

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, FEBRUARY 12, 2008

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

Also present: Ald. Lennon

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

The Committee held one public hearing, after which it discussed the following items in working session. Since Chairman George Mansfield was attending the Community Preservation Committee meeting, Vice Chairman Mitch Fischman chaired the public hearing and a portion of the working session.

#349-06(2) JOSEPH LONG requesting an EXTENSION of TIME in which to EXERCISE SPECIAL PERMIT/SITE PLAN APPROVAL #349-06, filed in the office of the City Clerk on March 9, 2007, granting a rear lot subdivision to create a new buildable lot on which to construct a new single-family home at 11 GRAY BIRCH TERRACE, Ward 2, NEWTONVILLE. Ref: Sec 30-24(c)(4) of City of Newton Rev Ord, 2007.

ACTION: APPROVED 5-0 (Albright and Mansfield not voting)

NOTE: The Board of Aldermen considered the request for a 1-year extension. The Board had granted special permit #349-06 for a rear lot subdivision to construct a new single-family home behind an existing legal two-family home. Mr. Long, who was present, explained that he has been unable to begin construction primarily, as outlined in a letter from Attorney Stephen Buchbinder, dated December 27, 2007, because of the real estate market. Conditions of the special permit include placing a preservation restriction on Mr. Long's existing two-family home and removal of a third illegal unit. Mr. Long said that the language of the preservation restriction is being reviewed by the City's Law Department and that the third unit has been removed. Alderman Hess-Mahan moved approval of the one-year extension of time to March 2009, which carried 5-0, with Aldermen Albright and Mansfield not voting.

#391-07 JOHN NIGRO/PACKARD COVE ASSOCIATES petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate a for-profit dance studio in an existing building and to waive dimensional and setback requirements for parking, light poles, lighting, interior landscaping and to allow parking in an existing off-site facility at 105 RUMFORD

AVENUE, Ward 4, on land known as Sec 41, Blk 35, Lots 1A, 14 and a portion of lot 5 in a district zoned MANUFACTURING. Ref: Sec Special Permit #19-06 and 30-24, 30-23, 30-5(b)(2), 30-19(f)(2), 30-19(m) of the City of Newton Rev Zoning Ord 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this item was opened and closed on January 15, 2008. Attorney for the petitioners is G. Michael Peirce. At the public hearing, Mr. Peirce explained that Mr. Nigro, the owner of Balera Ballroom School of Dance, wishes to locate a dance studio for adults in an existing building with an existing parking facility owned by Packard Cove Associates located in a Manufacturing zone, on the former City dump next to the City's waste disposal center. No exterior changes are proposed. In addition to providing 30 spaces on site, the petitioners are seeking to provide additional spillover parking off-site at 130 Rumford Avenue for the intended infrequent "showcase performances" as discussed below.

Classes will take place day and evening, by appointment, from Monday through Friday, 9:00 a.m. to 10:00 p.m. On Saturdays, the studio will be open from 9:00 a.m. to 11:00 p.m., with open studios for students from 7:00 p.m. to 11:00 p.m. Mr. Nigro anticipates no more than 20 students and their instructors will be within the studio during regular hours. Children would make up perhaps 5% of the business, most likely a youngster taking a 45-minute ballroom dance class. The Planning Department recommended that if in the future children's classes are proposed, the Director of Planning & Development and the City Traffic Engineer should review a parking and pickup/drop-off plan. Occasionally, the school will host evening "showcase performances" by invitation only. There are 30 parking spaces provided on-site; for special events, the petitioners seek to provide at least 16 additional parking spaces at 130 Rumford Avenue. Other waivers are sought for waivers from dimensional requirements for parking spaces and maneuvering aisles; driveway width (20' to 18'); various interior and perimeter landscaping requirements; reduction of setbacks; to reduce parking area lighting from one-foot candle to 0.5 foot candle, and to install two new light poles. The Planning Department asked that the petitioners submit a photometric plan and an updated site plan indicating the location of the off-site parking spaces at 130 Rumford Avenue (this will amend the site plan approved in special permit #19-06). The Planning Department also asked for a signage plan to identify the off-site temporary parking to "showcase performance" guests.

There was no public comment at the January 15th public hearing and upon a motion by Alderman Merrill, the hearing was closed.

At this evening's working session, Ms. Havens reviewed with the Committee a revised site plan identifying 24 off-site parking spaces at 130 Rumford Avenue, all located nearest the proposed dance studio. Mr. Nigro proposes to use folding sandwich board signs to direct guests to this temporary parking. Parking instructions will be included in all invitations. The Planning Department asked that the dance studio provide for the City Solicitor's review and approval a copy of the proposed lease agreement for the off-site parking, with copies when executed distributed to several City departments.

Ms. Haven's noted that, although the petitioners were seeking waivers for interior parking lot and perimeter landscaping, the site has ample landscaping, particularly in front of the building. Although the site is a former dump where active dumping ceased in 1975, the Planning Department and the owner have found no evidence of DEP review of 105 Rumford Avenue. The building is on a concrete slab and there is no indication that the proposed use presents any health risks to the occupants.

Most of the Committee discussion had to do with devising a condition that would control the shift from a predominately-adult clientele to children. The Planning Department had suggested a draft condition that would allow limited discretion to the Director of Planning & Development to review a pick-up and drop-off plan if more children's classes were proposed beyond those by appointment only. The Committee's sentiment was that if this were to occur, the special permit would need to be amended because a predominately-child clientele would substantially change the whole parking and traffic pattern. Alderman Sangiolo said that if it were an administrative process the three Aldermen from Ward 4 should be notified, but reiterated her preference that such a change should trigger an amendment to the special permit. Associate Solicitor Young said she would work on a condition reflecting the Committee's concerns.

Alderman Sangiolo moved approval of petition finding that the use is appropriate in a Manufacturing Zone and it will not adversely affect the neighbors; the hours of operation will not adversely impact traffic on Rumford Avenue; there is ample parking with additional spaces secured by a lease agreement provided off-site; there is sufficient on-site landscaping and the lighting and parking waivers are appropriate with no impact on adjacent properties. The motion carried unanimously, 7-0.

#392-07 THE CHURCH IN NEWTON petition to *amend* SITE PLAN APPROVAL/SPECIAL PERMIT nos. 469-79 and 469-79(3) to provide for a reduction of its parcel size by selling a 69,330 square-foot vacant portion of its property to the adjacent landowner and to waive requirements relative to encroachment within a setback and parking waivers re: dimensionals, maneuvering aisle width, and screening at 50 DUDLEY ROAD, Ward 8, on land known as Sec. 82, Blk 4, Lot 33, containing approximately 213,841 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: 30-24, 30-23, 30-30-19(h)(1), (h)(2) a) and b), 30-19(h)(3), (i)(1)a), 30-19(m), 30-15 Table 2 , of the City of Newton Rev Zoning Ord 2007.

ACTION: APPROVED 6-0-1 (Sangiolo abstaining)

NOTE: The public hearing on this item was opened and closed on January 15, 2008.

Attorney James Belliveau and Attorney Wayne Detrich, along with John McKinnon of HWMoore Associates. Mr. Belliveau explained that The Church, a non-profit religious use, wishes to sell approximately 66,330 square feet (~1.6 acres) of its property along the southern portion of its site to the adjacent landowner at 100 Dudley Road. Condition #4 of the prior Board Order #469-79 and, extended in subsequent Board Order nos. (2) and (3), all issued prior to the administrative site plan review process for religious uses, prohibits further subdivision of the site. The petitioner is seeking to delete that condition,

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which will result in an amended site plan. The sale of that portion of property will create a new non-conformity by placing 7 parking spaces within the new 40-foot setback. The petitioner is seeking a waiver from the setback and various dimensional requirements for spaces, maneuvering aisle width, and landscaping requirements for parking facilities. Currently, handicapped spaces are not identified and they should be. The Planning Department noted that although The Church had not complied in full with previous landscaping requirements the property appeared well landscaped and screened.

The only comment was from Lois Slovikof 85 Dudley Road. She was neither opposed nor in favor, but asked if the sale of the property would give extra frontage to 100 Dudley Road.

Upon a motion by Alderman Fischman, the Januray 15th public hearing was closed.

This evening, much of the Committee's discussion focused on what the potential effect the sale of 66,330 square feet to the adjacent property owner who has a lot already containing 174,240 square feet would have. Concern about a potential subdivision prompted several members to suggest placing a no-build restriction or conservation restriction on the 66,330 square-foot portion. Ms. Young did not recommend doing either, noting that the abutter was not a petitioner and it would not be an appropriate imposition to place on a property owner. Briefly, the Committee considered whether a future subdivision of the property at 100 Dudley Road could create a lot close to the non-conforming parking on The Church property. Ultimately, it decided it had no control over this and that if such subdivision should occur in the future it would be up to the potential buyer.

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Attorney Paul Roberts, representing Sheldon and Miriam Adelson, the owners of 100 Dudley Road, was present and asked to speak to the Committee. Unable to attend the public hearing, Mr. Roberts had written a letter on behalf of his clients in which he indicated that his clients first learned of the availability of a portion of the abutting property after it had been placed under agreement for sale to a developer for the creation of six lots. He said his clients support the petition and agree with a statement in the Planning Department memorandum noting that a reduction in the size of The Church property will limit its availability for a more intense institutional use in the neighborhood. His clients support the relief from the screening requirements. The proposed acquisition of the 66,330 square feet will provide a further buffer and if additional screening is needed his clients will provide it. It is their wish to acquire the property and merge it with their existing lot. The existing Purchase & Sale Agreement contains a right of first refusal to acquire the remainder of The Church property in the event it decides to sell it. Mr. Roberts stressed that his clients have no intention of subdividing their property. In addition, merging the lots will create a new lot, resulting in a non-conforming side setback on the other side of his clients' property that will need a variance from the Zoning Board of Appeals.

Alderman Fischman moved approval finding that reducing the size of the existing Church property will not adversely impact the abutters or immediate neighborhood; the existing parking and dimensional waivers will not adversely impact vehicular or pedestrian safety; waiving screening requirements will not have a negative impact on abutting residential property because sufficient screening exists on the property. In addition, the Committee agreed to prohibit further subdivision of The Church property.

Alderman Fischman's motion carried 6-0-1, with Alderman Sangiolo abstaining.

#393-07 73-77 WEST STREET, LLC, /OLD BLACKSTONE REALTY, LLC.
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct 4 attached dwellings in two 2-unit buildings on a nonconforming lot at 73-77 WEST STREET, Ward 1, on land known as Sec 14, Blk 14, Lots 57 and 58, containing approximately 13,569 sf of land in a district zoned MULTI RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-15, 30-9(b)(4) and (5). 30-21(b) of the City of Newton Rev Zoning Ord 2007.

ACTION: APPROVED 7-0

NOTE: The public hearing on this item was opened and closed on January 15, 2008. Attorney Terry Morris presented the petition, which proposes to construct two new buildings, each containing two attached dwelling units for four single-family dwelling units. The two non-conforming lots that comprise the site will be combined. An existing, unoccupied house on the site found by the Historical Commission not historically significant will be demolished. The site is a former garage and junkyard dating to the early 1900's. It is currently undergoing environmental remediation. The proposed units are 2.5 stories and oriented so a front door faces the street for both buildings with the other two units facing the rear in a mirror image. Each unit contains approximately 2,340 square feet; each has a fireplace, a porch, a small patio, a one-car garage and one outside parking space. The height of the proposed structures is 30 feet. Waivers are sought for front and side setbacks, lot area per unit, maximum building lot coverage and open space. The exterior proposed is clapboard with asphalt roof shingles. The existing block retaining wall at the rear of the site will remain because the property to the rear is much higher than the site. Proposed landscaping includes two Crabapple trees, yews, hollies and mountain laurels. There are several trees on the edges of the site and the petitioners, in compliance with the Tree Ordinance, will submit a tree removal plan and permit application. The Planning Department would like to see a few more substantial trees to help minimize what it believes is a project out of scale with the rest of the neighborhood. Mr. Morris said that a neighborhood meeting was well attended and the proposal well accepted. He also submitted photos of neighborhood properties to illustrate that the proposal was not out of scale with the area.

The environmental cleanup is approximately 75% complete. The petitioners met with the DEP in April of 2006 and are under a Contingency Plan for violations from the previous owner; phases I and II have been completed and the site should be cleaned by this spring. The petitioners will submit a copy of the DEP plan.

Engineer Joe Porter from VTP Associates has allayed the Associate City Engineer's concerns about running water lines under the patios. The patios are not concrete, but blocks that can be removed. One of the existing three curb cuts will be closed. The Chairman asked about the potential on-site circulation difficulties in the parking area, cited in the Planning Department memorandum. Mr. Porter explained that there is 24 feet between parking spaces, which is the width of most roads, allowing a three-point turn.

Alderman Sangiolo questioned whether the Fire Department has reviewed the plan with a 14-foot wide driveway. Mr. Morris said it would be 14 feet with the addition of 2 feet of pavers, one foot on each side. A chain link fence shown on the proposed plan was left inadvertently from the existing conditions plan; it will be removed.

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The Chief Zoning Code official raised the question of whether the petitioners need to obtain a variance from the Zoning Board of Appeals to allow lot coverage that exceeds the maximum lot coverage in the Multi Residence 2 zone or whether the Board of Aldermen could grant that relief. The Law Department subsequently determined that the Aldermen have that authority.

Alderman Hess-Mahan did not find the roofline aesthetically pleasing; it appears to have a "valley." Mr. Morris said the design is to avoid the prohibited "linguine" look. The architect agreed to explore other design options prior to the working session.

Public comment:

Philip Boucher, 50 West Street, is very excited with the plan. He has lived on West Street with a junkyard his entire life. The neighborhood wants residential up-to-date housing. Approval of this petition will change the street for the better and help the community.

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Upon a motion by Alderman Merrill, the hearing was closed.

At the working session, the Committee reviewed revised elevations that showed the notch in the roofline had been removed, and the peak of the dormers had been lowered below the peak of the hip roof, as the Planning Department had recommended. Ald. Lennon explained that the owner of the property, Blackstone Realty, is in partnership with an environmental remediation firm, TMC Services, which is undertaking the cleanup of the site. The DEP is urging that the work be completed as soon as possible, and Ald. Lennon reported that it will be complete before the applicant, the development firm, takes title. Ms. Havens reported that the landscape plan will be enhanced as the Department had requested, although it will not be substantially altered, as there is very little space for additional landscaping on site.

Alderman Albright moved approval of the petition, finding that the proposed use was not substantially more detrimental than the currently non-conforming use and parcel; in fact, it appears to be a significant improvement for the neighborhood. She also found that the site is an appropriate location for a 4-dwelling unit development, given the mix of one,

two and multi-unit residential uses in the area. Further the committee found the design does not result in any vehicular or pedestrian safety concerns, and the site circulation has been approved by the Fire Department. The environmental clean-up is a positive benefit for the neighborhood and the abutters, and they will not be adversely affected by the proposed non-conforming structures, with respect to side setbacks, bulk, open space, lot coverage, or lot area per unit. The motion was approved by a 7-0 vote.

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#274-07 ALD. SANGIOLO proposing that Article X of the Rules & Orders of the Board relative to Special Permit and Site Plan Approval Petitions be amended to require the applicant to post on the subject property a notice that would include but not be limited to identifying the subject matter and the date and time of the public hearing.

ACTION: APPROVED 7-0

NOTE: This item was discussed on October 16, 2007, when Alderman Sangiolo explained it was the result of a petition on Paul Street, where it appeared that the parties in interest did not receive proper notification. Ms. Havens explained that it the amendment is the result of a joint effort of the staff, the Committee Chair, and the President to improve notification procedures. The revised procedures would distinguish between major projects, as already defined in the rules, and other standard petitions. The rules for posting sign panels are tailored to the standard projects, whereas petitions for major projects would be asked to propose with the application the specific locations and content of the notices to be posted. In all cases, the Planning Department would determine the exact location of the panels on the site consistent with the provision of the rules.

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Ms. Haven showed some examples of panels that could be used, with preprinted text and spaces to fill in details about each petition. She said they would be printed on card stock, with a weather-resistant coating, similar to many political signs, Ald. Brandel suggested that the "Public Hearing" heading be in as large a font as practicable. Ald. Hess-Mahan expressed preference for a 2 ft. X 3 ft. size (larger than Ms. Havens had illustrated), and Chair Mansfield suggested that the orientation be "landscape," rather than "portrait," to make the sign more readable from a distance. Ald. Brandel then moved approval of the request, and the motion carried unanimously.

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#37-08 ALD. BAKER, MANSFIELD & FISCHMAN proposing a revision to the Rules & Orders of the Board to allow Land Use Committee public hearings to be held on more than one night per month.

ACTION: APPROVED 7-0

NOTE: The purpose of this amendment is to provide more flexibility to the Committee, staff, and petitioners by allowing more than one night each month for which the Board may assign public hearings, with the expectation that this will discourage both petitioner from submitting and staff from accepting incomplete supporting items rather than face a full month's delay in getting the petition to public hearing. The Chair noted that the

current calendar, established by the rules, tends to result in all petitions being filed the same Tuesday each month, aimed at getting before the Board for assignment for the one public hearing night. Sometimes, supporting material that was offered in the rush of that “deadline day,” doesn’t make it to the Committee before the hearing is opened. Ms. Havens further explained that with the proposed flexibility, petitioners could submit, and the Board could assign hearings, if necessary, two and even three times per month, with a greater assurance that petitions would be filed only when all material is ready (as the rules already require). Working sessions could also be held on any of the 3 Tuesdays scheduled for the Land Use Committee, at the Chair’s discretion. Sometimes, it is anticipated that both hearings and working sessions would be held on the same evening, which already happens on occasion (such as this night). It will be up to the Chair, the Planning staff, and the Clerk’s office to coordinate reasonable schedules.

From petitioners’ perspectives, this change should reduce backups in hearing and acting upon petitions when these are caused solely by the calendar. Ms. Havens noted by displaying a full calendar schedule for 2008, that there are only three months a year when at least one of the Land Use Tuesday dates is not “bumped” by holidays. This February, two Tuesdays have been “lost” in this manner. Ald. Hess-Mahan suggested that the Planning Dept. should be tougher in enforcing the current rules requiring complete information before filing. The Chair replied that the proposed change will allow them to be stricter, and that he will require that if the new schedule is adopted. Ald. Brandel moved approval of the item, and the motion passed 7-0.

The Meeting was adjourned at 11:35 PM

Respectfully submitted,

George Mansfield, Chair

Mitchell Fischman, Vice Chair