

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 15, 2008

Present: Ald. Mansfield (Chairman), Ald. Albright, Hess-Mahan, Merrill, Brandel, Vance, Fischman, and Sangiolo
City staff: Ouida Young (Associate City Solicitor), Candace Havens (Chief Planner) and Linda Finucane (Chief Committee Clerk)

#275-07(2) DENNIS & SVETLANA MIRVODA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter by more than three feet the existing contours of land for a retaining wall at 121 HARTMAN ROAD, NEWTON CENTRE, Ward 8, on land known as Sec 82, Blk 15, Lot 45, containing approx 10,424 sf of land in a district zoned Single Residence 2. Ref: Sec 30-24, 30-23, 30-5(b)((4) of the City of Newton Rev Zoning Ord, 2007.

ACTION: **HEARING CLOSED; ITEM APPROVED 8-0**

NOTE: This petition to approve a three-foot grade change was originally filed in 2007, two years after the work to level the foot of a steep hillside and increase the usable space in the back yard of a single family home was begun without the necessary special permit, and ISD had issued a “stop-work” order (11/05) because the retaining wall system being put in place was deemed unsafe. The petition was the subject of three public hearing sessions in 2007, and a working session, but no satisfactory plans were presented by the petitioner and ultimately the Committee suggested that he withdraw the petition and refile it when revised plans, satisfactory to the City Engineer, were complete. He did so, and refiled it for a new hearing on this date.

In a brief summary of the history of this petition, at the initial hearing Engineer Richard Volkin of RAV Associates, representing the petitioners, explained that when the petitioners purchased this property in 2005, there was a two-foot retaining wall close to the house because of the very steep hill to the rear. The petitioners hired a landscape contractor to move the existing retaining wall closer to the hill to gain more back yard. After a week, in which the over-zealous landscape contractor installed a poured concrete wall, Inspectional Services received a complaint and issued a stop-work order. The petitioners said that neither they nor the landscape contractor knew that a building permit, let alone a special permit, was necessary. They indicated that no work has been done on the wall since then, although it appears that another stop-work order was issued in July of 2007. The petitioners subsequently installed a chain link fence to prevent people getting near the slope, but that fence was later removed.

The petitioners are proposing to install a segmented interlocking wall designed in two- to eight-foot segments. The material is concrete block that looks like stone. The segmenting holds the

weight of the slope in place with no major foundation, set only on approximately one-foot of crushed stone. The slope will be secured, planted, and stabilized. Plywood will shore up the wall during construction. Mr. Volkin said that there are existing trees on the slope, but additional landscaping will be installed. He noted that he has stamped the design plans, but not the proposed materials.

At the initial public hearing, Lana Prokupets, of 115 Hartman Road, which abuts #121 to the right, said that the properties are divided by a retaining wall on her property. Noting that this excavation began more than two years ago, she asked that any more excavation be avoided, expressing a concern that such excavation could undermine her wall.

The Committee also expressed concerns about access of construction equipment to the rear yard and asked for a landscape screen between the street and the proposed wall. The Chairman asked about a proposed addition to the house shown on the plans. Originally, planning to construct additions to both sides of the house, the petitioner stated that they now plan only to build on the left side, allowing screening landscaping on the right side once the wall is complete. The petitioners explained that they relied on the landscape contractor and that one reason the project had taken so long was that they tried to resolve the issue with him. Alderman Hess-Mahan pointed out that this is a problem with the current three-foot grade change ordinance, i.e., that people think or are told that it is okay to build tiers, not realizing that it could result in a cumulative nine-foot grade change, or more.

The Committee asked that the City Engineer and Commissioner of Inspectional Services attend the second night of the hearing in October 2007, and asked the petitioners to clarify the dates of events by providing a written timeline.

On October 16, Commissioner of Inspectional Services John Lojek and Associate City Engineer John Daghlian attended the hearing. They clarified questions about the history and status of this project, as well as safety concerns about the stability of current conditions and the impact of the proposed project on neighboring properties. Abutter Lana Prokupets presented suggested revisions to the plans, but the petitioner's engineer was not present. Because the Committee wished to see and review revised plans, it continued the hearing to November. However, satisfactory revised plans were never presented nor was a landscape plan produced.

Lana Prokupets said that Mr. Volkin had mailed revised plans to her, but he did not respond to her remaining concerns relative to the location of the proposed wall and the already excavated portion of the property. Mr. Mirvoda said that Mr. Volkin was by then out of the country. It was at that point that the petition was withdrawn.

The current site plans were developed in consultation with the Associate City Engineer and he has approved them. They show a new retaining wall constructed in front of the existing non-compliant wall. The top of the old wall will be removed and covered with fill and the space between the walls will be backfilled with gravel. A landscape plan was submitted that shows that no more existing trees will be removed and that evergreens will be planted to the right of the house to screen the view of the wall. The site, with an occupied residence in place, is exempt

from the Tree Preservation Ordinance. However, Mr. Daghlian also pointed out that the existing situation is a safety hazard, with tree roots on the slope exposed, and demands immediate resolution.

After a brief public hearing on this date, at which Ms. Prokupets also expressed her satisfaction with the plan, the Committee went into an immediate working session. Ald. Fischman moved approval of the petition with the findings and conditions detailed in the draft Board Order. However, in discussion with the petitioner and his engineer, pointing out that a special meeting of the Board scheduled for 7/21/08 could allow construction to resume immediately after the 20-day appeal period expires in early August, it appeared questionable whether the petitioner intended to undertake the construction any time in the near future. The Committee then considered a condition of approval that would set a minimum time within which construction should be completed, but Ms. Young advised against that condition. She subsequently determined that the ISD Commissioner has the authority to order the property owner to take temporary steps to stabilize the hillside, with or without the special permit, but he has not done so since he was unaware of the Associate City Engineer's concern that there is a condition that could be an imminent threat to public safety. Ultimately, the Committee voted 8-0 to approve the motion.

The meeting was adjourned at 12:10 AM.

Respectfully submitted,

George Mansfield, Chair
with assistance from Mitchell Fischman, Vice Chair