

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, APRIL 13, 2009

Present: Ald. Yates (Chairman), Ald. Lappin, Baker, Danberg, Swiston, Harney, ad Linsky; absent Ald. Ciccone; other aldermen present: Ald. Johnson  
Also present: David Banash and Scott Wolfe (Planning & Development Board members), Phil Herr (Chairman, Comprehensive Advisory Planning Committee)  
City Staff: Michael Kruse (Director of Planning & Development), Jennifer Molinsky (Principal Planner), Marie Lawlor (Assistant City Solicitor), Linda Finucane (Chief Committee Clerk)

#46-09            DIRECTOR OF PLANNING & DEVELOPMENT recommending that Chapter 30 of the Revised Ordinances of Newton, Massachusetts, 2007, be amended by allowing the board of aldermen to grant a special permit for a Planned Multi-Use Business Development in any Mixed Use 1 District; by adding to Section 30-1, Definitions, a definition for Overlay Zone; by modifying certain minimum criteria and additional special permit criteria for a Planned Multi-Use Business Development in Section 30-15(s), Planned Multi-Use Business Development; by modifying certain density and dimensional requirements for Planned Multi-Use Business Development in Table A of Section 30-15(s), Planned Multi-Use Business Development; by renumbering, in Section 30-11(d), subparagraph (12) as (13) and adding a new subparagraph (12); by renumbering, in Section 30-13(b), subparagraph (16) as (17) and adding a new subparagraph (16); by adding to Section 30-13, Mixed Use Districts, a new subsection 30-13(h), special permits for Planned Multi-Use Business Development; and by adding to Section 30-19(l), Off-Street Loading Requirements, a new subsection 30-19(l)(4) and the table of off-street loading requirements new provisions for buildings containing a mix of commercial and residential uses in a Planned Multi-Use Business Development and included as part of this amendment as Exhibit A.  
*(Public Hearing opened March 23, 2009, continued to April 13)*  
ACTION:            PUBLIC HEARING CONTINUED TO APRIL 27, 2009

#94-08            PLANNING & DEVELOPMENT BOARD, ALD. JOHNSON & LINSKY recommending the deletion of certain provisions and the addition of new provisions to regulate home businesses by amending Section 30-1, Definitions; Section 30-8, Use Regulations for Single Residence Districts; Section 30-8(b) and (c), Special Permits in Single Residence Districts; Section 30-9(b), Special Permits in Multi Residence Districts; Section 30-19(d), Number of Parking Stalls; and Section 30-

20(e), Regulation of Signs in Residence Districts. The proposed amendments would revise or remove specific home occupations in the current definition of home businesses; modify the definition of home business; institute a registration requirement for some home businesses; allow multiple home businesses at the same residence provided that all home businesses combined do not exceed the limitations in the ordinance; revise the number of clients and employees non-resident to the business allowed on site at a given time without a special permit; amend and clarify limitations on storage, signage, and sale of merchandise; revise the list of prohibited neighborhood impacts; allow businesses in accessory apartments under certain circumstances; set a limit on the number of trips that may begin or end at a home business and the number of parking stalls demanded or utilized by the business without a special permit; revise the limit on the percentage of a dwelling unit that may be used for a home business without a special permit; require a special permit for home businesses involving the care and keeping of more than three animals; and revise the number of parking stalls required by a home business. **(Public Hearing closed 2/23/09; 90 days 5/21/09)**

**ACTION:** APPROVED AS AMENDED 6-1 (Lappin) DRAFT ORDINANCE ATTACHED

**NOTE:**

History 2008

This item in its first iteration was heard on September 22, 2008; approved as amended in committee on November 10, 2008; chartered at the full Board on November 17; and, re-committed to Zoning & Planning by the Full Board on December 1, 2008. A second public hearing was opened and closed on February 23, 2009. A subcommittee of the Planning & Development Board, represented by David Banash, had worked on the proposed draft ordinance for several years.

There was some general agreement that the basic item had merit in updating the format of the home business ordinance from lists of allowed and prohibited businesses, the nature of which could and has changed drastically, to a measure of impact by number of car trips per day per site. The points of disagreement focused on what number of by-right car trips per day was reasonable and the number on days when the size and impact of the business increased, and on whether permission to exceed the limits, i.e., the special permit granting authority (SPGA), should be given by the Board of Aldermen or the Planning Board.

Aldermen Danberg and Swiston essentially supported the concept of the transfer of the SPGA to the Planning Board for this one function. The fact that only seven such special permits had been sought from the Board of Aldermen over seventeen years demonstrated to them that many home businesses were operating without permits. There are about 450 registered home businesses in the city and many believe that the number of harmless home businesses far exceeds that and could grow further with reasonable regulation. Aldermen Baker and Yates felt that the seldom-used power should stay with

the Board of Aldermen. The small number of applications for permits probably reflects the fact that home offices are taxed at the commercial rate if they are known to the Assessors and that many people do not file for even a use of right for that reason. Alderman Baker felt that it was a reasonable policy question as to whether or not to spin off some or all of the Special Permits to appointed bodies but that it should be done as part of an overall policy change not as an incidental part of single function change.

Alderman Lappin was open to the switch of permitting authorities but felt strongly that the number of daily trips was set far too low for even the most innocuous of uses like music lessons for children. Alderman Linsky was also open to the switch to the Planning Board for the exceptions but felt strongly that the allowances for four exceptions to the trip limits per year would require undue amount of work by the Inspectional Services Department to prove violations and that the exception provision could easily be “gamed” to help obnoxious uses escape enforcement.

#### Public Hearing February 23, 2009

At the public hearing on February 23 the proponents (who had submitted a modified proposal that included retaining the Board of Aldermen as the SPGA) included Phil Herr as well as the sponsors and Planning Board member Mr. Banash said their primary purpose was to update the provisions of the ordinance to make it clear that the dozens or maybe even hundreds of city residents who were now trying to make money from their homes, often only by phone and by computer, with no visible impact on their neighbors, were doing so legally. There was also some concern that some home businesses were detrimental to their neighbors and needed to be closed down. Examples from Ward 5 included an income tax preparation service off Route 9 in Upper Falls, which had generated tremendous amounts of traffic in a residential area, a landscaper on Indiana Terrace in Upper Falls and from Ward 2, a limousine service. The most controversial business is a chiropractor on Walnut Street in Ward 2, which has been cited by the Inspectional Services Department for violating the current restriction of a home business to a square footage no more than 30% of the square footage of the first floor but located anywhere within the structure. The business owner appealed the decision to the Zoning Board of Appeals, but the ZBA upheld the ISD Commissioner's decision. The matter is now in the courts.

The chiropractor has an extremely loyal patient base who pointed out at some length that most chiropractic treatment takes a half hour or less so that a busy chiropractor (or other practitioner) could use up the proposed daily trip generation quota in half a day. Several members of the Committee were persuaded that the daily trip limit was both excessively low for such legitimate uses and not unreasonable for a busy street like Walnut Street. It was suggested to the proponents that they look at a scale of trip generation linked to the scale of street classification in a policy adopted by the Board of Aldermen.

#### Working Session April 13, 2009

At the request of the Chair, Planner Jennifer Molinsky had broken down the item into separate topics in the hope shared by several committee members that as much as possible of the item could be adopted by consensus and the controversial items postponed

to a later item at a later day. Subsequent to the February 23 hearing, the Planning Board decided to abandon the specific trip generation standard at this point in hopes of getting the majority of revisions adopted. They proposed instead to replace the words currently in the ordinance "traffic congestion" which are vague with the somewhat more specific term "amount of motor vehicle traffic in excess". After extensive discussion, the Committee voted unanimously on a motion by Alderman Linsky to accept this wording. Alderman Linsky will file another item for the consideration of the concept of trip generation differentiated by the type of street that provides access to a home business.

The other controversial item was the 30% measurement of the square footage of the ground floor and the allowance that the amount of square footage could be used for a home business anywhere in the building. The Planning Board suggested changes to the definition of where the square footage should be measured and that the percentage should be changed to 20% of the new defined number. Committee members found the existing language to be clearer than was asserted and the proposed language to be more confusing than the current language. Since the Committee did not want to include any changes to this section in the final version, Alderman Linsky's new item will also include this topic.

With topics of trip generation and the calculation of the amount of space postponed into Alderman Linsky's new item, almost all of the remaining sections of the proposed item were accepted by consensus. (See attached Planning memorandum.). The sole exception was the restriction of the number of parking spaces per lot allowed without a special permit. Alderman Lappin felt that the parking allowances were not consistent with the number of visitors to be allowed to a site.

Alderman Linsky moved that the Committee accept the item as amended by the amount of traffic amendment by the Planning Board but without trip generation or amendments to the current language on the amount of space allowed for a home business. The motion was approved 6 to 1 (Lappin.).

All other items were held without discussion and the meeting was adjourned at approximately 10:00 PM.

Respectfully submitted,

Brian Yates, Chairman