

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, APRIL 13, 2004

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

Also present: Ald. Baker and Linsky

City staff present: Associate City Solicitor Ouida Young, Planner Nancy Radzevich, Planner Alexandra Ananth and Committee Clerk Shawna Sullivan

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 7-0 (Merrill not voting)**

NOTE: The purpose of the discussion was to gather testimony from the public and Land Use attorneys. The Newton Land Use Bar Association was present and submitted a letter to the Committee. The submittal was lengthy and the Chair explained that the Committee would need time to review it.

Ms. Patricia Otis, President of the Chestnut Hill Association, was present and stated that she has read the rules and they seem like a good idea. She was pleased that the Planning Department would be able to have an early review of petitions. She suggested that a public hearing be held before the City does any scoping on petitions to get public input early on in the process, similar to the BRA review process in Boston.

G. Michael Peirce, Esq. stated that the concept of rules is valuable but had some concerns regarding the proposed rules. He would like to see a greater degree of specificity as it relates to defining different levels of projects. This would define what track a project is on, enabling the petitioner and attorney to create a time line for projects. Mr. Peirce also had concerns about the black out periods, which are addressed in the submittal. He would also like the Committee and Board to allow for an additional comment period after review of the letter.

Jason Rosenberg, Esq. endorsed the letter but also observed that part of the problem is that the Land Use Committee does not adhere to discipline and self-control during public hearings and working sessions in terms of time. Small petitions take too much time and there should be set time limits. Also, the Land

Use Committee is the only Board Committee with statutory time constraints and it meets on the worst night of the week, when many meetings are not pre-empted due to holidays and elections. The Committee should be meeting on Wednesdays or Thursdays. It would allow more time to devote to petitions and there would be less chaos. He would like to see the policies in the proposed rules incorporated into the City Ordinances.

Alan Schlesinger, Esq. stated that the challenge for the Committee is to establish a proper balance between no rules and too many rules. He believes that pre-filing requirements that may bar petitioners from filing are not helpful. This requirement might allow City staff to ask for amendments or further information that would deny the petitioner the right to file. There should not be a dispute about the right to file a petition. He also reiterated Mr. Peirce's request that significant and non-significant petitions be defined. He also suggested that the City investigate how other communities handle the special permit process.

Steven Buchbinder, Esq. told the Committee that the City has developed a reputation as being difficult to deal with in terms of special permits, while other communities are more user-friendly. The proposed rules seem to make the special permit process more elongated and expensive to petitioners. He would also like to see the City establish "triage" between smaller and larger projects. There should also be a clause allowing a petition to be deemed complete and ready to file if the petitioner does not get answers from the City staff within a defined time limit. He would also like to see the same planner work with a petitioner throughout the special permit process.

Mark White, Esq. addressed the Committee regarding the Chapter 40A statutory time frame. He doubts that the courts will allow the City to thwart the submittal of an application for a special permit. It is his belief that the Board cannot delegate substantive issues surrounding a petition to administrative departments.

Peter Harrington would like the rules to establish guidelines for interaction with petitioners and attorneys. The guidelines for the attorneys should specify how attorneys should interact with Board members, and address the ex parte communication by Aldermen with the public and staff. This would provide protection for the attorneys, as it is confusing since the Board is not acting in its political role when sitting as a special permit granting authority. It would also be beneficial to adopt the national ITE standard for traffic studies. This would save clients money, especially for small projects. It is his experience in other communities that the planning staff is not heavily involved in special permit petitions. He has never met with any member of the legislative body outside the public hearing in any other City or Town regarding special permits.

Ms. Otis added that she is pleased that the attorneys gave their input. It is a real opportunity for the City and attorneys to work together to come up with the best possible rules. Ald. Samuelson moved hold on the item until May 4 to give the

Committee an opportunity to read and discuss the submittal from the attorneys. The Committee voted unanimously to hold the item.

#17-01(5) REQUEST FOR A ONE-YEAR EXTENSION OF TIME to EXERCISE SPECIAL PERMIT #17-01(4), filed on April 11, 2003, granted to WILLIAM & MERLE ROSE to modify both the approved subdivision and proposed new single-family house with garage at 91 WINSTON ROAD, Ward 8, NEWTON CENTRE, on land known a Sec 81, Blk 51, Lot 22, containing approx 61,375 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24(c) (4) of the City of Newton Rev Zoning Ord, 2001.

ACTION: **APPROVED 7-0 (Fischman not voting)**

NOTE: The petitioner, Mr. William Rose, was present for the discussion. He has applied for the extension because the architect did not finish the plans until late in the summer and he could not find an available contractor. He has since found a builder and will most likely sign a contract with the company next week. Ald. Merrill moved approval of the extension, which carried unanimously.

#114-04 JOHN A. GROSSMAN & KATHARINE H.OLMSTEAD petition for SPECIAL PERMIT/SITE PLAN APPROVAL to locate an accessory apartment in an existing 1½-story carriage house, including exterior construction of a required 40 sf entryway and waiver of parking dimensional requirements, at 158 HOBART ROAD, Ward 7, CHESTNUT HILL, on land known as Sec 61, Blk 18, Lot 1, containing approx 28,109 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-8(d) 30-19(g) & (m) of the City of Newton Rev Zoning Ord, 2001. (90-days: 6/7/04)

ACTION: **APPROVED 6-2 (Albright and Harney opposed)**

NOTE: The petitioner is requesting a special permit to create an accessory apartment in an existing 1½-story carriage house/garage. The petition also includes the exterior construction of a 40-sf entryway on the east side of the existing garage and the waiver of parking dimensional requirements. The site is located in Overlay District D.

Ald. Harney reported on the concerns of the neighbors at the public hearing. There were some objections to accessory apartments in principle, and specific concerns regarding traffic, as the site was describes as located at a dangerous intersection. There were also concerns about what the petition would do to the character and integrity of the neighborhood, if everyone in the neighborhood sought an accessory apartment.

At the public hearing on March 9, 2004, the Committee requested that the petitioners meet with the Fire Department to review the plans. The attorney for the petitioner, G. Michael Peirce, submitted a letter to the Board on April 9, 2004 stating that the petitioners met with Assistant Chief Proia and reviewed the plans. Assistant Chief Proia recommended that the walkway leading from the driveway

to the garage be not less than 5 feet in width and that three proposed trees be relocated so that they do not overhang the walkway. It was also recommended that as a condition of approval all rooms within the accessory apartment have sprinklers installed and that there be no storage of inflammables in the basement. The petitioner has agreed to implement all of the Fire Department's recommendations. Ald. Samuelson felt that it was not reasonable to request a 5' walkway or to require a tree to be moved on a residential lot. Ald. Vance asked if it was possible to disregard the recommendations of the Fire Department. Ms. Young responded that it is a question of whether or not the recommendations are a requirement of the fire code, or simply the preference of the Fire Department. She suggested talking with the Fire Chief before the Board disregarded the recommendations.

Ald. Albright asked if all the issues raised by the Chief Zoning Code Official had been addressed. Attorney Peirce responded that the petitioners have submitted all requested materials. The petitioner has agreed to leave the loft area as an open carpeted area, as requested. The Committee felt that this should be a condition of the Board Order.

There was discussion surrounding setting a precedent for accessory apartments in the neighborhood. There are 32 properties located in the area of which twelve have detached garages. Out of the 12 properties that have a detached garage, only a possible five could petition for an accessory apartment. All five would require a special permit. The Committee also reviewed the parking plan. The dedicated parking for the apartment is a 40' long by 12' wide driveway that exits onto Wachusett Road and is located 50' from the intersection of Hobart Road and Wachusett Road. The parking for the main house is a 50' long by 12' wide driveway that exits onto Wachusett Road, as well. The two parking areas and curb cuts already exist. The length of the existing driveway for the garage will be significantly reduced creating less paved surfaces and an increase in landscaped open space at the site.

Ald. Baker spoke on the petition. He believes it is important to clarify why the site is unique and should be granted a special permit. The grading of the site is unique. The main house is located 20' above the garage and the garage is significantly below the grade of the street. Therefore, there will be little impact on the neighborhood. The house and garage are listed on the National Register of Historic Places. The issuance of a special permit for an accessory apartment will encourage the preservation of a historical structure.

The Committee discussed how the public is served by this special permit. Ms. Ananth responded that it provides additional diverse affordable housing in the neighborhood and it has a small impact on the neighborhood. The accessory apartment is an appropriate use for the site. Ald. Harney and Albright did not feel that the petition provided anything to benefit the public and was only a benefit to the petitioner.

Ald. Vance moved approval of the petition with the following findings: the proposed location is not detrimental to the neighborhood due to the topography of the site, there is no additional entranceway or driveway to the site, the garage is not functional as is and the accessory apartment would preserve the building, the architecture is suitable to the neighborhood, it will create a unit of housing that is diverse, it creates added safety by the addition of a sprinkler system in the living area and by having an occupied building, and the removal of a substantial amount of paving creates more green space. The motion included the recommended conditions found in the Planning Department memo, as well as a condition for the sprinkler system and the condition that the loft area remain a carpeted open space. The motion was approved 6-2.

#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: APPROVED 7-0-1 (Samuelson abstaining)

#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: APPROVED 7-0-1 (Samuelson abstaining)

NOTE: The petitioners are requesting a zone change from Single Residence 2 to Multi Residence 2 and a special permit to convert an existing church building at the intersection of Walnut and Otis Streets, and directly across from Cabot Street, Newtonville, to a multi-family use for 11 condominium units. The proposal would renovate the present open interior of the church into three levels of living space, and convert the basement to a garage with 11 spaces, mechanical uses and trash storage. Twelve exterior grade-level parking spaces are also proposed at the site of the existing parking area behind the church. Six of the units would also have living space at the basement level, and would include a new below-grade patio outside the present footprint of the building and a second story addition at the southwest corner of the building. This petition is subject to the 15% Inclusionary Zoning Ordinance (the first such petition since the revised Ordinance was approved), and two of the proposed units would be offered for sale to income-eligible households. The petitioners are also proposing a preservation

restriction for the exterior of the building, which would preserve the facade, steeple, and significant architectural features of the structure.

The main entrance to the building would be from Otis Street, where all vehicular access would also be located. One existing curb cut will be eliminated. new windows will be added to the front and side facades. A 3 sq. ft. free-standing identification sign would be installed on the Walnut Street frontage, as well as a bicycle rack. No dumpsters will be on site, and the trash pick-up from the basement will be scheduled to meet the requirement so of the Ordinances

These petitions were previously discussed at the March 16, 2004 working session of the Land Use Committee. At that time Ald. Fischman reported that the changes made to the original proposal—heard by the Committee in a previous petition submitted in 2003 and subsequently withdrawn, which reduced the number of units and increased the landscaped buffer and incorporated other revisions that were requested by the neighbors, resulting in public testimony at the hearing that was chiefly limited to concerns about the construction management plan and the question of whether the exterior parking should be covered or open. Chairman also reported then upon the Committee's visit to the site on March 16. Associate Director of Planning Steven Gartrell also reported at that meeting on the details of the petitioners' Inclusionary Housing Plan. Ald. Linsky also requested at that time that a neighborhood liaison committee be established.

The memo submitted by the Planning Department for the April 13 working session addressed the questions raised at the public hearing and the previous working session. The petitioner has removed the carports from the plans at the request of the abutters, a revised construction management plan was submitted and a liaison committee was agreed to by the petitioner. Ald. Salvucci questioned why there will be an underground garage when there is available space for parking above ground in the rear of the building. Attorney Rosenberg responded that the abutters did not want to see a sea of vehicles on the site. The underground garage will also increase the amount of green space on the site. The petitioners have also submitted revised plans indicating upgrades to the pedestrian curb cuts and handicap ramps on the east and west sides of Walnut and Cabot Streets. The revised Inclusionary Housing Plan for homeownership has been submitted and reviewed by the Planning Department. It is compliant with the requirements of the ordinances.

The Planning Department and the Commissioner of Inspectional Services Department have reviewed the revised Construction Management Plan. Ald. Albright asked what the impact would be if the Saturday work hours were shortened from 9 am to 6pm to 9 am to 4 pm. Attorney Rosenberg responded that he could not answer to that question, but Ald. Salvucci stated that if work times were shortened the project would take longer to complete.

Ald. Salvucci would like to see language in the construction management plan that covers the operation and location of heaters during construction, as they are very noisy. The plan should specify the best location for the heaters, as not to impact abutters. He would also like the wheels of construction vehicles washed when leaving the site so mud is not tracked onto the streets.

The Committee then reviewed the revised draft Board Order provided by Ouida Young at the meeting. Ms. Young explained that the conditions are based on direction from the Committee. Mr. Rosenberg stated that the formation of the construction liaison committee will take place within two months of the approval of the petition. The liaison committee will meet once a month during the construction period. The purpose of the committee is to provide a forum for good faith efforts and to resolve complaints or disputes. Attorney Rosenberg suggested dating the construction management plan and the revised plan with the date of this meeting. Ald. Salvucci had concerns regarding parking for the employees of the construction contractor. He would like to see the Board Order be more flexible in this regard. It was explained that the parking surrounding the site is very restricted and the employees could use the metered spaces in the nearby municipal lot. There was some question about the type of lighting to be used. The plans reference high-pressure sodium luminarie lights. Attorney Rosenberg explained that this was an error and metal halide lights will be used. Ouida Young suggested a condition for private trash collection be included in the Board Order, as the trash is to be compacted in the garage. The petitioner agreed and stated that trash pick-up will only occur Monday through Friday between 9 am and 5 pm. Ald. Salvucci asked if the units will have separate water meters. The petitioner responded that there will be separate water meters for each unit and two meters for the water sprinklers and fire systems.

Ald. Albright moved approval of the special permit petition and zone change with the following findings: the project includes two units for homeownership under the inclusionary housing plan, the façade of the building will be preserved, it is a good use of the site and an appropriate location for a multi-family structure, it creates additional housing supply without impacting open space, it is a less intensive use of the site than other potential uses and traffic and circulation on-site will have minimal impact on the neighborhood, it is in keeping with the architectural integrity of the structure and is not substantially detrimental to the neighborhood, the 4' parking waiver for the width of the exterior maneuvering aisle creates a larger landscape buffer for the abutting properties, light from the parking facility creates pedestrian safety on the public way, the freestanding sign will help identify the structure as a residence and the grade change will not adversely impact the neighborhood or create drainage problems. The motion was approved unanimously with one abstention (Ald. Samuelson).

#452-03 FERRARI AUTOMOBILES OF NEWTON
d/b/a FERRARI OF NEWTON
1203 Washington Street
West Newton, 02465 Class 1

ACTION: **APPROVED 8-0**

NOTE: The license was approved because it met the licensing criteria, has no outstanding zoning complaints, and the licensee owes no money to the City of Newton.

#464-03 NEWTON TRADE CENTER
103 Adams Street
Nonantum, 02458 Class 2

ACTION: **APPROVED 8-0**

NOTE: The license was approved because it met the licensing criteria, has no outstanding zoning complaints, no money is owed to the City of Newton, and their surety bond with the City has been posted.

The meeting was adjourned at 11:25 p.m.

Respectfully submitted,

George E. Mansfield, Chairman