

CITY OF NEWTON
IN BOARD OF ALDERMEN
LAND USE COMMITTEE REPORT
TUESDAY, FEBRUARY 4, 2003

Members of Committee present: Ald. Basham, Chairman; Ald. Bryson, Fischman, Linsky, Lipsitt, Salvucci, Samuelson.

Member of Committee absent: Ald. Merrill.

Other Aldermen present: Ald. Mansfield.

City Officials present: Nancy Radzevich, Chief Planner; Eric Jerman, Planner; Ouida Young, Associate City Solicitor; Linda Finucane, Chief Committee Clerk; John Daghlain, Associate City Engineer.

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APPLICATIONS FOR 2003 AUTOMOBILE DEALER LICENSES

36-03 RICHARD CASELLA/RC'S TOWN LINE AUTO SALES, INC.
 945 Moody Street
 Waltham
 Class II license

ACTION: Approved 7-0.

NOTE: This site, partially in Waltham, houses more than one auto sales business. The current applicant is a new tenant and sublessee of Sun Auto. He has received a license from Waltham that has certain conditions attached to it. The Committee reviewed the conditions and decided to adopt the relevant ones to keep the licenses consistent.

402-02 DELIO CORPORATION d/b/a RVD AUTO SALES
 227 Californian Street
 Class II license

ACTION: Approved 7-0.

SPECIAL PERMIT AND SITE PLAN APPROVAL PETITIONS

366-02 WALTER AND DIANE SHANNON petition for the following SPECIAL PERMITS: (a) TO EXTEND A NONCONFORMING STRUCTURE, (b) TO CREATE A

REAR LOT, (c) TO ALTER THE GRADE BY MORE THAN THREE FEET, AND (d) TO WAIVE TECHNICAL REQUIREMENTS OF SECTION 30-19(f)(2) TO PERMIT SHARING OF A DRIVEWAY, and a SITE PLAN APPROVAL, all associated with construction of a new single-family dwelling with garage at 305 CHERRY STREET, Ward 3, on approximately 31,600 sf of land known as Section 33, Block 34, Lot 2, in a district zoned SR3.

ACTION: Approved 5-1-1 (Ald. Linsky voting in the negative; Ald. Salvucci abstaining).

NOTE: The Committee previously acted upon this item, voting 3-1-3 to recommend approval. At the petitioners' request, however, the chairman polled the Committee under suspension of the rules at the Board meeting of 1/21/03 and the Committee agreed to hold the item in Committee so that the petitioners could attempt to address the issues underlying the several abstentions in the previous vote. Since the item was not reported in detail prior to that action, a full report is included here.

The petitioners propose the creation of a rear lot subdivision at 305 Cherry Street, for which they require several special permits and site plan approval. The two dwellings will share a driveway; the plan involves a change of grade of more than three feet to accommodate the driveway and turn into the garage. The front lot is currently nonconforming and becomes more so if divided because it must meet new dimensional requirements. Thus, the petitioners also require a special permit to extend this nonconformity. At present, the lot has a single-family dwelling with street frontage and front setback consistent with other neighboring dwellings, which was constructed in the mid-1800s. It has been described as a well-maintained cape style, smaller than the average home in the neighborhood and not particularly distinctive. The petitioners' stated intention is to construct a new single family dwelling on the new rear lot as their own dwelling and sell the front house and lot. At the public hearing on November 12, 2002, the neighbors to the rear raised concerns about drainage and flooding problems, some of which appeared to be related to a city-owned pipe that misdirects runoff.

In its initial discussion of the petition, the Committee reviewed the elevations for the proposed new dwelling of 3195 sf, which the Planning Department described as in character with the neighborhood. Because the lot slopes downward, the massing effect of the new dwelling is minimized. Reviewing the site plan, Ald. Lipsitt questioned whether it would be possible to "flip" the house so that it would be farther from the rear lot lines of abutting neighbors. The petitioners declined to consider that option because it would require greater disruption to the site and more fill.

John Daghlian reported on his review of the drainage and flooding situation. The drainage plan has been engineered to accommodate the 100 year storm and, in his view, the proposed development will not increase runoff from the site. However, there are several factors contributing to flooding in the low area at the rear, and one of them is beyond these petitioners' control: the city-owned 12" pipe. Mr. Daghlian said that the city should regrade the area at the mouth of the pipe and redirect the runoff. As for this petition, the petitioners have proposed a swale and certain regrading that Mr. Daghlian says will help to improve the situation for the

neighbors if the neighbors want it. The neighboring properties on Alden Place are subject to basement flooding because the topography of the area is pitched toward them, and this property, in Mr. Daghlian's opinion, will be less of a contributor to the problem with the new drainage system. The Committee also reviewed the landscape plan and noted the plans for additional screening on the east side of the property. Mr. Peirce, attorney for the petitioners, said that the landscaping had been discussed with the nearest abutters.

Several members of the Committee expressed concern that the front house is essentially the economic means to the development of the rear lot. Ald. Lipsitt said that the neighborhood as a whole has a lot of City history and a 140-year-old house in a mature neighborhood is worth preserving. We should be concerned in any rear lot subdivision proposal that the character of the neighborhood not be lost. Here the existing house is only 1626 sf, and there could be pressure on it for redevelopment. She suggested that the petitioners might want to consider offering to have the design for any new house reviewed and approved by the Historical Commission. Ald. Samuelson said that she respects and admires the work of the Historical Commission and is happy any time we can insist that they have input. Ald. Fischman said he was less concerned about the front house because it doesn't have much distinction and is on fairly narrow frontage. Ald. Salvucci distinguished this situation from the recent Grove Street petition because there the property was under a demolition delay. From his viewpoint, it is unfair if the petitioners don't know coming in that they will be expected to submit to the Historical Commission.

Ald. Basham remarked on the change in the rear lot subdivision permits from the time when petitioners would argue that they needed to develop the rear of the lot in order to afford preservation work on the original, older house, and so the Committee found public benefit in the restoration of the house and the preservation of the streetscape. Here the older house is nothing but the economic means to the desired end of building a new house – the petitioners want to sell it and get money out of it. It is hard to find the public benefit under such circumstances, particularly when the new residence will take up open space that requires regrading and extensive engineering just to make it buildable.

The Committee discussed briefly whether, as a matter of policy, Historical Commission review or some form of design review should be required in all rear lot subdivision situations. The Committee was not of one mind on this question. A straw vote of 3-4-1 revealed that the Committee was also divided on whether it would prefer that this particular location be subject to historical review. Mr. Peirce addressed the Committee and argued that this situation is not like Grove Street because his clients have put a lot of work into the front house and have not sought a demolition permit, so that it probably will not be torn down, but they would not want a buyer to be burdened with a condition requiring Historical Commission approval if that is the buyer's preference.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by adding to the housing stock without detriment to the community, the petitioners have offered a solution to some of the drainage problems in the area, and there will be no additional curb cut on a busy street. The petitioners also offered to eliminate access on the paper street

from Alden Place and agree to no further subdivision of the lot. The Committee voted 3-1-3 to approve the petition, with Ald. Basham, Samuelson, and Lipsitt abstaining and Ald. Linsky in opposition.

At this working session, the Committee reviewed a letter dated January 31, 2003 from Michael Peirce, who was present with his clients. The Committee found that Mr. Peirce had not offered any particular concessions or suggestions by the petitioners that would satisfy the concerns of the several abstaining members. Nevertheless, both the Committee and Mr. Peirce acknowledged that the primary issue underlying the several abstentions was whether the petitioners would agree to send the design for a reconstruction of the existing front house for the review and approval of the Historical Commission, and Mr. Peirce stated orally that if that was the preference of the three members who abstained, then his clients would agree to it.

Ald. Lipsitt said that notwithstanding any other issues with the petition, it is her firm belief that a rear lot subdivision behind a house of historical years gives great benefit to the petitioner at a possibly substantial risk to the community at large, and therefore she will expect the approval of the Historical Commission, at a minimum, as to the future of the front house. She pointed out that if the front house is not to be torn down, then such a condition of approval is not a burden on the petitioner. The historic character at issue is not just this house – it is all of the rest of what remains on the street, and anything new on the site needs to fit in or we have done the public a disservice. Ald. Samuelson and Ald. Basham, who also abstained, reiterated their earlier comments and said that they, too, wanted to see Historical Commission approval. There was some additional discussion of whether the Historical Commission review and approval would be triggered under circumstances other than voluntary demolition, and the Committee asked the Law Department to draft language that would cover any complete removal of the house but not a reconstruction of the same house as permitted by ISD in the event of a disaster.

Ald. Bryson then moved approval of the petition, adopting the findings and conditions in the draft Board Order and adding the finding that the petitioners have agreed to Historical Commission review, which will preserve a historically significant streetscape. Ald. Salvucci said he would abstain because he did not agree with the new condition, even though the petitioners had offered it, and Ald. Linsky reiterated that he remains opposed to rear lot subdivisions as a form of land use in the City. The Committee voted 5-1-1 in favor of the motion.

270-02(3) OMNIPOINT HOLDINGS, INC. A DIVISION OF T MOBILE and I. ZUSSMAN 219 REALTY TRUST petition for SPECIAL PERMIT and SITE PLAN APPROVAL to install wireless communication equipment, including three antennas enclosed within a canister designed to resemble a stovepipe chimney on the penthouse and radio control cabinets in the basement of an existing building at 219 COMMONWEALTH AVENUE, Ward 7, on land known as Section 63, Block 8, Lot 19, in a district zoned MR1.

ACTION: Approved 7-0.

NOTE: The petitioners wish to install mobile telephone equipment on the roof and in the basement of the historic structure at 219 Commonwealth Avenue. The building is residential in character, and it already has a number of antennas on the roof under leases with other telecommunications providers. The public hearing on this item was held November 12, 2002, and there was no public comment. The time for Board Action has been extended through March 4, 2003.

The Committee discussed this petition thoroughly at its meeting of January 14, 2003, but held the item pending Ald. Lipsitt's investigation of whether the City would be interested in issuing an RFP for the reconstruction of the telecommunications tower at Waban Hill Reservoir where this petitioner might be able to locate the proposed equipment. At this working session, Ald. Lipsitt reported that she had had discussions with the executive and law departments and the Mayor is interested in getting the tower rebuilt. If an RFP is issued, this petitioner has indicated an interest in rebuilding the tower or co-locating on the tower. Recognizing the city's obligation to accommodate telecommunications equipment, and also recognizing that the bidding and reconstruction process will probably take up to two years, Ald. Lipsitt urged the Committee to act favorably on the present petition, conditioning an approval on the removal of the equipment to the new tower if and when that becomes feasible.

In its earlier discussion, the Committee had reviewed the proposed "stovepipe" enclosure for the antenna and asked whether the petitioner could come up with a design that would be more in keeping with the building's style. At this working session, the Committee reviewed an alternative chimney-style enclosure designed proportionately to mirror other chimneys on the roof. The Committee generally favored the chimney design, but acknowledged that the design requires the approval of both local and state historical commissions and allowed for the possibility that the petitioner will have to revert to the stovepipe design if those approvals are denied. The petitioner also agreed to a condition requiring the removal of the equipment from the site if Omnipoint or its successors ceases operations.

Ald. Samuelson moved approval, finding that the public convenience and welfare is served, in accordance with the City's telecommunications ordinance, by adding mobile phone service to accommodate community needs, minimizing adverse visual effects, and encouraging co-location. The Committee supported the motion 7-0.

492-02 STEPHEN H. and LYNNE C. HALEM petition for SPECIAL PERMIT TO EXTEND NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for an accessory apartment in a detached carriage house at 47 SARGENT STREET, Ward 7, on approximately 39,749 sf of land known as Section 72, Block 27, Lot 1, in a district zoned SR1.

ACTION: Approved 6-0 (Ald. Linsky not voting).

NOTE: The petitioners wish to create an accessory apartment in an existing unoccupied carriage house associated with a single family residence on a lot measuring nearly one acre.

They require several special permits: (1) to create an accessory apartment in a detached structure, (2) to exceed the 18' height limitation on habitable space, (3) to make exterior alterations within the setback of a nonconforming structure, and (4) to exceed 1200 square feet while staying within 33% of the total building size. There was no public testimony at the hearing on January 14, 2003.

At this working session, the Committee reviewed the elevations and found the proposed exterior alterations, including two landings/means of egress and new garage doors, to be an improvement over the existing conditions. The Committee confirmed that several concerns of neighbors at 31 Ruthven had been addressed in this design. John Daghlian reported that there is no additional impervious surface and therefore no drainage calculations are needed. He noted that in reviewing this petition, he became aware that the existing driveway, which is located at the corner, does not meet the standards for a handicapped ramp. Upon questioning by the Committee, Mr. Daghlian said that the sidewalk was rebuilt several years ago and the City did not correct the problem at that time. The Committee said it was unreasonable to expect that this petitioner would redesign the driveway and site access to solve the city's problem, particularly where there would have been no occasion to ask that of the petitioner except for the current petition that is completely unrelated to the curb cut.

Finally, the City reviewed a plan of other lots in the area where similar projects might be proposed, noting that this is a neighborhood full of opportunities for accessory apartments on large lots where those units will be virtually unnoticeable. Ald. Lipsitt moved approval, finding that the extension of the nonconforming structure is minimal and is necessary to provide code-compliant access, there is no impact on abutters, and that the project therefore is not substantially more detrimental than the existing to the neighborhood. The habitable space above 18' will make the unit light and airy and is in keeping with the exiting roofline. The size of the apartment is appropriate in this area, and even so, there will be room for parking within the existing structure. The Committee specified that the plans may be modified in accordance with design recommendations of the Historical Commission if the commission accepts review of the project at the petitioners' request. The Committee supported the motion 6-0, with Ald. Linsky not voting because of a potential conflict of interest.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman

