

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 21, 2003

Members of Committee present: Ald. Basham (Chairman), Ald. Fischman, Salvucci, Linsky, Merrill, Lipsitt, Bryson, and Samuelson

Other Aldermen present: Ald. Mansfield and Sangiolo

City officials present: Nancy Radzevich, Chief Planner; Eric Jerman, Planner; Ouida Young, Associate City Solicitor; Mark Gilroy, Commissioner of Inspectional Services; Clint Schuckel, Traffic Engineer

#400-03 ALD. LINSKY requesting a discussion with the Commissioner of Inspectional Services and the Planning and Law Departments re the interpretation of section 30-21(c) that would apply such section to dimensional non-conformities in addition to setback non-conformities.

ACTION: NO ACTION NECESSARY 8-0.

NOTE: Ald. Linsky explained that his concern arose because of a constituent inquiry concerning the applicability of the de minimis provisions of Section 30-21, under which certain types of construction affecting nonconforming structures are deemed to be not substantially more detrimental to the neighborhood than the existing nonconforming structure and therefore do not require a special permit. ISD and the Law Department have interpreted this section as applying only to new construction affecting nonconforming setbacks, but Ald. Linsky argued that the section should be read more broadly, based on its actual language, to cover situations where the existing nonconformity and proposed new construction relate to other dimensional controls as well. The Committee reviewed the history of this provision as summarized in the Zoning and Planning Report from 1993 when the ordinance was adopted. Several members of the Committee recalled the discussions in 1993, with some differing opinions as to whether the underlying intention of the Board was to limit the de minimis provisions to situations where the existing nonconformity is a setback, particularly where some of the prior petitions identified as potentially de minimis concerned changes that may not have been located in nonconforming setbacks. Of perhaps greater significance was the Law Department's summary of the impact of recent changes in the ordinances concerning other dimensional controls on nonconforming pre-1953 lots. Ouida Young explained that when the de minimis ordinance was adopted, old lots were not subject to dimensional controls for lot area, frontage, lot coverage and open space. The amendments to section 30-15(c) make all lots subject to these controls, but when we adopted the amendments, we also created an exemption for nonconforming lot area and frontage. The other two dimensional controls – open space and lot coverage – were not “exempted” because a property owner can make construction choices that do not increase these nonconformities. She suggested that if Aldermen want to create further relief for property owners wishing to make changes that would affect substandard lot coverage and open space, we might want to amend the

de minimis ordinance. The Chairman suggested that since 1993 we have seen pressures on existing properties that were not even within our contemplation, particularly the teardowns and construction of "monster houses," and we have new incentives to encourage small additions to existing residences. She encouraged Ald. Linsky to docket an item to propose such amendments. Ald. Mansfield added that the 30-15 Task Force may be recommending new dimensional requirements that would create nonconformities, and this may be a good forum for considering the de minimis provision as well. Ald. Linsky thanked the Committee for taking up the item expeditiously and moved No Action Necessary, which the Committee supported unanimously.

#382-03 EMERALD DEVELOPMENT GROUP, INC./EMILY INVESTMENTS LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter the existing grade more than three feet to accommodate below-grade parking for two cars in a garage with access from Wessex Road at 6 WESSEX ROAD, Ward 7, NEWTON CENTRE, on land know as Sec 73, Blk 48, Lot 42, containing approx 9,586 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-(5)(b)(4) of the City of Newton Rev Zoning Ord, 2001.

ACTION: HELD 8-0.

NOTE: The Committee reviewed this petition in detail but was unable to act because it had not received the report of the Engineering Department on the drainage system and calculations. A complete report on the Committee's deliberations will be provided when the Committee reports its action on the petition to the Board.

#319-03 CHABAD-LUBAVITCH, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for waivers of parking from off-street parking requirements at 229 DEDHAM STREET, Ward 8, on land known as Sec 83, Blk 6, Lot 10, containing approx 15,190 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: 30-24, 30-23, 30-19(c)(1), 30-19(g)(1), 30-19(c)(2)(a), 30-19(d)(13), 30-19(m) of the City of Newton Rev Zoning Ord, 2001.

ACTION: HELD 8-0

NOTE: The Committee discussed this petition in detail, but was unable to reach a conclusion because it lacked sufficient information on several topics: (1) the history of complaints concerning activity on or related to uses at the premises; (2) review of the petitioner's traffic study by the City's Traffic Engineer; (3) activity at the premises; (4) actual use of the premises as a residence; (5) other activity on Dedham Street, particularly related to uses at Countryside School, that may be contributing to the perceived traffic and safety issues; and (6) recommended conditions acceptable to the petitioner that may serve to mitigate public safety issues and other concerns of the neighbors and the Committee. A complete report of the Committee's deliberations will be provided when the Committee reports it action on the petition to the Board.

The meeting was adjourned at 11:30 PM.

Respectfully submitted,

Ald. Susan M. Basham, Chairman