

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, FEBRUARY 6, 2007

Present: Ald. Mansfield (Chairman), Ald. Hess-Mahan, Albright, Fischman, Merrill, Harney, Vance, and Samuelson.

Also present: Ald. Salvucci and Linsky

City staff: Nancy Radzevich, Chief Planner; Linda Finucane, Chief Committee Clerk

#349-06 JOSEPH LONG petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision including a 3-foot grade change to create a new buildable lot on which a new single-family home, meeting all dimensional requirements, will be constructed at 11 GRAY BIRCH TERRACE, Ward 2, NEWTONVILLE, on land known as Sec 24, Blk 7, Lot 9, containing approximately 36,474 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-5(b)(4), and 30-15(r) of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 6-2 (Harney and Merrill opposed)

NOTE: This is a request for a special permit and site plan approval for a rear lot subdivision to create a single-family building lot in an SR-2 zoning district off Highland Ave. near its intersection with Lowell Ave. in Newtonville. This is the first such petition since the rear lot subdivision ordinance was revised in 2004. The site is a steeply sloped wooded portion of a lot that now contains a legal non-conforming two-family house, built in the mid to late 1800's, situated on the front of the lot—the only relatively level portion, which is also non-conforming with regard to setback. This petition is also for a special permit for grade changes exceeding 3 feet—up to a maximum of 11 feet—to accommodate the site of the new structure and its driveway access, and for an extension of a non-conforming structure for the “technical” increase in the non-conformity of the front setback of the existing house that would occur with the creation of its “new” (post-1953) lot as a result of the subdivision. The site borders the back yards of several single and two-family homes on Highland Ave., Elmwood Park, Austin St., and Gray Birch Terrace.

This petition was originally heard on November 14, 2006, but was withdrawn when the Law Department discovered that the additional relief for the increased non-conformity of the setback was necessary. It was corrected and refiled for another hearing on December 12, 2006. Testimony given at the first hearing was incorporated into the second hearing to save time, and in the interim the petitioner had made some changes to the design of the new house to reduce its apparent and actual height (the latter by 4 inches), as well as changes to the landscape and tree removal plans to increase the effect of landscape screening. Between the two hearings, on November 28, 2006, the

committee and several neighbors had a scheduled site visit at which the petitioner had marked the footprint of the house and the driveway on the ground, as well as the height of the former in the trees. At both sessions of the hearing abutters and other neighbors testified about their concerns about the impacts of this subdivision, including historic and aesthetic values, congestion on Gray Birch Terrace, fire safety, sewage system capacity, drainage, and loss of perceived open space. A petition containing more than 20 signatures of neighboring residents opposing the granting of the permit was submitted.

There was an extensive review of the petition and potential conditions of approval at the December 19, 2006 working session. The petitioner agreed to remove the illegal accessory apartment in the existing house when the lease of the current tenant expires in May, and proposed to merge the two 2nd floor apartments into one 2,100 s.f. unit, while retaining the existing 2,100 s.f. unit on the first floor, where he currently resides. However, he also offered the committee the option of converting the structure into a single-family home. Ald. Albright said she would prefer to have a single family with an accessory apartment.

The landscape plan was initially revised at the request of Marc Welch, the Director of Urban Forestry, to separate the proposed replacement trees to allow them to grow better. To meet the requirements of the Tree Preservation Ordinance, the petitioner would be required to replace 259 caliper inches. But the Chair noted that the ordinance did not prevent the petitioner from proposing thicker screening above this requirement to reduce the impact of a large home on the backyards of abutters. The petitioner responded with sketches of proposed plantings along the rear line of the rear lot, adjacent to the Elmwood Park homes, that showed larger pines that the petitioner's landscape architect said would grow to screen the view of the second story of the new home in 6 years. He also explained that they would add infill Canadian hemlocks, which can grow up to 40 ft. high. Some committee members expressed concern about the hemlocks, which have been attacked by pests in this area over the last few years, and that there has been a particular concern for the trees in Hemlock Gorge in Upper Falls. But the Landscape Architect responded that these insects are being killed by the cold winters, and that these hemlocks are the only evergreens that will grow in shady conditions such as exists on this site. Apart from these sketches, no final complete revised landscape plan had yet been developed, since the meeting with Mr. Welch had occurred only earlier that day, and Ald. Mansfield expressed his discomfort with proceeding without such a plan.

Ald. Hess-Mahan observed that because of the topography of the site, there were very few places available for additional planting. Ald. Merrill said that, in his opinion, this landscaping was trying to create an unnatural forest to screen what is essentially an objectionable use of the property that would be a detriment to the area. He said that approving this petition would not be in the best interest of the neighborhood. But Ald. Samuelson saw the proposal in a different light. She said it is a valiant effort to make the reasonable development of a huge lot more palatable to the neighborhood. She added that the proposal would preserve the existing house, which is in the best interest of the neighborhood and the community.

The Chair had asked for an explanation of the property owner's by-right alternatives if this petition was not approved. Ms. Radzevich explained that the current lot is 36,474 s.f., but the 2-family use cannot be expanded without a special permit extending the non-conforming use. The by-right use is single family, and if the present structure were demolished (subject to the demolition delay

ordinance), a 10,942 s.f. home could be built. However, the slope of the site would make this task difficult without Board approval of a grade change in excess of 3 ft., although the Tree Preservation ordinance would not apply to the occupied lot. The Planning Dept. also noted that even if the rear lot subdivision was approved, the existing house could be demolished and replaced with a single family structure of up to 4,800 s.f., subject to demolition delay, and suggested that the owner place a preservation restriction on the existing home as a public benefit to the historic character of the area and the site, which abuts the Newtonville National Register Historic District. The petitioner agreed to do so.

The committee also heard a report from Mr. Daghlian responding to concerns expressed by the neighbors about sewage and drainage problems. He said that with the revised plans, all engineering concerns had been addressed. He noted that the questions about the adequacy of the Gray Birch Terrace sewer had stemmed from calls to the Utilities Division to remove roots in the sewer service pipes, but that the main public sewer was clear and flowing freely. He recommended that neighboring homeowners have their service pipes replaced with PVC pipes. The design for the rear lot depends upon gravity flow through the existing Gray Birch Terr. sewer, which requires the house to be sited at a higher elevation than if a pump system and ejector were installed (which Mr. Daghlian did not recommend), or if abutters granted a new sewer easement at a lower elevation to Austin St. or Elmwood Park. Ald. Albright suggested that such an alternative would be desirable if it could lower the elevation of the new house. Mr. Daghlian also reported that the drainage design was adequate to prevent any new storm water runoff from leaving the site.

Ald. Albright reported on an analysis of the comparative heights of homes immediately abutting the site that she had asked the Planning Dept. to perform. That research found that the average height (as defined by the zoning ordinance) is 26.5 ft., with a range from 21 ft. to 30.3 ft. The proposed home is 29.27 ft. high. She then noted that the rear lot ordinance as amended in 2004 established 7 criteria to consider when reviewing a petition. Three of these, she said, are not well satisfied by this petition: whether the proposed building exceeds the average height of those on abutting lots; whether the existing topography is respected, and whether the access to the site is adequate. Ald. Vance, however, saw this petition adding just one house on a very large lot as the best guarantee that the other portion of the property won't change, and Ald. Albright replied that this was the one argument that could possibly convince her to support the petition.

Therefore, she moved approval of this petition and reviewed a list of findings that would support that action. The committee also reviewed draft conditions that had been prepared by the Planning Dept. Ald. Samuelson added that a property owner has the right to maximize the use of his land, and abutters don't have the same right. But Ald. Merrill felt that the rear lot ordinance protects that right to the detriment of the abutters and the public. He expressed concerns about the sewer, and stated that this is not a proper location for this proposal. Ald. Vance and Hess-Mahan stated that they were inclined to support the motion, balancing the concerns of the neighbors against the measures that have been taken to ameliorate the impacts of the proposal. But Ald. Fischman, Mansfield, and Albright said that they were likely to abstain on the motion.

At that point, the attorney for the petitioner said that his client was willing to investigate the possibility of further lowering the height of the house. The architect explained that by eliminating usable space on the third floor they could reduce the height of the structure by about 2 ½ feet. The

attorney suggested that if the committee wished to hold the item until the next working session, they would work on this design and also have the opportunity to complete the landscape plan. Thereupon, Ald Albright withdrew her motion and substituted a motion to hold, which was approved 7-0.

Reconvening on February 6, the committee was presented with revised plans that reduced the height of the house from 29.3 ft. to 26.3 ft, just below the 26.6 ft. average height of abutting homes. By removing the dormers and employing a flat roof instead of a peak, reflecting the style of the petitioner's home on the front lot, the maximum height is reduced by 6 ft. Ald. Albright noted that this plan better fits the criteria for a rear lot subdivision, and the new design reduces the massive appearance of this house. The petitioner also submitted a Tree Preservation Plan approved by the City Forester, and a revised landscape plan. Trees and shrubs of mixed heights are proposed, providing a more effective screen both initially, and also as the plantings mature.

Ms. Radzevich reviewed these plans and also explained that the Associate City Engineer had expressed concern about the runoff from the downspouts on the existing house, since the open land now absorbing that water would be significantly reduced with this project. As a result, the petitioner has agreed to tie these downspouts into the drainage system for the new driveway and parking stalls. She also explained that the petitioner has also agreed to erect a fence to screen the neighbor to the north at 29 Gray Birch Terrace from the new driveway, but that its exact location and design will be reviewed and approved by the Planning Director.

Ald. Albright then moved approval once again, observing that while it is never easy to give up what has served as private open space, and that the opinions of the neighbors should be given serious consideration in a rear lot subdivision, nevertheless the revised plan meets all the criteria of the revised ordinance. She further found that this plan will legalize and preserve 3 unit of housing on the site, that there is significant landscape screening of the new home and parking, that the re-oriented parking for the existing house is an improvement so that the technical reduction in setback is not substantially more detrimental than the existing non-conforming structure, that the sprinkler system in the new home improves safety, that the grade changes in excess of 3 feet are acceptable because drainage is controlled on site, that a 10,942 sq. ft. single family house could be built by right on the site if the existing home were demolished, and since the tree ordinance would not apply to this site without a subdivision, the proposed landscaping is a significant improvement over potential clear-cutting.

Ald. Merrill stated that zoning should not limit the rights of a homeowner, but the exercise of these rights should not have a detrimental effect on the neighborhood. He said there is not sufficient vehicular access to this site for public safety, and this development will have an adverse effect on the neighborhood and on the abutters in particular. Ald. Samuelson replied that the special permit process is the only way to protect abutters, and that because of the by-right options, they will lose if this petition is rejected. Ald. Harney said that he could argue that there are few special permits that can meet the objectives of neighborhood protection that are in the ordinance, and that on the site visit, the concerns of the neighbors rang true with him. He believes there will be site access problems that will reduce safety, and that despite the plan revisions, the house is still massive. Ald. Hess-Mahan noted that the Fire Chief has signed off on the safety of this plan.

Ald. Fischman noted that all the issues raised in December had been resolved in the revisions. He thinks the biggest impact of this development will be the driveway, but now believes the grade is acceptable. In addition, he said, the house is now more modest. Ald. Vance associated himself with the remarks of Ald. Samuelson. He noted that even the neighbors of the Kessler LLC project eventually realized that an approved special permit is their best protection. Ald. Mansfield stated that he was pleased to see the scale of the new house reduced, but that his earlier intention to abstain was primarily based on a motion made without a current landscape plan before the committee, since the landscaping could make or break this project.

Adopting the conditions proposed by the Planning Department in the draft Board Order, the motion was approved by a vote of 6-2, Ald. Merrill and Harney voting no.

#466-06

RICHARD J. GRANT TR. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL AND EXTENSION OF NONCONFORMING STRUCTURE for an addition constructed to the rear of an existing three-family dwelling with an attached two-car garage at 62-64 ELM STREET, Ward 3, WEST NEWTON, on land known as Sec. 33, Blk 24, Lot 4, containing approximately 16,600 sf of land in a district zoned Multi Residence 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)a) and b), 30-21(b), 30-19(d)(1), (g)(3) and (m) of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 8-0.

NOTE: This petition is a request to extend an existing legal non-conforming three-family dwelling in an MR-1 District, as well as for associated waivers to the on-site parking design requirements. The proposal calls for adding a 2,600 sq. ft. two-story addition to the rear of the structure, including a 2-car garage, and reconfiguring the interior spaces of all the units. The petitioner was erroneously granted a building permit for this work in March 2006, and the exterior construction of the building envelope of the addition is now complete. Some of this work was completed “at risk” with the ISD Commissioner’s concurrence after a stop-work order was issued.

The parking design waivers that the petitioner is requesting includes retaining an existing 2-stall driveway on the north side of the building (while providing a larger new driveway on the south side) that is substandard because it is 10 ft. wide, rather than the required 12 feet, the parking spaces are tandem, and the stalls are in both the front and side yard setbacks. There are also waivers required for the new parking area, which replaces four existing stall perpendicular to the street and directly adjacent to the sidewalk. This waiver is required since one of the new stalls, while now accessed from the driveway and set back from the street, is proposed to still be partially within the front setback. Including the 2-car garage, the 8 spaces proposed are two in excess of what is required by ordinance.

At the public hearing on January 9, the petitioner’s attorney explained that his client had owned the property as rental units since 1982, and his plans would be to live in the new third unit. He added that landscaping is proposed to screen the relocated parking stalls, and that additional parking is desired because Elm St. is too narrow to support regular on-street parking. He said that the design features in the original 1900 building are being replicated in the addition, and that the existing asbestos shingles will be replaced with composite shingles. He presented letters of support from the

five abutting neighbors, and Ald. Hess-Mahan reported that he had not received any objections to this project that is well underway from any neighborhood residents. Ald. Fischman asked if there was any way to break up the appearance of the 100-ft. long façade on the north side. The Planning Department expressed concern with the size of this addition and the unit sizes as being out of character with the neighborhood, noting that it will be at the maximum allowable FAR and nearly the minimum allowable open space requirements. They also believed that there is excessive paving proposed, which could accommodate 2 more vehicles in addition to the 8 requested. They suggested that the tandem parking area on the north side be eliminated, noting that sight lines are poor for vehicles backing out of this driveway. The City Engineer recommended replacing the sidewalk and curbing in front of the property, as well as the sewer connection which dates back to 1895. But the petitioner reported that the sewer line had been video-scoped and was shown to be in excellent condition, so that the Engineer withdrew his request. The Historical Commission allowed the project to move forward without a demolition delay.

At the working session, Ald. Fischman asked what would happen in this case if the special permit were not approved. The petitioner's attorney replied that the structure as built could be converted to a very large 2-family since it meets all dimensional requirements. Ald. Fischman also asked if as a 2-family, the third unit could be finished and used as of right as an accessory apartment, but Ms. Radzevich replied that this would not meet the ordinance requirements because the units are too large. Ald. Samuelson stated that three housing units in a building that otherwise could only accommodate two is a very desirable outcome.

The petitioner showed façade plans that would use a different material on a projecting portion of the north face of the building to break up its mass, and the Planning Department further suggested that both shingle and clapboard siding be used on the main structure, with different color treatments. But Ald. Hess-Mahan said he would prefer the house be treated in a single material and color to better match the neighborhood. The petitioner agreed to upgrade the City sidewalk and install recycled granite curbing, but the City Engineer opposed that latter because it tends to be irregular. However, the petitioner's attorney proposed to obtain uniform curbing. He also offered additional evergreens to screen the proposed new parking area from the street.

Ald. Hess-Mahan moved approval of the petition, finding that the parking stalls in excess of the requirements is a benefit to the neighborhood because of the density and demands for on-street parking, that the upgrade to the sidewalk and curb is a public benefit, that the proposed extension is not substantially more detrimental than the existing non-conforming use because it meets dimensional requirements and could otherwise be built as a conforming 2-family, that the expanded use is compatible with the surrounding neighborhood, and that the parking setback waivers are acceptable because, on the north, the tandem spaces are existing, and on the south, perpendicular parking at the property line are being set back and screened. The conditions proposed by the Planning Department were adopted, except the elimination of tandem parking was omitted, and the sidewalk and curbing upgrade, subject to the review and approval of the City Engineer, was added. The motion carried by an 8-0 vote.

Respectfully submitted,

George E. Mansfield, Chair