

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, SEPTEMBER 20, 2005

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

City Staff: Alexandra Ananth (Planner), Michael Kruse (Director of Planning & Development), and Ouida Young (Associate City Solicitor)

#236-04(3) REQUEST FOR A ONE-YEAR EXTENSION OF TIME to EXERCISE SPECIAL PERMIT #236-04, filed on October 20, 2004, granted to DRUKER MANAGEMENT CORPORATION/SCHRODER NEWTON LIMITED PARTNERSHIP to establish a managed parking system and expand existing parking by 45 spaces on the roof of the existing parking garage at 283-291 CENTRE STREET, NEWTON CORNER, Ward 1. Ref: Sec 30-24(c) (4) of the City of Newton Rev Zoning Ord, 2001.

ACTION: ONE-YEAR EXTENSION APPROVED 8-0

NOTE: This is a request for a one-year extension of time to exercise a special permit that granted a waiver for 45 additional stacked parking spaces, utilizing managed parking procedures, on the roof of the parking garage at One Newton Place, a retail and office building on the corner of Washington and Centre Streets in Newton Corner (north of the Mass Turnpike). No public hearing is required for such an extension. The original special permit was approved on 10/18/04, the Board finding that the additional spaces will serve the public convenience and welfare by providing additional on-site parking for the building's employees and relieving the impacts of their parking in the surrounding neighborhood.

The petitioner/owner of the site, Druker Management Corp., submitted a letter dated 8/22/05 explaining that the sole office tenant moved to Waltham on 3/31/05 to seek significantly more parking. Therefore, they have not implemented the managed parking plan, and do not plan to do so until a new tenant or tenants are in place. However, they believe the waiver is necessary to attract quality tenants to the building. Chairman Mansfield noted that when the waiver was requested, there was a single tenant, which may have been persuasive to some that the parking scheme would work smoothly. But, he also reported that the Board Order was quite clear that one or more tenants were expected to utilize the parking. Ms. Young explained that an additional one-year extension (but not more) is allowed by State law, but that the Board is not compelled to approve this request. Ald Fischman suggested that we should be indifferent about the tenant. Ald Harney pointed out that the original special permit was approved unanimously. Ald Merrill said that he had talked with the petitioner and learned that they

presently have two tenants “on the hook.” Therefore, he moved approval of the request, and the motion was approved 8-0.

#220-05 McDONALD’S CORPORATION petition a SPECIAL PERMIT and an EXTENSION OF A NON-CONFORMING USE to demolish an existing 3,025 sf building containing a fast food restaurant and replace it with a new 3,716 sf building, including new signage and a waiver from light requirements, at 197 CALIFORNIA STREET, Ward 1, NONANTUM on land known as Sec 11, Blk 4, Lot 6, containing approximately 40,073 sf of land in a district zoned MANUFACTURING. Ref: Sec 30-24, 30-23, 30-21(b), 30-20(l), 39-19(m), and 30-15 of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 7-0 (Harney not voting)

NOTE: This is a request for a special permit for the extension of a non-conforming use and an amendment to a 1991 Board Order that allowed a drive-through facility and a free-standing sign and menu board. It is also a request for a waiver of lighting requirements and a permit for several new free-standing signs. The petitioner proposes to demolish the existing building, which is located near the rear of the 40,000 s.f. site, and replace it with a new larger building housing a fast-food restaurant and drive-through facility that would be 73 ft. closer to California Street (although still set back 58 ft.). The new building would have a ground floor area of 3,716 s.f. (present building is 3,025 s.f.) and provide 70 seats (48 seats in the present facility). Parking, however, will be reduced from 61 to 41 spaces, although that is well above the zoning ordinance requirement of 27 spaces. Additional landscaping will be provided in place of some of the present parking. Proposed signage includes a monument style, internally-lighted free-standing McDonald’s ‘M’ logo and several directional signs near the street. There are also several proposed signs associated with the drive-through: a gateway sign, a pre-sell sign, a menu board and an LED customer order stand. The petitioner also is seeking lighting waivers to forego the requirement that the entire site be lighted to at least .1 foot-candles, and the requirement that the light not spill off the site.

The public hearing on this petition was opened on 7/12/05 and continued to 9/13/05. At the initial hearing, the Planning Department made several suggestions for modifications to the plans, including a redesign of the building elevations to be more in keeping with the architectural styles of the surrounding industrial and commercial buildings, a revised lighting plan showing a more even distribution of lighting levels on the site, and eliminating spillage onto California St., removal of the banner and logo signs from the gateway pole, and a revised waste disposal and recycling plan. In addition, a California St. residential abutter (across the street) expressed concern about light shining onto his property. Some Board members were concerned that the proposed internal circulation could cause conflicts, and the Committee found that reviews by the Fire and Engineering Depts. were incomplete, and asked the Traffic Engineer to evaluate the site circulation and the petitioner’s traffic study. To receive all this new information, the hearing was continued to September.

At that time, the petitioner presented the plans revised as requested, and the City Traffic Engineer submitted a memo in which he foresaw no adverse parking or traffic impacts from the proposed changes to the site. Both the Fire and Engineering Depts. reviewed the revised plans and found them to be acceptable. The abutter who expressed concern in August was satisfied that light spillage onto California St. was now minimal, and another abutter was reported to be satisfied that the petitioner would reconstruct a deteriorating retaining wall near the dumpster. Ald Fischman and Ald Albright both expressed concern about the design of the façade, especially the long unbroken expanse of wall on the drive-through (west) face of the building. Ald. Fischman asked to see a sample of the brick color, and the Planning Dept. suggested that there be a condition requiring their approval of these materials prior to the issuance of a building permit.

At the working session, the Chair asked if the lighting waivers were still necessary, and Ms. Ananth assured him that although the spillage has been reduced, it is not eliminated. However, the spillage is onto the sidewalk and driveway aprons in front of the site, where it is desirable. She also reported that, since the 9/13 hearing, the petitioner had added “fake” windows and other architectural details to the west façade to break up its mass. Ald Salvucci protested that this was a “ridiculous” request, and wanted to make it clear that it was not the Committee that requested this change, but only some members of the Committee. Ms. Ananth also showed color renderings of the building elevations, demonstrating red brick, cream clapboard, and granite-colored stone windowsills. Ald. Fischman asked to review the interior kitchen plans to try to determine whether actual windows could be used on the west façade. He did not find an alternate solution.

Ald Salvucci confirmed that the drainage plan was acceptable to the City Engineer. He also questioned the adequacy of the filtering system for cooking odors, since the new building was closer to residential abutters. McDonalds’ representative said that they used standard vertical exhaust, but did not employ any special filters. He pointed out that any odors would be similar to the present operation, and that there had been no complaints. Ald. Fischman questioned the control of speaker noise at the order board, but was convinced that since it faced Forte Park, it was unlikely to cause disturbance. Chairman Mansfield suggested the pre-sell sign was simply advertising and did not provide site identification or direction for public safety which are the standard criteria that the Board seeks to justify approval of a free-standing sign. But Ald. Vance concluded that the sign served half as advertising, and half providing information to vehicles in the queue to help them decide more quickly on a choice when reaching the menu board, thus facilitating the operation. Ms. Ananth added that the sign was behind the building line, unlike most free-standing signs. Ms. Young suggested that since there are no other drive-through businesses in Newton, the location of such a sign here could be found to be unique in purpose and so offer no precedent. Moreover, there are no residential abutters to the rear or sides of this site. Ald Harney agreed that the location and purpose of the pre-sell sign is unique, and Ald. Merrill added that it is a convenience to the customers.

Ald Merrill asked if there was adequate room for snow storage on the site. McDonalds' engineer assured him that there were sufficient islands, and parking spaces could also be used temporarily since they are in excess of requirements. Chairman Mansfield questioned the location of employee parking, and was told that they would be directed to park at the rear, although the spaces are not so designated. The petitioners stated that the hours of operation would be 6 AM to 12 midnight, as at present. Ms. Ananth described the landscaping, which retained existing trees and a stockade fence on the side property lines, and added ornamental trees and evergreen shrubs in the parking area and along the street frontage. The lighting will be metal halide.

Ald Merrill moved approval of the petition, incorporating the usual conditions recommended by the Planning Dept. and a limitation on operating hours: 6 AM to 12 midnight, seven days a week. He found that the extension of the non-conforming use would not be substantially more detrimental since the nature of the use, including the drive-through, is not more intense than at present. He and other Committee members also found that the appearance of the building is consistent with its surroundings, that pedestrian and vehicular circulation on the site promotes safety and provides adequate room to stack cars in the drive-through queue, that the lighting is evenly distributed and adequate for security but protects the neighbors from light trespass, that the signage serves to direct and assist customers and to facilitate the operation of the drive-through business, and that the pre-sell sign, the order board, and the order stand are adequately screened from neighbors and from the street.

Ald Samuelson explained that she could support this petition, although she had opposed drive-through restaurant proposals in the past, because of the unique characteristics of this site that made it an appropriate use. These included a large, regularly-shaped site that allowed adequate, safe circulation with no vehicle/pedestrian conflicts, frontage on an arterial street that experiences no traffic congestion, and a proposal for increasing the seating so that the petition did not further encourage vehicular use, idling and pollution. The Chair said that he fully agreed with Ald. Samuelson's position and reasoning. Ald. Harney expressed his support, but due to a family obligation, explained that he had to leave before the vote was taken. Other members also expressed their support for the petition, and the motion was approved 7-0, Ald. Harney not voting.

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

George E. Mansfield, Chairman