

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, APRIL 24, 2001**

Members of Committee present: Ald. Basham, Chairman; Ald. Antonellis, Lipsitt, O'Halloran, Salvucci, Samuelson, Tattenbaum.

Members of Committee absent: Ald. McGrath.

Other Aldermen present: Ald. Baker, Bryson, Merrill, Parker, Sangiolo.

City officials present: Ouida Young, Associate City Solicitor; Nancy Radzevich, Chief Planner/Land Use Coordinator; Tom Daley, City Engineer; Linda Finucane, Chief Committee Clerk.

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466-00(2)                    NEIL DRUKER and JOANNE MAC KINNON petition for SPECIAL PERMIT and SITE PLAN APPROVAL for an accessory apartment in a detached structure at 145 HIGHLAND STREET, Ward 3, on land know as Section 32, Block 9, Lot 13, measuring approximately 40,615 sf, in a district zoned SR1.

ACTION:        Approved 7-0.

NOTE:            The petitioners wish to create an accessory apartment in an existing carriage house on their property. At the public hearing on February 13, 2001, the petitioners explained that their initial reason for undertaking the development of the unit was to provide an alternative living space for themselves during the renovation of the primary residence. Their nearest abutter expressed support for the project.

The carriage house is nonconforming as to rear and side setbacks, and the petitioners require a special permit to put an accessory apartment in the detached structure. In addition, the unit will be slightly larger than the permitted 33% of "total building size." There will be no major exterior changes except for replacement of windows and certain components of the cupola. The petitioners have presented their plans for review by the Historical Commission and intend to continue working with the Historical Commission. Although the petitioners have stated they may enter into an agreement with the neighbors not to charge rent for occupancy of the unit, the Committee was reluctant to endorse such an arrangement because the apartment could be a much-needed unit of rental housing.

The Engineering Department recommends approval with several conditions. Mr. Daley reported that the water and sewer connections for the carriage house have been reviewed and approved by his department. There was some discussion as to whether it is really necessary for the petitioner to replace an existing catch basin in the driveway that drains to the sewer (illegally) with a new catch basin that has a "gas trap" and leaches into the ground. Mr. Daley explained that the gas trap is a relatively inexpensive item and provides important environmental protection. The petitioner has agreed to the plan. The Committee noted that in the past, the

Engineering Department has not approved sewer and water services to an accessory structure that tie into the services to the main house. Mr. Daley said he does not have any problem with the arrangement, but he would look into the past reasoning.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by creating a unit of housing, repairing the drainage system, and preserving and restoring the historic carriage house. The Committee found that site plan approval criteria are met because the site is sufficiently large to allow for required parking and adequate circulation.

90-01            KENNETH C. BRENNAN, PRESIDENT, AUBURNDALE COOPERATIVE BANK, petition for SPECIAL PERMIT FOR EXTENSION OF NONCONFORMING STRUCTURE and SITE PLAN APPROVAL to exceed building height limitations for second floor addition, with waiver of parking requirements, at 319 AUBURN STREET, Ward 4, on land known as Section 41, Block 15, Lot 12, measuring approximately 5196 sf in a district zoned Business 1.

ACTION:        Approved 7-0.

NOTE:            The petitioner has acquired a building next door to its present location in Auburndale, and now would like to expand banking operations into the new building. The bank requires a special permit because the structure is nonconforming and the petitioner wishes to exceed the 24' height limitation by a slight amount to allow for adequate ceiling height and room for HVAC circulation on the second floor. The petitioner plans to improve a walkway between the two buildings and improve the parking area with striping and landscaping, but needs a waiver of parking requirements because the improvements will trigger certain new requirements. In addition, the petitioner seeks a waiver of 10 spaces. At the public hearing on April 10, 2001, the petitioner's attorney, G. Michael Peirce, said it is undisputed that there is plenty of public parking in the square. There was no public testimony, but Ald. Bryson expressed her personal support for the project.

At the working session, the Committee received a letter from Kevin Courtney, president of the Auburndale Community Association. Mr. Courtney was present at the meeting and emphasized the ACA's support for the petition. The Committee reviewed the site plan and noted that the existing ingress and egress to the parking area is from Melrose Street. Mr. Daley reported that Roy Lamotte is satisfied with this arrangement. Ald. Bryson expressed particular appreciation for the plan to improve the walkway because it has often been an attractive location for graffiti. She noted that Ald. Sangiolo clarified that the petitioner does not intend to request approval for signage that is beyond that permitted as of right.

Ald. Salvucci moved approval, finding that the alteration and extension of the nonconforming structure will not be substantially more detrimental to the neighborhood than the existing because the excessive height is only four inches over the limit and still lower than the contiguous building. He also found that the passage way will be improved and the community

will benefit from the façade improvements. The Committee found that the petition meets site plan approval criteria because there is adequate parking in the area and the improvements to the parking lot will improve access and circulation.

1-01            LUNNY AUTO SERVICE and DONALD F. LUNNY JR., TRUSTEE OF DONALD F. LUNNY TRUST, petition for SPECIAL PERMIT TO EXTEND NONCONFORMING USE AND STRUCTURE and SITE PLAN APPROVAL to AMEND Special Permit Nos. 157-92 and 91-98 to relocate an existing full service pump island, add a second full-service pump island, and install a canopy over the two full-service pump islands at 2370 COMMONWEALTH AVENUE, Ward 4, on land known as Section 41, Block 9, Lot 1A, measuring approximately 16,300 sf, in a district zoned MR2.

**ACTION:**        Special permit and site plan approval for pump relocation and addition approved 7-0; request for withdrawal without prejudice of canopy request approved 5-0-2 (Ald. Lipsitt and Samuelson abstaining).

**NOTE:**            At the public hearing on February 13, 2001, the petitioner’s attorney, Stephen Buchbinder, explained that the petitioner wishes to improve the Auburn Street side of his station by moving one pump island, installing a second island, and erecting a canopy over both. He requires a special permit because the structure and use are both nonconforming. A number of residents of the new housing nearby on Auburn Street expressed concern that the canopy would be unsightly and an unwelcome commercial presence in the neighborhood. Others spoke in support of the petitioner as providing a needed and long-established service to the community.

Following the public hearing, the petitioner worked with the Ward 4 Aldermen and Ald. Tattenbaum to try to resolve some of the neighbors’ concerns. As a result of those communications, the petitioner offered a number of conditions of approval that were designed to address various operational issues at the station. The petitioner also stated by letter from counsel dated March 29 that he would be willing to “bifurcate” the two components of his petition for separate consideration by the Board. Ald. Bryson reported that the neighbors generally are willing to see the pumps approved if the canopy is delayed. They would like to work with Mr. Lunny to resolve other site issues and then would consider supporting a petition for a canopy in the future.

At the working session, the Committee reviewed the site plan and the proposed locations of the pumps and canopy. The Committee noted, in particular, that the Board approved a special permit several years ago for a similar configuration, except that the canopy was to be larger and would have encroached farther into the front setback. The petitioner was unable to proceed with that plan because the ZBA did not grant a variance for the newly nonconforming setback. The proposed canopy would be smaller than the canopy now erected on the Commonwealth Avenue side. It would have no logo signage and would provide down-directed light around the pumps, compared with the present spotlight arrangement. Ms. Radzevich reported that Roy Lamotte has reviewed circulation at the site and believes the new pump locations would be an improvement.

Based on the petitioner's willingness to have the two parts of the petition considered separately, the chairman asked for the sense of the Committee on the two components. Ald. Lipsitt said she appreciates the effort of the Ward 4 Aldermen and Ald. Tattenbaum to try to develop a consensus, but she sat on the Committee in 1998 when we approved the larger canopy closer to Auburn Street, and she sees this proposal as an improvement over the last. She stated that if the petitioner did not withdraw the canopy request, she would support it. She also commended the petitioner for moving the pumps back from Auburn Street. Ald. Salvucci agreed with Ald. Lipsitt, saying that the canopy really will have no direct effect on the new neighbors and their position makes no sense. Ald. Antonellis agreed that the lighting would be better with the canopy, but continued to be concerned with neighborhood opposition. Ald. Tattenbaum said she agrees with Ald. Lipsitt and Salvucci, particularly were we supported a similar project before, but she wants to be sure that the petitioner will obey all relevant legal requirements. Ald. Samuelson said she sees the canopy as a public benefit and would support it. Ald. O'Halloran agreed, adding that Lunny is a businessman and we need to work with him. The chairman said she saw no legal basis for turning down the canopy as an extension of a nonconforming structure or use, particularly where we approved the same use in a larger configuration in the past. She said she sympathized with the Ward 4 Aldermen's effort to reach consensus, but cautioned that a land use decision needs to be made on the basis of land use criteria, not only neighborhood preferences or concerns that a petitioner is a less than stellar operator.

Despite the apparent support for the canopy, Mr. Buchbinder stated that he had made a commitment to Ald. Bryson to withdraw the canopy if the Committee supported the pumps, and he still intended to do so. Mr. Buchbinder was advised that the Committee would have no choice but to vote on both components unless there was a request for withdrawal, and he would not have the option of waiting to see how the vote on the pumps came out before deciding whether to withdraw the canopy. Ald. Bryson said this is a very important juncture in neighborhood relationships. Ald. Sangiolo expressed disappointment in the withdrawal because she sees no way that the neighbors will ever support the canopy. After further private discussion with Ald. Bryson, Mr. Buchbinder asked to withdraw the canopy request without prejudice.

The Committee reviewed the proposed conditions and findings, after which Ald. Lipsitt moved approval of the pump component, finding that additional pumps will not be substantially more detrimental to the neighborhood than the existing nonconforming use and structure because the petitioner has represented he plans no increase in business but wants to provide better service; the traffic flow will not be changed detrimentally; and the new pumps will be more conforming to the setback. The Committee supported the motion unanimously, and supported the withdrawal request 5-0-2.

60-01            THE NEWTON TERRACES, LLC/NEWTON THEOLOGICAL SCHOOL  
petition for SPECIAL PERMIT and SITE PLAN APPROVAL for 42 single family attached  
dwellings, with 6 single family detached dwellings, requiring various forms of zoning relief, at

101 HERRICK ROAD, Ward 6, on land known as Section 65, Block 19, Lot 45, measuring 552,226 sf, in a district zoned SR3.

ACTION: Held 6-0 (Ald. Tattenbaum not voting).

NOTE: The Committee began its review of this petition in a “scoping session,” in which the Committee identified various issues requiring further information. A complete report will be provided when the Committee takes action on the petition.

86-01 MICHAEL LATZ petition to rezone 2,437 sf of land located on STATION STREET, Ward 6, known as Section 52, Block 52, and a portion of Lot 5.

ACTION: Withdrawal without prejudice approved 7-0.

86-01(2) MICHAEL LATZ petition for SPECIAL PERMIT and SITE PLAN APPROVAL to locate parking for four automobiles, including waivers for location, parking within setbacks, and a change of grade of more than 3 feet, at an existing dwelling at 336 LAKE AVENUE, Ward 6, on land known as Section 52, Block 21, Lot 4, and a portion of Lot 5, measuring 6,981 sf and 2437 sf in MR 1 and proposed MR1 respectively.

ACTION: Withdrawal without prejudice approved 7-0.

17-01(2) BILL AND MERLE ROSE request for Extension of Time for Board action through June 6, 2001.

ACTION: Approved 6-0 (Ald. Salvucci not voting).

The meeting was adjourned at 11:42 pm.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman