

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, JUNE 5, 2001**

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

Other Aldermen present: Ald. Bryson, Coletti, Mansfield, Merrill, 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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117-01        ALEXANDRA SHIELDS & EVELYNN HAMMONDS petition for SPECIAL PERMIT and SITE PLAN APPROVAL for an accessory apartment on the third floor in an existing single family house, and to locate parking in a setback, at 90 HIGHLAND AVENUE, Ward 2, on approximately 10,370 sf of land known as Section 24, Block 12, Lot 5, in a district zoned SR2.

ACTION:        Approved 7-0.

NOTE:        The petitioners are seeking approval to create an accessory apartment as part of the rehabilitation of their home following a fire. They also wish to remove an existing garage and create an additional parking space in the setback. They will apply for a variance to place a new garage within the setback, as well. No opposition was expressed at the public hearing on May 15, and one neighbor expressed support for the plan, including proposed parking in the setback. The Committee raised concern about the appropriateness of the proposed spiral staircase on a Victorian house and asked whether there is any requirement that the staircase be enclosed.

At the working session, Nancy Radzevich reported that the petitioners' architect had revised the plans to delete the exterior staircase. The second means of egress will be accommodated inside the house, and the only related exterior change will be a new door. The Committee reviewed the site plan and determined that locating the proposed garage farther to the rear of the property would necessitate the removal of mature vegetation, which would not be preferable.

Ald. Antonellis moved approval, finding the public convenience and welfare will be served by creating an accessory apartment as additional rental housing and by encouraging the petitioners to proceed with the restoration of their home. The parking waiver is justified because it allows for the preservation of mature vegetation and will promote public safety in not requiring residents to back out onto the street.

523-00        JOSE PACHECO, PRESIDENT, NEWTON DONUTS, INC./MILDRED MCMULLIN c/o DUNKIN DONUTS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a drive-in business and appurtenant buildings and structures, with various waivers, at 940 BOYLSTON STREET, Ward 5, on approximately 12,532 sf of land known as Section 51, Block 26, Lot 3, in a district zoned Business 2.

**ACTION:**     Held, with extension of time through August 15, by a vote of 6-1 (Ald. Samuelson voting in the negative).

**NOTE:**        At an earlier working session, the Committee had expressed serious concerns about the petitioner's plans and asked whether the petitioner would like to have the opportunity to consider responses to those concerns. At this working session, the Committee continued its discussion, focusing particularly on ingress and egress concerns. Some members of the Committee expressed the view that if the two-lane exit could be modified, they would be more inclined to support the petition. The petitioner said he would make that change. After a motion to deny failed to carry 2-4-1 (Ald. Samuelson and O'Halloran voting in the affirmative, Ald. Basham, Lipsitt, Salvucci and Tattenbaum voting in the negative; Ald. Antonellis abstaining), the Committee asked for a revised site plan for consideration at its next working session.

A more detailed report on the petition will be provided when the Committee takes final action.

119-01        FOREST REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to alter the grade by more than three feet in order to construct a single-family dwelling at 87 FOREST AVENUE, Ward 3, on approximately 26,000 sf of land known as Section 32, Block 51, Lot 2, in a district zoned SR3.

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

**NOTE:**        At the public hearing on May 15, 2001, the petitioner represented that a blasting error had created the present dilemma. Specifically, a large "boulder" that was to remain part of the landscape had been destroyed, thereby necessitating a change of grade in order to rearrange the yard. Once the excess blasting had occurred, the petitioners also lowered the foundation of the house, so that the grade change now is necessary, in addition, to make the yard compatible with the dwelling. At the working session, the Committee reviewed revised plans showing the area where the grade change will occur -- near the northwest corner of the house, which is under construction. It involves approximately 10% of the site. The Committee noted that the Engineering Department has approved this petition.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by making the yard more usable, and the grade change will have no adverse impact on the surrounding properties.

88-01            ROBERT P. FLAHERTY/LASELL DEVELOPERS LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to create a rear lot subdivision, including waivers for rear lot frontage, parking location and a change of grade of more than three feet, in order to construct two single family dwellings on Lot 4 at PINE MEADOW DRIVE, Ward 4, on approximately 51,556 sf of land known as Section 44, Block 36, and a portion of former Lot 90B, in a district zoned SR3.

ACTION:        Denied 5-2 (Ald. Salvucci and Samuelson voting in the negative).

NOTE:            The petitioners propose dividing the existing Lot 4 in the Pine Meadow Drive subdivision into two lots. Lot 4 was originally created as a single family house lot, and that remains the by right use. The new lot 4H, as proposed, would have frontage on the cul de sac and an as of right single family residence. The second lot 4G is to be created by measuring its entire frontage along the rear of Lot 4H. The creation of a rear lot requires a special permit. The petitioner proposes accessing the rear lot over lot 4H, thereby necessitating a waiver of access requirements. He also requires waivers related to parking off the premises and a change of grade of more than three feet. At the public hearing on April 10, 2001, several residents of the subdivision testified in opposition to the petition, focusing their comments, in part, on the petitioner's alleged failure to complete work in the subdivision. Ald. Bryson also asked a number of questions about the relationship of this proposed development to the existing subdivision and how much disruption would be involved in installing utilities.

At the working session, the Committee began by reviewing the site plan. The most troubling feature of the plan, for some members of the Committee, is the fact that the rear lot is proposed with no actual street frontage at all. Nearly always the Board sees rear lots with a "pork chop" configuration that creates a minimum of 20' frontage, as is required under state subdivision control law. Ouida Young explained that state law permits local ordinances to require otherwise, and ISD and the current city engineer have interpreted our ordinance to require no frontage. Ald. Lipsitt questioned that new interpretation, pointing out that the build factor was added to the ordinance to deal with irregularities in rear lots, and there would have been no need for it if not for the pork chop configuration. Ms. Young also stated that even though frontage may not be required, the absence of actual frontage could be a reason for denying a petition in light of other factors.

In this case, the Committee also considered the fact that the front lot is on a cul de sac, so that its actual frontage of 49 feet is far less than the required amount (even though the measurement of frontage for along a "arc" set back from the street gives it the necessary calculated amount). That frontage would be compromised even further by creating a 94' access driveway to the rear lot.

As for the rear lot itself, Ald. Bryson pointed out that the city engineer has concerns about the subsoil conditions and about the safety of building on that site. She reiterated her concern that the utilities for this development would create a further disruption to the street.

Ald. Lipsitt moved denial, finding that the public convenience and welfare will not be served by creating a rear lot where there is no actual frontage proposed for the rear lot, and even if that were acceptable under the ordinance, this site is on a cul de sac, which reduces the frontage to less than the technically required frontage for the front lot. The front lot's usable space is further reduced by the proposed access driveway. Because of the significance of the access, the project does not meet threshold requirements. In addition, the instability of soil conditions raises doubts as to whether any thing could be constructed safely on the rear lot. She noted that historically the petitioner had the right to seek a different configuration in the original subdivision but received approval for only five lots.

Jeannette Robinson, counsel to the petitioner, addressed the Committee, pointing out that when the subdivision was approved, the property was still subject to other benefits of the Ordinance. There were no promises made at the time that there would never be a modification. Because the rear lot has a turnaround area, there would be no parking on the street and plenty of room for guests. Verne Porter, engineer for the petitioner, stated that the build factor would be very small on this site. He explained that the grade change in the rear is necessitated so as to "catch" the utilities as they come in from the street.

The Committee nevertheless voted 5-2 to deny the petition.

The meeting was adjourned at 10:40 pm.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman