

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, DECEMBER 6, 2005

Present: Ald. Mansfield (Chairman), Ald. Albright, Fischman, Vance, Harney, Merrill, and Samuelson; absent: Ald. Salvucci
City staff: Nancy Radzevich, Chief Planner; Ouida Young, Associate City Solicitor; Linda Finucane, Chief Committee Clerk

#337-05 NEW CINGULAR WIRELESS PCs, LLP, /COMMONWEALTH HOUSE TRUST petition to install wireless communication equipment including 3 sectors of antennas to an existing elevator penthouse on the roof of 209 COMMONWEALTH AVENUE, CHESTNUT HILL, on land known as Sec 63, Blk 8, Lot 20, containing approx 20,338 sf of land in a district zoned MULTI RESIDENCE 1. Ref: 30-18(A), 30-24, 30-23 of the City of Newton Zoning Ord, 2001.

ACTION: APPROVED 7-0

NOTE: The petitioners are seeking a special permit to install six wireless telecommunications antennas and all of the support equipment on the roof of an existing 4-story multifamily condominium building. The special permit would include the extension of the height of the non-conforming structure to allow the proposed wireless equipment and screenwalls to extend up to 50 ft., 12 feet higher than the existing building but comparable to the height of the existing elevator penthouse. The wireless carrier and the condominium trustees (unit owners) are co-petitioners.

The antennas would be attached to three sides of the elevator penthouse, and fiberglass screenwalls would be constructed around the penthouse, increasing its size from 8.5 ft. x 8.5 ft to 12 ft. x 12 ft. The ancillary equipment would be placed on a new steel platform, constructed over an existing concrete slab formerly used to support a rooftop pool. Fiberglass screenwalls would be constructed on all four sides to create a new “faux” penthouse, but this structure would have no roof.

At the public hearing held on November 15, 2005, Cingular’s representatives explained that the carrier has insufficient indoor and in-vehicle coverage in the area and found that this was the best site available. There are wireless antennas on the multifamily building located to the immediate west of this site, and communications towers at the City’s Manet Road reservoir to the north, but neither of these sites was available. They also explained that the support equipment cannot be located within the building, since the basement is used for parking and there is not room elsewhere on the site. They asserted that sound from the equipment will not violate the City’s Noise Ordinance at the property line, and that because the antennas and equipment are set back at least 22 ft. from the

roof's edge, they will have minimal visual impact. Furthermore, the fiberglass screenwalls will be designed to match the existing brick. Photo simulations were submitted to support these arguments. The only speakers at the hearing were condominium owners/residents, who reported that with one exception, all owners supported the petition. Committee members expressed some concern about potential noise for building residents, and pointed out that the support equipment for the antennas on the adjacent building is within the building. But the owners pointed out that there are already air conditioning units for each apartment on the roof, and their noise has not disturbed the residents nor resulted in complaints from any neighbors. The Committee asked for confirmation that the roof could support this equipment, a more detailed sound study, and for examples of similar installations that could be viewed.

At the working session, the petitioners presented revised plans that rotated the equipment pad 90 degrees, so that the shortest side (12 ft.) now faced Commonwealth Ave. They also submitted a report from a structural engineer confirming that the roof was adequate to support the weight of the equipment—about 7,000 lbs. The Committee also reviewed a revised acoustical study that showed that at distance of 5 feet, the cooling fans in the equipment cabinets would produce 67-70 dBa. It also stated that the 16 existing HVAC units located near the edges of the roof emit 65-85 dBa, and concluded that residents of the building would hear these, not the wireless equipment. The wireless fans do not run constantly, but only when the temperature in the cabinets exceeds 80 degrees. Ald. Fischman also observed that the study showed that at 60 ft. from the source, the level was estimated to be 49 dBa, but he noted that there was no ambient noise level measured at night with which to compare this. But Ald Vance and others concluded that this was not relevant, since the likelihood of these fans running at night—when temperatures exceeded 80 degrees, and when the HVAC units were not also running—was very low. The petitioner also offered to install acoustical insulation on the inside of the faux penthouse walls to further dampen any sound, and the Committee accepted this offer.

The petitioner had identified three Cingular sites where this equipment was in use prior to the working session. However, none of these sites were in Newton, and most members were unable to view them. Ald. Fischman visited a Brookline site and reported he could not find the equipment, but the petitioner explained that it may not yet have been installed.

Ald. Vance then moved approval of the petition, finding that the installation will provide additional wireless coverage for the public, that the equipment will be well integrated with the existing non-conforming structure and will have no adverse visual impact upon the surrounding neighborhood, that the sound-dampening material enclosing the equipment cabinets and their location set back from the roof's edges should minimize any noise impacts and not be substantially more detrimental than the existing HVAC equipment, and that the building is judged to be structurally capable of handling the new equipment on its roof. The motion was approved 7-0.

The following auto dealer licenses were approved because they meet the licensing criteria; and they have no outstanding zoning complaints; have 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; and, in the case of the Class 2 licenses, have posted surety bonds with the City.

- #391-05 CLARK & WHITE INC.
777 Washington Street
Newtonville, 02460 Class 1
- #393-05 FERRARI AUTOMOBILES OF NEWTON
d/b/a FERRARI OF NEWTON
1203 Washington Street
West Newton, 02465 Class 1
- #394-05 FROST MOTORS INC.
399 Washington Street
Newton Corner, 02458 Class 1
- #395-05 FROST MOTORS INC. d/b/a FROST NISSAN
624 & 1180 Washington Street
Newtonville and West Newton Class 1
- #397-05 AUTO EUROPA
38 Ramsdell Street
Newton Highlands, 02461 Class 2
- #398-05 CITY OF NEWTON
100 Commonwealth Avenue
Newton Centre, 02459 Class 2
- #401-05 LOS ANGELES AUTOBODY, INC.
41 Los Angeles Street
Nonantum, 02458 Class 2
- #402-05 NEW ENGLAND MOTOR MART
1221-1229 Washington Street
West Newton, 02465 Class 2
- #408-05 ROBERT'S TOWING INC.
926R Boylston Street
Newton Highlands, 02461 Class 2
- #410-05 VAN AUTO SALES INC.
50 Tower Road
Newton Upper Falls, 02464 Class 2
- #412-05 ECHO BRIDGE SALVAGE INC.
16-24 Maguire Court
Newtonville, 02460 Class 3
- #413-05 SCHIAVONE BROTHERS INC.
16-24 Maguire Court
Newtonville, 02460 Class 3

#414-05 TODAY'S SERVICES INC.
1362 Washington Street
West Newton, 02465 Class 2 & 3

ACTION: ALL APPROVED 7-0

#405-05 EURO PLUS AUTO formerly PRESTIGE AUTO BUYERS INC.
50 Tower Road
Newton Upper Falls, 02464 Class 2

ACTION: APPROVED 7-0

NOTE: This is a new license, and the licensee, George Mansour, was present. He reported that he had operated an auto repair business in Needham for three years, and had moved that business to the Tower Rd. site of Prestige Auto Buyers, a former holder of a Class 2 license. He said he planned to keep all vehicles for sale inside the building, and that he would have approximately six vehicles on site at any one time. The Committee found that he was a suitable person with a suitable site for the business, and repair facilities would be available. Ald. Samuelson moved approval, and the motion passed 7-0.

#409-05 THE TRAVIS CORPORATION
d/b/a THE CAR STORE
19 Rolling Lane
Chestnut Hill 02467 Class 2

ACTION: APPROVED 7-0

NOTE: Renewal of this license was problematic in 2004 and 2005 because the City Treasurer's records indicated that Licensee Marc Epstein owed the city over \$50,000 in past due excise taxes (the 2004 and 2005 applications were discussed in committee March 16, July 20, September 21, 2004 and February 8, 2005.) Mr. Epstein's business was previously located in the 200 Boylston Street block destroyed by a fire in 2000. He operates his current business out of his home. In 2004, Mr. Epstein contended that taxes and penalties continued to accrue for vehicles and plates he no longer owned or possessed and for a corporation no longer in existence, but for which he could not offer proof because the records were destroyed in the fire. Associate City Solicitor Ouida Young advised the Committee that the city could probably not hold Mr. Epstein responsible for debts accrued under a corporation now dissolved. At the Committee's request, Mr. Epstein filed forms and an affidavit with both the Registry and the city to provide evidence that he no longer possessed the plates and vehicles in question. The Assessors reduced a small amount of the charges, but the majority of his abatement requests were denied. At the February 8, 2005 meeting, the City still alleged that his previous corporation, Mini Cost Auto Rental, owed the city \$55,000 in taxes, interest, and fees. At that meeting Mr. Epstein was asked to determine how much of the balance was the taxes and how much was interest and fees. (He estimated that about 10%, or \$5,500, was attributable to the taxes, although he still disputed that he legitimately owed these, since the vehicles had been sold and the corporation dissolved.) The committee approved Mr. Epstein's 2005 license, with the stipulation that Mr. Epstein work with the City Solicitor's office to determine the amount attributable to the excise taxes and to develop a plan to pay that amount within 2005, prior to consideration of a 2006 license. Subsequently, Associate City Solicitor Ouida Young acting on behalf of the Committee accepted Mr. Epstein's offer to pay \$3,000

toward a portion of the disputed excise taxes during calendar year 2005. In exchange, the Committee as the licensing authority agreed not to pursue the issue of Mini Cost Auto's unpaid excise taxes in considering The Travis Corporation's application for a 2006 license.

This evening Ms. Young informed the committee that Mr. Epstein, in accordance with the agreement, paid \$3,150.00 in calendar year 2005. There was a brief discussion about the reality of pursuing and ever collecting taxes owed by a dissolved corporation. Ms. Young noted the difficulties involved in "piercing the corporate veil." Ald. Harney expressed his discomfort with this settlement but, ultimately, the Committee agreed that Mr. Epstein had abided by the arrangement and, on a motion by Ald. Vance, approved 7-0 the issuance of a 2006 Class 2 Auto Dealer License.

The meeting was adjourned at approximately 9:45 PM.

Respectfully submitted,

George E. Mansfield, Chairman