

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, DECEMBER 2, 2003

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

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

City officials present: Eric Jerman, Senior Planner; Alexandra Ananth, Planner; Clint Schuckel, City Traffic Engineer; Linda Finucane, Chief Committee Clerk; Ouida Young, Associate City Solicitor; Martha J. Ahern Horn, Senior Environmental Planner.

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SPECIAL PERMIT/SITE PLAN APPROVAL PETITIONS

435-03 VADIM GOODMAN petition for SPECIAL PERMIT TO EXTEND A NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for a second-floor addition and new attached garage/breezeway at 6 ELSWORTH ROAD, Ward 3, on land known as Section 34, Block 47, Lot 10, measuring approximately 5,798 sf, in a district zoned SR3.

ACTION: Approved 5-1-1 (Ald. Lipsitt voting in the negative; Ald. Fischman abstaining; Ald. Samuelson not voting).

NOTE: The petitioner proposes the construction of a 749 sf second floor addition to an existing single-family residence. The property is currently nonconforming as to lot area and rear setback. The addition will be within 8.5' of the rear lot line. In addition, the petitioner intends to construct a new Garrison overhang and front porch which will encroach on the currently conforming front setback. The creation of a new nonconformity will require a variance from the ZBA. At the public hearing on November 12, the Committee learned that in actuality, most of the construction has already been completed under a building permit issued in error by ISD on September 16, 2002. Testimony from two neighbors indicated that the project is an enhancement to the neighborhood. In addition, G. Michael Peirce, counsel to the petitioner, indicated that the abutters to the side and rear had been contacted concerning the plans and were not opposed, nor did they ask for additional screening or landscaping.

At its working session of November 18, the Committee reviewed the site plan and elevations for the project. Although the neighbors did not testify in opposition to the increased mass of the building, some members of the Committee were concerned that the two-story design is inconsistent with the area generally. The Committee noted that the curb cut is 4.25' wider than the current 20' city standard, and the petitioner has defined his driveway to match the curb cut. Since the curb cut was installed by the city more than 10 years ago, and the Committee declined to require the petitioner to adjust it. However, some members of the Committee were concerned that the site has a substantial amount of area covered by "pavers," both in the driveway and in

two wide walkways going toward the front of the house to the left and around the driveway to the right. Ald. Lipsitt, in particular, said she was concerned that the site had very little landscaping and that where the paved walkways are virtually indistinguishable from the driveway itself, they suggest additional parking areas. The Engineering Department had not commented on the drainage system based on as-built plans, and the Committee held the item.

At this working session, the Committee reviewed a revised landscape plan showing a row of euonymus at the rear of the site. The Planning Department stated that there is little other room for landscaping. Some members of the Committee were pleased that the petitioner had made some effort to screen the site from its nearest neighbors, while Ald. Salvucci, in particular, thought there was no need to try to hide the house, and Ald. Bryson observed that the landscaping left the petitioner with an even smaller rear yard. The Engineering Department confirmed by memo that the drainage on the site appears to accommodate the 100 year storm standard. The petitioner had declined to make any further changes in the installed paving, which is composed of pavers set in sand and therefore not entirely impervious. The Committee briefly reviewed the site plan as it existed before the new construction and noted that two previous walkways were divided by grassy strips.

Ald. Salvucci moved approval, finding that the proposed nonconforming structure will not be substantially more detrimental to the neighborhood than the existing. Ald. Lipsitt said she could not support the motion because, in her view, the site plan is not approvable with the excessive paving running at angles from the driveway. In her view, there is no justification for that amount of paving at a single family home. Ald. Basham said she was concerned about the massing as inconsistent with the area, but where none of the neighbors seemed to be in opposition, her concern would not stop her from supporting the motion. Ald. Linsky also expressed concern about the massing but added that the paving materials are at least an improvement over asphalt. Ald. Merrill said he agreed with Ald. Salvucci that the walkway around the building does not invite more parking and could serve as a convenient place to store rubbish barrels. Ald. Bryson said that whether we would have approved the petition if we had seen it before construction or not, it would not be reasonable to force the petitioner to tear down the building or make other changes at this point. The Committee supported the motion 5-1-1.

401-03 STAR MARKET CO., INC./S.R. WEINER ASSOCIATES INC./CHESTNUT HILL SHOPPING CENTER LLC/C&R REALTY TRUST, DANIEL E. ROTHENBERG AND JULIAN COHEN, TRUSTEES petition for SPECIAL PERMIT TO EXTEND A NONCONFORMING STRUCTURE and SITE PLAN APPROVAL to demolish and replace the existing Star Market at 1-27 BOYLSTON STREET, Ward 7, on land known as Section 63, Block 37, portions of lots 18A and 25, measuring approximately 327,541 sf, in a district zoned Business 1.

ACTION: Approved 7-0-1 (Ald. Linsky abstaining).

NOTE: The petitioners propose the replacement of the current one-story Star Market, measuring approximately 45,646 sf, with a two-story structure measuring approximately 59,683 sf. The new market will take up 37,266 sf on the second floor of the new building, increasing the sales area from the current 27,239 sf. In addition, 10,610 sf of retail space on the first floor will be designated for uses complementary to the grocery store. The market will also have 9,208 sf of space for food preparation areas on the first floor and a 2,599 sf atrium/lobby. In total, the new building will have 14,037 sf more than the existing. The petitioners require the Board's approval of their site plan and special permits to waive the required number of parking spaces and certain parking facility requirements; to construct a building greater than 20,000 sf in the aggregate; to build within 300 feet of a Great Pond; and to extend the structure, which is currently nonconforming as to front setback. The building, while located entirely in the City of Newton, is located in the Chestnut Hill Shopping Center, for which some of the parking is in the Town of Brookline.

A public hearing was held on November 12, 2003. In addition to a number of questions raised by members of the Board in attendance, several residents of the area raised concerns about increased traffic on Route 9 related to other projects approved in the past few years; potential impacts on the Town of Brookline; the need for buffering to protect nearby residents; potential increases in traffic generally and truck traffic in particular; noise associated with rooftop equipment and light overspill; and absence of adequate parking to serve the various uses in the shopping center.

The Committee spent approximately four hours discussing this petition. Initially the Committee made note of various communications received since the public hearing, all of which have been distributed to the Board as received. The Committee acknowledged a December 2 memorandum from the Town of Brookline's Director of Planning and Development Director expressing concern about the longer-term development of Route 9, and noted that Brookline would prefer not to see additional development burdening Hammond Street. The Chairman referred the Brookline communication to the Planning Department and urged the Planning Department to work with Brookline on area-wide planning, but suggested to the Committee that such planning, while desirable, could not happen before action on this petition is required. Ouida Young said that several of the conditions proposed by the petitioner include efforts to coordinate with Brookline and the State Highway Department on related issues.

The Committee then turned its attention to an extensive review of the site plan and consideration, in particular, of potential increased impact on the neighborhood greater than that imposed by the existing nonconforming structure. The Committee noted the expansion of the footprint of the market and the addition of covered parking accessed from the rear of the structure. The footprint will expand approximately 45.3' to the east (toward Hammond Street) and 31.7' to the north (toward Hammond Pond). A new atrium entrance will be accessible both from the front of the building and the new covered parking. Once inside the atrium, shoppers may access the new

retail establishments on the first floor or reach the market on the second floor by stairs, elevator, or “moveator” similar to the moving sidewalks used in some airports. Ald. Lipsitt noted that the petitioner has agreed to provide the assistance of its employees to shoppers who would like help moving their groceries from the second floor to their vehicles in whatever manner.

The site is accessed principally via a driveway off Hammond Street and the Route 9 frontage drive. The shopping center is also accessible from Hammond Pond Parkway, although the market is at the far end of the center. With the expansion of the footprint of the structure, the driveway around the perimeter of the market structure will be a consistent 24’ instead of the current wider drive. The Fire Department has approved the circulation plan. Truck access, as at present, will be from Route 9. The market currently receives 3-5 tractor/trailer deliveries per day and may receive fewer as it gains more storage space. It also receives 15-20 “Wonder Bread” sized truck deliveries per day. Ald. Baker raised concerns about the reorientation of the truck delivery bays, currently oriented to the east, but proposed for a northward orientation at the back of the building, particularly because an increased demand for parking in the rear of the building may create greater potential for conflicts with deliveries. The Committee reviewed the petitioner’s proposed delivery schedule and confirmed that all deliveries, with the exception of dairy, will be during non-peak hours. The petitioner agreed to modify the schedule as to dairy deliveries, as well, and to incorporate this schedule by reference in the Board Order. Clint Schuckel confirmed that he had reviewed the turning movements and he sees no difficulty for trucks to maneuver into the new bays. The petitioner also confirmed that the lighting in the bays will be focused downward (not outward) and the light source will not be visible from offsite. The trash compactor will also be moved inside in the loading area.

The Committee reviewed the current and proposed parking on the site. The Planning Department had looked at parking in the entire Chestnut Hill Shopping Center by dividing it into three zones, with the “Project Area” including the zone eastward from the medical center building. The proposed project will require the relocation and adjustment of some of the existing parking, but in the end, will result in no change in the number of actual spaces. The 67-space parking waiver requested by the petitioners will essentially legalize the existing parking configuration, which is not subject to a special permit currently. The petitioner’s traffic consultant, Rizzo Associates, had analyzed actual parking demand during identified peak hours and found that peak utilization is during the hours of 1-2 pm on a Tuesday. Although actual parking demand during the peak hour is currently at 79%, it is projected to reach 96% of capacity with the expanded market. However, that figure includes about 15 employee cars and 35-40 commuter cars currently parking in the area closest to the project site. During this same peak hour, the cinema “zone” is 35-40% occupied, so that there is ample parking on the larger site. Mr. Schuckel emphasized that the petitioner has agreed to arrange to have employees park farther away and, as may be necessary, to enforce parking restrictions against commuters.

The Committee also looked at potential impacts on traffic in the immediate area. The two nearest intersections currently operate at LOS F. The petitioners’ traffic engineer had analyzed

potential new trips according to both the stand-alone supermarket ITE standards and shopping center standards. Applying the more conservative of these standards, the additional trips per hour during peak utilization will be 62 trips at the Hammond Street driveway and 35 at the Route 9/Hammond Street intersection. Current utilization of these access points is 1060 and 3500 trips respectively. Both the City's Traffic Engineer and the Committee concluded that the anticipated additional trips will not make the existing situation measurably worse. The petitioner has proposed additional signage to improve traffic movements.

The Committee finally reviewed the parking lot layout, lighting and landscaping. The Acting City Engineer has approved the drainage system design and calculations for the site. The Committee confirmed that the fixtures will all be "cut off" fixtures with the light source not visible off site. The petitioner has added some landscape in islands within the parking lot which, in the opinion of the Planning Department, strikes a reasonable balance between the need for parking and the potential for improving its appearance. At the request of nearby neighbors on Moorfield Road, the petitioner agreed to investigate the ownership of a certain "Parcel C" and, if the owner is amenable, to install spruce trees of a variety that will provide substantial screening, 2' higher than the existing stockade fence at the time when planted, in a random pattern as proposed by the Moorfield owners' architect.

Based on this review, the Committee found the site plan approvable.

The Committee briefly reviewed the design of the building. The Planning Department pointed out the vertical design features intended to "break up" visually the second floor front façade. The Committee confirmed that the windows at the rear of the building will not be translucent and should not be disruptive to the nearest neighbors.

The Law Department, in consultation with the petitioners' counsel, had prepared a set of draft conditions of approval, and the Committee reviewed these in detail. In particular, the Committee worked on a condition that will require establishing a baseline for rooftop equipment noise based on the current operation and a future assessment of noise from equipment to be installed, with mitigation as needed. The petitioner has provided a detailed construction management plan to be incorporated by reference.

After reviewing the draft condition, Ald. Lipsitt moved approval, finding that the new structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure because it is designed to control impacts by limiting light spillage, controlling noise, relocating and managing deliveries and moving the trash compactor to the interior, improving directional signage, adding landscaping and buffering for the neighbors and generally providing an upgraded facility that will improve service to the community. She also found that the petitioner has offered to engage in discussions that may lead to improvements to the eastern access drive and pedestrian access from Route 9. The new building will also provide covered parking and greater assistance to customers. The parking waiver is justified because the actual

number of spaces will remain the same and become more conforming, and because literal compliance on this site is not possible. The petitioner, in addition, will manage employee parking to reduce interference and subsidize the use of public transportation. The petitioner will also contribute to the public interest by a voluntary contribution of \$150,000 to stormwater improvements in the Hammond Pond Master Plan.

Ald. Linsky said he would abstain because he wanted to consider all of the information carefully. He asked that the Committee's draft Board Order be forwarded to the Town of Brookline. The Committee supported the motion 7-0-1.

317-03(3) CITY OF NEWTON/CHESTNUT HILL SHOPPING CENTER LLC/C&R REALTY TRUST, DANIEL E. ROTHENBERG & JULIAN COHEN, TRUSTEES petition for SPECIAL PERMIT and SITE PLAN APPROVAL to remove three parking spaces at 33-55 BOYLSTON STREET, Ward 7, to allow the installation of a bioretention area to improve the quality of stormwater runoff going overland into Hammond pond in furtherance of the Hammond Pond Stormwater Management Grant to the City of Newton, on a portion of land known as Section 63, Block 37, Lot 26, measuring approximately 381,805 sf in a district zoned Business 1.

ACTION: Approved 8-0.

NOTE: The petitioners wish to install a bioretention area that will contain and filter stormwater runoff from the Chestnut Hill Shopping Center before it enters Hammond Pond. The area proposed for the installation is the location where stormwater naturally flows into the pond currently. The retention area will displace three parallel parking spaces along the rear of the shopping center site near Bloomingdale's. At the public hearing on November 12, Martha Horn, the City's Senior Environmental Planner, presented the petition on behalf of the City. State Representative Ruth Balser spoke in support of the petition, explaining the five year process she had undertaken to convene a task force of all of the stakeholders and work toward improvements to protect Hammond Pond.

At the working session, the Committee reviewed the location of the bioretention area and confirmed that the bioretention will not require any above-ground structure. Ald. Lipsitt moved approval, finding that the installation of a bioretention area designed to protect a Great Pond is a desirable benefit to the community and more than offsets any potential detriment associated with the loss of the three spaces. The Committee supported the motion unanimously.

REQUEST FOR WITHDRAWAL WITHOUT PREJUDICE

272-03 CLEAR CHANNEL RADIO, BEASLEY BROADCASTING GROUP & CHAMPION BROADCASTING SYSTEM petition to AMEND various Board Orders and

request a SPECIAL PERMIT TO EXTEND A NONCONFORMING STRUCTURE and SITE PLAN APPROVAL to replace two existing 353' lighted towers for transmission of AM radio with five 199' unlighted transmission antennas, with replacement and relocation of foundation piers, anchor mounts, footings, 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 approximately 805,000 sf of land known as Section 84, Block 10, Lot 57, in a district zoned SR3.

ACTION: Withdrawal without prejudice approved 8-0.

NOTE: As discussed previously, the petitioner decided to withdraw and refile this petition for hearing in January 2004 after it became clear that the work of the independent consultant selected by the City could not possibly be completed before the expiration of the present term.

The meeting was adjourned at 12:45 a.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman