

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JUNE 22, 2004

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

Also present: Ald. Danberg and Lappin

City staff: Ouida Young (Associate City Solicitor), Nancy Radzevich (Chief Planner), Eric Jerman (Senior Planner), David Naparstek (Commissioner of Health), Clint Schuckel (Traffic Engineer), and Linda Finucane (Chief Committee Clerk)

#210-04(2) AGREEMENT TO AN EXTENSION OF TIME in which to ACT on OMNIPOINT HOLDINGS, INC. (WHOLLY-OWNED SUBSIDIARY OF T-MOBILE USA, INC.)/ANDOVER NEWTON THEOLOGICAL petition #210-03 for a SPECIAL PERMIT/SITE PLAN APPROVAL to install façade-mounted wireless communication equipment at 210 HERRICK ROAD, Ward 6, NEWTON CENTRE; said EXTENSION will run from August 9, 2004 through August 10, 2004.

ACTION APPROVED 6-0 (Harney and Vance not voting)

NOTE: The Petitioners intend to revise their plans in accordance with the recommendations of the Historical Commission. The plans will be submitted and reviewed by the Planning Department and the Committee expects to discuss this petition on July 20<sup>th</sup>. If for some reason it is not discussed at that meeting, the Petitioners will grant a further extension of time.

#213-04(2) AGREEMENT TO AN EXTENSION OF TIME in which to ACT on BROOKLINE STREET, LLC, c/o MARK KAPLAN, 99 BALDPATE HILL ROAD petition #213-04 to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL nos. 504-80 & 504-80(2) by subdividing an existing 61,498 square-foot lot at 333 BROOKLINE STREET, Ward 8, into two lots in order to construct two single-family dwellings; said EXTENSION will run from August 9, 2004 through September 9, 2004.

ACTION: APPROVED 6-0 (Harney and Vance not voting)

NOTE: This Petitioner also needs to submit revised plans to the Planning Department. It is expected that this too will be on the agenda for July 20<sup>th</sup>.

#164-04 McDONALD'S CORPORATION (McCOY ASSOCIATES, INC. – FRANCHISEE) petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #140-78 and for an EXTENSION of a NON-CONFORMING USE to rehabilitate an existing 136-seat restaurant with the addition of drive-through and pick-up windows on the south side of the building; a menu display board, reconfiguration of the existing parking area, including lights, curb cut, signage and landscaping, and the addition of new exit driveway at 111 NEEDHAM

LAND USE COMMITTEE REPORT

June 22, 2004

Page 2

STREET, Ward 5, on land known as Sec 51, Blk, 28, Lot 16, containing approx 40,335 sf of land in a district zoned MIXED USE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2), 30-21(b), 30-13(b)(1), (5), (16), 30-19(m), 30-20(l), of the City of Newton Rev Zoning Ord, 2001. **(8/9/04)**

ACTION: HELD 8-0

NOTE: The discussion of this petition was continued from the meeting of June 8, 2004, to review issues of traffic circulation, parking and safety with the City Traffic Engineer, Clint Schuckel, who was present. Other information that had been requested from the petitioner regarding noise, signage and easements was also discussed. Following this discussion, a motion to deny the petition was made by Ald. Samuelson with a number of findings, the primary ones of which were that the proposed drive through facility does not promote the planning goals for Needham Street or the development goals for the city as a whole, and that the impacts of the proposal are substantially more detrimental than the current non-conforming use. The majority of Committee members stated that they were not ready to vote for either a motion to approve or deny at this time, and indicated their intent to abstain on the motion. Ald. Salvucci and others asked that the Traffic Engineer visit other similar fast-food drive through sites in adjacent municipalities and observe their operation to prepare a report to the Committee. On this basis, Ald. Samuelson withdrew her motion, and made a motion to hold the item, which was approved 8-0. The petitioner was also asked to agree to an extension of time to act so that this additional information could be considered. (See below)

#164-04(2) AGREEMENT TO AN EXTENSION OF TIME in which to ACT on McDONALD'S CORPORATION (McCOY ASSOCIATES, INC. - FRANCHISEE) petition #164-04 to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #140-78) and for an EXTENSION of a NON-CONFORMING USE to rehabilitate an existing 136-seat restaurant with the addition of drive-through and pick-up windows on the south side of the building; a menu display board, reconfiguration of the existing parking area, including lights, curb cut, signage and landscaping, and the addition of new exit driveway at 111 NEEDHAM STREET, Ward 5, on land known as Sec 51, Blk, 28, Lot 16, containing approx 40,335 sf of land in a district zoned MIXED USE 1; said EXTENSION will run from August 9, 2004 through September 9, 2004.

ACTION: APPROVED 8-0

#542-03 CLEAR CHANNEL RADIO, BEASLEY BROADCASTING GROUP & CHAMPION BROADCASTING SYSTEM petition to AMEND Board Order nos. 91260 of 1947; 102720 of 1953; 105686 of 1954, 422-6, 552-66, and 781-73(2) and (3) for SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING STRUCTURE to replace two existing 353' lighted towers for transmission of AM radio with five 199' unlighted transmission antennas (relocated), including the replacement and relocation of foundation piers, anchor mounts, footing, guy wires and outbuildings and renovation of interior and exterior of the existing transmission

station building at 750 SAW MILL BROOK PARKWAY, Ward 8, on land known as Sec 84, Blk 10, Lot 57, containing approx 805,000 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-18, 30-21(b), 30-8(b)(8) and (9) of the City of Newton Rev Zoning Ord. **(8/18/04)**

**ACTION:** HELD 7-0 (Salvucci not voting)

**NOTE:** The Petitioners propose the replacement of two (2) existing 353' AM antennas with five (5) 199' AM antennas and the interior and exterior renovation of the existing 1,142 sq. ft. transmission building at 750 Saw Mill Broad Parkway. Each proposed antenna will have a 16' by 20' equipment shelter located adjacent to it, replacing two (2) 6' by 6' equipment shelters located adjacent to the existing antennas. Buried copper wires will radiate from the proposed antennas and the bases of each antenna will be fenced. The proposed antennas will be directional, with most of the broadcasting power aimed towards the northeast.

The Petitioners propose to renovate the interior and exterior of the transmission building, altering its appearance to resemble a small single family dwelling. Landscaping will be added to both the building and along the perimeter of the Site. The existing two-car graveled parking area adjacent to the transmission building will remain. A non-functioning 35' tower located to the rear of the existing transmission building will be removed.

The transmission building and antennas will support the continued broadcast of WUNR-AM, and permit two (2) additional radio stations, WKOX-AM and WRCA-AM, to broadcast from the Site as well. WKOX-AM currently broadcasts from a location in Framingham and WRCA-AM currently broadcasts from a location in Waltham. The three (3) stations currently hold construction licenses from the Federal Communications Commission ("FCC") permitting each station to broadcast from the Site. Each FCC license is for 50kW of power. WUNR-AM broadcasts at 5 kW of power and the combined power of the three (3) radio stations will be 95 kW. The transmission station will be unmanned.

The Petitioners identified the following public benefits offered by the proposal:

- a) the replacement of the existing antennas with lower, unlit antennas, painted an unobtrusive color and constructed in accordance with current building and safety codes;
- b) renovation of the exterior of the transmission station to make it more residential in character;
- c) additional landscaping around the transmission station and perimeter of the Site;
- d) wetlands protections imposed through the Conservation Commission's Order of Conditions and contribution of a conservation restriction on a portion of the Site;
- e) no TV or telecommunications equipment to be added to the proposed antennas; and

- f) continuation of an interference correction program to the 1 V/m contour line for each respective radio station beyond the one (1) year period required by FCC regulations.

The existing antennas and transmission building were authorized by Special Permit #91260 in 1947. This Special Permit has been amended several times, most recently in 1966, to permit a small addition to the transmission building. The antennas are non-conforming structures as to height. The transmission building is a non-conforming structure because it encroaches into the front setback. The proposed antennas, while shorter than the existing antennas, will remain non-conforming as to height. The proposed renovation of the transmission building will cause it to encroach slightly more into the front setback.

The land owned by Petitioner Champion Broadcasting System, Inc., is approximately 19.7 acres in size. The Site consists of an open meadow surrounded by areas forested with mature deciduous trees. The existing antennas are located toward the center of the Site. The Site is within four hundred (400) ft. of the Charles River; is partially within the Charles River floodplain; and contains a Bordering Vegetated Wetland and its 100-foot Buffer Zone. The Site also contains a vernal pool and provides a habitat for the Blue Spotted Salamander, which is classified as an endangered species by the Massachusetts Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife.

The neighborhood surrounding the Site is zoned SR-3 and predominately consists of single family dwellings. The housing in the immediately adjacent neighborhood of Oak Hill Park was developed to provide W.W.II veteran housing shortly after the existing antennas and transmission building were constructed in 1948. The Solomon Schechter Elementary School is also located in the Oak Hill neighborhood.

The closest existing antenna to the Site's property line is approximately 380 ft. from Saw Mill Brook Parkway; 390 ft. from Antonellis Circle; and 420 ft. from Spiers Road. This same antenna is approximately 420 ft. from the nearest residential structure on Antonellis Circle and 500 ft. from the nearest residential structure on Spiers Road. The closest proposed antenna to the Site's property line will be approximately 210 ft. from Saw Mill Brook Parkway; 200 ft. from Antonellis Circle; and 150 ft. from Spiers Road. The proposed antennas will be approximately 200 ft. from the nearest residential structure on Antonellis Circle and 215 ft. from the nearest residential structure on Spiers Road.

A Public Hearing on the Proposal was opened January 13, 2004 and continued to allow testimony from Dr. Linda S. Erdreich, of Exponent, and David Maxson, of Broadcast Signal Lab, peer reviewers retained by the Board of Aldermen to comment on health standards and interference from the proposed radio frequency emissions. The Public Hearing was closed on May 20, 2004. The Land Use Committee attended a publicly noticed Site visit on May 6, 2004, to observe a balloon test showing the height and location of the proposed antennas.

Testimony and reports were received from the Petitioners' experts, including Dr. Peter A. Valberg, of Gradient Corporation, and Hatfield & Dawson Consulting Electrical Engineers. A

significant number of neighborhood residents testified and submitted written information and comments during the Public Hearing. The Conservation Commission's Order of Conditions for the Proposal, DEP #239-448, was submitted, together with staff reports from the Newton Planning and Development Department and the City Engineer. The Newton Health Commissioner, David Naparstek, and Dr. John Osepchuk, retained by the Oak Hill Park Association, also testified and submitted written information during the Public Hearing. Copies of all written information, comments and reports submitted during the Public Hearing, as well as the Petitioners' site plans and expert reports, are on file with the Newton City Clerk.

Discussion of this petition began in working session at this meeting late in the evening, and after considerable discussion with the Health Commissioner, David Naparstek, the item was held for a special meeting on June 30, 2004, at which time the Committee agreed to try to reach a recommendation to the Board.

The meeting was adjourned at approximately 12:35 AM.

Respectfully submitted,

George E. Mansfield, Chairman