

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, OCTOBER 22, 2002**

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

Other Aldermen present: Ald. Coletti, Mansfield, Parker.

City officials present: Nancy Radzevich, Chief Planner; Alexandra Ananth, Planner; John Daghlian, Associate City Engineer; Linda Finucane, Chief Committee Clerk.

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96-02            PRESIDENT LIPSITT requesting the appointment of the following resident neighborhood members to the Construction Liaison Committee for Chestnut Hill School, pursuant to Board Order 96-02, Condition 11:

Nancy Younger, 17 Suffolk Road, Chestnut Hill  
Michael Horwitz, 135 Essex Road, Chestnut Hill

ACTION:        Held 7-0 (Ald. Fischman not voting).

NOTE:            Ald. Lipsitt stated that that school is working to set up the committee and she has informed the representatives of the school that in order to avoid delay, they can met with these appointees before the Board confirms them.

**REQUESTS FOR EXTENSIONS OF TIME**

250-01(2)       REQUEST FOR EXTENSION OF TIME IN WHICH TO EXERCISE SPECIAL PERMIT 250-01, granted to THE NEWTON TERRACES, LLC/ANDOVER NEWTON THEOLOGICAL SCHOOL on November 19, 2001, for 41 single family attached townhouse dwellings and 7 single family detached dwellings, with 109 parking spaces, on a new subdivided lot with frontage on Langley Road and Cypress Street (also bounded by Langley Path) on HERRICK ROAD, Ward 6.

ACTION:        One year extension of time approved 7-0-1 (Ald. Linsky abstaining).

NOTE:            By letter dated October 3, 2002, the petitioners have requested an additional year in which to exercise special permit no. 250-01, voted by the Board on November 19, 2001 and filed with the Clerk on December 3, 2001. According to both the petitioners and Nancy Radzevich, the petitioners have not been able to proceed to construction because the process of working out compliance with the Tree Ordinance and the conservation restrictions on this large and complex site have taken a lot of time. Ms. Radzevich reported that even though the City Tree Warden had signed off on the petitioners' plan for compliance with the Tree Ordinance a

while back, she had had some concerns about the choices of replacement landscaping in relation to the special permit requirements for preservation of views and such. She attributed much of the delay to the Planning Department's review process, but indicated that the Law Department now has the agreed tree plan, and she sees no further impediment to the petitioners' beginning construction as soon as the weather permits.

Ald. Parker and Ald. Mansfield, along with members of the Committee, asked a number of questions about the petitioners' compliance to date with various conditions. Ald. Parker questioned whether, in considering a request for an extension of time, the Board has discretion to simply say that we don't care to grant it. He asked whether the standard for granting an extension is the same public convenience and welfare standard as the grant of the original special permit. Ms. Young was not in attendance, but the Chairman stated that the Board cannot act arbitrarily or capriciously in land use matters and that the standard for an extension is certainly a much lower threshold than that required for the project itself. She cautioned that the request for an extension of time should not be viewed as an opportunity to reopen deliberations on the merits of the original petition or rewrite its conditions. Ald. Parker asked for a further explanation from the Law Department.

After reviewing the petitioners' stated reasons for their delay and hearing the Planning Department's assessment of the petitioners' progress, the Committee voted 7-0-1 to approve the extension on a motion by Ald. Merrill.

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

328-02        NATHAN AND ROCHELLE PHILLIPS petition for SPECIAL PERMIT and SITE PLAN APPROVAL to extend the maximum building lot coverage by adding a covered entry porch to the front and an addition to the kitchen, including a deck, to the rear of 229 FULLER STREET, Ward 3, on approximately 15,120 sf of land known as Section 32, Block 28, Lot 19, in a district zoned SR1.

ACTION:        Approved 8-0.

NOTE:         The petitioners wish to make two small additions and a deck to their property. They require a special permit because the residence is currently nonconforming as to building lot coverage. If built now, the lot coverage limit would be 20%. The current coverage is 21%, and the additions will further increase the lot coverage to 25%. There was no public testimony at the hearing on October 15, 2002.

The Committee reviewed the site plan and noted the open space on the 15,120 sf lot that will remain after construction. The Committee was satisfied that the proposed additions will have no impact on the surrounding neighborhood.

Ald. Salvucci moved approval, finding that the extended nonconforming structure will not be substantially more detrimental to the neighborhood than the existing because the additions are minor in scale and only 117 sf is in the front of the house. The Committee supported the motion 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:**        Approved 5-2-1 (Ald. Lipsitt and Samuelson voting in the negative; Ald. Basham abstaining.)

**NOTE:**        The petitioner recently undertook some significant renovation and upgrades to his property, including the construction of several retaining walls in the rear yard. ISD observed in an inspection that the grade had been altered by more than three feet in several locations and notified the petitioner that he required a special permit. Mr. Smith has now sold the property at 51 Winthrop Street. He has brought this petition on behalf of the new owners of the property as part of his purchase and sale agreement with them.

Mr. Smith seeks the Board's approval of the alteration of the grade by more than three feet in an area immediately to the rear of the residence, where small stone-faced retaining walls have been constructed to create a terrace, thereby altering the grade by approximately 3 feet, six inches at one wall and 4.5 feet at the other. He also seeks approval of a grade alteration at the rear left corner of the property, where he constructed a railroad tie retaining wall along the rear and side property lines to retain the fill in his yard. This wall extends approximately 90 feet along the rear lot line and 45 feet along the west side line. The Planning Department estimates that the maximum grade alteration in this area is about five feet. To compound matters, the City Engineer had received "as built" plans for this wall, but had not received or had an opportunity to comment on the modifications of the site from the original, as he would have in a situation where the change of grade was proposed for our approval before the work was undertaken. At the public hearing on July 9, 2002, the Committee asked the petitioner to provide a pre-construction topographical plan for Engineering. An interpolated plan was later provided. The property at 61 Winthrop abuts the railroad tie wall, and the owners testified that they are concerned about a number of issues. After hearing from the neighbors concerning the potential leaching of creosote from the railroad ties, the Committee asked for a review by the Health Department. A written report later confirmed that there is no risk associated with leaching from this wall.

The Committee attempted to discuss this petition at its working session of October 5, but held it after receiving a report from Mr. Daghlian that he had discovered some problems with the

retaining wall and the catch basin in the driveway, and a report from Ms. Radzevich that there had been additional paving undertaken since the public hearing.

At this working session, the Committee reviewed the site plan and received a further report from Mr. Daghlian on the condition of the railroad tie wall. Apparently it has developed two types of flaws. Gravel from within the wall structure is leaking out at the bottom, and the wall has developed a bulge along the upper ties in one stretch. Mr. Daghlian commented that Engineering would have approved the plan for the wall, and if the wall was constructed according to the as-built plans, it should not have developed these flaws, but in his view, the wall can be repaired and made to last many years. He has recommended modifications and the petitioner has agreed to undertake them, including the installation of cement along the base of the wall to hold in the gravel. Some members of the Committee were satisfied with this arrangement, while others remained skeptical. Ald. Lipsitt suggested that if the petitioner had constructed the rear wall of stone, in the same manner as the terrace wall, this issue would not have arisen, and that would be the best result for the neighbors who have to look at the wall. She said she was not inclined to support the petition for that reason.

Mr. Daghlian also notified the Committee that he expects the petitioner to relocate a dry well installed in the driveway and to install a gas trap. Ald. Coletti questioned why the petitioner should have to go to such expense. The Committee noted that the driveway is not part of the grade change and therefore not directly related to this petition. It declined to impose any requirements with regard to the dry well, leaving that to the normal procedures of the Engineering Department.

The Committee addressed briefly the condition of a large copper beech tree and other vegetation on the site. The City Forester, Marc Welch, had examined the copper beech and recommended root treatment and other care. The petitioner has already retained an arborist and have agreed to undertake special treatment of this tree, as well as to maintain the landscaping generally. He has provided a landscape plan showing certain plantings to complement and lessen the impact of the retaining walls.

Ald. Salvucci moved approval, finding that the public convenience and welfare are served by the grade change because it creates more usable space and is accompanied by improved landscaping and runoff control on the site. Ald. Samuelson said she cannot support the petition where there are issues of workmanship and performance in the construction of the wall. She is not opposed to the grade change generally, and she does not wish to penalize the new owners, but the construction is inadequate. Ald. Lipsitt said she agreed, noting the neighbors' concern with the impact of the wall. Ald. Bryson said she supports the petition, but would not be comfortable ignoring the Engineering Department's policy on the design of the dry well if that were part of the petition. Ald. Fischman asked for a condition that would require an inspections by a licensed civil engineer at six months and annually thereafter for two years to ensure that the

repairs are successful, and the Committee adopted this condition. The Committee supported the motion to approve by a vote of 5-2-1.

271-02        SOPHIA AND PETER ALEXANDRIDES and HELEN LAZARIDES petition for SPECIAL PERMIT TO EXTEND NONCONFORMING USE and SITE PLAN APPROVAL to waive the parking requirements to allow first-floor living space to be converted to a hair service establishment space, with the second and third floors remaining living space, at 17-19 PLEASANT STREET, Ward 6, on approximately 5,985 sf of land known as Section 64, Block 30, Lot 2, in a district zoned Business 1.

ACTION:        Approved 8-0.

NOTE:        The petitioners are proprietors of Helso Coiffures in Newton Centre. They wish to established a separate location for hair replacement services on the first floor of a two-family residence at 17-19 Pleasant Street. Part of the first floor of the residence was used in past years as a beauty parlor, and they require a special permit to extend that nonconforming use. City records are unclear as to whether more than one room was used for this purpose, and so the petitioners have requested a waiver of four parking stalls, based on the most conservative interpretation of prior use. At the public hearing on October 15, 2002, Professor Ernest Siciliano urged the Board to deny the petition because he believes the parking lots at Pelham and Pleasant Streets are saturated. The Committee asked the Planning Department for their assessment of the condition of these lots.

At the working session, the Committee reviewed the floor plan for the hair salon and noted both the proposed handicapped lift at the front and the new means of egress for the upper floors, which will be located in an enclosed stair at the rear. The site currently has a two car garage and accommodates three tandem spaces. The petitioners have agreed to limit their business to serving only two clients at a time and limiting their hours of operation to 8 am to 8 pm Monday through Saturday. Because many of their clients are elderly and travel by cab, they do not anticipate a heavy parking demand. They do not park in the driveway and expect that it would be available for pick up and drop off as needed.

Parking in the area, as reported by the Planning Department, includes metered spaces immediately across the street and 77 spaces in the Pleasant Street public lot, with 37 3 hour meters. Several members of the Board offered their own observations of utilization in this lot. There was no consensus on whether this lot is ever “saturated.” Ald. Lipsitt observed that the number of three hour spaces is most relevant, since the typical appointment in this business is two hours.

Ald. Lipsitt moved approval, finding that the proposed nonconforming use will not be substantially more detrimental to the neighborhood than the existing because the use is of low intensity, serving a limited number of clients at infrequent intervals. The waiver is justified

because the nature of use will generate low parking demand and the structure is adjacent to ample public parking. The use is ideal as a buffer between commercial and residential districts. The Committee supported the motion 8-0.

268-02        DANIEL HAVERTY and KENMORE REALTY CORPORATION petition for SPECIAL PERMIT and SITE PLAN APPROVAL to waive the number of parking spaces required for a restaurant located at 1349 WASHINGTON STREET, Ward 3, on land known as Section 33, Block 12, Lot 1, in a district zoned Business 1.

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

NOTE:        Daniel Haverty is the owner of the Cherry Tree restaurant, long established in West Newton at 1365 Washington Street. Because Mr. Haverty is losing his lease in the near future, he has arranged to relocate his business to 1349 Washington Street. The new space comes with a parking credit, based on its prior use, which permits 27 restaurant seats. The Cherry Tree has operated with 45 seats for a number of years, and Mr. Haverty wishes to maintain a similar number. He requires a special permit to waive the requirement for 7 parking stalls in order to increase his seating to 48 seats at the new location.

At the public hearing on September 10, 2002, the Committee asked Mr. Haverty to provide a written assessment of the parking demand of his patrons and asked the Planning Department to provide information on parking in the area. One patron testified in support of the petition at the hearing.

At the working session, the Committee considered Mr. Haverty's parking analysis, noting the patterns of activity and the large number of patrons who are in West Newton square for multiple purposes. The Committee acknowledged that parking in the square is at a premium, but both of these spaces have been occupied regularly, and the actual increase in demand related to this petition is relatively small. Ald. Fischman also noted that there is parking space behind the new location shared by five tenants, and the petitioner might confer with his landlord to improve lighting and otherwise encourage patron parking in this area.

Ald. Merrill said he sees this petition like Lumiere, where the site lacks parking but the demand is related to specific times. Mr. Haverty had no choice but to relocate his business. We have an opportunity to assist a business in serving the public and in being successful, and the parking condition of the area should not deter us. Patrons who are frustrated by lack of parking will simply go away. Ald. Samuelson said she remained concerned that the old space will be taken over by the health club and the net effect will be an increase in parking demand.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by granting the parking waiver because it supports a local business in a good location, there is some parking in the rear and an adjacent public parking lot, the patrons will have limited

impact on parking demand because of multi-purpose stops in the square, and literal compliance with the parking ordinance requirements is impossible at this site. The petitioner agreed to accept a condition in which the parking waivers will expire if the use changes from restaurant use. The Committee supported the motion 7-0-1.

228-02 CYNTHIA TOTER and MICHAEL L. KATZEFF petition for SPECIAL PERMIT TO EXTEND NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for the enclosure of a third-story deck at 10 CHAPIN ROAD, Ward 6, on approximately 6,609 sf of land known as Section 64, Block 25, Lot 4, in a district zoned SR2.

**ACTION:** Deck enclosure special permit approved 8-0; withdrawal of other special permit requests in original petition approved 8-0.

**NOTE:** This petition originally included a request for approval of a large two-story addition at the rear of the residence and a waiver related to the driveway width as well as the present request concerning the deck enclosure. Based on a reinterpretation by ISD of the impact of merging two lots within the site, however, the petitioners no longer require relief from the Board related to the rear addition and driveway. They require a special permit to enclose the existing third floor deck on one side of their nonconforming house, which will result in an addition of approximately 228 sf. The Committee reviewed the elevations and found the proposed enclosure consistent in design with the dwelling.

Testimony at the public hearing by the immediate abutter concerned the aspects of the petition no longer requiring relief from the Board. Ald. Mansfield expressed concern that this abutter had been misled somehow and asked whether the petitioners should have to withdraw and refile for another hearing because of changes in the petition. The Chairman responded that the Law Department generally has regarded changes reducing the scope of a petition as not necessitating further hearing because the public has already had an opportunity to comment on the parts of the project remaining. Ald. Lipsitt emphasized that the most controversial part of the project can be done as of right and it simply is not before the Board any longer. Nothing would be gained by additional public input.

Ald. Lipsitt moved approval of the deck enclosure, finding that the proposed extension of the nonconforming structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure because it is only 228 sf and does not alter the footprint, the architecture is in keeping with the style of the residence, proposed landscaping will improve screening for the abutter, and the addition requires no increase in impervious surface. The petitioners requested orally, and Ald. Lipsitt moved, withdrawal without prejudice on the other parts of the original petition. The Committee supported the motion 8-0.

The meeting was adjourned at 12:05 a.m.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman