

**CITY OF NEWTON**  
**IN BOARD OF ALDERMEN**  
**LAND USE COMMITTEE REPORT**  
**TUESDAY, JUNE 26, 2001**

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

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

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

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114-01        PAUL M. BRESNAHAN, TRUSTEE, 225 LEXINGTON STREET REALTY TRUST petition for CHANGE OF ZONE from SR 3 to MR 2 for land known as Section 41, Block 31, Lot 19A, containing approximately 32,000 sf, located at 225 LEXINGTON STREET, Ward 4.

ACTION:        Approved 6-1 (Ald. Lipsitt opposed).

114-01(2)    PAUL M. BRESNAHAN, TRUSTEE, 225 LEXINGTON STREET REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct two 2-unit attached dwellings, including waivers from dimensional/design requirements for a parking facility at 225 LEXINGTON STREET, Ward 4, on approximately 32,000 sf of land known as Section 41, Block 31, Lot 9A, now proposed for the MR2 zoning district.

ACTION:        6-0-1 (Ald. Lipsitt abstaining).

NOTE:         The petitioner proposes to change the zone of property at 225 Lexington Street from SR3 to MR2. If that rezoning is successful, the petitioner also proposes the development of two 2-unit attached dwellings, for which he requires a special permit for attached housing and various waivers related to parking under ISD's interpretation of the Ordinance. Without the rezoning, the petitioner would be limited to a single family residence, with the potential for a rear lot subdivision that would require a special permit.

At the public hearing on May 15, 2001, two people testified. One, a resident of Staniford Street, stated that this project would be an improvement to the neighborhood with no negative impact. The other, who lives across the street on Lexington Street, expressed skepticism about multi-family units and said he would prefer less development.

Following the public hearing, the Planning and Development Board voted to recommend denial of the zone change because it appears to be "spot zoning."

At the working session, Ouida Young explained that the Committee must consider whether the proposed rezoning would be consistent with principles of uniformity that underlie zoning generally. She said that although singling out a parcel for special treatment could be considered improper “spot zoning,” local zoning authorities have discretion to advance local zoning objectives and exercise discretion in determining whether there are distinguishing factors lead to a different result. She added that that zone changes are a legislative function of the Board not related to its role as special permit granting authority.

The Committee reviewed the zoning map. It found that the west side of Lexington Street north of the subject site is zoned MR2, but beginning with the subject site, the land along Lexington Street is zoned SR3. Opposite on Lexington Street is a large SR 3 area. The petitioner has argued that it makes as much sense to include the subject site in MR2 as in SR3 because it is the “buffer” between the two zones. The complicating factor is a small public use area that actually divides the parcel from the nearest MR2 parcel. Ald. Salvucci pointed out that the public use area is just a connection to Flowed Meadow and not of great consequence in our analysis. Ald. Lipsitt, however, said she sees no reason to rezone the parcel where it is part of a large SR3 zone. She disagrees with the petitioner’s argument that rezoning will ensure the upgrading of the streetscape at that location. Ald. Bryson said it is not the petitioner’s fault that City took the easement for Flowed Meadow and the continuation of MR2 to include this parcel makes sense. Ald. Sangiolo said she was initially troubled by the change of zone, but the orientation of the lot is toward Lexington Street and she now agrees that the zone change makes sense. The Committee voted to approved the zone change 6-1.

On the merits of the special permit and site plan approval petition, the Committee noted that the petitioner proposes two buildings that are different from each other and that fit the topography of the site. Because the petitioner proposes a septic system, the Committee focused on whether that there is any way the site could be tied into City sewers. John Daghlian said the proposed system is Title V compliant and, in his opinion, is a reasonable solution here. Verne Porter, the petitioner’s engineer, explained that the topography makes a gravity system tie-in to the pipes in Lexington Street impossible. The Engineering Department had proposed initially that the petitioner construct a pumping station to serve a number of lots on or near the west side of Lexington Street, but the petitioner found that alternative cost-prohibitive. Neither would it make sense financially to pump sewage for a four-unit development. Mr. Porter explained the mechanics of the septic system and stated that the soil conditions will support it. The Committee was troubled by the idea of installing a new septic system when public policy supports universal sewer access, but ultimately found that the septic proposal is reasonable under the circumstances. The petitioner agreed to a condition that it would connect the property to sewer service if it becomes available.

Ald. Salvucci challenged the proposed non-looped water service with a single meter. Mr. Porter assured the Committee that the plans show a looped system with separate meters, despite the utilities director’s preference for the alternative.

The Committee also reviewed the landscape plan, noting new screening and a fence along the Staniford lot line.

Ald. Bryson said that the neighbors had been meeting on this petition since March 1999 and that originally it was very dense. In her view, it has become an attractive proposal. She asked that the Board Order specify hours of construction and other construction management controls. The petitioner will make a contribution to low income housing in accordance with the Ordinance.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by increasing the City's housing stock and upgrading the property. The parking-related waivers are justified because the use is residential. Ald. Lipsitt said she would abstain because she needs to be convinced about the septic system. The Committee supported the motion 6-0-1.

115-01        ROBERT DiSTEFANO, TRUSTEE, DiSTEFANO REALTY TRUST, and ELIZABETH LONGMOORE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct one 3-unit attached dwelling and one 2-unit attached dwelling, including waivers from dimensional/design, location, handicapped and lighting requirements for parking facilities, at 232-236 PEARL STREET, Ward 1, on approximately 28,269 sf of land known as Section 11, Block 14, Lot 15, in the MR2 zoning district.

ACTION:        Withdrawal without prejudice approved 7-0.

NOTE:        The Committee reviewed and discussed this petition fully before the petitioners, through counsel, requested they be permitted to withdraw without prejudice. The Committee found the proposed project flawed in various ways, including but not limited to its density with five units; its one-way driveway skirting the property line at the side and rear and effectively isolating the project from its neighbors; its parking and maneuvering configuration, with tandem parking in the garages and a single asphalted area for backing out and turning, creating the strong possibility of vehicular conflicts; the design of the structures, which have the appearance of pre-designed buildings that pay little attention to the context of the neighborhood; and the proposed removal of a significant historic residence without any effort to incorporate it into the plans. G.

Michael Peirce, representing the petitioners, stated that the Historical Commission was concerned not so much with the preservation of the Italianate residence as with preservation of the deep frontage and the "farmhouse" effect. The Committee suggested that while preservation of the frontage is certainly desirable, the configuration of the buildings and the parking in the proposed locations on the site is not a good use of this site.

Ald. O'Halloran moved denial of the petition for all of the reasons stated above. She withdrew her motion in favor of Ald. Lipsitt's motion for withdrawal without prejudice upon the petitioners' request.

60-01 THE NEWTON TERRACES, LLC/ANDOVER NEWTON THEOLOGICAL SCHOOL petition for SPECIAL PERMIT/SITE PLAN APPROVAL for 42 single-family attached dwellings, 6 single-family detached dwellings, a community center, and 13 parking spaces at 101 HERRICK ROAD, Ward 6, on approximately 552,226 sf of land known as Section 65, Block 19, Lot 45, in the SR3 zoning district.

**ACTION:** Extension of time for action through 9/21/01 approved 7-0; held 7-0.

**NOTE:** The Committee last discussed this petition on May 22. At this working session, the Committee first accepted a request for extension of time through 9/21. All of the outstanding issues were then discussed, with highlights as follow:

**Landscaping and tree preservation:** The Committee previously authorized the Planning Department to retain a consultant at the petitioner's expense to assist with this review. Nancy Radzevich reported that there are two interested consultants. The Committee advised her that it is not necessary to obtain the petitioner's approval of the department's selection (although the petitioner may challenge the selection of a consultant it believes is not qualified). The Committee noted that the petitioner's efforts to count trees with Rich Metro was related to the tree preservation ordinance, but does not respond to the Committee's fundamental concerns about the site.

**Emergency access to Hebrew College:** The Fire Department has confirmed that it is not needed for this project and there is nothing in the configuration of the proposed Terraces project that would compromise later construction. The petitioner has agreed to delete it.

**Club house and parking waiver:** Robert Engler, representing the petitioner, stated that the petitioner now wishes to delete the clubhouse from its plans. Several members of the Committee said that they would have been willing to support the parking waiver, but would accept the petitioner's request.

**Public pathway/access to viewing point:** The petitioner has agreed to add a pathway in approximately the same location as the present "trail" along the outside of the proposed retaining wall on Cypress Street. Ouida Young reported that she had not yet reached a conclusion on whether there is a "prescriptive easement" for such a pathway, but her preliminary conclusion is that there likely is not, in part because the easement would have to run to the "public," i.e., the City, and that would be difficult to establish.

The Committee also discussed a number of additional issues. Ald. Salvucci questioned the proposed water engineering and the use of a single meter. Mr. Engler pointed out that the individual condo owners will be billed for their actual use, even though the City will have only one meter to monitor. The Committee continues to be concerned that the Utilities Director is calling for "unlooped" systems and asked Mr. Daghlian to discuss this matter with him.

Ald. Parker raised again the question of the distribution of the affordable units, suggesting that at least one of the largest units should be included. Ms. Radzevich reported that the Housing Authority is satisfied with the proposed distribution of 1 cottage unit, 2 carriage house units, and 1 town house (no villas). The Committee noted that the maintenance fees for the units are not part of the “contribution” and will not be subsidized by the condominium association.

Ald. Mansfield asked for clarification on “Option 2” concerning the drainage plans. The Committee asked Ms. Radzevich to confer with Parks and Recreation on how the petitioner will do work on the public fields included in this option.

Mr. Engler asked to address the Committee. He stated that the petitioner had prepared its plans and advanced its petition on a calendar based on its financial arrangements with Andover Newton, but has been aware all along that the neighbors would prefer some reductions in the size of the units and the relocation of one unit from Cypress Street. More recent discussions with Andover Newton have made it possible for the petitioner to consider withdrawing this petition and filing plans that meet the neighbors’ concerns, but there are still time constraints. The petition would be filed by July 22 for a hearing in September. The petitioner needs Board action by October 22.

The Chairman advised the petitioner that the present petition could probably be voted at the next working session on July 17, and although she would do her best to schedule a working session after the September hearing so that a new petition could possibly be reported out by October 22, there are no guarantees that a new petition would not have issues resulting in unforeseen delays. Ald. Lipsitt added that while we would welcome the petitioner’s withdrawal and its revisions, there should be no implication that the Board would make a commitment to act in less than the statutorily-permitted 90 days after the public hearing.

Ald. Lipsitt moved to hold the item, with the understanding that the petitioner will either request withdrawal or anticipate further discussion on July 17, and that the work of the landscape consultant will proceed in any event.

The meeting was adjourned at 11:24 p.m.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman