

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 10, 2009

Present: Ald. Fischman (Vice Chairman), Ald. Albright, Sangiolo, Vance, and Hess-Mahan; absent: Ald. Brandel, Mansfield and Merrill; also present: Ald. Baker and Alderman-elect Fuller

City staff: Candace Havens (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Chief Committee Clerk)

***Public hearing continued from October 20, 2009:***

#208-09      TREXLER M. & JUDITH W. TOPPING petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to re-grade portions of a yard for retaining walls/berms and landscape areas in excess of 4 feet at 132 FARLOW ROAD, Ward 7, NEWTON, on land known as Sec 72, Blk 35, Lot 10, containing approx 62,378 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION:      HEARING CLOSED

***A public hearing was opened and closed on the following item:***

#303-09      MAURY E. LEDERMAN & LYNDIA FINK petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION of a NONCONFORMING STRUCTURE to convert an existing screen porch to a new room, increasing the floor area ratio from .61 to .63 at 22 WALTER STREET, Ward 6, on land known as Sec 62, Blk 24, Lot 16, containing approx 4,950 sf in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 20-21(2)(2)b and 30-15(u)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION:      HEARING CLOSED; ITEM APPROVED 5-0

NOTE: The petitioners are seeking a special permit to enclose and convert an existing screen porch into a new room. The proposed enclosure will increase the already nonconforming FAR from .61 to .63. The by right FAR is .42. Because the lot slopes down towards the rear, the basement is included in the calculation of the FAR for this house. The FAR appears to be slightly higher than the average estimated FAR for neighboring homes, but if basements in those homes were included, the .61 FAR might not be higher than the neighborhood average. The petitioners are proposing to clad the enclosed porch with cedar shingles. Windows will match the existing windows in the house. The petitioners submitted letters from abutters at 18 and 26 Walter Street, both in support of the petition. There was no public comment and the hearing was closed.

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In working session, Alderman Albright moved approval finding that the increase in FAR is consistent with other structures in the neighborhood and the enclosure of the existing screen porch is not more detrimental to the neighborhood because it does not increase the

footprint or any dimensional standard other than FAR. The motion to approve the petition carried 5-0.

***Request for withdrawal without prejudice:***

#245-09      SEAN & CINDY ROCHE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION of NONCONFORMING STRUCTURE to demolish an existing one-story sunroom and replace it with a two-story addition at 42 DANIEL STREET, Ward 6, NEWTON CENTRE, on land known as Sec 62, Blk 25, Lot 7, containing approx 5,330 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21(a)(2)(b), 30-21(b), and 30-15 Table 1.

ACTION:      WITHDRAWAL WITHOUT PREJUDICE APPROVED 5-0

NOTE: The petitioners' surveyor recalculated the lot coverage and discovered that the initial 34.6% existing lot coverage should have been 21.1%. Based on the corrected calculation, the petitioners do not need a special permit to build the planned addition.

***Request for withdrawal without prejudice:***

#209-09      KARAMEH HAWASH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing single-family dwelling and to reconstruct a new single-family dwelling, which will exceed the allowable floor area ratio from .3 to .33 at 45 VILLAGE CIRCLE, Newton Centre, Ward 8, on land known as Sec 81, Blk 3, Lot 14, containing approximately 10,037 sf in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-15, Table 1 Footnote 5 of the City of Newton Rev Zoning Ord, 2007.

ACTION:      WITHDRAWAL WITHOUT PREJUDICE APPROVED 5-0

NOTE: The petitioner has decided to redesign a house that can be built by right on the subject lot.

***Item held in Committee at full Board on 10/19/09:***

#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, 30-20, 30-19(m), 30-13(b)(5) of the City of Newton Rev Zoning Ord, 2007.

*Approved 2-0-3 (Hess-Mahan, Albright voting in the affirmative; Brandel, Merrill, Sangiolo abstaining; Fischman recused) on 10/13/09*

ACTION:      APPROVED 4-0 (Ald. Fischman recused)

NOTE: Alderman Albright chaired the discussion of this item. The petitioner was asked to explain why he had requested the item be held in committee at the Full Board meeting of October 19. The petitioner's attorney Frank Stearns explained that they wanted to be clear that the committee understood all the issues related to parking and pedestrian travel. First, that the petitioner has agreed to approach the city, the state and the landowner on the opposite side of Industrial Place regarding a crosswalk. Second, the circulation in the parking lot recommended by their consultant is the preferred pattern, designed to get

people in and out of the site and includes internal directional signage for pedestrian and traffic flow. Alderman Hess-Mahan proposed reconsideration of the Committee vote of October 13, which passed, and a motion was then made to approve the petition including the original findings and conditions. The petition was approved 4-0, with Alderman Fischman recused.

#244-09      S. R. WEINER ASSOCIATES INC./CHESTNUT HILL SHOPPING CENTER, LLC/C&R REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NONCONFORMING USE for restaurants in excess of 50 seats; to increase the number of seats in two existing legal nonconforming restaurants currently having in excess of 50 seats; to permit a new restaurant over 50 seats and an associated request for a parking waiver at 1-27-33-35 BOYLSTON STREET, Ward 7, CHESTNUT HILL, on land known as Sec 63, Blk 37, Lot 25, 26, 27, 18A, containing approx 767,306 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-11(d)(9), 30-19(d), 30-19(m) of the City of Newton Rev Zoning Ord, 2007 and Special Permit nos. 401-03, 317-03, 317-03(6).

ACTION:      HELD 4-0 (Ald. Fischman recused)

NOTE: The public hearing for this item was opened and closed on October 6. There was no public comment. The petitioners are seeking:

- to locate a 275-seat restaurant in the 5,400 sf of space currently occupied by Portobello Road, which requires a parking waiver of 83 spaces;
- to add 20 outdoor seats to the existing 285-seat Legal Sea Foods, which requires a parking waiver of 7 spaces;
- to use 5,534 sf on the third floor over The Container Store as general office space, which requires a parking waiver of 17 spaces (this space is currently cordoned off);
- to lease 5,700 sf of previously approved accessory retail space for restaurant use (split among 3 small restaurants), which requires a parking waiver of 19 spaces.

The shopping center has 1,319 parking spaces; the petitioners are seeking a waiver of 126 spaces. There is no proposed expansion or new construction.

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This evening, Alderman Albright chaired the discussion of this item. Attorney Frank Stearns represented the petitioners. Ms. Havens presented information on the tool used by the petitioner to determine the capacity of the parking lot. She explained that this cluster of businesses meets the definition of mixed-use used for the study. A question was raised by Alderman Vance regarding the timing of the parking study. There was concern that the study was done in September before the opening of Star Market. Mr. Stearns said that the study took this into account because the spaces used for Star were excluded from the study. Alderman Baker would rather see an after study of the complete parking lot. Associate City Solicitor Young reminded the committee that in 2003 the then Land Use Committee discussed the use of the parking lot by commuters and that control of commuter parking was referenced in a finding included in the Star

Market special permit of 2003. Alderman Sangiolo asked if there would be free valet parking at the new restaurant. The petitioner responded that valet parking would be an option, particularly since the petitioner has agreed to create a fire lane. Alderman Sangiolo suggested that valet parking should become a condition. Mr. Stearns was hesitant to commit the owner to a condition because it would be the responsibility of the tenants. Its feasibility could be studied after occupancy, depending on hours of operation, etc. Alderman Vance wanted to know if the city's traffic professionals had reviewed the project. Ms. Havens referred the committee to the original planning report where city officials had commented on the proposal. There was a discussion regarding the types of restaurants that would be in the cluster served by the parking lot. The petitioner's traffic consultant explained that there were assumptions based on the three types of restaurants, 1) fast food/café, 2) family, 3) high end. Ms Havens reviewed the assumptions and was comfortable with them. Several requests were made for more information for the December 1 working session including 1. an extended parking study now that Star Market is open, 2. a traffic and parking management plan with specific and measureable issues with appropriate solutions provided, and 3. a review of conditions in the Star Market board order to assess any applicability to this request for parking relief. Alderman Vance moved hold, which motion was approved 4-0, with Alderman Fischman recused.

#247-09      RICHARD SEVERINI petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing single-family dwelling and construct a new single-family dwelling, increasing the FAR from 0.41 to 0.43, and to construct a retaining wall greater than 4 feet within the front setback at 23 HOWE ROAD, Ward 8, NEWTON CENTRE on land known as Sec 81, Blk 11A, Lot 37, containing approx 6,591 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-15 Table 1, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION:      APPROVED 5-0

NOTE: The public hearing for this item was opened and closed on October 6, 2009. The petitioner was represented by Attorney Terrence Morris. The petitioner is seeking a special permit to demolish an existing two-story Tudor-style single-family home and construct a new Colonial-style single-family home. The proposed structure is approximately 100 sf larger than the existing house, increasing the FAR from 0.41 to 0.43. By right FAR is 0.3. The Historical Commission reviewed the plans and approved a waiver of the demolition delay based on the plans submitted with the special permit application. Exterior materials are wood clapboard with an asphalt shingle roof. The site is a corner lot that slopes up towards Jane Road. Although the proposed structure conforms to all setback requirements, it is taller than the existing structure. A retaining wall is proposed in the front setback to retain one side of the driveway from the basement level garage at the front of the house. A set of stairs leads up to the house from the driveway. A mature maple tree near the front property line facing Jane Road will remain. The petitioner has agreed to install a new sidewalk in front of the proposed home. The Planning Department noted several discrepancies on the plans and asked the petitioner to submit revised plans prior to the working session. There was no public comment. Subsequent to the public hearing, an e-mail in support of the petition was received from the abutter at 19 Howe Road.

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At this evening's working session, Ms. Havens reviewed with the Committee revised plans, dated October 28, 2009. The updated plans reflect existing and proposed conditions and the sidewalk improvements in front of the house as well as the maple tree that will be retained on site. The landscape plan shows screening at the corner of the lot. The height of the proposed structure is 21 feet. The site is transitional between Tudor-style and Colonial-style homes and a home at 58 Jane Road, which was converted by right in 2000 from a 1,500 sf one-story structure into a 2.5-story 4,400 sf structure. Several Committee members preferred the original design of the house that showed three doghouse dormers instead of the shed dormer. Mr. Morris explained that the shed dormer was in response to a request from the Historical Commission. Alderman Sangiolo felt that the garage doors needed to be broken up somehow. Mr. Morris said that the doors also were in response to suggestions from the Historical Commission.

Alderman Fischman moved approval finding that the increase in FAR is appropriate in the context of this neighborhood as the house is consistent with many of the surrounding homes and that the proposed new structure will not adversely affect the neighborhood. The 4-foot retaining wall in the front setback is perpendicular to the sidewalk and will mitigate the visual impact of the garage from the street view. The Committee agreed to include a condition that the petitioner at his option can return to the Historical Commission to replace the shed dormer with the original doghouse dormers. Alderman Fischman's motion was approved 5-0.

#273-09      YOUNG INVESTMENTS, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING STRUCTURE to demolish an existing single-family dwelling and replace it with four attached dwelling units with associated parking waivers (handicapped stall; width of maneuvering aisle, driveway width) and construct a retaining wall greater than 4 feet within the side setback at 244 CALIFORNIA STREET, Ward 1, NONANTUM, on land known as Sec 11, Blk 8, Lot 6, containing approx 7,200 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(h)(2)c), 30-19(h)(3), (4)(a), 30-19(m), 30-15 Table 3, 30-11(d)(8), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION:      APPROVED 5-0

NOTE: The public hearing on this item was opened and closed on October 13, 2009. Attorney Terrence Morris represented the petitioner. This petition is for a special permit to replace a nonconforming single-family dwelling with four 2.5-story attached dwellings. Each unit will have a small amount of ground-level open space and a balcony on the top floor. The site is 55% open space. The proposed exterior is wood clapboard. The proposed dwellings will be sited sideways on the deep narrow lot and the unit fronting California Street will resemble a single-family home. The site is located in a mixed-use residential/commercial/manufacturing neighborhood near several parks and the Charles River. Also proposed is a 5-foot retaining wall within the setback to enable access to the underground parking. One curb cut will be closed. Arborvitae is proposed

on the perimeter of the site. Three maples, two in the rear and one in front are also proposed.

The petitioner is seeking a waiver from the handicapped parking requirement for one stall. The proposed parking is underground with access via the driveway ramp and staircases. Because the proposed units are 2.5-story townhouses, significant modifications would have to be made to accommodate handicapped residents and it is unlikely that handicapped residents would choose to live there. Handicapped visitors would have easier access from parking on California Street. (Handicap parking is not required for townhouses by definition of Massachusetts Architectural Board.) Alderman Hess-Mahan asked if the rooflines could be adjusted and some architectural feature added to differentiate the units. There was no public comment.

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At this evening's working session, Ms. Havens noted that the petitioner had provided turning templates for the garage to demonstrate that there is adequate access to each of the parking spaces. The petitioner adjusted the rooflines to the same height and added a design element between each of the units. Revised landscaping shows additional plantings in front of the building and additional plantings and fencing along each side of the property line. Alderman Fischman asked if the proposed maple trees could be 3 to 3.5 inch caliper, and Mr. Morris agreed.

Ms. Havens pointed out the petitioner proposes to make a cash payment in accordance with the Inclusionary Zoning provisions of Section 30-24(f). Alderman Sangiolo moved approval finding that the proposed 4 townhouses will not be more detrimental than the existing nonconforming single-family house and the townhouses will complement the existing mix of uses/structures and add to the diversity of the city's housing stock. The waiver of the handicapped parking stall is appropriate because of the lack of accessibility and adequate accessible on-street parking, dimensional waivers for the garage are appropriate because safe entry/exits are provided and the underground parking increases the open space on the site. The retaining wall in the setback is appropriate because it enables access to below grade to provide the underground parking. The petitioner agreed that the lighting will be residential and reviewed by the Planning Department. Alderman Sangiolo's motion carried, unanimously, 5-0.

Alderman Albright asked Ms. Havens if in the future the Planning Department would include reviewing with applicants the feasibility of locating utilities underground. Ms. Havens said that it was standard in the case of commercial developments, but not for small projects; but staff would begin to do so.

The meeting was adjourned at approximately 10:45 PM.

Respectfully submitted,

Susan Albright, Acting Chairman  
Mitchell Fischman, Acting Chairman

