

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, JUNE 19, 2001**

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

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

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

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179-01(1) ROMAN CATHOLIC ARCHBISHOP OF BOSTON, a Corporation Sole and EMERALD DEVELOPMENT GROUP, INC. requesting Board of Aldermen and Planning Board consent to consider a petition unfavorably acted upon within the two-year period prescribed in GL c. 40A, s. 16.

ACTION: Approved 7-0.

NOTE: Petition #520-00 for 12 units of housing on the former St. Jean's property was denied on 4/1/01. The Committee held a public hearing on June 12 on petition #179-01 to construct 9 attached dwelling units at the same site. GL c. 40A, s. 16 requires that no project denied by a special permit granting authority may be considered again within a two year period. Thus, before the Board can consider the new petition on its merits, both the Board and the Planning Board must first find that proposed new project differs in "specific and material" ways from the earlier project.

The Committee reviewed a memorandum from Terry Morris, Vice President of Emerald, dated June 15, 2001, in which he itemized the reasons for the Board's denial of the earlier petition and compared the two petitions. He noted, in particular, the reduction in the number of units by 25% from 12 to 9; creation of a wider central driveway and removal of all driveways from the side setbacks; modification of the width of the eastern driveway, relocation of that driveway, and creation of a separate driveway for the adjacent housing authority housing; the addition of parking to allow 3 cars per unit, with required parking not tandem; and a reduction in the number of waivers needed.

Ald. Salvucci moved approval, finding that the layout on the site is significantly different and that the changes enumerated by Mr. Morris amount to the requisite specific and material changes under G.L. c. 40A, s. 16. Ald. Merrill agreed, saying that the new plan is substantially different and citing in particular the change in the number of units, the central roadway, and the change in access to the existing housing. The Committee supported the motion 7-0.

118-01 XM SATELLITE RADIO, INC./ANDOVER NEWTON THEOLOGICAL SCHOOL petition for SPECIAL PERMIT/SITE PLAN APPROVAL to install two antennae for XM Satellite Radio (a newly-licensed third band on the radio dial) on an existing building at 101-239 HERRICK ROAD, Ward 6, on land known as Section 65, Block 19, Lot 45, in a district zoned SR3.

**ACTION:** Approved 6-0-1 (Ald. Basham abstaining).

**NOTE:** The petitioners propose the installation of two antennas on a historic building at the Andover Newton campus. The antennas will serve a new radio band, XM. The petitioner proposed to add a “whip” antenna 9’ high attached to the chimney on the left side of the building and a “dish” antenna 26” in diameter on the right side of the roof. They need a special permit under Section 30-18(e)(2) and (e)(5) for the wireless communication transmission in a SR 3 district and because the proposed antenna location is within the required roof setbacks. There was no public testimony at the hearing on May 15, 2001.

At the public hearing, the petitioner explained that the radio band is not within the Telecommunications Act of 1986. Ald. Lipsitt asked whether the City’s telecommunications ordinance covers installations that are not within the Telecommunications Act. The building’s roof already has a number of antennas on it. Ald. Mansfield questioned whether the various antennas on the building received proper approvals and asked why Andover Newton was not represented as co-petitioner.

At the working session, the Committee focused on the array of antennas already on the roof. The petitioner reported that Cellular One had one whip antenna approved under a special permit, the Newton Police have a whip antenna, and an amateur ham radio club has another. Ouida Young explained that the City’s telecommunications act has an exemption for amateur radio equipment, but not for other types of equipment. The Committee asked the Planning and Law Departments to inquire further as to the approvals needed and/or obtained for each of the antennas. In particular, the Committee expressed concern about the large array of “paddle antennas” surrounding the apparent Cellular One installation.

Ald. Salvucci said he would be reluctant to deny the petition when the police already have an antenna there. Ald. Lipsitt said that if the choice is between adding to this building’s antennas or spreading to another, she would see this as the lesser of two evils. She moved approval, finding that the structure already has a number of whip antennas and the addition will not significantly alter the visual impact. Although located in a SR zone, the building is in the middle of a campus and does not affect a neighborhood directly. The site is appropriate because of the construction of the roof and configuration of other antennas on it.

Ald. Mansfield challenged the findings, saying that other buildings on the top of the hill are not historically significant. The confusion about the other antennas is germane because some are not there legally, it could affect how we view the “blight” on this building. He suggested that

there are methods for concealing antennas that should be explored here. Ald. Basham said she would abstain because she is not convinced that the location is appropriate. The Committee supported the motion 6-0-1, anticipating the receipt of addition information on the existing antennas prior to the Board's vote.

180-01        RACHEL M. IZRINA petition for SPECIAL PERMIT TO EXTEND NONCONFORMING USE AND STRUCTURE and SITE PLAN APPROVAL for an existing addition to one unit of a 3-unit condominium at 27 MAPLE PARK, Ward 6, on approximately 9,054 sf of land known as Section 61, Block 42, Lot 33, in a district zoned MR1.

ACTION:        Approved 7-0.

NOTE:        The petitioner seeks a special permit for a two-story addition to her condominium unit, which is one of three in the building at 27 Maple Park. At the public hearing on June 12, 2001, the Committee learned that Ms. Izrina received a building permit in 1998 and proceeded to construct her addition in accordance with the approved construction drawings. Only later, when another of the condominium unit owners made inquiry of ISD, did it become clear that the building is nonconforming dimensionally in several aspects and that its multifamily use is also nonconforming. The addition increases the nonconforming lot coverage and open space and expands the habitable area for a nonconforming use. ISD has ruled that the addition effectively constitutes an extension of both the use and structure requiring Board approval. There was no public testimony.

At the working session, the Committee discussed the location of the addition as proposed (and as constructed). The addition takes up an area where a deck previously was located in an indented portion of the rear of the petitioner's unit on the first and second floors. It does not extend beyond the existing rear facade. The petitioner had not filed a site plan or elevations, and the Committee asked that plans be submitted before the Board vote for purposes of recording what is acted upon.

Ald. Lipsitt moved approval, finding that the proposed addition is not substantially more detrimental to the neighborhood than the existing nonconforming use and structure. The additional lot coverage and open space coverage are minimal and well-contained completely within the footprint of the building. The number of units is not being expanded, so there is no increase in the intensity of use on the site. The addition will make the unit more habitable and is already constructed. The Committee supported the motion 7-0.

178-01        ROBERT C. ROEPER petition for AMENDMENT TO SPECIAL PERMIT 345-84(2), granted on 3/18/85, to EXTEND A NONCONFORMING USE for five dwelling units by enlarging two exiting room dormers and enlarging a 3d floor deck, at 876 BEACON STREET, Ward 6, on approximately 42,217 sf of land known as Section 62, Block 9, Lot 11, in a district zoned SR2.

**ACTION:** Approved 7-0.

**NOTE:** The petitioner wishes to amend a previously-granted special permit to enlarge two dormers and an existing roof deck. The roof deck and one dormer are on the rear; the other dormer is on the west side. The dormers would be expanded in width from 4'3" to 8'3", and the heights would be extended by 1'7". The deck would be enlarged from 130 sf to 333 sf.

Special Permits 345-84 included a condition of approval that the exterior of the building could not be altered except to comply with health and safety codes. The Historical Commission was granted a preservation restriction on the facades. In addition, because the multifamily use of the building is nonconforming, ISD has determined that any changes to the habitable space constitute an extension of that nonconforming use, requiring a special permit. (ISD also concluded that the petitioner is extending a nonconforming structure, but Ouida Young advised that the Board need not grant that relief because the only nonconformity is the three story height of the building and there is no impact on that aspect at all. The deck enlargement is three feet larger than would be permitted under the de minimis provisions of the Ordinance.

The Historical Commission approved the present plans in December 1999. There was no public testimony at the hearing on June 12, 2001.

At the working session, the Committee reviewed photographs of the structure and elevations of the proposed changes, finding them consistent with the historic structure. Ald. Lipsitt moved approval of the amendment to the prior condition and the extension of the nonconforming use, finding that the proposed extension will not be substantially more detrimental than the existing nonconforming use because it is not altering the number of units and provides only a minor addition to habitable space and has been approved by the Historical Commission. The dormers and deck are to be considered an exception to the condition of approval, which will remain in place for all other purposes. The Committee supported the motion 7-0.

523-00 JOSE PACHECO, PRESIDENT, NEWTON DONUTS, INC. and MILDRED McMULLIN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a drive-in business and appurtenant buildings and structures, including a waiver for locating two secondary signs above the roof of the building and a exception to the sign ordinance to relocate the principal free-standing sign, at 940 BOYLSTON STREET, Ward 6, on approximately 12, 532 sf of land known as Section 51, Block 26, Lot 3, in a district zoned Business 2.

**ACTION:** Approved 4-1-2 (Ald. Basham, Antonellis, Salvucci and Tattenbaum voting in the affirmative; Ald. Samuelson voting in the negative; Ald. Lipsitt and O'Halloran abstaining).

**NOTE:** This petition, originally heard on January 9, 2001, has been the subject of several discussions in Committee as well as an extension of time for Board action. The petitioner proposes to add a drive through component to his Dunkin' Donuts business, for which he requires a special permit from the Board under Section 30-11(d)(10). In conjunction with this

change in operations, the petitioner intends the demolition and reconstruction of the existing building. He wants to replace the building with a new building, built to Dunkin' Donuts standards and accommodating their most advanced technologies. The rectangular new building will be reoriented with its shorter facade facing Route 9. The petitioner originally requested a number of waivers related to the reduction and reconfiguration of parking on the site, but as a result of site plan revisions following the public hearing, is now able to accommodate all required parking onsite. The petitioner requires approval under Section 30-20(f)(2) to locate two secondary signs above the roof of the building (the signs themselves are allowed as of right), and under Section 30-20(f)(1) for relocation of the principal free standing sign to a new location along Route 9 but more central to the frontage.

At the public hearing on January 9, the proprietor of International Tire on Ramsdell Street expressed concern about traffic congestion at the rear of the site. Jim Sullivan of 487 Boylston Street questioned how delivery trucks will be handled and asked that no parking waivers be granted.

The Committee's deliberations in its prior working sessions, and changes made as a result of those discussions, were summarized briefly in the related reports. At this working session, the Committee took up several issues that it had identified as problematic at the close of the previous discussion. The Committee had asked the petitioner to redesign the exit as a single lane into which the drive through customers and the previously-parked customers would merge. The Committee reviewed a new site plan showing this change along with modifications at the entrance to deter people from backing out and to bring traffic onto the site easily. Although Roy La Motte had stated in a memo dated 6/19/01 that he prefers a two-lane exit, the majority of the Committee disagreed. The Committee did note, however, that Mr. La Motte is generally satisfied that the proposed drive through operation will work without stacking up cars on Route 9. He agrees with the petitioner's traffic engineer that the site can accommodate up to 11 vehicles in the drive through lane, while the maximum anticipate stacking is less than 7 vehicle at any point in time, even at peak periods, allowing for anticipated increase in business volumes. The petitioner also agreed to several additional changes recommended by Mr. La Motte, including the creation of a tow zone near the one-way out Ramsdell curb cut. Ald. Salvucci suggested that the Ramsdell curb cut be closed entirely, and although that idea did not receive general support, the Committee did vote to require the reduction in the size of that curb cut.

Ald. Lipsitt questioned the need for both of the proposed parapet signs, since the one facing east serves no real purpose for the westbound traffic that cannot turn into the site. Michael Peirce, representing the petitioner, said that the petitioner would agree to delete that sign if the Committee asked for it. Ald. Lipsitt moved that the one sign be deleted. Her motion failed 2-3-2.

The petitioner agreed to a condition that it will work with Mass. Highway to try to get curbs and sidewalks with bollards or other limiting devices to discourage truck parking on Route 9, and will extend landscaping accordingly.

Ald. Tattenbaum moved approval, finding that the public convenience and welfare will be served by adding a drive-through business, which is a great convenience to residents and by improving and reorganizing this very ugly site and increasing the landscaping. She added findings that the traffic experts say there is adequate queuing room on the site for the drive-through operation. The relocation of the free-standing sign is justified because it will improve drivers' ability to anticipate the turn and thereby improve public safety. The secondary wall signs support the business and are consistent with Dunkin' Donuts standards.

The Committee members and other Aldermen present revisited their positions stated in the previous working session. Ald. Lipsitt said she intended to abstain because she will not support the second wall sign and remains concerned about the projected volume of traffic exiting onto Route 9. She asked for further clarification from the Planning Department. Ald. Mansfield said he thinks a lot more could be done with the exterior of the building. In his view, not enough information has been provided about the effects of rush hour traffic. Ald. Coletti stated, as he had previously, that he supports the petition. He added that he had observed the site at AM rush hour for several days recently and had not observed problems with entering the site. He also observed the parking on Ramsdell Street and does not agree that this business causes problems there. Ald. Samuelson reiterated her position that the proposed use is an overuse of a small site, and sometimes we need to tell businesses they simply cannot expand in the manner they propose. In her view, the drive-through is not safe and will create too many conflicts on the site. The Committee supported the motion 4-1-2.

The meeting was adjourned at 10:13 p.m.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman