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CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 18, 2005

Present: Ald. Mansfield (Chairman), Ald. Salvucci, Albright, Harney, Samuelson, Vance, Merrill, and Fischman
Also present: Ald. Lennon
City staff: Ouida Young (Associate City Solicitor), Nancy Radzevich (Chief Planner), and Linda Finucane (Chief Committee Clerk)

#267-05 CHARLES RUDNICK & ILYSE GREENBERG petition for a SPECIAL PERMIT to EXTEND a NON-CONFORMING STRUCTURE to renovate unfinished attic space over a garage into a bathroom and walk-through closet at 41 LOMBARD STREET, Ward 1, on land known as Sec 13, Blk 12, Lot 8, containing approximately 9,484 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21((a)(2)b), (b) of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 7-0-1 (Ald. Fischman abstaining)
NOTE: This is a petition to extend a non-conforming structure by extending the attic space over an attached garage and finishing the space as a extension of the bedrooms and bathrooms on the second floor of this single-family residence. The existing structure is 4.8 feet from the side property line, but the addition will not change this dimension. The public hearing was opened on September 13, 2005, but was continued without testimony to October 11 at the request of the petitioner, who had hoped to reach agreement with his immediate abutter, the owner of the property that would be most impacted by this addition. At the second night of the hearing, the applicant submitted a petition signed by 5 abutters in support of his petition. His architect explained that the proposed addition would be in the context of the house, a clapboard colonial, and that the profile of the adjacent roof would be continued. He said that minimal new shadows would be created only in the afternoon. However, an attorney for the abutter at 35 Lombard Street expressed his clients contention that the 6-foot increase in height of the addition would block the light from his client's back yard, where she has a greenhouse. He asserted that the petitioners should have known when they purchased the property in 2004 that the house was non-conforming and would need a special permit to extend it. Committee members asked for more information on the distance between the two structures, and requested a shadow study.

At the working session, the Committee received the results of a shadow analysis and photographs prepared by the petitioner's architect. Because the elevation in question has a northwest orientation, there are shadows produced in the late afternoon only, and because there are several large trees on the site—some of them at least appearing to be

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evergreen, there is minimal impact. The abutter did not submit any additional information. The Planning Department reported that the structures are 8.4 feet apart at the closest point. Attorney Young explained that this situation likely arose between the 1920's and the 1940's, when the ordinances required no side setbacks. Ald. Fischman questioned whether the addition could be pulled back 5-10 feet to reduce the impact, but the petitioner pointed out that the proposed addition is only 309 s.f, and such a reduction would not meet their needs. Ald. Lennon stated that he supported the petition as it stands, and also understands that the abutter is concerned because she is trying to sell her property. Ald Merrill moved approval of the petition, finding that the proposed extension was not substantially more detrimental than the existing conditions, and that the addition is appropriately set back from the front façade so that the new massing is back from the street.. Ald Fischman observed that any additional shading is only in the late afternoon and then only adds 5-10% to existing shadows, but he nevertheless abstained from the vote, which approved the motion 7-0-1.

266-05 BRUNO DiFAZIO, TRUSTEE OF BRUNO DiFAZIO REALTY TRUST petition to AMEND SITE PLAN/SPECIAL PERMIT #420-87 in order to construct a canopy over a pump island at an existing gasoline selling station at 50 & 56 WINCHESTER STREET, Ward 8, on land known as Sec 83, Blk 3, Lots 44 & 45, containing approximately 33, 315 sf of a land in a district zoned MULTIRESIDENCE 1. Ref: 30-24, 30-23, 30-13(d)(13), 30-19(H)(4)a), 30-19(i)(2),(j)(1)b), j(2)e), and (m), of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 8-0

NOTE: This petition is to install a protective canopy over an existing pump island at a gas station that was approved by special permit in 1987, and to amend the site plan to extend a sidewalk on the site and to remove a portion of a landscape island and fence separating this site from the adjacent commercial parking lot also owned by the applicant. Also included is a request for a temporary 2-space parking waiver in the adjacent lot, to accommodate fuel delivery trucks. Also requested is a waiver to remove a wheel stop, to reduce the amount of interior landscaping, and to allow some light spillover off the site.

At the public hearing on September 13, 2005, the committee learned that the proposed changes to the site plan (but not the canopy) had been put in place shortly after the original special permit was granted, because the standard length of fuel trucks increased in 1988. and the break was installed to allow them to back into the site without overhanging Needham St. The petitioner also offered a restrictive condition that the gas station would continue to provide full service. His attorney noted that the canopy lights had been reduced to 9 foot-candles and would be recessed into the ceiling of structure, noting that this is the lowest light intensity available in such fixtures. There will also be no signage on the canopy itself. The attorney also noted that the current pump island shoebox lights also create overspill, but both these and the proposed lights are overpowered by the City streetlights. Ald. Samuelson noted that there are substantial trees on the petitioner's land between this use and the immediately adjacent residence, while all other abutters are commercial. The landscape plan proposed to retain these trees and shrubbery in front of the attendant's booth, and to increase the landscaping on

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the island between the gas station and retail strip mall. Ald. Fischman was concerned that the retail tenants in this mall, owned by the petitioner, had not been notified of this application, and that the visibility of their businesses and wall signs might be obstructed by the proposed canopy. No public testimony was received at the hearing.

At the working session the Planning Dept. provided information on the history of fuel deliveries, which were almost all in the late evening or very early morning. There was discussion of restricting hours to those times, so as not to disrupt traffic flow on Winchester St. during heavily traveled hours. However, the petitioner expressed the need to be able to refuel outside these hours in rare cases of unpredictable emergency conditions. Attorney Young cautioned the Committee not to adopt a condition that was too complex to enforce, so no restrictions were imposed. The City Traffic Engineer submitted a memo that expressed no concern about this proposal. The petitioner reported that he did not think it was necessary to notify his tenants, and that was a private matter. he did note, however, that the plans included new, wall-mounted lighting to better illuminate the stores' wall signs. In answer to Ald. Albright's question, the Planning Dept. reported that the bottom of the proposed canopy is 14.6 ft. high, and the commercial building behind is 15 ft. high, so that the facades and signage of the storefronts will remain visible. Ald. Samuelson moved approval of the petition, finding that the proposal will provide a better environment for the attendant and for customers, that it will preserve a service business, that the full-service condition is a public benefit, that the parking waiver is limited to off-hours for retail parking demand, that the existing mature vegetation minimizes the effects of light spillover, that there will be improved landscaping and lighting, and that the off-hours refueling creates minimal disruption on Winchester St. The motion was approved 8-0.

#470-04(2) PRESIDENT BAKER in conjunction with NEWTON WELLESLEY HOSPITAL recommending the appointment of the following individuals to the Newton Wellesley Hospital Neighborhood Council pursuant to condition 29 of special permit #470-04:

(A) Theresa Fitzpatrick
1935 Beacon Street
Newton, MA 02468

(B) Dr. Jonathan M. Horowitz
11 Bonaire Circle
Newton, MA 02462

(C) George Swetz
120 Dorset Road
Newton, MA 02462

(D) Andree Saulnier
54 Longfellow Road
Newton, MA 02462

ACTION: APPROVED 6-0 (Ald. Merrill & Fischman not voting)

NOTE: Ms. Finucane explained that the Newton-Wellesley Board Order requires that there be members of this advisory council appointed from each street abutting the hospital site. She said that the President has had a difficult time finding members willing to serve, and that a resident from the opposite side of Washington St. (Walsingham St.) has yet to be identified. Ald. Samuelson moved approval, and the motion carried 6-0

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#470-04(3) PRESIDENT BAKER recommending the appointment of Aldermen Amy Sangiolo and Samuelson to the Newton Wellesley Hospital Neighborhood Council as the aldermanic appointees from Wards 4 and 5 pursuant to special permit #470-04.

ACTION: APPROVED 6-0 (Ald. Merrill & Fischman not voting)

NOTE: Ald. Harney expressed his willingness to serve in place of Ald. Sangiolo, whose assent to this appointment had not been confirmed. It was noted the term of these appointments is coincident with the Aldermanic terms, so these members will have to be re-appointed in January 2006. Ald. Samuelson agreed to serve and Ald. Harney moved approval. The motion carried 6-0.

Respectfully submitted,
George E. Mansfield, Chairman