

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, OCTOBER 8, 2002**

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

Other Aldermen present: Ald. Mansfield, Parker.

City officials present: Ouida Young, Associate City Solicitor; Nancy Radzevich, Chief Planner; John Daghlian, Associate City Engineer; Linda Finucane, Chief Committee Clerk.

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**APPLICATIONS FOR AUTOMOBILE DEALER LICENSES**

333-01        SUSAN S. PENTA requesting the transfer of a 2002 Class 2 Automobile Dealer License for Albemarle Motors, Inc., located at 175 North Street, to PETER J. COYNE, with a residential address at 35 Trapelo Road, Belmont.

ACTION:        Approved 7-0 (Ald. Samuelson not voting).

NOTE:        The Committee reviewed the written request of Peter J. Coyne and found him to be a suitable person to hold a Class 2 Dealer's License. Outdoor storage on the site was approved under a very old permit.

340-01        MINI-COST AUTO RENTAL d/b/a THE CAR STORE  
210 Boylston Street, Chestnut Hill  
Class 2 license.

ACTION:        Approved 4-0-4 (Ald. Bryson, Linsky, Lipsitt and Salvucci abstaining).

NOTE:        This application has been pending since January 1, 2002, but the Committee held it in an early review of all license applications pending resolution of outstanding excise tax obligations and investigation of the address given for the business, since it was the site of a fire. Mr. Epstein attended this working session. He explained that he has operated both rental and sales businesses at 210 Boylston Street since 1995. After the fire, he suffered a 50% loss in business. He moved his rental business temporarily to 640 Hammond Street and relocated his sales business activity to a home office but continues to store vehicles on the site. His sales activity fell off another 50% after September 11, 2001. He fell behind in payments and taxes and liquidated much of his inventory. He started selling wholesale, but because his license had not been approved by the Board of Aldermen he ran into problems with the Registry. He is concerned that he may be subject to criminal investigation for attempting to sell vehicles without a license.

Mr. Epstein states that he is a tenant at will but is looking for another storage location. At this time he is seeking a license only for his sales business under the name of The Car Store, which is operated from his home at 19 Rolling Lane. Ouida Young said she had questioned whether the outdoor storage of vehicles for sale is permissible at 210 Boylston Street, but noted that ISD has received no complaints and has not been asked to conduct an investigation. He has met with the Treasurer and Collector concerning the outstanding excise tax bills and they are working out a payment plan. He assured the Committee that he intended to honor that plan. He is still trying to produce proof that he may not owe taxes on certain vehicles which were sold after the fire, but for which he cannot produce plate return receipts.

The Committee was sympathetic to the impact of the fire on Mr. Epstein's business, but several members asked that he correct his application to show his home as the location of the business for which he seeks a license and produce a d/b/a certificate. The Committee also asked for more information on the payment plan and on his alternative storage locations before the Board votes. Ald. Samuelson moved approval, saying that she appreciates the Committee's caution but believes that we have put necessary safeguards in place. She noted that the Committee would not be inclined to renew a license for 2003 if Mr. Epstein has not found a new storage location. The Committee supported the motion 4-0-4.

### **REQUESTS FOR WITHDRAWAL WITHOUT PREJUDICE**

125-02        BOSTON PCS, LLC and AMERICAN TOWER CORPORATION petition for SPECIAL PERMIT TO EXTEND NONCONFORMING USE AND STRUCTURE and SITE PLAN APPROVAL for the addition of six panel antennas at the height of 150' and to locate its equipment cluster in the existing compound at the base of an existing 1249' lattice tower located at 1165 CHESTNUT STREET, Ward 5, on approximately 330,000 sf of land known as Section 51, block 45, Lot 5, in a district zoned MR1.

ACTION:        Withdrawal without prejudice approved 8-0.

270-02        OMNIPOINT HOLDINGS, INC. A DIVISION OF VOICESTREAM WIRELESS and I. ZUSSMAN 219 REALTY TRUST petition for SPECIAL PERMIT and SITE PLAN APPROVAL to install wireless communication (3 antennas enclosed within a canister designed to resemble a stovepipe chimney); equipment on the penthouse, with 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:        Withdrawal without prejudice approved 8-0.

269-02        ROBERTA O. HING & WILLIAM J. CLEARY III petition for SPECIAL PERMIT TO EXTEND NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for the addition of a rear vestibule within the wide yard setback of an interior lot line at 116

ATWOOD AVENUE, Ward 2, on approximately 13,932 sf of land known as Section 22, Block 21, Lot 65, in a district zoned MR1.

ACTION: Withdrawal without prejudice approved 8-0.

NOTE: Under the recently-revised policy of ISD regarding interpretation of interior lot lines, the petition no longer requires relief from the Board of Aldermen.

### **SPECIAL PERMIT and SITE PLAN APPROVAL PETITIONS**

167-02 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, petition 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 parking 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: Approved 6-0-2 (Ald. Basham and Linsky abstaining); extension of time through November 19, 2002 approved 8-0.

NOTE: The petitioners seek approval of the addition of 26 seats at the Sabra Restaurant. This restaurant of greater than 50 seats is a legally nonconforming use. The restaurant previously had 77 seats, but was forced by the owner of the building to relinquish 26 seats in 1989 so that the parking credits associated with those seats could be used in the conversion of the upper floors of the building from residential to business use. The petitioners admit that, at later times, they continued to have 77 seats in the restaurant. To legitimize those 26 seats, they require a waiver of the additional parking requirement, which is calculated at nine spaces. At the public hearing on June 11, 2002, Aldermen asked the petitioners to consider limitations on the hours when the additional seats would be used, develop a plan to encourage use of public transportation, and provide additional information on other uses in the building. The petitioners presented a petition signed by patrons of the restaurant in support of this petition, while six residents of the Newton Centre area testified in opposition, citing chronic parking problems in Newton Centre as a principal concern.

At the working session, Ald. Merrill reviewed the licensure history of the restaurant back to 1978, showing that the capacity was reduced to 51 in 1989 as reported by Mr. Rosenberg at the hearing. The Committee also reviewed memoranda from city officials and responses from Jason Rosenberg, counsel for the petitioners. Roy Lamotte, before his departure from the city, provided an overview of parking demand in Newton Centre. He observed that the seats in Sabra are only 40-50% occupied during peak hours around noon. He also observed that a significant

percentage of patrons (20-30%) arrive by public transportation. There is also a considerable walk-in trade. He concluded that the additional seating is not a problem at the present time.

The Committee reviewed all of the conditions proposed by the petitioners, including but not limited to a restriction on use of the additional seats to hours after 6 pm Monday through Saturday and after 11 am on Sunday. The Committee reviewed and discussed a floor plan showing the specific seats to be roped off, with some discussion of whether roping off different seats would be more logical. The Committee concluded that the petitioners should be able to decide which make the most sense from a business perspective. The petitioners have also agreed that the parking waiver will expire with a change of use. Ald. Linsky and Ald. Mansfield argued that the use should expire with a change in ownership or transfer of license so as to protect the small business nature of "Sabra," while Ald. Lipsitt and Ald. Fischman said that the only critical factor is the time when the seats can be used. Mr. Rosenberg said that the petitioners will not accept a restriction as to change in ownership/licenses because the Board of License Commissioners have complete control over the transfer of licenses and will deal with any parking changes that might be associated with a different type of restaurant. Thus, a waiver that expires with a change in use is restrictive enough.

Ald. Fischman said he was less than satisfied with the petitioners' response to his concern about incentives for use of public transportation, and Mr. Rosenberg said that the reality is that the present employees are T riders and such jobs tend to attract people who use public transport, so incentives are irrelevant. He stated that the business is too small to offer T passes or financial incentives. The petitioners agreed to take additional steps to encourage use of public transportation, such as reminders on menus.

Ald. Mansfield had suggested that this petitioner should contribute to a fund for a parking study of Newton Centre, but members of the Committee thought that such a request would be premature and would unfairly burden a small business. The Economic Development Commission provided a memorandum in support of small businesses, suggesting that the cost of a comprehensive parking study should be borne equally by all businesses and/or property owners in the area. Ald. Lipsitt asked the Planning Department to docket a proposal to that effect. Mr. Rosenberg stated in writing that the petitioners should not have to contribute to such a study in exchange for a special permit, and that the restrictions on the use of the additional seats will alleviate impact on the parking demand with respect to both the building and the business area. Ald. Parker, who expressed the view that there is no public benefit in the petition, suggested that a contribution to the study would create such a public benefit, but if the petitioners won't contribute, maybe they should give up even more seats during the day. Ald. Lipsitt said that there is no need to punish the petitioners during the day as some kind of trade-off.

Ald. Lipsitt moved approval, finding that the parking waiver is appropriate because the hours of use of the additional seats will be limited to times when demand is light, and literal compliance with Ordinance parking requirements is impossible on this site. The history of

operations indicates that the neighborhood is able to support the additional demand. The extension of the nonconforming restaurant use is justified because the proposed extended use will not be substantially more detrimental to the neighborhood than the existing nonconforming use. The restaurant is located in a busy retail and commercial area with substantial walk-in patronage and access from public transportation. Ald. Linsky asked to modify the conditions to impose a requirement that the parking waiver expire upon change of ownership/licensee, but the Committee rejected his motion by a vote of 2-6 (Merrill and Linsky voting in the affirmative). Ald. Parker offered contrary findings that would support a negative outcome, including that (1) the proposed special permit is substantially more detrimental than the by right alternative as a result of the impact of traffic, additional trips, and public safety risk, and (2) parking currently is insufficient to meet additional demand and more parking will have a negative impact on the quality of life. The Committee supported Ald. Lipsitt's motion 6-0-2, and accepted the petitioners' request for an extension of time by a vote of 8-0.

230-02         DOUGLAS C. SMITH petition for SPECIAL PERMIT and SITE PLAN APPROVAL for a change of grade of more than three feet to cut and fill in a rear yard to create two terraces and a flat area at 51 WINTHROP STREET, Ward 3, on approximately 22,450 sf of land known as Section 32, Block 14, Lot 7, in a district zoned SR2.

ACTION:       Held 8-0; Request for Extension of Time through November 18, 2002 approved 8-0.

NOTE:         This item was held because the Associate City Engineer has unresolved concerns about the construction of the retaining wall and because Ms. Radzevich, in a site visit the same day, noted additional alterations on the site.

29-02         GERALD E. BUTTERWORTH and ANDREA M. BUTTERWORTH petition for SPECIAL PERMIT and SITE PLAN APPROVAL for a change of grade of more than three feet to create a flat area for two additional parking spaces to be located in the front yard setback at 488-490 LOWELL AVENUE, Ward 2, on approximately 6,342 sf of land known as Section 24, Block 28, Lot 42, in a district zoned MR1.

ACTION:       Approved 3-2-3 (Ald. Bryson, Merrill, and Salvucci voting in the affirmative; Ald. Lipsitt and Samuelson voting in the negative; Ald. Basham, Fischman and Linsky abstaining).

NOTE:         The petitioners wish to create two new parking spaces to serve their two-family dwelling. Currently the site has a garage that was designed for two vehicles but it accommodates only one of contemporary size. The new parking spaces will be accessed across a new curb cut, with the existing curb cut, driveway and garage remaining unchanged. The petitioners require relief from the Board of Aldermen to alter the grade by more than three feet and to create more than one parking space in the front setback. At the public hearing on

September 10, 2002, counsel for the petitioners, G. Michael Peirce, stated that the two curb cut arrangement, and front setback parking, appear to be common solutions to the same problem along Lowell Avenue. Ms. Butterworth stated that the occupants of the two units now are forced to juggle cars in the driveway and park on the street, and this is the best available solution to an unsafe situation. Ald. Lipsitt asked the petitioners to consider the alternative of investing in the renovation of the garage for two cars and thereby avoid the need for a second curb cut. There was no public testimony.

At the working session, the Committee reviewed photographs provided by the petitioners of examples of front setback parking along Lowell Avenue, including one situation with two curb cuts. Mr. Peirce, by letter dated October 3, 2002, stated that the Engineering Department and DPW have determined that the two curb cuts are permissible within city policy. Reviewing the site plan, the Committee noted that the proposed retaining wall will be about 7' at the rear, which may be comparable to the wall at 478-480 Lowell. The wall will be low enough for visibility from a car at approximately 6' to 8' from the back side of the sidewalk and will slope to 2.5' to 27' at the sidewalk. In response to Ald. Lipsitt's request, Mr. Peirce stated that an architect has determined that the two columns in the garage cannot be removed because they are load bearing and they compromise the ability of a driver to turn right from the driveway into that space. The petitioners have considered but rejected the concept of additional surface parking in the rear because of the loss of screening. Ald. Lipsitt pointed out that if the petitioners were willing to spend the money, the load could be shifted from the bearing columns in the garage so that they could be removed.

Mr. Daghlian reported that the Engineering Department has reviewed the plans for the grade change and retaining walls and finds them acceptable. Storm runoff is controlled to the 100 year storm standard. A structural engineer must design the wall, and the petitioners will be required to install erosion control. The petitioners have agreed to specify stone-faced walls.

Ald. Bryson said there is a real need for a second parking area at this site, and Ald. Merrill agreed that this is a satisfactory solution to the safety issue. Ald. Linsky said he sees this as a great convenience for the residents but is not convinced that this is a significant safety enhancement for the public, and he sees the front setback parking as further deterioration of a beautiful avenue. He moved approval, finding that the public convenience and welfare will be served by the grade change because it will permit adding parking, thereby getting parked cars off the street, and improve drainage on site. The front setback parking is justified because literal compliance with the parking requirements under the Ordinances is impossible with the existing structure and vegetation. This arrangement will also preserve a large tree in the front yard.

Ald. Lipsitt said she does not intend to support the petition. She understands the inconvenience to the residents, but does not see the present proposal as a desirable solution to their problem. The house across the street has single car garages and single curb cuts, whereas this plan calls for a double curb cut and two cars up against the sidewalk. It will be unattractive

and unsafe backing out. Ald. Samuelson said she agreed that this will make a dangerous situation worse on Lowell Avenue. Ald. Fischman expressed concern about the abutter who will be most affected by the new retaining wall. Ald. Salvucci said he sees the plan in character with the street and will support the petition. Ald. Bryson said the current driveway is more of a hazard for exiting vehicles than the proposed will be. Ald. Merrill said that the turn into the garage is a major consideration. The Committee supported the motion 3-2-3.

The meeting was adjourned at 11:49 p.m.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman