

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 13, 2007

Present: Ald. Fischman (Acting Chairman), Ald. Albright, Hess-Mahan, Vance Samuelson, Harney, and Merrill; absent: Ald. Mansfield
City staff: Candace Havens (Chief Planner) and Linda Finucane (Chief Committee Clerk)

The Committee held Public Hearings, after which it met in working session to discuss the following petitions.

A Public Hearing was held on the following item:

#275-07 DENNIS & SVETLANA MIRVODA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter by more than three feet the existing contours of land to install a retaining wall at 121 HARTMAN ROAD, NEWTON CENTRE, Ward 8, on land known as Sec 82, Blk 15, Lot 45, containing approx 10,424 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-5(b)((4) of the City of Newton Rev Zoning Ord, 2001. **(Hearing opened 10/9; continued to 10/16; and continued to 11/13)**

ACTION: HEARING CLOSED; ITEM HELD

NOTE: The public hearing for this petition was opened October 9. At that hearing, Engineer Richard Volkin of Rav Associates, engaged by the petitioners in January 2006, presented the petition. He explained that when the petitioners purchased this property in 2005 there was a two-foot retaining wall close to the house because of the very steep hill to the rear. The petitioners hired a landscape contractor to move the existing retaining wall closer to the hill to gain more back yard. After a week, in which the over-zealous landscape contractor installed a poured concrete wall, Inspectional Services received a complaint and issued a Stop Work Order. The petitioners said that neither they nor the landscape contractor knew that a building permit, let alone a special permit, was necessary. They indicated that no work has been done on the wall since then, although it appears that another Stop Work Order was issued in July of 2007. The petitioners have installed a chain link fence to prevent people getting near the slope.

The petitioners are proposing to install a segmented interlocking wall designed in two- to eight-foot segments. The material is concrete block that looks like stone. The segmenting holds the weight of the slope with in place with no major foundation, only approximately one-foot of crushed stone. The slope will be secured, planted, and stabilized. Plywood will shore up the wall during construction. Mr. Volkin said that there are existing trees on the slope, but additional landscaping will be installed. He noted that the he has stamped the design plans, but not the proposed materials.

Comment:

Lana Prokupets, of 115 Hartman Road, which abuts #121 to the right, said that the properties are divided by a retaining wall. Noting that this excavation began two years ago, she asked that any more excavation be avoided. Prior to installation of the wall, there was a small slope on the property line.

A resident of 127 Hartman Road –had no objection....a rear wall has always existed on this site.

The Chairman asked about a proposed addition to the house shown on the plans. Originally, planning to construct additions to both sides of the house, they can now only build on the left side because of the yard. The petitioners explained that they relied on the landscape contractor and that one reason this had taken so long was that they tried to resolve the issue with him. Alderman Hess-Mahan pointed out that this is a problem with the current three-foot grade change ordinance, i.e., that people think or are told that it is okay to build tiers, not realizing that it could result in a cumulative nine-foot grade change, or more.

The Committee asked that the City Engineer and Commissioner of Inspectional Services attend the next meeting. Because there was some confusion about dates of events including when the petitioners actually purchased the property and when excavation began, the Committee asked the petitioners to clarify the dates of events by providing a written timeline.

Alderman Fischman suggested continuing the public hearing, but wondered if the Committee should act quickly in case this is a potentially dangerous condition. He made a motion to continue the hearing until Tuesday, October 16, which motion carried unanimously.

On October 16, Commissioner of Inspectional Services John Lojek and Associate City Engineer John Daghlian attended the continued public hearing. They clarified questions about the history and status of this project, as well as safety concerns about the stability of current conditions and the impact of the proposed project on neighboring properties. Abutter Lana Prokupets of 115 Hartman Road presented suggested revisions to the plans, but the petitioner's engineer was not present. Because the Committee wished to see and review revised plans, it continued the hearing to November 13.

At the continued public hearing this evening, November 13, Mr. Mirvoda explained that his engineer Richard Volkin had submitted to the Planning Department revised plans consistent with the description of an interlocking wall system. Chairman Fischman noted that an October 25 site visit to 121 Hartman Road, attended by himself, Aldermen Vance and Hess-Mahan, was helpful in understanding the site issues. Alderman Hess-Mahan expressed concern that the Committee had not received the revised plans. Ms. Havens said she would review the plans with the Committee in working session.

Lana Prokupets of 115 Hartman Road said that Mr. Volkin mailed the revised plans to her, but he has not responded to her remaining concerns relative to the location of the

proposed wall and the already excavated portion of the property. Mr. Mirvoda said that Mr. Volkin was out of the country.

Ms. Havens explained that the revised plans, reviewed by the Planning and Engineer Departments, indicate no further excavation, but show a new retaining wall constructed in front of the existing non-compliant wall. The old wall will be removed and the space between backfilled. However, a landscaping plan has still not been submitted.

Alderman Harney introduced a motion to close the public hearing, which motion carried unanimously.

In this evening's working session following the close of the public hearing, Ms. Havens recommended that if this petition were approved tonight that the special permit be conditioned on receipt of a landscape plan; height of the wall shown to determine if a fence is necessary; and, a plan showing the stone facing proposed for the wall.

After a brief discussion, the Committee agreed it did not feel comfortable approving the petition without having the revised plans completed and reviewed. Alderman Samuelson suggested to Mr. Mirvoda that he withdraw the petition and re-file it when his engineer completed the revised plans or she would move denial. Mr. Mirvoda agreed to do so and the Committee held the item in the expectation that a request for withdrawal will be received in time for a vote at the November 19 full board.

#300-07 SANDRA MAYER/KENMORE REALTY CORPORATION petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE relative to the required number of parking spaces, design, layout, landscaping, lighting, handicapped parking in a parking facility associated with the location of a massage service establishment in an existing storefront at 1290-1294 WASHINGTON STREET, Ward 3, WEST NEWTON, on land known as Sec 33, Blk 10, Lot 3 in a district zoned BUSINESS 1. g

ACTION: HEARING OPENED AND CLOSED; WITHDRAWAL WITHOUT PREJUDICE APPROVED 7-0

NOTE: Subsequent to the first advertised legal notice of this petition on October 30, the Planning Department determined in a memorandum dated November 7, based on the proposed use and the parking requirement calculations, that this use would generate a parking requirement of one (1) parking space. As of this date, this would still leave a parking credit of four (4) parking spaces for the entire property. While a change of use in the future could trigger the need for special permit, but it would not be necessary at this time. Attorney G. Michael Peirce submitted a letter requesting to withdraw the petition without prejudice.

The public hearing had to be opened because of publication of the legal notice. There was no public testimony; and the public hearing was closed. In working session, upon a motion by Alderman Albright, the Committee voted 7-0 to approve withdrawal without prejudice.

#278-07 NOURIA ENERGY/CID REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE to convert an existing gasoline service station to partial self-service station (retaining two full service pumps); to expand snack sales; and to install as part of re-branding “Shell” a free-standing sign and canopy signs at 979 WATERTOWN STREET, WEST NEWTON, Ward 3, on land known as Sec 31, Blk 16, Lot 15, containing approx 17,376 sf of land in a district zoned BUSINESS 1. Ref: 30-24, 30-23, 30-21(b), 30-20(l) of the City of Newton Zoning Ord and special permit nos. 501-64, 394-70, 11-93(4).

ACTION: APPROVED 7-0

NOTE: The public hearing on this petition opened and closed on October 9. Attorney G. Michael Peirce represented the petitioners. The existing service station was constructed in 1964 (BO #501-64), but a gas station with associated repair uses has existed on this site prior to the enactment of zoning in 1922. In 1951, the site was placed in a Business 1 zone, which made the use non-conforming. Two additional special permits, nos. 391-70 and 677-73, granted a freestanding sign, two pump aisles, and other site improvements. Board Order #11-93(4) approved a self-service aisle with a new canopy and three (3) vending machines for the sale of snacks, and a second freestanding price sign. This petition, stemming from a re-branding of the station to “Shell,” seeks to convert an additional aisle to self-service, while retaining one full-serve aisle and the 3-bay auto repair component, and to replace the 3 vending machines with 3 coolers, a freezer, several racks, and a counter. There is an existing ATM on-site as well. The petitioners are also seeking to relocate two existing walls signs to the existing freestanding sign and to add two ‘Shell’ wall signs on the canopy. The proposed modified freestanding sign, 49.7 square feet and 20 ft. high, will exceed the height and size requirements of the ordinance. The Planning Department recommends consolidation of the existing signage on site. All non-compliant portable advertising signs should be removed as well. The Chairman questioned the classification of signs on a canopy as wall signs, not as freestanding signs. The Committee was concerned that it again was being asked to legalize after the fact unauthorized changes made to a site, e.g., a third self-service island, existing snack sales, etc. Mr. Peirce acknowledged that most of the site changes should have come through the special permit process, but the owners are here now to rectify the situation. He submitted a letter from the operator of the station, who has been leasing it for the last eight years and who said he was unaware of the restrictions on the site.

Members of the Committee noted that there are considerable differences between this gas station and the one proposed by Hess for Commonwealth Avenue. Alderman Hess-Mahan pointed out that the landscaping required in prior Board Orders has deteriorated. Alderman Fischman asked that condition 5 in Board Order 11-93(4), relative to site lighting, be addressed for the working session.

There was no public comment. Alderman Merrill motioned to close the hearing, which motion carried unanimously.

This evening, November 13, Ms. Havens reviewed with the Committee the landscaping plan submitted by Attorney Peirce; the site lighting; and, the signage, existing and proposed.

Landscaping: A narrow planter along Watertown Street has been paved over and other site plantings and shrubs have died. Mr. Peirce said, and Alderman Hess-Mahan confirmed, that the planter was run over and that perhaps Watertown Street was not the best location for a planter because it was located between two paved areas. The Planning Department recommended that it not be replaced in the same location. Mr. Peirce tonight submitted a new landscape plan that includes approved plant materials contained in Board Order #11-93(4) and replacement plantings for the other existing planters on site. Alderman Hess-Mahan recommended that the Board Order include a condition requiring that the plantings be maintained or replaced.

The petitioners indicate that the site lighting is consistent with that approved and installed pursuant to Board Order #11-93(4). Ms. Havens said that she visited the site in the evening and observed that the lighting does not spill over from the site. She paid particular attention to where the property borders Eden Avenue.

A suggestion that one of the proposed canopy signs be oriented towards Watertown Street was reviewed and the Planning Department and petitioners agreed that signs on the east and west sides of the canopy would be seen and identify the site better. The pricing and service center information will be incorporated into one freestanding sign and all other temporary signs will be removed, except the sign authorized and required by the State exempt from the City's sign ordinance that identifies the station as authorized to perform auto inspections. The Committee did not discuss the Planning Department's suggestion that it might wish to lower the proposed modified freestanding sign to 16 feet.

Alderman Hess-Mahan moved approval of the petition as proposed finding that the conversion of one full-service aisle to self-service for a total of three self-service aisles and one full-service aisle and the addition of a snack bar that will serve primarily customers using the three existing service bays is not substantially more detrimental than the existing operation and that consolidating the existing signage, eliminating the visual clutter currently on-site; and improving the sparse non-compliant landscaping will serve the public convenience and welfare. Alderman Hess-Mahan proposed adopting the Planning Department's recommended conditions as well as one that stipulates maintaining/replacing the landscaping. The motion to approve carried 7-0.

All other items were held without discussion and the meeting was adjourned at approximately 10:50 PM.

Respectfully submitted,

Mitchell L. Fischman, Vice Chairman