

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MARCH 10, 2008

Present: Present: Ald. Yates (Chairman), Ald. Lappin, Swiston, Ciccone, Linsky, Baker, Harney, and Danberg

Also present: Ald. Hess-Mahan and Gentile

City staff: Michael Kruse (Director of Planning & Development), Marie Lawlor (Assistant City Solicitor), John Lojek (Commissioner of Inspectional Services), Linda Finucane (Chief Committee Clerk)

Appointment by His Honor the Mayor

#66-08 LESLIE BURG, 75 Fuller Terrace, West Newton, appointed as a member of the Planning & Development Board for a term to expire February 1, 2013. (4-19-08) [2-7-08 @3:21 PM]

ACTION: APPROVED 8-0

NOTE: Former Alderman Burg explained that she had become fascinated with planning issues while serving on the Board and wishes to continue participating on an appointive body. She is replacing former Alderman Lipsitt as an Alternate Board member now that Ms. Lipsitt has become a full Planning Board member. Ms. Burg plans to participate in the Citizens Planning Training Collaborative session at Holy Cross this week. The Committee thanked her for her willingness to serve again in a new capacity and voted 8-0 to confirm her appointment.

Change of appointment by His Honor the Mayor

#67-08 DONALD TELLALIAN, 19 Crystal Street, Newton Centre, currently an Alternate member of the Newton Upper Falls Historic District Commission, appointed as a regular member for a term of office to expire July 1, 2010. (4-19-08) [2-07-08]

ACTION APPROVED 8-0

NOTE: Mr. Tellalian is an architect who serves on the Newton Historical Commission. Although his architectural skills would be valuable on the District Commission, his formal role under Chapter 40C would be to represent the Historical Commission on the District Commission. Alderman Yates noted that he is the architect for a project on High Street that was denied by the District Commission. If the project comes back, he will not be able to serve as a voting member. Alderman Yates asked Ms. Lawler to bring this situation to the attention of Ms. McGettigan, the Assistant City Solicitor who works directly with the District Commissions. The last time this project came up, the Commission seemed perplexed as to which members could vote. Alderman Baker is familiar with Mr. Tellalian's work on one or more other Commissions. He moved approval, which passed unanimously

Re-appointment by His Honor the Mayor

#95-08 DAVID BANASH, 12 Warwick Road, West Newton, re-appointed as a member of the PLANNING & DEVELOPMENT BOARD for a term to expire February 1, 2013 (5-3-08).

ACTION: APPROVED 8-0

NOTE: Mr. Banash is a lawyer who currently serves as Chairman of the Planning & Development Board. Many members of the Committee are familiar with Mr. Banash from his extensive past services and attendance at all the public hearings on proposed zoning amendments. Alderman Baker moved approval, which carried unanimously.

Re-appointment by His Honor the Mayor

#96-08 JEFFREY R. RIKLIN, 37 High Street, Newton Upper Falls, re-appointed to the NEWTON UPPER FALLS HISTORIC DISTRICT COMMISSION as a *resident member* for a term to expire July 31, 2011 (5-3-08).

ACTION: APPROVED 8-0

NOTE: Mr. Riklin is a licensed construction supervisor, which would be very useful in advising petitioners how to complete their projects in a suitable historic manner and at a reasonable cost. He is also the former President of the Boston Building Materials Resource Center. (Alderman Yates expressed interest in the possibility of a satellite BMRC facility in Newton.) Alderman Yates also pointed out that Mr. Riklin is an abutter to the High Street project that Mr. Tellalian designed so that any rehearing of that matter would find both of them in conflict of interest. Alderman Yates moved approval of the re-appointment, which passed unanimously.

Re-appointment by His Honor the Mayor

#97-08 LAWRENCE C. SCHWIRIAN, 7 Williston Road, Auburndale, re-appointed to the NEWTON UPPER FALLS HISTORIC DISTRICT COMMISSION as the *full architect* member for a term to expire July 30, 2011 (5-3-08).

ACTION: APPROVED 8-0

NOTE: Mr. Schwirian is an experienced architect who lives in the Auburndale Historic District and who serves as Chair of the Newton Upper Falls Historic District Commission. Mr. Schwirian was instrumental in the establishment of the Auburndale District and is well know to several members of the Committee. Alderman Yates moved approval of the re-appointment, which also passed unanimously.

#110-07 ZONING TASK FORCE recommending amendments to *Definitions, Story, half*, referred to as the half-story/dormer policy, by creating an ordinance with provisions: (1) codifying policy that permits a dormer that does not exceed fifty percent of the width of the wall directly below it; (2) permitting the vertical plane of the front wall of a dormer to align with the exterior wall directly below and requiring a roof line overhang between the dormer and the wall directly below; (3) requiring that the vertical plane of the side wall of a dormer be at least two feet from the vertical place of the vertical plan of the side wall directly below; (4) prohibiting a dormer roof that exceeds the highest point of the ridgeline of the roof of

the building; (5) amending the definition of roof height to be the vertical distance between the elevations of (a) the average grade plane and (b) the midpoint between the highest point of the ridgeline of the main roof and the line formed by the intersection of the top of the main building wall plane and the main roof plane; (6) creating a design review committee (DRC) to review and approve dormers not expressly permitted by ordinance, with a right of appeal to the Board of Aldermen by petitioners aggrieved by decisions of the DRC; and (7) specifying that the above policy does not apply to dormers on the second floor of a building.

Hearing closed 1/28/08; 90 days: 4/27/08

ACTION: APPROVED AS AMENDED 5-0-1 (Linsky abstaining; Baker, Danberg not voting)

#126-07 ZONING TASK FORCE recommending the following amendments to Section 30-1 Definitions, "*Story, half*," referred to as the half-story/dormer policy, as follows: (1) remove the definition of "*Story, half*" in its entirety; (2) amend the current definition of "*Dormer*" to "*Dormer* a permanent superstructure projecting from a sloping roof and equipped with a window or a vent. The length of a dormer shall be less than the length of the wall below it by at least 3 feet at each end of the wall." **Hearing closed 1/28/08; 90 days: 4/27/08**

ACTION: APPROVED AS AMENDED 5-0-1 (Linsky abstaining; Baker, Danberg not voting)

NOTE: In 2005, the Zoning & Planning Committee appointed a Zoning Task Force to look at a number of issues raised by Inspectional Services Commissioner John Lojek. The Task Force was broken up into subcommittees. Members of the Half Story/Dormer Subcommittee included Anatol Zukerman, Architect; Stephen Buchbinder, Attorney; Jonathan Kantar, Builder; Sean Leary, Developer; David Weinstein, Historic Preservation; Steve Hamilton, Homeowner; James Sullivan, Neighborhood representative, Valerie Pontiff, realtor; and Ted Hess-Mahan, Chairman of the Task Force, ex officio.

The Half Story/Dormer Subcommittee focused on dormers, for which there is no definition at present in the zoning ordinance. The addition of dormers to a home makes it possible to convert attic space into a usable half-story. The Inspectional Services Department has adopted a *policy* to regulate the scale of dormers, while still allowing their construction. One of the charges of the Task Force was to review that policy for possible codification. The Half Story/Dormer Subcommittee submitted its report to Zoning & Planning in July of 2006. (A minority report from one member was submitted as well.) The current zoning ordinance provides for a maximum height of 30, feet, 2.5 stories and Floor Area Ratio limits (excluding half-story) in residential districts. "Gross Floor Area" excludes habitable space, such as a basement, finished attic, or half story. Many developers try to maximize building sizes in different ways, e.g., grading the site to create another story.

Public Hearings on these items were opened and closed on January 28. Zoning Task Force Chairman Ted Hess-Mahan and Attorney Stephen Buchbinder summarized the report of the

Subcommittee. Commissioner of Inspectional Lojek testified in favor of creating a definition and stressed the importance of including in the ordinance diagrams and drawings for clarification. Architect and Subcommittee member Anatol Zukerman reiterated the views expressed in his minority report that the definition of "half-story" should be eliminated and that 3 full stories should be allowed regardless of the roof shape, as it had been prior to 1997, and increasing the Floor Area Ratio for single residence zones.

N.B. It is the Chairman's intention to ask the Board to postpone this item to a date certain of April 7 because the drawings that will be part of the proposed ordinance have not yet been completed. A complete report will be provided prior to that meeting.

#330-02 ALD. JOHNSON, BULLWINKLE, LINSKY requesting a discussion regarding revamping the home business ordinance to reflect current uses (allowable/not allowable).

ACTION: NO ACTION NECESSARY 6-0 (Baker and Danberg not voting)

NOTE: Since he, Alderman Johnson, and the Planning Board have submitted a new item that offers specific language on this topic, Alderman Linsky graciously moved No Action Necessary, which carried unanimously.

#344-07 ALD. GENTILE, HARNEY & SANGIOLO requesting information from the Commissioner of Inspectional Services as to why a building permit was issued for work at the Marriott Hotel without a special permit amendment and when the mistake was discovered why a stop work order was not issued. [10-30-07 @5:20 PM]

ACTION: HELD 6-0 (Baker and Danberg not voting)

NOTE: Apparently, the Marriott Hotel, which was constructed in 1969 under a special permit amended several times since, received in error a building permit to renovate for display and/or meeting space a basement area originally shown as parking on plans approved in one of the special permits. Aldermen Gentile and Harney were upset that the work has been allowed to continue without a special permit amendment. Mr. Lojek explained that there was confusion in his department relative to prior plans and that since a merger with Host Hotels and resulting personnel changes, Marriot staff were not aware either. Mr. Lojek said that Marriott has engaged local zoning attorney Jason Rosenberg. The Marriott told Commissioner Lojek that it would continue the construction at risk because it would still be less costly than stopping. Alderman Gentile was concerned about a perception that the City had done the Marriott a favor and asked that the item be held and a copy of the erroneous building permit be provided to the Committee prior to its next discussion.

All other items were held without discussion. The Committee adjourned at approximately 10:15 PM.

Respectfully submitted,

Brian E. Yates, Chairman

