford Rd. submitted a letter, also signed by five other abutters, expressing concerns with the portion of the proposal that requires a 3-foot grade change, noting that they had no objections to the installation of a 2-car driveway in the setback. They contended that the proposed brick walkway and the change of grade for a below grade entrance would damage the appearance and enjoyment of the neighborhood, have a negative impact on property values, damage existing vegetation, including the hedge separating #5 and #11 Stafford Rd., and the excavation could damage surrounding structures and cause water seepage to basements. Ms. Sawyer spoke and also stated that she and her husband contend that the hedge and certain land shown on the submitted site plans is their property and not that of the petitioners. She also said that the plan was developed without any neighborhood input, and although having spoken with the petitioners since receiving the hearing notice, she said they have not been able to resolve

their objections. She pointed out that the space between the petitioners' house and the property line was narrow, and regardless of whose land the hedge sits on, excavation there is likely to destroy it. She asked that the proposed brick walkway be removed and that a grass strip of not less than 3 feet be maintained between the widest point of the existing hedge and any excavation or walkway. She said that she wanted to work with the petitioners, but noted that there are two other existing entrances to the basement and their goal could also be achieved by installing a storage shed in the back yard.

David Chodriker, the petitioner, responded that he had considered all other reasonable alternatives for egress but none are acceptable. He pointed out that the existing basement door is at the opposite corner of the house. He also offered to have a professional engineer evaluate the neighbors' concerns about potential damage and water infiltration from excavation.

Ald. Hess-Mahan asked to see a basement plan at the working session, and Ald. Albright asked the petitioner to consider a storage shed. Ald. Fischman noted that it would have been preferable if the developer who expanded the house had also brought the garage up to grade level at that time, eliminating the need for the requested relief.

At a working session held on January 6, 2009, revised plans were presented that removed the proposed brick walkway but retained the ramp and stairway to a below-grade entrance. Drainage plans were modified slightly, and the petitioners' engineer and the City Engineer reached agreement that there were no ground or surface water concerns or likely impacts from the project. A basement sketch plan was presented that purported to demonstrate why it would be difficult to access the storage area from the rear of the house. Several committee members found the sketch not to be too informative, and Ald. Brandel suggested that the problem could be addressed by changing the way in which the basement spaces were utilized. Ms. Young noted that above-ground accessory sheds are allowed by right, but it was not clear whether one could be located that would not interfere with a City sewer and drain easement that covers much of this property's back yard. Ald. Hess-Mahan asked whether a fence between #5 and #11 Stafford Rd. would provide better screening than the existing hedge. Ald. Brandel said he was unlikely to support the three-foot grade change in any event. The item was held, 6-0, so that the petitioner could further consider alternatives.

The final working session was held on February 10. Ms. Havens explained that all the issues and conditions related to the establishment of two parking stalls within the front setback and eliminating the Pleasant St. access had been resolved, but the questions of the below-grade entrance remained. The petitioner had analyzed three alternatives for accessing the garage storage space or creating another option, and had submitted several photos and plans of the basement and the site which the committee reviewed. His conclusion was, however, that none of the alternative plans were feasible. The alternatives were (1) a ramp leading to the back yard, (2) a ramp in the year facing Pleasant St., or (3) a storage shed in the rear yard. Alt. 1 would place the ramp over the City's sewer easement, which would not be allowed by the DPW. Alt. 2 would require access through an existing work room and would be constrained by an existing oil tank

and electrical panel, which would be difficult and costly to work around. Neither of these alternatives, the petitioner contended, would provide convenient access he desired to the driveway for lawnmowers, snow blowers and children's equipment. Alt. 3, the free-sanding storage shed, would be allowed up to 80 sq.ft., according to Ms. Young. However, it would require a license from the City to be on the sewer easement, and the Engineering Division was reported to "discourage" such a structure. Moreover, once again, the petitioner found it not to be convenient for his needs.

The Sawyers, owners of the abutting property, submitted another letter reiterating their opposition to the ramp and the grade change, once again saying that they believed it had no public benefit. Ald. Vance suggested that, in his opinion, no 3-foot grade change can be found to have a public benefit. Ms. Young replied that, in general, such grade changes make property more usable and avoid drainage impacts. The Sawyers also noted that they would not pursue the property line dispute, which may be based on the theory of adverse possession, unless the petitioner undertook construction in or near the disputed area. Ald. Mansfield proposed a fourth alternative, the location of the 4-foot wide ramp within the existing grade of the driveway, building a new retaining wall on the west side and filling only the portion to the west of that wall. The proposed parking stalls would then be shifted 4-5 ft. west, moving all activity further from #11 Stafford. The new entrance to the garage would replace a portion of the existing overhead door, and the grade of the ramp could be reduced, if necessary, by extending a gradual ramp within the garage. He suggested that this would not only eliminate the impact upon the neighbors, but would likely be less expensive than the petitioners' proposal, since no new excavation, cutting through an existing foundation, or relocation of HVAC equipment would be necessary. However, the petitioner's attorney, with whom the Chair had shared this alternative prior to the meeting, produced a dimensioned plan that showed that in this alternative the parking area would intrude up to 4 ft. into the front steps and landing.

The committee then examined photographs of the view of the proposed grade change area from the abutting property. Ald. Albright noted that the deciduous hedge appears to be sparse in some sections in the winter. She asked if there had been any consideration of replacing it with an evergreen hedge. The petitioner's attorney said that they would be willing to replace the portion of the hedge that is in the line of sight with "pencil yews," and allow them to grow up to 8 feet high. The discussion also considered a solid fence in front of the hedge, but concluded that this would not allow the petitioner to maintain the hedge.

Ald. Fischman said that he could not see evidence from this review and discussion of the impact on the abutters that they were claiming. Ald. Albright did see the aesthetic impact, however, with the type of hedge now there, and moved approval of the petition with the condition that the portion of the hedge adjacent to the proposed ramp be replaced with an evergreen hedge of the equivalent height of the present deciduous hedge, estimated to be about 6 feet. Her findings included that the wider driveway and parking in the setback will not be a hazard to vehicles or pedestrians and improves the users' safety, that the removal of a curb cut on Pleasant St. will increase safety there, that the new trees and curbing along Stafford Rd. will improve the streetscape, that the plans

adequately manage surface water drainage, that the existing hedge and proposed replacement will adequately screen the parking area and access ramp from the neighbors, and that other options for access to the basement were explored and found infeasible.

She also included the following conditions: that the portion of the hedge bordering the proposed below grade entrance ramp be replaced with an evergreen hedge of like dimensions; that evergreen shrubs be planted to screen the relocated HVAC units; and that an operations and management plan for storm water be recorded with the special permit.

The Chair, noting that the site is in Ward 6, said that it was unfortunate that the neighbors could not reach agreement, but that in his opinion the safety and access problems of the current garage could be solved without creating the new below grade access in an area that was very tight and apparently subject to a potential property dispute. He said that while none of the alternative options are preferred by the petitioners, it would seem that some combination of them could be found to suffice to improve their situation, rather than risking a Land Court appeal that could keep the whole project from moving forward.

The motion was then approved by a vote of 4-0-3, with Ald. Merrill, Sangiolo and Mansfield abstaining.

Application for a Class 2 Auto Dealer License (renewal)

#406-08 ROBERT LEONE

14 Beech Street

Newton 02458

ACTION: APPROVED 7-0

NOTE: This license is a renewal. It satisfies all the licensing criteria, and Alderman Merrill moved approval, which carried 7-0.

Request for a Consistency Determination re special permit ##277-08, granted on October 20, 2008, for partial demolition and to expand to an FAR of .51, to extend an existing nonconforming structure at 66 Montrose Street. The petitioners' engineer and contractor are recommending additional demolition.

NOTE: On January 30, Attorney Stephen Buchbinder submitted a packet that included details of the proposed demolition and photographs of the existing foundation. Mr. Buchbinder, contractor David Brookes, and civil engineer Verne Porter were present this evening. Mr. Buchbinder explained that originally the architect thought that a bit more than half the existing structure would need to be demolished, but when work began, Messrs. Brookes and Porter became concerned about the future structural integrity and safety of the structure. The remaining portion of the structure that was to be saved may be structurally unsound. There are cracks in the existing foundation and it may be structurally compromised after additional cuts are made. There is evidence of an existing water problem, which may also be exacerbated by the cuts and seams that would be left in the existing foundation. If the original intent had been to demolish the entire house then the relief sought would have been limited to an FAR in excess of .30 without the

need for relief for the extension of a non-conforming structure. The existing house has no historical significance. There are no proposed changes to the elevations approved in the special permit; the new house will be built in accordance with those elevations. The Committee agreed that the proposed additional demolition was consistent with the special permit and asked Ms. Havens to convey its conclusion to Commissioner Lojek.

Request for a Consistency Determination re the location of plantings approved in special permit #301-07, granted on December 17, 2007, to alter the contours of land by more than three feet at 42 Huntington Road.

Request for a Consistency Determination re the location of plantings approved in special permit #301-07, granted on December 17, 2007, to alter the contours of land by more than three feet at 42 Huntington Road.

NOTE: This petition consisted of an as-of-right addition with relief sought to alter the grade by more than 3-feet to create a usable and safe backyard outside the new addition, increase the length of the driveway, and extend an existing stonewall along the property line to create a terraced patio and play area with stairs. The approved planting plan shows 10 azaleas and 5 rhododendrons along the right back property line. Candace Havens was on-site when the plants were installed; however, over the course last summer and fall, the plants at this location did not thrive. The petitioners have transplanted them to another location and wish to leave the space in its original pre-construction condition. The abutter at that property, 48 Huntington Road, was involved throughout the special permit process and had expressed her preference that nothing be planted along that property line. She felt most impacted and was concerned about encroachment on her property, particularly since she claimed that a portion of the petitioners' property was actually her property. The Committee recalled the allegations re the property line and for the second time this evening noted it is not the City's role to arbitrate property disputes between neighbors, but up to the persons making the allegations to obtain a survey.

Several Aldermen wondered if the plantings were given enough time to acclimate, but ultimately agreed with other members who felt there was no harm in relocating them since the abutter had not wanted any plantings installed in that location. The problem is that the relocation of the plantings is not in accordance with the approved planting plan. The Committee agreed that a letter from the Planning Department should be sent to the abutter to explain the removal of the plantings and a note placed in the file to memorialize why there is an inconsistency with the approved planting plan.

The meeting was adjourned at 10:30 PM

Respectfully submitted,

George E. Mansfield, Chair