

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 7, 2008

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

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

#179-08      FB NEWTON PROPERTIES, LLC/FB NEWTON PROPERTIES c/o PARAGON PROPERTIES petition for SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing retail/restaurant building and to construct a new building for retail/restaurant building with a basement and rooftop parking at 215-227 NEEDHAM STREET, Ward 5, on land known as Sec 51, Blk 28, Lot 8G, containing approx 70,837 sf of land in a district zoned MIXED USE 1. Ref: Special Permit #610-89, 30-24, 30-24(d)(5), 30-23, 30-21(b), 30-20(f) and (l), 30-19(h)(2) and (3), (j)b and 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

**ACTION:      APPROVED 8-0**

**NOTE:**      [Reports from earlier working sessions on this petition on 8/12/08 and 9/16/08 are incorporated in the following.] This is a petition for the approval of a special permit and site plan to demolish a one-story retail building at the corner of Needham Street and Tower Road, currently occupied by Filene's Basement Women's Store and Papa Gino's restaurant, retaining the existing 3-level parking deck, and replacing it with a larger 2-story retail building anchored by a new Filene's Basement, a second retail store, and a restaurant. The proposal would also add parking on the roof and in the basement of the new building, with elevator access to all levels (which does not currently exist). Relief for signage, lighting and a parking waiver is also sought in this application.

Public hearing

At the public hearing held on June 10, 2008, the petitioner's attorney, Alan Schlesinger, and the Vice President of Filene's Basement presented the proposal. They explained that the developers are the Glick family, who have owned the site for 20 years, and received a special permit in 1990 authorizing the current retail uses and structured parking. They also stated that the proposed building complies with all dimensional requirements as of right, and the plan will eliminate the current building's intrusion into the front setback. As presented, the restaurant will have outdoor seating on Tower Rd., which will require a waiver of 2 spaces to meet parking requirements. However, if this were a retail use, no waiver would be required, although in subsequent working sessions,

at the Committee's request, the petitioner eliminated 13 proposed spaces which will require a waiver.

Plans for the reconstruction of Needham St. call for the widening of the Tower Rd./Needham St. intersection, to align it with Industrial Place. The proposed setback of the building respects this plan, and plaza designs have been filed to accommodate either the present or proposed rights-of-way. Mark Luther, Filene's VP, explained that Filene's is rebuilding in downtown Boston and also wants to strengthen its presence in Newton. He described the current building as inefficient, turning its back on Needham St., and too small for the company's retail needs. The project architect pointed out that unlike the current design, all parking will be within the building with very few spaces at ground level, and 3 curb cuts on Tower Rd. will be reduced to one. This, he said, supports Needham St. as pedestrian space, and is not a "closed-box" retail design. Trash storage and delivery space will also be within the garage, and a 5-ft. parapet will conceal the roof parking. He described a glass tower entrance at the corner of Needham St. and Tower Rd. that will be an architectural feature, and encourage pedestrians to enter from Needham St. A free-standing sign at this location will also be a dominant feature seen both from the street and from inside the building. The landscape architect described the proposed pedestrian plazas on both streets, but primarily on Tower Rd. He said the Needham St. setback would have a 5-ft. wide sidewalk and grass lawn in front of the building. Shrubs will be planted around the parking structure, and a tree replacement calculation has been presented. The project engineer reported that the impervious area had been reduced on the site.

The applicant's traffic consultant described the traffic and parking effects of the project. He said that safety will improve with the plan, that the number of parking spaces will be increased by 116, from 138 to 254. He also estimated that traffic will increase by 50-75 trips in the peak hour as a result of this project, and reported that although the level of service of the Tower Rd. intersection is F, there have been no recent accidents. He said that the LOS would increase to B or C with a traffic light, even with the added trips, and that the petitioner will contribute to the cost of that light, which has been partially funded for several years by other Needham St. projects. The traffic study was submitted to the City Traffic Engineer for review.

The petitioner's attorney stated that the project has been well received in the community, and cited letters of support from the Newton Upper Falls CDC and the Russian grocery store (Baza), which recently opened next to the site. He added that there was still some work to do to prior to the Committee's working session, and that he planned to meet with the Undergrounding Task Force and provide a photometric plan. In answer to a question posed by a Committee member, the petitioner's attorney said that underground utilities were not presently part of the plan.

Ald. Brandel determined from the petitioner's representatives that they expected most customers would arrive at the site by car, but noted that the plan seems to face the building to Tower Rd., not Needham St. He suggested that the store entrances be reoriented. He also asked whether there was a schedule for the installation of the traffic

signal, and asked that it be part of this plan. Ald. Hess-Mahan agreed with this, and also that undergrounding should be employed in this plan. He also expressed dismay that the traffic analysis and plan for this development was not coordinated with that of the nearby Northland (Marshall's Plaza) site. Ald. Vance asked for inclusion of some sculptural design element(s) in this plan. Ald. Albright agreed with the importance of public art. Ald. Sangiolo asked that crosswalks be included at this intersection.

Ald. Fischman suggested that the City's Needham St. design consultant, McMahon Associates, investigate the feasibility of widening this intersection now, concurrent with this development. He also asked that another look be taken at whether the proposed realignment of this intersection as shown in the 25% plans is really the best solution. He also suggested that street trees be incorporated in the plan along Needham St., and that sitting areas be added to the lawn proposed for the Needham St. frontage of the building.

#### Public testimony

Lois Beiner, Chair of the City's Undergrounding Task Force told the committee that Needham St. is a priority for this initiative, that this effort is not unique to Newton, and that other nearby cities require utilities be placed underground in the frontage of new development. Sean Roche, Chair of the Bowen-Thompsonville Neighborhood Association, spoke for himself and not for the organization, and underscored some similar points made in a letter to the Committee from Srdjan Nedeljkovic, Vice President of the Newton Highlands Neighborhood Area Council. Mr. Roche praised the petitioner for a "beautiful" building and a responsible new commercial development. He cited the continuous streetscape shown in the plan, achieved by removing parking from the setback, as well as the flexible parking plan. He asked that 4 vehicle stalls be eliminated in favor of inside bicycle parking. He agreed that exchanging the Needham St. and Tower Rd. facades would improve the project, since development should not be encouraged on side streets. He asked that connections be established between this project and surrounding buildings, especially Paragon Tower and the Baza market. He said the Board should consider parking maximums, and that the roof deck could be built to support parking, but initially developed as a green space, only converting it to parking if and when necessary. With these changes, he suggested, this building could serve as a model for new commercial development in Newton.

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#### 8/12/08

The committee had previously approved a peer review of the petitioner's traffic plans and analysis by McMahon Associates, and at the 8/12/08 working session reviewed McMahon's draft report and the amended plans submitted by the petitioner. The McMahon report noted that, in general, the assumptions of the petitioner's traffic report were sound, but it disagreed with the method used to calculate trip generation. The difference is significant, since the petitioner had predicted an additional 66 trips per peak hour, while the peer reviewer estimates 141-258 trips per hour. The report recommended that the petitioner demonstrate how the project would handle the additional volume. The petitioner had offered \$25,000 for public improvements to mitigate effects of this project,

including a new traffic signal at the Needham/Tower intersection. However, McMahan also recommended that if the signal is needed to address traffic changes before Needham St. reconstruction is complete, the petitioner should provide full funding for the signal. In addition, he has pointed out that the traffic study does not factor in potential increases related to the prospective Northland re-development which may use both Needham St. and Tower Rd. for access. Both the City Engineer and members of the committee asked that this baseline information be included.

Ald. Hess-Mahan stated he didn't see how the street reconstruction, the Northland project, and this petition fit together, and asked the Planning Director to comment. Mr. Kruse replied that Northland is still a "hypothetical" project, and doesn't see how the petitioner can consider data that is not yet publicly available. Ald. Mansfield asked if McMahan's Needham St. design factors in projected Northland traffic. Mr. Kruse replied that these plans are based on 1999 projections, so they didn't include this possibility. The plans have been updated to account for real traffic generation as it occurs, but not before. He stated that a problem with the Northland proposal is that there is no agreement between McMahan and Northland's traffic planners. He acknowledged, however, that we are now closer than we have ever been to reconstructing Needham St. Ald. Brandel asked if it would not be prudent to reconstruct the street before installing the traffic signal. He also asked the Planning Dept. to tell the committee what they know about Northland's plans. Ms. Havens said that the Dept. has asked Northland to show the committee a concept plan, but they replied they wanted to wait for a public hearing (i.e., after filing for a special permit).

Ald. Fischman summarized that our peer reviewer says that trip generation estimates should be redone, and that the timing, design and fiscal responsibility for the signal is an issue with this petition. He added several questions: Should we approve a plan served by a Level of Service (LOS) F intersection? Where will the funds come from to pay for a full signal? Can the signal be installed without intersection realignment? Mr. Kruse reported that McMahan doesn't believe the signal can go in without a taking on the opposite side of Needham Street. Ms. Havens said that the City Traffic Engineer recommended that field observations be done by the petitioner to confirm the LOS F rating. Ald., Albright asked what 1999 assumptions were employed regarding full buildout in this area.

Ald., Albright also referred to the questions raised at the public hearing re: undergrounding. The petitioner has agreed to underground utility wires from the street to the Filene's property, but has no control over their relocation in the right of way. Although he has offered mitigation funds to bury wires in the ROW when and if it becomes possible, this is same \$50,000 contribution could support the signal.

A second entry to the Filene's space has been added to the Needham St. façade; and the second retail tenant's entrance on Tower Rd. has been reoriented slightly so that it is more visible from Needham St. An art object or fountain has been proposed in the center of the plaza. More pedestrian pathways are proposed on the Needham St. frontage, and a new canopy adds visual interest. Street trees matching others along

Needham St. have been proposed. 17 additional benches have been added to the plaza. Bike racks are now shown near the entrances and in the basement-level garage. The freestanding sign has been lowered to 12 feet, and the Urban Design and Beautification Commission has approved the sign package.

Representatives of the petitioner and of the Northland project met and agreed on many issues of traffic and circulation, including the concept of promoting “one-stop” shopping. However, they could not agree on any particular pedestrian pathway connecting the sites (other than the Needham St. sidewalk) because that would require the cooperation of two other property owners, those of Paragon Tower and the Baza site, who were not present. The Chair encouraged the petitioner to reach out to these owners. He said that he had recently visited the site and through observation reached many of the same conclusions as those presented by Mr. Roche at the public hearing. He thinks the area as a whole, including the subject site, has at least three challenges to pedestrian “friendliness.” There is too much parking; there are too few and/or poorly designed and maintained pedestrian pathways; and there is too much hardscape and not enough natural light reaching the ground. This project could begin to correct these deficiencies, he suggested, by taking the following steps:

- 1) Reduce the planned parking on the roof (with a waiver) and replace it with a roof garden/greenspace that would attract employees and customers to use it.
- 2) Create pedestrian passageways from the first level of the garage to the grocery parking lot and to the Paragon Tower property. In fact, the Paragon garage does have good, separated pedestrian ways that could be used to connect to the Northland property.
- 3) Pull back the south wall so as not to close in the space between the subject property and that of Paragon Tower, where there are retail and office uses, and create a sidewalk along the building that would lead to both garages. Also provide another entrance to the retail space on this façade that would facilitate shoppers using all the retail sites on foot.

He also asked the Planning Department to encourage Northland in their site development plans to open up a pedestrian passage to the Paragon garage, where an exit stairway now meets the blank back wall of Marshall’s.

The Chair then asked the petitioner and the Planning Dept. to consider all the questions and requests posed by the Committee, and suggested that another working session be scheduled for September 16.

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9/16/08

The discussion on the revised plans and conditions that had been submitted by the petitioner prior to this meeting did not begin until quite late in the evening at the second working session, approximately 10:30 PM. The first matters considered this evening were regarding the traffic analysis, plans for improvements to the Tower Rd./Needham St. intersection, and for Needham St. itself. This discussion consumed considerable time, and the Chair also found that some of the revised plans had not come in soon enough to

be fully reviewed by the Planning Department. In addition, questions about the site plans and circulation raised by Committee members led the project architect to provide further useful insight into how the vehicles and pedestrians would experience the site, but also led to additional questions.

As it approached midnight, it became clear that it would not be possible to act on this petition at this meeting, and the Committee developed a list of additional requests for the 10/7 meeting. These included a request from Ald. Fischman for an analysis and cost estimate from McMahon Associates on the feasibility of an interim solution to the need for a traffic signal at Tower Rd., and a written recommendation from the Traffic Council or City Traffic Engineer on the intersection; a request from Ald. Yates for more detail on the sustainability of the building design, and a report from the Mayor and/or Planning Director on the status of previously approved 25% Needham St. plans (that Ald. Coletti contended had been rejected by the State); and a request from Ald. Coletti for a statement from the Fire Department on the adequacy of the fire suppression system in the basement garage, as well as information from the petitioner on their security plans, lighting plan and snow removal plan. The chair also asked for comments from the attorney for the abutting property, Paragon Tower, on the recently-submitted revised Construction Management Plan.

The attorney for the petitioner agreed to request an additional 2-week extension for Board action, until 11/5/08. The item was then held for discussion on 10/7/08.

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#### 10/7/08

At the third and final working session, Ms. Havens summarized the petition, the recommendations of the Planning Department and the Committee, and the petitioner's responses. She noted that a stamped concrete walkway had been added along the southerly property line linking the Needham St. sidewalk to the Baza Market property behind the parking structure; that a second Needham St. entrance and canopy had also been added; that windows at the second story level and facade detailing had been proposed; that 13 parking stalls have been eliminated--10 of which have been replaced with 6 additional solar panels (for a total of 16), improving the building's energy efficiency; and that the petitioner has agreed to make up to 25 spaces available to employees of other nearby businesses if they remain unused at full tenancy. She also reported that the Planning Department has further recommended that one of the two large wall signs facing Needham St. be eliminated, that additional street trees be added to both frontages, and that the building facade be a matte finish to be more compatible with the existing materials used in the area.

The Committee also noted that they had received written communications dated 10/3/08 from the Newton Bicycle/Pedestrian Task Force (BPTF) and from the owners of the abutting Paragon Tower building, 233 Needham St (Needham Street Equity Partners, LLC), both stating opposition to the approval of the petition. The former asked the Committee to "aggressively" pursue the potential for "walkability" throughout the site as a condition of approval, and to seek an easement through this site that could eventually

allow vehicular access to the adjacent Paragon Towers garage without the current curb cuts on Needham St. The abutters' letter expressed their concerns about the impact of the project on their property, including protection of their structures during construction, and traffic congestion and loss of parking both during and after construction.

Chair Mansfield reported that he, Ald. Brandel and Ald. Danberg had met with the petitioner, his architect and his attorney between meetings in an attempt to clarify some of the details of the proposed site plan and pedestrian and vehicular circulation that had been somewhat confusing to the Committee at the previous meeting, as well as to clarify some of the above objections and to prepare for a working session in which the Committee would be able to address all outstanding matters. Architect John Pears had showed them some options in an interactive, 3-dimensional computer model and they asked that he bring these proposals more fully developed to the Committee for discussion tonight. Attorney Schlesinger added that if the Committee accepted some of these site plan improvements, they would submit revised site plans with all options recommended by the Committee prior to the full Board meeting.

#### Site plan

Mr. Pears took the Committee through the interactive model, showing several components of the project with alternative site elements. On the Needham St. frontage, he showed a sidewalk set back further from Needham St., and second through walkway next to the building with a green area separating them. This strip would now contain 4 (previously 2) street trees, set back a similar distance as other Needham St. trees. The benches are reoriented to face each other, rather than facing the street. On the Tower Rd. side, Mr. Pears showed lower retaining wall planters, and improved access for pedestrians between the plaza and the garage entrance. Bike racks are also located in a protected area under the building overhang, as well as in the garage, so that 50% of these racks will be under cover. All these changes did not increase the impervious surface.

At the rear of the site, Mr. Pears showed a new HP-accessible pedestrian ramp providing a connection to the Baza parking area, directly opposite the main elevator entrance to the Filene's building, which would require the elimination of one additional space, and also require Baza to reduce or relocate one space in their lot. This would allow and encourage users of both sites to park once and shop at both locations. Mr. Pears also noted that Baza should be encouraged to relocate their dumpster for pedestrian circulation on the south and west sides of the Filene's site to work well. This revised plan could also provide a means for an eventual pedestrian connection to the Northland site.

Within the parking structure, Mr. Pears described the proposed electronic parking control panel at the entrance from Tower Rd. that is designed to display the available number of parking spaces in the upper and lower levels, helping drivers to make an immediate decision about which level to choose. He also used the model to illustrate why the BPTF's proposal to provide an easement for an eventual vehicular connection to the Paragon Towers garage would be impractical, since the southern portion of the entrance level (1/2 story below grade) is to be used as the primary enclosed loading dock and dumpster area for the building, and is a structural element. Mr. Schlesinger pointed

out that with two public frontages, Needham St. and Tower Rd., and the existing parking deck ramps using the other three sides of the site, there was no feasible alternative location for these utility areas.

Another proposal for improved streetscape and a more attractive rooftop environment that was incorporated in the computer model was the introduction of trees on the roof directly behind the parapet. The Committee also discussed lowering the parapet from 5 feet to 3 ½ feet, or varying its height to open up views from the roof and to improve the appearance of the façade. There was general agreement that the trees in this location would probably not survive and would add little for passersby on the street. Although Ald. Brandel favored the varied parapet height, and Ald. Vance suggested breaking up the parapet by changes in its material, the Committee and the petitioner finally agreed that Ms. Havens' suggestion that a varied finish on the façade, using a matte finish in place of the shiny finish, would be the best alternative to break up its mass.

There was substantial discussion about the proposed signage. Ald. Brandel suggested more directional signage, for both vehicles and pedestrians. It was agreed that the details and locations of such signs could be subject to the review and approval of the Planning Director. The Committee, however, did agree on two changes to the major wall signs. To help direct vehicles approaching the site from the south (Rte. 128/95) to the parking, the south façade wall sign identifying "Filene's Basement" and "Tenant Two" would also say "Next Left." The second wall sign on the south end of the Needham St. side of the building would also be eliminated, and replaced with a smaller "Filene's Basement" sign on the new canopy over the second entrance. This satisfied the petitioner's need to identify where that tenant would be located. All these primary signs will be internally lit.

### Conditions

The Committee then reviewed the previously proposed conditions and the reviews of other officials. They confirmed that the Fire Dept. had reviewed and approved of the plans, and that the site is outside the wetlands jurisdiction of the Conservation Commission. Security measures are included in the plan, including lighting and surveillance cameras on each floor of the garage. Windows have been added to the southwest stair tower and at the elevator lobby entrances to create a more secure and pleasant environment for pedestrians. A 21E evaluation of the site showed no evidence of underground tanks or environmental contamination. A draft construction management plan (CMP) was reviewed and approved by the Planning Dept., and a draft operations and maintenance plan for drainage has similarly been accepted by the Associate City Engineer.

Attorney Michael Pierce, representing the owners of Paragon Tower, reported that they are looking for more specificity in the CMP regarding pile driving and the staging of construction. He stated that a violation of the CMP should be a violation of the special permit, so that abutters could seek redress from ISD and not the Planning Dept., and Ms. Young agreed that this could be clarified in the conditions. The Chair pointed out that



the CMP should specify that access for construction vehicles should not be directly from Needham St., but only from Tower Rd. to minimize traffic impacts. Ms. Havens agreed that all these details could be worked into the final CMP.

The Committee discussed the proposed \$50,000 contribution of the applicant to the goal of undergrounding overhead utility wires. Ald. Albright pointed out that this was solely to support a study of the feasibility, costs and methodology for such an endeavor, and objected to the provision that would allow this contribution to be redirected to traffic mitigation.

Ald. Fischman had addressed in detail the possibility of installing the Tower Rd./Needham St. signal prior to the full Needham St. reconstruction. He reported that McMahon Associates agrees that this signal alone could be beneficial for traffic flow. The question that could not be answered within this special permit review is if and how the cost of the signal could be borne by a City bond authorization—presumably paid back with State funds when they are forthcoming, plus contributions of the petitioner and other businesses that would benefit from these traffic improvements. The Committee did ask that a condition be drafted to allow such a plan to proceed, if the Mayor and the DPW were able to implement it.

They also noted that the plans provided two options for the design of the plaza at the intersection, incorporating realignment and a signal, or the current configuration. Some members suggested that the “signal” option be built from the outset, but the petitioner strongly preferred to retain the two options, allowing a larger plaza in the interim, which the Committee consented to. In the absence of a full signal installation, the petitioner also agreed to a condition that requires a post-development traffic study and a “look-back” provision, which would require the petitioner to contribute a proportional share to other forms of traffic mitigation if traffic volumes at that time exceed a set percentage of those predicted by the pre-development traffic study. The petitioner proposed that this threshold be 20%, but the Planning Dept. and the Committee requested it be 10% to be consistent with the PMBD ordinance.

Finally, a parking management plan was proposed as a condition that would provide, among other objectives, that if parking utilization is less than 85% at peak times, the petitioner may enter into an agreement with neighboring properties to permit the usage of up to 25 spaces by off-site employees.

Following this lengthy discussion, Ald. Brandel moved approval of the petition, finding that the public convenience and welfare are served by the expansion of the retail uses and the replacement of the existing outmoded building with a structure that is of a mass and scale that is in keeping with other Needham St. retail structures and sites, enhances the streetscape, and provides improved pedestrian circulation and amenities. Other detailed findings can be found in the draft Board Order. This motion was approved by a unanimous 8-0 vote

#217-08 JULIE & CHRISTOPHER DARNELL petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter the existing contours of land by more than three feet and to construct a garage of more than 700 square feet at an existing single-family dwelling at 25 DRUMLIN ROAD, Ward 8, NEWTON CENTRE, containing approx 77,755 square feet of land in a district zoned Single Resident 1. Ref: Sec. 30-24, 3-23, 30-5(b)(4), 30-9(b)(7) of the City of Newton Rev Zoning Ord, 2007.

ACTION: **APPROVED 7-0-1 (Mansfield abstaining) SUBJECT to 2<sup>nd</sup> CALL**

NOTE: This petition was the subject of a public hearing that was opened and closed on July 15, 2008. The petitioners obtained a building permit in May of 2007 to renovate an existing single-family dwelling built in the 1930's and to add a 1,562 sf addition including an attached garage with living space above on a 77,755 sf lot, which is four times the size of any neighboring property. (An earlier building permit was obtained to remove an existing swimming pool and to replace it on a different location on the lot.) The petitioners are seeking a special permit to alter in four areas around the house the grade by more than three feet to provide better access to the garage and to create level yard space.

- Area 1 is in front of the house where 109 cubic yards of fill, with a maximum grade change of 5 feet, would fill a 752 sf area to level the area between the existing house and new driveway;
- Area 2 is a 3,250 sf area to the rear of the new garage, which the petitioner is proposing to fill with 594 cubic yards of fill for a maximum grade change of 8.5 feet to create a rolling lawn area behind the house.
- Area 3, the most extensive, involves filling 5,735 sf to the left of the house with 852 cubic yards of fill that will create a grade change of 5 feet to support a grass path leading from an existing terrace to the pool and rear yard. .
- Area 4 consists of a 44 sf cut behind the house between two sets of stairs leading down to the pool.

The proposed plans tie the grades into existing grades at the property lines without the use of extensive retaining walls, other than an area in front of the garage that will be retained with a new wall. This results in a gentler slope on much of the lot since the lot currently slopes rather steeply to the rear towards the homes on Cynthia Road. The Existing Conditions Plan shows that 78 trees have been removed, with 31 more to be taken out, leaving 65 trees on-site. In accordance with the City's Tree Preservation Ordinance, the petitioners signed a Certificate of Exemption form and noted the removal of 109 trees, totaling 1309 diameter inches. The petitioners said that most of the trees removed were dead or dying and there was a great deal of overgrown brush removed. Proposed landscaping includes a significant number of additional evergreens at the perimeter of the site as well as flowering and specimen trees located throughout the lot. The Planning Department asked that a revised plan be submitted prior to the working session because not all the trees called for on the plan are listed in the plant list. The Committee asked for an explanation as to why the site is exempt from the Tree Preservation Ordinance.

The Associate City Engineer has reviewed the proposed drainage system and asked that the petitioners submit for review and approval an Operations and Maintenance Plan for Stormwater Management.

Public testimony

Seymour Silverstein, a resident of 104 Cynthia Road since 1977, which is to the rear of the subject property, said that since clearing of the land began approximately 5 years ago his backyard has been a swamp. He has spent \$10,000 on french drains to alleviate the problem and would like to be reimbursed for repair and damages.

Vivian Podrid, a resident of 96 Cynthia Road since 1989, said there is a 40-foot drop from the subject property to her backyard and that she has had water in her house. She believes it is because so many trees have been removed and wants the drainage issue addressed before any more trees are taken down.

Alan Rashba of 411 Dudley Road was concerned that no more trees be removed.

At the suggestion of Alderman Fischman, the Committee agreed to arrange a site visit and the hearing was closed.

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At this evening's working session, the Chairman noted that members of the Committee had attended site visits on either the 3<sup>rd</sup> or 5<sup>th</sup> of September. Ms. Havens indicated that the Planning Department had reviewed a revised planting plan that identifies all plants and trees. The petitioners are proposing 102 trees, six of which are specimen quality, which the landscape architect has represented as the equivalent of at least 530 caliper inches, or more. The Planning Department believes the proposed planting plan is ample and will help stabilize the site and reduce any runoff on abutting properties. Ms. Havens also addressed the applicability of the Tree Ordinance. A property may be exempt when it has been occupied and used primarily as a dwelling for up to four families and to maintain the exempt status the property must be owned for 12 months from the date of certification. If someone continues to own the property for that period, it remains exempt from the Tree Ordinance. The petitioners purchased the property three years ago but have never lived there, however the Inspectional Services Department accepted their certificate of exemption because they intend to live there. Committee members were concerned about how the Tree Ordinance was being interpreted and whether it is applied consistently. Alderman Sangiolo suggested that the Committee move on this petition, and invite the Tree Warden and the Commissioner of Inspectional Services to meet with the Committee. Alderman Hess-Mahan agreed that this petition should not be held up as winter is approaching and it would mean another year of an unoccupied house. The petitioners would like to complete the landscaping before winter.

Petitioner Chris Darnell explained that much of the grade change work is finished, particularly in the area next to the garage because the Inspectional Services Department identified the turn-around area as a safety issue and told them to complete the fill pending pursuit of a special permit. When asked if these types of violations were enforceable,

Ms. Young noted this is typical, ISD and even a Court generally will not act if the property owner is seeking relief. Several existing retaining walls, including one that is 12 feet and one made of railroad ties, will be removed and the proposed grading will grade up to the abutters' property. The petitioners propose planting two rows of hemlocks, one row on the Laffel's property at 11 Drumlin Road and one row on their property and propose additional plantings and ground cover at both the Laffel's and Rashba's (411 Dudley Road) property lines. The petitioners will provide to the Committee confirmation from both abutters and will submit a revised landscape plan by October 16. The petitioners tonight considered withdrawing the request for a garage of more than 700 sf, but were convinced of the practicality of seeking the relief if, in the future, they wish to accommodate another vehicle by removing the existing partition.

Engineering calculations indicate that drainage will be contained on site, with the system designed for the 100-year storm event. The petitioners have submitted an Operations and Maintenance Plan for Stormwater Management that has been reviewed and approved by the Associate City Engineer, who asked that the plan be filed with the special permit.

Alderman Sangiolo moved approval subject to second call, pending receipt and review by the Planning Department of a revised landscape plan and letters from the Laffels and Rashbas confirming their satisfaction with the proposed landscaping, finding that the impact of the grade change has minimal impact on abutters as the drainage system has been designed to the city's 100-year storm event and the site will be stabilized and landscaped. Alderman Sangiolo's motion carried 7-0, with Alderman Mansfield abstaining because he would like an explanation from the Inspectional Services Department about the property's exemption from the Tree Ordinance and its alleged counsel to perform work before getting a special permit.

***Clerk's note: On October 16, the petitioners submitted a letter (attached) signed by Glen Laffel, Alan Rasba, and Julie Darnell and a revised landscape plan dated 10/15/08 that reflects the agreed upon landscaping revisions.***

#276-08      BRIAN COOK/INVESTMENT PROPERTIES, LTD. petition for a Special Permit/Site Plan Approval and Change to a Non-conforming Use and Structure, including two exterior wall signs, at 552 COMMONWEALTH AVENUE, Ward 6, Newton Centre, on land known as Sec 61, Blk 3, Lot 22, containing approx 12,944 sf of land in a district zoned Multi Residence 1. Ref: Sec 30-24, 30-23, 30-21((a)(2)a), 30-21(b), of the City of Newton Rev Zoning Ord, 2007.

**ACTION:      APPROVED 8-0**

**NOTE:** This petition was the subject of a public hearing that was opened and closed on September 9, 2008. The petitioners were represented by Attorney Laurance Lee, Brian Cook, President of *Get In Shape for Women*, and Robert Walsh, owner of the property. Located on Commonwealth Avenue at the corner of Chestnut Terrace, the subject property is a one-story multi-tenant commercial building in a Multi Residence 1 district where retail use is not a by-right use. The building was constructed in 1917 and predates

adoption of the zoning code, which makes it a legally nonconforming structure. The petitioners are seeking a special permit to change from one nonconforming use, a butcher, to another nonconforming use, a by-appointment personal training establishment. There are five other storefront tenants including a barber, a dentist, a pet grooming/supply store, a dry cleaner, and a frame shop. The personal training establishment seeks to occupy the space on the east end vacated a year ago by Gordon & Alperin.

The petitioners are not proposing any exterior changes. They propose two wood-carved, non-illuminated wall signs, with black backgrounds, one 36"x87" and one 36"x144" on each side of the door where the prior tenant's signs were located. The Urban Design & Beautification Commission reviewed and approved the proposed signs on August 20, 2008.

There are five parking spaces to the rear of the building. Four spaces are required for the proposed use, one less than the previous butcher shop required. The Planning Department noted that there are a number of parking options in the immediate neighborhood. Clients may come from the neighborhood and walk to the site. Mr. Lee said that services are by appointment only. One personal trainer would work with groups of no more than four women during hour-long sessions; the maximum occupancy at any one time would be eight people, two trainers with two groups of up to four clients. Proposed hours of operation are Monday to Friday, 6:00 a.m. to 8:00 p.m. and Saturdays from 8:00 a.m. to Noon. There are 17 other franchises in Massachusetts, with the closest in Walpole. Several Aldermen were concerned that the sound of music would carry outside the building.

There was no public comment, and the hearing was closed.

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At this evening's working session, Ms. Havens noted that the petitioner provided information attached to the Planning Department working session report re the hours of operation of all the tenants at 552-564 Commonwealth Avenue. The petitioners submitted letters from four abutters of Get in Shape for Women in other locations, which all stated there has never been a problem with noise. The petitioners clarified that music will be played as part of the workouts, but must be low enough so the clients and the instructors can hear one another without shouting. The petitioners agreed that the back door of the premises would remain closed during hours of operation.

Alderman Brandel moved approval, finding that the proposed change of use from a butcher shop to a personal training establishment would not be more detrimental to the neighborhood than the previous nonconforming use, with a maximum of 10 people; the music will be kept to ambient levels, the signage is appropriate and consistent with other signage on the building; and the use is consistent with the Comprehensive Plan, which encourages local uses and local services. Alderman Brandel's motion carried 8-0.

#277-08      DANIEL & WENDY KRAFT petition for a Special Permit/Site Plan Approval and to Extend a Non-conforming structure to allow Floor Area Ratio (FAR) in excess of .30 for an existing single-family dwelling at 66 MONTROSE STREET, Ward 7, Newton, on land known as Sec 73, Blk 19, Lot 10, containing approx 10,190 sf of land in a district zoned Single Residence 2. Ref Sec 30-24, 30-23, 30-15 Table 1, 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

**ACTION:      APPROVED 8-0**

NOTE: The Public Hearing on this petition was opened and closed on September 23, 2008. Attorney Stephen Buchbinder represented the petitioners along with the project architect from Konstant Architecture Planning; Landscape Architect Rick Kattman; and Engineer Verne Porter. The petitioners wish to demolish and reconstruct more than 50% of this existing single-family home where they have lived since 1993. They are seeking a special permit to extend a non-conforming structure by increasing the FAR from .45 to .51, with a net addition of 539 sf to the building footprint. The existing dwelling has 4,654 sf; the proposed dwelling has 5,193 sf; the by-right square footage is 3,051 sf. The average FAR in the neighborhood is .31. The Historical Commission found the existing structure not historically significant. Exterior changes include a complete new façade in a Tudor-style similar to other homes in the neighborhood. Proposed materials include brick veneer and stucco, slate roof and cedar garage doors. The proposed dwelling meets all dimensional, lot coverage, and open space requirements. Although the Planning Department was concerned about the size of the proposed dwelling, the petitioners feel that although the lot is on the small side, it abuts the Ward School ball field/playground. Currently, there is substantial arborvitae screening and chain link fence to the rear and the driveway side of the property, which the petitioners propose to replace with a wood fence. The petitioners are amenable to underground wiring. The petitioners need permission to remove one city street tree to install the proposed relocated driveway. The proposed driveway has a turnaround so vehicles do not have to back out.

The petitioners have offered the City approximately \$10,000 in improvements, which include two benches overlooking the ball field at Ward School, a sports box in the ball field, re-sodding a portion of the ball field; planting seven rhododendrons and a 2.5' sugar maple tree on city-owned land between their home and the path that connects to Dolphin Road; and extending a concrete sidewalk in front of their home to the corner with a handicapped cut and granite curbing. The petitioners are awaiting confirmation from the Parks & Recreation Department relative to the installation of the proposed amenities. They explained that they had cleared the pathway of overgrown brush and weeds to discourage the teenage drinking that used take place at night.

Public testimony

Pearl Albert, 56 Montrose, abutting the driveway side said that because the street slopes, #56 is higher than #66, and existing hemlocks screen the properties. The Kraft family is the best of neighbors and she is very much in favor of the proposal.

Robert Rubin, 62 Lorna Road, the abutter to the rear of #66 and a 38-year resident, echoed Mrs. Albert's sentiments.

A petition was submitted from 22 neighbors in favor of the project. A letter in favor of the petition from Roger J.F. Lehrberg, President of Newton Central Little League, was also distributed this evening.

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This evening, Ms. Havens noted that this property, owner-occupied since 1993, is exempt from the Tree Ordinance. The Parks & Recreation Department has accepted the improvements offered and has scheduled a public hearing at the end of October on the proposed removal of the street tree for the new driveway. The petitioners propose to plant four trees for the tree removed. Mr. & Mrs. Albert of 56 Montrose Street decided they did not want a 6-foot wood fence along the boundary line and a revised landscape plan reflecting its elimination was submitted today. The Chairman told the Committee that subsequent to the public hearing that he and, as it turned out, Aldermen Albright and Sangiolo were unable to attend, the three Aldermen met with the petitioners and their attorney last Friday, October 3, to hear overview of the proposed project.

Alderman Fischman moved approval of the petition, finding that although the lot is small, it is adjacent to city-owned opened space, which appears to make it larger; that the proposed expansion of a nonconforming structure would not be substantially more detrimental to the neighborhood than the existing nonconforming structure; and the proposed architectural changes are more compatible with other homes in neighborhood. Alderman Fischman's motion carried 8-0.

#278-08      RHANNA KIDWELL & DANIEL SILVER petition for a Special Permit/Site Plan Approval and Extension of a Non-conforming use and structure to expand to the rear and sides of an existing 4-family dwelling an 6d to construct to the rear a 6-car garage in excess of 700 sf at 187-189 CYPRESS STREET, Ward 6, Newton Centre, on land known as Sec 65, Blk 15, Lot 16, containing approx 20,704 sf of land in a district zoned Single Residence 3. Ref Sec 30-24, 30-23, 30-21(b), 30-15((m)(5)b and c), 30-8(b)(7), 30-5(b)(4), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

**ACTION:      APPROVED 8-0**

**NOTE:** This petition was the subject of a public hearing that was opened and closed on September 9, 2008. Representing the petitioners were Attorney G. Michael Peirce, Architect Peter Sachs, and Civil Engineer Joe Porter. The petitioners are seeking a special permit and extension of a non-conforming structure and use to expand a lawfully nonconforming (height is 33 feet and number of stories is 3.5) four-family dwelling. The proposal will increase the footprint of the structure to the sides and rear (from 4,350 sf to 7,224 sf), which will increase the size of each of the four units. The proposed expansion is approximately seven feet in width in each direction and three feet in the rear. Built in 1913, the rental dwelling has been neglected by previous owners and the petitioners hope that a condominium conversion will instill pride of ownership. The Historical Commission found the structure not preferably preserved. The Planning Department expressed some concern about creating the largest structure in the immediate

neighborhood and suggested a more complex design that would vary the size and configuration of the units. The Planning Department noted that for a large lot, there is no usable open space on-site. Mr. Peirce explained that it is because the house sits close to the street and the lot slopes so steeply to the rear and flattens into a wooded area towards the backyards on Bow Road and Ridge Avenue. As an amenity, each unit will have a new rear deck, approximately eight feet wide. The petitioners and the abutters to the rear wish to retain the natural character to the rear of the lot and Mr. Peirce said that given the proximity to Newton Centre, the MBTA, and the abundant on-site parking, the condominiums would self-select.

A detached accessory garage placed where the site slopes steeply downward is proposed to provide parking for six vehicles, with two exterior spaces for a total of eight spaces. To accommodate the proposed garage, grade changes in excess of three feet are necessary in two areas: 463 sf located behind and between the proposed garage and 218 sf where proposed parking space #7 will be located. This requires the removal of two existing trees. The proposed garage looks very high from the rear, but the closest rear abutter is 300 feet away and screened by the woods. The Planning Department suggested that the garage be moved to save the two trees, but the petitioners pointed out that moving the garage would place it closer to the abutter on the north side. The proposed location is the best layout because it is equidistant from the two lot lines. Evergreens will provide additional screening at the north side of the garage. Because parking is provided for more than five vehicles, the petition includes requests for parking waivers including limits on parking within the side setback; parking within five feet of a dwelling; minimum driveway width; providing a handicapped parking stall; and screening and lighting requirements. The Fire Department has reviewed and approved the plans. The garage will be sprinklered.

Drainage will be contained on-site and is designed to the City's 100-year storm event. The proposed drainage design includes catch basins and leaching galleys in the driveway to direct the water away from the rear. The Associate City Engineer questioned whether weep holes shown in the proposed new retaining wall on the south side of the property would discharge directly onto the abutter's property. The Associate City Engineer recommended certain sidewalk improvements and the petitioners have agreed to install granite curbing along the frontage and to install new asphalt to match the rest of the sidewalk on Cypress Street. However, the petitioners have significant concern with the recommendation from the Associate City Engineer that the massive tree in the front yard be removed to avoid possible root damage to the sidewalk. This is a signature tree of 27" caliper and the petitioners wish to preserve it, as do the neighbors. Proposed landscaping includes ornamental trees and shrubs.

### Public Testimony

Katherine Knight, 177 Cypress Street, had attended a neighborhood meeting several months ago, but wanted to confirm the distance of the garage from her property line. Mr. Peirce explained that the wall of the proposed garage is 12.3 feet from her



property line; the pavement is 5 feet, and there is 24 feet from the proposed garage to her house.

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Tonight, the Committee reviewed with Ms. Havens elevations dated 9/25/08 provided by the petitioner that show the side retaining wall, and the front and back sides of the garage. Material for the exterior of the structure is cedar clapboard.

Ms. Havens told the Committee that the property is exempt from the Tree Ordinance because it has been occupied and used primarily as a dwelling. In order to maintain this status, the petitioners must own it for 12 months from the date of certification. Other than reiterating their intention of preserving the large tree on Cypress Street and installing an asphalt sidewalk to match the 85% of the existing sidewalk on Cypress, the petitioners agreed with all of the Associate Engineer's recommendations, but pointed out that there are no weep holes in the proposed retaining wall on the south side of the property. The petitioners feel that additional landscaping behind the garage is not necessary because of the substantial existing vegetation and the distance from the abutters. As to creating a level backyard, the petitioners explained that the existing woods are very shady and, although not a wetland, tend to be very damp, which could limit its use. The residents on Bow Road use this area as a neighborhood woods. The petitioners plan to clear the woods of brush, but leave it in a natural state.

Alderman Hess-Mahan moved approval, finding that the proposed expansion of a nonconforming structure is not substantially more detrimental than the existing structure and it will remain a four-family; the proposed garage for more than three cars is a public benefit because it removes the existing parking located in the front setback and it will take parking off the street; the proposed grade changes will have no adverse impact on any abutters because drainage has been designed to accommodate the 100-year storm event; the proposed parking waivers are appropriate because literal compliance is not practical and they pose no hazards to vehicles or pedestrians; the proposal is consistent with the Comprehensive Plan because the petitioners are renovating and preserving an existing four-family structure close to a village center. Additional conditions are that the rear of the site be retained in its natural state and that in the future if the condominium association wishes to create a usable backyard, it will have to seek an amendment to this special permit/site plan approval.

Alderman Hess-Mahan's motion was approved 8-0.

The meeting was adjourned at approximately 12:40 PM.

Respectfully submitted,

George E. Mansfield, Chairman