

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MAY 4, 2004

Present: Ald. Mansfield (Chairman), Ald. Salvucci, Merrill, Vance, Albright, Samuelson, Fischman, and Harney; also present: Ald. Hess-Mahan and Baker

City staff: Mike Kruse, Director of Planning & Development; Nancy Radzevich, Chief Planner; Ouida Young, Associate City Solicitor; Linda Finucane, Chief Committee Clerk

REQUEST FOR WITHDRAWAL WITHOUT PREJUDICE:

#150-04 TEE GEE, LLC/DAVID W.S. CLAY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install a free-standing sign at 451 WATERTOWN STREET, Ward 1, NONANTUM, on land known as Sec 14, Blk8, Lot 8, containing approximately 42,364 sf of land in a district zoned BUSINESS 2. Ref: Sec 30-24, 30-23, 30-20(1) of the City of Newton Rev Zoning Ord, 2001.

ACTION: WITHDRAWAL WITHOUT PREJUDICE APPROVED 7-0 (Harney not voting)

#151-04 OMNIPOINT HOLDINGS, INC. (WHOLLY-OWNED SUBSIDIARY OF T-MOBILE USA, INC.)/TRINITY PARISH OF NEWTON CENTRE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to install wireless communication equipment consisting of three 72"x12"x4" panel antennae within a new 30"x30"x10' fiberglass chimney at 1097 CENTRE STREET, Ward 6, NEWTON CENTRE, on land known as Sec 64, Blk 41, Lot 6, containing approximately 22,000 sf of land in a district zoned SINGLE-RESIDENCE 2. Ref: Sec. 30-18(A), (e)(2), (e)(10) and 30-21(b) of the City of Newton Rev Zoning Ord, 2001.

ACTION: APPROVED 8-0

NOTE: The petitioners propose to install three exterior, roof-mounted antennae inside a faux chimney at Trinity Episcopal Church, which is bounded by Centre Street, Homer Street, and Furber Lane in Newton Centre. The petitioners need a special permit because the church is within a Single-Residence 2 zoning district. They also require an extension of a non-conforming structure because the setback of the existing structure from Homer Street and Furber Lane, on which the antennae and outside condenser will be located, is nonconforming. At the public hearing on April 13, one person spoke in opposition; however, the comments related to parking on Furber Lane and commercialization of the neighborhood in general, not the special permit.

The faux chimney will be fiberglass. Originally proposed to be ten feet high, it has been reduced to a maximum of five feet and maximum width of 30 inches, consistent with the two

existing chimneys between which it will be located. It will be painted to match those chimneys. The Historical Commission reviewed and approved the design on March 29, 2004.

The condenser will be situated at the rear corner of the church facing Homer Street, and will be screened with existing shrubs. It will not be adjacent to Furber Lane, as originally proposed. The base transceiver station will be housed in the basement. The committee was satisfied with the report from the petitioners' acoustical engineer concerning the noise level emanating from the condenser. Typical ambient urban night noise is 37 dB(A), the level will increase to 37.4, an amount unnoticeable to the human ear.

Ald. Samuelson noted that financial arrangements of this type help older buildings needing extensive physical plant upkeep to remain viable. She moved approval, finding the extended non-conformity not substantially more detrimental as there is no major encroachment into the existing non-conforming setback. Public convenience and welfare will be served because there is limited impact on abutters; the noise level meets the standards of the "Noise Ordinance;" the antennae are camouflaged in the faux chimney approved by the Historical Commission; and, it accommodates communication needs and improves service.

The motion was approved 8-0 with the following conditions agreed upon by the committee:

- The special permit shall be limited to the use of Omnipoint or its successor, and shall not be transferable.
- The petitioner shall submit material samples and colors of the faux chimney to the director of Planning & Development for review and approval, consistent with the Historical Commission approval of March 29, 2004.
- The equipment and facility will be kept in good appearance and in good operating order at all times.
- If the wireless communication ceases, the petitioner(s) shall be responsible for the removal of said equipment per Section 30-18A(c)(2).
- If new technological changes permit smaller or internal equipment Omnipoint or its successor shall take advantage of such changes and replace the equipment approved herein to the extent feasible at this location, and approval for such replacement shall not be unreasonably withheld by the property owner of 1097 Centre Street

REFERRED TO PROGRAMS & SERVICES AND LAND USE COMMITTEES

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

ACTION: APPROVED 6-2 (Salvucci and Samuelson opposed)

NOTE: The Committee reviewed a revised draft of the procedural rules for special permit filing and review that had been considered at prior meetings, and the Chair noted that this draft was prepared with assistance from the Planning and Law Departments specifically to respond to questions and concerns raised by the Newton Land Use Bar Association during the Committee's last discussion of this item on April 13, 2004. The Chair also suggested dividing the item so that the concerns raised by the land use attorneys about ex parte communication and professional

standards of conduct could be considered apart from the procedural rules. Aldermen Fischman, Vance and Baker voiced support for this division, and Ald. Vance proposed that it be docketed as a (2) item. Chairman Mansfield suggested further that it be under the Land Use Committee's title, since no one could be sure that former Ald. Basham would have intended to file this related item. Ald. Fischman suggested that in a discussion of such communication, the Committee should explore how other jurisdictions handle it. In some instances, he reported, there is total separation between the public, the petitioner and the special permit granting authority.

Returning to the main item, Mr. Kruse explained the overall basis for the proposed rules. He said that, in general, only about 15-20% of the smaller project applicants file the necessary information sufficiently before filing to allow for adequate review. For the larger projects, the problem is more with the coordination of the in-house interdepartmental review process. He believes these rules will serve as guidelines and incentives to address both problems. Ald. Samuelson reiterated her previous position that a rules revision is not necessary to address these problems. She said that some of the problems are in the Board's perception of the process, and are not flaws in the process itself. She also suggested that the process would be improved if the Board were advised earlier of discussions the Planning Department might be having with potential applicants. But Mr. Kruse warned that some applicants would not talk with his department early in the process if they know their discussions were going to be broadcast widely.

Ald. Vance raised some questions about the proposed fall "blackout" period, but admitted that he was somewhat relieved by the waiver provision proposed. Ald. Harney asked whether anything in Sec. 5 could violate the provisions of Chap. 40A. Ms. Young replied that she had reviewed court decisions and found nothing that violated the statute, but admitted there was no case law on this subject. She added that such blackout period are consistent with other actions of the City, citing the ZBA's rules that don't allow applications during certain periods, and the general validation of zoning moratoria that are legal while related planning and review activities are proceeding. Ms. Young also suggested shortening the fall blackout period, allowing hearings to be scheduled in October, but not in November. Ald. Baker agreed with this change. The Committee also discussed the preferable form a waiver provision from the blackout restrictions might take, and at the suggestion of former Ald. Lipsitt, reached consensus on a procedure that would employ the Board's standard procedure for the suspension of the rules.

The Committee next reviewed the Planning Director's draft criteria for defining a Major Project. Ald. Fischman suggested a shorter list of criteria, and felt it should be similar to the MEPA thresholds. Mr. Kruse said he developed the traffic limits in conjunction with Clint Schuckel, but some members thought the thresholds might be too low. Mr. Kruse agreed to reconsider and refine these criteria, noting that they are not part of the rules themselves, but that the rules require him to consult with the Committee on their development and revision. If the Board adopts the rules, he will continue to consult with the Committee on these guidelines.

Attorney Peter Harrington noted that he supported rules in general, observing that they are good for the law profession. He added that large developers don't generally care what the rules are, but they want to know the rules. Smaller applicants are more likely to be concerned with the rules' specifics, he said. For those reasons, he suggested, the criteria for major projects and the Planning Department checklist should be incorporated into the rules.

Ms. Lipsitt observed that the draft rules have come a long way from their first incarnation, but she was still concerned that for major projects there might be pressure on the Planning Department from outside the Board to block a petition from going forward using these rules. One way to discourage that, Ald. Samuelson suggested, would be for the Board to know what the Department is reviewing. Mr. Kruse agreed that he would keep a development log and inform the Land use Committee of proposals before the Department after they have gone through the scoping session.

Ald. Samuelson also agreed that she liked the direction the discussion has followed, and was supportive of the development team scoping session. But she was not comfortable with increasing the gate-keeping responsibilities of the Planning Department. She noted that they are already too busy, that they should plan, not administer, and the responsibility for gate keeping should be with the Committee. Ald. Salvucci agreed, saying that the Committee does not need rules. But Ald. Baker proposed that these rules are designed to empower the Committee. Ald. Vance said that such rules do not give away the ultimate authority of the Board of Aldermen to control the gate, but are designed to allow the Planning Department to give the Board the best possible assistance in that function. Ald. Harney suggested that the Board is still the gatekeeper, but with these rules, the Planning Department can give petitioners complete and accurate directions to get to the gate. Ald. Salvucci responded that the petitioners' lawyers know what the Board wants and don't need directions. Ald. Merrill suggested that the directions should be called policies, not rules.

Ald Vance moved approval of the item, with the revisions to the draft that had been suggested in the discussion and with the expectation that there would be another draft of the major project criteria for Committee consideration. The motion was approved, 6-2, Ald. Samuelson and Salvucci, nay.

The meeting was adjourned at 10:23 p.m.

Respectfully submitted,

George Mansfield, Chair