

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 17, 2006

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

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

Application for a 2006 Class 2 Auto Dealer License

#238-06 RADOSLAV STAMBOZIEV
304 Watertown Street
Nonantum

ACTION: APPROVED 8-0

NOTE: Mr. Stamboziev is seeking a Class 2 license to sell automobiles, many of which will be sold via the internet to countries in Eastern Europe. He has on file with the city clerk a d/b/a signed off by the inspectional services department. There will be no on-site storage of automobiles. Alderman Merrill moved approval and the committee, noting that this license is only valid until January 1, 2007 when it will have to be renewed, voted 8-0 to approve the license.

#281-06 WILLIAM M. & SUSAN S. WHISTLER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the Maximum Build Factor 20 at 10 ANDREW STREET, Ward 8, NEWTON HIGHLANDS, for a lot containing approximately 10,003 sf and a Build Factor of 22.61, which would result from the proposed sale of 3300 sf of land to an abutting property located at 95 Dedham Street. The property is also identified as Sec 83, Blk 6, Lots 16A and 16 and located in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 30-15(p), 30-24, and 30-23 of the City of Newton Rev Zoning Ord, 2001.

ACTION: Approved 7-0-1 (Fischman abstaining)

NOTE: This is a request for a special permit to exceed the Build Factor of 20 required for an SR-3 zoning district. The petitioners, owners of 10 Andrew Street, are proposing to reduce the size of their existing lot from 13,303 s.f. to 10,003 s.f. by selling a 3,300 s.f. portion on the corner of Andrew St. and Dedham St. to the abutters at 95 Dedham St. The original lot at 95 Dedham St. has been previously subdivided twice; first in 1955 when several new lots were created. At that time, the original house at 95 Dedham St., which was legally non-conforming due to front setback, became subject to the post-1953 "new lot" requirements and so was noncompliant. In 2001, the owners of 95 Dedham St. further subdivided the property to create the 10 Andrew St. lot, but to do so, they had to seek and receive a setback variance from the Zoning Board of Appeals. The Andrew St. lot was laid out larger than the 10,000 s.f. minimum area and the corner

portion of the parcel was included in order to comply with Build Factor, a lot regularity control, which for that lot is currently 19.82. The petitioners now seek to reduce the size of this parcel and increase the Build Factor to 22.61. All other zoning dimensional requirements for both lots would continue to be met, and the setback variance for 95 Dedham St. would remain in force if the proposed property exchange takes place.

At the September 12, 2006 public hearing, the petitioners' attorney stated that the neighbor at 95 Dedham St. had proposed to acquire the corner portion of the lot which had originally been, and still visually appears to be, a part of his property. That owner, Charles Williams, the only member of the public to testify, explained that his front door faces Andrew St. and that he prunes the large English yews that dominate the portion of the lot he wishes to acquire. The petitioner, in turn, said that he cannot see that portion of the lot from his house and so cannot supervise it. Some Committee members were concerned that increasing the size of the Dedham St. lot could create an incentive to tear down the older, smaller house there and replace it with a large two-family (by special permit).

In the working session, Ms. Radzevich explained that a gas line easement that bisects the parcel proposed to be transferred severely limits the building potential there, adding only about 800 s.f. of buildable land to the current lot. She also pointed out that the existing home is already expandable under current lot conditions. Finally, she noted that although the Build Factor will increase, the Andrew St. lot will actually appear to be more regular, a factor of the formula that increases the Build Factor as the lot size decreases. Ald. Vance also observed that the Dedham St. lot will become less regular with this transfer, but its Build Factor will decrease because its area is increased. Ald. Mansfield noted that the Andrew St. home appears to face the rear of the Dedham St. property, and asked whether some screening might be desirable in exchange for decreasing its size. Ms. Young replied that this would not be an appropriate or necessary mitigation.

Ald. Hess-Mahan moved approval of the petition, noting that while the Build Factor would be slightly exceeded, the reconfiguration makes a more logical and regularly shaped lot, and makes the Dedham St. lot appear more intact and fit better into its streetscape. In addition, he found that there would be no negative impact on the neighborhood, and the specimen yew trees on the corner are likely to be better cared for. Ald. Fischman said that he was on the fence on this petition, since allowing an increase in the Dedham St. lot from 12,000 s.f. to 15,000 s.f. creates a likely candidate for a tear-down when it goes on the market. The motion was approved by a vote of 7-0-1, with Ald. Fischman abstaining.

#282-06 TERRA SEARCH, LLC for SPRINT SPECTRUM, L.P., d/b/a SPRINT NEXTEL/HAMMOND POND TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install wireless communication equipment consisting of 12 panel antennae and 2 GPS antennae on the façade of an existing elevator penthouse with associated equipment within the existing building basement at 20 HAMMOND POND PARKWAY, Ward 7, CHESTNUT HILL, on land also known as Sec 82, 2, 21A1,

containing approximately 175,950 sf of land in a district zoned MULTI RESIDENCE 3. Ref: Sec. 30-24, 30-23, and 30-18A of the City of Newton Rev Zoning Ord, 2001.

ACTION: Approved 8-0

NOTE: This is a request for a special permit to allow for the installation of wireless communication equipment consisting of 12 façade-mounted antennas, 3 (not 2) GPS antennas, and 2 HVAC condenser units on the roof of a 7-story, multi-family condominium dwelling on Hammond Pond Parkway, known as Embassy House, as well as associated equipment within the basement. The site is abutted to the north and south by multi-family dwellings under the same condominium ownership, and to the west (rear) by Avalon at Chestnut Hill, a 200+ unit apartment development currently under construction. The antennas would be attached to the existing penthouse and painted to match its façade. There are no proposed changes to the site itself. The condensers, mounted on the roof, do not appear in photo simulations to be visible from any abutting properties. The petitioner submitted a noise study that projected the sound from the condensers at the nearest abutting property at the 32 dBA level, which is below the lowest background noise level of 37 dBA. The petitioner also offered to install a vibration isolation rail system to further reduce the likelihood of noise transmitted to the building.

At the public hearing on September 12, 2006, one abutter was concerned that she hadn't received notice, but was later given the opportunity to review the plans. Ald. Hess-Mahan questioned the petitioner's access to the building citing security concerns. The petitioner's representative explained that they would have keyed access to the basement only, but to access the roof they would have to check in with the management office. Ald. Vance moved approval of the petition, finding that the installation will improve reception in this heavily traveled location and have no visual or sound impact on the neighborhood. This motion was approved 8-0.

#283-06 DIMITRIOUS DELIGIANNIDES, TRUSTEE, HELLENIC GOSPEL CHURCH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION of a NON-CONFORMING STRUCTURE to replace two existing signs, one primary freestanding sign and one secondary exterior wall sign, at 187 CHURCH STREET, Ward 1, NEWTON CORNER, on land also known as Sec 12, Blk 13, Lot 14, containing approximately 26,875 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-21(b), and 30-20(l) and (e)(3) of the City of Newton Rev Zoning Ord, 2001.

ACTION: Approved 8-0

NOTE: The petitioner is proposing to replace an existing 38.4 s.f. free-standing sign at the corner of Church St. and Centre St. in Newton Corner with a slightly larger 40.4 s.f. illuminated sign, as well as to replace an existing secondary wall sign with a non-illuminated sign of the same size. Both signs would be placed in their present locations. Because the current free-standing sign is larger than the 35 s.f. limit, the

special permit is also necessary for the extension and alteration of a non-conforming sign. The purpose of the proposed signs is to identify the property as the “Newton Corner Worship Center” and the eight individual congregations that share the building. The petitioner and the Committee noted that the building is historic and architecturally significant, having been designed by H. H. Richardson. The signs were reviewed and approved by the Urban Design and Beautification Commission. At the public hearing, some Committee members questioned the historic appropriateness of the proposed colors of the signs, and asked if other churches in the area have illuminated signs.

In the working session, the petitioner presented revised designs and plans for the signs developed for the church by a Newton Corner resident and member of the Farlow Park Historic Committee, who works as an architect’s historic finishes expert. The revised signs developed a font and letter size for better visibility, and use a dark crimson background with gold lettering. The proposed lighting was also modified for the free-standing sign, expanding an overhanging roof with focused down-lighting so that the source will not be visible. The Committee was pleased with all the revised proposal, and the petitioner’s representative thanked them, and Ald. Fischman in particular, for urging them to explore these revisions. Ald. Merrill noted that the neighborhood has not commented on this petition, and moved its approval, finding that the listing of the groups worshipping there is in the public interest, that the improvement in colors is respectful of the historic character of the site, that the lighting minimizes light pollution and trespass, and that it is not substantially more detrimental than the existing non-conforming signs. The Committee agreed that since the standing sign would be installed behind existing shrubbery, but visible above it, that no additional landscaping was necessary. The motion was approved 8-0.

#312-06 WILLIAM S. CURTIS of the CLASSIC GROUP representing ANNE M. & JAMES DAVIS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to renovate an existing carriage house for use as a private garage exceeding 700 square feet and have the capacity to store up to five automobiles and for a second-floor game room at 48 SARGENT STREET, Ward 7, Newton, on land known as Sec 73, Blk 8, Lot 9, containing approximately 92,555 sf of land, in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 30-24, 30-24(d), 30-23, 30-8(b)(7), 30-15(m)(2), 30-15(m)(5)(a), (b), and (c), 30-15 Table 1 Footnote 5 of the City of Newton Rev Zoning Ord.

ACTION: Approved 8-0

NOTE: This is a petition to renovate an existing carriage house as a pool house, game room, and a garage exceeding 700 s.f. for the display of up to five antique automobiles, adjacent to a main house and attached garage under construction by right on a 92,555 s.f. parcel at 48 Sargent St. Because the height of the existing structure is 2 ½ feet above the allowed height of habitable space in an accessory building, and the petitioner proposes to locate the game room on the second floor, a special permit is also required to waive this limit. The petitioner also proposes to merge two existing lots which comprise this property, since the lot line currently runs through the carriage house.

At the public hearing on October 10, 2006, Ald. Coletti asked if it is necessary to merge the lots, and if they aren't merged, how that will affect the relief needed by the petitioner. He cautioned that by merging the lots, the petitioner will subject the entire site to the special permit and site plan approval, and that "new lot" dimensional controls will apply. Also at the hearing, Judge Eliot Cohen, a neighbor, raised some questions about the petitioner's proposal to "display" vehicles, and whether the public might frequent the site. He also complained about the lack of control of construction parking on surrounding streets.

In response at the working session, Ms. Radzevich reported that the Chief Zoning Code Official explained that if the lots are not merged, then the carriage house will be non-compliant with zoning requirements and could require a variance. The carriage house's setback to external lot lines does not allow the carving out of a new lot for it exclusively. The Planning Department strongly recommended the merger. The Fire Department approved the plans, provided there is to be no residential (sleeping) use of the carriage house. They also will require a separate permit for the storage of gasoline in the vehicles. The petitioner's representatives reported that there would be no public display of vehicles, but rather they would only be shown to his guests. He anticipates rotating groups of 5 cars from an inventory of about 40 that he has stored in Allston. Ald. Vance asked how often the inventory is expected to be rotated, and the petitioner's attorney said it would be infrequent. Somewhat concerned that this owner's proposal was unusual, and that a subsequent owner might use the special permit for a more intensive use involving 5 vehicles, he asked if the permit could be limited to this petitioner's use. Ms. Young replied that such limits are also unusual, but if the petitioner assents to it, it is not prohibited. Ald. Samuelson agreed that the use should be limited to this petitioner, and his attorney did not disagree, as long as the permit was extended to the petitioner's children as well.

Ald. Vance moved approval of the petition with the conditions as discussed, limiting the permit to the petitioners and their children and satisfying the Fire Department requests. He found that this will preserve the historic character of the carriage house, will not adversely affect the neighborhood, and will avoid non-conformities by merging the lots. The motion was approved 8-0.

#284-06 MARC S. PRICE & HILLARY K. PRICE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a grade change(s) in excess of three feet to construct a by-right single-family house at 6 KESSELER WAY, Ward 8, on land known as Sec 82, Blk 37, Lot 86, containing approximately 15,662 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 30-24, 30-23, and 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2001.

ACTION: Approved 8-0

NOTE: The petitioners are seeking a special permit for a greater than 3-foot grade change in order to construct a new house on a lot located at the corner of Kessler Way, a

new subdivision cul-de-sac, and Brookline Street. The lot has a depression in its center, created in part by the installation of the subdivision roadway at a grade higher than the surrounding land. Two lots in this subdivision have already received similar relief, and most others are expected to request it. This lot also has to meet the grades established by special permit for the lot immediately to the south, although construction has not yet begun on that lot. As proposed, 62.5% of the lot area will be filled to a depth of more than 3 feet, with a maximum grade change of 7 feet. No other relief is being sought.

When the public hearing was opened on September 12, 2006, there were no reports available from either the City Engineer or the Director of Urban Forestry (arborist) concerning this petition. Also, detailed grading plans of the proposal were not available. Consequently, the hearing was held open until October 10 to receive that information, critical to the nature of the request. During the hearing, several members of the Committee raised concerns about the proposed near clear-cutting of the site, the amount of fill being brought in (for fill of areas less than 3 ft. deep as well as what was requested in this petition), the excessive amount of pavement utilized in the driveway design, and the drainage patterns that would be created by this proposal. There was also an observation that design guidelines, created by the developer (C.S. Kessler, LLC) for this subdivision, call for new houses to be harmonious with the existing topography and for improvements to minimize grade changes and removal of existing vegetation. The Chair asked for evidence that this proposal had been approved by the development's design review committee.

However, the City Engineer did approve the drainage design, with the petitioners' engineer noting that all the runoff on the site would be collected into the storm drain system and carried to a detention basin at the foot of the cul-de-sac. The petitioners' attorney also argued that the house layout and driveway location were dictated by the corner site and the 10 ft. deep sight line easement along Brookline St. established in the subdivision plan. They did agree to reduce the length of the T-turnaround in the driveway by 4 feet, thus reducing some impermeable surface.

The petitioners calculated that the total volume of fill is 1,663 cu. yds., or 83 truckloads. They also met and negotiated a Tree Preservation Plan with the City arborist, and submitted a landscape plan for his review. A deficit of 36 caliper inches of trees to be planted will require a payment of \$5,760 to the City. The plan was approved by a 2-member design review committee established by Kessler, LLC.

During the working session, the petitioners' engineer demonstrated—at Ald Fischman's request, that water will not flow onto abutting property. Ald. Mansfield asked if there was a construction management plan that dealt with the truckloads of fill coming to the site. The petitioners' attorney explained that the fill would be brought in over time, perhaps over a full month; hours would be limited to 7AM to 5PM; trucks would queue and park on Kessler Way only; and they would be tarped.

Ald. Fischman suggested that the City Engineer review the draft Board Order, and—if necessary—add language to ascertain that the drainage will work as proposed. With that

he moved approval of the petition, finding that there will be no adverse drainage impact on abutting neighbors, the City's storm drain system at this location is adequate for the 100-year storm, that the grading is designed to match proposed grading of the abutting lot to the south, and that the landscape plan has been improved as much as possible. His motion was approved, 8-0.

The meeting was adjourned at 10:20 PM.

Respectfully submitted,
George E. Mansfield, Chair