

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

TUESDAY, OCTOBER 22, 2013

Present: Ald. Johnson (Chairman), Danberg, Baker, Kalis, Yates, Lennon and Sangiolo

Absent: Ald. Swiston

Also Present: Ald. Schwartz and Harney

Others Present: Dori Zaleznik (Commissioner, Health and Human Services), John Lojek (Commissioner, Inspectional Services), Maura O'Keefe (Assistant City Solicitor), James Freas (Chief Planner, Long Range Planning), Rob Muollo (Housing Planner), Amanda Stout (Senior Planner), Phil Herr, Karyn Dean (Committee Clerk)

#309-13      DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton. [09/11/13 @ 4:12PM]

**ACTION:**      **HELD 7-0**

**NOTE:** There were some outstanding questions from the last discussion of this item. Ald. Johnson asked that these be addressed first.

Ald. Baker explained that he spoke to a representative of the Massachusetts Municipal Association (MMA) and asked if they had any information regarding marijuana issues. The information that was provided was aimed at secondary use issues and not medical use issues and siting of dispensaries. He was concerned about the Newton Police involvement in the discussion of the issue. Commissioner Zaleznik explained that Captain Mintz is a member of the working group and is fully informed. It is no longer a felony to possess up to an ounce of marijuana and Commissioner Zaleznik said that for states that have legalized medical marijuana, no one is being prosecuted if they have a prescription. Ald. Baker said there has been a concern of prescription re-sale. James Freas explained that the state regulations are designed to eliminate the ability of the marijuana product to be available to anyone other than those who are licensed and authorized to sell it and those with a prescription to possess it. Otherwise, it is illegal to sell or possess the product. Ald. Baker would like the Committee to look at what MMA has collected on the issue. Ald. Baker provided a sample regulation from MMA to the Planning and Law Departments.

Ald. Baker had also asked about using the 1000-foot buffer as opposed to the 500-foot buffer. Mr. Freas explained that Cambridge has made a provision to allow a less than 500-foot buffer under certain circumstances and Brookline is adopting the 500-foot buffer except for daycare centers for which there is no buffer zone except that the facility cannot be located in the same

building. Mr. Freas noted that the map that has been provided show the buffer zones from the center of a site when in fact the buffer zones would be measured from the edge of a property line to the edge of the property line in question. Some Committee members proposed using the 1000-foot buffer zone in order to provide a level of comfort to the residents of the City. Others felt the 500-foot buffer was sufficient. Commissioner Zaleznik noted that by using the special permit process, a specific site can be analyzed for suitability and all these factors can be taken into consideration. Any applicant would have to provide a context map to show the area 1000 feet around the site and this would also provide information needed to make a special permit determination.

It was noted that DPH is authorized to increase or modify the number of RMDs in a future year if they determine the existing number is insufficient to meet patient needs. In the initial phase, however, DPH is authorizing only 35 in the state.

#### Ordinance Comments

- Mr. Freas noted that the language in the draft ordinance is carried forward from the state regulations. The term which includes where “children commonly congregate” was used by the state as a broad term because it is difficult to pre-identify every such place where that may occur. This will be open to interpretation in the special permit process, and the context map, which was mentioned earlier, will assist in this determination. Some Committee members thought a more precise definition would be helpful as there are no other instances in the ordinance where this term is defined. The Committee decided to leave the language as is on this issue.
- The definition of *Marijuana Dispensary, Registered*, was added in the moratorium item which was approved by the Board on October 21, 2013.
- The Committee felt that Business 2 and Business 5 zones were good choices for this use. The proximity to highways and public transportation make these ideal. Mixed Use 1 is office park types of locations but there are also many teaching facilities for children in these areas (such as gyms, dance schools, etc.). There is some potential there, however, so the Committee decided to leave this zone in as well.
- There was a concern about the cultivation of marijuana. There is an exemption in Chapter 3 of the General Laws for agricultural uses and the City does not have the ability to control those by special permit. Mr. Freas said the cultivation of marijuana use was exempted from that statute. Assistant City Solicitor, Maura O’Keefe added that aside from that, there has to be more than 5 acres of a crop for it to be considered agricultural.
- The general feeling was that the 1000-foot buffer did not make much of a difference in terms of locations, but could possibly limit the discretionary process unnecessarily. The overriding sentiment of the Committee was for a 500-foot buffer as opposed to a 1000-foot buffer.

- There was discussion about excluding the Houses of Worship provision, but the Committee decided to leave that in. There are often religious classes for children at these facilities and it may make residents feel more protected to keep this provision in the ordinance. It also does not seem to negatively affect the zones that have been proposed.
- The Committee wanted to know how the City would know if DPH revoked a RMDs license. Commissioner Zaleznik said she would look into that question. She noted that DPH has questions and answers on their website and that might be a good resource for general questions.
- The Committee asked if there were any dimensional requirements that needed to be in the ordinance. Commissioner Zaleznik said that when DPH reviews the applications in Phase 2, they will determine whether or not a site is of sufficient size for the purpose(s) proposed. She did not feel anything needed to be spelled out in the ordinance. Commissioner Lojek said the structure must follow all zoning regulations, as any other business would.
- Each site is required to identify their anticipated service area and anticipated client. They do not want anyone producing more product than they are distributing. With this information, the parking requirements will become more apparent. Ald. Baker asked for a base criteria for the parking requirements that could be modified in the special permit.
- The Committee would like references to compliance with the sign, light, noise and tree ordinances. The state regulations have landscaping restrictions.
- Hours of operation can be a condition of the special permit and it was suggested that it could be spelled out in the minimum criteria and part of the application review process.
- It was suggested that Bill Paille should be consulted on any transportation study so that the Land Use Committee has all the relevant information when it comes to the special permit process.
- There was a suggestion to add that there could be relief from the 500-foot buffer if the facility is sufficiently buffered as to not adversely impact any surrounding uses. This is being used in some of the surrounding community's regulations.
- The Committee wondered if the word "children" or "minors" should be used in the ordinance. They will take this under consideration. All other communities and the state regulations use the term "children" only.
- The Committee felt that the special permit criteria should be spelled out in the ordinance.

- On the question of traffic, the term being used is “substantial” adverse impact on the surrounding area and that seems like a higher than usual standard. The Committee felt that “significant” would be preferable.
- It was asked if the reference in the ordinance should be persons with “disability”, or “disabilities”. Commissioner Lojek said “disabilities” would be appropriate.
- It was requested that language regarding monitoring by law enforcement include other code enforcement personnel.

Ald. Johnson asked that the comments and edits be incorporated into the draft ordinance for the October 28<sup>th</sup> meeting. Ald. Baker also asked that the Planning and Law Departments look at the MMA materials he provided. A public hearing for this item will be scheduled for November 13, 2013. The Committee voted to hold this item.

#295-13      ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by deleting paragraph (11) *Hotels* in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing. [08/26/13 @ 12:30PM]

**ACTION:**      **HELD 7-0**

**NOTE:** The Planning Department memo explained that no new hotels have been proposed in Newton since the adoption of the Inclusionary Zoning ordinance in 1977. This requires a hotel developer to pay the City a “housing affordability” fee equal to 10% of the valuation of any new hotel room created. The Economic Development Commission (EDC) met jointly with the Newton Housing Partnership (NHP) on this issue and found that no parallel provisions exist in other communities in Massachusetts. Since no new hotels have been built and no new guest rooms have been added anywhere in the City, there have been no gains in either hotels or affordable housing. The EDC and the NHP find the ordinance unfair as it singles out hotels alone to be subject to this fee and it sends a negative message to the business community. Deletion of this section is being recommended.

This item will be scheduled for a public hearing on November 13, 2013. The Committee voted to hold this item.

#64-12      ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities. [03-14-12 @8:54AM]

**ACTION:**      **HELD 7-0**

**NOTE:** Amanda Stout, Senior Planner, addressed the Committee. The Newton Fair Housing Committee revised their guidelines relative to resident preference provisions in 2010 and 2012. This amendment will bring the ordinances up-to-date with those revisions. (Please see attached

draft ordinance). There are minor changes which state that when a development results in displacement, preference is given to those qualified displaced persons. In addition, it also states that if a development has features that are designed to be accessible to persons with disabilities, the recommendation is that first preference goes to people who are both displaced and who need those accessible features. The smaller edits add a “bona fide offer of employment in Newton” clause which mirrors the current ordinance but was left out in error, and the items about “priority” and “lottery” refer to the state housing inventory. This is the language typically used when giving priority.

Rob Muollo, Housing Planner, explained that there is a general pool and local preference pool within the lottery. Individuals or households that are identified would be entered in, and pulled from both pools. They are then itemized in a list and based on their preference they are ranked. For all of these affordable units, there will be a lottery with preferences made within that lottery. The trigger for a lottery is more than one applicant for each unit and that is the typical situation. For clarity, the Committee asked that the language state that preference shall be given for qualified applicants “in the following order”, instead of “as follows”. They felt it was unclear whether these different preferences were ranked in order, or equal. Phil Herr explained that this is no different than what has been in place for many, many years. He suggested dropping v)(c) and vi)(e) completely as they are unnecessarily descriptive.

The recommended changes will be incorporate into the draft ordinance. This item will be scheduled for a public hearing on November 13, 2013. The Committee voted to hold this item.

Respectfully Submitted,

Marcia T. Johnson

**PROPOSED TEXT AMENDMENT**

1. The proposed language recommends deletion of 30-24(f)(8)(b)(v) and (vi) and replacing it with the new text:

- ~~v) Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.~~
- ~~vi) Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants."~~

- v) Preference shall be given for qualified applicants as follows:
  - a) Where a development results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference shall be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project.
  - b) Following that, preference shall be given to any other qualified applicants who fall within any of the following equally weighted categories: (1) Individuals or families who live in Newton; (2) Households with a family member who works in Newton or has been hired to work in Newton **or has a bona fide offer of employment in Newton**; and (3) Households with a family member who attends public school in Newton.
  - c) Following that, **preference priority** shall be given to other qualified applicants **by lottery**.
- vi) Preferences for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall be given for qualified applicants as follows.
  - a) First preference for initial occupancy shall be given to applicants who are displaced as a result of the project and who need the features of the unit;
  - b) To households that include a family member needing the features of the unit and having preference under one or more of the three categories listed in 30-24(f)(8)(b)(v)(b);
  - c) To households that include a family member needing the features of the unit but that do not have a preference under one of the three categories listed in 30-24(f)(8)(b)(v)(b);
  - d) To households having preference under one or more of the three categories listed in 30-24(f)(8)(b)(v)(b);
  - e) To other qualified applicants **by lottery**.

**NEXT STEPS**

If the Zoning and Planning Committee agrees with these amendments, staff recommends this or similar language be presented at a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee describe what additional data and analysis it may need to inform its decision-making.