

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JANUARY 6, 2004

Members present: Ald. Albright, Salvucci, Harney, Samuelson, Vance, Fischman and Mansfield, Chairman

Member absent: Ald. Merrill

Other Aldermen present: Ald. Baker and Hess-Mahan, and Sangiolo

City Staff present: Associate City Solicitor Ouida Young, Planning Director Michael Kruse, Planners Alexandra Ananth and Eric Jerman, and Chief Committee Clerk Linda Finucane

#15-04 ALD. BAKER requesting discussion and planning of upcoming committee agendas, process, future work, and how to streamline committee work on minor or routine approvals in order to allow time to focus on more major or non-routine matters.

ACTION: Held 7-0.

NOTE: The Committee and other Aldermen present participated in an orientation session in which the legal background for the special permit granting authority, Board and Committee procedures, and possible rules changes were reviewed and discussed. This discussion was particularly important since there are four new members of this Committee this term, three of whom are newly elected to the Board, as well as a new Chair. The Chair expressed appreciation for the depth of experience and expertise that is embodied in the returning staff, as well as that of the four returning Committee members.

Ms. Young presented the "land use tutorial" that she has developed over the years working with the former Chair, Ald. Basham. She described that the Board's authority to grant special permits comes from the State Zoning Act, Ch. 40A, Sec. 9, which in turn is derived from basic police powers of government. She highlighted the fundamental difference in the role of Aldermen as legislators and our role as a special permit granting authority in which we act in a quasi-judicial capacity. She discussed the need for Aldermen, especially members of the Land Use Committee, to maintain impartiality while hearing and reviewing special permit petitions, but also recognized that as elected officials we also can bring forward our specific knowledge of local conditions. This is a difficult balancing act, and one in which each Alderman must determine how he or she is going to treat information brought to him/her by constituents and/or petitioners. Ms. Young stressed the need to afford fundamental fairness and access to all information, and suggested that a best course action was to put all information one receives in writing

and/or bring it to the committee table to share with other members. She also addressed the issue of “ex parte” communication, defined as conversations with any parties with interest in a pending petition that takes place outside the decision-making arena. She said that here also each Alderman has to deal with the circumstances in which such communication can arise, but that the fundamental responsibility was to disclose all such conversations to the Committee and/or the Board

Ms. Young noted that the former Chair’s policy was not to have any conversations with petitioners or their representatives outside of Committee meetings. Ald. Samuelson explained that it was her policy not to discuss a petition before the hearing, but once the hearing was closed she made herself available to both petitioners and constituents. Ald. Mansfield noted that former Ald. Lipsitt made a practice of visiting every site before the public hearing, and suggested that this could be a possible occasion for ex parte communication. He added that in other situations where he has worked as a municipal planner, decision-making boards often schedule group site visits within the public hearing and post them under the open meeting law, which avoids the ex parte problem and gives all members the same “view.”

Ald. Vance raised the question of the rationale for closing the public hearing on its first night, which has long been the practice of this Committee, suggesting that not to do so universally could ease the problem of ex parte communication and facilitate the acceptance of new information which is often required to reach an informed decision. Ms. Young explained that information that is submitted during the working session is included in the public record, and that is legally acceptable. She noted that only the oral testimony has been considered concluded after the first night of the hearing.

Ms. Young also reviewed the specific circumstances under which special permits are requested: non-conforming uses under Sec. 30-21(b) of the Zoning Ordinances; permissive uses under Sec. 30-24; and site plan approval under Sec. 30-23. She discussed the criteria for finding that the public convenience and welfare have been served, and stressed that these criteria are different from expediency. She explained that special permits run with the land, not the petitioner or the owner. The Committee also discussed the format of the special permit Board Order with Ms. Young and raised the question of whether these Board Orders should less resemble our legislative Board Orders and instead be structured more like administrative decisions. Finally, Ms. Young explained the “clocks” that control special permit actions, and related these timing issues to the procedural measures available to the Board such as the Charter objection and reconsideration.

Mr. Kruse then continued with the orientation, introducing his Planning Department staff members and explaining the nature of the work they do on special permit applications, both before the application is filed and during its review. The Chair and Ald. Baker both had raised the suggestion of more intensive pre-application meetings between petitioners and staff, and Mr. Kruse explained that it was his policy to encourage these, but nothing in the law or our rules requires such meetings. He also explained that it was not always possible to involve other departments in such meetings. He suggested that if the Board

desired such a policy, then it should be incorporated in adopted rules and regulations. He explained the filing process for special permit petitions, and the preparation of the Planning Department report.

Ald. Fischman asked if this report could be filed earlier than the Friday before the public hearing is to open, or alternatively, again questioned whether it would be good policy to leave the hearing open so that the issues raised in the report could be more completely addressed in a public forum. Another means to this end, he suggested, would be allow a comment period at the working sessions. Ald. Harney and Salvucci agreed that some better way to incorporate new information into the process was worth exploring. Ald. Samuelson disagreed, although she did support a Committee-arranged site visit that could be announced during the public hearing.

Ald Salvucci asked for an explanation of the process by which “consistency rulings” are made on special permit decisions. Ms. Young explained that the Inspectional Services Commissioner has the authority to make such rulings, when certain conditions arise in the execution of a permit that appear not to match exactly either the plans or the conditions that were approved by the Board. The Commissioner has made it his practice to ask for input from the Land Use Committee at a working session before he issues such a ruling, but the Committee is not asked to vote on the matter.

The Committee then continued discussion of the steps involved in making sure an application for a special permit was thoroughly reviewed by staff in advance and was ready for filing and assignment for a public hearing. Ald. Baker suggested that the Chair ought to have the authority to recommend that hearings be scheduled by the Board in a logical sequence (within the 65 days of filing as required by State law), not simply on a first-come, first-served basis as has been done in the past. Ald. Fischman focused the discussion on the scoping process and the need for consistent internal review for major or controversial petitions, so that they are more likely to be complete before a public hearing is opened. A list of possible questions about these procedures is attached to this report. This discussion led to the consideration of the following docket items:

#267-02 ALD. BASHAM requesting creation of rules for Board of Aldermen acting as Special Permit Granting Authority

ACTION: Held 7-0.

#267-02(2) LAND USE COMMITTEE recommending that the Rules and Orders of the Board of Aldermen be amended by adding to ARTICLE I. Section 3. Referral of business to Committees. to (1) To the Committee on Land Use. a new subsection (c) that will require all applications for special permits and site plan approvals be stamped and initialed by the Department of Planning and Development prior to filing with the City Clerk.
PROGRAMS & SERVICES APPROVED 6-0-1 (Coletti abstaining)
1/7/04)

ACTION: Approved 7-0.

NOTE: Ms. Young explained that former Ald. Basham's original item was never acted upon by the previous committee but that she believed that there should be rules in place that at least define the elements of a complete special permit application, if not also rules that would guide the procedures and policies of the Committee. Ald. Mansfield agreed, noting that is very common and generally recommended that rules and regulations be adopted by a special permit granting authority that control the application, the review, the hearing and the form of the decision. One advantage to having this guidance in rules rather than in the ordinance is that more stringent rules may be waived on a case-by-case basis by the special permit granting authority when circumstances (such as a minor petition) do not warrant their application. At the Chair's request, Ms. Young had drafted an "interim" rules change that would designate to an administrator the determination of when an application was deemed to be complete and ready for filing. She drafted this rule to refer only to those criteria for an application that are already contained in the Zoning Ordinances, although additional criteria could be drafted within the rules themselves at a later time. This, she explained, is the legally defensible and expedient means to allow the Planning Department the authority to determine when an application is complete, without changing any of the requirements that petitioners have always had to meet.

Mr. Kruse explained that, although his department has long had a policy of "stamping" plans as complete before filing, he has had no authority from the Board under which to withhold that stamp. Ald. Fischman asked whether this proposed rule would delay petitioners and complicate the review process, but Mr. Kruse replied that as long as the requirements were made clear to petitioners in advance, which his department staff would do, there should be no delays and the process could become clearer and more equitable.

Ald. Salvucci moved approval of the proposed rules change, and it was approved unanimously.

A copy of the proposed rule is attached to this report.

The meeting was adjourned at 10:16 p.m.

Respectfully submitted,

George E. Mansfield, Chairman