

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 20, 2007

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

Absent: Ald. Fischman and Vance

Also present: Ald. Sangiolo, Gentile, and Parker

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

#302-07      LEWIS J. MILLER & ANNETTE FURST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter by more than three feet (maximum 12 feet +/-) the existing contours of land to construct a single-family dwelling including a garage exceeding 700 sf at 62 CARLTON ROAD, Ward 5, WABAN, on land known as Sec 55, Blk 14, Lot 6, containing approx 28,077 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-5(b)(4) and 30-8(b)(7) of the City of Newton Zoning Ord, 2001.

**ACTION:**      WITHDRAWAL WITHOUT PREJUDICE APPROVED 6-0

**NOTE:** The Public Hearing on this petition was opened on November 13 and continued to November 20, when it was closed. The petitioners, who own both 60 and 62 Carlton Road, combined the two lots, filed an Approval Not Required (ANR) subdivision plan, and are seeking a special permit for a grade change in excess of 3 feet to construct a single-family home at #62 Carlton Road, where there is an existing tennis court. The properties abut Kettle Pond and this proposal was the subject of a hearing in the Conservation Commission, which on October 25 determined the proposed house would have no impact on the abutting wetlands and issued a negative determination.

There were a number of speakers at the public hearing on November 13 and several questioned whether #62 was actually a buildable lot, since the City's Assessing Department classifies it as "unbuildable." Many speakers were concerned that the public hearing notice from the City was the first they heard of this proposal. Upon a motion by Alderman Harney, the Committee continued the public hearing to November 20.

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This evening, to allow the petitioners to meet with abutters and because of an apparent discrepancy relative to the lot line on the site plan submitted with the special permit application, Bernard Shadrawy, attorney for the petitioners, verbally requested to withdraw the petition without prejudice. The Committee voted 6-0 to close the public hearing and to allow the petition to be withdrawn without prejudice. (A letter was

received from Mr. Shadrawy on November 21.) It is expected the petition will be refiled when the lot dimensions are confirmed.

#301-07        TIMOTHY A. & CARRIE R. BURR petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter by more than three feet the existing contours of land to extend the driveway; provide an accessible back door entrance and patio and stairs to an upper terrace at 42 HUNTINGTON ROAD, Ward 1, NEWTON, on land known as Sec 72, Blk 36, Lot 6, containing approx 11,180 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-5(b)(4) of the City of Newton Zoning Ord, 2001.

ACTION:        APPROVED 6-0

NOTE: The public hearing on this petition was opened and closed on November 13. Attorney Jeffrey Allan of Seegel Lipshutz & Wilchins, 60 William Street, Wellesley, represented the petitioners. An as-of-right addition is under construction and almost completed. The petitioners have two young children and wish to create a usable and safe backyard outside the new addition and increase the length of the driveway so it will function better. To accomplish this, they are seeking a special permit for a grade change in excess of three feet to extend an existing stone wall along the property line, create a terraced patio and play area with stairs. A letter was received in support of the petition from Steven & Barbara Grossman of 30 Huntington Road. Carrie Burr told the Committee that she and her husband simply want to provide landscaping and a safe outside area for the family to enjoy.

Landscape architect Lucinda Brookway, 53 High Street, Kennebunk Maine, explained that the existing backyard has a steep hillside that comes almost to the back of house. Currently, there is no room to walk out to get to the backyard, so the petitioners propose to add stairs to provide easy access to a proposed terraced patio and play area. They are also proposing an additional set of stairs from the driveway to the door at the back of house. The landscaping proposed will more than adequately screen the area of the proposed grade change.

A representative from Bennett Engineering explained that the existing conditions survey shows runoff running against the house because of the steeped grassed slope at the rear of the property. The proposed plans are a “dramatic” improvement. Drainage calculations including the by-right addition meet all the City’s requirements, with a 5,000-gallon capacity cistern under the driveway to retain runoff on-site. He also noted that submitted with the application was a detailed property survey to verify the property line.

In response to a question from Alderman Fischman about the material proposed for the wall extension and where the wall would be located, Ms. Brookway said that the existing stonewall runs along the side of the driveway and across the side of the front yard. The proposed new wall will match the existing granite fieldstone wall and extend approximately 10-12 feet from the existing wall to the rear. The existing wall will remain as is. A small wall at the base of the rear slope is granite fieldstone as well.

Public comment:

Fran Ferris, 48 Huntington Road, who has lived there since 1979, said she is the most impacted. Her only concern is encroachment on her property. Ms. Ferris indicated that she had a property survey done in the early 1980s but cannot find the survey and that the petitioners had removed a flowering crabapple tree in 2005 because their survey indicated the tree was on their property, which she disputes. (The Burrs have since replaced the tree.) There is an existing oak tree along the property line, and the petitioners have represented that no planting would be installed east of that tree. She had her house painted and windows washed in this past June and wants the petitioners to pay for power washing her house and windows.

Mr. Allan responded that the crabapple tree was clearly on the petitioners' property and its replacement was a neighborly gesture. He iterated that this is not a case of dueling surveyors. The petitioners have never seen a survey from a registered surveyor that indicates any other property line.

Upon a motion by Alderman Albright, the hearing was closed.

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At this evening's working session, the Committee discussed with Associate City Solicitor Ouida Young the assertion by the abutter at 48 Huntington Road that the petitioners' survey was incorrect and that the abutter wished as condition of approval of the special permit the petitioners to clean her house and windows. Ms. Young pointed out that these are not criteria for looking at a special permit petition. Although there is construction on the petitioners' site, the subject of the special permit petition is the area of the proposed three-foot grade change. It is not the City's role to arbitrate property disputes between neighbors, but instead it is up to the persons making the allegations to obtain a survey.

Alderman Merrill moved approval of the petition finding that the grade change does not involve any major topographic changes to the site and the improved drainage will contain runoff on-site; the design and material of the wall are compatible with the existing wall; the extended driveway will improve on-site circulation; and that overall there will be no adverse impact on the neighborhood.

The Committee voted 6-0 to approve the petition.

#279-07      BRENDAN GARRY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE to legalize a third unit of housing a two-family house and; a waiver of one parking stall including dimensions; to allow an alteration in legally non-conforming open space; and a SPECIAL PERMIT/SITE PLAN APPROVAL to alter by more than three feet the existing contours of land for an existing retaining wall alter the contour at 218-220 NEWTONVILLE AVENUE, NEWTON, Ward 1, on land known as Sec 13, Blk 3, Lot 13, containing approx 7.624 sf of land in a district zoned

SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-5(b)(4), 30-19(M) of the City of Newton Zoning Ord.

**ACTION:** MOTION TO APPROVE FAILED TO CARRY 1-1-4 (Merrill voting in the affirmative; Mansfield opposed; Albright, Harney, Hess-Mahan, Samuelson abstaining)

**NOTE:** The public hearing on this petition was opened and closed on October 9, 2007. G. Michael Peirce represented the petitioner who, when he bought this house a few years ago, thought it was a legal three-family house. The house was built in 1923 and is 3.5 stories on a 7,625 sq. ft. lot. Each unit is approximately 1600 square feet. There has been no alteration to the height. After working with the Commissioner of Inspectional Services for months and providing affidavits from former owners/tenants to prove the third unit existed since prior to 1979 to qualify for amnesty, the Law Department concluded that it was not eligible for amnesty. Mr. Peirce acknowledged that the petitioner had done quite a bit of site work without a building permit, e.g., the retaining wall replaced an existing retaining wall (an affidavit that it did replace an existing wall and certification relative to the wall's structural integrity were submitted) and a substandard cinder block garage was demolished without a building permit. Mr. Peirce contended that legalizing an existing third unit is not substantially more detrimental than the existing three-family use, it is not like introducing a third unit. The petitioner has been living on the third floor for two years without a kitchen, since he removed it after ISD determined the unit was not legal.

A concrete deck since removed covered the parking in the rear of the site. There are five parking spaces on-site; the petitioner is seeking a waiver for one space and to reduce dimensional requirements for the others. There is little room for landscaping.

The City Engineer stated in his report that additional information was needed on surface drainage on the site, since it is largely impervious surfaces and drains to neighboring property. He also requested an asphalt berm be installed along the street frontage to channel stormwater and prevent erosion and that sidewalk panels apparently damaged during site construction be replaced. The Committee also requested a landscape plan showing proposed landscaping adjacent to the parking area.

#### Comment

John Bliss of 9 Lewis Street, a 40-year resident, asked rhetorically how many actions that required permits can be taken by a property owner without the proper permits. He noted that in the past a public benefit was required in granting a special permit. He is concerned about the impact a parking waiver would have on Lewis Street.

Tamara Bliss, of 9 Lewis Street, believes there should be penalties for people who ignore the permitting procedure. This is a huge project. It had dumpster on-site and a big retaining wall. Why was it not noticed? What about precedent? The house next door just changed hands. She also suggested that, if the permit was granted to extend the non-conforming use, the 3<sup>rd</sup> unit be designated affordable and deeded to the Housing Authority.

Alderman Vance said that the Mrs. Bliss's questions resonate with the concerns he has had repeatedly. How seriously does the City take its ordinances that, whether by special permit or by-right, are meant to embody thought-out-policies? Will this become more widespread? This situation has the potential to have the kinds of impacts attested to by Mr. & Mrs. Bliss. Alderman Harney agreed. It is not the first situation this year and it is not fair to those who follow the rules.

Upon a motion by Alderman Merrill, the public hearing was closed.

At the working session, the Committee was advised by Ms. Havens that there was not enough evidence provided to determine whether the top level of the house was a 3<sup>rd</sup> or 4<sup>th</sup> story. This evidence would have to include ceiling heights on the top floor and floor plans which identify the use of the basement, less than half of which is below grade and appears to be habitable space. If the grade has been changed, it is also possible, she said, that the measured height of the structure is increased, exceeding the height allowed by zoning. Neither of these dimensions, excess height or a 4<sup>th</sup> story, can be allowed by special permit, but would require a variance from the Zoning Board of Appeals. She also explained that the parking waiver request involved a trade-off between having adequate parking and not further reducing the already non-conforming amount of open space on the site. The landscape plan had been provided late in the week before the meeting, and the City Engineer had not had the opportunity to review it for his drainage concerns. Ms. Havens suggested that the plan should show some screening of the parking area from Lewis Terrace, which it does not.

Ms. Young explained that if the Board chose to approve the petition, a condition could be included that would require a variance from the ZBA for height, number of stories, and/or insufficient open space, if needed. The petitioner's attorney agreed to such a condition.

Ald. Samuelson and other Committee members expressed concern with the insufficiency of information. Ms. Havens noted that the petition wouldn't be accepted as complete for filing if it were presented today. Ald. Samuelson asked if the petitioner had been asked to withdraw, but the petitioner's attorney urged the Committee to act upon the petition. He also said his client would not agree with the Engineer's request for the berm and sidewalk repair, as it was not related to the relief sought.

Ald. Merrill then moved approval of all the special permit requests, the extension of the non-conforming use, grade changes in excess of three feet, and waiver of one parking space and dimensional requirements for those provided. He found that the 3-family use is not substantially more detrimental than the non-conforming 2-family use, and that additional housing was a need in this part of the city. He added conditions that the basement be used for storage only, that the petitioner submit further information to determine if the open space is a valid non-conforming condition, and if not, that he seek relief from the ZBA, and that the light fixtures already in the parking area be subject to review by the Planning Director.

Ald. Albright offered as further conditions that the drainage and repair improvements requested by the City Engineer be implemented, and Ald. Merrill accepted these as friendly amendments. Ald. Hess-Mahan expressed concern about the lack of space to access a stairway that is built so that it comes to the ground within a parking space. Upon request, Ms. Havens offered the Planning Department's recommendation that this site was only adequate for a 2-family use, with the parking to support it adequately and room for more open space. Such a use would eliminate concerns about spill-over parking and the effect upon drainage of the amount of impervious surface on the lot. Only the 3-foot grade change would probably be necessary for such a use, but of course amended plans would have to be provided.

A vote was taken on the motion, which failed to approve it by 1 in favor, Ald. Merrill, 1 opposed, Ald. Mansfield, and 4 abstentions. The recommendation is therefore DENIAL.

#232-07      AMERADA HESS CORPORATION/DONALD F. LUNNY, JR., TRUSTEE OF LUNNY REAL ESTATE TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE to convert an existing full service gasoline selling station to a self-service gasoline selling station and retail convenience store, including waivers from setback and dimensional requirements for 4 parking stalls; side yard landscape strip; lighting; and for a free-standing, directional, and wall signs at 2370 COMMONWEALTH AVENUE, Ward 4, AUBURNDALE on land known as Sec 41, Blk 9, Lot 1A, containing approx 15,904 sf feet of land in a district zoned MULTI-RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-20(e)(4) and (5), 30-20(l), 30-19(h)(1), 30-19(h)(2)b), and (2)c), 30-19(5)a), 30-19(i)(1), 30-19(j)(1)b), and 30-19(m) of the City of Newton Rev Zoning Ord, 2001 and Special Permit nos. #609-59, 699-65, 590-76, 157-92, 1-01, and 226-02. *(90 days: 12/18)*

ACTION:      APPROVED 4-2 (Harney and Merrill opposed)

NOTE: The public hearing for this petition opened and closed on September 11, 2007. Attorney Stephen Buchbinder represented the petitioners. He explained that this property has been used as a gasoline station since authorization in 1923, subsequently, the property was re-zoned to Multi-Residence and the use became nonconforming. It has been the subject of several special permits and a variance for a freestanding sign, a canopy and the conversion of one pump island to self-service on the Commonwealth Avenue side for as long as the auto repair business continued, a second full-service pump on the Auburn Street side and construction of a canopy over the Auburn Street pumps.

Over the years, the current owners/operators have added without approval from the Board of Aldermen more signage and snack sales and converted two more pump islands to self-service. Hess plans to purchase the property pending obtaining the necessary zoning relief. It proposes to operate the same number of pumps, but all eight will be self-service with no full-service option; discontinue the repair business; and operate a convenience store as an accessory use. In a neighborhood meeting, one focus of discussion was the material and color of the roof: dark green v. lime green. Hess agreed to provide a hunter

green metal roof and was willing to meet with neighbors who did not attend that meeting. Alderman Gentile prefers an asphalt shingle roof. Hess typically uses asphalt shingle with white buildings. Hess plans to use the existing building, which has a red brick facade.

Substantial proposed site improvements include replacing four dead street trees previously planted along the berm as conditions of special permits, the removal of a portion of asphalt for additional landscaping and removal of a stockade fence on Auburn Street. The Planning Department had some concern about damage to the proposed three-foot high bollard lights during snow removal, and suggested placing lights on the façade instead.

The Planning Department believed the proposed signage, with a proposed freestanding sign exceeding the height and size requirements of the ordinance, is excessive. Additional existing signs at the Commonwealth Avenue and Auburn Street facades are non-compliant. Mr. Buchbinder noted that the existing 17-foot freestanding sign was approved by special permit. The proposed canopy sign is only on Commonwealth Avenue and he pointed out that the “Mobil” logo, although not legal, is already on one canopy.

Amerada Hess representative Russ Wells explained that the mini-mart food component includes muffins, coffee, and hot dogs. The pizza, etc., that other Hess Express stores sell are not feasible on this site because the building is too small. There is no plan to lease to Dunkin Donuts or Honey Dew Donuts and Hess would agree to a condition prohibiting such a lease.

The Chairman asked if stations converted from full-serve to self-serve typically create traffic backup. Mr. Wells said that Hess will provide a queuing study showing how many cars can be accommodated on site. The Committee asked that the City Traffic Engineer review the study prior to the working session.

Alderman Hess-Mahan said he gets gas at Lunny’s and agrees with the Planning Department’s concern that the existing five curb cuts are too many and too wide. Hess proposes reducing one of the Auburn Street curb cuts from 38 feet to 24 feet, but has indicated that the curb cuts are used access points and for maneuvering fuel tankers. Hess agreed to look at the increase in traffic and circulation at Auburn Street/Commonwealth Avenue.

Alderman Vance had a concern about the food component of the mini-mart. He asked if Hess could find a comparable area and sized facility to compare for impact. Will it need a common victualler’s license from the Licensing Board and/or a permit from the Health Department?

Alderman Harney asked Hess to provide the percentage of sale from gas and sundries. (80/20%) Alderman Sangiolo asked that the City Traffic Engineer review a queuing plan and that the accident history figures from the past few years at the intersection of

Auburn Street and Commonwealth Avenue be obtained from the Police Department. (Subsequently, Police Sargent Norcross confirmed 26 incidents between January 2001 and December 2006, but no further information was obtained. )

#### Public Comment

- Hugh Gelch , 20 Oakland Avenue, attended the neighborhood meeting on September 9–This intersection is dangerous and the proposed use is not appropriate for a gateway to city.
- William Chaisson, 31 Evergreen Avenue, grew up on Commonwealth Avenue and supports the petition; he noted that Commonwealth is one way at this site.
- Millard Harmon, 15 Evergreen Avenue, said that the only problem could be litter; there is always the sound of traffic, and Lunny has been a good neighbor.
- A resident of 28-30 Oakland Avenue, said the existing site is a mess and it needs to be cleaned up.
- Ruth Noble, 578 Auburn Street, said that traffic is already terrible, you can't cross street between 7-9 AM and 4-7PM. She suggested restricting access/egress to one way.
- Charlotte Stafford, 580 Auburn Street, said that Auburn Street is residential and the existing parking spaces indicate that the most traffic is there.
- Kevin Newman, 36 Oakland Avenue, noted that the existing traffic light is not well placed and this is the City's fault. What about the existing curb cuts on the site. Proposed operating hours?
- A resident of Auburn Street does not want a stripmall.
- John Lisker, 2390 Commonwealth Avenue, said that the traffic issue must be resolved...perhaps the City should work out improvements.
- A resident of 14 Oakland Avenue said this is a danger to children, there are no sidewalks.

That concluded the public testimony and the hearing was closed.

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The Committee discussed this petition in a working session on October 2 in which it identified several issues relative to the layout of the site and its circulation and asked the petitioner to consider modifications to the site plan.

This evening, the Committee reviewed with Chief Planner Candace Havens a revised site circulation plan developed by the Petitioner's traffic engineer. The revised plan eliminates the easternmost curb cut on Auburn Street and narrows three other curb cuts, resulting in the reconfiguration of the area in front of the proposed convenience store and the driveway between the store and gas pumps widened to allow two-way traffic. This allows cars to move more easily between the pumps and the proposed convenience store and provides for more landscaping on the street and adjacent to the residential area. The Commonwealth Avenue exit remains. The petitioner is proposing to use signage to identify the southwesterly drive as restricted to one-way traffic.



Proposed intersection improvements include:

- a curb and sidewalk with a bump out that extends into Commonwealth Avenue from Oakland Avenue around the corner onto Auburn Street to slow traffic from Commonwealth Avenue onto Auburn Street. A handicap accessible raised crosswalk also is proposed at the intersection.
- a possible additional crosswalk with median island across Auburn Street near the intersection of Auburn Street with Evergreen Avenue has also been studied. This would provide better pedestrian crossing of Auburn Street.
- a sidewalk on the south side of Auburn Street from Oakland Avenue up to the traffic light to provide safe access to the intersection from Oakland Avenue.
- a crosswalk at Evergreen Avenue that would designate a path to the north side of Auburn Street and its continuous sidewalk.
- In addition, Hess has offered \$25,000 to the City to cover the cost of these proposed improvements or any other improvements the City may seek instead. Hess would undertake the improvements, but upon the advice of the Law Department, a solution could be a three-way contract to get the work done in a timely fashion without having to go through the public bid process, e.g., the conditions in the board order for the pedestrian path recently completed at Brimmer & May.

The petitioner's traffic engineer recommended that there be no left turn from Oakland Avenue onto Commonwealth Avenue. Another option is to make Oakland Avenue one way. The City's Traffic Engineer has reviewed the proposed revisions and agrees generally with the proposed site circulation and pedestrian safety improvements. He suggested extending the median island to limit left turns in and out of the Auburn Street side of the site nearest the intersection. The petitioners indicated this is not practical, but suggested that stanchions could be installed to limit the turns. The revised plans also show a loading area in front of the dumpster, which eliminates parking and creates a space for deliveries.

Aldermen Harney and Sangiolo asked how the projected increase in traffic at the site resulting from the current use to a Hess Express was arrived at. Gary McNaughton from McMahan Traffic Engineers and Planners, the traffic planning firm retained by the petitioner, explained that the projected figures are from data contained in the Institute of Transportation Engineers (ITE) publication, which is the industry standard. This data indicates an increase of approximately 16 new trips (10 entering and 6 exiting) during the weekday morning peak hour and an increase of approximately 19 new trips (10 entering and 9 exiting) during the weekday evening peak hour, that is 8 to 10 new vehicles each peak hour. Alderman Sangiolo asked if the accident data provided by McMahan was from the Newton Police. Mr. McNaughton said they used Mass Highway data, which is collected from among other sources local police departments.

Alderman Harney made a motion to deny the petition finding that the self-service gas station with convenience store would have many adverse effects and would be substantially more detrimental to the neighborhood than the existing use, the traffic flow creates a dangerous situation and would increase noise and air pollution, the redesign of

the entrance/exits presents dangers to pedestrians and is a public safety issue for vehicles; the existing non-conforming use is safer with the gas station and repair bays because cars in for repair stay longer; the high turnover associated with the convenience store would result in more traffic; would make an already dangerous area more so; the number of off-site improvements offered may not although funded be appropriate; the convenience store at this location contradicts the village emphasis of the Comprehensive Plan.

The motion to deny failed to carry, with Alderman Harney voting in the affirmative and Aldermen Albright, Hess-Mahan, and Samuelson opposed; and Alderman Mansfield abstaining.

The petitioner's attorney Stephen Buchbinder then offered the following: The existing 17-foot freestanding sign will be reduced in accordance with the recommendation of the Planning Department to 16 feet. Hess will withdraw the proposed canopy signs; the existing brick building can remain red brick or be painted beige with a grey or green asphalt shingle roof, whatever the Committee wishes. Hess has offered to pay an additional \$5,000 for the installation of the raised crosswalk or for other intersection improvements.

Alderman Gentile suggested and the Committee agreed that the Auburndale Historic District review in an advisory capacity the proposed colors, material, and wall surface of the building.

Alderman Samuelson made a motion to approve the petition finding that the proposed use is not substantially more detrimental than the existing gas station with repair bays; the use is appropriate to the site and will not adversely affect the neighborhood particularly relative to the proposed site circulation design that will improve circulation on-site and the proposed raised crosswalk that will improve pedestrian and vehicular safety; the additional landscaping and upgraded building and visual improvements to the site will enhance a gateway to the City; the reduction to a 16-foot high freestanding sign with no canopy signs and advisory review of the colors, materials, etc. of the building serve the public convenience and welfare.

The Committee vote 4-2 (Aldermen Harney and Merrill opposed), to approve the petition with Alderman Samuelson's findings and conditions suggested in the Planning Department memorandum as well as a prohibition on leasing to a sub-franchise such as Dunkin Donuts; the installation of stanchions if the traffic island on Auburn St. cannot be extended; hours of operation 5:30 AM to 10:00PM, except Sunday, when the hours will be 7:00 AM to 10:00 PM; a condition relative to the construction of the intersection improvements; and support of petition(s) to the Traffic Council for parking restrictions on Auburn Street and a possible one-way on Oakland Avenue.

***N. B. Alderman Samuelson as the senior member of the Committee chaired the meeting on petition nos. 276-07 and 276-07(2) because Alderman Mansfield is recused.***

#276-07     LEONARD H. STRAUSS, D.M.D., P.C., petition for a change of zone from PUBLIC USE TO BUSINESS 1 for approximately 8500 sf of land identified as Section 52, Blk 22, Lot 1, on which a former railroad station

zoned Business 1, is located, at 18 STATION AVENUE, NEWTON HIGHLANDS.

ACTION: APPROVED 4-0 (Merrill not voting; Mansfield excused)  
#276-07(2) LEONARD H. STRAUSS, D.M.D., P.C. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a parking waiver of 3 stalls, including 1 handicap stall; a free standing sign; and secondary signs associated with a proposed professional office at 18 STATION AVENUE, NEWTON HIGHLANDS, Ward 6, a former railroad station, zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(d)(12), (h)(2)(c), and 30-19(m), 30-20(f)(3) & (9) and 30-20(l) of the City of Newton Zoning Ord.

ACTION: APPROVED 4-0 (Merrill not voting; Mansfield recused)

NOTE: Attorney Stephen Buchbinder represented the petitioner who is purchasing the former Newton Highland rail station, which is on the National Register. The building itself is zoned Business 1 zone, but the surrounding land is zoned Public Use, for which the petitioner is seeking a change of zone from Public Use to Business 1.

Dr. Strauss is a periodontist who plans to use half of the 2400 square feet and rent the remaining space, preferably to another dentist. He has been practicing at 701 Washington Street in Newtonville for eleven years. He currently has no handicapped access. He has three employees. His practice operates four days a week; it is closed Mondays and evenings. He is willing to restrict the hours on the remaining rental space as well. He expects including the other practice no more than four patients at a time. He has met with the neighborhood, sought and received review and approval of his plans for restoration from the Historical Commission. Plans have been submitted to Mass Historical for approval. His intention is to restore the building completely. From the 1960s to 2005 it was a busy auto parts store.

Although the property gets a parking credit of ten spaces, there is a three-space deficit. Parking is not allowed in a Public Use District. The Planning Department recommended that there be no further building the on-site and suggested restricting the building to office use. The petitioner hopes to attract another specialty dentist, but today could rent to any other business. He feels that it is not fair that if he sells the building in ten years it is restricted and prohibited from uses allowed in a Business 1 zone. The traffic study indicates that parking for this type of business can be accommodated. The employees will be encouraged to arrange parking in private homes. Metered two-hour parking exists on adjacent streets.

The petitioner proposes to restore the overgrown neglected landscaping to the original Olmstead design. The landscaping is on the proposed Business 1 current Public Use land. Initially, two trees were to be removed and although an invasive species, City Tree Warden Marc Welch said they would have to be replaced anyway. The cost is too high, so the trees will remain. Because the original Olmstead design had a number of shrubs, the landscape architect is proposing shrubs. The petitioner is willing to landscape on the T site if the T agrees. The proposed HVAC units are on the ground, baffled. Two secondary wall signs and a small standing marker sign in the front of the building are proposed.

The T owns the station platform. The T starter office will remain. The petitioner will spruce it up and put in bathroom. Signs on the platform belong to the T. The loading zone in front of the building no longer makes sense, so its discontinuance will be sought.

The petitioner said it makes sense to rezone the land Business 1, where the proposed bike rack, benches, handrail, and handicapped access are to be located. They are not allowed in a Public Use District. He is okay with a restriction prohibiting construction, including additional parking, or a condition that he return to the Board in the future, but does not want to be overly restricted by the special permit.

#### Comment

George Mansfield, 312 Lake Avenue, is an Alderman who is excused from voting on these petitions because he lives three doors from the site. Mr. Mansfield said that the neighborhood meetings were well attended. There is strong support for the overall project/signs/and parking waiver. Everyone is aware of the limited parking associated with this site. He complimented the petitioner for doing a tremendous job. The building has suffered benign neglect. He believes the level of intensity of the proposed dental office(s) supports the parking waiver, but this is not necessarily true for other uses. He is not convinced that there is a reason for the zone change. Keeping the property in a Public Use District with no parking allowed on it is one protection the City can provide if the special permit ceases to be exercised. He noted that a previous design for this site by the petitioner shown thirteen parking spaces on the site.

Upon a motion from Alderman Albright, the hearing was closed.

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This evening the Committee discussed the proposed rezoning of the land surrounding the building. After noting that public uses should be restricted to where public uses occur, Associate City Solicitor said it is really a policy issue. As noted in the Planning Department working session report, a deed restriction to preserve the site and prevent further development. Recorded at the registry of deed, a restriction and runs with the land and is held and enforced by the Newton Historical Commission. A statutory historic preservation restriction is the same as a deed restriction, but requires approval of the Massachusetts Historical Commission

The Associate City Engineer had asked that the petitioner install a new water line  
The Planning & Development Board on November 5 "...appreciated the special attention to restoration of this historic building and site and favored maintaining the surround area as undeveloped." It voted to rezone the entire site with a provision that the landscaped area remain as open space.

The following auto dealer licenses were approved 5-0 (with Aldermen Merrill not voting) because they all meet the required licensing criteria, i.e., they have no outstanding zoning complaints; no outstanding traffic complaints or tickets with the Police Department; offer or have contracts for warranty repairs as required by GL chapter 90; 7N1/4; owe no money to the City of Newton. Class 1 licenses have contracts with a motor vehicle manufacturer and Class 2 licenses have posted surety bonds with the City.

**CLASS 1**

- #309-07 CLARK & WHITE INC.  
777 WASHINGTON STREET  
NEWTONVILLE
- #310-07 CLAY NISSAN OF NEWTON INC  
431 WASHINGTON STREET  
NEWTON CORNER
- #311-07 FROST MOTORS INC.  
399 WASHINGTON ST  
NEWTON CORNER
- #312-07 FROST MOTORS INC.  
d/b/a FROST PREOWNED  
624 WASHINGTON ST.  
NEWTONVILLE
- #313-07 VILLAGE MOTORS GROUP INC.  
d/b/a HONDA VILLAGE  
371 WASHINGTON STREET  
NEWTON CORNER

**CLASS 2**

- #314-07 MAP DEVELOPMENT & INVESTMENTS  
d/b/a ALBEMARLE MOTORS INC.  
175 NORTH STREET  
NEWTONVILLE
- #315-07 NEWTON AUTO GROUP INC  
1235 WASHINGTON STREET  
WEST NEWTON1
- #316-07 AUTO EUROPA INC.  
38 RAMSDELL STREET  
NEWTON HIGHLANDS
- #317-07 VELOCITY MOTORS INC.  
14 HAWTHORN ST  
NONANTUM
- #318-07 DELIO CORPORATION/  
d/b/a RVD AUTO SALES  
227 CALIFORNIA STREET  
NONANTUM
- #319-07 ENZO's AUTO SALES  
10 HAWTHORN STREET  
NONANTUM
- #320-07 LOS ANGELES AUTOBODY, INC.

- 41 LOS ANGELES STREET  
NONANTUM
- #321-07 TRAVIS CORPORATION  
d/b/a THE CAR STORE  
19 ROLLING LANE  
CHESTNUT HILL
- #322-07 NEW ENGLAND MOTOR MART INC  
1221-1229 WASHINGTON STREET  
WEST NEWTON
- #323-07 NEWTON TRADE CENTER  
103 ADAMS STREET  
NONANTUM
- #324-07 OLD TIME GARAGE LTD.  
1960 WASHINGTON STREET  
NEWTON LOWER FALLS 02162
- #325-07 BOSTON AUTO BROKERS, LLC  
50R TOWER ROAD  
NEWTON UPPER FALLS
- #326-07 RADOSLAV STAMBOLIEV AUTO SALES  
304 WATERTOWN STREET  
NONANTUM
- #327-07 R.C.'s TOWN LINE AUTO SALES INC.  
945 MOODY STREET  
WALTHAM
- #328-07 R.S. SERVICE INC.  
361 WASHINGTON STREET  
NEWTON CORNER
- #329-07 ROBERT'S TOWING INC.  
926R BOYLSTON STREET  
NEWTON HIGHLANDS
- #330-07 VAN AUTO SALES INC.  
50 TOWER ROAD  
NEWTON UPPER FALLS
- #331-07 CITY OF NEWTON  
1000 COMMONWEAL TH AVENUE
- CLASS 2 & 3**
- #332-07 ECHO BRIDGE SALVAGE INC  
16-24 MAGUIRE COURT  
NEWTONVILLE
- #333-07 SCHIAVONE BROTHERS INC.  
16-24 MAGUIRE COURT  
NEWTONVILLE
- #334-07 TODAY'S SERVICES INC.  
1362 WASHINGTON STREET  
WEST NEWTON

Respectfully submitted,

George E Mansfield, Chairman  
Christine S. Samuelson, Acting Chairman