

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH 20, 2007

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

City staff: John Daghlian (Associate City Engineer), Nancy Radzevich (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Chief Committee Clerk)

Request for a Consistency Ruling: Re Special Permit #287-04 to extend a nonconforming structure by replacing an existing stair tower on an existing single-family dwelling with a slightly larger footprint.

This special permit was for an extension of a non-conforming structure at 340 Chestnut Street, West Newton, in the form of a 3 ½ to 4-story addition on the back of a single family house. Incorporated into this addition was a stair tower that exceeded the height limitation, extending to 41.7 ft. Upon the Planning Department's review of the as-built plan and conditions, it has been found that the tower is slightly lower than in the approved plans, the new windows appear to be double, rather than separated by casing, and there is a new fence not shown on the plans. The Committee did not find these changes inconsistent with the approved plans, especially since the non-conforming height was less than anticipated, and because the owner explained that the windows would appear almost exactly as in the plans if the casings were painted in a contrasting color. The Chair noted that the Historical Commission had reviewed the original façade plans in waiving a demolition delay, and asked Ms. Radzevich to have the Preservation Planner review the as-built plans, if she had not done so already.

#39-07            ASHWOOD HOMES, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the 0.3 Floor Area Ratio for an existing single-family dwelling in a Single Residence 2 district at 48 CLEMENTS ROAD, NEWTON, Ward 7, on land known as Sec 73, Blk 25, Lot 7, containing approximately 10,354 sf of land. Ref: Sec. 30-24, 30-23, 30-15 Table 1, Footnotes 4 and 5 of the City of Newton Rev Zoning Ord, 2001.

ACTION:        APPROVED 7-0

NOTE:           This is a request to allow a Floor Area Ratio of 0.358, exceeding the maximum FAR in this SR-2 district by almost 20%. The construction of this new home is complete, although it is not yet sold and occupied. However, although it does not comply with the FAR requirement, it is consistent with the building permit that was issued in 2003. ISD had then failed to notice that the attached garage was at-grade, rather than below grade, so should have been included in the FAR calculation. The discrepancy in the FAR is entirely due to this mistake.

At the Public Hearing on March 13, one neighbor whose property on Stuart Road abuts this property at the rear, testified that this parcel had been vacant prior to this construction, and suggested that additional landscaping might help bring down the scale of the house as seen from the properties on that street. The Planning Department subsequently noted that the trees that were on this site were protected under the Tree Preservation Ordinance, and although the Director of Urban Forestry had approved a request to remove one tree, up to 5 additional protected trees were also removed, totaling 66 caliper inches.

Committee members who visited the site noted that this house is generally in scale with the other, older homes in the neighborhood. They also felt that the site was well landscaped. While most of the houses on Clements Road are brick, as are the front and sides of this house, the rear is white clapboard. However, many of the homes on Stuart Road are also white frame, so this house does not look out of character when seen from that perspective. As of the working session, the City Forester had not reviewed the landscape plans to see if sufficient caliper inches had been replaced. Ms. Radzevich also reported that the neighbor, Mr. Landy, requested mature rhododendrons be planted as a screen in the rear. But Ald. Samuelson suggested that if the Planning Department found the existing landscaping adequate, and there had been a deficit in tree replacement, then the petitioner should just be asked to pay the penalty. Ald. Merrill agreed with Ald. Samuelson. Ald. Fischman asked the Planning Department to review spacing, and not just numbers and size of plantings. Ald. Harney said that in his opinion, the FAR requirement was not as important as long as all other zoning requirements had been met. Ald. Hess-Mahan questioned whether the apparent size of the structure was not more a result of the third story appearing to be a full story from the rear than of the placement of the garage. But Ms. Finucane distributed a 3/12/07 letter from the ISD Commissioner that stated that the area at the rear of the building did not constitute a third story in the definitions of the Zoning Ordinance, however, Ald. Hess-Mahan was still unconvinced.

Nevertheless, Ald. Samuelson moved approval of the petition, finding that the structure is consistent with other structures in the neighborhood, that the FAR increase of 600 ft. is relatively small, and that all other dimensional standards are met. The motion was approved by a vote of 7-0.

#164-06(3) WHOLE FOODS MARKET GROUP, INC. ET AL. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE and STRUCTURE to enlarge an existing accessory parking facility that serves a food market at 916 WALNUT STREET by adding and integrating land at 1082 BEACON STREET (between which is a parcel of city-owned land for which Whole Foods has a long-term leased pursuant to Board Order #164-06) for an additional 38 parking spaces (for a total of 123) with waivers from dimensional lighting, landscaping and other design requirements, in Ward 6, on parcels of land known as Sec 62, Blk 4, Lot 16 containing approx 10,997 sf of land in a district zoned Business 2; Sec 62, Blk 4, Lot 15 containing approx 22,871 sf of land in a district zoned Public Use; Sec 62, Blk 4, Lot 12 containing approx 37,870 sf of land in a district zoned Business 1; and a portion of Massachusetts Water

Resources Authority licensed land on the Sudbury Aqueduct which is part of Sec 62, Blk 4, lot 7 containing approx 3, 260 sf in a district zoned Public Use. Ref: 30-24, 30-23, 30-20(g)(3), (4) & (l), 30-21(b), 30-19(f)(1) & (2), 30-19(h)(1),(2), (3) & (4), 30-19(i)(1)a(i) & ii, 30-19(i)(2b), 30-19(j)(1)a & b), 30-19(m), 30-15, Table 3 Footnote 2, 30-15(m) of the City of Newton Rev Zoning Ord, 2001, board order 164-06.

**ACTION:** APPROVED 4-1 (Mansfield opposed; Albright and Merrill not voting)

**NOTE:** This is a petition to allow the alteration and expansion of the present Whole Foods parking lot at the corner of Walnut and Beacon Streets from the current 85 spaces to 122 spaces, all to be used for customer, not employee, parking. (Employees are and will continue to be required to park off-site in leased off-street spaces.) There is no proposed expansion of the retail use or floor area. The required number of parking spaces under the Zoning Ordinance is 89. The relief sought is complex because the parking lot will span portions of 5 different parcels in different zoning districts with 5 separate owners. A portion of the present lot is owned by the owner of the building, AAA Realty Trust, and leased to the petitioner. The central portion is owned by the City, and is over the Cochituate Aqueduct (used to carry sewage); this has been leased to Whole Foods and its predecessor for 20 years. (In June 2006, through the recommendation of the Real Property Reuse Committee, the Board of Aldermen in Board Order #164-06 authorized the Mayor to approve a new 10-year lease, renewable for 2 successive 5-year periods.) The most easterly portion of the rear part of the lot is owned by the MWRA, as part of the right-of-way of the now unused Sudbury Aqueduct. The front portion of the access driveway from Beacon Street is on land owned by the abutting residential property at 1062 Beacon St. The petitioner has used this land as either an implied easement or adverse possession, but as part of this proposal, the easement has been codified and recorded. Finally, the applicant's proposal is to also lease the triangular parcel at the corner of Beacon and Walnut, formerly occupied by a self-service gas station that was demolished last year. It is the use of this parcel that allows the expansion of the lot.

Largely because of this situation of multiple lots, the present parking area as well as that proposed has several non-conformities. Although the dimensions of the presently undersized spaces are proposed to increase somewhat, they would still be non-conforming. The aisles would be widened by reducing the interior landscaping, requiring a waiver. New light fixtures would be installed, designed to spill over onto adjacent public sidewalks, but that too will require a waiver (as well as waivers necessitated by the multiple interior lot lines that the light would cross). The present curb cuts that served the gas station would be closed, and the two driveways that currently access the parking area would continue to provide the only egress. The Walnut St. driveway would be widened, but the curb would be narrowed, since it is currently in excess of 25 ft. wide. The Police detail currently employed at the Walnut Street entrance would be expected to continue as needed. Large delivery trucks would continue to enter from Walnut St. and leave via Beacon St.; while they are at the loading dock, they block 5 spaces and would continue to do so. Both driveways would remain 2-way, but new non-illuminated free-standing directional signs are proposed to better direct entering and exiting traffic.

At the public hearing on March 13, the petitioner's attorney explained that the reason for this request was insufficient parking space for customers, especially during the peak hours of 4–6 PM, although he failed to submit any traffic study data to substantiate this condition. He said that drivers circulate in and out of the lot searching for parking, and so cause traffic congestion on the two arterial streets, but again did not present any data. He reported that the petitioner has taken steps to address some chronic complaints of the surrounding neighborhood. These include hiring an acoustical engineer to evaluate the noise generated by the rooftop HVAC equipment, with the intent to repair, replace and/or baffle it if necessary; notifying vendors to cease idling delivery trucks (as required by City ordinance); and distributing flyers asking customers not to park on Carthay Circle (in a resident permit parking zone).

Two members of the public spoke at the hearing. One, a resident of Pinecrest Road behind the store, supported the need for parking (although she stated she comes on foot), but confirmed that HVAC noise and truck idling were indeed impacting the neighborhood. She also complained about the general lack of maintenance of the site and the adjacent MWRA property, noting that trash from the petitioner's business, including abandoned shopping carts, built up regularly. The Chair also noted that the petitioner has not complied with the City ordinance requiring commercial properties to remove snow and ice from adjacent public sidewalks. Another Beacon St. resident said the Beacon St. entrance is too narrow and suggested that the City should also widen Beacon St. in that area and eliminate the grass berms.

The petitioner's landscape architect explained that they would be removing 6 mature trees, including ornamental and evergreen trees, and planting 18 new trees, all deciduous. These trees would be added on the edge of the lot adjacent to the sidewalk (and some currently on the corner would be retained), and low shrubs would be planted under the trees to help screen the cars. In addition, three new benches adjacent to the public sidewalk were proposed, and a 6-ft. solid white vinyl fence was proposed to screen the lot from the home at 1062 Beacon St. Drainage improvements were also described and approved by the Associate City Engineer.

Ald. Fischman questioned whether the parking stalls could be made even more conforming. He suggested maintaining the specimen flowering trees in the center islands of the existing lot. He suggested that traffic using the Walnut St. entrance might benefit from an island to separate it. He asked for data on accidents within the lot and at its access points. He concluded that the petition, in his opinion, does very little to make the existing lot more complying, and that turning a prime retail corner into a private parking lot does not meet any general urban design criteria.

At the working session, some of these concerns were addressed. The petitioner removed one space from the original layout, by restriping the stalls on the MWRA land to make them 8.46 ft. wide (9 ft. is required to be conforming). Committee members made suggestions that could bring more spaces closer to conformity, and/or preserve existing landscaping, and improve pedestrian circulation within the lot, but the petitioner refused to consider any proposal that would reduce the number of added spaces (now 37) or reduce the proposed width of maneuvering aisles. Mr. Daghlian reported that the City Traffic Engineer was satisfied with the proposed size of the stalls.

He also said that a separated island at the Walnut St. entrance would pose a problem for fire and emergency vehicles.

The Chair had cited a suggestion of the Associate City Engineer in his initial report that a pedestrian path be established as an egress to the parking lot at the apex of the intersection, allowing pedestrians crossing at the corner to enter Whole Foods by the most direct route, and allowing those parked in the lot easy access to walk to other retail outlets (pharmacy, wine shop, cleaners, restaurants, etc.) in the immediate area. He said that this could reduce vehicular trips and perhaps partially address Ald. Fischman's desire to have a more retail "presence" at the corner. However, the petitioner argued that this would not work in many ways, whether because of its impact on the drainage design, because the grade made handicapped accommodations difficult, because their insurer does not want pedestrians inside the parking lot, but mostly because it would reduce the number of parking spaces. Mr. Daghljan subsequently withdrew his suggestion, citing the design grade of 7.7%, and reported that Mr. Schuckel was in agreement.

Ald. Fischman pointed out that although the Walnut St. entrance has been widened to 22 ft., the travel aisle in front of the store is only 19 ft. wide, leading to a possible bottleneck. He also noted that the existing sidewalk in front of the store is quite narrow. Ald. Mansfield asked if one-way traffic had been considered here to address these problems, but was told it has not been. The accident data the Committee had requested was not specific. The Police reported 5 "incidents" in the area in the past year, but said they would need more time to produce any more detailed information.

Regarding the interior landscaping, the petitioner's landscape architect suggested either relocating the existing mature flowering trees, or increasing the size of the proposed red maples to 6" caliper (15-18 ft. high). However, he admitted that the risk of losing the transplants, especially in a parking lot, is high. Since there was no updated planting plan to refer to, the Committee asked that a revised landscape plan be made available before a full board vote is taken on this petition. The question of the screen fence for 1062 Beacon was also left for resolution prior to a full board vote. The owners of that property seemed to have indicated (through the petitioner's attorney) that only the proposed white vinyl fence would be acceptable. Many Committee members, however, felt that such a fence would detract from the natural design of the landscaping proposed, and would even prefer that the present chain-link fence remain. The petitioner's attorney proposed another meeting with the abutter.

A draft construction management plan was offered. Work is expected to proceed in 3 stages, with no significant loss of parking at any stage, and to be complete in 6 weeks. Construction hours would be Mon-Fri. 7AM – 4PM, and Saturday from 8AM – 4PM.

Ald. Samuelson then moved approval of the petition, finding that the various dimensional and lighting waivers are necessitated by the 5 different entities comprising this site, and the result will be a uniform plan for the whole site. Specifically, she found that the parking use would be an improvement over the former gas station use, that public safety is enhanced by closing the curb

cuts, that drainage is improved by this plan, that the free-standing signs improve the visibility of the access points, that the perimeter (but not the interior) landscaping is improved, and that the increase in the number of spaces will provide better on-site circulation and more convenience for customers.

Chairman Mansfield then explained, as Ward 6 Alderman, why he could not support this petition. He said that the plan does not take advantage of the availability of a prime corner lot to improve the site either functionally or aesthetically. Functionally, it does not provide improved linkage to other complimentary retail uses at Four Corners, nor does it encourage or enhance pedestrian circulation, which could reduce vehicular congestion, particularly off the site. Aesthetically, it diminishes the existing high quality landscaping on this site by removing the focal flowering trees; it could replace an unobtrusive fence with an inappropriate one that will stand out; and it provides no improvements to the important area immediately in front of the store or along the Walnut St. building facade. The only public convenience he could find would be that of Whole Foods' customers and the additional parking would likely enhance the petitioner's business. He was troubled by the lack of data to support the request, and that no study had been performed of traffic congestion in the area and whether the increase in available parking would truly reduce the congestion caused by "circling" vehicles, or simply draw more vehicles to the area, increasing that congestion. In the end, he felt the number of new spaces proposed by the petitioner, 42% more than required by zoning, was dictated not by a determined need but rather by the maximum that could be fit on the site.

Ald. Fischman said that he shared a lot of the Chair's concerns. He said the access to the site is not good; the landscaping improvements are minimal, the view of the site from the public way will only be that of parked cars, and that the lots on three out of four corners of this intersection will be simply paved, with no retail presence. He suggested that if the plan were reduced by a maximum of 10 spaces, it could be a much improved site plan. Nevertheless, he said, he would support the motion.

Ald. Harney cited some of the concerns addressed to the Committee in an e-mail by Newton Centre resident Sean Roche that more parking would bring more traffic, and that off-peak shopping and the use of alternate modes of transportation to the site should be encouraged. But, he concluded, this site is not suitable for other uses, and the Four Corners area is "broken up," so he too agreed he would support the petition.

Ald. Hess-Mahan stated that as an exercise in urban planning, this petition is "terrible." But it is his opinion that fixing one of the four corners is not going to fix the intersection or the area; so that he also felt he had to support the motion.

Ald. Samuelson, on the other hand, expressed "moderate enthusiasm" for this petition. She said that grocery stores are the biggest retail traffic generators, and that parking has to be adequate to support them. Four Corners, she said is an "eyesore" and this plan at least improves the site of the former gas station, now a blighted vacant lot. She agreed with Ald. Hess-Mahan that this petition cannot fix Four Corners.

Ald. Merrill and Ald Albright left the meeting before the vote. The motion was subsequently approved by a vote of 4-1 (Mansfield, nay), with 2 not voting (Merrill and Albright) and 1 absent (Vance)

The meeting was adjourned at 11:40 PM.

Respectfully submitted,

George E. Mansfield, Chair