

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MAY 14, 2007

Present: Ald. Yates (Chairman), Ald. John son, Lappin, Baker, Danberg, Burg, and Weisbuch;  
also present: Ald. Vance  
City staff: Juris Alksnitis (Chief Zoning Code Official), Michael Kruse (Director of Planning &  
Development), Marie Lawlor (Assistant City Solicitor), John Lojek (Commissioner of  
Inspectional Services),

Appointment by His Honor the Mayor

#107-07 PATRICIA BAKER, 55 Wilde Road, Waban, appointed as an *alternate realtor*  
member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a  
term to expire June 30, 2010 (60 days 6-16-07). [03-30-07 @2:09 PM]

ACTION: APPROVED 7-0 (Sangiolo not voting)

NOTE: Ms. Baker is a longtime resident of the city. Since her family has grown up, she has the  
time to give something back to the community. Ms. Baker has sold a number of historic homes  
in Newton and formerly worked with Nancy Grissom, who urged her to apply for membership  
on one of the Historic District Commissions. She has attended several commission meetings  
ands looks forward to becoming a voting member. The Chairman moved approval of her  
appointment to the Auburndale District Commission, which carried 7-0, with Alderman Sangiolo  
not voting.

Appointment by His Honor the Mayor

#125-07 CHARLES WAGNER, 25 Harrington Street, Newtonville, appointed to the  
Planning & Development Board for a term to expire February 1, 2012 (60 days 7-  
6-07) [4-26-07 @4:15PM]

ACTION: APPROVED 7-0 (Sangiolo not voting)

NOTE: Mr. Wagner is an attorney, who specializes in employment law. He has lived in Newton  
for ten years and for the past two years has worked with the West Newton Advisory Committee,  
including city personnel Danielle Bailey and Dee Spiro, who both recommended him for the  
Planning & Development Board. The Advisory Committee has focused on repair of Cheesecake  
Brook, which is located in the West Newton Target Area. Alderman Burg moved approval,  
which carried 7-0, with Alderman Sangiolo not voting.

**ITEM RECOMMENDED 4-17-07 BY FULL BOARD:**

#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 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 3-26-07; 90 days 6-24-07)**

***Item separated on April 9, 2007: Purpose Approved 5-0 (Sangiolo not voting); Criteria Approved 4-0-1 (Baker, Burg, Danberg, Weisbuch voting in the affirmative; Yates abstaining; Sangiolo not voting)***

**ACTION:** APPROVED AS AMENDED 6-0-2 (Johnson and Sangiolo abstaining)

**NOTE:** A public hearing opened on January 22, 2007 and was continued to March 26, when it was closed. The Committee discussed, separated, and voted the item on April 9. The Board sent the item back to committee on April 17.

This evening, Inspectional Services Commissioner John Lojek explained that he had pointed out to the Committee Chair the apparent conflict between the This proposed amendment language requiring applicants to exceed the relevant codes and a provision of the State Building Code (which has the force of law) that says that no community may impose requirements on property owners through zoning in any of the areas covered by the Code. One of these specific areas is energy conservation. Mr. Lojek cited the specific section of the Building Code that deals in detail with energy conservation (he knows this section particularly well since he ran an energy conservation company earlier in his career). He is currently teaching a course on the Building Code and noticed the apparent conflict between the code and the proposed amendment. As the Department Head charged with enforcing the Building Code and the city Zoning Ordinance, he was troubled at the apparent conflict between the two, which usually run on different tracks.

The Committee Chair informed Assistant City Solicitor Marie Lawler of the apparent conflict. She consulted with the City Solicitor and with Associate City Solicitor Ouida Young who confirmed the apparent difficulty. Ms. Lawlor talked to the Assistant Attorney General and the Executive Director and Chief Counsel of the Board of Building Code Practices. They all confirmed that the General Court had in fact intended to pre-empt the field in this area so that builders would not face different building codes in different communities in the Commonwealth. Mr. Lojek confirmed this objective as well. The specific reference to surpassing the Code was definitely against the law. The City of Boston passed a similar green zoning by-law and will have to make provisions acknowledging the supremacy of the State Code. Alderman (and Attorney) Vance strongly denounced the Law Department's findings and said that the proposed amendment was certainly defensible and might not even be appealed by applicants. Alderman (and Attorney) Weisbuch expressed his support for passing the original version and fighting it

out in Court. Alderman Burg pointed out that the State Environmental Policy is being changed to require consideration of global warming in Environmental Impact Statement on projects requiring state approval. Several members felt that the change proposed by Alderman Yates and recommended by the Law Department to just citing the topics of energy conservation and natural resources conservation was too weak and lacked teeth in the view of several members. Aldermen Baker and Yates said that in fact in practice, the simpler version would conserve as much energy and resources as the previous version and might well conserve more. It certainly would be more effective than the other version if it were suspended, possibly for years, during a legal challenge.

Mr. Lojek pointed out that there was a separate administrative process for communities who wish to exceed the Building Code. A mayor must petition the Board of Building Regulations & Standards. Mr. Lojek said that such petitions are almost never granted on individual cases unless the State Board is about to change the Code on a statewide basis. Phil Herr, one of the original sponsors of the item, admitted that it was supposed to serve as a first step in the energy conservation process in Newton. He said that he would rather have the version recommended by the Law Department passed than the other passed after a bitter fight on the floor of the Board and then hung up in court. He also admitted that building codes of individual communities had been used as a means of blocking affordable housing and that statewide uniformity was intended to avoid such occurrences. Planning Director Michael Kruse agreed that quick and clean passage of green zoning amendment of the sort recommended by the Law Department was preferable to an amendment bogged down in legal controversy. Alderman Lappin described the recommended version as a baby step. Alderman Weisbuch agreed and asked why an applicant could not just say that since he had complied with the stringent energy conservation provisions of the Code and demand a special permit. Alderman Yates and Alderman Baker explained heatedly that the Aldermen could dismiss such a demand because he had offered nothing more than the basics required and that did not justify the affirmative act of granting a Special Permit.

Alderman Baker, who is both an original sponsor of the item and a Professor of Law, moved the version of the item that avoids the words that conflict with the Building Code. Alderman Vance, the other original sponsor, grudgingly joined in urging approval of this version as the start of an energy conservation process in Newton. However, he made a suggestion that Alderman Baker accepted as a friendly amendment. Applicants must show that their projects will "contribute significantly" to the conservation of energy and natural resources. Some Committee members were still skeptical, but were somewhat mollified that a brochure would be developed by the Planning Department and provided to applicants listing the examples that were in the first version of this item. Ultimately, with declarations from several skeptics that they would file future amendments if this version as passed did not conserve energy sufficiently, the item passed 6-0-2. The Affirmative votes were Baker, Yates, Lappin, Burg, Danberg, and Weisbuch. Alderman Johnson and Sangiolo had missed some of the hearings and working sessions and thus abstained.

#23-07      ALD. YATES requesting a resolution that His Honor the Mayor and the Economic Development Commission take all necessary steps to restore the vacant site of the former Purity Supreme Super Market at the intersection of Elliot and Boylston Streets to us use as a super market. [1-22-07 @9:15 PM]

**ACTION:**      NO ACTION NECESSARY 8-0

**NOTE:** Since a CVS is currently being constructed on the subject site, Alderman Yates moved No Action Necessary on this item.

All other items were held without discussion and the meeting was adjourned at approximately 9:45 PM

Respectfully submitted

Brian E. Yates, Chairman