

**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**THURSDAY, SEPTEMBER 20, 2001**

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

Other Aldermen present: Ald. Baker, Mansfield, Merrill, Parker.

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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219-01        LAURIN PANZANO and NANCY ARMS petition to AMEND Special Permit #32-87, granted on 4/21/87, for purposes of expanding two decks at 22 and 20 LOTHROP STREET, Ward 1, in a district zoned MR1.

ACTION:        Approved 5-0 (Ald. Samuelson and Antonellis not voting).

NOTE:        The petitioners are owners of two condominium units in the 8-unit development at 16-30 Lothrop Street, constructed pursuant to Special Permit No. 32-87. They wish to expand the decks on their individual units, nos. 20 and 22. The decks will be fully compliant with dimensional controls of the Zoning Ordinances. The petitioners require a special permit to amend the approved plans. There was no public testimony at the hearing held August 14, 2001.

At its working session, the Committee noted that the original decks were only 4.5' x 8.5', or approximately 40 sf, and the petitioners want to expand them to 114 sf at No. 20 and 185 sf at No. 22. The petitioners have agreed to replace any landscaping disturbed by the new construction. The condominium association may consider adding landscaping, although it is not required under the special permit or this amendment. The Engineering Department reported no issues with the petition.

Ald. O'Halloran moved approval, finding that the public convenience and welfare will be served by increasing the usable area and habitability of the units, consistent with the original plans.

249-01        LYNDA CAGGIANO-MATTEI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to serve alcohol at Vecchia Roma restaurant located at 398 WATERTOWN STREET, Ward 1, pursuant to Section 30-11(d)(9) of the Newton Rev. Zoning Ordinances.

ACTION:        Approved 7-0.

NOTE:        The petitioner has already received a wine and malt beverage license from the Board of Licensing Commissioners. ISD has determined that she also requires a Special Permit

from the Board (although previously ISD interpreted the relevant provision of the Ordinance to apply only to restaurants with more than 50 seats). At the public hearing on September 12, 2001, counsel for the petitioner stated that the petition, if approved, will necessitate no changes in the premises. There is no bar in the restaurant. Several people testified in favor of the petition, expressing their hope that the restaurant will stay open later than its current 7 pm closing.

At the working session, the Committee discussed the closing hours. Ouida Young reported that state law provides for a 12 am (midnight) closing, while Ald. Merrill stated that state law provides for an 11 pm closing but the Licensing Commissioners had extended it to 12. In either case, the petitioners do not need to return to the Board of Licensing Commissioners to extend their closing to midnight if they choose. Ms. Young confirmed that the Board has the authority to restrict hours of operation, but in this case, there has been no request by either the petitioners or the neighborhood that we do so.

Ald. O'Halloran moved approval, finding that the public convenience and welfare will be served by granting this special permit because it will support the viability of a community business and because the service of alcohol meets an expressed preference of the community.

251-01        HILLEL I. HOCHMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment to be located in an existing carriage house at 175 ELGIN STREET, Ward 7, on approximately 23,492 sf of land known as Section 65, Block 3, Lot 12, in a district zoned SR2.

ACTION:        Approved 7-0.

NOTE:            The petitioner wants to convert an existing carriage house to an accessory apartment, for which he requires a special permit. The carriage house was adapted for residential use in 1997, but only for occasional guests, since it did not include a kitchen. The present proposal will require no additional exterior or interior changes other than those associated with the installation of a kitchen. The site measures 23,492 square feet and is one lot away from the Webster Conservation area. There was no public testimony at the hearing September 12, 2001.

At the working session, the Committee noted that the petitioner has provided plans showing the interior changes proposed. The Committee reviewed the site plan and noted that three parking spaces are already installed, two in a gravel area. There are no engineering issues since all utilities are installed. The Planning Department suggested additional screening to block headlights shining onto the adjacent property and the petitioner agreed to work with the Planning Department on a final plan. Ald. Lipsitt questioned whether the petitioner should be expected to add landscaping where the spaces in question appear to serve the main house rather than the carriage house.

Ald. Mansfield asked whether the petitioner is responsible for a barrier at the end of Elgin Street that affects access to the last lot next to Webster Conservation Area. Counsel for the petitioner, G. Michael Peirce, stated that the petitioner has no responsibility for the barrier and his understanding is that it was erected to protect the conservation area. The lot in question is accessed from the adjacent street. Mr. Peirce also said he had no knowledge of any pile of brush about which the neighbor had complained to Ald. Mansfield.

Ald. Lipsitt moved approval, finding that the public convenience and welfare will be served by the creation of an additional unit of housing on a site that is large and relatively isolated with no impact on the abutters and no expansion of the footprint of the structure.

235-01        ROGER S. WYNER, TRUSTEE, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to waive the parking requirements, including dimensional and design requirements, necessitated by a change of use at 398 WALNUT STREET, Ward 2, on approximately 14,951 sf of land known as Section 22, Block 18, Lot 13, in a district zoned SR2.

ACTION:        Approved 7-0.

NOTE:         The petitioner wishes to continue the use of an existing parking lot to serve a nonprofit educational use in a structure previously used as a psychiatric clinic. The proposed user is FCD Educational Services, Inc., which wants to use the building as its headquarters. The Zoning Board of Appeals recently approved a variance for the lot area and determined that no use variance is necessary because the nonprofit educational use is an as of right use. The ZBA, among other things, limited the maximum number of employees on the site to 15 and required that the building “be used for nonprofit education and administration office space,” allowing that the small groups of teachers may use the building on an infrequent basis. The petitioner requires the Board’s approval to waive the parking requirements for the proposed use where the existing lot and garage can accommodate 11 cars but the required parking is 15 spaces. The petitioner also seeks waivers of the dimensional and design requirements for offstreet parking “facilities” as imposed by ISD.

At the public hearing on September 12, 2001, several neighbors on Cabot Street testified that they prefer the current arrangement on the site and do not want more parking, which would make the site look less residential. They reported that the neighborhood has accommodated any overflow parking without disruption of traffic.

At the working session, the Committee considered whether the petitioner could accommodate all of the required parking onsite if necessary. Ms. Radzevich reported that the open space requirement could not be met in that case. She also reported that if there were no parking waiver, the occupant could not use approximately half of the building.

The Committee reviewed a schematic landscape plan and noted that there is screening on the west side of the parking area. There will be an additional tree along the Cabot Street

frontage. The petitioner agreed to be responsible for managing snow removal so as to not block any of the parking on the site. The petitioner also agreed to a condition limiting use to administrative services and not classroom education or general offices.

Ald. Antonellis moved approval of the parking waiver, finding that literal compliance with the parking requirements of the Ordinance is not feasible without negatively impacting the site. The public convenience and welfare will be served by continuing the adaptive use of a lovely Victorian building without any need to increase parking on the site and with anticipated lower impact than the most recent use.

221-01        41 NEEDHAM STREET LLC/HJD NEWTON ASSOCIATES TRUST ET AL, petition to AMEND Special Permit No. 362-99, granted on 11/15/99. Original special permit approved 149 seat restaurant with attendant parking waivers, including permission to locate 12 spaces at 41 Needham Street; amendment would increase seating to 176 and increase parking (with or without waiver), parking to be located at 49 NEEDHAM STREET.

ACTION: Approved 5-0-2 (Ald. Lipsitt and O'Halloran abstaining).

NOTE:        The petitioners received approval from the Board in 1999 to expand an existing restaurant at 55 Needham Street (Skipjack's) from 113 to 149 seats and add 12 parking spaces on a separate lot at 41 Needham Street (Collins Pub). Another parcel, 49 Needham Street, divides the two. As plans for the adjacent Avalon Bay project have taken shape, the petitioners realized they had an opportunity to arrive at a better result through various reconfiguration of the lots and/or easements. They now propose the construction of additional parking on 49 Needham Street, to be accessed via a driveway shared with Avalon Bay over 41 Needham Street, from which the Collins Pub will be removed. In other words, the restaurant will have all of its parking directly on either side of it. The parking on the west side will continue to be accessed by its own curb cut. As part of this petition, they wish to increase the seating to 176 seats, which will require a total of 21 additional spaces, all of which are proposed for the new lot.

At the public hearing on August 14, 2001, while there was no public testimony, members of the Board asked the petitioners to consider whether they would consider removing the existing 5 spaces in front of the building, closing the wide curb cut in that location, and installing landscaping to enhance the Needham Street corridor. Board members also asked whether there might be a way to link the two lots at the rear so that people unable to park in one lot would not have to go onto Needham Street to circulate to the other lot.

At the working session, Ms. Radzevich presented a revised site plan responsive to the Board's concerns. It shows the deletion of all parking in front of the building, a closed curb cut, added landscaping, and a rear access drive linking the two lots. If the petitioners delete the five spaces, however, they will require a parking waiver in order to install the requested 176 seats. Otherwise they will need to reduce the proposed seating to 162, which they are willing to do if necessary. The advertisement for the hearing anticipated the need for various types of parking

waivers, so the petition need not be refiled. Ouida Young asked for a condition concerning review of necessary easements. The Engineering Department asked for minor modifications to the plans consistent with its memorandum dated 8/9/01.

Ald. Samuelson moved approval of the petition for 176 seats with the necessary parking waivers, finding that the expansion of the restaurant will not be substantially more detrimental to the neighborhood than the existing nonconforming restaurant use and finding that the proposed reorganization and expansion of parking is a great improvement over the current situation and the other proposals. She thanked the petitioners for their responsiveness to the Board's concerns, including the closure of the wide curb cut and installation of more landscaping to improve the streetscape. Ald. Lipsitt said she is more hesitant about the parking waivers. She asked for additional assurances that overflow parking will not be a problem once the parking and seating are expanded. Ald. Mansfield took a similar position.

250-01        THE NEWTON TERRACES, LLC/ANDOVER NEWTON THEOLOGICAL SCHOOL petition for SPECIAL PERMIT/SITE PLAN APPROVAL for 41 single family attached dwellings and 7 detached dwellings with 109 parking spaces on a newly subdivided lot of approximately 552,226 sf with frontage on Langley Road and Cypress Street, also bounded by Langley Path, known as Section 65, Block 19, Lot 45, in a district zoned SR3.

ACTION:        Held 5-0 (Ald. Samuelson and Tattenbaum not voting).

NOTE:         This latest revision to the Terraces petition was heard on September 12, 2001. The previous version of the petition had proceeded nearly to the point of a vote in Committee when the petitioner asked to withdraw and refile in order to address several concerns of the neighborhood that were beyond the scope of the petition then under review. The revised petition requests approval of the same number of units – 48 – but includes one more detached dwelling. No parking waivers are required. There are 109 parking spaces, made up of the two car garages of 42 units, five single car garages, “stacked” parking in the elongated driveways, and 13 visitor spaces scattered throughout the site. The petitioners have reduced the footprints of the units and increased open space in the proposed development. They have deleted the proposed clubhouse and redistributed buildings in that space. At the public hearing, 10 neighbors testified on a variety of issues, some acknowledging the improvements made in response to their earlier concerns and others raising questions for the Board's further consideration.

Given the Committee's familiarity with the most recent version of the petition, the working session focused on the differences between the two by reviewing several letters from the petitioners' experts in response to questions raised at the hearing, particularly the memorandum from Bill Brown of Brown/Sardina (at p. 2 of 20 of Attachment C1 to Planning Department's working session memo dated September 18). Highlights of the discussion included the following:

Cypress Street. The petitioners have endeavored to reduce the “wall effect” of the attached dwellings along Cypress Street by relocating detached dwellings to this location, spacing them up to 20 feet apart, and moving the buildings farther back from Cypress by 3 to 12 feet. A single retaining wall has been replaced by a terraced effect with two walls, each with a maximum height of 6’. At the Committee’s request, the petitioners provided a cross section showing the relationship between the retaining walls and the pedestrian path running along the lower wall.

The Committee asked the petitioners to consider further their rejection of a stone facing for the wall based on the need for deeper footings, landscape disruption and potential blasting. The petitioners have offered an interlocking block with a “tumbled rock” appearance and will provide a sample.

Ald. Baker expressed concerns about whether the existing and proposed landscaping along Cypress Street will provide enough screening in winter. Ald. Lipsitt asked whether any consideration had been given to moving the houses farther back, and Robert Engler, representing the petitioners, stated that the grading would not permit moving the houses any farther into the site. Ald. Salvucci said we can’t make the houses disappear and questioned what is so bad about seeing the new houses.

Roadways. While the plans show a 16’ one way circulating road, Ms. Radzevich and Mr. Daley reported that Assistant Chief LaCroix wants a minimum of 18’, so the plan will have to be revised. The side roadway near Langley Road will be a full 24’ two way road with a hammerhead turnaround. By easement, it may be used for emergency access to the Hebrew College site. The Committee discussed once again the question of Andover Newton’s interest in creating a formal additional access to Hebrew College. Counsel for the petitioner, William Shaevel, stated that Andover Newton’s retention of emergency access is a condition of the sale and the Committee was not opposed to that use, but asked that any nonemergency use be subject to further Board review.

The Committee asked the petitioner to address concerns regarding the width of the entrance and proposed “traffic calming” measures that may create a backup on Langley Road.

Landscaping. The petitioners have modified proposed landscaping to ensure preservation of views from the Andover Newton site, and they have added a walking trail along Cypress Street to the Andover Newton site to replace an existing footpath. The Committee acknowledged the petitioners’ response to the Brown and Rowe report. Ms. Radzevich stated that Kenn Eisenbraun is still reviewing the landscape plan and will report at our next working session. Ald. Parker asked for information on how the petitioner will comply with the tree ordinance, and Ald. Lipsitt and Baker asked for clarification on the tree replacement provisions offered by the petitioners.

Engineering. Mr. Daley said there are additional issues to be resolved but he does not foresee problems. He confirmed that the plans include addressing drainage in the entire Bowen upper

field. At Ald. Salvucci's request, he agreed to look into whether this is a situation where a "looped" water system would be advisable.

The Committee also discussed briefly the concept of cluster zoning. Residents questioned whether this project is responsive to the fundamental concept of clustering housing in order to preserve expanses of open space. Ms. Young explained that the cluster zoning ordinance does not require a particular configuration of open space and it contemplates single family detached dwellings. Here, because the petitioners proposed both attached and detached dwellings, they agreed to comply with the more stringent dimensional controls for attached dwellings, thereby effectively "spreading out" the buildings more than would have been required with only single family dwellings. In the final analysis, however, the project does comply with the cluster zoning ordinance.

The Committee agreed to discuss a list of proposed conditions at its next working session and held the item.

The meeting was adjourned at 11:26 p.m.

Respectfully submitted,

Ald. Susan M. Basham  
Chairman