

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JUNE 19, 2007

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

Also present: Ald. Lappin

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

**Request for Consistency Ruling to modify the landscaping approved in special permit #542-03, granted to Clear Channel Radio et al on November 21, 2005 for the construction of five (5) 199' AM radio transmission antennas at 750 Saw Mill Brook Parkway.**

Attorney Richard Seegel of 60 William Street, Wellesley was present for Clear Channel. Ms. Radzevich explained that initially when seeking the special permit Clear Channel anticipated removing a considerable amount of existing under-story growth and mature trees along the perimeter of the site for the installation of cables and wires. However, after construction got underway, it was unnecessary to remove as much vegetation as was expected initially. Since there is not much room on the site for additional plantings, Clear Channel is proposing to relocate much of the plantings and trees onto Saw Mill Brook Parkway. Ms. Radzevich noted that a portion of the approved plantings was under the Conservation Commission's Order of Conditions that will need to be amended as well.

In response as to whether the plantings could be installed somewhere else on site, Ms. Radzevich said site constraints make it difficult, although some of the plantings can be used to screen vernal pools. Alderman Lappin asked if Clear Channel had spoken with the Public Works and Parks & Recreation Departments about installing plantings on a public way. She suggested that perhaps some plantings could be installed on properties abutting the site.

The Committee agreed it makes no sense to remove mature plantings and replace them when there is no need to do so simply because of the approved site plan. At the Committee's request, Alderman Lappin agreed to arrange a meeting with the neighborhood and include representatives from Public Works and Parks & Recreation Departments to discuss appropriate alternative locations for some of the plantings prior to the Conservation Commission meeting on June 28. The Committee asked Ms. Radzevich to convey to the Commissioner of Inspectional Services the importance of Clear Channel's responsibility to maintain in perpetuity any plantings installed in the public right-of-way as well as the existing plantings around the perimeter to preserve the present dense screen. Alderman Lappin will report to the Commissioner the results of the neighborhood meeting.

**Request for Consistency Ruling** to relocate some previously approved activities further away from any wetland and buffer zone from what was approved in special permit #306-05 granted to Brae Burn Country Club on December 5, 2005 for the expansion of a cart barn, pool house and paddle court and construction of a new maintenance facility at 326 Fuller Street.

Several representatives from Brae Burn Country Club were present to explain the changes proposed to the approved site plan. At the back of the site near then Woodland MBTA station, the equipment wash pad will be relocated from the north side to the south side of Building F to make the wash pad more conveniently located adjacent to the building, reducing disruption to the site north of the building. (The washdown system includes a water recycling system that will eliminate discharge to the sewer system.) The dumpster and recycling bins will be relocated to accommodate the relocation of the washpad. The pesticide storage building will be moved more than 200 feet further from Cheesecake Brook, eliminating one bay of the proposed material storage bin system in order to accommodate the relocation. The gravel and organic material storage area will be eliminated, and organics will be removed from the site annually. All this will require removing fewer trees. On the Fuller Street portion of the site, instead of privet hedge, 4- to-5-foot spirea were planted to carryout the plantings from the clubhouse. The Committee agreed that the changes were consistent, even an improvement to the approved site plan, and asked Ms. Radzevich to convey that to the Commissioner of Inspectional Services.

**Request for Consistency Ruling, re special permit #288-04, granted September 7, 2004, to construct 4 units at 267 Watertown Street, adjacent to Stearns Park, to allow one owner to install a fence on the side of the building running to Watertown Street and across the Watertown Street frontage.**

Terry Lo and Li Kang, owners of one of the units at 267-273 Watertown Street, have a young child and wish to erect a 6-foot high fence along the side and across the front of their unit on busy Watertown Street. The Committee understood the owners wish to have a fence, but asked that it be a wood fence consistent with the materials of the buildings, not white vinyl. The owners agreed and Ms. Radzevich will convey the Committee's comments to the Commissioner of Inspectional Services.

#165-07      36-38 COURT STREET CONDOMINIUMS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING STRUCTURE for existing decks including waivers from lot coverage; setback requirements; various dimensional requirements related to parking and perimeter screening at 36-38 COURT STREET CONDOMINIUM, Ward 2, NEWTONVILLE, on land known as Sec 23, Blk 19, Lot 18 containing approximately 6,743 sf of land in a district zoned MULTI RESIDENCE 1.

ACTION:      APPROVED 8-0

NOTE: The public hearing for this item was opened and closed on June 12, 2007. There was no public comment. The property, occupied as a 4-family dwelling since at least since 1929, was renovated and sold by a developer as four condominium units. Since both the use and structure

predate current zoning regulations, both use and structure were nonconforming prior to the renovations and remain so. The current condominium owners are seeking to legalize the extension of nonconforming use and structure to allow the existing decks on the rear of the building to remain as re-built by the developer. This work was completed with a valid building permit, but subsequently it was determined that additional relief from setback requirements was needed. In addition, there are 8 parking stalls at the rear of the dwelling for which relief is sought from parking requirements including waivers of side setbacks, a handicapped stall, maneuvering aisle width, screening and lighting, etc, all technical waivers to legalize the existing parking layout. The Planning Department in its memorandum asked if the petitioners could clarify whether the current parking situation existed before the developer improved the site, and if so, they might document parking layout conditions prior to the current parking facility design requirements adopted in March 1977 to seek an extension of a nonconforming parking facility. Subsequent to the hearing, the petitioners submitted a copy of a grant of easement referencing a plan dated March 1955. The Planning Department recommended that the petitioners install downward facing motion detector lighting at the end of the driveway to ensure pedestrian/vehicle safety entering and exiting the site.

\*\*\*

At this evening's working session, the petitioners agreed to install the motion detector light and after a brief discussion, Alderman Albright moved approval finding that the enlargement of the rear decks and stairs are not substantially more detrimental than the previous porches and that they are in character with the neighborhood. The parking layout has existed and has no adverse impact on pedestrians and vehicular movements on site, particularly since the petitioners have agreed to install the motion detector lighting. The Committee voted 8-0 to approve the petition.

#106-07      BETH MENACHEM CHABAD petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive parking requirements associated with the demolition and construction of a new Synagogue facility at 349 DEDHAM STREET, Ward 8, on land known as Sec 83, Blk 36A, Lot 1, containing approximately 33,697 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-19(d)(10) & (13) 30-19(j)(1), 30-19(m) of the City of Newton Rev Zoning.

ACTION:      HELD 7-0 (Merrill not voting)

NOTE: The public hearing for this item, at which there was a considerable amount of public comment, was opened and closed May 15, 2007. More details will be provided once the Committee makes a recommendation on this petition.

This evening the Committee discussion with Associate City Solicitor Young focused on the scope of the Board of Aldermen's role in this petition. Ms. Young cited the State's Dover Amendment, which gives certain protections to religious and non-profit educational uses and explained that the Board of Aldermen in this petition is looking at the request for the waiver of parking requirements only. Since this petition is not for the extension of a non-conforming use, the proposed encroachments into the setback and exceeding FAR requirements cannot be granted

by the Board of Aldermen, but case law relative to the Dover Amendment gives the Commissioner of Inspectional Services latitude concerning the site plan and the building, including the FAR, although the petitioner needs a special permit in order to obtain the parking relief. As requested at the public hearing, on June 12 the petitioner's attorney submitted a letter to the ISD Commissioner requesting these waivers, but the Commissioner had not yet considered it. If not granted, Ms. Young explained, the petitioner could subsequently appeal to the ZBA. Committee members expressed some concern whether the ISD Commissioner's decision could affect the site plan presented, especially if he granted only a portion of the request. Ald. Fischman suggested that the Committee might recommend lower waivers for the FAR or setback, but Ald. Vance said this is unlikely to affect the need for a parking waiver.

The Committee reviewed the Planning Department working session memorandum and figures provided by the petitioner relative to the number of vehicles expected on site and trips expected at different times and for different life cycle events. The Committee noted that the petitioner's own numbers conflicted. Acknowledging that it could be difficult to predict absolutely the number of vehicles for some events, the Committee asked the petitioner to clarify the figures. The Committee also reviewed draft conditions, and noted that the petitioner had stated that they would no longer agree to a condition they had accepted during the public hearing not to operate any day care, nursery school or full-time day school programs at the site. Ald. Vance pointed out that if these uses are left open, there could be a tremendous increase in parking needs not currently accounted for, and he asked the petitioners to be more specific about their plans. The Chair also noted that since this condition was agreed to within the hearing, he would be uncomfortable eliminating it once the hearing was closed. The Committee also asked the petitioner to be more specific about the restrictions they would accept on the use of a proposed outdoor patio close to an abutter, and to get details on the School and Parks & Recreation Departments' position on licensing the use of the entire Countryside parking lot as times of special events. The Committee also requested that the City Traffic Engineer review the memo from the petitioner's traffic planning consultant, Michael Abend, and comment on his recommendations, including a flashing light at the Dedham St.-Rachael Rd. intersection.

Ald. Fischman suggested that the petitioner also have another neighborhood meeting. For all these reasons, he moved that the item be held, and that n motion was approved 7-0, Ald. Merrill not voting.

#91-07(2)      AGREEMENT TO AN EXTENSION OF TIME in which to ACT on OMNIPOINT COMMUNICATIONS INC. d/b/a T-MOBILE USA INC/CAPASSO REALTY CO. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install roof top wireless communication equipment including an equipment room in existing attic space and an at-grade HVAC condenser unit on a multi-family residential building at 181 LEXINGTON STREET, Ward 4, AUBURNDALE; said EXTENSION will; run from AUGUST 13 to SEPTEMBER 19, 2007.

**ACTION:** APPROVED 7-0 (Merrill not voting)

**NOTE:** Since this petition was not ready for discussion this evening, the petitioners have agreed to an extension of time.

The meeting was adjourned at 11:08 PM.

Respectfully submitted,

George E. Mansfield, Chair