

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JUNE 28, 2010

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

Absent: Ald. Lappin, Lennon, Shapiro and Swiston

Also Present: Ald. Fischman

Planning Board Members: Joyce Moss, Howard Haywood, Leslie Berg, David Banash and Doug Sweet

Others Present: Candace Havens (Interim Director, Planning Dept.), John Lojek (Commissioner, ISD), Marie Lawlor (Assistant City Solicitor), Juris Alksnitis (Planning Dept.), Phil Herr, Karyn Dean (Committee Clerk)

#142-09(3) ZONING & PLANNING COMMITTEE proposing that subsection 30-15(u) of Chapter 30 relative to floor area ratio, as established by Ordinance Z-51, dated August 10, 2009, be amended by extending the provisions of paragraph nos. 1. 2. and 3. from July 30, 2010 to October 31, 2010. [05/11/10 @ 10:10 AM]

ACTION: **PUBLIC HEARING CLOSED**
ITEM APPROVED AS AMENDED 4-0 TO 12/31/10

NOTE: This item seeks to extend the sunset dates pertaining to the FAR “bonus” measures contained in subsection 30-15(u) to December 31, 2010 as advertised in the legal notice for the public hearing. (Public hearing notice is attached.) This would allow further review of the utility of these provisions. Candace Havens, Interim Director of Planning, said she supports the time extension. She has suggested the Inspectional Services Department (ISD) flag building permits and cases which are reviewed for additional FAR under these bonus measures. This would allow ISD to prove a report to the Board with information such as the frequency of these bonus cases including location, zone, type of residence, and type of FAR relief, along with the amount of additional gross floor area declined or granted and the character of the work involved.

Ms. Havens also pointed out that the FAR Working Group recommended that the City undertake a data gathering period during which FAR calculations are done on upcoming building permits utilizing two methods in tandem: the current system and the proposed system. This would allow for a report of the comparison of the two and the impact any new approach might have.

Ald. Johnson opened the public hearing and there were no comments. She closed the hearing and the Committee voted to extend the provisions through December 31, 2010.

#93-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 30-27** of the City of Newton Ordinances governing membership of the Zoning Board of Appeals by providing selection criteria guidance and process so that the level of expertise in related areas, or the equivalent combination of experience and/or education is present in order to enhance the ability of the Board to increase its level of service to Newton. [03/26/10 @ 12:31 PM]

PUBLIC HEARING CLOSED

NOTE: The public hearing notice for this item is attached as it has language that varies from the docket item. Ald. Sangiolo explained that there were two reasons this item was docketed. There had been some discussion in the past about perhaps transferring special permit granting authority to the Zoning Board of Appeals (ZBA). Requiring some specific expertise on the ZBA may be a way to allow the Board to feel more comfortable in relinquishing that authority. It may also give added confidence to the public that the decisions for special permits were being granted by non-elected, rather than elected officials, if there were some guidelines in place. Ald. Sangiolo also explained that the Mayor's office was looking for some guidance in the selection process for the various Boards and Commissions. Ald. Sangiolo and Johnson felt that the responsibilities and authority of the ZBA made it an ideal candidate for some guidelines.

Ms. Havens said that the proposed language for this item has evolved from very restrictive to less restrictive based on discussions in Committee. The Planning Dept. is recommending that 2-3 positions reflect a broader group of knowledge areas and can work well together. The other recommendation is that the members be appointed with broad discretion of the Mayor in conjunction with an established process. This process would include various methods of outreach, a description of the responsibilities and mandates of each board, a job description for board members, establishment of relevant qualifications for board members from ordinance and by policy, establishment of guidelines for the mix of background, experience, training, geographic representation and diversity desired for each board, implementation of a recruiting, intake, screening, vetting and approval sequence which results in the appointment of highly qualified and well-suited candidates.

Ald. Johnson opened the public hearing.

Phil Herr addressed the Committee. He said that the Planning Department report was excellent and the recommendations seem to imply a work in progress which he supports. He does not think that creating an ordinance is necessary to provide guidance to the Mayor, however. Mr. Herr provided a document which lists the ownership and dwelling type of the ZBA members and the Planning & Development Board members. It is attached to this report. He suggests that perhaps this is an area that should be looked at in terms of diversity of membership.

David Banash, Planning & Development Board member, addressed the Committee. He asked Ms. Havens if she had considered the memorandum the Planning Board provided when preparing the Planning Dept. memorandum on this item. Mr. Banash restated the

reasons the Planning & Development Board opposed the proposed changes. Please see the attached memo for the details. He said the same issues apply for the ZBA. He also said the board did not think that an ordinance was the proper method to impose any regulations. Mr. Banash also felt that having a housing expert would be helpful with Comprehensive Permits. Ald. Sangiolo said she spoke to a member of the ZBA and in the last 5 years or so, the ZBA dealt with only 3 Comprehensive Permits, and that member did not feel that type of expertise was required.

Ms. Havens said they did take the Planning Board's memo into consideration and the final language has not yet been decided. They have moved from very restrictive to less restrictive language and they are hoping to find a suitable middle ground. Mr. Banash said the Planning Board recommended more than just fine tuning the language. It recommended reconstituting the whole idea into regulations and guidelines instead of an ordinance change. He also wondered what would happen if they were unable to fully staff the board, and therefore, have members that meet all the requirements. Would that invalidate any decisions made by the Board?

Ald. Johnson closed the public hearing and the Committee entered into a working session.

Ald. Johnson said that the appointment process has been a political process and the same members get re-appointed over and over. The new Mayor is looking for some guidance to change the process in general to reach out to the community and to find the most qualified members. She reminded the Committee that at she would be working on a job description and process for these Boards.

Commissioner Lojek said he believes that any board that makes major decisions such as the ZBA should have baseline qualifications for at least some of its members. The work of the board can be quite complex and the members need to understand the various aspects of it. Ms. Moss said she has seen that the process of membership generally sorts itself out naturally. She has not seen anyone apply for these positions that do not have a deep interest or experience in the appropriate areas.

Ald. Fischman said that there needed to be some care in terms of conflict of interests. People with expertise in these areas may be involved in business and projects in Newton which could interfere with their responsibilities on the ZBA. He felt the most important thing was finding a group that worked well together and worked diligently. Ald. Sangiolo noted that she met with a member of the ZBA who said the most important quality for a board member was demonstrated leadership and sound judgment. Ald. Baker agreed. He also said it was important to consider the people looking for zoning relief as well as the people affected by the zoning relief. He said there needs to be consideration for both perspectives.

Ald. Yates said he would like his proposed language which is less restrictive, considered as well:

“The members of the Board shall so far as practicable be selected to provide expertise in the fields of real estate/land use, law, city planning, community development/human services, architecture/engineering and so far as practicable be selected to provide representation of as many wards as possible.”

Follow Up

Ald. Johnson will work on the job description and documentation for process for the chairs of the ZBA and the Planning Board to look at. She will bring this item back to Committee in the fall.

The Planning Board members excused themselves to deliberate the public hearing items. They are required to provide their report within 20 days. It was not received at the time of this report.

#152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
HELD 4-0

NOTE: Ald. Baker explained that Boston College is applying for site plan review for Stokes Common which is a new project on College Road. This raised the question of what kinds of rules apply to institutions in terms of parking. This particular kind of situation is governed in part by a case that went through the Board of Aldermen initially and then through Land Court ten years ago. The court said that the parking requirements that the city applied to the college were not reasonable and the kind of credit for multiple uses that the Planning Dept. attempted to use were not going to be applicable to the college. The court did say that the college had not taken into consideration the desirability of the building and that people in the parking garage would stay longer thus affecting turnover.

Current Ordinance

The Newton ordinance currently states that there needs to be 1 space for every 5 residents in a dormitory. For other kinds of facilities at a university, however, the standard is generally 1 space for every 3 employees, or parking spaces based on seats for places of assembly. It is not built around a performance standard. It seems to him that the City does not have an effective regulation for institutional uses for parking and should be remedied. He understands that this would not affect the current project at Boston College but he would like to look to the future.

New Approach

Ald. Baker said he tried to draft an amendment to the ordinance that conformed to what the court said – basically that there should be some arrangement that would give credit

for multiple uses but also take into account extent of stay. However, he found it still did not have a planning rationale underneath it. Ms. Havens said there might be some work going on around the country from which they might be able to take some guidance. Ald. Baker also questions whether the Board has a role under the special permit process through the parking waiver. If the goal is to make this ordinance like other regulations in the city, they would choose some mechanism for choosing an objective number and then use a waiver provision to adjust that with good cause. The other way to handle this would be to use a performance standard model which would say that each campus would have different needs and aspects and should take into account each circumstance in determining number of spaces. In cases where an institution has more than one campus, perhaps in different cities or towns, the location of the spaces would have to be taken into account as well. For some neighborhoods, the local side streets are more convenient than the provided parking areas and this causes problems for the neighbors.

Ald. Baker mentioned that state law relating to educational institutions says that one thing that can be regulated is parking. There was a case that involved Radcliffe and Cambridge imposed a parking requirement. Harvard opposed the requirement but the court said parking was an educational use and the city was allowed to allocate educational uses in different ways. He suggested looking back at that case.

Possible Restrictions

Ald. Yates felt that there need not be many spaces for student parking during the day. Most students live on campus or nearby and could walk, use public transportation or the campus bus system. Employees and faculty would require all day parking for the most part. He said it should be the responsibility of the institution to provide adequate transportation from dorms to campus and all points on campus. He also suggested the institution provide incentives for employees to bring fewer cars to campus.

Ald. Sangiolo said there is a problem at Lasell College as well. Students are parking and then driving to their next destination on campus instead of walking. Overnight guest parking is also a problem. She isn't sure how this can be managed because a parking ban on a street would also apply to the residents.

City Property

Ald. Johnson said there have been issues at Newton North High School regarding parking. The neighbors are having problems with this and she feels the City is not doing anything to help them. She feels that the City should not be able to exempt itself from ordinances when it negatively impacts the residents. She will not support something that will allow the City to continue to abuse residents who are near City property but requires the private institutions to provide protections.

Planning Department Response

Ms. Havens said she has seen some examples for other institutions around the country. She found that there was not a standard imported for individual uses. Existing conditions were looked at and managed as in a mixed used district. She did see a performance standard model wherein a particular situation was studied and the variables analyzed.

She could not find a model whereby a particular number was chosen based on number of students or residents. She thought they could look at universities across the country to find out how they have done things but each campus is so very different, it may not be applicable. They could also target some goals for parking for campuses. For example, they may want to support more sustainable campuses and encourage fewer cars coming to campus. Or they could do a study on an institution here in the city and try to apply some requirements based on the analysis of the variables.

Ald. Baker said he would work with Ms. Havens and come back to the Committee with this item in the fall. The Committee voted to hold this item.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#184-10 **HIS HONOR THE MAYOR** requesting authorization to eliminate the part time Chief Zoning Code Official and the part time Principal Planner positions (19 hours each) and to create a full time (37.5 hours) Chief Zoning Code Official position, which salary will be absorbed in the existing FY2011 Planning Department budget, although there may need to be additional funding for benefits. [6/14/10 @ 6:20PM]

APPROVED 3-0-1 (Ald. Sangiolo abstaining)

NOTE: Ms. Havens explained that Jen Molinsky had held the Principal Planner 19 hour position and Juris Alksnitis is now temporarily filling that position. They have been interviewing for the Principal Planner position and they have found a wonderful candidate who would like to work full time. They would like to put both positions back into one full time position. No further funds are necessary for benefits. The Zoning Code Official will move into the position that Ms. Havens had occupied.

The Committee voted to approve this item.

Motion to adjourn.

Respectfully Submitted,

Marcia Johnson, Chairman

CITY OF NEWTON
PUBLIC HEARING NOTICE
FOR
MONDAY, JUNE 28, 2010

A Public Hearing will be held on Monday, June 28, 2010 at 7:45 PM, second floor, NEWTON CITY HALL before the ZONING & PLANNING COMMITTEE and the PLANNING & DEVELOPMENT BOARD, for the purpose of hearing the following petitions, at which time all interested parties shall be heard. Complete text for these items is on file in the office of the Clerk of the Board of Aldermen, first floor, Newton City Hall and on the City's website at www.ci.newton.ma.us under Board of Aldermen/Committees/Zoning & Planning/2010.

Notice will be published Monday, June 14 and Monday, June 21, 2010 in the NEWS TRIBUNE and Wednesday, June 23, 2010 in the NEWTON TAB, with a copy of said notice posted in a conspicuous place at Newton City Hall.

- #142-09(3) ZONING & PLANNING COMMITTEE proposing that **subsection 30-15(u) of Chapter 30** relative to floor area ratio, as established by Ordinance Z-51, dated August 10, 2009, be amended by extending the provisions of paragraph nos. 1. 2. and 3. from July 30, 2010 up to December 31, 2010.
- #93-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 30-27** of the City of Newton Ordinances governing membership of the Zoning Board of Appeals by providing selection criteria guidance as follows: Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development and at least one citizen who has expertise or demonstrated interest in professional design/engineering and at least one citizen who has experience with or demonstrated interest in the zoning process in Newton.

ADDENDUM June 27, 2010

Based upon member names as listed on the City Website today, residences as found in the Verizon Phonebook, and ownership and dwelling type as listed on the Assessor's database this date, here is the diversity of residences among board members. Based upon both Assessor's and US Census data, approximately half of Newton's dwelling units are owner-occupied single-family dwellings.

Zoning Board of Appeals members (data for 4, 1 missing):

Own.....	4
Rent.....	0
Single-family detached dwelling	4
Other dwelling type.....	0

Zoning Board of Appeals Associate members (data for all 5):

Own	5
Rent.....	0
Single-family detached dwelling	5
Other dwelling type.....	0

Planning Board members (data for 5, 1 missing):

Own	5
Rent.....	0
Single-family detached dwelling	5
Other dwelling type.....	0

Planning Board Alternate members (data for both)

Own	1
Rent.....	1
Single-family detached dwelling	0
Other dwelling type.....	2

Total

Own	15
Rent.....	1
Single-family detached dwelling	14
Other dwelling type.....	2

Phil Herr

MEMORANDUM

TO: ZONING AND PLANNING COMMITTEE OF THE BOARD OF ALDERMAN
FR: PLANNING AND DEVELOPMENT BOARD
RE: 92-10 MEMBERSHIP REQUIREMENT FOR THE PLANNING AND
DEVELOPMENT BOARD

DATE: JUNE 9, 2010

The Planning and Development Board ("Board") discussed the Zoning and Planning Committee's proposed revisions to Section 22-3(a) of the City of Newton Ordinance governing membership of the Board at their June 7, 2010 meeting. The Board voted unanimously to oppose ZAP's proposed change for the following reasons:

- (a) it could be viewed as purporting to encompass the functions of the Board, but does not sufficiently, e.g., it misses the CDBG function;
- (b) it makes the Board's votes suspect to the extent that the Board was then not constituted with the minimums that the proposal mandates;
- (c) the Board is frequently not constituted with such minimums, e.g., at present there is no architect or design person on the Board;
- (d) to the extent that the minimum is satisfied just by appointment of a citizen who has "demonstrated interest" in the topic listed, that standard is too broad to be meaningful; and
- (e) the proposed language is confusing: "zoning" (last line) is subsumed in the topic of "land use" (second line);

The Board further commented that if the point is to give the mayor guidance in his or her selection process, it is a good one, but would be better addressed by a memorandum from the Director of Planning and Development as to the Board's functions and needs as a board at any given time.

The Planning and Development Board respectfully requests that the Zoning and Planning Committee take these reasons for the Board's opposition to the proposed ordinance changes in consideration during the Committee's subsequent discussions on this matter.

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO. Z-

July 12, 2010

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 2007 be and are hereby further amended in respect to Sec. 30-15 Table 1 *Density & Dimensional Controls in Residence Districts and for Residential Use* as follows:

In subsection 30-15(u), as established by Ordinance Z-51, dated August 10, 2009, delete in the last sentences of paragraph nos. 1., 2. and 3. the words “July 30, 2010.” and substitute in place thereof the words “December 31, 2010.”