

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, APRIL 9, 2007

Present Ald. Yates (Chairman), Ald. Sangiolo, Baker, Danberg, Burg, and Weisbuch; absent: Ald. Johnson and Lappin

Also present: Ald. Hess-Mahan

City Staff: Juris Alksnitis (Chief Zoning Code Official), Linda Finucane (Chief Committee Clerk), Michael Kruse (Director of Planning & Development) and Marie Lawlor (Assistant City Solicitor)

Re-appointment by His Honor the Mayor

#80-07 DONALD TELLALIAN, 29 Crystal Street, Newton Centre, appointed as an *Alternate* member of the NEWTON HISTORICAL COMMISSION and the NEWTON UPPER FALLS HISTORICAL DISTRICT COMMISSION for terms expiring January 1, 2010 (60 days 5-18-07). [3-06-07 @2:07PM]

ACTION: APPROVED 5-0-1 (Alderman Burg abstaining)

NOTE: Mr. Tellanian's resume documenting his extensive architectural experience was attached to the agenda, and his work in the Commissions is well known to some Committee members. Alderman Yates said that he had observed Mr. Tellalian making very helpful suggestions to applicants on how they could comply with design guidelines without undue expense. He moved approval of the re-appointment, which passed 5-0-1 with Alderman Burg abstaining.

Re-appointment by His Honor the Mayor

#22-07 DONALD LANG, 999 Chestnut Street, Newton Upper Falls, re-appointed as an *alternate member* of the HISTORICAL COMMISSION for a term to expire January 1, 2010 (60 days 4-6-07). [1-19-07 @4:18 PM]

ACTION: APPROVED 5-0-1 (Alderman Burg abstaining)

NOTE: Mr. Lang has recently purchased and rehabilitated a house in the Upper Falls Historic District in the block between Chestnut Street and Ellis Street across Chestnut Street from the Echo Bridge Service Station. Alderman Yates expressed his pleasure with the improvements to the building and the site. Mr. Lang said that he was a good example of the truth of the axiom that an architect should never work on his own home. The work though personally satisfying was very expensive, but he had learned a lot about the history of his house through removing the four layers of siding and other tasks.

Alderman Sangiolo asked him to comment on complaints she has had that the Historical Commission members have exceeded their authority by getting into design review and commenting on zoning matters. Mr. Lang said that it had been his experience that members stayed away from comments of design review until a decision had been made about whether a building proposed for demolition was historically significant and preferably preserved. Since the

demolition delay will run out in a year, the petitioner can present plans and make the case that the building he or she will build at the end of that period is aesthetically pleasing on the site and that he should be allowed to proceed immediately. If the replacement structure is attractive enough and compatible on the site, the Commission may waive the demolition delay. The Commissions are free to give their opinions to the petitioner as to the merits of the design of his new building and to what he would need to do to win approval of a waiver of the delay.

Comments on zoning may be made based on the members' knowledge of the zoning ordinance but they are incidental commentaries for the benefit of the petitioner so that he does not waste his time on something that is clearly against the zoning. After this discussion, the Committee voted 5-0-1 (Burg) to approve his re-appointment.

#350-06 ALD. HESS-MAHAN requesting that subsections 30-8(d) (4) and 30-9(h)(2) relative to the lawful use pre-existing accessory apartment units be amended by deleting in each the following first sentence relative to the sunset provision for such use:

“The provisions of section 30-8(d)(4), relating to the lawful use of pre-existing accessory apartment units (second dwelling units) as described herein, shall be effective for a limited time period beginning with the date of adoption and ending June 30, 2007.”

“The provisions of section 30-9(h)(2), relating to the lawful use of pre-existing accessory apartment units (second dwelling units) as described herein, shall be effective for a limited time period beginning with the date of adoption and ending June 30, 2007.”

(Hearing Closed on March 26; 90 days 6/24/07)

ACTION: APPROVED 3-2-1 (Burg, Sangiolo, Yates voting in the affirmative; Baker and Danberg opposed; Weisbuch abstaining)

NOTE: *The public hearing opened and closed on March 26. There was no public comment. Planning Board members present: Chris Dame (Chairman), David Banash, Joseph DiDuca, and Michael Kruse. The Planning Board voted to eliminate the “sunset” provision.*

When the pre-existing accessory apartment ordinance was adopted in 1992, the Board of Aldermen included a “sunset” date requiring owners to legalize such units by June 30, 1997. Since then there have been two extensions, with the current period ending June 30, 2007. The intent of the provision was to encourage owners of illegal apartments to come forward within a defined amnesty period. The Planning Department has since 2002 reviewed ten accessory apartments, three of which were new as-of-right units and seven legalizations of pre-existing units. (The Board of Aldermen has approved five units in that period.)

Alderman Hess-Mahan believes that as time advances, it will become more difficult to prove pre-existence, making it harder for owner-occupants to qualify under this process. Recently, the Accessory Apartment Working Group comprised of aldermen, city departments, and community

housing representatives was instrumental in the design of a pilot program, the Accessory Apartment Incentive Program, under management of Community Living Network, Inc, (CLN). The City and CLN have received Community Preservation funds to implement the program, whose goal is to provide financial assistance to low/moderate income applicants to legalize or create new accessory apartments.

Alderman Hess-Mahan proposed these amendments because he thinks implementation of the CLN program will create more opportunities to identify and facilitate legalization of pre-existing owner-occupied accessory apartments, but pointed out that if the “sunset” provisions are not eliminated they will, unless extended, expire on June 30 and there will be no mechanism for legalization.

This evening’s discussion focused around whether or not the time limit for allowing the older units to be legalized should be extended for a longer period or eliminated. Alderman Baker backed by Alderman Danberg felt that an extension of the time for five or ten years would cause an orderly re-assessment of the subject at a time in the future when conditions may have changed. The other Committee members felt that the numbers of units left over from the 1979 target period was so few that it would be pointless to review the situation in the future. Ultimately, the item as proposed by Alderman Hess-Mahan was approved with 3 in favor, 2 opposed and 1 abstention (Aldermen Burg, Sangiolo, and Yates voting in the affirmative; Aldermen Baker and Danberg opposed, and Alderman Weisbuch abstaining).

#333-97 ALD. YATES proposing to amend the zoning ordinance to require a special permit for the subdivision of property where such subdivision would reduce the level of service for traffic at the intersection of the subdivision with a public way by one level of service or more. (**Hearing Closed on March 26; 90 days 6/24/07**)

ACTION: The public hearing on this item was opened on January 22 and continued to March 26, when it was closed. Alderman Yates asked that the item be held.

#391-06 ALD. VANCE & BAKER proposing that Chapter 30 be amended by:

- (1) adding to the statement of purpose in section 30-2 a reference to promoting sustainable building practices and conserving natural resources and energy;
- (ii) including in section 30-24(d) as a required criterion for approval of special permits involving construction a showing that the site planning, building design, construction, maintenance, and long-term operation of the premises will go beyond applicable city, state, and federal standards in achieving efficient use and conservation of natural resources and energy;
- (iii) inserting a new provision in section 30-24 requiring that for applications for special permits authorizing construction of new building(s) and/or structures, or additions to existing building(s) and/or structure(s), if such new construction and/or addition(s) contain individually or in the aggregate 20,000 or more square feet in gross floor area, the applicant shall submit evidence that the site planning,

building design, construction, maintenance, and long-term operation of the premises will go beyond applicable city, state, and federal standards in achieving efficient use and conservation of natural resources and energy; and

- (iv) including in section 30-23(c)(2) as a criterion for approval of site plans for projects containing 20,000 or more square feet in gross floor area of new construction of building(s) and/or structures, or of addition(s) to existing buildings and/or structure(s), a showing that the site planning, building design, construction, maintenance, and long-term operation of the premises will go beyond applicable city, state, and federal standards in achieving efficient use and conservation of natural resources and energy.

(Hearing Closed on March 26; 90 days 6/24/07)

ACTION: ITEM SEPARATED
PURPOSE APPROVED 5-0 (Sangiolo not voting)
CRITERIA APPROVED 4-0-1 (Aldermen Baker, Burg, Danberg, Weisbuch voting in the affirmative; Alderman Yates abstaining; Alderman Sangiolo not voting) Draft Ordinance attached.

NOTE: A public hearing was opened on January 22 and continued to March 26, when it was closed.

January 22 hearing

Planning Board members present: David Banash, Carol Beard, Joseph DiDuca, Mary Jo Peterson, and Lorraine Salvucci.

Aldermen Vance and Baker presented the item. This proposal is a relatively simple first step to conserve resources through zoning, developed in concordance with the draft Comprehensive Plan and input from various citizen groups such as the Citizens Energy, Sustainable Newton, and the High Performance Building Committees. (Architect Deb Crossley, Planner Phil Herr, Dr. Halina Brown, David Tannozzini of the DPW, and Brooke Lipsitt, and architect Anatol Zukerman are some individuals who participated in drafting the language.) It is a value identified in the purpose section of 30-24 and is one the city should promote. The proposal contains elements of discretion and as a modest first step only applies to special permits/site plan approvals for buildings containing in the aggregate 20,000 sf or more, tracking the existing ordinance language. There are a number of ways in which a petitioner can demonstrate it has been taken into account. The City should see how it works and decide what further steps may be taken, perhaps developing a more restrictive approach in the future. Alderman Baker noted the site plan review process include criteria designed to enhance the quality of development. Sufficient guidance from the City prior to filing a special permit provides a public benefit and can reduce significant impact of a development.

Alderman Yates expressed concern about going "...beyond applicable city, state, and federal standards in achieving efficient use and conservation of natural resources and energy..." He

asked about the list of examples in the draft of ways in which such efficient use and conservation might be achieved, i.e., which are legally mandated and which simply demonstrate a basis by which a developer can prove that he has gone beyond the legal requirement. He asked the meaning of “regenerative restoration.” He feels the proposed item is either too proscriptive or unintentionally unclear, for example on page 3, must one or all be met? He asked if any local developers were included in the drafting of the language. Were the Planning and Law Departments involved? Alderman Weisbuch noted that it was important to include the development community, preferably before a public hearing. Mr. Herr pointed to the many architects involved, including himself, Mr. Zukerman, Ms. Crossley, as well as developer Josephine McNeil of Can-Do.

Public Comment

Phil Herr, Chairman of the Comprehensive Plan Advisory Committee, who helped draft this proposal, said that the draft Comprehensive Plan identifies areas that might get relatively quick action. In meetings with the committees mentioned above, everyone reached agreement that this is relatively small step, a value already advocated by the City, but not in writing.

Alderman Johnson asked about the legality. This proposal goes beyond typical zoning requirements to new ground. Are there any conflicts? Any challenges? She referred to the memorandum from Commissioner of Inspectional Services John Lojek.

Mr. Herr explained that Cambridge was used is a partial model. Cambridge has been doing this for many years, but does not specify a particular rating. Boston is a step beyond. It has developed a strict set of standards to obtain approval. Alderman Fischman agreed that Boston has a sophisticated process of earned credits. He agrees with Mr. Lojek’s statement in his memorandum that to review the evolving technologies requires on the part of the City a certain level of expertise.

Deb Crossley, Vice Chair of the Citizens Commission on Energy, read a letter from the Commission in favor of the proposal. It creates the opportunity to learn by putting the issue on table.

Anatol Zukerman, 17 Noble Street, a member of the High Performance Building Committee member, favors the intent of this proposal, but the language does not appear to fit with the zoning ordinance. He suggested credits for certain sustainable techniques, e.g. FAR incentive. Credits and incentives would work better than proposed language. Include public buildings.

Sharon Roberts from the League of Women Voters read a previously submitted letter in favor.

Brooke Lipsitt, 36 Billings Park, Co-chair of the High Performance Building Committee said it was involved early on and it is a strong supporter of the concept of including environmental sustainability criteria in the zoning ordinance. It should apply to public buildings. There is a companion item in Public Facilities for an amendment to Section 5-58. This proposed

amendment would add a fifth criterion to the four criteria already included for a special permit. The list is only a list of examples by which the goals may be met. The idea is to encourage special permit petitioners to be aware of different ways to reduce the negative environmental impact of new project. Perhaps it looks more proscriptive, but it is not a difficult proposal. She read a letter from David DelPorto of the Mayor's Advisory Committee on Sustainable Newton in favor of the proposal.

Dr. Halina Brown, 56 Cloverdale Rd, a member of the Energy Commission and Green Decade Coalition spoke in favor. Lights alone will save great deal of money and energy. The purpose is to reduce consumption and green house gases. The proposed amendment only provides the right questions.

Dino Rossi, a resident of Valentine Street, asked when the last 20,000 sf building was built. He agrees this is a good idea, but a baby step, and suggested that all construction be included and that it consider requiring energy star appliances, windows, insulation

A resident of 63 Grasland Road, Brookline, a founding member of Chestnut Hill Building Alliance, said this is a proactive step, air and water quality cross borders.

That concluded the testimony at the January 22, 2007 public hearing, which was continued to March 26

March 26, 2007 Public Hearing

Planning Board members present: Chris Dame (Chairman), David Banash, Joseph DiDuca, and Michael Kruse. The Planning Board voted to support the proposed amendment as re-stated as a first step. Further recommendations are that within the next 24 months the Board of Aldermen seek to develop more specific sustainability standards and incorporate such standards with the Zoning Ordinance and that the Board take into consideration that technical standards change over time and that a method be found to link sustainability provisions in the Zoning Ordinance with the most recent technical standards available in the various disciplines relating to "green" development.

Alderman Vance was unable to attend this hearing, but had submitted prior to this evening an amended draft of the proposed ordinance with an explanatory cover memorandum. Alderman Baker explained that the revised draft ordinance was an attempt to respond to concerns raised on January 22. He reiterated that this proposal is a first step in looking at a question and responding in manageable dimensions. It does not preclude looking at smaller scale development in future.

The Chairman asked that copies of the Cambridge and Boston by-laws be provided for the working session.

Planning Board member David Banash asked if the revised draft ordinance still stipulated "beyond minimal compliance?" Alderman Baker pointed out that the revised draft refers to

“city” standards. In response to a question from Mr. Banash, Alderman Baker noted that the existing criteria are not necessarily objective. The Building Code provides standards. Alderman Yates feels the proposed ordinance is convoluted. He suggested the “purpose” component, which he has no problem with, be separated. Alderman Baker explained that the drafters were concerned about providing models for applicants to follow without being too specific. Technologies evolve.

Public Comment

Anatol Zukerman, 17 Noble Street, a member of the Zoning Task Force said that the Task Forces members he had consulted have strong reservations about the draft as proposed. He submitted a letter from himself.

Phil Herr, Chair of the Comprehensive Plan Advisory Committee, noted that a petitioner has to satisfy one or all criteria v. general findings. It is no more of blank check to the Board of Aldermen than what exists today if the City adopts guidance materials.

Dr. Halina Brown agreed that general criteria leave room for changing technologies.

That concluded the testimony and the hearing was closed.

This evening Alderman Baker moved a series of amendments contained in the revised text, simplifying the language of the amendments as much as possible and making the language parallel wherever possible. The amendments were discussed for clarity and eventually adopted by consensus.

The Chair reported that the Inspectional Services Commissioner today had informed him that the provisions of the proposed amendments to exceed the energy conservation standards applicable to all buildings directly conflict with provisions of the State Building Code (attached) prohibiting such measures under zoning unless carried out in a specific way other than what is proposed. Alderman Baker suggested that since the item applied only to special permits, it would not be in conflict with the Code. Since this had only come up this afternoon, the Law Department had not been able to reach a conclusion. The Committee asked that an opinion be included in the next packet April 13.

Alderman Yates exercised the right of all members under the rules to separate an item where the sense allows for it. He placed the proposed new (d) to the purposes section in one item and the new criteria for special permits and site plan reviews in another.

He said further that the language of the new criteria was probably illegal and certainly convoluted. Most Committee members disagreed and felt that the overall importance of both sections were such that they should both be approved as soon as possible.

The item was separated and two votes were taken, with the addition of a new (d) to the purpose section approved 5-0 and the criteria approved 4-0-1 (Alderman Yates abstaining and Alderman Sangiolo not voting).

Respectfully submitted,

Brian Yates, Chairman

Please note that the letters and memoranda referred to in the report were distributed to the Board of Aldermen.

Clerk's note: Attached, is a letter from the Solid Waste Commission received on April 10 relative to adding an emphasis on recycling and hazardous waste.