

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 16, 2002

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

City officials present: Ouida Young, Associate City Solicitor; Nancy Radzevich, Chief Planner; Alexandra Ananth, Planner.

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REQUESTS FOR EXTENSION OF TIME

167-02(2) MIDDLE EAST FOOD SERVICES, INC., d/b/a SABRA RESTAURANT & PICCADILLY LANGLEY REALTY TRUST, through its trustees David T. Zussman and Debra L. Peck, Trustees, requesting Extension of Time through October 31, 2002 for Board Action on petition 167-02 for: (1) Special Permit pursuant to Newton Rev. Ords. §§ 30-24 and 30-21(b) to extend a nonconforming use for purposes of increasing the number of seats from 51 to 77; (2) Special Permit pursuant to §§ 30-24, 30-19(m), and 30-19(d)(3) to waive the requirement for nine spaces; and (3) Site Plan Approval pursuant to § 30-23, all at 57 LANGLEY ROAD/43 UNION STREET, Ward 6, on land known as Section 61, Block 36, Lot 6, in a district zoned Business 1.

ACTION: Extension through October 31, 2002 approved 7-0 (Ald. Bryson not voting).

NOTE: Several members of the Committee expressed disappointment that the petitioner's attorney had asked that the item not be on the agenda for this evening. The next opportunity to consider the petition will be in September, putting several months between the public hearing and the Committee's deliberations.

SPECIAL PERMIT and SITE PLAN APPROVAL PETITIONS

62-01(2) SCOTT D. & URSULA C. STEELE petition to Amend Board Order 62-01 by granting a Special Permit pursuant to Newton Rev. Ords. §§ 30-24 and 30-5(b)(4) to alter the grade by more than three feet for purposes of adding fill associated with a rear addition above a rear porch approved in Board Order 62-01, and for a Site Plan Approval pursuant to § 30-23 to amend the site plan approved in Board Order 62-01 to reflect the new grades, at 105 TEMPLE STREET, Ward 3, on approximately 14,861 sf of land known as Section 32, Block 12, Lot 8, in a district zoned SR2.

ACTION: Approved 8-0.

NOTE: The petitioners are asking the Board to approve the alteration of the grade in their rear yard by more than three feet by adding fill. The petition has become necessary because, in fact, the grade was altered when the petitioners went forward with the addition approved in May 2001 (although the area affected by the grade change is at the far rear of the yard and not related to the addition). At that time, the petitioners installed two parallel retaining walls to create a terraced effect. They have also constructed a tree well to preserve an existing mature tree.

The Land Use Committee convened a public hearing on June 11, 2002, at which the petitioners were represented by G. Michael Peirce. The Engineering Department had not yet commented on the design of the walls or any drainage impacts of the grade changes, nor had the Planning Department received a landscaping plan. Mr. Peirce stated that the rear neighbors were consulted about the stone material used in the retaining walls, and Ald. Lipsitt asked that the rear neighbors be consulted about their preferences in plant materials. There was no public testimony.

At the working session, Ms. Radzevich reported that the City's new Arborist, Mark Welch, had reviewed the tree well and found that it was created properly for the long-term survival of the tree. Mr. Peirce confirmed that the petitioners intend to amend the rocky soil along the upper wall to promote planting and will agree to a landscape maintenance and replacement condition. A memorandum from John Daghlian confirmed that the grade change necessitates no revision to the drainage plans. The Committee received a letter from the abutting neighbors at 73 Perkins Street indicating that they want to have their own ivy grow up the rear wall from their yard and they are generally pleased with the shrubs and trees planted thus far.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by granting the special permit for the grade change because it is an opportunity to improve the landscaping and the containment of runoff on the site. The Committee supported the motion 8-0.

127-02(2) DANIEL & CHERYL GRAU petition for a Special Permit pursuant to Newton Rev. Ords. §§ 30-24 and 30-21(b) to extend a nonconforming structure by replacing a porch and adding of a two-car garage, family room, bathroom and bay window in the south wall of the kitchen, as well as a Site Plan Approval pursuant to § 30-23, at 334 KENRICK STREET, Ward 7, on approximately 12,947 sf of land known as Section 72, Block 40, Lot 1, in a district zoned SR2.

ACTION: Approved 8-0.

NOTE: The petitioners' residence is a small, mansard-roofed house dating from the 1860s. It stands at the corner of Kenrick Street and Dorr Road. They wish to add approximately 1,466 sf, including basement level space and a garage, to improve the livability of their residence. They require a special permit because the existing residence is nonconforming as to

the front setback on Dorr Road. An earlier petition proposing a different configuration for the garage was withdrawn without prejudice after the Land Use Committee expressed concerns about the impact on an existing street tree; the position of the garage, which would have required a special permit for a grade change; and the design of the garage loft space. At the public hearing on July 9, 2002, the Committee learned that the petitioners had addressed its issues by relocating the driveway farther south along Dorr Road and redesigning the entrance to the south side, thereby reducing the curb cut on Dorr Road, saving the existing street tree, and alleviating the need for a significant grade change. The garage has been reduced in size and the office loft above the garage eliminated. There was no public testimony.

At the working session, the Committee reviewed the site plan and noted the reconfiguration of the garage. The most nonconforming point in the setback on Dorr Road is 10.6', and the garage will encroach no more than 12.4' at its closest point. The driveway now has a turnaround area, providing improved pedestrian/vehicle safety. The Committee also reviewed the elevations, which the Historical Commission has reviewed and deemed appropriate. The Committee reviewed the landscaping plan and accepted it as proposed, rejecting the Planning Department's suggestion that evergreens be substituted for dogwoods, but allowing for the possibility that the petitioners and their neighbors may agree on alternative screening along the property line. The petitioners have agreed to removed the synthetic siding on the residence and restore its wood clapboard and/or shingle treatment as part of this project. The Committee agree that the petitioners may phase the project as long as they comply with the timetable for exercise of the special permit.

Ald. Lipsitt moved approval, finding that the extension of the nonconforming structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure because the addition creates less intrusion into the setback than the existing structure and the addition will be screened adequately from the neighbors. In response to the petitioners' concern that they may need to construct their project in phases, she added that the Board contemplates that exercise of the special permit will occur upon the petitioners' obtaining and exercising a building permit for any portion of their plan. The site plan approval is justified because the new plan permits the improvement of pedestrian and vehicular safety, the preservation of a street tree, and the closure of an existing, wide curb cut. The removal of the vinyl siding will support the restoration of a significant historical structure. The Committee approved the motion 8-0.

226-02 LUNNY'S AUTO SERVICE, INC. and LUNNY REAL ESTATE TRUST
through Donald F. Lunny, Jr., Trustee, petition pursuant to Newton Rev. Ords. §§ 30-24 and 30-
21(b) for a Special Permit to extend a nonconforming use and structure by installing a canopy
over two existing full-service pump islands located within the front setback on the Auburn Street
side of the site, and a Site Plan Approval pursuant to § 30-23, at 2370 COMMONWEALTH
AVENUE, Ward 4, on approximately 16,300 sf of land known as Section 41, Block 9, Lot 1A, in
a district zoned MR2.

ACTION: Approved 8-0.

NOTE: Mr. Lunny wishes to add a canopy over the pump islands on the Auburn Street side of his service station. The canopy will measure 22' x 28' and will be set back eight feet, thus encroaching on the 25 feet front yard setback. The city's Zoning Administrator has determined that the canopy creates a new, separate structure and a new nonconformity, thus necessitating a variance (although the Committee and the Associate City Solicitor spent considerable time discussing whether the canopy is actually an extension of the existing nonconforming pump islands and whether such a ruling is consistent with ISD's past requirements). This service station use was "grandfathered" under current zoning and therefore is also nonconforming. The site is subject to a number of special permits and their related conditions of approval, the most recent of which was granted by the Board last year to allow the relocation and installation of new pumps on the Auburn Street side. The canopy now under consideration was originally part of that petition but was withdrawn.

At the public hearing on July 9, 2002, the petitioner was represented by his attorney, Stephen Buchbinder. Mr. Buchbinder pointed out that this canopy will be smaller than the canopy on the Commonwealth Avenue side of the site. He also explained the traffic and random short term parking around the site as customer-related, not generated by the station moving cars offsite. He presented a petition from patrons of the station in support of the canopy. Two residents of Evergreen Avenue also testified in support, pointing out that the canopy will be good for both customers and workers. Ald. Bryson stated that a neighborhood meeting had produced good results, and she noted the petitioner's cooperation concerning site beautification and his support for parking restrictions on the west side of Auburn Street.

At the working session, the Committee reviewed the site plan and assessed the location of the canopy, confirming that Roy LaMotte has no concerns about lines of sight related to the canopy. The Committee reviewed the lighting configuration of the canopy and several communications from the lighting designer, indicating that with 50% of the light source concealed this canopy is an improvement over the earlier version where 100% of the light source is exposed below the canopy. The petitioner agreed to a condition that will limit the maximum lighting intensity and add shielding on the outside of the canopy. Ald. Bryson introduced a memo from Andrew Adelson of 570 Auburn Street and others, asking the Committee to consider certain additional conditions of approval. In response, the Committee confirmed that most of these concerns were addressed in earlier board orders and all prior conditions of approval will remain in effect unless overridden by new conditions. The petitioner agreed to a condition requiring that he will keep the gate on Auburn Street closed at all times.

Ald. Bryson moved approval, finding that the extended nonconforming use and structure will not be made substantially more detrimental to the neighborhood by adding a canopy because the canopy will not affect the traffic flow, and its extension into the setback will be at a height

without any negative impact, and in dimensions smaller than the other canopy on the site. The canopy will enhance work conditions, protect the public, and add lighting without spillover on neighboring properties. The site plan merits approval because the site functions well and the canopy will not impact it. The Committee supported the motion 8-0.

227-02 MAYYIM HAYYIM LIVING WATERS COMMUNITY MIKVEH AND EDUCATION CENTER, INC. and TEMPLE REYIM petition for: (1) a Special Permit pursuant to Newton Rev. Ords. §§ 30-24 and 30-21(a) and (b) to extend a nonconforming use (the temple parking lot) to reduce the number of spaces in the lot by converting two spaces to one handicapped space and by leasing that space and eleven other spaces to Mayyim Hayyim; (2) a Special Permit pursuant to §§ 30-24, 30-19(m) and various other sections of § 30-19 for waivers to parking-related requirements to allow Mayyim Hayyim to use a portion of the Temple parking lot to provide eleven required spaces in an off-site location for its community mikveh to be constructed at 1838 WASHINGTON STREET; and (3) a Site Plan Approval pursuant to § 30-23, all on land known as Section 43, Block 44, Lots 7 (temple) and 9 (mikveh), measuring 170,155 and 14,008 sf respectively, in a district zoned SR1.

ACTION: Approved 8-0.

NOTE: Mayyim Hayyim wishes to construct a community mikveh (ritual bath) and education center on residential property at 1838 Washington Street, which abuts the parking lot of Temple Reyim to the rear. Because its site lacks adequate onsite parking as required under Newton's ordinances, Mayyim Hayyim has entered into an agreement with Temple Reyim whereby Mayyim Hayyim will gain the right to use 12 parking spaces in the temple lot. Mayyim Hayyim's special permit request is essentially a request to waive the requirement that it provide eleven spaces on site and be permitted instead to provide that parking off site. Temple Reyim cannot make the necessary spaces available to Mayyim Hayyim unless it obtains its own special permit to extend the nonconformity of its parking lot. The temple technically requires 285 spaces as a "place of assembly" but has a lot with 137 spaces. Combining two spaces for handicapped use and then sharing twelve spaces with Mayyim Hayyim will increase the nonconformity of the lot. In addition, some of the spaces do not meet the dimensional requirements of the Ordinance. Mayyim Hayyim is considered a "religious and educational use" pursuant to G.L. c. 40A, § 3, and although the Mayyim Hayyim site is nonconforming as to lot size and side setback, the City's Commissioner of Inspectional Services has determined that requiring the petitioner to obtain relief because of these zoning deficiencies would be unreasonable.

The Land Use Committee convened a public hearing on July 9, 2002. Attorney Alan Schlesinger represented both petitioners. He provided a detailed explanation of the Mayyim Hayyim programs and introduced numerous religious leaders and others involved in the creation of the mikveh, all of whom testified as to widespread community support for the mikveh. Mr. Schlesinger stated that the temple parking lot is rarely full except for high holidays and the

occasional large funeral, and he provided anecdotal tabulations of estimated parking impacts of various temple activities. The petitioners have declined to provide an independent traffic/parking study. Two members of the public testified, one of whom, Mr. Sgarzi, lives at 1844 Washington Street directly abutting the properties of both petitioners. He asked the Committee to consider limiting weekend activity in the parking lot and to review the lighting plan.

At the working session, the Committee first reviewed the site plan for the mikveh facility and its relationship to the temple parking lot. The Committee considered a memorandum from Roy LaMotte dated July 15, 2002, suggesting that it would be preferable to modify the existing driveway off Washington Street onto the mikveh property with a “hammerhead” turnaround for deliveries and such. Some members of the Committee agreed with Mr. LaMotte’s concern that the existing driveway will create a traffic hazard because vehicles will pull into it and then back out. The petitioners expressed a preference not to add paving to the site and agreed to install a chain or some type of barrier acceptable to the Fire Department and Planning Department that can be removed for purposes of emergency access.

At the request of Committee members, the petitioners provided additional comparative utilization data from four other mikvehs. The Committee acknowledged that these facilities differ in a number of ways and at least two of them are not good predictors of the volume of use at this facility. All visits will be by appointment, and the educational activity is limited by the amount of space in the existing residential portion of the facility. Mayyim Hayyim has agreed to a condition restricting its offices to Mayyim Hayyim use and prohibiting rental. The Committee was generally satisfied that the amount of possible activity is not likely to impact the temple parking lot negatively. The Committee focused, in particular, on the proposed hours of operation, noting that the activity of the mikveh will rarely overlap hours of primary temple activity. The hours of operation on the weekend will be reduced but not eliminated entirely because the mikveh must operate during certain hours when the ritual associated with its baths must be performed.

Responding to additional concerns raised by Mr. Sgarzi, the Committee reviewed the proposed landscape and lighting plans. It found that the petitioners have submitted a new photometric study to confirm that the light sources will not affect Mr. Sgarzi detrimentally, and that the petitioners have added screening to protect their neighbors. The Committee agreed to incorporate the petitioners’ private Parking Agreement by reference as a further control on the use by Mayyim Hayyim. The special permit as to shared use of spaces will expire if Mayyim Hayyim ceases to have a contractual right to such shared use. The petitioner will also submit a directional signage package for approval of the Planning Department and City Traffic Engineer. Several other conditions were added at the petitioners’ suggestion or with the petitioners’ agreement.

Ald. Bryson moved approval, finding that the special permit to extend the nonconforming use (parking lot) is appropriate because the proposed use will not be substantially more detrimental than the existing use, given that only one parking space is being lost physically and only a small number of spaces will be affected by the Mayyim Hayyim offsite parking use under the Parking Agreement. The lot has sufficient parking to accommodate both uses as a practical matter and the Parking Agreement structures the relationships. The offsite parking special permit is justified because literal compliance by Mayyim Hayyim would be impracticable on its own site and the two uses are complimentary. The parking waivers are not expected to impact the neighborhood negatively. The shared use eliminates the need for additional paving. The site plan approval is appropriate where there are no vehicular or pedestrian safety issues associated with the lot, and the shared use will effectively remove a curb cut on the Mayyim Hayyim property. The Committee supported the motion 8-0.

The meeting was adjourned at 11:24 p.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman