

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, APRIL 8, 2008

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

City staff: Candace Havens (Chief Planner), John Lojek (Commissioner of Inspectional Services), Ouida Young (Associate City Solicitor), Linda Finucane (Chief Committee Clerk)

Request for a Consistency Determination from Richard Grant to revise the landscaping approved in special permit #466-06, granted February 27, 2007, for an addition constructed to the rear of an existing legal three-family dwelling with an attached two-car garage at 62-64 Elm Street, West Newton.

Ms. Havens explained that Mr. Grant, who resides at the property and who is an avid gardener, wishes to revise the landscaping approved in special permit #466-06. He indicated that the approved plan, prepared in a rush in order to file it with the special permit application, over plants the site. He prefers fewer plantings that will spread. Plantings are too dense around the foundation and he is concerned that the moisture will damage the foundation.

One of the biggest changes proposed is in the middle of the parking area where the approved plan shows trees now planted elsewhere on the property. Mr. Grant would like to leave the area as open space, perhaps as a play area. He has talked with the abutter, who submitted a letter in favor. The Chairman said he recently viewed the site and noted the large amount of hardscape. An area shown on the approved site plan as gravel is paved, apparently for easier snow removal, and another area shown as paved is gravel. Several Committee members recalled that the then-Land Use Committee focused its discussion on breaking up the mass of the length of the building, not on the landscaping. Ald. Hess-Mahan reminded the Committee that the front of the property faces a park and that Mr. Grant lives in one of the units and is an award-winning gardener.

Ms. Havens suggested evergreen screening in the front, where currently there are hostas and a bollard and chain fence. There is a six-foot fence along the north side of the property. The proposed revised landscaping pushes landscaping from the center of the site to the south side of the property. Instead of hedges and a mimosa, Mr. Grant is proposing to plant three larger trees: a maple and two dogwoods. Ms. Havens reiterated her suggestion that the front of the property have some type of evergreen screening. She also suggested that planting a large tree in the center of the parking area would provide a canopy of shade for that area.

Alderman Hess-Mahan felt strongly that given the initial lack of detailed review of the landscaping by the then Land Use Committee, these proposed changes by a man who is an avid gardener. Other Committee members, although sympathetic to Mr. Grant, thought that Ms. Havens' suggestions, particularly the tree in the centre of the parking, should be given some thought. Ms. Havens was asked to convey the Committee's discussion to the Commissioner of Inspectional Services.

Request for a Consistency Determination from Amerada Hess Corporation after consultation with the Historical Commission seeking to revise the design of the building approved in special permit #232-07, granted on December 17, 2007, for a self-service gas station and retail convenience store at 2370 Commonwealth Avenue, Auburndale.

A condition in the special permit for the new Hess Gas Station requires review by the Historical Commission and/or the Auburndale District Commission of the building, its colors and materials and freestanding sign. After receipt of their input, the condition delegates final approval of the materials, colors, and design to the Director of Planning & Development. On January 28, 2008, the Historical Commission reviewed several color and material schemes and, after considering its recommendations, the Director approved a natural brick building with a medium gray roof, corporate banding (two different greens) around the fascia and canopies, simple detailing, which includes a gable over each entrance, muntins in the windows, as well as small "porches" at each door, and planters. The Historical Commission also suggested transom-style windows, a smaller, authentic dormer in place of the faux gable façade on the front of the building, and clapboard siding (textured HardiPlank) above brick wainscoting. The Commission had no issue with the freestanding sign. Combined, these changes create a much different building than the one reviewed in the special permit

Representing Hess was Attorney Stephen Buchbinder, who noted that the revisions were made in response to suggestions from the Commission. He informed the Committee the Hess has agreed to pay for all the work at the intersection of Auburn Street and Commonwealth Avenue, which cost is estimated at \$75,000.

Alderman Sangiolo, who was very involved in the special permit petition, and Committee members agreed that the proposed changes were a vast improvement over the generic building proposed originally and asked Ms. Havens to convey this to the Commissioner of Inspectional Services.

#93-08 WABAN IMPROVEMENT SOCIETY requesting a temporary license pursuant to Sec 30-6(k) of the City of Newton Ordinances to hold its fourth annual WABAN VILLAGE DAY on Sunday, May 18, 2008. 2-8-08 @11:03 AM]

ACTION: APPROVED 6-0 (Brandel not voting)

NOTE: The letter from Waban Improvement Society member Ms. Anki Wolf containing this request was distributed. Ordinance section 30-6(k) allows the Board of Aldermen to grant a temporary license for the use of certain City land without complying with the provisions of site plan approval set out in Sec. 30-23. The Waban Improvement Society

is in the process of obtaining all necessary permits from other City departments. In its fourth year, festivities include rides, craft tables, free T-shirts, etc. Alderman Hess-Mahan moved approval, which carried 7-0, with Alderman Brandel not voting because he was at Kids in Jeopardy.

12-08 ROBERT LEONE, 14 Beech Street, Nonantum, submitting an application for a Class 2 Auto Dealer License for 2008.

ACTION: APPROVED 7-0

NOTE: Mr. Leone proposes to conduct this business in his home over the internet, with no vehicles on-site. Essentially, this is a wholesale business. He has filed a d/b/a, provided a \$25,000 bond, and will provide for repairs as required in GL chapter 140. Alderman Merrill moved approval, which carried 7-0.

#40-07(2) REQUEST FOR A ONE-YEAR EXTENSION OF TIME to EXERCISE SPECIAL PERMIT #40-07 granted on May 21, 2007 to Anthony Bonadio to construct two new attached dwelling unit buildings containing five units at 13 Elm Street, West Newton, Ward 3. Ref: Sec 30-24(c) (4) of the City of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: Attorney Laurance Lee, who provided a letter attached to the agenda, was present to represent Mr. Bonadio. Although, his client has completed the preliminary phases to implement the special permit, the mortgage industry crisis and slump in the housing market have created an unanticipated financial predicament for him. Mr. Bonadio has paid for the preparation of construction drawings and engineering and landscape plans currently in process. He hopes to begin marking the units in the spring/summer housing market of 2009. The Committee sympathized, and upon a motion by Ald. Hess-Mahan, approved 7-0 a one-year extension of time from May 2008 to May 2009.

#64-08 NATHAN EIGERMAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING STRUCTURE to expand an existing single-story detached garage from 657 sq. ft. to 748 sq. ft. at 360 HAMMOND STREET, Ward 7, CHESTNUT HILL, on land known as Sec 63, Blk 24, Lot 7, containing approx 19,095 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(b), and 30-8(b)(7) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 7-0

NOTE: This is a petition to allow an expansion of an existing non-conforming detached 2-car garage from 657 square feet to 748 square feet, to allow the petitioner to accommodate two vehicles plus storage for recreational equipment. A special permit is required to expand the accessory structure, because it is non-conforming in side and rear setbacks, and because it would be in excess of 700 square feet. At the public hearing on March 11, 2008, the petitioner explained that he only wished to make the garage slightly deeper, by adding a 4½ ft. extension to the front of the garage to increase storage space. No members of the public spoke, and there were no questions.

The site is on the corner of Hammond St. and Reservoir Ave. in Chestnut Hill, a neighborhood of large homes on large lots. The petitioner's house is 3,854 square feet, built in 1880 on a 19,095 square-foot lot. The cinder block garage, built in 1914, is set back at the rear corner of the lot, and heavily screened from the street by trees. The proposal is to build a 91 square-foot addition on the front with a wood clapboard façade and a "faux" shingled gable roof. The Chestnut Hill Historic District Commission reviewed and approved the design and noted that additional approval would not be needed if the owner wished to extend the wood siding and/or the hip roof line to the entire building. At the working session, the Committee noted that the new garage door, which is designed to look like two individual carriage house doors, was very attractive. Ald. Fischman recommended that additional landscape screening be considered on the side of the garage where there is minimal setback. Ald. Baker said this would be of value to the abutting property. Ald. Hess-Mahan said he would prefer that the entire garage be sided, but did not suggest it as a condition.

Ald. Sangiolo moved approval, finding that the expanded structure was not substantially more detrimental than the existing non-conforming garage, that there were no adverse impacts on the site or the surroundings, and that the proposed expansion would be consistent with the scale and character of the existing neighborhood. The motion was approved 7-0.

#62-08 LISA ROSENBAUM & RONALD D. FISHER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct after demolishing an existing detached garage a new detached garage over 700 square feet with an accessory apartment at 99 KIRKSTALL ROAD, NEWTONVILLE, Ward 2, on land known as Sec 22, Blk 28, Lot 1, containing approx 34,340 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-19(g), 30-19(m), 30-8(b) (7), (d)(2), (d)(1)c and e, 30-15 Table 1, 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: (A) Relief for a garage over 700 sf with associated grade changes (30-8(b)(7) and 30-5(b)(4) APPROVED 6-0-1 (Merrill abstaining)
 (B) Withdrawal of request to waive the 4-year period re additions/exterior renovations prior to occupancy of an accessory apartment 30-8(d)(1)e) WITHDRAWAL APPROVED 6-0-1 (Merrill abstaining)
 (C) Relief for an accessory apartment in a detached structure 30-8(d)(2) FAILED TO CARRY 2-3-2 (Albright, Hess-Mahan voting in the affirmative; Brandel, Mansfield, Sangiolo opposed; Fishman, Merrill abstaining)

NOTE: This is a complex petition for approval of an accessory structure of over 700 square feet, containing a garage and additional space, an accessory apartment in excess of 1,000 square feet in the new detached structure, a waiver of the 4-year "lookback" requirement that would otherwise prevent using the accessory apartment during that period, and a request for a change of grade in excess of 3 feet. Prior to a revision of the plans, there was also a request to seek relief from the maximum driveway width and curb cut standards. The petition as presented was also controversial to the neighborhood and a

concern to the Committee, since almost all the construction had been completed before zoning relief was sought

The public hearing for this petition was held March 11, 2008. The petitioners' attorney, Edward Patten, explained that, in 2005, his clients had proposed to demolish an existing detached garage and build a new one on another part of the lot with an accessory apartment above it. However, after initiating the special permit filing process, they decided to abandon the accessory apartment concept and instead build the garage with a private family gym above it. They withdrew the special permit request in January 2007, and received a building permit for a by-right accessory structure in May. They began construction, but with the structure 80% complete in December, an ISD inspector determined that the plans should not have been issued a permit because the upper level above the garage was greater than 700 square feet. To continue construction, ISD gave the owners the option of applying for a variance from the ZBA, or renewing their application for an accessory apartment.

Atty. Patten contended, however, that there were no grounds for a variance, and stated that the plans before the Board were identical to those previously granted a building permit, except the area previously designated as a kitchen. Other than the relief sought, he said, the plans comply with all zoning. He added that, although this is an accessory apartment petition, the petitioners plan to use the property solely for the family. However, the garage has a third stall to comply with parking requirements for the apartment. He added that, with grade changes in excess of 3 feet in several portions of the site, the drainage is designed to capture all runoff on the site.

The architect, Paul Hajian, explained that the garage qualified as a basement since it is partially below grade. He stated that it was less than 700 square feet, but that the apartment above it—considered the first floor—is 1,044 square feet, and that the ordinance restricts the square footage of this area to 700 square feet. Ald. Sangiolo asked whether the same inspector who discovered the violation was also the inspector who had approved the earlier construction, and Mr. Hajian said that it was. Ald. Hess-Mahan asked how the clear restriction of Sec. 30-15(m) of the Zoning Ordinance could have been missed, and asked that the ISD Commissioner attend the working session. Ald. Vance asked if any construction has been done to convert the space to an apartment, and Mr. Hajian replied that there are no changes to the original plans. Ald. Fischman asked why at least the 3-ft grade changes had not been flagged by ISD.

In public testimony, Paul Ogara of 191 Upland Road expressed concerns about the potential noise of the large generator located on a pad outside the structure and about loss of privacy due to the apartment. He asked for more screening or a fence, and that there not be exterior floodlights. Linda Swartz, 260 Upland Road, said her property is directly across the street from the garage and although she supported the original plans for an exercise room, is concerned that the wide driveway could become a parking lot. She wants her neighbors to be able to use the building, now that it is constructed, but would like her view of it screened. Bud Gartland of 15 Whitney Road, would also rather have the gym and is opposed to the apartment. Ald. Linsky said that the neighbors he has

spoken to are confused about the proposal and how it got this far and there is mixed sentiment about the accessory apartment. Ald Hess-Mahan added another apparent provision missed by ISD: that the plans appear to show two separate garages, when it is clear that Sec. 30-15(m)(5)(a) would allow only one in an accessory building without a special permit.

Commissioner Lojek attended the working session. He explained that the Chief Zoning Code Official's analysis ignored the restrictions on the size of the accessory structure, and only stated that up to 1200 square feet is allowed in an accessory apartment. Ald. Albright asked why a cease and desist order had not been issued in December and Mr. Lojek replied that he would not do so as long as the owners were seeking relief from the Board. The Chair said that while this makes sense for a use violation, to allow construction to continue while a petition is filed to legalize it, makes the Board's decision even more difficult. Ald. Brandel asked if the petitioners had any other options. Mr. Lojek replied that they could subdivide the lot into two legal building lots, and then seek a setback variance for this structure on one lot, with the main house remaining on the separate lot. Ald. Baker felt that the restrictions in the Ordinance were designed to prevent just this situation, an accessory structure and apartment that are too big. He said he would also be opposed to the waiver of the lookback provision, since this was designed to discourage construction of new structures to create accessory apartments.

In general, Mr. Lojek accepted the blame for his department's errors in allowing this construction to go forward. Committee members were confused, however, about whether the garage alone would have needed a special permit, and Ms. Young said it would, regardless of what, if anything, was above it if it were in excess of 700 square feet measured to the outside walls. Atty. Patten again argued that the only alternatives his clients had were to demolish the structure or to obtain an accessory apartment permit. Ms. Rosenbaum, the petitioner, said she had no intention to use the apartment, except as an exercise room, but saw no reason she should not ask for it. Therefore, she said, she did not need the waiver of the 4-year lookback provision, and agreed to withdraw it.

Ms. Havens then turned to questions of the site plan and the structure. She said that the generator, which would serve both the apartment and the main house, complies with current noise ordinance standards. Although it is enclosed in a sound shield, Ald. Hess-Mahan suggested that more planting was needed on the side facing the nearest neighbor. Ms. Havens said that a revised landscape plan would be subject to review and approval by the Planning Department. She added that the lighting was residential in scale, and there was no overspill. The Committee considered alternatives to the garage doors as presently installed, since they appear out of scale and design with the neighborhood and is what many neighbors look at directly. Some suggested a design with windows, but Ms. Rosenberg objected, since they want to install a basketball backboard above them. Ald. Mansfield suggested they simply be repainted in an earth-tone color to coordinate with the main house, but the architect said this would void the manufacturer's warranty. The architect suggested that they would consider a trellis that would break up the doors' façade. He also said that the driveway and curb cut would be reduced to 20 ft. wide.

After Ald. Baker had suggested how the elements of the petition might be addressed separately, Ald Albright moved approval of a special permit for a garage greater than 700 square feet, a 3-foot grade change, and a detached accessory apartment, but not waiving the lookback provision, finding that the site is appropriate for this use, that the new structure doesn't affect the neighborhood adversely because of extensive landscaping, and that the accessory apartment will add to the diversity of the housing stock sometime in the future. Ald. Sangiolo suggested that approving this petition would encourage others to build structures such as this one. Ald Hess-Mahan said he would have agreed with her, but in this instance, the City was at fault and the petitioner deserved relief. Ald. Brandel suggested making it clear to the Board that this petition is the result of the City's error, and should not set a precedent. Ald. Baker reiterated, however, that this is still about the size of the accessory building. Ald. Fischman said that he would likely abstain on the motion, but agreed with Ald. Albright that it should be one motion. Ald Merrill also joined in this opinion. Ald. Mansfield said that he found it difficult to support an accessory apartment petition when the petitioner has stated that she does not intend to use it. That, he said, defeats its purpose.

Upon hearing the Committee's positions, Ald. Albright decided to split the motion into 3 parts: (A) approving the greater than 700 ft. detached structure and 3-foot grade change; (B) approving withdrawal of the waiver of the lookback provision (C) approving the accessory apartment; (A) was approved 6-0-1, Merrill abstaining; (B) was approved, 6-0-1, Merrill abstaining and (C) failed to carry 2-3-2, Sangiolo, Brandel and Mansfield voting no, and Fischman and Merrill abstaining.

Additional notes:

Subsequent to the meeting and vote, Chair Mansfield and Chief Planner Havens reviewed the building permit plans from 4/07 and compared them with the current special permit plans. Despite what was stated by the petitioners' attorney and architect, it is clear that the building permit plans were quite misleading, since they showed the proposed garage to have exactly the same footprint as the finished space directly above it, which has been determined to be 1,044 sq.ft. However, the plans clearly state that the garage is **"691 sq.ft. to exterior walls."** This statement on a stamped plan should have been enough for ISD to rely on, so that the Department should not bear the entire fault for this situation. In addition, again in contradiction to statements made by the architect in the hearing, there have been substantial changes to the layout of the first floor from the 4/07 plans to the current plans, including changes to the access between the garage and first floor. Both plans include two full bathrooms, one even including a separate shower and spa bath, more than would be expected for a one-bedroom apartment or even for an exercise room.

It is also now expected that the petitioners will submit a letter withdrawing their request for an accessory apartment, and Associate Solicitor Young has confirmed that the approval of part (A) alone would be a valid special permit, in that the space over the garage would not be considered living space. The Chair, however, remains concerned that, without specific restrictions in the permit, this space as designed and built could be

used as commercial gym/dance/exercise studio space, generating potential parking demand and other neighborhood impacts.

The meeting was adjourned at 11:13 PM.

Respectfully submitted.

George E. M