

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH 16, 2004

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

Absent: Ald. Vance

Also present: Ald. Hess-Mahan, Linsky, and Baker

City Staff present: Associate City Solicitor Ouida Young, Planning Director Michael Kruse, Community Development Director Steven Gartrell, Planner Alexandra Ananth, and Chief Committee Clerk Linda Finucane

Review of request for Consistency Ruling, 225 Lexington Street, Special Permit #114-01(2)

Ms. Ananth explained the request. The special permit was approved in July 2001 for two, 2-unit attached townhouses on a 32,000 s.f. parcel abutting Auburndale Park and the Flowed Meadow conservation area. The petition also required a change in zone from SR-3 to MR-2.

Construction is currently underway, but the petitioner wishes to add fencing on the northeast corner of the site for safety reasons. At that point, there is a six-foot drop from the petitioner's land to the City-owned land. The builder, Gary LeSanto, described the fence as 65 ft. long, and 5 ½ to 6 ft. high, with a lattice top. He said it would be similar to the fencing at the southwest corner of the lot, which was approved in the special permit.

The Committee agreed that the proposed fence was justified for safety concerns and appeared to be consistent with the approved plans. Mr. LeSanto was advised that if he were to seek additional interior fencing, such as between yards, he would likely need to return to the Board for an amendment. The Planning Department took the Committee's observations under consideration.

#44-04 PRESIDENT BAKER recommending the following Board of Aldermen appointments to the Boston College Neighborhood Council, with terms to expire, December 31, 2005, per Condition #13 of Special Permit #101-03:
(B) Steven Bart, 26 Rochester Road, Newton
(Law School Campus neighborhood)

ACTION: APPROVED 6-0

NOTE: Mr. Bart was present for the discussion. He explained that he has been involved in neighborhood interaction with Boston College since moving to Rochester Road in 1991. The matters under discussion have included the football stadium at the main campus, the Newton campus master plan and the Newton campus soccer field. He served on the BC Neighborhood Council during the 2002-03 term. He has also worked with the Newton Conservators on

Edmund's Park development, and expressed a more global interest in city issues. He has helped to negotiate two Memoranda of Understanding with B.C., and although he has been concerned with the lighting of the soccer field, he observed that he is pleased that B.C. has continued to be willing to talk with the neighborhood and that they appear open to dialogue.

The Committee thanked Mr. Bart for his service and moved approval of the appointment.

Application for 2004 Auto Dealer License
#470-03 THE TRAVIS CORPORATION
 d/b/a THE CAR STORE
 19 Rolling Lane
 Chestnut Hill 02467 Class 2

ACTION: APPROVED AS AMENDED (6 months) 5-0-1 (Merrill)

NOTE: Licensee Mark Epstein was present to answer questions about this application. This business has been conducted from a residential district since Mr. Epstein lost his place of business in the fire at 200 Boylston Street several years ago. He explained that he has only an administrative office at his home on Rolling Lane, and that vehicles are stored at 483 Pleasant Street in Watertown. When he had a business location, Mr. Epstein also ran a Mini-Cost Auto rental franchise there, but dissolved that business in 2002. However, he currently owes the City \$53,411 in past due excise taxes and interest related to the Mini-Cost business, dating back to 1994. Mr. Epstein contended that these taxes are still being assessed for vehicles he no longer owns but cannot demonstrate that fact since records were destroyed in the fire. He also argued that the City couldn't hold the current corporation under which he is seeking a renewal of his license responsible for the debts of a corporation that has been dissolved. Ms. Young agreed with that point.

Ms. Finucane pointed out that the Board had renewed this license in 2003 with the knowledge that Mr. Epstein had worked out a repayment plan with the City Treasurer, but that over the past year he had only paid \$2,000 towards this plan (although the Treasurer's records submitted to the Committee were difficult to interpret), and the balance owed had actually increased. Ald. Fischman asked if Mr. Epstein intended to repay this debt, and Mr. Epstein replied that he would do so if he must to stay in business, but he believed the charges were unjust. Committee members generally agreed that the charges appeared, at least in part, to be in error, but the Treasurer had not provided enough information to substantiate this. Ald. Harney asked Mr. Epstein to work with the Treasurer to clarify these charges, and suggested that the license be held until this information could be presented to the Committee. But Mr. Epstein pointed out that to hold the license any longer—since the previous license expired on 12/31/03—would jeopardize his business since dealers cannot participate in auto auctions without a current license.

Ald. Samuelson then suggested an alternative, and moved to grant a temporary license for six months (until June 30, 2004), on the condition that Mr. Epstein accept such a license, provided that Mr. Epstein work with the Treasurer to document a clear history of the valid and invalid charges and a plan to repay the former, and return to the Committee with that information before the temporary license expires. Mr. Epstein accepted that condition, and the motion was approved 6-0-1, with Ald. Merrill abstaining.

#112-04 NANCY I. WOLFE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate an accessory apartment on the third floor of an existing single-family dwelling. (No exterior construction is proposed except that necessary for meeting requirement of state building code for access; parking will be accommodated in 3 existing spaces; landscaping will be relocated and improved.) at 23 FOREST AVENUE, Ward 3, WEST NEWTON, on land known as Sec 32, Blk, 1, Lot 12, containing 25,460 sf of land, in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-8(d) of the City of Newton Rev Zoning Ord, 2001. **(90 days: 6/7/04)**

ACTION: APPROVED 6-0

NOTE: The petitioner is requesting a special permit to establish a 769 s.f. accessory apartment by renovating the existing third floor in a 2-½ story Victorian style house built circa 1870. The lot area is 25,460 s.f. in a Single Residence 2 district. The house has 3,493 s.f. of floor area, and the site would meet all the requirements of a by-right accessory apartment (RAAP), except that since it lies just within Overlay District B (West Newton Hill), the minimum house size for RAAP is 3,600 s.f. The apartment is entirely within the existing structure, although the petitioner proposes to add two dormers and an exterior staircase. The latter is not within a setback, although the existing house is non-conforming because the south setback is only 6 ft., where a 7.5-ft. setback is required. The existing parking on site was found to be sufficient to accommodate the main house and the apartment. The site is heavily landscaped, and the Planning Department only recommended moving a few of the existing shrubs to better screen the new stairway. No additional site work is proposed or necessary.

A public hearing was held and closed on March 9,2004. The petitioner's attorney explained that much of the review of this petition was completed last year by the Planning Department while they believed that the RAAP process was sufficient, but the Chief Zoning Code Official discovered that the site was within the overlay district. One abutter, Laura O'Gara of 6 Forest Ave., spoke in favor of the petition. Former Ald. Brooke Lipsitt also spoke in favor, and on behalf of six citizens in attendance representing a group organized to promote the use of the accessory apartment ordinance. In addition, the Committee received letters from two other abutters at 14 and 29 Forest Ave. in support of the petition. There was no testimony in opposition to the petition.

The Planning Department pointed out that the petitioner had already begun interior demolition work with a permit supported by the RAAP process before the Department determined that a special permit was required.

Without further discussion, Ald. Samuelson moved approval of the petition, finding that the proposed apartment adds housing within a low density neighborhood, preserves and maintains architecture consistent with the neighborhood, provides a fully code-compliant living unit of modest size, is an appropriate location for such housing because of the size of the lot and the main house, and is nearly available as a by-right use. Standard conditions referencing the plans and requirements for issuance of building and occupancy permits were included in the motion. The motion was approved 6-0.

#113-04 DREW HYMAN/RONALD CAHALY FOR ARIN REALTY CO., INC, AGENT FOR NEWTON 70 LANGLEY TRUST petition for a SPECIAL PERMIT to install a cabinet display case with interior illumination on the building façade of 72-74 LANGLEY ROAD, Ward 6, NEWTON CENTRE, on land known as Sec 61, Blk 38, Lot 2, Blk 2, containing approx 4,131 sf of land in a district zoned BUSINESS 2. Ref: Sec 30-24, 30-20(1) of the City of Newton Rev Zoning Ord, 2001. **(90 days: 6/7/04)**

ACTION: APPROVED 6-0

NOTE: The petitioner is requesting a photography cabinet display case with interior lighting to be mounted on the front of a commercial building adjacent to the sidewalk in the Newton Centre village commercial area. The Chief Zoning Code Official has determined that this proposal is a sign, but not of a type specifically allowed by the ordinance. However, Sec. 30-20(1) authorizes the Board to grant a special permit to allow exceptions to the Sign Ordinance if it is determined that the nature of the use of the premises, the architecture of the building, or its location with reference to the street is such that an exception would be in the public interest.

The proposed display case is 45 “ high by 54” wide, and contains 16.88 s.f. of display area. The site is in the southeast corner of Langley Road, at the corner of Union Street. The Urban Design and Beautification Commission approved this sign in concept. There are several other commercial tenants in this 2-story brick building, and the petitioner occupies a below grade space with no frontage for a window display. The Planning Department determined that there are several existing signs, including wall signs, awning signs, window signs, and another display case on both the Langley Road and Union Street facades of the building, all installed by other tenants. They also found that there were no records of permits or reviews of most of these signs. The Inspectional Services Department has not evaluated this situation. The Planning Department recommended that the petitioner (or the building owner who is the co-petitioner) provide the Board with evidence that that all existing signs and awnings are legal and were properly reviewed and permitted prior to approval of this petition.

A public hearing was held and closed on March 9, 2004. The petitioner, Mr. Hyman, a commercial photographer, explained that he has been in business in Newton for 30 years, but lost his location and much of his business capital in the fire at 200 Boylston St. He said he is trying to reestablish himself at this location, but since he does not have street frontage, he need this display case to properly advertise his services. Several other commercial tenants of the building submitted written statement in support of this petition, and at least one member of the public also testified in favor. Mr. Hyman explained that he had no control over the other signs on the building, but the Chair asked him to bring the request of the Planning Department to the attention of his landlord.

Although he was notified both by Mr. Hyman and by the Committee Clerk of the potentially illegal existing signs, the owner did not respond before the working session. Members of the Committee agreed that this businessman should not be delayed or penalized, although they realized that the present application might be the only opportunity to address the issue of the other signs. Ms. Young reminded the Committee that in a recent Board Order approving a free-

standing sign at 188 Needham St., a condition of approval required the building owner to remove and/or replace the illegal building signs at that location.

With that knowledge, Ald. Samuelson moved approval of the petition with conditions, finding that the nature and use of the premises renders the exception to the Sign Ordinance in the public interest, that the tenant has no street frontage on which to otherwise display and promote his services, that the design of the sign is tasteful and in appropriate scale and character with the building, as well as appropriate for the nature of the business, and that the concept has been approved by the Urban Design Commission. The motion also recognized that there may be other signs on the building in violation of the ordinances, and so imposed the condition that the owner of the building would be responsible for legalizing or removing any unauthorized signs within one year of the approval of the special permit. Other conditions of the motion were that the lights in the display case be turned out one-half hour after the business is closed daily, and that the special permit terminate when this tenancy terminates. The motion was approved 6-0.

#510-03 OTIS DEVELOPMENT LLC/FIRST CHURCH OF CHRIST SCIENTIST
petition to change from SINGLE RESIDENCE 2 to MULTI RESIDENCE 2 land
known as Section 24, Block 17, Lot 3 located at 391 WALNUT STREET,
containing approximately 40,509 square feet of land. **(90 days: 5/10/04)**

ACTION: HELD 6-0

#510-03(2) OTIS DEVELOPMENT LLC./FIRST CHURCH OF CHRIST SCIENTIST
petition for SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF
A NON-CONFORMING USE and STRUCTURE to convert an existing 3-story
church into a multi-family building containing 11 dwelling units with a one-level
basement garage parking for 11 cars and additional 11 exterior parking spaces at
391 WALNUT STREET, Ward 2, NEWTONVILLE, on land known as Sec24,
Blk 17, Lot 3, containing approx 40,509 sf of land in a PROPOSED MULTI
RESIDENCE 2 district. Ref: Sec 30-9(d)(1), 30-8(b)(7), 30-9(b)(1) & (4), 30-
9(d)(1), 30-15(m)(5)(a) &(b) & (c)30-24, 30-23, 30-21(b), 30-20(l), 30-5(B)(4),
30-19(m) of the City of Newton Rev Zoning Ord, 2001. **(90-days: 6/7/04)**

ACTION: HELD 6-0

NOTE: A full report will be submitted on this petition only after the Land Use Committee makes a recommendation. The public hearing was opened on February 10, 2004, and continued until March 9, 2004, when it was closed.

At this meeting, the Chair and members of the Committee reported on the site visit held earlier in the day. Mr. Gartrell reported to the Committee on how the petitioner's proposed Affordable Housing Plan complies with the Inclusionary Housing Ordinance. There was discussion of the proposed construction management plan, which is expected to be further refined. Ald. Linsky suggested that a neighborhood liaison committee be established for this project, if approved, and the petitioner agreed to propose one. Finally, the petitioner asked Committee members to consider whether the proposed carports behind the building should remain a part of the

plan, or should be redesigned. Anticipating further information on these matters, the petition was held.

REFERRED TO PROGRAMS & SERVICES AND LAND USE COMMITTEES

#267-02 ALD. BASHAM requesting creation of rules for Board of Aldermen acting as Special Permit granting authority.

ACTION: HELD 6-0

NOTE: A full report will be submitted on this item only after the Land Use Committee makes a recommendation.

The Law and Planning Departments had distributed to the Committee final drafts of the proposed rules amendments and a tracking worksheet to be used by the Planning Department to guide and follow the special permit application process. However, most members of the Committee wished to formally solicit comments on these drafts from local land use attorneys and other potential participants in the application process before a final discussion and vote on this recommendation. Because the calendar in April otherwise restricts land use working sessions, the Committee agreed to hold a meeting to receive comments on the proposed rules at 7:15 PM, Tuesday, April 13, 2004, just prior to the scheduled public hearings. To allow for this comment, the item was held.

The meeting was adjourned at 12:30 AM.

Respectfully submitted,

George E. Mansfield
Chair