

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 18, 2003

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

Other Aldermen present: Ald. Mansfield, Sangiolo; Ald.-elect Vance.

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

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382-03 EMERALD DEVELOPMENT GROUP, INC./EMILY INVESTMENTS LLC
petition for SPECIAL PERMIT and SITE PLAN APPROVAL to alter the existing grade by more than three feet to accommodate below-grade parking for two cars with access from Wessex Road at 6 WESSEX ROAD, Ward 7, on approximately 9,586 sf of land known as Section 73, Block 48, Lot 42, in a district zoned MR 1.

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

NOTE: The petitioners are undertaking a redevelopment of the property at 6 Wessex Road to create a second dwelling unit. The as of right plan includes parking for one unit in a new two-car garage. The petitioners seek a special permit to create covered parking for the other unit, which will require a grade change greater than three feet. The proposed covered parking will be accessed from Wessex Road via a downward-sloping driveway with retaining walls. The garage will be essentially underground and covered by grass when complete. There was no public testimony at the hearing on October 14, 2003.

The Committee first discussed this petition on October 21, focusing in particular on the design of the parking and the potential merits of moving access to the site off Ward Street. The Committee did not complete its work because it lacked a report from the Engineering Department on any drainage impact associated with the grade change. At this working session, the Committee reviewed a November 14 memo from the Engineering Department. The Engineering Department recommended that the driveway be moved farther away from the corner than originally proposed, which will require the removal of a street tree measuring approximately 8" caliper. Some members of the Committee thought that the tree should remain. The petitioner agreed to pay to replace the tree either on the berm or on the site, as the Tree Warden may recommend. If the tree is not approved for removal by the Tree Warden, the petitioner will require an amendment to the site plan to relocate the driveway. The Engineering Department reported that drainage calculations are correct for the 100-year storm event. The Acting City Engineer noted that the retaining wall needs to be designed by a structural engineer because the wall is higher than 9' at its highest point. The wall will be constructed of versa-lock

stone. The Traffic Engineer has recommended no landscaping within 10' of the property line along the north side of the driveway to keep the line of sight clear.

Ald. Samuelson moved approval of the petition, finding that the public convenience and welfare will be served by creating covered parking to get cars off the street and out of view and by removing access from Ward Street, thereby enhancing public safety. Ald. Lipsitt said she would not support the motion. In her view, the site is overbuilt. It may meet the requirements for lot size and open space, but it is built out to the extreme and the massive building is out of scale with its surroundings. The reduced landscaping only exacerbates the problem. The petitioners could create open parking accessed from Ward Street, and she sees that as a better result. Ald. Salvucci said that the downward sloping driveway could be less attractive to a buyer, but he sees removing the access from Ward Street as a plus. Ald. Linsky said he shares Ald. Salvucci's position. The covered parking is better than surface parking accessed from Ward. Ald. Merrill agreed. Ald. Basham said she would abstain pending a site visit. The Committee supported the motion 5-1-1.

437--03 SULLIVAN REALTY TRUST, JEAN GREER, TRUSTEE and WINCHESTER REALTY TRUST, JAMES McDONALD, TRUSTEE petition for SPECIAL PERMIT and SITE PLAN APPROVAL to use off-site leased land adjoining 60-64 Needham Street to provide parking for a portion of building at 60 Needham Street on land known as Section 83, Block 11, Lots 18, 17, and a portion of 12, measuring approximately 54,000 sf in districts zoned MY2, MR1, and Manufacturing.

ACTION: Approved 6-0-2 (Ald. Linsky and Salvucci abstaining).

NOTE: A portion of the building at 60-64 Needham Street, previously used for light manufacturing, is being converted as of right to retail use and will be leased to Sovereign Bank. In conjunction with this change of use, the Sullivan petitioner wishes to remove the parking in the front of the building, creating a nine-stall deficit. The petitioner proposes to meet this parking requirement for the bank's use by relying upon adjoining parking at the rear, for which Sullivan has an existing lease with the McDonald petitioner. Off-site parking requires a special permit. Previously the Board granted use of 10 accessory parking spaces on Lot 17 to the Farm Grill. There was no public testimony at the hearing on November 12, but several Aldermen asked the petitioner to consider additional improvements to the front of the building.

At this working session, the Committee reviewed the site plan, noting the improvements to the front of the building proposed by the petitioners, including a bituminous berm parallel to the sidewalk and improved landscaping. Several members of the Committee had asked the petitioner to investigate whether the 40' curb cut could be reduced in conjunction with this petition. The petitioner responded by letter from counsel dated November 14, stating that they would work with the City Traffic Engineer to request permission from the state to install a bollard or some other temporary measure to block part of the curb cut. The Committee did not like the bollard arrangement and ultimately decided that the extension of the proposed berm into

the former driveway area with additional landscaping will define the narrower driveway sufficiently. Reviewing the configuration of the parking at the rear, the Committee noted improved handicapped access to the building. The Committee asked the petitioner to mark on a plan the specific spaces “assigned” to the use at 60 Needham Street so that they do not conflict with those “assigned” to the Farm Grill and won’t be double-counted in some future petition. Ald. Lipsitt asked whether the petitioners could do some landscaping in the accessory lot. Mr. Peirce, representing the Sullivan petitioner, said he was unsure whether the lease would permit it and urged the Committee to focus on the public benefit of reducing parking in the front of the building. Ald. Merrill asked whether the construction equipment visible at the rear is on the McDonald site, and Mr. Peirce replied that it not Sullivan equipment and not stored on Sullivan property.

Ald. Samuelson moved approval, finding that the public convenience and welfare will be served by removing parking in the front of the building, thereby improving Needham Street, with additional green space, better site access, and a safer frontage with an asphalt sidewalk and berm. The Committee also found that the petitioner has a long-term lease arrangement to ensure the availability of this parking. The Committee supported the motion 6-0-2.

436-03 MARC PROCTOR petition for SPECIAL PERMIT and SITE PLAN APPROVAL to alter the grade by more than three feet to construct stone walls and fill in the rear yard to create a terraced flat area for a swimming pool at 479 COMMONWEALTH AVENUE, Ward 7, on land known as Section 61, Block 5, Lot 6, measuring approximately 12,360 sf, in a district zoned SR1.

ACTION: Approved 8-0.

NOTE: The petitioner is undertaking the installation of a swimming pool and other improvements to his rear yard. As part of this project, and to facilitate the installation of the pool and a terraced area, he wishes to alter the grade by more than three feet on a 384 sf area of the lot. The proposed alteration will be 5.5 feet at its greatest point. There was no public testimony at the hearing on November 12, 2003.

Reviewing the site plan, the Committee observed that approximately half of the proposed swimming pool will be located in the area of excessive grade change and the pool could not be constructed here without approval of the Board. The new stone retaining walls proposed to retain the fill will match existing stone-faced walls. Ald. Lipsitt expressed concern about a flat-roofed area that serves as a deck accessed from the pool area and asked that it have a suitable railing to prevent someone from going off the far end onto the driveway. The Acting City Engineer has reviewed the drainage calculations and finds them correct for the 100-year storm event.

Ald. Lipsitt moved approval, finding that the proposed grade change will allow for better use of the property, the railing on the garage will create a safer deck, the stone walls will

improve the aesthetics of the property, and the drainage improvements associated with the new construction will avoid any adverse impacts on the surrounding properties. The Committee supported the motion 8-0.

435-03 VADIM GOODMAN petition for SPECIAL PERMIT TO EXTEND A NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for a second-floor addition partially in the rear setback and a new attached garage/breezeway at 6 ELSWORTH ROAD, Ward 3, on approximately 5789 sf of land known as Section 34, Block 47, Lot 10, in a district zoned SR3.

ACTION: Held 6-1-1.

319-03 CHABAD LUBAVITCH, INC. petition for SPECIAL PERMIT and SITE PLAN APPROVAL for waivers of parking requirements at 229 DEDHAM STREET, Ward 8, on approximately 15190 sf of land known as Section 83, Block 6, Lot 10, in a district zoned SR2.

ACTION: Motion to approve fails to carry 1-4-3 (Ald. Linsky voting in the affirmative; Ald. Samuelson, Merrill, Bryson and Salvucci voting in the negative; Ald. Basham, Lipsitt and Fischman abstaining).

NOTE: In conjunction with conversion of the use of a single-family dwelling to a place of assembly for religious and/or educational purposes, the petitioner, an Orthodox Jewish congregation, seeks Board approval of the waiver of parking requirements associated with the new use. According to the Planning Department's calculations, the parking requirement is 46 stalls, and the deficit is 45, with one space on site in the existing driveway. A public hearing was held on September 9. The petition was presented by counsel for the petitioner, Joel Sowalsky, with assistance from the petitioner's architect. Mr. Sowalsky explained that the congregation is prohibited from driving on the Sabbath and on thirteen other days during the calendar year. Therefore, the congregation does not need the spaces required by ordinance. He acknowledged that some members drive their cars to the area before the start of the Sabbath so that the cars will be available for them to drive home after sunset on the Sabbath when services have concluded.

There was also extensive public testimony. Some neighbors urged support of the petition because the next nearest orthodox synagogue is 2.5 miles away. Some testified that they have encountered no adverse impacts from use of this site by the congregation. A large number, however, testified as to parking and traffic problems in the immediate area and expressed particular concern about conflicts with the Countryside School and its related activities. They noted that the petitioner consistently has parked four cars in the driveway, two of which hang over the sidewalk.

Because of statutory protections afforded religious and educational uses, ISD previously determined that it would be unreasonable to require the petitioner to seek relief for several minor dimensional nonconformities and issued a building permit associated with the creation of a

parsonage/residence for the rabbi in or about 2000. However, when the congregation began holding religious services at the site, the city issued a cease and desist order. The congregation appealed this decision to the ZBA. Ultimately, the city entered into an agreement with the petitioner that would permit the congregation to continue holding its religious services for 25 persons on a regular basis as long as it continued residential uses and began the process of seeking a special permit for a parking waiver. Apparently since that time, the petitioner has completed interior renovations to create a sanctuary seating 75 persons, with adjacent office space and a multi-purpose room, using the garage space in the process and replacing the garage doors with a passage door.

The Committee discussed this petition in three working sessions where Ouida Young, Associate Solicitor, was present to advise the Committee and where counsel for the petitioner was present. At each working session, the Committee received various materials from the Planning Department, the petitioner's counsel, and interested members of the community, all of which have been distributed to members of the Board as they were received. At the working session of October 21, the Committee discussed the history of the use of this site by the congregation and reviewed the site plan and interior plans in detail. The Committee 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) weekday 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. At its working session of November 3, the Committee received responses to these issues and reviewed a draft Board Order prepared by the Law Department after consultation with the petitioner's attorney on draft conditions of approval. Several members of the Committee remained reluctant to conclude the Committee's deliberations until the Committee received a revised plan showing a second means of egress from the second floor of the structure as approved by the Fire Department.

At this working session, the Committee reviewed the design for the proposed second means of egress at the rear of the structure and the proposed walkway connection to the front. Because the construction will be in a floodplain, it will require a filing with the Conservation Commission and the installation of compensatory storage. In reviewing the proposed stairway, Martha Horn, the City's Senior Environmental Planner, had noticed that the petitioner's fence was installed in a manner that will result in displacement of floodwaters to other properties. She recommended, by memo dated November 18, that the petitioner modify the fence to leave at least 3" clearance along the bottom of the fence. The petitioner has agreed to make this modification to the fence. The Committee also received, among other things, copies of two photographs taken by a neighbor on November 14 and 15 showing four cars parked on the site both on and off the driveway. Both Ald. Fischman and Ald. Merrill observed this condition personally. After seeing these photographs, the Committee asked for further modifications to the

landscaping and site plan that will make it virtually impossible to park more than one car in the driveway, with a permanently affixed wheel stop for the one car.

The Committee proceeded to review the revised draft Board Order, after which Ald. Fischman moved approval, citing the findings that appeared in the prior draft Board Order and adding several more recommended in a memorandum submitted by a neighbor, attorney Alan Kovacs. There was extensive discussion on the motion. Ald. Samuelson said she was very conflicted about the petition, but for her there are too many nagging and ongoing concerns, including the number of congregants, the fact that there is a large elementary school contiguous to the site, the site is not suitable for a use other than a single family residence, and the fire lane required by the Fire Department for a place of assembly will result in the loss of on-street parking. The conditions ultimately require that the City make the petitioner comply, and she sees the complaint process as a terrible burden on the neighborhood. In her view, this is not an appropriate use for the site and the parking waiver is not justified. Ald. Merrill said he finds it hard to vote against a house of worship, but he has had continuous concerns about the acceptability of this use in the neighborhood. The traffic on Dedham Street, conflicts with activity at Countryside, and inundation of cars in the neighborhood have led him to the conclusion that he cannot support this petition. Ald. Salvucci agreed, saying there simply is nowhere to park and the use is too close to the school.

Ald. Lipsitt took a differing position, describing her own home and its location in relation to several churches with overflow parking on Sundays. She is not concerned about the potential parking issues associated with this use. While she is infuriated by the petitioner's apparent lack of regard for the Board's processes, as evidenced by the photos presented that evening, she urged the Committee to separate the petition from the petitioner. She reminded the Committee that Ms. Young had advised the Committee several times that with protected uses, the Board must balance the City's legitimate interests against the substantial rights of the petitioner. The Board can impose only reasonable dimensional controls and cannot use dimensional controls to effect a denial of a use. Ald. Lipsitt said that in her view, the conditions of approval provide as much protection as the City reasonably can expect under the circumstances.

Ald. Bryson said she came prepared to support the petition, but the photographs, and the petitioner's total disregard for our processes, convinced her that we cannot provide adequate protections for the neighborhood. Ald. Fischman responded that he remains troubled by the history of this site and believes that this is not the right location for a synagogue, but he has weighed those concerns against what he believes are the protections specific to this religious use. Ald. Linsky said that the condition restricting use of the site during various school activities is very important to him because of the troubled past use of the site. Beyond that level of condition, he is convinced the city would not be able to regulate the use. Based on the facts, he will support the petition. Recognizing that the motion was not likely to succeed, the Committee discussed briefly the process of reporting a negative outcome. The Chair agreed to include all of the reasons given for not supporting the motion in the Committee's report. The Committee voted not to support the motion to approve, voting 1-4-3.

65-02 LAND USE COMMITTEE proposing RESOLUTION to Mayor Cohen requesting funding of zoning enforcement function in ISD.

ACTION: No action necessary 8-0.

267-02 ALD. BASHAM requesting creation of rules for Board of Aldermen acting as Special Permit Granting Authority.

ACTION: Referred to 2004-05 Board 8-0.

293-03 ALD. SANGIOLO asking the Land Use Committee to request enforcement of the conditions of Special Permit 67-98 granted to Hebrew College.

ACTION: Referred to 2004-05 Board 8-0.

297-02 ALD. CICCONE requesting ordinance change to require that all light duty (2 1/2 tons or less) commercial vehicles for businesses located on Maguire Court use Court Street access and prohibiting heavy duty commercial vehicle and large truck access on Court Street, designating Maguire Court to be used for heavy duty commercial vehicles and large trucks in accordance with special permit 268-97 granted to Fraser Engineering, Inc.

ACTION: No action necessary 7-1 (Ald. Bryson voting in the negative).

The meeting was adjourned at 11:20 p.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman