

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

THURSDAY, NOVEMBER 6, 2008

Present: Ald. Mansfield (Chairman), Ald. Brandel, Hess-Mahan, Merrill, and Vance;  
absent: Ald. Albright, Fischman, and Sangiolo  
City staff: Chief Planner Candace Havens, Senior Planner Benjamin Solomon-Schwartz,  
Associate City Solicitor Ouida Young

#501-94(2)     ROBERT E. DUNN & SEANA R. GAHERIN TRUSTEES of D&G REALTY TRUST petition to amend Special Permit/Site Plan Approval/Extension of a Nonconforming Structure #501-94, granted on February 6, 1995, in order to expand an existing restaurant and increase the seating capacity from 49 to 69 seats; to waive the required six additional parking spaces and to locate one handicapped parking space in one of the existing standard 10 parking spaces and allow an impervious surface on the off-site parking area at 342-344 ELLIOT STREET, Ward 5, NEWTON UPPER FALLS on land known as Sec 51, Blk 41, Lots 10 and 12 containing approx 6,725 sf of land in a district zoned Business 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(c)(2)a), (h)(2)c), (j)(2)b), and 30-19-(m).

ACTION:        APPROVED 5-0

NOTE:         This is a request to amend a 1995 Special Permit to allow Dunn-Gaherin's, an Irish pub and restaurant to expand its seating from 49 to 69 seats waiving the requirement to provide 6 additional off-street parking spaces. The building itself, located in the Newton Upper Falls Historic District, dates from the 1850's and is non-conforming in its front and side setbacks. The proposal also includes a small one-story addition at the rear of 237 sq. ft., which requires approval of the extension of a non-conforming structure. The parking lot is also non-conforming and was paved without approval of an amendment to the original permit. The petitioners propose to locate a handicapped stall in one of the existing spaces, and retroactively are seeking approval for the paving of the parking area. They are not proposing to reconfigure the parking area in any other way, except by striping the existing 10 spaces. Since the 1995 special permit included a waiver of 11 spaces, the total parking waiver requested is 17 spaces.

The proposal is also to remodel the interior of the restaurant, moving the rest rooms from the center of the space between the bar and the dining area to the rear addition. A handicapped rest room would be added, along with a second entrance from the rear, near the proposed HP space. The opened-up area would be reconfigured to provide the 69

seats. The petitioners are not proposing to expand the second floor in any way, which is used only for storage.

The petitioners proposed an on-site parking manager to direct and expedite the parking in the small, narrow lot during their busiest times, Friday lunch and Thursday, Friday and Saturday dinner hours. They would direct patrons to back into the spaces to facilitate circulation, and direct them to nearby on-street parking when the lot was full. They also proposed to lease space for employees in the nearby lot behind Mary Immaculate church on Oak St. They submitted a parking study that surveyed and found available parking for about 25 vehicles on Elliot St. and at least 30 more spaces on surrounding streets.

At the public hearing on October 14, 2008, several residents of the neighborhood and the general area spoke in support of the petition, including Alderman Yates. There were no complaints expressed, except about existing illegal parking on Hale St. (that was not believed to be associated with the restaurant). Many people noted that residents and workers at Upper Falls businesses regularly walk to the restaurant. Others testified that the owners have had a very hands-on and responsible management style. The petitioners also submitted 9 original letters and a petition signed by approximately 240 people, many of whom are residents and business people from the neighborhood, in strong support of the petition.

In the working session, Ms. Havens reported that a revised landscape plan had been submitted showing new screening at the front of the parking area and two additional pear trees along the side lot line. The dumpster at the rear is proposed to be screened with a 6-foot board fence. She also reported that the petitioners have agreed to apply for an additional on-street handicapped parking space in front of the restaurant which, when not occupied, would improve visibility for cars exiting the lot. They also submitted a more detailed Parking Management Plan. Several committee members, including the Chair and Ald. Hess-Mahan questioned whether the Plan was both sufficient and necessary. Basically, it provided for an on-site manager (and specified that it would be the owner or his designee), a practice that is already in effect. But Ald. Vance added that usually the imposition of parking management provisions are limited to situations where there is perceived to be a parking problem. Ald. Brandel noted that there is clear signage specifying that vehicles should be backed into spaces, and the system works well now. He suggested that the permit should require that signage be maintained, as well as a sign directing patrons to the HP parking in the rear. Ald. Hess-Mahan added that he felt the spaces should not be restriped, which could allow more flexibility.

Ald. Brandel moved approval of the petition, finding that the expansion of the non-conforming structure would not be substantially more detrimental to the neighborhood than the existing structure, and the addition will allow a new handicapped bathroom and entrance; that the expansion of the restaurant use will not be substantially more detrimental to the neighborhood than the existing use since the petitioners have operated the use at this location for some time with no neighborhood complaints; that the waiver of six spaces is appropriate since the petitioner has proposed a parking management plan that maximizes use of existing parking at peak times and off-site parking for employees;

that the proposed landscape improvements will enhance the site and the neighborhood; and that the business contributes to the vitality and sense of place in the Upper Falls neighborhood, consistent with the Comprehensive Plan. He accepted the proposed conditions, including all those of Board Order #501-94, that the petitioner will make every effort to renew the lease for off-site parking for employees when it expires, and that directional signage for parking be maintained. The petition was approved by a 5-0 vote.

#102-06(8) KESSELER DEVELOPMENT, LLC petition for a change of zone from SINGLE RESIDENCE 3 to MULTI RESIDENCE 3 for a parcel of land located on LaGrange Street, Ward 8, identified as Section 82, Block 37, Lot 95, and shown as Lot H-1 on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102.

ACTION: APPROVED 5-0

#102-06(9) KESSELER DEVELOPMENT LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a condominium complex consisting of 3 structures, 1 multi-family residence of 52 dwelling units and 2 single-family attached dwelling structures with a total of 10 units, for a total of 62 dwelling units with accessory parking on land located on LaGRANGE STREET, Ward 8, known as Sec 82, Bl 37, Lot 95, shown as Lot H-1 on a Subdivision Plan of Land in Newton MA, "Toomey-Munson & Associates, Inc.," dated April 28, 2004, recorded with the Middlesex South County Registry of Deeds in Plan Book 2005, page 102, containing approx 640,847 sf of land in a proposed Multi Residence 3 district. Ref: §30-24, 30-23, 30-20(1), (e)(5), 30-19(k)(2),(3),(h)(2)a c) and (m), 30-9(d)(1), (b)(5), 30-5(b)(4), 30-15 Table 1, footnote 9, 30-15(h) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0

NOTE: This Special Permit request and change of zone which was contingent upon the exercise of the Special Permit were approved by the Board on October 16, 2006, after six months of deliberations in this committee (see Committee Report of 9/19/06). One year later, the Board approved the petitioners request to extend the period for exercising the permit one additional year due to market conditions. However, since the permit was not exercised after two years had passed since its approval, and State statutes prevent further extensions, that permit and the zone change have expired. Thereupon, the petitioners refiled exactly the same petition as the one that had been approved by the Board (and modified slightly by a consistency determination in December 2006, lowering a portion of Building A to reduce its impact on abutters). With the exception of one further minor modification to Building B, in which one townhouse unit has been enlarged significantly and designated as a market-rate rather than an affordable unit to be consistent with the project's Inclusionary Housing Plan, the proposed project is identical to that approved in 2006 [see Board Order #102-06(3)].

Therefore, the proposed project includes a 52-unit multi-family building with parking below it (Building A) and 10 single family attached dwelling units in two townhouse-style structures (Buildings B & C). They are sited on a 14.7 acre wooded parcel on LaGrange St. adjacent to single family homes in Brookline on its eastern side. City-owned open space is to the north and west of the site, while to the south is an area of single, two and multi-family dwellings in Newton, and a larger multi-residence district in Boston. There is a proposed single access driveway from LaGrange Street.

The public hearing for this petition was held on October 14, 2008. Unlike the 2006 hearings, which extended over two nights, there were fewer comments from the public. One Brookline abutter repeated her original objections to the project and its impact upon her home, but others supported the project with the modifications and protections imposed by the Board in 2006, and complimented the Board and the petitioner for their willingness to work with the neighborhood. There was concern expressed about the traffic on LaGrange St., with fears that it had increased since the original approval. It was agreed that the most significant impact of the project is likely to be from the construction process, involving substantial blasting and excavation. There is an extensive construction management plan (CMP) incorporated in the approval. In accordance with an ordinance amendment since the original approval, a LEED report was submitted by the petitioner to document sustainable features of the project.

At the working session, Ald. Brandel noted that the traffic on LaGrange St. and at its intersection with Vine and Corey Sts. is bad and will remain bad with this project, but asked if there was anything the petitioner could really do about it. Ms. Havens replied that the petitioner had submitted a letter from his traffic consultant who had observed current conditions and stated that traffic signals were not warranted either at the project driveway or the Vine/Corey intersection. The City Traffic Engineer had reviewed this letter and concurred, noting that conditions have not changed since 2006.

It was noted that the requirement for a neighborhood liaison committee was still included in the approval, and the Ald. Brandel suggested that the CMP include a provision that abutters and the liaison committee be contacted by e-mail with any day-to-day changes in the blasting or rock hammering schedule. He pointed out that this procedure has worked well for MBTA construction. A 10/30/08 letter had been submitted by the Brookline Planning Director asking that the plans be amended to preserve more of the natural topography of the site, and that more broadleaf evergreen shrubs be added to the perimeter screen for the Brookline homes to act as an understory as the proposed pines mature. Ms. Havens noted that a 2007 landscape plan had been approved by Newton's Planning Dept., and the committee did not feel that there was a need to amend it further.

Ald. Hess-Mahan moved approval of the petition, adopting all the findings in the 2006 Board Order, and adding a finding that the project will contribute significantly to the efficient use and conservation of natural resources through use of a compact site design, as evidenced by the LEED checklist, and also that the project furthers the goals of the Comprehensive Plan, preserving 75% of the site as significant open space and adding 11

affordable housing units. He also adopted all the conditions of the original Board Order, adding notification of abutters of changes in the construction schedule by e-mail, and the requirement that final as-built plans be submitted to the City in digital format.

The motion was approved 5-0. Ald. Hess-Mahan then moved the zone change petition, rezoning the site from SR-3 to MR-3, which was also approved 5-0.

#320-08      METROPCS MASSACHUSETTS LLC/ZUSSMAN 219 REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install for wireless communications 6 panel antennae inside a new fiberglass roof-mounted faux chimney; 1 GPS antenna mounted on the penthouse roof; 1 condenser on the roof; and associated equipment to be located beneath the parking area at the rear at 219 COMMONWEALTH AVENUE, Ward 7, on land known as Sec 63, Blk 8, Lot 19, in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-18A(e)(6) and (10) of the City of Newton Rev Zoning Ord, 2007, and special permit nos. 270-02(2) and 124-06.

ACTION:      HELD 5-0

NOTE:        This petition was held at the applicant's request. Planning staff had asked to consider relocating the proposed antennas on the roof of this building, and the petitioner needed to reach agreement with other PWS providers who have equipment on the same roof, as well as with the landlord, in order to present a new plan.

#321-08      METROPCS MASSACHUSETTS LLC/NEWTON HIGHLANDS CONGREGATIONAL CHURCH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install for wireless communication 2 panel antennae flanking the louvers on the northeast side of the bell tower; 2 panel antennae flanking the louvers on the southeast side of the bell tower; 2 panel antennae flanking the southwest side of the bell tower; 1 GPS antenna mounted on the roof inside the bell tower parapet; and ancillary and radio equipment to be located within the bell tower at 54 LINCOLN STREET, Ward 6, on land known as Sec 52, Blk 41, Lot 3, in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-18A(e)(6) and (3) of the City of Newton Rev Zoning Ord, 2007 and special permit nos. 459-97(2) and 398-99(2).

ACTION:      HELD 4-0-1 (Hess-Mahan abstaining)

NOTE:        Metro PCS is a newly-licensed personal wireless service provider in eastern Massachusetts who is building out a network on which they intend to launch service early in 2009. The committee asked several questions about why they weren't seeking to locate antennas on City buildings. They also noted that, at the public hearing on October 14, 2008, concerns were voiced by neighborhood residents about the impact of additional antennas at this site on the historic church building, and about the combined noise of cooling equipment for three providers at this site. The petitioner's attorney explained that City policy does not encourage these facilities on City sites, unless they are totally concealed as they are in the City Hall cupola. He also stated that the ordinance encourages co-location on private sites.

Ald. Brandel moved to hold the petition so that the committee could get more explanation from the Historical Commission regarding their approval of this proposal, from the Planning Department regarding City policy encouraging and discouraging certain locations for PWS facilities, and from the petitioner regarding the potential noise from the proposed equipment. The motion was approved 4-0-1, Ald. Hess-Mahan abstaining.

The meeting was adjourned at 10:00 PM.

Respectfully submitted,

George E. Mansfield, Chair