

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, DECEMBER 16, 2008

Committee members present: Ald. Mansfield (Chairman), Ald. Albright, Merrill, Hess-Mahan, Fischman, Brandel, and Vance. Absent: Ald. Sangiolo

City staff: Candace Havens (Chief Planner), Maurya Sullivan (Principal Planner), and Ouida Young (Associate City Solicitor)

Request for a Consistency Ruling: Re: Special Permit #106-07, Beth Menachem Chabad, 349 Dedham Street

The petitioner has proposed several changes to the plans for which parking, FAR and setback waivers were approved in 2007. The parking waiver of 61 spaces is not affected by these changes, and construction in the setback is reduced. However, the changes to the façade, massing and floor plans of the proposed building were considered extensive enough when first presented on 12/09/08 that the committee asked the architect to attend this meeting to explain them. Ms. Havens described the site plan, which includes 9 parking spaces and will not change. The footprint of the building also remains unchanged, however, the floor plans have been altered and many architectural details have been modified. David Myers, the project manager and architect, described these changes. They include changes to the roof lines, substituting shed dormers for eyebrow windows, other changes in fenestration, changes in the design of the front entrance, the addition of a faux chimney to vent the elevator equipment, and elimination of one of the proposed stairways in the setback. Most of these changes, he explained, were driven by changes in the floor plans.

At the basement level, the children's classrooms were moved to the front of the building and enlarged slightly, incorporating a bathroom to take advantage of natural light. The mikvah baths were also redesigned, but will still accommodate the same number of people. On the first floor, the architect found another means of egress and so eliminated one of the staircases on the east side of the building, and also enclosed the staircase leading to the basement. The sanctuary has been redesigned, but its capacity is unchanged. A conference room is enlarged. The front entrance is redesigned for greater efficiency, and the elevator placed between two sets of stairs.

Ald Vance questioned whether any of these changes were relevant to the relief granted by the Board through the waivers. Ms. Young replied that the special permit incorporated a site plan, which included both floor plans and elevations, and the revised plans are clearly different from (but not necessarily inconsistent with) those approved by the Board,

although they do not appear to have any significant impacts on traffic or parking demand. Ald. Fischman noted that finding no. 6 in the Board Order was that the proposed building, replacing an historic farmhouse in a residential district, was to be residential in scale, and suggested that the committee determine whether the proposed changes would be consistent with that finding. Ms. Young agreed with that approach.

Ald Hess-Mahan noted that there were aspects of each set of plans that he found attractive, but that overall the new plan is much more modern in style. He was somewhat troubled that the facades of the building appeared to be less broken up in the new plan, despite the proposed mixing of shingle and clapboard siding, and therefore it appeared less residential. Ald. Mansfield agreed, and said that the reduction in windows and/or a more regular pattern of fenestration adds to the institutional character of the new design. Ald. Vance again asked if the committee could reject the special permit if the building didn't appear "residential" enough. The Chair replied that the role of the committee at this point was not to accept or reject the revised plans, but rather to advise the Commissioner of Inspectional Services whether we believe they are consistent with the ones approved. He, then, would make the decision on their consistency. If he found them inconsistent, the petitioner would have to submit these plans to the Board for an amendment to the special permit, or revert to the original plans.

Several committee members then identified elements in the façade plans that they thought made the building appear more institutional. Many identified the "blank" walls on the south, east and west elevations, although Ald. Fischman pointed out that the Rachel Rd. (west) elevation of the present farmhouse also presents a blank wall. Mr. Myers noted that he had heard these concerns, and would try to revise the plans to reduce them. Ald. Hess-Mahan felt that the stand-alone nature of the proposed front entrance also reduced the building's residential character, and Ald. Albright added that balcony over the entrance seemed to further detract from that character. Ald. Brandel said that he felt that the new design is a rather dramatic change from what was approved, and asked if the neighbors had seen the new plans. Ald. Fischman replied that the liaison committee has not met recently, and the petitioner did not share the plans with neighbors, but that he had shown the plans to one neighbor, who had agreed that they were less residential in character.

Ms. Havens summarized the report she would submit to the ISD Commissioner: that the petitioner's architect would try to integrate some of the committee's recommendations into the proposed revised plans, including adding windows to blank wall space, softening the main entry design, retaining the eyebrow windows and the original scale and design of the windows on the front façade.

#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). (1/12/09)

ACTION: Approved 4-1-2 (Mansfield, nay, Merrill, Brandel abstaining)

NOTE: This is a petition for a special permit to install six façade-mounted panel antennas mounted on three façades of the bell tower of the Newton Highlands Congregational Church, to provide personal wireless communication services. In addition to the wireless antennas, the petitioner proposes to locate a GPS antenna on the roof of the bell tower, and support equipment within the tower. Previous Board Orders in 1998 and 2000 permitted T-Mobile and Sprint to locate wireless antennas and associated equipment on this bell tower. MetroPCS is a newly licensed provider of telecommunications services, and is building out multiple facilities in the region to provide competing wireless phone service early in 2009.

The site is in the Newton Highlands village center, on a triangular parcel with frontage on both Lincoln and Hartford Streets. Across Lincoln St. are several retail businesses, restaurants, and a post office. Across Hartford St., there are additional stores, a municipal parking lot, and a City-owned community youth center (Brigham House, a former branch library). Adjacent to the church on both streets are condominiums in the historic Hyde School building and in new townhouses. Single and two-family residential uses are also close by within view of the church tower. The site is in an SR-1 zoning district. The Congregational Church is a stone structure that is a visual landmark within the center of the village, comprised predominantly of a mix of buildings dating from the late 19th and early 20th centuries.

As required by the National Historic Preservation Act, the proposed project was subject to a "Section 106 review" to determine whether the proposal would have any adverse effects on historic properties and what steps should be taken to avoid or mitigate those effects. In Massachusetts, this review is undertaken by the Mass. Historical Commission (MHC). The MHC, in turn, relies heavily on the local Newton Historical Commission (NHC) in its review. The NHC found that the installation of these antennas would have "no adverse effect," and thus the MHC also found that there would be "no adverse effect."

At the public hearing which was held on 10/14/08, some residents of abutting properties noted the significance of this building as a neighborhood landmark and also complained of noise from existing equipment of other wireless providers at the site, projecting that the current petition would likely increase that noise. It should be noted that the current proposal locates the supporting equipment within the bell tower behind open louvers, whereas the previous providers installed their equipment in the church basement.

The petitioners agreed to submit an acoustical report to demonstrate compliance with the City's noise ordinance. This report was reviewed by the committee and the petitioner's acoustical engineer at a brief 12/9/08 working session. The report showed that the lowest ambient noise level at the site, in the overnight hours, was 43 dBA. This is likely traffic noise from Rte. 9 and/or Rte. 128, or from other HVAC equipment in the area (the measurements were taken in mid-summer). In this case, the noise ordinance would limit tonal noise from new equipment to 48 dBA (ambient level +5). The projected sound from the MetroPCS equipment is 33 dBA, well within the noise ordinance limit. The engineer also pointed out that the tonal noise the residents heard was likely coming from a transformer on the Hyde condominium property, not from the church.

Ms. Sullivan and Ms. Havens reviewed this study with the committee at this meeting, also pointing out that Federal law prohibits municipalities from discriminating among providers, that co-location is encouraged by the zoning ordinance, and that the NHC and MHC have found no adverse impacts. Chair Mansfield noted that he believed that the intent of the ordinance provision was to cluster wireless facilities on towers built specifically for this purpose, thus avoiding multiple towers. It was not, in his opinion, intended to proliferate them on residential and institutional sites, where one set of antennas might not change the character of the site significantly, but several could certainly have that effect. He explained that, although he did not serve on this committee in 1998 and 2000, he voted against both petitions at the full Board level. He opposed the 1998 petition because it mounted the antennas on a 12-ft high pole above the steeple, in a very visible location, and the 2000 permit (although it attempted blend them with the stone façade of the tower, as does the present petition) for the same "proliferation" reasons that concern him now. He added that he had no concerns with multiple "stealth" installations, such as within the City Hall cupola, since they are not visible and did not change the character of the building. But he said that he felt the co-location preference was also creating ugly commercial sites, and referenced one such building in Thompsonville on Rte 9.

Ald. Fischman asked if the prior two installations at this site had MHC and NHC approval, and Ms. Young said they did. Ald. Hess-Mahan said that churches have found this to be a reliable and necessary source of income. Ald. Brandel agreed that, while the City cannot discriminate against this petitioner, this building is the most prominent architectural feature of Newton Highlands and there are alternative sites in the area, including those on City property, that should have been looked at by the petitioner. He said he could understand the MHC/NHC positions on this proposal and questioned their criteria. Ald. Mansfield suggested that, at least in this case, the NHC may have determined that the building was already historically "compromised" by the previous installations, so was not bothered by additional degradation.

Ald. Albright expressed her intent to submit a docket item to amend the co-location preferences of the zoning ordinance to address the concerns expressed by the Chair. But noting that such an amendment cannot affect this petition, she moved approval, finding

that wireless antennas are already in place at this site, that the Historical Commission found no adverse effects from this proposal, and that their installation will improve wireless communications services in this section of the city and add a new provider. She also adopted the conditions of the 2000 Sprint Board Order, except for the specific condition of the alignment of the antennas, since these antennas are proposed to be lower on the tower and not aligned with the gargoyles or clocks.

The motion was approved by a vote of 4-1-2, Ald. Mansfield voting nay, Ald. Merrill and Brandel abstaining.

#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 (1/12/09)

ACTION: APPROVED 4-0-3 (Mansfield, Merrill and Brandel abstaining)

NOTE: This is a petition for a special permit to install six panel antennas inside a new fiberglass, roof-mounted faux chimney, one GPS antenna on the elevator penthouse roof, and a condenser on the roof to provide personal wireless communications services. Associated equipment would be located beneath the parking area at the rear of the building. Previous Board Orders in 2003 and 2006 permitted T-Mobile and Bell Atlantic Mobile (now Verizon Wireless) to locate wireless antennas and associated equipment on this site. MetroPCS is a newly licensed provider of telecommunications services, and is building out multiple facilities in the region to provide competing wireless phone service early in 2009.

The site is on the north side of Commonwealth Avenue along the carriage lane within a small MR-1 zoning district. It is within the Commonwealth Avenue Historic District, which is listed in the National and State Registers of Historic Places, and the site itself is also individually listed. The site houses a 4 ½-story apartment building built circa 1899 in a Tudor style. Two 2-family dwellings and Mount Alvernia Academy are located to the north of the subject property. A City reservoir is located to the west, and a 4-story condominium is adjacent on the east. That building also has wireless antennas located on its roof. The roof of the subject property contains 3 previously-approved T-Mobile panel antennas located within a false chimney, and 12 Verizon panel antennas screened by false penthouse facades. There are also 3 existing whip antennas attached to the penthouses, an existing dish antenna, and a GPS antenna installed on the roof.

As required by the National Historic Preservation Act, the proposed project was subject to a "Section 106 review" to determine whether the proposal would have any adverse effects on historic properties and what steps should be taken to avoid or mitigate those effects. In Massachusetts, this review is undertaken by the Mass. Historical Commission (MHC). The MHC, in turn, relies heavily on the local Newton Historical Commission (NHC) in its review. The NHC requested that the proposed faux chimney be designed to originate or at least appear to originate from the roof, rather than from the penthouse, that it be color-coordinated to match existing chimneys and/or be moved to the rear of the building so as to be less visible from the National Register District. The MHC asked the petitioner to submit a revised design, addressing the NHC's concerns.

At the public hearing, which was held on 10/14/08, the petitioner was asked to prepare revised designs addressing the above requests. No members of the public spoke on this petition. Some members of the committee asked whether alternative sites had been explored, specifically the alternative of locating on the City's existing emergency communications tower, the Waban Hill tower, located on the reservoir property. At the first working session on this petition, these alternative designs were still being developed and the matter was continued until these designs were complete. However, Ms. Havens explained that the existing special permits for the two wireless installations on this property, as well as the one on the adjacent property at 209 Commonwealth Ave., contain conditions that require relocation onto the Waban Hill tower should the City make it available. Although the City leases space in City Hall to numerous wireless providers, there has not been interest in leasing space at this site or other sites. In fact, she said, members of the Board of Aldermen opposed previous attempts to locate antennas on other municipal properties. In 1990, Nynex withdrew its application for a facility on the Waban Hill tower because of this opposition and that of the neighborhood. In 2005, a similar situation led to the withdrawal of an application to locate equipment at Fire Station #10 on Dedham St.

At this working session the discussion was focused on the alternative designs for this installation and potential alternative locations for wireless facilities on City properties. The petitioner had developed a design that would move the faux chimney closer to the rear of the building and make it appear to be supported by the roof, rather than the penthouse. The owner was reported to be in favor of this modification. However, to satisfy the request of the NHC, part of the rear wall screening Verizon's installation would have to be painted to mimic brick. Ms. Havens reported that Verizon will not agree to this portion of the plan, even though MetroPCS would bear the cost of the work. The committee speculated that Verizon does not want to do anything to enable a new competitor to provide facilities at this location, and suggested accepting the revised plans with the proposed painting subject to Verizon's agreement. If that agreement isn't forthcoming, the installation—if approved by the Board—would go forward, but this detail would not be included.

Ald. Brandel reported that he and Ald. Hess-Mahan had docketed an item to evaluate locations for wireless facilities on City property, and asked when this facility would come

on line if approved. The petitioner's attorney estimated that it could be operational by March 2009. Ms. Sullivan said that DPW Commissioner Daley is now allowing commercial antennas on City water towers, with provisions being made for secure third party access to these sites. Ms. Young noted again that previous carriers at this location had agreed to a condition requiring relocation to City property, and suggested that a similar condition would be appropriate here. She further explained the steps that would have to be taken to utilize City sites: A site or sites would be declared surplus by the controlling department(s), the Real Property Reuse and/or Public Facilities committees would review the sites and make recommendations to the Board for its approval, the City would issue an RFP, and finally successful bidder(s) would petition for a special permit through the Land Use committee.

Ald. Vance then moved approval of this petition with the location of the antennas in the faux chimney at the rear corner of the building, finding that the addition of antennas enclosed within this chimney and a rooftop condenser will not be substantially more detrimental to the neighborhood than the existing structure and its present uses, that the proposed antennas as designed are compatible with this architecturally and historically significant building and the existing installations, that the Historical Commission found no adverse effects from this proposal, and that their installation will improve wireless communications services in this section of the city and add a new provider. He also included the condition that the faux chimney be painted, textured, and maintained to match the existing features of the roof and penthouse—subject to the approval of other owners, as well as all the relevant conditions of Board Orders #270-02(2) and #24-06, all of which shall also remain in effect.

This motion was approved by a vote of 4-0-3, Ald. Mansfield, Merrill and Brandel abstaining.

The meeting was adjourned at 9:58 PM.

Respectfully submitted,

George E. Mansfield, Chair