

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

THURSDAY, SEPTEMBER 6, 2007

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

Absent: Ald. Fischman

Also present: Ald. Baker

City staff: Michael Kruse (Director of Planning & Development), Ouida Young (Associate City Solicitor)

#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: APPROVED 6-0-1 (Harney abstaining)

NOTE: The petitioner is proposing to demolish an existing 2,500 s.f. farmhouse, dating from the 1820's and formerly a single-family residence, and replace it with a 12,214 s.f. building that will accommodate religious services, special functions, office space, kitchen facilities, and mikvah on a corner lot at Rachel Road and Dedham Street. The proposed building qualifies as a one-story building with a full basement, 24.2 feet in height, and can be entered on the Dedham St. frontage at grade or at the main floor level from an elevated porch on the Rachel Road side. The design includes a variety of roof configurations and heights to break up the overall mass and volume. Residential architectural features are employed, and the facade is wood shingles. The site will be accessed by a one-way circular driveway off Dedham St. and includes a parking facility for 9 vehicles, including one handicapped stall. The facility would accommodate up to 203 worshippers and to satisfy the parking demand requirements of the Zoning Ordinance, the petitioner is seeking a special permit for a parking waiver of 61 spaces. They are also seeking a waiver of parking lot lighting requirements to allow lighting levels to be below 1.0 foot-candles.

The petitioner expects that there will be few vehicles parked at the site on the days of the most intensive use, since Orthodox Jewish practice prohibits the use of vehicles for attending services on the Sabbath and for most religious holidays during the year, and therefore believes it is reasonable to provide only 9 or the required 70 spaces on site. In addition, the design of the facility and its large footprint (8,775 s.f.) limit the space available for parking, and the petitioner believes that limiting the parking also helps to preserve the single-family residential character of the neighborhood.

The FAR for this facility is 0.36, exceeding the maximum permitted FAR of 0.2, and stairs on both sides of the building encroach into the required 20-ft. side setback, leaving a 10-ft. setback on the Rachel Rd. side and a 15 ft. setback on the side adjacent to the neighbor to the east. The Board of Aldermen cannot grant relief from these non-complying dimensions through a special permit. Instead the petitioner had to choose whether to seek variances from the Zoning Board of Appeals, or ask the ISD Commissioner to grant waivers through the "Dover Amendment," through which the religious use itself is allowed by right. At the time of the public hearing, the petitioner had not made that request, but without either said variances or waivers, the project could not proceed even with the grant of the special permit.

Public hearing:

The public hearing was held on May 15, 2007. At that time the petitioner's attorney, Joel Sowalsky, explained that in 2003 the Chabad had petitioned the Board for a special permit for parking waivers for a smaller, but similar, use of an existing house at 229 Dedham Street, next to the Countryside School. The Board denied that request and the petitioner appealed the denial. Subsequent negotiations led to a settlement agreement, which resulted in the approval of a special permit at that site in May 2004. The agreement and the permit provided for the use of the parking lot at the Countryside School for up to 15 cars whenever there was a function at the facility that would promote driving to the site. Chabad's attorney said his client had been a good neighbor at this site, but that their congregation and needs for space had grown over that time, and hence they purchased the subject site in February 2005 with the intent of building a new facility. In October of that year, a previously imposed demolition delay of what the Historical Commission had found to be "Preferably Preserved Historic structure," the house currently on the site, expired. The petitioner has not stated its intentions for the property they own at 229 Dedham St., once they have built and occupied the new structure.

The architect for the project, Albert Fine, described the design as one that would minimize excavation and grading, and the petitioner is not seeking the approval of a grade change in excess of 3 feet. He said that the storm water drainage would all be contained on site, infiltrated under the parking lot. The design will preserve the maximum number of existing trees, complying with the Tree Preservation Ordinance, but he also reported that the petitioner would consider additional screening along Rachel Rd. The site lighting will be less than 50% of the City's requirement (for which a waiver is requested), with no light poles or spillover, lighting only the pathways and the driveway. Mr. Fine described the elements of the building in addition to the sanctuary. There would be two mikvahs, ritual baths that can accommodate only two people at once, in the basement. Also on that level will be two children's rooms, and all the mechanical equipment. No mechanical equipment will be placed on the roof or at grade. There will also be three residential-sized kitchens, two offices and a small conference room. He said the structure is designed to look house-like and does not provide extensive facilities beyond those of a house of worship.

Fred Chanowski of 111 Countryside Rd., a member of the congregation, spoke on behalf of the petitioner. He reported that there had been two neighborhood meetings on the proposal, the first of which had been well attended. The plans submitted were not essentially different from those presented to the neighbors. One of the primary issues raised, he said, were the Chabad's plans for a day care program on site. However, at this time, he said, the petitioner has eliminated this

program. He said that the Chabad's record at its current site is very good, with no complaints recorded from the neighbors or with the Police or ISD. However, that site is not an appropriate location in which the congregation can grow. He discussed proposed "life cycle" events, such as weddings, bar and bat mitzvahs, etc., where driving to the site would be permitted and expected. He said he expected these to be small and infrequent, since bands, d.j.'s, and mixed dancing are prohibited, and the congregation is aging. He did admit that there might be some unplanned events, such as circumcisions and funerals, where there would be on-street parking, as well as a couple of holidays annually (Purim, Chanukah). At those times, Chanowski estimated, 20-30 families would attend. During these times and for life cycle events, Chabad will agree to require attendees to use the Countryside parking lot (about ¼ mile from the site) and, for scheduled events, to pay for and use a shuttle or valet service to get to the site.

Ald Mansfield asked whether a parking study was done and reviewed by the City's Traffic Engineer. Mr. Sowalsky replied that the Planning Department had not asked for such a study. Mr. Fine, however had submitted a parking analysis and Michael Abend, a traffic planner had submitted a report that made some general observations and recommended traffic improvements at the Rachel Rd/Dedham St. intersection, as well as at Rachel Rd and Winchester St. At a later time, the City's Traffic Engineer submitted a memo (6/19/07) finding that the Abend report "lacks any quantitative analysis" and that the conclusions and recommendations were generally not defensible. The Chair also asked how many congregants were presently in Chabad. Mr. Chanowski replied that there were currently 70 families, with 3-4 members per family. He added that the need for the 203 seats in the sanctuary is to accommodate these congregants during the holidays.

Ald. Albright noted that at other Orthodox temples in the city, attendees often leave their cars on street before the Sabbath (before sundown), where they remain overnight until sundown the next day. She also noted that in Ward 2, temples are expanding their functions, which proliferate on-street truck deliveries. Mr. Fine responded that the site was designed with plenty of room for on-site deliveries. It was also noted that those who wished to leave their cars overnight could park them on site, but that the parking area would be barricaded once the Sabbath begins. Ald Vance suggested that Countryside lot is not likely to get much use due to its remoteness from the site. Ald. Mansfield, citing the experience of the Hebrew College special permit conditions, asked that the shuttle/valet service requirement be carefully worded so that it would be enforceable by ISD. Ald. Fischman asked that Chabad consider more screening and landscaping.

Ald. Samuelson expressed her concern more with weekday programs, Sunday through Friday, than with use of the facility on the Sabbath. She was told that there would be daily morning services, generally 6:30 – 7:15 AM, for 10-15 people generating 5 – 7 cars that could park on site. There may also be late afternoon services for small groups. When she asked if they would be adding other weekday programs, they replied that they hadn't discussed it.

Susan Abookire, 22 Rachel Rd., an immediate abutter, said that she bought her property in 2004 because it was in a quiet residential area. She was concerned with what she saw as many inconsistencies in the presentation. One of her greatest concerns, she said, was the safety of the Dedham St./Rachel Rd. intersection, where the volume and speed of turning traffic is great and there have been many accidents. She noted that the intersection was also a school bus stop. She also said that the waiver would result in frequent parking on Rachel Rd. by attendees of the

temple, and that the service entrance/loading zone will be next to her driveway. In her opinion, the size of the project is beyond what should be allowed in a residential area under the Dover amendment. She requested a formal traffic study, and also said that it is incorrect to say that the neighbors are in favor of the parking waiver. She reported that the neighborhood meetings were mainly to show them the building plans.

Chris Peckins, also of 22 Rachel Rd., pointed out that the proposed building covers 1/3 of an acre and is 5 times larger than the surrounding homes. He expressed concern that while a nursery school was not proposed, the building nevertheless had two children's rooms, a playground and outside gathering areas, all of which could support activities that could intrude upon neighbors.

Dennis Tourse, 3 Cannon St., lives diagonally across from the present Chabad. He said he was apprehensive at first, but has become an enthusiastic supporter. A couple of congregants park on his street, but that causes no difficulty. All conditions of the 2004 special permit have been met, he said, and he has never heard any noise or commotion.

Ben Blout, 360 Dedham St., lives across the street from the proposed site. He would like to see the property's use retain the character of the single-family neighborhood. He is concerned with uses that will occur Sunday – Thursday, when driving is permitted, and suggested that restrictions be imposed consistent with the Chabad's operations at their current site, not allowing expansion. He also asked that all conditions be clearly stated in writing.

Ted Tye, 25 Malubar Lane, supported the congregation's right to build on the site that they own, and conceded that the Chabad leaders have reached out to the neighborhood. Nevertheless, he expressed his concern about the FAR waiver, which he doesn't support. He asked the City to get some site sections of the proposed building and abutting homes to better evaluate the scale of the request. He added that he is concerned with traffic and parking on Rachel Rd., however, he can't make a decision on the parking waivers until the dimensional variances are decided upon.

James Mitchell, 88 Countryside Rd., past president of Temple Beth Avoda, supported the Chabad in this neighborhood, said that it has been designed within the City's zoning requirements, and that this has been done in consultation with Mr. Tye. He recognized that the request to increase the FAR is the neighborhood's driving concern, and said that the spirit of the Zoning Ordinance should be fulfilled. Leon Semonian, 373 Dedham St., also spoke about traffic safety at the Dedham/Rachel intersection and supported the request for a formal traffic study. Nina Steingold, a Chabad congregant, said that without this location her family would have to walk 1 ½ hours to get to temple. She also noted that they couldn't park overnight on neighborhood streets in the winter.

The Committee then discussed the request for a traffic study. There was some consideration of keeping the hearing open for this information, which Ald Fischman supported. However, Ald, Hess-Mahan thought that the issue was parking, and that the traffic issues were existing and independent of this project. Ald. Samuelson suggested that the Chabad hire a crossing guard for pedestrians during services and other large events. After some discussion, the Committee voted to close the hearing.

Working sessions:

Three working sessions were held on this petition, June 19, August 14 and September 6, 2007. The petitioner requested and the Board approved an extension of time in which to act from August 13 until September 21.

June 19, 2007: 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. Nevertheless, the Committee discussed whether it would be appropriate to make a recommendation on this petition in advance of the ISD Commissioner's decision.

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 some of the petitioner's own numbers conflicted with each other. 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 initial 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 on Rachel Rd., although it was not clear that restrictions on this use bear any relation to the relief requested, i.e., the parking waiver. The Committee asked staff 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, since it appeared that more than the current 15 spaces might be needed. The

Committee also requested that the City Traffic Engineer review in more detail the memo from the petitioner's traffic planning consultant, Michael Abend, and comment on his recommendations, including a flashing light at the Dedham St.-Rachel Rd. intersection.

Ald. Fischman suggested that the petitioner also have another neighborhood meeting. For all these reasons, and because of limitations in the summer schedule, the petition was held until August 14 and the petitioner was asked to request an extension of time in which to act until after the Board's second September meeting.

August 14, 2007: The Committee was notified at this working session that the ISD Commissioner had issued his decision granting the requested FAR and setback waivers at the end of the previous week. [A copy of the ISD Commissioner's letter of 8/9/07 is attached to this report.] The Chair had become aware of this development earlier in the day, and had requested that Commissioner Lojek attend the meeting to explain and discuss his decision, only to find that he was currently on vacation. Thus it fell upon the Law and Planning Departments to both explain and defend this decision and its ramifications. The Committee had hoped there would have been more communication between them and the ISD Commissioner, especially on this sensitive item.

Ms. Young explained that Commissioner Lojek felt that the parking waiver was the Aldermen's prerogative and that he should look at the FAR waiver request independently, as a massing control and not an activity or density control (which the parking waiver does provide). In other words, his FAR waiver allows Chabad to build the building they have proposed, but unless the Board grants the requested parking waivers, they cannot use it as they have proposed. The Committee, however, was of the opinion that the ISD action could put them and the Board in an unfavorable position if they chose to deny or reduce the parking waiver. Several members, and President Baker, found Commissioner Lojek's letter troubling because they thought his standards for reaching his decision were not clearly expressed. This, they said, could set a bad precedent for other Dover-eligible sites. Ms. Young noted in response that the initial Chabad site at 229 Dedham St. had also been granted an FAR waiver, apparently without Board concern. But Ald. Baker pointed out that a distinction should be made between such a waiver pertaining to an existing building, where a hardship may exist, and one applying to a building yet to be constructed, and referenced some case law in this regard.

The Chair asked what appeal rights there might be to the Commissioner's decision. Ms. Young replied that any zoning decision is appealable, and in this case the ZBA is the first level of appeal, but the eligible appellants are limited to "aggrieved parties." There is a standard 20-day appeal period, similar to that of a special permit, but there may also be extended appeals, she said, based on subsequent actions ISD might take to implement the project, up to and including the issuance of a building permit.

Ald Fischman reported on a neighborhood meeting that had taken place on August 5 that he had attended on invitation from the neighbors. (No representative of Chabad was invited or attended, and Mr. Chanowski objected to Ald. Fischman's presence at the meeting on these grounds.) The opinions expressed at the meeting were summarized in 3 letters submitted on August 6 and 7 by neighbors in attendance. [The **neighbors' letters** are attached to this report.] Ald. Fischman

summarized their opinions as follows: They do not support the scale of the proposal, and believe that scale is related to the parking waiver. They are concerned that the FAR requested is 60-70% higher than allowed. They are also concerned about the setback waivers, and particularly the one that allows a stairway down an embankment to Rachel Rd. (rather than limiting pedestrian access to Dedham St. only). Finally, they believe the site plan does not provide sufficient screening from their properties nor protects their privacy. They have asked that the site plan include a sound barrier and that existing traffic problems be solved before Chabad is given permission to build.

Ms. Young reported on the progress of the license agreement for use of the Countryside School lot. The School and Parks & Recreation Departments will agree to increase the license from 15 to 46 spaces (the entire lot), and Chabad will ask to use the lot in any instance when the expected attendance at an event will generate more than 20 cars. If permission is denied (because of conflicting City needs), Chabad will reschedule the event or find another source of off-site parking. Ald. Mansfield noted that shuttle service was still not clearly defined.

The Planning Department memo prepared for this meeting noted that not all the information requested on traffic and parking had been provided, but Ms. Young cautioned that the Committee might not get all the information they want, and still have to make a recommendation. Ald. Fischman said that defining and controlling the impact of the life cycle events is the key to the decision on this petition. Ald. Samuelson added that she was more concerned about controlling day-care and day school uses on this site. Mr. Kruse reported that Chabad had agreed to eliminate full-time programs of this nature, but Ald. Vance pointed out that there was no clear definition of "full-time." Ald. Mansfield suggested considering limiting the school and day care uses through the development of performance standards.

When it became clear that the Committee still did not have enough information to vote, the search for another date when a majority of the Committee could meet before the 9/17 Full Board meeting yielded only the date of 9/6, when Ald. Fischman would be out of town. Subsequently, Ald. Fischman submitted a memo for the Committee to consider at that meeting. [**Ald. Fischman's memo** is attached to this report.]

September 6, 2007: Between the previous working session and this date, Ms. Young and City Solicitor Dan Funk had met with the petitioner's attorney, and Ald. Fischman, Mansfield and Baker had met with Ms. Young, Mr. Kruse and Jean Fulkerson of the Planning Department. These meetings were primarily to develop and refine specific conditions for *parking management* for life cycle events and holidays when driving is allowed, and to try to reach agreement with the petitioner on the potential use of the facility for day school, nursery school and day care and the *traffic management* that such uses would require. The outcome of those meeting and the subsequent discussion at this working session were a **Draft Parking Management Plan** [attached to this report], and extensive conditions that would apply if school and/or day care uses were implemented, all incorporated in Condition #10 of the draft Board Order.

While the primary impact of the requested parking waiver is overflow parking impacts, the additional impact of school and/or day care uses is caused by drop-off traffic which is not

controlled by the Zoning Ordinance or by the licensing requirements of the State's Office for Children. The design of the site, according to the Planning Director and the City Traffic Engineer, make it likely that any queue of more than 3 cars will back traffic out into Dedham St. With proper active staff management, however, the lot could accommodate up to 8 cars for drop-off, they estimate. Although Ald. Albright pointed out that drop-off could be a problem for other life cycle and religious events, Ms. Young and Mr. Kruse said that this kind of problem has not occurred at other religious institution sites. Therefore, this potential is not addressed in Condition #10.

Ms. Young explained that Chabad wishes to retain the ability to have the same kind of day care facilities and religious schools that other existing religious institutions enjoy. Also, the Zoning Ordinance encourages co-location of these uses. Mr. Kruse said that any such use would still have to comply with the parking provisions of Sec. 30-19, notwithstanding the waiver granted in this petition. However, these requirements pertain mostly to staff parking needs, and generally could be met by the planned 9 on-site spaces. Ald. Vance and Mansfield both questioned simultaneous parking demand, either from a day school and nursery school, or either of these while religious services or another event were occurring. Ms. Young replied that this would be an ISD enforcement problem. Ald. Samuelson asked if the Board order could require a police detail for this traffic. Ms. Young replied that this has been required in other instances where greater than 150 participants were expected for an event or assembly, and Ald Samuelson asked for something similar here.

As it was worked out in Committee from Ms. Young's draft, Condition # 10 defines "full-time" and "part-time" school and day care activities, basing time thresholds on usual Hebrew school schedules. It prohibits full-time schools, and subjects part-time schools and any day care or nursery school with an enrollment greater than 16 students to the preparation of a Traffic Management Plan for review and approval by the Traffic Engineer and Planning Director. Details of the contents of that plan and criteria for its approval are included. The ceiling of 16 was calculated by doubling the available drop-off capacity of the proposed parking lot, even though the petitioner wanted that ceiling to be as high as 30. When children 7 or younger are involved in such a program, the condition also requires an on-site drop-off traffic manager.

Other draft conditions were reviewed and approved by the Committee. Noteworthy additions included a requirement that the petitioner improve the sidewalk abutting it property on Dedham St., and provide additional landscaping, especially low shrubs on the Rachel Rd. side. No sound barrier was incorporated, as Ald. Hess-Mahan was not sure what type of sound would need to be mitigated. Also, the stairway to Rachel Rd., which Ald. Mansfield suggested shifting closer to Dedham St., was not moved because the Fire Department insisted it be closer to the rear of the building so that occupants could evacuate in case of emergency without impeding the fire apparatus. Ald. Mansfield also noted that the shuttle and/or valet service serving the Countryside lot was still not well defined. The petitioner did agree not to oppose requests by the neighborhood for parking restrictions. Some Committee members expressed concern about the loss of an historic house, but recognized that the Board had no power to prevent this since the demolition delay ordinance had run its course. However, the petitioner did agree to donate the house to any party that wished to move it to another site, and to contribute up to the cost of its demolition to support that move.

Ald. Samuelson moved approval of the petition, but she found it particularly difficult to support an institutional use and structure replacing an historic home. However, she noted this congregation has fit well into the neighborhood at the Countryside School site. The motion included the approval of the waiver of lighting levels to fit better into a residential area. The Committee reviewed and approved 23 specific findings [see Board Order], adapting many from the 2004 approval of the parking waiver at 229 Dedham St. Ald. Baker said he would support the petition. The motion was approved 6-0-1, Ald. Harney abstaining.

The meeting was adjourned at 10:55 PM.

#106-07(3) AGREEMENT TO AN EXTENSION OF TIME in which to ACT on 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; said EXTENSION will run from SEPTEMBER 21, 2007 through OCTOBER 5, 2007.

ACTION: APPROVED 6-0 (Merrill not voting)

NOTE: This extension is necessary to prevent a constructive approval if parliamentary action prevents a final vote on the previous petition on September 17, 2007. The petitioner has stated that they will not accept an extension beyond October 5, 2007.

Respectfully submitted,

George E. Mansfield, Chair

City of Newton



David B. Cohen
Mayor

Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
Telephone: (617) 796-1060
Fax: (617) 796-1086
www.ci.newton.ma.us

106.07
Building/Zoning Inspectors
(617) 796-1060
Zoning Board of Appeals
(617) 796-1060
Plumbing and Gas Division
(617) 796-1070
Electrical Division
(617) 796-1075
TDD/TTY
(617) 796-1089

August 9, 2007

Joel M. Sowalsky
Smith & Sowalsky
Counselors At Law
50 Congress Street, Suite 300
Boston, MA 02109

2007 AUG 14 PM 12:37
CITY CLERK
NEWTON, MA 02159

RE: Chabad-Lubavitch, Inc., 349 Dedham Street, Newton

Dear Mr. Sowalsky:

I am in receipt of your letter of July 9, 2007 wherein you have requested Dover Amendment relief from various sections of the City of Newton Zoning Ordinance for your client Chabad-Lubavitch, Inc.

I have read the Chief Zoning Code Official, Juris Alksnitis', summary of the issues involved with the development of the new facility and your letter in response. Based on all information available to me, I have concluded the following, based on my understanding of Chapter 40A of the General Laws of the Commonwealth of Massachusetts and the City of Newton Zoning Ordinances:

- 1) Setbacks.
 - a) I have determined that the stairs on the east elevation, that principally serve the *mikveh*, or ritual bath, on the lower level, and the egress stairs from the main level, could be interpreted as stairs/steps within the setback line, per the City of Newton Zoning Ordinance 30-15 (e). Additionally, because both of these stairs are egress stairs, they must be protected from the accumulation of ice and snow, per 780 CMR 1014.12, and therefore they must have a roof to protect them.

*Strict code enforcement makes the city safer .
Before buying, renting or leasing check zoning*



Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
Telephone: (617) 796-1060
Fax: (617) 796-1086
www.ci.newton.ma.us

Building/Zoning Inspectors
(617) 796-1060
Zoning Board of Appeals
(617) 796-1060
Plumbing and Gas Division
(617) 796-1070
Electrical Division
(617) 796-1060
TDD/TTY
(617) 796-1089

- b) Based on the landscape and site plans submitted, the stairs that are associated with the property circulation plan, or within the landscape are not considered structures, within the generally accepted meaning of the term, as regards zoning. Therefore they are not subject to the setback requirements of the City of Newton Zoning Ordinance. This would include the proposed stairs at the west elevation to Rachel Street and the proposed stairs at the east elevation to the path and parking area.

Whether there is agreement or not on the zoning definition of these features in this proposal, I believe that, even if in technical violation of the City of Newton Zoning Ordinance, it is most reasonable to grant Dover Amendment waivers of requirements pertaining to the setback of the above features.

2) FAR (Floor Area Ratio)

- a) The City of Newton Zoning Ordinance, Section 30-15, Table 2, prescribes a FAR of .2 for a non-residential building in a SR-1 zoning district. The applicant has proposed a building that has an FAR of .36.
- b) The City of Newton Zoning Ordinance, 30-1, Floor area ratio, requires that, in non-residential buildings, the areas below grade "not used for storage, parking or building mechanicals shall be included in determining floor area ratio." Whereas residential buildings are allowed to exclude all gross floor area that is more than 50% below grade, as defined as *basement*. *Basement* is defined for any building, other than residential, as "any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building." The Chabad proposal has a partial basement that qualifies as a basement under the more stringent requirements of non-residential buildings (2/3rds below grade), though the building is of residential scale.

Certainly the applicant could have proposed a building that would more closely follow the FAR requirements by designing more vertically. But, such structure could rise to 36 feet, perhaps with a flat roof and 5' cornices. Additionally, they could have added towers, spires, or domes, enclosures for elevators, etc., all of which would be excluded from height calculations, resulting in a building of perhaps 45-50'.

City of Newton



David B. Cohen
Mayor

Inspectional Services Department

John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
Telephone: (617) 796-1060
Fax: (617) 796-1086
www.ci.newton.ma.us

Building/Zoning Inspectors
(617) 796-1060
Zoning Board of Appeals
(617) 796-1060
Plumbing and Gas Division
(617) 796-1070
Electrical Division
(617) 796-1075
TDD/TTY
(617) 796-1089

I believe that the applicant has made a concerted effort to design their building in such a way as to blend into the neighborhood and it has achieved a residential scale, by current standards.

It is most therefore reasonable to grant a Dover Amendment waiver for the FAR of .36, rather than subjecting the applicant to a redesign that could be built, without any necessary Dover relief, but would be far more intrusive to the neighborhood. Any other decision would force the applicant to redesign, in manner that may not be in keeping with their services or mission. There are various ways to technically comply with zoning that would have the unintended consequence of creating blight on the neighborhood, far in excess of that which has been proposed. I conclude that the proposal has been designed, on a residential scale, so as to blend into the existing neighborhood, while achieving the purpose and mission of the congregation. It is therefore reasonable to grant a Dover Amendment waiver for FAR in this case.

I wish your clients well with their project. Please contact this office if you have further questions.

Sincerely,

John D. Lojek, Commissioner

cc: Mike Kruse, Planning Director
Dan Funk, City Solicitor

Zoning Review Memorandum

Dt: March 23, 2007

To: Rabbi Chaim Prus, Congregation Beth Menachem Chabad
 Albert Fine, Architect, Fine Associates

Fr: Juris G. Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development
 John Lojek, Commissioner of Inspectional Services

Re: Petition for a special permit/site plan approval and parking waivers pertaining to proposed new place of worship.

Applicant(s): Congregation Beth Menachem Chabad	
Site: 349 Dedham St.	SBL: Section 83 Block 36A, Lot 1
Zoning: SR-1	Lot Area: 33,697sq. ft.
Current use: Single fam. dwelling	Prop. use: Synagogue facility

Background:

The petitioner seeks to build a new synagogue facility in place of an existing single family dwelling, which will be demolished. Once complete, the applicant intends to relocate all activities and operations from its current location at 229 Dedham St. The petitioner seeks a special permit/site plan approval and related parking waivers associated with this new single use religious institution.

Administrative determinations

1. The applicant, an orthodox Jewish congregation is a religious non-profit entity normally subject to Section 30-5(a)2) administrative site plan review. A single-use institution, the project is subject to Section 30-15, *Table 2 – Dimensional Regulations for Religious and Non-profit Educational Uses (Table 2)*, and Section 30-19, *Parking and Loading Facility Requirements*. However, based on submitted plans, the applicant needs zoning relief both from the Board of Aldermen and from the Zoning Board of Appeals, as discussed below.
2. The proposed site plan locates the building so as to meet most Table 2 dimensional controls. While it is noted that the two-foot roof overhang is consistent with Section 30-15(e), certain building components on the east side encroach on the 20 ft. side setback. These include the external stairs from the basement level to ground level and then to the upper level, which involve a retaining wall structure, columns, and roof, placed at approximately 15 ft. from the side lot line. In addition, another adjacent set of external stairs from the parking area to the side-yard come to within 10 ft. of the same side lot line while a proposed new wall connects with the existing stone wall along the side lot line. The character and size of these structures

exceed the intent of Section 30-15(e), which accommodates bulkheads and steps within setbacks, but not major building components or related structures. The applicant may wish to discuss these elements with the Commissioner of Inspectional Services for additional guidance. As a result, the proposed design necessitates dimensional variances from the Zoning Board of Appeals. Moreover, the as proposed FAR exceeds the applicable limit of 0.2, this necessitates an additional variance from the Zoning Board of Appeals. While the proposed FAR shown on plan is 0.36, the applicant may wish to revisit this figure to see if calculations used are consistent with the definition provided in Section 30-1 for *Floor Area Ratio* associated with nonresidential structures.

3. Plans and information provided by the applicant indicate that the lower level qualifies as a basement. In addition, the overall structure is well within the 36 ft. height and 3 story limits.
4. *Section 30-19(d)(13)* sets forth the applicable parking requirements pertaining to overall parking supply while *Section 30-19(h)(2)c* establishes the required number of Handicapped parking stalls. With regard to HP spaces, one (1) is required and provided. Submitted plans anticipate that 67 spaces would be necessary for sanctuary seating of 200, based on an anticipated specific seating layout contemplated for the sanctuary and social hall together. While the hypothetical seating capacity of the subject area might accommodate approximately 236 seats based on a building code factor of 15 sq. ft./seat, the applicant's architect has indicated that architectural plans will be prepared for 200 maximum seats. In addition, as the applicant's architect has stated that the lobby area is not intended for sanctuary overflow seating or other events requiring concurrent seating, this space is considered accessory to the primary use and does not generate a separate parking requirement.

Three offices on the first floor with a total floor area of approx. 519 sq. ft. require an additional three parking spaces per *Section 30-19(d)(10)*. Two children's rooms are provided on the lower level for accessory childcare purposes and will be staffed by volunteers. While a play area is indicated on plans, the applicant has stated that no separate pre-school or childcare program will be conducted. Should this change in the future, additional review of this aspect would be required. The applicant does not anticipate conducting religious education classes at this time. It is noted that two Mikveh rooms on the lower level have a maximum capacity of three users along with one attendant at any one time, and would be available for use by persons not members of this congregation as well. However, the applicant indicates that these rooms are typically utilized for purifying rituals ahead of religious services or special occasions primarily by member congregants. As a result, they are considered accessory to the primary use and do not generate a separate parking requirement.

The above suggests that at maximum use, 70 spaces would be required [200 seats/3 = 67 + 3 office]. Since only 9 spaces are provided on site, a waiver of 61 spaces would be necessary pursuant to *Section 30-19(m)*. The applicant states that their religious practices preclude use of motor vehicles on high holy days and Sabbath, and that therefore their actual need for parking is less than that required by the Newton Zoning Ordinance. It is the petitioner's responsibility to provide such building use and facility operational data, vehicle use data, and historical information as to congregational religious practices, as is deemed necessary and acceptable by the Board of Aldermen to justify the proposed waiver.

5. *Section 30-19(h)* and (j)(2) establish the parking facility design and related requirements for parking facilities of this size. The proposed layout indicates eight (8) standard and one (1)

handicapped parking stall and a driveway system conforming to applicable dimensional requirements.

6. *Section 30-19(i)* establishes the perimeter and interior landscaping requirements applicable to parking lots. While perimeter landscaping is required for a parking facility having more than 5 parking stalls, interior landscaping is not required unless a parking facility has 20 or more stalls. The Planting Plan submitted by the applicant suggests the perimeter screening requirements appear to be satisfied. The applicant has also provided information pertaining to compliance with the Tree Ordinance and is responsible obtaining such approvals as necessary from the Tree Warden.
7. *Section 30-19(j)(1)* establishes illumination requirements applicable to parking lots of this size. As the submitted Site Lighting Plan indicates parking lot lighting levels less than the 1 ft.-candle requirement, this will necessitate a waiver from the Board of Aldermen per Section 30-19(m). In addition, the synagogue is responsible for meeting the requirements of Ordinance X-142, *Light Ordinance*, as set out in sections 20-23 through 20-28 pertaining to light trespass and light pollution in relation to the parking area as well as to lighted stair and patio areas.
8. *Sections 30-19(k) & (1)*, establish the applicable bicycle parking and off-street loading requirements, respectively. Although proposed plans indicate fewer than 20 parking stalls, and not triggering the requirement for bicycle spaces, two bicycle parking spaces are provided. In addition, as proposed plans show a building with less than 50,000 sq. ft. of gross floor area, off-street loading requirements are not applicable.
9. *Section 30-20* establishes the requirements pertaining to signs. The applicant has elected not to address signage at this time. Should the applicant wish to obtain signs in the future, it is the responsibility of the applicant to meet the applicable sign provisions of this section, including sign permitting procedures.
10. Records indicate that the existing single family structure at 349 Dedham St. was originally built circa 1820s and is considered a historic resource within the City. While the Record of Action dated October 29, 2004 of the Newton Historical Commission found this property in the category of Preferably Preserved, the demolition delay period expired on October 28, 2005. As noted above, the applicant intends to demolish the structure and build the subject synagogue in its place.
11. It is noted that some submitted plans lack the respective stamps and signatures of applicable registered professionals preparing the plans and certifying required calculations. The applicant is responsible for providing stamped and signed plans not later than at the time of filing their petition for special permit with the Clerk of the Board of Aldermen.
12. See "Zoning Relief Summary" below.

<i>Zoning Relief Summary</i>		
<i>Ordinance</i>	<i>Building</i>	<i>Action Req</i>
	See variances, below	
	<i>Parking</i>	
30-9(d)(10)&(13) 30-19(d) 30-19(m)	Approval of waiver to allow applicant to reduce required parking from 70 spaces by 61 spaces to net total 9 spaces.	X

Ordinance	Zoning Relief Summary (cont.)	Action Req
	Parking cont	
30-90)(1) 30-19(m)	Approval of waiver to allow applicant to reduce parking lot lighting level below 1 ft.-candle.	X
	Signs	
30-20	Signs not proposed at this time.	N/A
	Site	
30-23	Approval of Site Plan and Planting Plan	X
	Special Permit	
30-24(d)	Approval of Special Permit.	X
	Variances ZBA	
30-15, Table 2	Variance to reduce side setback from 20 ft. to est. 15 ft. to allow the multi-level roof-covered stairs from the basement to the upper level.	X
30-15, Table 2	Variance to reduce side setback from 20 ft. to est. 10 ft. to allow the external stairs leading from the parking area level to the side yard and any further reduction to the extent necessary pertaining to new walls.	X
30-15, Table 2	Variance to increase FAR from 0.2 to approximately 0.36.	X

Plans reviewed:

- Plan titled "Plan of Land in Newton, MA, 349 Dedham St., Preliminary", dated Nov. 28, 2006, prepared by Everett M. Brooks Co., Surveyors and Engineers, 49 Lexington St., West Newton, MA 02465, stamped and signed by Bruce Bradford, Professional Land Surveyor.
- Plan titled "Plan of Land in Newton, MA, 349 Dedham St.", dated Nov. 28, 2006, last revised 2/27/07, prepared by Everett M. Brooks Co., Surveyors and Engineers, 49 Lexington St., West Newton, MA 02465, stamped and signed by Bruce Bradford, Professional Land Surveyor.
- Plan set titled "Beth Menachem Chabad, 349 Needham St., Newton, MA", dated 12/8/06, prepared by Fine Associates, 192 South St., Boston, MA 02111, stamped and signed by Albert D. Fine, registered architect consisting of the following:
 - Dwg. AS 1.01 – Architectural Site Plan, Roof Plan
 - Dwg. A 1.01 – Lower Floor Plan
 - Dwg. A 1.02 – Upper Floor Plan
 - Dwg. A 2.01 -- Building Elevations
 - Dwg. A 2.02 -- Building Elevations
- Plan titled "Beth Menachem Chabad, 349 Needham St., Newton, MA", Drawing #AS 1.02, Site Lighting Plan, dated 12/08/06, prepared by Fine Associates, 192 South St., Boston, MA 02111, bearing no stamp or signature of a registered professional.
- Plan titled "Beth Menachem Chabad, 349 Needham St., Newton, MA", Drawing # L-1, Planting Plan, dated 3/2/07, prepared by Fine Associates, 192 South St., Boston, MA 02111, and Ray Dunetz, Landscape Architecture, 12 Pond St., No.1, Boston, MA 02130, bearing no stamp or signature of a registered professional.

106.07

August 6, 2007

THE HONORABLE MAYOR DAVID COHEN AND THE
HONORABLE BOARD OF ALDERMAN OF NEWTON, MA

GENTLEMEN:

I am writing this letter as a very concerned neighbor of the planned Chabad at the intersection of Dedham Street and Rachel Road.

My home is contiguous to the abutter on Rachel Road.

I view the FAR and parking waivers sought by the Chabad to be of a very destructive and dangerous nature.

I have lived in my home since 1962 and have helplessly watched as the area has been continually urbanized and made more dangerous and less accessible.

When I moved in, Rachel Road was not even a through street – never mind the main thoroughfare and speedway which it has become.

I welcome the Chabad as neighbors and I wish them great comfort and success in their new facilities. However, I do hope that they will be held to city and state requirements regarding the bulk and height of structures to be built, yard sizes, lot areas, setbacks, open space, parking and building coverage requirements.

Esthetically, I do not wish to see the suburban nature of the area lost to a large overbuilt facility intended to handle many more members than those currently in the Chabad. One should bear in mind that the Chabad does not have much of a track record for predicting their expansions. In a Boston Globe article on May 6, 2004 the synagogue officials were quoted as saying that they did not expect the size of the congregation to grow significantly beyond the 15 - 20 members then in the congregation. Obviously, if they are now seeking to build a 12,000 square foot facility, there has been considerable expansion of the membership or conversely, if the congregation has held to size, then such a large expansion is clearly unnecessary.

Forgetting the esthetics and the opportunity for the quiet enjoyment of one's property, however, the matters of public safety are far more serious.

As noted above Rachel Road has become a major connecting road and often a raceway. It is frequently quite difficult to leave one's driveway and enter the stream of traffic even when there is only occasional parking on the street. The presence of scores of cars on Rachel and nearby streets will make visibility and congestion far worse and will, beyond doubt, cause some serious accidents. One of my neighbors has brought to your attention the plight of our school children in the area and the extreme dangers to which they are exposed when attempting to cross Rachel Road at Dedham Street; similar conditions exist all along Rachel Road. Surely you cannot believe that the addition of scores of cars belonging to the Chabad members will not exacerbate the problems.

2007 AUG 6 1 PM 4:43
CITY CLERK
NEWTON, MA 02159

Another neighbor has appealed to you because of her disability and her need to have good access to the street through her driveway, so that she can receive aid when necessary. The addition of many Chabad cars will surely bring this lady no improved safety and comfort.

There has been much said about the fact that Orthodox Jews do not drive their vehicles on Friday night and Saturday. This is quite true- however the use of the facility will surely not be confined to those periods- the orthodox also engage in daily prayer both morning and afternoon. It seems likely that some, perhaps many will drive to morning , afternoon and evening services. Moreover, there will be other types of events at the facility and one may rest assured that the presence of the Chabad cars will have a serious impact on the neighborhood if the requests for waivers are granted !

I am also quite aware that in the past, this same Chabad has played the "anti-semitism card" to fight the city. (Boston Globe - December 21, 2003- January 18, 2004 - June 6,2004). It must be clear to you that this is a tactic; no governmental group need be cowed by such public pronouncements. The citizenry understands these matters quite well and can differentiate between the defiant acts of groups seeking privileges far beyond their rights and legitimate discomfort with religious intolerance.

As I said earlier, I personally welcome the Chabad as neighbors. I would fight for their right to religious freedom of expression with the same fervor I have fought to defend my country. They had every right to buy this property and use it for religious purposes. However they do not have any "right" to the waivers requested and I strongly urge that for the benefit of all concerned, these waivers and special requests be denied.

I thank you for your concern and your attention.

Sincerely yours, Edward M Levin 34 Rachel Road Newton Center, MA

106-07

To:
The Board of Aldermen
The Land Use committee

From:
Susan Abookire; Chris Peckins; Roz Frim; Marshall and Barbara Matorin; Leon
Marion Semonien; Ben Blout; Janis and Stanley Miller

Date: August 07, 2007
RE: Proposed Chabad at corner of Dedham and Rachel Road

2007 AUG 10 PM 3:21
CITY CLERK
NEWTON, MA 02459

We are writing as concerned neighbors to the site of the proposed Chabad at the corner of Rachel Road and Dedham Street.

We respect the right to religious freedom, and believe it can be done while respecting the rights to safety, privacy, and respecting the general character of the neighborhoods in which this freedom is exercised. We feel this proposal goes beyond those limits.

The petitioners propose a 12,000 square foot structure which would seat 200 people. This is roughly a quadrupling in size of their present location, yet most of the predictions of usage requirements seem to be based on a doubling in size of the present congregation. If the Chabad wishes to double in size, then such a large structure, with the attending waivers of FAR, setback, parking, etc is seemingly not needed. If the Chabad does wish to possibly grow to require the full capacity of the proposed building, we would like to see usage predictions based on full utilization.

Proposed Building:

We feel that the architectural design is out of keeping with the neighborhood. The size, density, and footprint of this structure would overwhelm the ability of this neighborhood to survive with a residential character. The evolution of Rachel and Dedham is one from a quiet street, to a cut-through, to what is now a densely trafficked area of fast moving vehicles both on Rachel and Dedham. The current level of risk to pedestrians and drivers is at this intersection is at the tipping point. Further stress with a huge structure and overflowing parking needs poses danger that is unacceptable.

The proposed structure is nearly 4 times the size of immediately adjacent homes. In addition, large events will require food trucks, dumpsters, ongoing food deliveries, and up to 200 people.

Parking:

The scope of the proposed structure and use calls for 70 parking spaces. A request to waive 61 parking spaces is unrealistic. The magnitude of the request is indicative of the inappropriateness of the scope of this project to this neighborhood.

As an example of how our intersection is challenged by traffic, neighbors frequently have called local police to park a vehicle near this corner so that their presence might calm traffic during morning and afternoon commuting hours.

The Chabad petitioners remind us that due to their religious restrictions, cars will be minimized for the 24 hours of Sabbath each week. Also proposed are morning services, afternoon services, classes, a school, and Life Cycle Events. Morning services will break out just at the time all of the schoolchildren are walking to school. The school bus that presently stops at the corner of Rachel and Dedham at that time of morning is already a risk, as cars swerve around it to get around the corner with the resulting limitations on visibility.

The petitioner hopes to use Countryside school for overflow parking at large events. We are concerned there will be little incentive for individuals to park a half-mile away at Countryside and wait for a shuttle to bring them up the hill, when they could simply park along our residential streets.

Estimates from the petitioner claim that few parking spaces would be required during different times of the week. These estimates seem inconsistent with the usage needs estimates used to request setback and FAR variances.

Inconsistencies:

The petitioners propose a need for a 12,000 square foot structure which would dwarf, by a factor of 4, neighboring homes. It is particularly alarming that arguments posed to justify this need are contradictory to the arguments posed to justify a waiver of 61 parked cars. In fact, many of the arguments posed to waive the parking needs dismiss the usage needs as unrealistic. We are deeply concerned with the inconsistent arguments that suggest, on the one hand, that the sizable structure serves a necessary hardship to be granted waivers of 1) FAR, 2) setback, 3) parking, but on the other hand, one can simply dismiss the parking needs, as not really valid or needed.

Life Cycle Events

We understand that the petitioners suggest that Life Cycle Events such as weddings, bar mitzvahs, funerals, and other life cycle events will only happen 3 or 4 times a year. For a congregation that requires capacity for 200 people, we would like to know on what basis would these estimates be made. We'd like to know whether there are other congregations of this size, and if so how many life cycle events occur annually? Among our small group of neighbors alone, we count more than four such events that have occurred in our families this past year.

Specifically, we request either a reasonable benchmark for the number of Life Cycle Events among the proposed congregation size, or a requirement that there be a permanent requirement that these large scale events be limited to the proposed estimate of four annually.

As pointed out by Clint Schuckel in his memo to the Board on June 19th: “The Fine memo indicates that there are approximately 6 holidays, 12 ‘life cycle’ events, and 12 other events during the year, where 150 or more persons will visit the site. Thus, there are as many as 30 events per year where an unknown amount of parking could occur on adjacent streets.”

Accountability:

We would like to see accountability for enforceable limits on building use and parking. Introducing a structure such as this that will permanently alter this neighborhood ought to require more than an estimate that is not based on any analysis, and that seems low when discussing parking, but high when justifying requests for this size of the structure.

Public Safety

Of greatest concern is public safety. The schoolchildren who need to cross Rachel and Dedham on their paths to Countryside, Brown, and Newton South presently dart quickly to cross the street in constant and heavy traffic. Much of the traffic is turning quickly and dangerously around the corner to speed down Rachel Road. Safety is an issue for adults. Putting children and pedestrians at further risk is irresponsible.

Feasibility:

One aspect to this scope of structure that simply does not seem feasible at this intersection relates to getting in and out of driveways. Several neighbors have declared that they will simply be unable to exit their driveways with the addition of parked cars near this corner.

Presently, abutters endure daily difficulties getting out of their driveways due to heavy traffic on Dedham Road. There is no further traffic capacity at this intersection. The safety issue is at its worst at this very corner because of the traffic that whips around the corner from Dedham onto Rachel (or Rachel onto Dedham.) Adding parked cars to this situation would worsen visibility.

Privacy:

The proposed structure seemed to place little value on the need for privacy among the neighbors. It is not acceptable to create an environment where the abutters no longer have privacy in their own homes. This structure directly abuts quiet back yards.

Direct abutters and others expressed a deep concern about the auditory and visual encroachment of such a large and active center. They request thick and tall insulating barriers of walls, thickets and trees to protect their own right to enjoyment of their property. There are concerns about delivery vehicles, garbage dumpster and recycling trucks with loud engines, exhaust, and back-up sirens disrupting the quiet harmony of the neighborhood. There should be some accountability to ensure privacy measures are put into place.

Density and Noise:

Life Cycle events are natural, but when their celebrations spill directly into the backyards of residents, they threaten to disturb the peace. Given the extreme proximity of this proposed structure directly into the quiet back porches and yards of neighbors, it is likely that these events will repeatedly represent an unwarranted disturbance.

Neighbors:

Of particular concern to several of the neighbors are statements given by the petitioner that the neighbors are in support and agreement of these plans. Several neighbors take offense at this misrepresentation. There has been a persistent lack of sharing of proposed plans. We emphatically do not support the scale, the parking waivers, the setback waivers, and the lack of privacy and screening concerns.

We respectfully request that you allow for a Chabad in a manner that also protects the basic characteristics of the neighborhood.

Thank you.

126.07

To:
The Board of Aldermen
Mayor David Cohen

From:
Ellen and Charles Lipson
5 Malubar Lane

August 9, 2007

2007 AUG 10 1 PM 12: 21
CITY CLERK
NEWTON, MA. 02159

We have seen plans for the Chabad on the corner of Dedham Street and Rachel Road and have a number of concerns about the effect upon the neighborhood as the plans are now constituted. We therefore propose that construction by the Chabad be subject to the following conditions that will mitigate its effect upon the neighborhood.

1. Require on-site parking for at least 15 cars.
2. Reduce the footprint of the building to no more than 8,000 square feet, more than three times their current building. This would leave more space for parking and make the building less intrusive.
3. Change the design of the building so that it looks more like a large home rather than the edifice that is proposed on the plan that we saw.
4. Require a sound barrier with landscaping be built at the rear and side of the property where it abuts the nearest neighbors.
5. Delay construction until the city traffic engineer devises changes in traffic patterns and parking rules to mitigate the current and future traffic nightmare.

106-07

MEMORANDUM

TO: LAND USE COMMITTEE
BOARD OF ALDERMEN

Cc: Board of Aldermen, City Traffic Engineer

FROM: Mitch Fischman, Alderman at large, Ward 8

DATE: August 28, 2007

SUBJECT: Petition #106-07
349 Dedham Street-Chabad Special Permit Petition

2007 AUG 29 PM 2:02
CITY CLERK
NEWTON, MA 02459

I will be on vacation when the Land Use Committee next meets on Thursday, September 6th to continue its discussion on the Chabad petition at 349 Dedham Street. It is expected that the Planning Department will provide comments on the open questions regarding the possibility that a religious school might be established at the site in the future, either after school or on weekends. As many of you know, the Petitioner has been unwilling to agree to a condition precluding such a use in a Board Order, and the Committee and Planning Department are concerned about such a possible impact on the neighborhood. There is also a need to further address the Petitioner's Parking Management Plan to deal with events where there is more than 20 cars expected at the site (for life cycle and other special driving-time events). Finally, while parking is currently allowed on adjoining Dedham Street and Rachel Road, there may be a need to limit parking on one side of Rachel and limiting parking on Dedham as it is a major traffic carrier and a lot of parked cars may present safety concerns.

Key issues as yet unaddressed by the current petition:

1. Sufficiency of Parking On-Site: At present only eight spaces plus one handicap space is proposed and parking demand estimated by the Petitioner is up to 20 spaces before a Parking Management Plan is required and cars are diverted to an off-site location (Countryside School or other locations). The on-street parking is generally unrestricted and the neighborhood obviously can tolerate some parking on local streets, but is it fair to ask neighbors to absorb 10 or more additional cars on a daily basis? The Planning Department will indicate in its memo to the Committee that 20-22 cars could be parked on both sides of Rachel Road between Dedham Street and Mosely Road and Dedham Street could absorb more parking, but there are safety concerns along Rachel and Dedham, and how would this additional parking impact the quality of life of nearby residents?

One possible answer would be to accommodate more automobiles on site. The internal and site impacts, however, could lead to more pavement and less landscaping, maybe even new retaining walls or fences. While the Petitioner clearly can ease this parking condition (and waiver request) by reducing the size of its facility or amount of uses/activity proposed, the Inspectional Services Commissioner responded to the Petitioner's Counsel on August 8, 2007 and has accepted the FAR request indicating that "it is most reasonable therefore to grant a Dover Amendment waiver for the FAR of 0.36 (from the 0.2 maximum permitted under existing zoning) rather than subject the applicant to a redesign..."

Clearly, to suggest more parking on site could lead to tradeoffs as to whether the building and limited parking area appearance would fit-in with the neighborhood from a design or massing viewpoint vs. on-street parking spilling over onto nearby residential streets causing safety and other concerns.

When the possibility of an after school religious program is added into the mix of possible future activities, the question of additional short-term spaces and drop-off and pick-up queuing concerns will further complicate the parking and traffic issues in front of the Committee. The neighbor across Rachel Road at 5 Malubar Lane suggested in an August 9th letter to the Committee that on-site parking be increased to at least 15 cars.

2. Parking Management Plan: As of this date, the Petitioner's August 3rd Draft Outline of a Parking Management Plan that was part of the August Working Session discussion is still unchanged and would seem to need further input from the city's traffic engineer and planners. A key omission is the lack of a designated parking manager on site to be responsive to the parking requirements for Life Cycle events and a designated person who can do follow-up with the neighbors in case of problems. There are also a number of proposed mitigation measures such as the use of congregants' driveways for other congregants when the demand onsite exceeds nine spaces during Shabbat and Yom Tov. Clearly, the draft outline needs to be beefed up and finalized for the Committee. Finally, while we have heard from the Associate City Solicitor that Countryside parking would be available, there is neighborhood concern about conflicts with week-end sporting events and use of the fields that may be impacted by Chabad's Life Cycle events.
3. Landscape Buffers: Neighbors at the rear and across Rachel Road are concerned about sound movement and increased landscaping in the site plan. The neighbor at 5 Malubar Lane even suggested some form of sound barrier in areas where it abuts the nearest neighbors.
4. Potential Traffic Council Actions: The neighbors are naturally concerned about parking impacts on Rachel Road and Dedham Street, crosswalks, and safety for pedestrians (both children going to Countryside and adults crossing Dedham Street). Some of these issues require Traffic Council action which normally doesn't take place until a problem is demonstrated in "real time". However, an

issuance of a special permit without such concerns addressed would open the neighborhood to potentially significant safety issues. One of the neighbors suggested delaying construction until changes in traffic patterns and parking rules are introduced. While this may sound harsh, in that the Chabad is not responsible for the present "traffic nightmare," might it be reasonable to relate curbside parking policy changes to the granting of a Certificate of Occupancy.

Again, I am sorry I am unable to be in attendance at the September 6th Land Use Committee meeting, and would be happy to elaborate on these points when I return.

Mitch Fischman

CHABAD-LUBAVITCH, INC.

PARKING MANAGEMENT PLAN

DRAFT OUTLINE

Introduction

This Parking Management Plan is designed to address and establish uniformity in maintaining the availability of parking for the various anticipated uses of the synagogue. The Congregation recognizes that its location in a residential neighborhood, and its reliance upon neighborhood on-street parking from time-to-time, imposes upon it special neighborly obligations and responsibilities. Chabad takes seriously those obligations and responsibilities.

General Management of the Parking Plan

The Congregation shall designate two congregants to serve on the Neighborhood Council, one of whom shall be designated as the Congregation's Parking Manager. Upon such designation the Congregation shall notify the Principal of the Countryside Elementary School and the members of the Neighborhood Council of the name and phone number of the Parking Manager.

The Parking Manager shall be responsible for the successful implementation and enforcement of this Parking Management Plan. This includes but is not limited to:

1. Arranging for shuttle service by van or bus to and from the Countryside Elementary School Parking Lot when required by this Parking Management Plan;
2. Serving as the congregation's community contact person to respond to any neighborhood concerns about traffic and parking problems;

3. Developing and maintaining a current list of congregants living near the synagogue whose driveways may be used for overnight parking on Shabbos and Yom Tov and communicating their availability to the Chabad congregation; and

4. Communicating regularly with the congregation concerning the need to remain sensitive to neighborhood concerns regarding on-street parking, by, among other things, using the synagogue's parking lot whenever it is available, not parking overnight on neighborhood streets, informing the congregation of the availability of nearby public transportation (e.g., MBTA Bus Route #52), and generally encouraging congregants to walk to the synagogue.

Parking for Daily Services and Weekly Classes

Chabad's parking lot can hold up to 9 cars. Congregants are encouraged to park on-site whenever possible. Our own parking lot should provide enough parking most of the time for our daily services and weekly classes. However, should parking spill over to neighborhood streets, Congregants are reminded to show respect to our local neighbors. Recognizing that it can be an annoyance to some homeowners to have cars parked in front of their homes regularly, Congregants are requested to avoid the temptation of always parking as close as possible to the synagogue. Please use different locations and different streets, so that our closest neighbors will not feel burdened or imposed upon by our location in the neighborhood. Please do not simply switch places with each other from week to week but make a concerted effort to spread out your cars. Please remember that, for some people, having a car parked in front of their house for an extended period is

fine perhaps one or two days a month but it may feel like an imposition if it is even as often as once a week.

Shabbos and Yom Tov

Congregants and guests are welcome to use our parking lot for overnight parking over Shabbos and Yom Tov. We will close our parking lot at the beginning of Mincha on Erev Shabbos/Yom Tov, and we will reopen it upon the conclusion of Maariv on that Motzei Shabbos/Yom Tov. Congregants who wish to leave their cars in our parking lot overnight on Shabbos or Yom Tov should notify the Rabbi at least one full day in advance. Normally, there should be plenty of space in the driveway, but if the demand exceeds our 9 parking spaces, many of our congregants who live nearby are willing to offer the use of their driveways for this purpose. The Parking Manager maintains a current list of available driveways. Congregants from outside our immediate neighborhood should never leave their cars on neighborhood streets during Shabbos and Yom Tov.

Larger Events and Functions

Whenever it is anticipated that more than 20 cars will be drawn to an event or function at the synagogue, special procedures must be undertaken, as permission must be obtained to use the Parking Lot at the Countryside Elementary School. Under no circumstances may a life-cycle, congregational or community event be scheduled at the synagogue, in which we reasonably anticipate that more than 20 cars will be driven to the synagogue, without first ascertaining the availability of the Countrywide Elementary School Parking Lot and following the procedures set forth below.

First, Chabad must contact the office of the Principal of the Countryside Elementary School and the Department of Parks and Recreation to ascertain the availability of the Parking lot for the number of spaces that are needed and to request permission for the use of those spaces on the particular date and times.

Second, once the availability is confirmed and permission is granted, the event or function may be scheduled. If the Parking lot is not available, the event shall be rescheduled (with the exceptions of religious holidays or a funeral) to a time when the Parking lot is available.

Third, either Chabad or the sponsor of the event must arrange for shuttle transportation service between the Countryside Elementary School Parking Lot and the synagogue for the duration of the event or function.

Fourth, to the fullest extent possible, congregants and guests should be encouraged to use the Countryside Elementary School Parking Lot for the event or function and not to park on the streets nearby the synagogue.