

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 16, 2001

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

Members of Committee absent: Ald. Antonellis.

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

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

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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 6-0.

NOTE: This was the Committee's third working session on the petition (the previous sessions occurring on September 20 and October 3). The Committee began its discussion by reviewing the responses to outstanding questions addressed in the Planning Department's Working Session Memo of October 12. The following issues received particular attention:

Blasting. The Committee had received a letter from Carol Bock, Director of Capital Planning and Operations for the schools, asking that blasting be restricted to times when Bowen School is not in use – including school days and “after school programs, evening programs and occasional weekend events” – and that the developer provide a blasting schedule at least two weeks in advance. The petitioners responded that they could not possibly meet such a request because the effect would be to eliminate the possibility of winter construction and restrict blasting to weekends and school vacations. It would make the project economically infeasible. Ms. Radzevich reported that she had tried to get a response from Assistant Chief LeCroix but he was away. Ms. Young stated that state regulations restrict blasting to daylight hours and not on Sunday, and the State Fire Marshall may not impose further restrictions but may waive restrictions. The Committee noted that the Board's regulations are more restrictive than state standards and the petitioner has agreed to them.

The Committee discussed a number of possible scenarios. Ald. Salvucci said the concern was exaggerated. Blasting is controlled, and Ms. Bock's request would prevent the petitioner from exercising the special permit. Ald. Lipsitt pointed out that the special permit process creates the opportunities for various tradeoffs and additional benefits to the city, and she would be loathe to

support the petition without adequate assurance that Ms. Bock's fears are unfounded. The petitioner's blasting expert, Logan Huffman, explained some of the mechanics of blasting and emphasized the role of the Fire Department in supervising the process. He assured the Committee that the process will occur over a period of two to three weeks and will be totally controlled.

Lacking the necessary assessment by the Fire Department, the Chairman suggested that the Committee move on to other issues and ask the Planning Department to speak with Assistant Chief LeCroix as soon as possible. The consensus of the Committee was to rely on Assistant Chief LeCroix and his resources to determine whether there is any merit in Ms. Bock's request and to include any condition he finds necessary to protect the safety of school children. The Committee acknowledged that such a condition could be so restrictive that the petitioner would find it necessary to mount a legal challenge and that it would be a departure from the Board's policy of not including conditions that petitioners do not offer or accept. Ald. Baker also asked the Planning Department to review the blasting conditions on the Epstein petition.

Compliance with Tree Ordinance. The petitioner had provided a calculation of the number of trees that would be involved in full compliance with the Tree Ordinance – a total of 7088 caliper inches. The Tree Warden is authorized to exercise discretion in enforcing this aspect of the Ordinance. The petitioner has proposed a less costly alternative. Ms. Young said that although the Tree Ordinance would apply to a by right development, the impact might be different if the property were subdivided into multiple lots. Since the enforcement of the Tree Ordinance rests with the Parks and Recreation Department, the Committee agreed to note the petitioner's compliance with the Tree Warden's decision on how to enforce the Ordinance.

Path easement. The path will be protected by an easement in gross running to the city through its Conservation Commission. In response to Ald. Mansfield's concerns, Ouida Young stated that the path will be defined by specific metes and bounds which have not yet been defined. Ald. Mansfield said the actual easement will need to be about 10', even if the path itself is only 4'. Ald. Baker asked for definition of the path's surface.

FAR calculations. The Committee reviewed more detailed FAR calculations that had been requested specifically by Ald. Parker.

Entrance. The Committee returned to its earlier discussion of the minimum curb cut necessary to accommodate emergency fire vehicles. Mr. Daghlian reported that the Fire Department and Engineering Department are not willing to go any smaller than a 32.5' cut with 15' radii on the sides.

Cluster zoning. Ms. Young reviewed several additional questions from Sarah Barnett that had been submitted through Ald. Mansfield and Baker.

Hammerhead turnaround. At the request of Jim Sullivan, the Chairman asked whether the petitioners, particularly Andover Newton, has some objection to the Hammerhead. Richard Bonz was in attendance and he stated that Andover Newton does not object to the hammerhead and assumes it will be the main emergency access easement. The Committee asked that the hammerhead be redesigned to be as small as is consistent with public safety and acceptable to the Fire Department. Mr. Bonz acknowledged that Andover Newton will have to modify or remove the emergency access easement on the west side of the site, which was recorded before plans for this site were proposed. The Committee asked the petitioners to work with the Law Department to try to resolve that question.

Drainage. Mr. Daghlian confirmed that the Engineering Department is comfortable with offsite improvements proposed for the Langley culvert.

Webster Brook/conservation issues. Ald. Baker referred to concerns raised by the Charles River Watershed Association. Mr. Daghlian assured the Committee that the engineered drainage will protect the brook. Ms. Radzevich reported that she had also reviewed the concerns with Martha Horn and she had provided her assurances to the Engineering Department, as well.

After addressing these specific issues, the Committee reviewed in detail the draft Board Order conditions prepared by the Planning and Law Departments, making a number of changes in the process. Ald. Samuelson then moved approval of the petition, finding that the public convenience and welfare will be served by increasing the housing stock and receiving four affordable units. The present proposal, as conditioned, represents the least damaging alternative for development of the site. It will preserve the 1.8 acre open space area, the views from the hill, and public access via a public path to replace one presently on the site. The petitioner has agreed to contribute to a traffic mitigation fund and a landscape fund. The drainage plan will improve infrastructure in the area and improve drainage in the Bowen School fields. She also found that the requested waivers to the parking facility requirements are justified because the requirements are incompatible with a residential development.

Several Aldermen in attendance expressed dismay that the Committee was on the brink of taking action when it had not finally resolved the blasting issue and did not have a more polished Board Order. The Chairman stated that Ald. Samuelson's motion was in order and that the Committee could reasonably take action with the expectation that the Law Department and Planning Department would complete the revisions to the Board Order consistent with the Committee's discussion, including resolution of the blasting question consistent with Assistant Chief LeCroix's recommendations. Ald. Baker suggested that the proposal might gain more support if all of the details were worked out. Ald. Merrill speculated that the petition would be sent back to Committee if the Committee did not meet once again to review the Board Order, and Ald. Parker said there might be remaining policy options that should be hammered out in Committee.

The Chairman polled the Committee and determined that a vote was likely to result in several abstentions. Ald. Samuelson then withdrew her motion and moved to hold the petition. The Committee supported the motion 6-0.

The Chairman announced a special meeting of the Committee on October 24 for the sole purpose of reviewing a further revision to the draft of the Board Order.

252-01 PATRICK AND AUDREY NICOLAS & EMERALD DEVELOPMENT GROUP, petition for SPECIAL PERMIT/SITE PLAN APPROVAL for a rear lot subdivision in order to construct a two family dwelling on proposed lot 2A at the rear of 153 WEBSTER STREET, Ward 3, on land known as Section 33, Block 22, Lot 2, measuring approximately 30,425 sf, in a district zoned MR1.

ACTION: Approved 5-0-1 (Ald. Samuelson abstaining).

NOTE: The petitioners propose the creation of a rear lot subdivision on a lot measuring approximately 30,425 square feet. The new rear lot will have 17,106 square feet and the new front lot 13,319 square feet. The rear lot will have 20' of frontage on Webster Street. In addition to the special permit needed to create a rear lot, the petitioners require relief from the Board to exceed the build factor for the new rear lot and to permit the front lot to share the driveway with the rear lot. They also seek waivers of the technical requirements for a parking in a MR 1 district.

At the public hearing on September 12, 2001, the petitioners explained that in creating the rear lot, they intend to restore and expand the existing historic mansard-roofed structure on the front lot after removing an existing ell. On the rear lot, they intend to construct a two-family dwelling. They have submitted plans for the proposed construction and will agree to construct their project in accordance with those plans if the subdivision is approved. Subsequent to the public hearing, the petitioners received Historical Commission approval for the demolition of the ell and construction of the proposed addition to the existing house.

Public testimony at the hearing focused on concern that the area has been subject to other development in recent years and two additional units will increase the "density" of the area with related impacts on traffic and schools. Some residents also expressed concern that other large lots could be subject to the same kind of development. There was little comment on the specific elements of the petition. Ald. Lipsitt asked the Planning Department to provide comparative measurements of lots and FARs in the surrounding area, particularly Webster Park. She also asked for an analysis of how the build factor would be affected if the "flag" at the rear of the site were not included.

At the working session, the Committee first reviewed several analyses provided by the petitioners and the Planning Department. The Webster Park lots average 24,795 sf and an FAR

of .135, while Webster Street in the immediate area averages 10,820 sf and an FAR of .317. The proposed project will average 15,213 and an FAR of .328. The build factor was confusing because excluding the “flag” seemed to result in a higher build factor, when logic would suggest a lower one. The Committee concluded that the irregularity of the driveway, and its greater influence on the calculation without the “flag,” probably accounted for the surprising result.

Ms. Radzevich reported that in response to the Historical Commission, the petitioners have adjusted the position of the rear building 5’ to the east. Ald. Lipsitt asked the petitioners to provide evidence that they have discussed this change with the abutter to the east, which is apparently a landscape business.

John Daghlian reported that site engineering accommodates the 100 year storm runoff. In his view, the groundwater quality will be improved with this project. The Conservation Commission has addressed its concerns through the conditions in its Negative Determination of Applicability, with which the petitioners will comply. The Fire Department has also approved the site plan.

The petitioners have agreed to install a fence on its property abutting 155-157 Webster Street and 102 Webster Park. The fence will be maintained, as will the landscaping shown on the landscape plan.

Ald. Salvucci moved approval, finding that the public convenience and welfare will be served by increasing the housing stock and that the project poses no detriment to the neighborhood. The two family dwelling is appropriate to the size of the lot, all drainage will be captured on site, adequate screening will be provided to protect the neighbors. The use of a shared driveway is the only feasible way to access the two lots. The development will promote preservation of a historic structure under the guidance of the Historical Commission. The build factor waiver is justified because the rear lot without its appendage is essentially compliant with the minimum lot size in a MR1 zoning district. The Committee supported the motion 5-0-1, with Ald. Samuelson abstaining.

181-01 DALLAIRE HOLT BUILDERS, LLC & NICOLA AND SECUNDINE CIVETTA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct four attached dwelling units, with various parking waivers, at 236-238 NEVADA STREET, Ward 1, on land known as Section 14, Block 7, Lot 20, measuring approximately 31,231 sf, in a district zoned MR1.

ACTION: Approved 6-0.

NOTE: The petitioner proposes a four-unit development. The existing dwelling, currently assessed as a three-family, will be restored as a single family dwelling and will have a new garage and another unit attached to it. A new two-unit structure will be constructed at the rear of the site. All four units will be accessed via a single driveway from Nevada Street. The

petitioner requires a special permit to construct attached dwellings and to waive the requirement that driveways not be within 10 feet of a boundary line. Here the driveway is 5 feet from the south side lot line. The petitioner also requires a special permit to extend the existing nonconforming setback (6.5' rather than 25' required) at the north side of the site so that the attached garage can follow the side line of the existing dwelling. The petitioner requests waiver of the minimum light requirement for a parking facility and relief from handicapped parking stall requirements. A particular feature of the site is the fact that Lawn Avenue dead ends at the rear of the site on its north side, and a small parcel of unknown ownership separates the subject site from Lawn Avenue.

A public hearing was held on July 10, 2001, and the time for Board action has been extended until November 21, 2001. At the hearing, a number of Lawn Avenue neighbors expressed concern that the development in the rear of the site will be disruptive to them because of the location of parking and a turnaround area. Some lamented the loss of a wooded area that they enjoy. They also wanted to be sure no access from Lawn Avenue would ever be created. Ald. Lipsitt asked whether the petitioner could rearrange the parking to require less paved area.

At the working session, the Committee reviewed a revised site plan showing a reconfigured parking plan reducing the paved area, with approval of the Fire Department, and preserving more vegetation and trees to screen the Lawn Avenue neighbors. The Committee debated the merits of granting a waiver for tandem parking spaces or keeping more spaces onsite. The consensus was to keep the spaces.

The Committee reviewed the elevations and noted that the petitioner had responded to concerns of the Historical Commission and the Planning Department by agreeing to maintain the existing brick facade of the original house and face the new attached garage in brick. In addition, the petitioners have lowered the roofline of the new attached construction. The new building will be a garrison colonial with some attempt at detail consistent with the style of the original house. The Committee also reviewed the landscape plan, which was substantially upgraded in response to Kenn Eisenbraun's review after the public hearing. The revised parking arrangement will allow all but two mature trees to be preserved. The Engineering Department had revised its earlier memorandum as of October 11 and had only minor issues that will need to be addressed in construction plans. Each of the units will have individual meters and water lines.

As for the Lawn Avenue parcel, the petitioner has agreed to a condition that there will never be a cut through. Ald. Lipsitt commented that she would have preferred a Lawn Avenue access to the site and asked the Law Department to find out whether anyone has been paying taxes on the parcel. The Committee was divided on whether the condition should be included and ultimately voted 4-2 to include it.

Ald. O'Halloran moved approval of the item, finding the public convenience and welfare will be served by increasing the housing stock. The petitioner will contribute to affordable housing under the 10% ordinance. Attached housing is appropriate for the size and dimensions of the

site. The extension of the nonconforming setback creates no additional detriment because it is in line with the existing house. The development will support preservation of the historic house, and the petitioner will consult voluntarily with the Historical Commission to preserve and enhance the house's details. The Committee supported the motion 6-0.

The meeting was adjourned at 12:40 a.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman