

CITY OF NEWTON

BOARD OF ALDERMEN

October 1, 2007

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT and SITE PLAN APPROVAL, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman George E. Mansfield:

1. The Petitioner's congregation consists of individuals and families that follow the tenets of Orthodox Judaism, which prohibit vehicular driving on the religious Sabbath (weekly - from Friday sundown until Saturday sundown) and on religious holidays.
2. The Petitioner has stated that most members of the congregation live in the neighborhood, that the nearest Orthodox Jewish synagogue is located several miles from this neighborhood, and that this synagogue will meet a community need for a place of worship and religious study for Orthodox Jewish families living in the neighborhood who need a place of worship where they can attend by walking on Sabbath and religious holidays.
3. The Petitioner's land (the "Site") at 349 Dedham Street is located approximately ½ mile from Countryside School which has a parking lot of more than 40 parking spaces. The Petitioner currently has a license to use up to 15 spaces at the Countryside School parking lot.
4. The Site is situated within a Single Residence 1 District as created by the applicable zoning ordinance of the City of Newton, and the immediate neighborhood is occupied exclusively by single-family residences.
5. An historic farmhouse is currently located on the Site, and the Petitioner is unable to reuse such structure. The Petitioner has offered to donate this historic structure to anyone who is able to move the structure prior to its demolition. In addition, the Petitioner has offered to donate an amount equal to the Petitioner's cost of demolition to whomever moves the structure.

6. The Petitioner has designed the new structure to be residential in scale and in the use of materials. The Commissioner of Inspectional Services has granted "Dover Amendment" waivers to the new structure, permitting two sets of stairs to be located within setbacks and an FAR of 0.36.
7. As a result of the new structure's design, the Petitioner's efforts to preserve landscaping, and the need to provide access to the structure for firefighting equipment, the Site can accommodate only 9 parking stalls.
8. Under the Newton Zoning Ordinance, a use for religious purposes involving a place of assembly triggers a requirement to provide parking.
9. The zoning parking requirement is a function of calculations independent of the type of place of assembly involved.
10. Based on the applicable physical characteristics and use of the Petitioner's Site, calculations made pursuant to the Newton Zoning Ordinance would normally require 70 on-site parking spaces.
11. In order to justify a waiver of this parking requirement, there need to be special circumstances in the current and anticipated parking needs at the Site that would be distinguishable from similarly situated uses.
12. Because of the Orthodox faith of the Petitioner's congregants, they may not drive to the Site on religious holidays or the Sabbath. These services are the time when traffic and parking demands would ordinarily be the greatest if the Site were not an Orthodox place of worship.
13. Driving to the Site by the Petitioner's congregants is permitted at other times.
14. During times when the Petitioner's congregants may not drive to the Site, the congregants' need for parking is limited, consisting of congregants who for health or other reasons may leave a car nearby for a period before, during and after a religious holiday or the Sabbath to minimize the need to walk. Because many members of the congregation live nearby, the anticipated demand for parking during these times should be accommodated with the 9 on-site parking stalls.
15. During times when the Petitioner's congregants may drive, the Petitioner has agreed to implement a Parking Management Plan utilizing the Countryside School parking lot whenever it schedules an event at the Site that is reasonably expected to draw more than 20 cars to the Site.
16. To address future impacts, the Petitioner has agreed to seek an amendment to the Special Permit if the enrollment of the part-time school or educational program, or daycare, or nursery school exceeds sixteen (16) students.

17. Because of the use of the Site as a place of assembly, the Newton Fire Department has required emergency egress be provided via a stairway opposite the structure's rear exit door to Rachel Road. The Fire Department has also required that no vehicle be parked in the driveway that runs along the Rachel Road side of the structure in order to ensure access for its fire equipment.
18. In order to minimize the need for on-street parking, the Petitioner has agreed to license up to 45 parking spaces from Newton Public Schools at the Countryside School and to implement a Parking Management Plan which includes the use of a shuttle van or bus.
19. The Petitioner will coordinate with representatives of Newton Public Schools, the Countryside School, and the Parks and Recreation Commission to assure that its parking use of the Countryside School parking lot does not interfere with the School's or Parks and Recreation's use of the parking lot.
20. To assist in solving any significant parking or traffic problems that might arise in the future in the neighborhood from on-site activities not now contemplated, Petitioner agrees to be part of a neighborhood council consisting of neighbors and an alderman from Ward 8. The Council will provide all parties with the opportunity to discuss such problems and to work together to resolve such problems.
21. The Board finds that the conditions imposed by this Board Order will reduce to the extent possible conflicts between the use of this Site and the adjacent residential uses.
22. Based upon the anticipated uses at the Site, the Board finds that the provision of 9 on-site parking spaces coupled with the conditions in this Board Order, including implementation of a Parking Management Plan, supports the Board's waiver of 61 parking spaces.
23. The Board finds that the reduction of the lighting level below 1 ft. candle in the parking lot area provides sufficient illumination for safety while allowing the Site to be more residential in character.

PETITION NUMBER: #106-07

PETITIONER: Beth Menachem Chabad

LOCATION: 349 Dedham Street, Ward 8, Section 83, Block 36A, Lot 1, containing approximately 33,697 s.f. of land

OWNER: Beth Menachem Chabad, Rabbi Chaim Prus

ADDRESS OF OWNER: 229 Dedham Street, Newton, MA 02459

TO BE USED FOR: Religious Institution

CONSTRUCTION: Wood frame, poured concrete foundation, paved driveway and exterior parking

EXPLANATORY NOTE: Section 30-9(d)(10)&(13), 30-19(d), 30-19(m) approval of waiver to allow applicant to reduce required parking from 70 spaces to 9 spaces for a total waiver of 61 spaces. Section 30-9(j)(1), 30-19(m) approval of waiver to allow applicant to reduce parking lot lighting level below 1 ft.-candle. Section 30-23 for approval of site plan. Section 30-24 for approval of special permit.

Land referred to is located in Single Residence 1 Zone.

Approved, subject to the following conditions:

1. All buildings, driveways, walkways, landscaping and other site improvements associated with the project granted through this Special Permit and Site Plan Approval shall be consistent with the following approved plans:
 - a. Plan Set titled "Site Plan of Land in Newton, MA, 349 Dedham St., Preliminary", dated April 4, 2007, prepared by Everett M. Brooks Co., Surveyors and Engineers, 49 Lexington St., West Newton, MA 02465, stamped and signed by Bruce Bradford, Professional Land Surveyor, and Michael S. Kosmo, Civil Engineer, consisting of the following:
 - i. Sheet 1 of 4, Site Plan of Land
 - ii. Sheet 2 of 4, Site Plan of Land (Details)
 - iii. Sheet 3 of 4, Zoning, and
 - iv. Sheet 4 of 4, Area Wide Plan of Land
 - b. Plan set titled "Beth Menachem Chabad, 349 Needham St., Newton, MA", dated 5 April, 2007, prepared by Fine Associates, 192 South St., Boston, MA 02111, stamped and signed by Albert D. Fine, registered architect consisting of the following:
 - i. A 1.01 – Lower Floor Plan
 - ii. A 1.02 – Upper Floor Plan
 - iii. A 2.01 -- Building Elevations
 - iv. A 2.02 -- Building Elevations
 - v. AF 1.01 -- Sanctuary Seating Plan
 - vi. AF 1.02 -- Sanctuary and Social Hall Function Seating Plan
 - vii. AS 1.01 – Architectural Site Plan, Roof Plan
 - viii. AS 1.02 -- Site Lighting Plan

- c. Plan titled “Beth Menachem Chabad, 349 Needham St., Newton, MA”, Drawing # L-1, Planting Plan, dated 3/2/07, revised 2 August 2007, prepared by Fine Associates, 192 South St., Boston, MA 02111, and Ray Dunetz, Landscape Architecture, 12 Pond St., No.1, Boston, MA 02130, bearing no stamp or signature of a registered professional.
2. The Petitioner shall submit final engineering plans for review and approval by the City Engineer, in accordance with the memorandum from the Associate City Engineer, dated May 10, 2007, on file with the City Clerk.
3. The Petitioner shall submit a final site circulation plan showing the interior driveway clearly marked for one-way circulation, with the entrance driveway located on the east side of the Site, closest to Rachel Road, and the exit driveway located on the west side of the Site.
4. The Petitioner shall submit a final landscape plan showing additional landscaping along the rear yard and side yard of the subject property to increase visual screening.
5. The Petitioner shall submit a Final Construction Management Plan, prior to the issuance of a building permit, for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development and the City Engineer, and shall also include, at a minimum:
 - a. The hours of construction; and a commitment that there shall be no construction on Sundays or Holidays, except in an emergency, and only with prior approval from the Commissioner of Inspectional Services;
 - b. The proposed schedule of the project;
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for delivery vehicles, and location of any security fencing;
 - d. The proposed truck route(s) shall be identified; the truck routes shall be developed in such a way to minimize travel on local streets;
 - e. The proposed methods for dust control shall be identified and shall include, but not be limited to: using covered trucks for transportation of excavated material; minimizing storage of debris on-site by using on-site dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; and location of a truck washing station, to clean muddy wheels on all truck and construction vehicles before exiting the Site;
 - f. The proposed methods for noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise, and noise producing staging activities should be located as far as practical from noise sensitive locations; and

- g. A tree preservation plan, as appropriate, to define the proposed method for protection of any existing trees, which are to remain on site.
6. The Petitioner shall submit a final Parking Management Plan to the Director of Planning and Development and City Traffic Engineer for review and approval. The Plan shall include, but not be limited to, the following items:
 - a. A designated parking manager who will respond to neighborhood concerns such as but not limited to, parking in front of homes for extended periods or on a regular basis; enforce the Parking Management Plan including notifying those attending events to use the shuttle service; and assist in establishing shuttle services by van or bus in accordance with the Parking Management Plan when it is anticipated that more than 20 cars will be drawn to an event,
 - b. Programs to encourage walking on days other than the Sabbath,
 - c. Programs to encourage use of public transportation, and
 - d. Description of a shared driveway program to reduce on-street parking.
7. The Petitioner shall maintain all landscaping proposed and installed through this special permit/site plan approval in good condition, and any plant material that becomes diseased or dies shall be replaced by the Petitioners on an annual basis with similar material.
8. The Petitioner shall maintain the Site exclusively for use by an Orthodox Jewish congregation, and the parking waivers granted by this special permit may be transferred to no entity other than another Orthodox Jewish congregation using the Site in accordance with all the conditions contained in this special permit.
9. The Petitioner shall work with the Commissioner of Public Works to improve the public sidewalk abutting the site along Dedham Street.
10. Schools or Educational Programs; Daycare or Nursery Schools.
 - a. For purposes of this condition, "full-time" shall mean a school, educational program, daycare, or nursery school that operates for four (4) or more hours per day and "part-time" shall mean a school, educational program, daycare, or nursery school that operates for less than four (4) hours per day, whether continuously or in multiple sessions, for a minimum of two (2) days per week, on average, for eight (8) or more months during a twelve (12) month period.
 - b. No full-time school or educational program shall be conducted at the Site.

c. No part-time school or educational program, or any daycare or nursery school licensed by the Department of Early Education and Care, whether full-time or part-time, with an enrollment of more than sixteen (16) students in such school, educational program, daycare or nursery school, shall be conducted at the site unless the Petitioner seeks an amendment of this Special Permit from the Board of Aldermen acting as a special permit granting authority. The Petitioner shall comply with the applicable provisions of the Zoning Ordinance with regard to a part-time school or educational program, daycare, or nursery school which has an enrollment of sixteen (16) or fewer students. The Petitioner shall also comply with the applicable parking space requirements of section 30-19 of the Zoning Ordinance regardless of the number of students enrolled in the part-time school or educational program, daycare, or nursery school.

d. If the Petitioner seeks an amendment of this Special Permit to conduct a part-time school or educational program, or daycare, or nursery school at the Site, the Petitioner shall include in its application for an amendment a proposed Traffic Management Plan (the Plan"). The purpose of the Plan is to provide information on the impact such school or program will have on traffic and safety of vehicular and pedestrian movements, both on-site and off-site, including during drop-off and pick-up of students. The Plan shall, at a minimum, include the following information:

- Number and ages of students, including the maximum number of students that may attend;
- Number of staff and their hours;
- Hours and days of operation, including the possibility that operation of the school or program permit staggered start and stop times to prevent queuing of cars off the Site onto Dedham Street;
- Description of the proposed drop-off and pick-up plan to address potential queuing problems, including all proposed signage and written information to parents regarding the drop-off and pick-up plan;
- Site plan showing the vehicular and pedestrian movements on the Site during drop-off and pick-up of students.

The Petitioner shall provide additional information that may be reasonably requested by the City Traffic Engineer and/or Director of Planning and Development.

e. Whenever the Petitioner conducts a school, educational program, daycare, or nursery school on site which involves the drop-off and pick-up of children age

- seven (7) or younger, the Petitioner shall have a person outside in the parking lot area during the drop-off and pick-up times who is responsible for facilitating the drop-off and pick-up activity.
11. No group activity other than a religious service shall be held at the Site between the hours of 11:00 p.m. and 7:00 a.m. In order to minimize noise arising from its use of the Site, the Petitioner shall ask its congregants or guests to refrain from socializing outdoors after evening functions.
 12. The Petitioner and Newton Public Schools have agreed to execute the draft License Agreement dated September 6, 2007, on file with the City Clerk and Clerk of the Board of Aldermen, which Agreement will permit the Petitioner's congregants to park up to 45 cars in the Countryside School parking lot on evenings when school is not in session and/or on weekends, or at other times when School sponsored events are not scheduled at the School. Petitioner agrees not to schedule any events at the Site, in which the Petitioner reasonably anticipates that more than 20 vehicles will be driven to the Site, without first ascertaining the availability of the Countryside School parking lot under the terms of the license, requesting and encouraging its congregants and guests to use the Countryside School parking lot, and providing shuttle services between the Site and the Countryside School parking lot. If the Countryside School parking lot is not available, the Petitioner shall reschedule the event (with the exceptions of religious holidays or a funeral) to a time when the Countryside School parking lot is available.
 13. The Petitioner acknowledges that the waiver of off-street parking provided by this special permit shall not constitute any waiver by the City of Newton of its enforcement rights against the Petitioner and its congregants with respect to the duly established and uniformly enforced parking ordinances and regulations of the City of Newton, including, but not limited to, no parking zones, limited parking zones, snow emergencies and limitations on overnight parking. The Petitioner will not oppose any traffic or parking ordinances or regulations proposed for the surrounding neighborhood streets.
 14. With the exception of emergency repairs, the Petitioner shall use its best efforts to restrict deliveries by commercial vehicles to the Site to hours between 9:00 a.m. and 5:00 p.m., and any regularly scheduled deliveries to the Site shall be scheduled between 9:00 a.m. and 5:00 p.m.
 15. In order to ensure clear access for all emergency vehicles and/or to facilitate general circulation, the Petitioner shall not permit motor vehicles to be parked on site in any location other than within the striped parking spaces shown on the approved plans. No stacked or double parking shall be permitted at any time.
 16. The Petitioner shall not use the Site for regular community center types of community activities, such as weekly or monthly bingo, bridge, etc.

17. Any exterior lights shall be residential in style and scale; shall be chosen and placed so as to have minimal impact on neighborhood residents; and shall be subject to the review and approval of the Director of Planning and Development. No illumination from exterior lights shall wash onto adjacent properties, and such illumination shall comply with the photometric plan in Condition 1.
18. The Petitioner shall arrange for private collection of all trash, garbage or yard waste generated at the site and shall store all trash/garbage inside the building on the Site. No trash collection shall occur on the weekends or before 7:00 a.m. in the morning.
19. If the Commissioner of Inspectional Services finds that there is a change in the circumstances upon which the Board granted this special permit due to the loss of the license to use parking spaces at the Countryside School, then the Petitioner shall use its best efforts to address the need for replacing those parking spaces. Such steps may include, but are not limited to, Neighborhood Council discussions of how replacement parking can be accomplished.
20. The Petitioner shall cooperate in the establishment of a Neighborhood Council. The Neighborhood Council shall consist of two (2) representatives from the Petitioner, two (2) neighborhood representatives, an alderman from Ward 8, and the Principal or her/his designee from the Countryside School. As soon as possible after the date of approval of this Special Permit, the Petitioner shall appoint its representatives and the Board of Aldermen shall appoint the neighborhood representatives.

The purpose of the Neighborhood Council shall be to discuss issues which jointly affect the neighborhood, the Petitioner and Countryside School such as parking, traffic, noise, etc., and to attempt to find consensus on the ways of mitigating such impacts upon the neighborhood, the Petitioner, or Countryside School. Failure of the Council to reach consensus on how to mitigate any issue shall not prevent any party from any activity they are lawfully entitled to pursue.

The Neighborhood Council shall meet at least two (2) times per year, and may meet more frequently at its discretion. The alderman from Ward 8 will call the first meeting of the Council. The City Clerk and the Clerk of the Board of Aldermen shall receive advance notice as to the dates, times and locations of all Neighborhood Council meetings. The Council shall file annual reports of its activities with the City Clerk and the Clerk of the Board of Aldermen.

21. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until:
 - a. The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
 - b. A certified copy of such recorded notices shall have been filed with the City Clerk, the Inspectional Services Department, City Engineer, and the Director of Planning and Development.

- c. The Petitioner shall submit final engineering plans, for review and approval by the City Engineer, in accordance with Condition 2, above.
 - d. The Petitioner shall have filed a final landscape plan for review and approval by the Director of Planning and Development in accordance with Condition #4.
 - e. The Petitioner shall have submitted a final site circulation plan in accordance with Condition #3.
 - f. The Petitioner shall have complied with the City of Newton Tree Preservation Ordinance.
 - g. The Petitioner shall have submitted a Construction Management Plan in accordance with Condition #5, above.
 - h. The Petitioner shall have submitted a Parking Management Plan in accordance with Condition #6, above.
22. No portion of the Site shall be occupied, pursuant to this Special Permit/Site Plan Approval, until:
- a. The Petitioner shall have filed with the Clerk of the Board, the Commissioner of Inspectional Services and the Department of Planning and Development a statement by a registered architect, for the structures, and registered engineer, for site conditions, certifying that Condition #1 has been complied with.
 - b. There shall have been submitted to the City Engineer final as-built, record site engineering plans, in digital and paper format, with the latter sealed by a licensed surveyor.
 - c. There shall have been filed with the Clerk of the Board, the Commissioner of Inspectional Services and the Department of Planning and Development, a statement by the City Engineer certifying that the final construction details have been constructed to standards of the City of Newton Engineering Department.
 - d. There shall have been filed with the City Clerk and the Commissioner of Inspectional Services a statement by the Director of Planning and Development certifying the final location, number and type of plant materials and landscape features, and the layout of the parking facilities have been completed in accordance with the approved plans.
 - e. Notwithstanding the provisions of Condition #22.d, above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the Site prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Under Suspension of Rules

Readings Waived and Approved

19 yeas 3 nays (Aldermen Harney, Lappin, and Lipof 2 absent (Aldermen Gentile and Linsky)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on _____. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen