

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 10, 2008

Present: Ald. Yates (Chairman), Ald. Baker, Lappin, Linsky, Danberg, Harney, Swiston, and Ciccone; also present: Ald. Hess-Mahan

Also present: Planning Board member David Banash, Commissioner of Inspectional Services John Lojek, Phil Herr, Chairman of the Citizen Planning Advisory Committee
City Staff: Jennifer Molinsky (Planning), Marie Lawlor (Assistant City Solicitor), Linda Finucane (Chief Committee Clerk)

Appointment by His Honor the Mayor

#360-08 HILLARY S. BROWN, 39 Crescent Avenue, Newton Centre, appointed as an *associate member* of the ZONING BOARD OF APPEALS for a term of office to expire September 1, 2009 (60 days 12/19/08).

ACTION: APPROVED 7-0 (Ald. Ciccone not voting)

NOTE: Zoning Board of Appeals Chairman Bud Shadrawy recommended Ms. Brown to the Mayor. She has an extensive background in complex property management.

Although she has not yet attended any meetings or received any briefings, department representatives assured that she would. She looks forward to serving and thinks the 40B petitions will be the most interesting. The Committee thanked her and upon a motion by Ald. Danberg, confirmed her appointment 7-0.

#109-07 ZONING TASK FORCE recommending amendments to Section 30-5(b)(4), referred to as the three-foot grade change ordinance, by deleting the existing language and: (1) add a provision defining structure in Section 30-1 to include retaining walls that exceed five (5) feet in height; (2) substitute language in Section 30-5(b)(4) to allow the Zoning Board of Appeals to grant a special permit for the construction of retaining walls that exceed five (5) feet in height; and (3) create an ordinance to require the Engineering Department to review and approve a drainage plan for construction or alteration of single and two-family residences that would increase impervious surface by the lesser of 5% or 500 square feet and for all other types of construction or alteration. **(Hearing closed 2-25-08)**

ACTION: HELD 8-0

NOTE: The Committee reiterated its previous request to the Planning and Law Departments to develop an ordinance giving authority to the Engineering Division of the Department of Public Works to review and approve drainage plans only if they show that water from the new development will be retained on site and not impact other properties.

The Committee's directions included the following:

- that the height should be 4 feet as referenced in the State Building Code and suggested by subcommittee member Mark Sangiolo; walls over 5 feet should be defined as structures and require a special permit, since Mr. Lojek pointed out that a retaining wall over 4 feet requires an extensive base below grade.
- that the special permit granting authority not be delegated to another board or commission;
- that the Law Department develop with the Engineering Division of the Department of Public Works a draft ordinance that creates specifics for review and approval by the Engineering Division.

The item was held 7-0.

#111-07 ZONING TASK FORCE recommending amendments to 30-21(3)(c), referred to as the de minimis rule, by amending the existing language with provisions: (1) clarifying the applicability to and effect of the rule on (a) the minimum distance between buildings; and (b) all applicable dimensional controls; and (2) creating a new procedure for approving a de minimis extension of the nonconforming nature of a structure. **(Hearing closed 9-8-08)**

ACTION: HELD 8-0

NOTE: Mr. Lojek had included this on his original list of provisions to be addressed. Since then he has seen little need for the change, but feels at the very least there should be a limitation of one use of this provision for any one property. The balance of other conforming provisions will be difficult. The Committee voted unanimously to hold the item.

#94-08 PLANNING & DEVELOPMENT BOARD, ALD. JOHNSON & LINSKY recommending amendments to Section 30-1, Definitions; Section 30-8, Use Regulations for Single Residence Districts; Section 30-8(b), Special Permits in Single Residence Districts; Section 30-9(b), Special Permits in Multi Residence Districts; Section 30-19(b), Number of Parking Stalls; Section 30-20(e), Regulation of Signs in Residence Districts; and Section 30-24, Special Permits, by deleting certain provisions and adding new provisions to regulate home businesses. **(Hearing closed 9-22-08)**

ACTION: APPROVED AS AMENDED 6-0-2 (Harney and Lappin abstaining)

NOTE: Planning Board Chairman David Banash presented the rationale for the item while Ms. Molinsky answered questions about the text proposed. Mr. Lojek described how the enforcement process currently works and how other communities regulate home occupations. The current ordinance allows some occupations and prohibits others with no clear current rationale. The proposal would focus as suggested by Mr. Herr on the traffic impact of occupations beyond the dozen or so car trips that an average residential unit might generate in the course of a day. The model might be a therapist who sees one

person per hour during the day. That figure would generate a total of sixteen trips per eight-hour day and seemed reasonable to all; the suggested number of business trips per day to be allowed was changed to sixteen from the suggested twelve. Some objected that music lessons tend to last only a half hour so that a full day of lessons at that rate might yield far more trips than that limit. It was pointed out that virtually all of the music teachers in their homes in the city teach in addition to other outside of the home occupations so that the total trips would be within the limit.

Objections were raised to the statement that the trips per day had to be violated four times in a year. Alderman Linsky questioned the intensive amount of enforcement time to generate proofs of violations. Mr. Lojek explained that photographs of the same number of excessive cars parked near a site with the same plate numbers for four days in a row was the best way to prove a violation to a judge and almost always led to a finding against a violator.

With the understanding of the majority of Committee members that the proposal would give Mr. Lojek the tools he needed to control disruptive home occupations while leaving harmless ones untouched, the Committee voted to approve a motion by Alderman Swiston to approve the draft as amended to allow sixteen trips per day.

Days later, the Chair learned that although the Committee had discussed discarding the provision giving the power for Special Permits for Home Occupations to the Planning Board, the final vote had not included dropping that provision. An alternative draft accomplishing that is attached to this report and will be offered on the floor Monday.

All other business was held without discussion and the meeting was adjourned at approximately 10:15 PM.

Respectfully submitted,
Brian Yates, Chairman