

LEWIS ASSOCIATES
33 CLAYPIT HILL ROAD
WAYLAND, MASSACHUSETTS 01778

TELEPHONE (508) 358-4973

ANETTE SELTZER LEWIS, ESQ.

E-MAIL: ASLEWIS33@VERIZON.NET

Via e-mail

December 13, 2012

Eve Tapper, Chief Planner for Current Planning
Department of Planning and Development
1000 Commonwealth Avenue
Newton, MA 02459

Re: Special Permit Petition #272-12 – Hotel Indigo/BH Normandy Owner, LLC

Dear Ms. Tapper:

I am writing to follow up on our recent conversation concerning the legitimacy, or lack thereof, of what is currently being used by the Hotel as a service/loading area in the front of their building facing Grove Street. As you and I discussed, during the summer and autumn of 2012, my clients and I conducted a comprehensive review of existing City of Newton files in an effort to determine if and when the front service/loading area was approved by the Board of Aldermen. Based on all of the available documentation, the front area was never an approved location. The only approved service entrance was located on the south side of the building at the front corner where Grove Street and the Route 128 highway ramp come together (see ATTACHMENT 1 Approved May 17, 1963 Site Plan in #392-63 and ATTACHMENT 2 Enlargement of Approved May 17, 1963 Site Plan in #392-63 with “SERVICE” location denoted on plan).

It is our belief that use of the south side service area was discontinued when the hotel was converted to the Indigo. The loading dock was removed, the curbing was reconfigured, and the stairs and entrance way into the building were removed (see ATTACHMENT 3 Photo from City files showing the approved and constructed configuration of the “SERVICE” area). That area is now occupied by a large air conditioning unit/condenser that blocks all possible access to the original and only approved service area.

Because the petitioner in this proceeding was proposing to relocate the Grove Street loading area to the rear of the building, we did not press the point. However, listening to the questions and responses during the last two public hearings, we determined that it was important for the record to be clarified. We do not want anyone to take at face value some of the unsubstantiated and possibly erroneous assertions that have been proffered on behalf of the Petitioner as well as certain statements made in your department’s October 5, 2012 (on p. 5 at II.A.) and November 23, 2012 (on p. 6 at II.B.) briefing memos prepared for the Aldermen and September 11, 2012 Zoning Review Memo (on p. 2 at 1.).

Eve Tapper, City of Newton
 December 13, 2012
 Page 2 of 6

History of Special Permits

Records in City of Newton files reveal issuance of the following Special Permits:

May 20, 1963 initial Special Permit [#392-63] issued by the Board of Aldermen approved a 200-unit Motor Inn with dining and related facilities for motel patrons and underground parking for 300 cars. The Special Permit was conditioned on compliance with a revised site plan dated May 17, 1963 filed with the City Clerk. That plan shows the service area on the south side of the building at the front corner where Grove Street and the Route 128 highway ramp come together.

December 16, 1963 extension of time [#392-63(2)] granted by the Board of Aldermen to complete construction work by July 22, 1964 in accordance with the initial Special Permit.

March 16, 1964 amendment [#158-64] to the initial Special Permit issued by the Board of Aldermen relating to “Changes in detail to conform to sewer and drainage requirements Mass. Dept. Public Works and M.D.C. and to make more effective use of building within the ordinance requirements for parking area and overall height.”

Between July 12, 1965 and February 18, 1986, a series of Special Permits were issued by the Board of Aldermen for: signage [#335-65 June 21, 1965 & July 12, 1965]; a heliport [#634-66 November 21, 1966; #556-67 August 21, 1967]; and a satellite receiving dish antenna [#810-85 February 18, 1986].

May 19, 1986 amendment [#291-86] to the initial Special Permit issued by the Board of Aldermen relating to new signage and modification of previously approved site plan with regard to façade alterations. The approval was conditioned on and required compliance with the provisions of the initial Special Permit #392-63.

March 2, 1987 amendment [#747-86] to the initial Special Permit issued by the Board of Aldermen relating to new wall signs and modification of previously approved site plan with regard to new entrance. The approval was conditioned on and required compliance with the provisions of the initial Special Permit #392-63.

Thereafter, until the filing of the Special Permit request currently before you, apparently no other Special Permits were sought.

Factual Analysis

The March 3, 1964 Nolan Engineering Service letter presented and relied upon this past summer by Petitioner’s counsel was addressed to the Board of Aldermen. It would seem to fall in chronological order between the Aldermen’s December 16, 1963 extension of time [#392-63(2)] and the March 16, 1964 amendment [#158-64] to the initial Special Permit. Based on the wording of the March 16, 1964 amendment [#158-64] “to make more effective use of building within the ordinance requirements for parking area and overall height”, it would appear that the Aldermen did not grant permission for another service entrance in the front of the building.

Further, the Riverside Inn Site Plan Drawing X-1 relied upon by Petitioner, and subsequently referred to by City staff, is date-stamped “Received Nov. 18, 1985 Building Department”. That is more than twenty (20) years after the date of the Nolan letter. There is nothing in City files or on the Site Plan itself to indicate that the 1/31/64 plan or the 3/30/64 General Revision noted in the

Eve Tapper, City of Newton
December 13, 2012
Page 3 of 6

descriptive block on the Site Plan were ever submitted to or approved by the Aldermen or anyone else in City government.

Moreover, there is no indication on the proffered plan that a service/loading area different from the original was ever approved. Even on the Riverside Inn Site Plan Drawing X-1 relied upon by Petitioner, the service area is clearly denoted with the word “service” on the south side of the building at the front corner where Grove Street and the Route 128 highway ramp come together. And the land contours in that area are appropriately flat to accommodate service vehicles at a grade differential of 1 ½ feet. The area being referred to by Petitioner and City staff as a somehow “approved” loading dock area in front of the hotel bears no notation whatsoever, other than the location of drainage points and land contours sloping down toward the building from 98 feet at the entrance of the “drive” to 91.5 feet at the building. That is a grade differential of 6 ½ feet which is quite steep for accommodating deliveries, especially in such a short distance. The alleged “loading dock area” is undifferentiated in any way from the front wall of the rest of the building and it is immediately adjacent to a rectangle that is identified as “1ST FL. Bedrms”.

Conclusion

On behalf of the nine Woodland Grove Condominium residences located at 416 Grove Street, across the street from and directly opposite the Hotel Indigo, I thank you for all of your efforts on behalf of the residents of Newton to assure that a clear and factual record is created and maintained throughout this proceeding. I would be happy to discuss any of this further with you should you wish to do so.

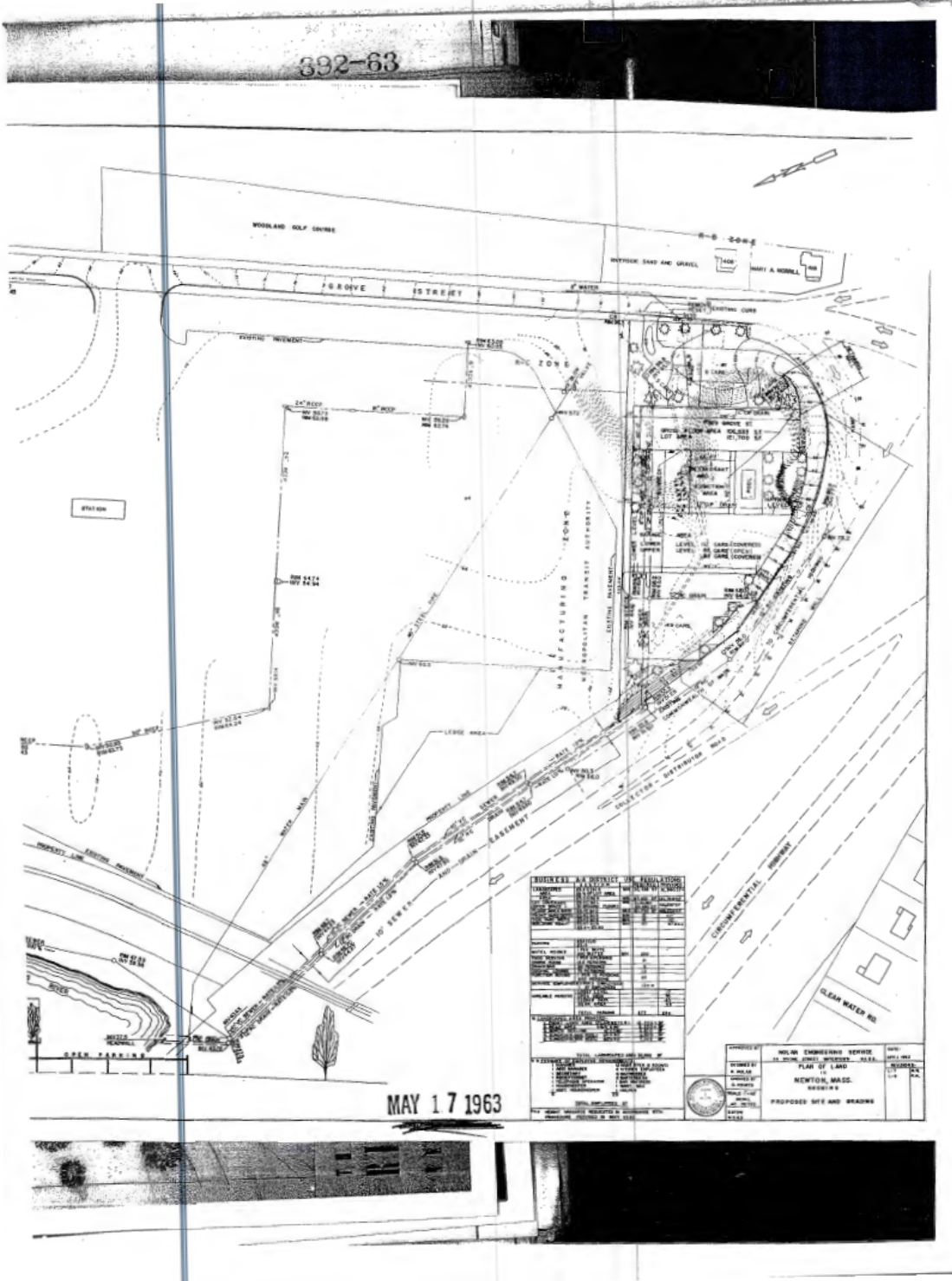
Very truly yours,

Anette Seltzer Lewis

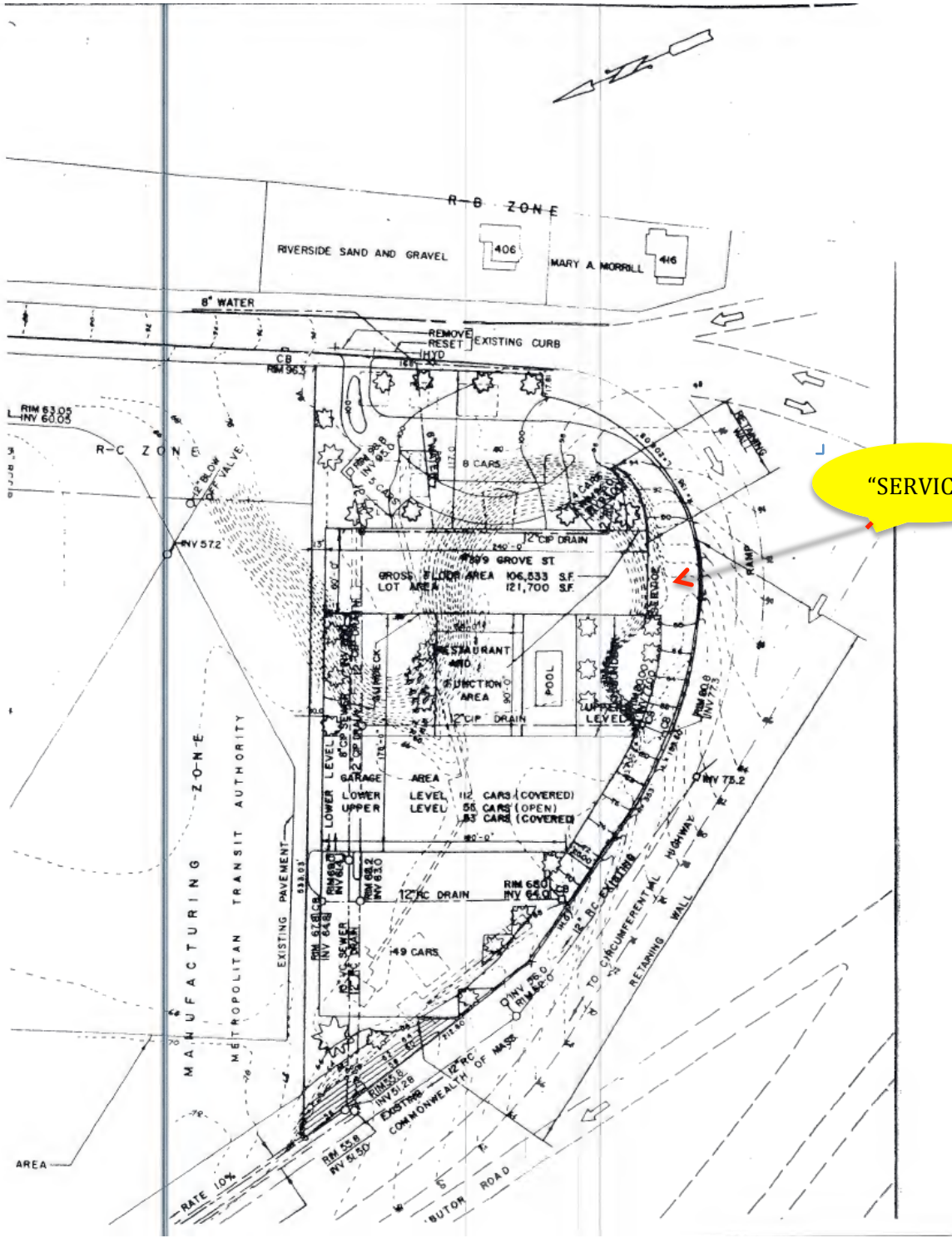
Anette Seltzer Lewis

Attachments (3)

cc: City of Newton Board of Aldermen
Linda Finucane, Chief Committee Clerk Newton Board of Aldermen
Candace Havens, Director of Planning and Development
Ouida C. M. Young, Esq.
John D. Lojek, Commissioner of Inspectional Services
Lynne Sweet, Business Manager Woodland Grove Condominium Trust
Stephen J. Buchbinder, Esq.



ATTACHMENT 1 -- Approved May 17, 1963 Site Plan in #392-63



ATTACHMENT 2 – Enlargement of Approved May 17, 1963 Site Plan in #392-63 with
“SERVICE” Location Denoted on Plan



ATTACHMENT 3 – Photo from City files Showing the Approved and Constructed Configuration of the “SERVICE” Area