

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 13, 2009

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

#216-08(3) JACKSON REAL ESTATE PARTNERS request for a one-year extension of time in which to exercise special permit #216-08, granted on October 6, 2008, for a grade change in excess of three feet in order to construct a new single-family dwelling at 20 Kessler Way, Lot 2; said extension will run from October 6, 2009 to October 6, 2010. Ref: Sec 30-24(c)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0 (Merrill not voting)

NOTE: Attorney G. Michael Peirce said it appears the downturn in the real estate market has affected his clients' ability to obtain funding for new home construction. The clients hope the coming year will see a positive turnaround and are seeking an additional year to exercise this special permit for a single-family home. Upon a motion by Alderman Hess-Mahan, the Committee approved the one-year extension 5-0, with Alderman Merrill not voting.

#182-09 188 NEEDHAM STREET LIMITED PARTNERSHIP petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert a portion of existing retail and office space to restaurant space with 120 seats at 188-210 NEEDHAM STREET, Ward 8, Newton Upper Falls, on land known as Sec 83, Blk 28, Lots 83 and 84, containing approx 192,308 sf of land in a district zoned MIXED USE 1 Ref: Sec 30-24, 30-23, 30-19(m), 30-13(b)(5) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 2-0-3 (Hess-Mahan, Albright voting in the affirmative; Brandel, Merrill, Sangiolo abstaining; Fischman recused)

NOTE: Alderman Albright chaired the discussion of this item because Vice Chairman Fischman was recused. A board order is included in today's packet and a report will be e-mailed to the Board on Monday, October 19 and on everyone's desks that evening.

#210-09 PHILIP & MICHELLE DANDREA petition for SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING STRUCTURE to demolish an existing one-story garage and replace it with a new garage and second-story addition, which will increase the floor area ratio from .46 to .55 at 91 OTIS STREET,

Newtonville, Ward 2, on land known as Sec 24, Blk 12, Lot 10, containing approximately 3,467 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 1, Footnote 5 of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0 (Sangiolo not voting)

NOTE: This petition was the subject of a public hearing that was opened and closed on September 22, 2009. There was no public comment. Architect Ernest DeMaio of Tektroniks Architects explained that the petitioners wish to demolish an existing one-story attached garage and construct a two-story addition containing a garage with a master suite above it onto an existing single-family house situated on a 3,467 square-foot lot. The petitioners are seeking a special permit because the proposed addition will increase the existing nonconforming floor area ratio (FAR) from .46 to .55. However, because the proposed garage is narrower than the existing garage and set further back, it will *increase* the existing conforming 7.9 side setback to 9 feet (7.5 feet is required). An additional 2 square feet will be added to the first floor and 308 square feet to the second floor. Other setbacks, lot coverage, and open space will remain the same. The proposed addition is sensitive to the existing Colonial-style, gambrel roof house, constructed circa 1890 and listed on the National Register of Historic Places as part of a National Register District.

The Planning Department suggested that the petitioners be encouraged to retain the original existing west side dormer window. Mr. DeMaio said that the petitioners would like to save the window, but fear it has suffered water damage. The window is located over the headroom of the interior staircase and because there is no landing or floor adjacent to it, it cannot be reached now to examine it for damage. The proposed window is reminiscent of the existing window.

At this evening's working session, Ms. Havens reviewed the Planning Department working session memorandum, which had attached a letter from the architect Ernest DeMaio on behalf of the petitioners. Mr. DeMaio reiterated that the window is not easily reachable at this time for a detailed examination, but it is easy to observe a significant amount of water damage to the wall and the ceiling directly above/adjacent to the window. He proposes replicating the basic geometry of the window while making it operable and adding light and air as required by building code. The Committee agreed that the special permit, if approved, contain a condition reflecting either the reuse or replacement of this window. Also attached to the memorandum was a letter in favor of the proposed addition from Julia Terry at 95 Otis Street. Alderman Fischman also found helpful the summary of floor area ratios attached to the memorandum.

Alderman Albright moved approval finding that the proposed extension of the nonconforming structure is not more detrimental than the existing house and garage and will have no adverse impact on the neighborhood; the increase in the FAR is consistent with other structures in the surrounding neighborhood and it complies with lot coverage and open space; the proposed addition will not encroach into the existing nonconforming

front setback and will enlarge the side setback from 7.9 feet to 9 feet; there are no proposed topographical changes and the existing vegetation will provide adequate screening.

Alderman Albright's motion carried 5-0, with Alderman Sangiolo not voting.

#246-09 DOWN UNDER YOGA, LLC/J. ROBERT CASEY, TRUSTEE OF NEWTONVILLE AVENUE REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a parking waiver of 8 stalls in order to locate a yoga studio at 304-306 WALNUT STREET, Ward 2, NEWTONVILLE, on land known as Sec 22, Blk 5, Lot 33, zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0

NOTE: This petition was the subject of a public hearing opened on October 6 and closed in the early morning hours of October 7, 2009. Attorney Stephen Buchbinder represented the petitioner, who is seeking a waiver of 8 parking spaces in order to locate a yoga studio in approximately 2000 square feet of existing basement space under the CVS store in Newtonville Square. The small parking lot behind CVS is already in use by other businesses in the block. The petitioner conducted a parking survey indicating that over 250 parking spaces are available within a ¼ mile of the proposed studio during all of the times surveyed. These spaces include on-street metered spaces and metered spaces in the Austin Street municipal lot. The survey excluded all spaces limited to one hour because yoga classes are usually about one hour and fifteen minutes. The Planning Department believes many patrons will arrive by foot or bicycle. The petitioner has offered to donate a bike rack to be placed at a location still to be determined.

The only proposed exterior change is the replacement of an existing metal door on Walnut Street with a glass door, which will be the primary access.

Down Under Yoga is currently housed in Newton Highlands. Public testimony in support of the petition included Emma Rinehart, who praised Down Under Yoga for its community endeavors, John Rice, and Dr. Judy Estroff. Because the public hearing began so late, most people who came to speak had to leave, but Mr. Buchbinder submitted a petition signed by 81 of those people along with a notebook of testimonial letters, all in support of the petition

At this evening's working session, the Committee in its discussion noted that since the bike rack could not be installed on the petitioner's property, the petitioner could donate a portion towards the cost of a bike rack should the special permit be approved. The petitioner agreed to work with the City to find an appropriate location, perhaps in the Austin Street municipal lot. Ultimately agreeing that \$200 towards the bike rack would be a fair contribution, Alderman Albright made a motion to approve the petition for an 8-space parking waiver finding that waiving the 8 spaces will not impact the Newtonville

commercial district; the parking study indicates there is ample vacant parking space during the proposed hours of operation of the yoga studio to justify the 8-space waiver; and the yoga studio will bring additional vitality to the area;. At Ms. Young's suggestion, the Committee agreed to a condition that the parking waiver remain in effect only for as long as the space remains a yoga studio.

Alderman Albright's motion to approve the petition carried unanimously, 6-0.

#108-08(2) SSG DEVELOPMENT, LLC petition for a one-year extension of time in which to exercise Special Permit/Site Plan Approval #108-08, granted on 5/18/08, to construct a 4-story self-storage facility at 0 LEXINGTON STREET, Ward 4, on approximately 14,242 sf of land in a district zoned BUSINESS 2, with the remaining 49,242 square feet located in the City of Waltham, for which approval is pending; said extension will run from May 18, 2009 to May 18, 2010.

ACTION: APPROVED 6-0

NOTE: Attorney Stephen Buchbinder, who represented the petitioner during the special permit process, spoke on behalf of the petitioner this evening. In Waltham, where the major portion of this site is located, a local Waltham land use attorney represented the petitioner. Apparently, the petition did not have the community support it had in Newton and a number of procedural extensions of time were agreed to. Mr. Buchbinder said that now the only remaining issue is the proposed number of units in the same proposed size building. The petitioner is confident that this matter will be resolved and that Waltham will grant the special permit and construction can begin within the next year. Upon a motion by Alderman Sangiolo, the one-year extension of time was approved 6-0.

The meeting was adjourned at approximately 10:00 PM.

Respectfully submitted,

Mitchell Fischman, Vice Chairman