

**CITY OF NEWTON**  
**IN BOARD OF ALDERMEN**  
**LAND USE COMMITTEE REPORT**  
**TUESDAY, NOVEMBER 20, 2001**

Members of Committee present: Ald. Basham, Chairman; Ald. Lipsitt, Salvucci, Samuelson, Stewart, Tattenbaum.

Members of Committee absent: Ald. Antonellis, O'Halloran.

Other Aldermen present: Ald. Bryson, Merrill, Parker, Sangiolo, Yates.

Also present: Alderman-elect Fischman.

City officials present: Ouida Young, Associate City Solicitor; Nancy Radzevich, Chief Planner/Land Use Coordinator; Tom Daley, City Engineer.

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**SPECIAL PERMIT/SITE PLAN APPROVAL PETITIONS**

303-01        **BROOKLINE DEVELOPMENT GROUP** petition for **SPECIAL PERMIT/SITE PLAN APPROVAL** for a grade change in excess of three feet to accommodate a new single-family residence, and for waivers of front and side yard setback requirements to create parking for 36-38 Hood Street, all at **Lot 44 HOOD STREET**, Ward 7, on approximately 15,002 sf of land known as Section 72, Block 38, Lot 13, in a district zoned SR2.

ACTION:        Approved 4-0-1 (Ald. Samuelson abstaining; Ald. Stewart excused).

NOTE:        The petitioner intends to construct a new single family residence on a steeply sloped lot numbered 44 on Hood Street. Rather than build as of right, the petitioner seeks the Board's approval of a grade change in excess of three feet so that the residence can be constructed with a safer driveway, locating the garage closer to the street, and with a more usable rear yard. At the same time, the petitioner seeks waivers from setback requirements to create two parking spaces at the left edge of the lot to formalize an ongoing shared parking arrangement with the neighbors at 36-38 Hood Street. The owners of 36-38 are not co-petitioners because they are not seeking offsite parking to meet any requirement under the Ordinances. The petitioner and the owner of 36-38 Hood intend to execute an easement concerning the parking.

At the public hearing on October 9, 2001, neighbors raised several issues for the Board's consideration: potential instability of the hillside, loss of view or sunlight for abutters, the towering effect of the house and retaining wall, and drainage and water problems in Hood Street (a private way) that might be exacerbated by the grade change. As for the parking, one neighbor pointed out that two spaces would be an incomplete solution because the residents of 36-38 Hood have more than 2 cars. The Committee asked the petitioner to provide proposed as of right plans for purposes of comparison.

At the working session, the Committee reviewed the revised the site plan and compared it with the as of right plan. The as of right house would be taller and larger. The basement would be 12' deep, creating a larger visual mass from the rear. It would sit higher on the site. The distance to the rear lot line from the residence would be 30', compared to 25' in the as of right. No retaining wall would be necessary.

The Committee reviewed the proposed retaining walls and noted that the rear wall has a maximum height of 5.0 feet and an average height of 4.0 feet. The wall for the front parking area has a maximum face height of 9.46 feet including a concrete safety "reveal."

The Committee also assessed the drainage impacts of the grade change. The petitioner's expert, Verne Porter, stated that the drainage system is designed to the 100 year storm standard and there will be a 34% improvement in current retention. Tom Daley reported that the Engineering Department is satisfied with the drainage plans but has asked for several additional modifications before issuance of a building permit, all of which are referenced in the department's memorandum of November 9. While Mr. Porter reported that he has found no ledge on the site, Ald. Salvucci asked that the Board Order include blasting conditions to cover the possibility.

Ald. Lipsitt reported that she has been working with the Commissioner of Public Works and the petitioner's attorney on potential improvements to Hood Street. The petitioner has offered to make substantial temporary improvements in paving on the street, provided that the abutting homeowners want it. She plans to arrange a community meeting to review options.

Turning its attention to the proposed parking arrangement for the abutting property at 36-38 Hood Street, the Committee considered whether more than two spaces would be feasible. The amount of excavation, and the resulting height of the retaining walls, make that plan unattractive. Since 36-38 Hood Street predates required off-street parking under the Zoning Ordinances, the availability of two spaces represent a positive contribution to the area. The Law Department will review the proposed easement as a condition of approval.

Finally, the Committee considered the landscaping at the rear of the site where the abutter is most impacted. The landscape plan shows substantial screening, including an evergreen mix. Ald. Lipsitt asked that the petitioner be permitted to vary from the landscape plan if the abutter prefers a different treatment along the lot line. She then moved approval, finding that the 3' grade change is justified because the mass of the house is smaller and the height lower than it would be as of right. The grade change permits a substantial improvement to the drainage and a long-term problem for properties downhill. It allows the petitioner to avoid a steep driveway which would promote more flooding. The setback waivers are justified where 36-38 Hood Street has no reasonable way of providing off street parking; the arrangement reflects a historic arrangement, and it will be accomplished by an easement. The public convenience and welfare will be served by the petitioner's offer of extensive temporary repair to the street surface. The Committee added that by providing access to parking for 36-38 Hood, the Board expressly is not

requiring that 36-38 Hood meet current zoning requirements for off street parking. The Committee supported the motion 4-0-1.

116-01(2) RAM COHEN and DEBRA DEBOTTON petition for SPECIAL PERMIT TO EXTEND A NONCONFORMING USE and SITE PLAN APPROVAL to construct an addition to an existing 2-family dwelling at 585 GROVE STREET, Ward 4, on approximately 26,728 sf of land known as Section 42, Block 29, Lot 24, in a district zoned SR3.

ACTION: Held 5-1 (Ald. Salvucci voting in the negative).

NOTE: Because we are nearing the end of the term and this was to be the Committee's last working session, the Committee held this item with great reluctance. Revised drainage plans and calculations had been submitted to the Engineering Department on the day of the meeting, and although the Engineering Department completed a revised analysis, which was documented in a memorandum, Tom Daley reported that he had not ample time to try to resolve several significant issues with the petitioner's engineer. The petitioners' counsel submitted a memorandum to the Committee at the table agreeing with some of the Engineering Department's requirements but refusing to comply with others. In addition, the Committee discovered discrepancies between the most recent "plot plan" and the "planting plan." Most significantly, the Committee found the proposed parking arrangement flawed and suggested an alternative design that will require both engineering evaluation and plan revision. In short, there were too many "loose ends" that needed to be cleaned up.

The Committee has agreed to consider acting on the item in a special meeting immediately prior to the Board meeting on December 3 and has asked the Planning and Law Departments to prepare a draft Board Order. If the Committee takes action, the Chair will seek suspension of the rules to report the results of that meeting. The substance of the petition as of November 20 is as follows:

The petitioners propose a large addition to an existing two-family residence. Their intention is to convert the existing residence to single family use and make the addition a second unit. They require a special permit because the two-family use is already nonconforming and will be extended into a larger structure under this proposal.

The subject lot is deep and rectangular, measuring 26,728 sf. The existing residence sits to the far right of the lot's street frontage. The petitioners originally had contemplated an addition that would have run in linear fashion along the side lot line toward the rear of the site. After discussions with the Planning Department, the petitioners redesigned the addition to run parallel to the street, attached to the existing residence with a "right angle" connection and set back farther than the existing residence. The proposed addition is both taller and larger than the existing residence. The petitioners have proposed continuing the use of an existing 14' driveway with two spaces along its side. Two additional spaces are proposed for the front yard. The Committee, as noted above, has suggested an alternative configuration that will remove the two

spaces along the side of the driveway and align them with the new spaces, potentially increasing the amount of green space.

At the public hearing on October 9, 2001, the abutter closest to the existing residence, Ray Rawlings, said he is not opposed to the current plan. However, Ald. Stewart and Ald. Bryson reported at the working session that Mr. Rawlings has not seen the most recent plans, particularly the proposed parking configuration.

The Committee reviewed the site plan, the elevations and the landscape plan. Ms. Radzevich reported that Kenn Eisenbraun found the landscape plan acceptable.

Ald. Lipsitt said the substantial expansion of the nonconforming use is an issue for her, even if the deficiencies in the plans are corrected. Ald. Sangiolo suggested that the size of the structure could be justified if it were a single family. Ald. Merrill asked the Planning Department to provide additional comparisons of the heights of other houses along Grove Street.

On Ald. Lipsitt's motion, the Committee held the item 5-1.

#### **OTHER DOCKET ITEMS**

NOTE: The Committee voted 6-0 to refer all of the pending applications for automobile dealer licenses to the 2002-2003 Board. These applications will be reported by docket number in the Reports Docket.

610-89(3) ALD. YATES requesting reports from the Commissioner of Inspectional Services and the Director of Planning and Development re: compliance with the conditions of Special Permit Board Order #610-89, granted on April 17, 1990, to NEEDHAM STREET INVESTMENT TRUST, MARVIN M. GLICK, TRUSTEE, for 215-277 Needham Street.

ACTION: NAN 6-0.

NOTE: This item concerns compliance with two conditions of Board Order #610-89 that required the petitioner to assist the city in addressing traffic issues at the intersection of Needham Street and Tower Road. Specifically, the petitioner, Mr. Glick, was to conduct a traffic analysis and present the results to the City's Traffic Engineer, who would then decide whether some remedial action was warranted. If a signal was warranted, the petitioner would pay for the design and "make a proportional contribution to any such construction based on a formula reflecting the site's contribution to the necessity of the signalization." Subsequently, several other projects on Needham Street were approved with conditions requiring contributions, as well. Ald. Yates has stated that he docketed this item because he wants to know whether this petitioner has met his obligations and what is to become of the funds contributed.

Ouida Young reported that at present, the escrow fund amounts to \$28,329.13. Of that sum, \$8,000 was contributed by H.C. Stark under another Board Order, \$5,000 was contributed by Needham Street Partnership/Huber under its Board Order, and the rest – \$15,329.13 – was contributed by Mr. Glick or his tenants. She believes there are several other Board Orders requiring some contribution. Her recollection, however, is that only the Glick Board Order contemplated a contribution based on some measure of the petitioner's contribution to the problem. The others were simply lump sums offered as conditions of approval.

Apparently the controversy over Mr. Glick's performance under the Board Order arose because there was disagreement about his traffic data. The study did not include the opposite side of Needham Street, and some people thought the data had been skewed to minimize the potential impact of his development (and the related contribution). No information was available as to how the amount to be contributed by Mr. Glick had been calculated or whether his contribution represented the entire amount required. In any event, the Committee acknowledged that Needham Street's circumstances have changed considerably since 1989 and the expectation now is that any redesign or reconstruction of this intersection will be part of a much larger project with separate funding. Therefore, even if Mr. Glick has failed to meet his obligations under the Board Order, no enforcement would make any sense.

The Committee discussed briefly whether the fund could be used for another purpose, and Ms. Young said she needed to look into that option. If it cannot be used for another purpose, she believes the petitioners who contributed the funds will need to apply to amend their Board Orders to retrieve their contributions.

Finding that Mr. Glick has gone as far he can reasonably be expected to go toward compliance, Ald. Samuelson moved NAN and the Committee supported the motion 6-0.

418-96(8) ALD. LIPSITT requesting a one-year review of compliance with conditions of Board Order #418-96, granted 11/3/97 to Michael Galatis, Inc., Central Directory for Nursing, Inc., for Pelham House Nursing Home, 45 Pelham Street, Newton Centre.

ACTION: NAN 6-0.

NOTE: Under Condition 16 of Board Order #418-96, the Special Permit was to expire two years and six months from the date of approval. Within one year from the date of approval, the Land Use Committee was to hold a discussion of complaints from the neighborhood council and compliance with the conditions of the special permit. By Board Order dated August 14, 2000, the Board extended the Special Permit for another two years. Therefore, the current Special Permit will expire on August 14, 2002.

The present docket item was continued on the Committee's docket after the Committee's last action on the petition in August 2000 to make sure that the Committee had a ready mechanism for addressing complaints. In an earlier informal discussion, Ald. Mansfield had reported to the

Committee that the neighborhood council was not reconstituted after August 2000 and although there have been periodic complaints, the neighbors and Pelham House appear to be coexisting with some degree of equilibrium.

The Committee debated whether it would make sense to initiate a review at this time. The Committee found that the most recent Board Order requires no annual review. The Special Permit will expire within the year, thereby creating an automatic opportunity for review if the petitioner seeks another special permit. In addition, there are no complaints of pressing immediacy, and if there were, the first line of recourse should be the neighborhood council, which should be constituted as anticipated under the Board Orders. Ald. Samuelson moved NAN and the Committee supported the motion 6-0.

256-99(3) REQUEST FOR A ONE-YEAR EXTENSION OF TIME in which to EXERCISE Special Permit #256-99, granted on 10/4/99, to PAULA E. TURNBULL for a SPECIAL PERMIT TO EXTEND A NONCONFORMING USE/STRUCTURE and SITE PLAN APPROVAL to reapportion the land between two existing lots by measuring the frontage of Lot C along the rear line of Lot A, and to allow the existing barn and one-story shed located on Lot A to retain their pre-existing non-conforming status at 497 HAMMOND STREET, Ward 7.

ACTION: NAN 6-0.

NOTE: This request for an extension should have been rejected without docketing because the petitioner has already received one extension. Under Chapter 40A and Newton's Ordinances, a special permit must be exercised within two years from the date of approval. Therefore, this special permit has expired.

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,  
Ald. Susan M. Basham  
Chairman