

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MAY 19, 2009

Present: Ald. Mansfield (Chairman), Ald. Vance, Sangiolo, Fischman, Hess-Mahan, Merrill, Brandel, and Albright; Ald. Linsky, Johnson, and Baker

City staff: City staff: Linda Finucane (Chief Committee Clerk), Candace Havens (Chief Planner), Ben Solomon-Swartz (Senior Planner), and Ouida Young (Associate City Solicitor)

*A Public Hearing was opened and closed on the following item:*

#120-09      WILLIAM S. & GILLIAN B. PIERCE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXPAND A NONCONFORMING STRUCTURE to demolish an existing first-floor porch and to add a small two-story addition onto the south side of an existing single-family dwelling that is legally nonconforming with respect to floor area ratio at 19 GLEN ROAD, Ward 7, Newton Centre on land known as Sec 65, Lot 5, Blk, 7, containing 6,795 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 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 (Merrill not voting)

NOTE:      This is a petition to expand a legal non-conforming single-family house on a small lot by demolishing an existing enclosed first floor porch and constructing in its place a modestly-scaled two story addition on the west side of house, which faces Westminster Road from this corner lot. The site plan also straightens and moves the entrance to the driveway on Westminster Road closer to the lot line to allow some setback from the addition and to improve to sight distance. The existing house is on a 6,800 sq. ft. corner lot and is nonconforming with regard to setback and floor area ratio (FAR). The proposed plan does not increase the setback non-conformity, but would increase the FAR from 0.38 to 0.43. The maximum FAR in this zoning district is 0.3.

This increase in FAR at this site would not have required a special permit prior to April 6, 2009. On March 16, 2009, the Board of Aldermen approved the deletion of Footnote 7 from Table 1 in Sec. 30-15 of the Zoning Ordinance, which action had been recommended by the Zoning and Planning Committee (ZAP) after several years of study by the Zoning Task Force, as a means of closing a “loophole” in the Ordinance which had provided an exemption from FAR requirements that led to instances of residential reconstruction that many believed to be out of scale with existing neighborhoods. This petition is for one of several projects that were in the planning and/or early permitting stages when the revised ordinance provisions took effect.

At the public hearing held on this date, Mr. Pierce, the petitioner, explained that his family has lived in this home for five years and would like to add a family room with a study above on the second floor. He explained that the change to the exterior of the house is modest and reflects the Colonial style of the 1915 structure. He added that they plan to replace the current vinyl siding with cedar shingles as part of the renovation. He explained that the planning for this project took place last year, and then was put on hold by economic conditions. However, the project has been selected as a "This Old House" feature that is scheduled for the fall of 2009, and so they are seeking all approvals on a tight schedule. Ald. Brandel asked whether their architect was made aware of the impending ordinance change in advance of the Board's action. Architect Paul Rovinelli explained that because the project had been designed last year, he had not been working with ISD during this period. He said that it was a modest project that follows all the de minimus rules so that he did not expect it to require a special permit. Mr. Pierce added that in the design process, they had worked very hard specifically to avoid the special permit process. Simon Walker, 9 Glen Road, an immediate abutter, spoke in support of the petition. Ald. Fischman asked whether other neighbors had been apprised of this proposal. The petitioner replied that all his neighbors had signed a statement in support of the plans, except the residents of 11 Westminster Rd. and 182 Langley Rd., who could not be reached. The Chair also determined that the Historical Commission had found the demolition of the existing porch to be "not historic."

Kenneth Leonetti of 124 Allerton Rd., Newton Highlands, said that he was among the seven owners who have filed similar petitions for FAR relief that will be heard on June 2 because their plans were halted by the Ordinance change. He said approval of these petitions should be granted as a fundamental fairness issue, and that his contractor had received no notice of the impending change although he was working with ISD at that time. James Jumes of 26 Acacia Avenue added that his project was also one of these seven. He said that he had been working on the design with the Chestnut Hill Historic District Commission for 9 months, but was never told that such a change in the Ordinance was on the agenda.

The public hearing was closed and the committee began a working session at 11:45 PM. Ms. Havens began the discussion by reviewing the history of the zoning change (Ordinance Z-44), which was begun in 2006, but up until the Zoning & Planning Committee public hearing on February 23, 2009, she stated that no one on the staff could discern what the changes might be or when they were likely to take place. Ald. Vance asked Ald. Hess-Mahan (former chair of the Zoning Task Force) to describe the problems that his group was trying to eliminate by means of this change. Ald. Hess-Mahan explained that the "50% demolition provision" (Footnote 7) had allowed owners to essentially rebuild existing homes with no limits on size and scale of construction except height, setback and minimum open space requirements, which in many cases were ineffective. When FAR requirements were first added to the Ordinance in 1997, this footnote had the effect of limiting its application to residential construction solely to new homes on vacant lots, which are in the minority in Newton. Ms. Havens also noted that several Aldermen have docketed a proposal to offer some temporary and minor relief to those who have prepared plans with small additions based on the previous zoning, while

a longer term refinement of the FAR provisions can be considered by the Board. As an alternative, Ald. Sangiolo has also docketed a proposal to rescind the deletion of Footnote 7, thus restoring the previous provisions.

The discussion then focused on the petition at hand. Ms. Havens noted that because the only relief sought is from FAR requirements, and that the footprint would be expanded by only 55 sq. ft. (not into the setback), no landscape plan would be needed. She also explained that under the proposed legislation, this project would still require a special permit since the current structure already exceeds the maximum FAR that would be allowed in this district (0.37) and the proposal would increase that. Ald. Sangiolo noted that her alternative proposal of rescinding the previous Board action would eliminate the need for a special permit for this project. Ms. Havens added that dense evergreen landscaping presently surrounds the property and will not be affected by this construction. It will, however, continue to screen the driveway in its relocated position. Ald. Vance then moved approval of the petition, finding that the use as developed and operated will not be substantially more detrimental to the neighborhood than current conditions, that the site plan produces no nuisance or hazard to vehicles and pedestrians, that there are no significant topographical changes, that the modest addition to this single family residence will help preserve the character of the neighborhood while allowing the occupants to meet their current housing needs, and as such is consistent with the Comprehensive Plan. He also found that an FAR of 0.43, in this instance, is appropriate on this very small lot and in the context of this neighborhood.

The Planning Department had proposed several standard conditions which were contained in the motion, including the maintenance of existing landscape screening in good condition. Ms. Young suggested that this condition might not be appropriate on this single family lot, as there is no landscape plan nor new plantings proposed. Ald. Vance agreed to remove it. Ald. Mansfield suggested that the committee consider controls on the possible disruption of this quiet neighborhood during the construction process, since it will be a TV production in process as well. Ald. Sangiolo suggested that a condition requiring that a construction management plan (CMP), especially for parking, be approved by Planning and ISD. But the majority of the committee was not in favor of such a condition, and the WGBH producer present explained that her crew would be coming in private autos, rather than large mobile studio vehicles, and that their impact in similar settings has been minor. Therefore, Ald. Vance rejected any CMP condition.

The motion was approved by a vote of 7-0, Ald. Merrill not voting.

*Public Hearing continued from April 7, 2009*

#75-09        DONALD A. & JILL L. EURICH petition for a Special Permit/Site Plan Approve to Expand a Non-conforming Structure and Use to add an addition of less than 200 sf to an existing detached barn to be used for a home office and to waive the requirement for two parking spaces at 7 WALNUT STREET, NEWTONVILLE, Ward 2, on land known as Sec 21, Blk 22, Lot 4, containing approx 32,716 sf of land in a district zoned SINGLE RESIDENCE 3. and add

ACTION: WITHDRAWAL WITHOUT PREJUDICE APPROVED 7-0 (Merrill not voting)

NOTE: This petition was originally scheduled for a public hearing on April 7, 2009, but was continued at that time at the request of the petitioners. Just prior to that date, the Inspectional Services Department discovered that the detached barn, for which a partial demolition permit (unrelated to this petition) had been approved by the Historical Commission, had been totally demolished. The petitioners explained that this action was taken by their contractor upon discovering substantial structural damage from a previous fire. The petitioners have been subsequently working with the Commission on plans to rebuild the structure. Until those plans are complete, they have requested that this petition be withdrawn without prejudice. The public hearing was closed without any testimony. Ald. Albright moved approval of the withdrawal, and the motion carried 7-0, Ald. Merrill not voting.

#134-09 NEWTON HIGHLANDS NEIGHBORHOOD AREA COUNCIL  
requesting a temporary license pursuant to Sec 30-6(k) of the City of Newton Ordinances to hold its 34th annual VILLAGE DAY on Sunday, June 14, 2009.

ACTION: APPROVED 7-0 (Merrill not voting)

NOTE: This is an annual license requested for this neighborhood street fair which is being held as the 34<sup>th</sup> annual Highlands Village Day on June 14, 2009. Although no one was present, Katy Dallas, on behalf of the NHNAC, had provided the committee with a detailed list of the street closings and activities planned for the day and her request for assistance from the Public Works Department. Ald. Brandel moved approval of the license, and the motion carried 7-0, Ald. Merrill not voting.

The meeting was adjourned at 12:30 AM

Respectfully submitted,

George Mansfield, Chair.