

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 23, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Crossley, Laredo, Schwartz, Harney, and Fischman; absent: Ald. Merrill; also present: Ald. Sangiolo and Swiston

City staff: James Freas (Chief Planner Long-term Planning), Derek Valentine (Chief Planner), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

#272-09(3) HERRICK ROAD REALTY TRUST petition for ONE-YEAR EXTENSION of TIME, from December 21, 2012 to December 21, 2013 in which to exercise SPECIAL PERMIT/SITE PLAN APPROVAL #272-09, granted on December 21, 2009 to erect at 39 HERRICK ROAD, Ward 6, NEWTON CENTRE (Lot 7) a 3-story mixed-use building containing 4 dwelling units and ground floor commercial space with a 75-seat restaurant, with underground parking and associated parking waivers (allow 1¼ parking spaces per housing unit; allow off street parking facilities to be located on a separate lot; waive 9 parking spaces; waive 3 bicycle parking spaces; allow frontage to be measured along a public footway) and to construct a retaining wall greater than 4 feet within the rear/side setbacks and waive 18 existing parking spaces on Lot 7 Herrick Road, on land known as Sec 61, Blk 35, Lots 6 and 7, in a district zoned BUSINESS 1.

ACTION: NO ACTION NECESSARY 4-0 (Fischman, Harney, Schwartz not voting)

Please see note below.

#137-10(4) REQUEST FOR AN EXTENSION OF TIME in which to EXERCISE Special Permit/Site Plan Approval #137-10(3) granted to SHARAD S. GANDBHIR on November 21, 2011 for an accessory apartment in an existing detached structure and to allow three parking spaces in the front setback and less than five feet from the front lot line at 298-300 ADAMS STREET, Ward 1; said EXTENSION will run from November 21, 2012 to November 21, 2013. Ref: Sec. 30-24(c)(4)of the City of Newton Rev Zoning Ord, 2012.

ACTION: NO ACTION NECESSARY 4-0 (Fischman, Harney, Schwartz not voting)

NOTE: Chapter 240 Acts of 2012, Section 173, granted permitted projects in effect or existence for the period beginning August 15, 2008 continuing through August 15, 2010 an additional 2 years in addition to the lawful period of the term of the approval; on August 7, 2012 the Legislature passed Chapter 238 of the Acts of 2012, which Sections 73 and 74 amended chapter 240 of the Acts of 2012 to provide an *additional* 2-year extension of time for all approvals in effect or existence between the extended tolling period of August 15, 2008 to August 15, 2012.

#210-12 STEPHEN & LESLIE BERNSTEIN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE in order to replace an existing detached garage with a new attached garage and mudroom and to extend an existing rear deck, increasing the Floor Area Ratio from .48 to .57, at 97 HILLSIDE AVENUE, Ward 3, West Newton, on land known as SBL 32, 3, 12, containing approximately 12,551 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 30-24, 30-23, 30-21(b), 30-15(u) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 4-0 (Fischman, Harney, Schwartz not voting)

NOTE: The public hearing on the petition was opened and closed on September 11, 2012. The petitioners wish to demolish an existing small detached garage and a deck to the rear of the property and construct a new larger garage and connector with a mudroom in approximately the same location. Because the single-family home, a circa 1880's Victorian, is sited on a slope and has a steeply pitched roof both the attic and basement are defined as "floors." The current Floor Area Ratio (FAR) is .48, where .35 is allowed by right. The petitioners are seeking a special permit to increase the nonconforming FAR to .52. The proposed garage is designed to mimic a typical West Newton Hill carriage house with details such as fanlights and a cupola. The house has a wrap-around porch that partially screens the garage so it actually appears detached. The garage accommodates two cars. There is no reconfiguration of the surface parking.

The petitioners spoke with their direct abutters at 333 Otis Street who have a large historic carriage house and have no issues with this petition. Jonathan Miler at 85 Hillside, two houses to the north, communicated via letter that although he is not affected by this proposal, he is opposed because in his opinion zoning regulations in general are too lax.

This evening, the Committee noted that the existing 1920's garage is not aesthetically pleasing, whereas the proposed garage and connector complement the historic home. There is a stockade fence and heavy evergreen screening between the proposed garage and 333 Otis Street. Alderman Albright moved approval of the petition finding that extending the FAR of .52 where .48 exists and .35 is allowed by right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood; the replacement of a 1920's garage with one that will accommodate present-day cars is consistent with a goal of the *2007 Comprehensive Plan* to adapt historic homes to meet the needs of today's families. The motion to approve carried 4-0, with Aldermen Fischman, Harney, and Schwartz not voting.

#213-12 NEEDHAM STREET VILLAGE SHOPS LLC/H&J NEWTON LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND A NONCONFORMING USE/STRUCTURE to construct two single-story commercial buildings with an aggregate total gross floor area of 19,200 sq. ft.; to permit retail/service uses including restaurant uses containing up to 150 seats; to waive 20 parking stalls and certain dimensional requirements and associated fencing and lighting requirements for parking facilities greater than five stalls; to waive one required loading dock facility; and to allow a freestanding sign and the number of secondary signs and dimensionals at 49, 55, 71 NEEDHAM STREET, Ward 5, on land known as Sec 51, Blk 28, Lots 23, 22, 20, containing

approximately 11,775 sq. ft., 19,625 sq. ft. and 27,475 sq. ft., respectively, for a total of 58,875 sq. ft., in a district zoned MIXED USED 1. Ref: Sec. 30-24, 30-23, 30-21(b), 30-13(b)(1), (4), (5), (h)(1), 30-19(d), (h)(3)a), (i), (l)a)(ii), (j), (k), (l), (m), 30-20(f)(1), (2), (9) and 30-20(l) of the City of Newton Rev Zoning Ord.

ACTION: (1) 6-PARKING STALL WAIVER ONLY FOR RETAIL USE APPROVED 7-0
(1) 8-PARKING STALL WAIVER FOR RESTAURANT USE UP TO 110 SEATS APPROVED 7-0

NOTE: Attorney Alan Schlesinger presented the petition at the public hearing which was opened and closed on September 11, 2012. The petitioner is proposing to demolish two buildings and construct two new multi-tenant commercial buildings with a mixture of retail, restaurant, and service uses on a new lot that will be created by combing three existing lots at 49, 55, and 71 Needham Street. The existing buildings are occupied by two single-story single-tenant commercial buildings which until recently contained Skipjack's, a 175-seat restaurant, and International Bicycle Center, a bicycle sales/repair/storage facility.

Initially, the petitioner sought restaurant use(s) of up to 150 seats, which would require a waiver of 20 parking spaces; however, the proposed number of seats has been reduced to 110, which reduces the waiver to 8 parking spaces. The proposed buildings are each one-story; together, they will contain nine to ten storefronts, with entrances on both the street and parking sides of the building. In response to a question about the addition of a second story, the petitioner doesn't see it as practical or feasible on this site. The buildings front directly onto a 12-foot pedestrian walkway which will be buffered from Needham Street with a landscaped strip. Most parking is located to the rear, abutting Avalon Bay, with 5 other spaces located on the south side of the site which abuts a Mobile service station. Any building mass is broken up by a variety of exterior materials, different colored awnings, and a roof parapet that is raised at the corners. The petitioner developed a similar one-story project in Arlington, which Mr. Schlesinger suggested members might visit.

The petitioner is seeking a special permit to construct two buildings with an aggregate total gross floor area of 19,200 square feet to extend a nonconforming retail use in the MU 1 zone; to permit restaurants (up to 110 seats total) and service establishments in the MU1 zoned; to waive the number of parking stalls required for the proposed uses; allow maneuvering aisles 23' in width where 24' is required; permit a landscape buffer that includes a bumper overhang or allow a 3-foot landscape buffer without a fence; waive interior landscaping requirements; waive lighting, surfacing, curbing requirements; waive the number of bicycle stalls; waive one required loading dock facility; permit a freestanding sign and waive dimensional standards and the number of secondary signs. Currently, all three lots provide 71 parking spaces, 29 fewer spaces than what would be required for the former restaurant and bicycle sales/service/storage uses. The proposed project includes 64 parking spaces, where 72 are required.

In 1984 the Board of Aldermen granted a special permit to 55 Needham Street permitting the restaurant use to be open until 1:00 am and allowing additional seating when off-site customer parking was obtained. Another special permit was granted in 1999 to increase the seats to 149 with parking on 41 Needham Street, which was then under joint ownership with 55 Needham Street. In 2001, another special permit was granted, increasing the number of seats to 176 and amending the site plan to allow parking on 49 Needham Street, since parking was eliminated on 41 Needham Street because it was swapped for 49 Needham Street to allow Avalon to construct its driveway on 41 Needham Street.

Vehicle access and egress is provided by a center drive between the buildings and by Avalon's driveway. Cars may exit the site on the south side of the site, most likely with a right turn only onto Needham Street. These new access/egress points will replace an existing 200-foot uncurbed access that runs along the frontage of 55 and 71 Needham Street. MassDOT must give final approval, but the reduction is compatible with the MassDot plan for Needham Street.

The small size of the tenant spaces and the type of tenants they will attract make a loading dock unnecessary. Two dumpsters will be located in rear corners of the site and enclosed with fences. Currently, there is one tree on the site; a landscape plan indicates a number of additional shade trees. The impervious area of the site will be reduced by approximately 1,000 square feet. There is an existing fence along the Avalon property. Utilities to the property will be undergrounded. The proposed freestanding sign will identify the center driveway. The petitioner will submit a photometric plan and a Construction Management Plan prior to a working session.

A Parking Demand study by Vanasse & Associates, Inc. indicates decreasing the restaurant seats to 110 yields a value of 64 spaces to be provided, which in its view are sufficient. The proposed retail and restaurants – two restaurants are anticipated - are smaller and more likely to attract residents from Avalon, employees of businesses on Needham Street, and local convenience traffic unlike Skipjack's which drew patrons from a broad area.

Public Comment

Avalon Bay submitted a letter dated September 11 in support of the project.

Robert Nealon, Managing Agent for Sullivan Realty Trust (SRT) owner of the property at 60 Needham Street spoke in opposition. SRT believes that Sec 30-19(c)(2) applies to existing "buildings or structures" where in this instance the petitioner is demolishing the existing structures and merging the lots. In addition, 30-19(c)((2)b) prohibits using the number of seats in the case of a restaurant use; it must be calculated based on the "existing floor area of the existing structure and not the seating capacity thereof." There has been a long history of employees, customers, and vendors of various restaurant uses at 55 Needham Street parking on SRT's property. SRT fears this will continue. Subsequent to the public hearing, the Board received a letter from Mr. Nealon in which he stated SRT's notice of intent to appeal any finding by the Board of Alderman [sic] approving the proposed new development or any resemblance thereof of the "so-called" Needham Street Village Shops for under-representing the necessary relief in the legal notice.

This evening, Alderman Albright said she was not convinced there is enough parking. She visited the Arlington site and wanted to know how it compares with this proposal. The petitioner said the shops in Arlington contain 21,500 square feet of space and have 69 parking spaces; this proposal contains approximately 19,000 square feet and has 64 parking spaces. Alderman Laredo asked if the south egress could be eliminated to create more parking spaces. The petitioner explained that would not be possible. The Fire Department requires three ways around the building, besides dispersing the traffic flow three ways makes the site work. Several committee members asked if were possible to direct patrons to use the 5 spaces on the south side

of the property. The petitioner agreed to provide interior signage and directional markings. The petitioner said that Avalon has agreed to a licensing agreement to provide employee parking subject to Avalon's need. Also, the owner of the NTW site, which is currently unoccupied, has agreed it could provide up to 15 parking spaces, again subject to its eventual parking requirements. Mr. Freas noted that Urban Land Institute shared parking methodology indicates that restaurant and retail uses have different demands for their respective peak hours.

There was a question about the visibility of the rooftop equipment. The architect explained that the parapet shields it from the street view, but not from the upper floors of Avalon. He proposed the problem be resolved by installing the equipment close to the rear corner parapets which because of their height will screen the equipment from the Avalon residents.

The Urban Design Commission has reviewed and commented on the site plan design including the signs and landscaping. The petitioner has offered to contribute \$19,000 (\$1.00 per square foot) with a 5-year sunset provision towards undergrounding the utilities on Needham Street concurrent with its reconstruction. It was pointed out that 5 years doesn't seem realistic. The plans are only at 25% and projections range from 2017 to 2024. Mr. Freas suggested it could be sooner if a Business Improvement District (BID) were formed or if grants were obtained. However, if a BID is formed, the petitioner will end up paying twice – double jeopardy. The amount of the contribution is comparable to the one from Avalon and is twice what the defunct Linens & Things contributed. The petitioner is willing to extend the sunset provision to 12 years. Ultimately, the Committee and petitioner agreed that the obligation will run with the land for 12 years from the date of the special permit. The petitioner will pay at such time as either the City of Newton or the Commonwealth commences undergrounding the utility lines with sufficient funding from governmental or private sources for at least the section of Needham Street from Winchester Street to Columbia Street. The petitioner will not be required to make this contribution if a BID is established for the same purpose.

Subsequent to the public hearing, the Board received two letters in opposition the project, one from Alice McDonald of 135 Winchester Street and the other from Marilyn Flanagan of 125 Winchester Street. A letter was received from G. Christopher Riley, the owner of the Mobil service station, who supports the project.

In light of potential litigation relative to the parking credit calculations, Ms. Young suggested that a base, or first, special permit anticipate the entire site as retail use; the second special permit would build on the first authorizing up to 110 seats for the additional parking waiver using the "phantom" parking credit. This will allow the petitioner to go forth at risk should there be a challenge. The Committee agreed, and split the petition into #213-12(1) and (2), with (1) to waive up to 6 parking stalls for retail with no restaurant use, and (2) to waive up to 8 parking stalls for a restaurant use of up to 110 seats.

Alderman Crossley moved approval with the findings and conditions contained in the draft special permit board order nos. 213-12(1) and 213-12(2) dated November 5, 2012, both of which were approved 7-0.

#190-12 YOUNG INVESTMENTS, LLC/NEWTON COMMUNITY SERVICE CENTER
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing 2-story building and construct a 3-story (36.5') multi-family structure with 13 units (with a 1.47 FAR), 996 sq. ft. of office space on the first floor, an 18-stall below grade parking garage, a retaining wall greater than 4 feet in height in the setback, and to waive 11 parking stalls and certain parking dimensionals at 429 CHERRY STREET, Ward 3, WEST NEWTON, on land known as SBL 33, 12, 12, containing approximately 13,398 sq. ft. of land in district zoned Business 1. Ref: Sec 30-24, 30-23, 30-15 Table 3, 30-11(d)(8), 30-5(b) and (b)(4), 30-19(d)(1), (d)(11), 30-19(h)(3), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HELD 7-0

NOTE: This will be reported out when voted in Committee.

The meeting was adjourned at approximately 11:00 PM..

Respectfully submitted,
Ted Hess-Mahan, Chairman