

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING AND PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 8, 2004

Present: Ald. Lappin (Acting Chairman), Ald. Johnson, Danberg, Baker, Lennon, Yates, and Hess-Mahan; absent: Ald. Sangiolo

Also present: Attorney Edward Dailey, Chairman of the Inclusionary Housing Task Force

Planning Board members: Carol Beard, Joseph Proman, Joseph DiDuca, and Chris Dame

City staff: Juris Alksnitis, (Chief Zoning Code Official), Mike Kruse (Director of Planning and Development), Steve Gartrell (Associate Director of Housing and Community Development), Michael Baseman (Assistant City Solicitor), Linda Finucane (Chief Committee Clerk)

**PUBLIC HEARING CONTINUED ON 9/27/04 and 10/25/04 to 11/8/04:**

#264-04 ALD. JOHNSON, SANGIOLO, HESS-MAHAN, LINSKY recommending that Section 30-24(f). Inclusionary Zoning, as most recently amended by Ordinance X-48 on April 22, 2003, be further amended based on its first application to the Christian Science Church redevelopment at 391 Walnut Street. **(Hearing closed 11/8/04; 90 days 2/6/05)**

**ACTION:** HEARING CLOSED

**NOTE:** The public hearing on this item was continued to give Ald. Johnson, who had been out of the country, the opportunity to be present. Ald. Johnson was a member of the Inclusionary Housing Task Force (Task Force) that proposed the revisions to section 30-24(f) approved by the Board on April 22, 2003, Ordinance X-48. The first application of X-48 was in the special permit granted to the Christian Science Church at 391 Walnut Street to convert the former church into 9 residential units. When applied the ordinance did not reflect the wishes of the Task Force in several areas. Task Force Chairman Attorney Ed Dailey, Attorney Jason Rosenberg, who represented the developers of the Christian Science Church, and several other members of the Task Force, including Ald. Johnson, reviewed the ordinance and suggested further changes. Mr. Rosenberg submitted a letter (attached) in favor of the amendments.

Task Force Chairman Ed Dailey went through the “clean up” changes recommended by the Task Force, A. through F. on page nos. 2 and 3 of the Planning Department memo of October 22, 2004, attached. Noting that a number of other changes had been suggested by the Planning Department and Newton Housing Partnership, page nos. 3 through 5 of the same memo, Mr. Dailey said he and the other Task Force members would be willing to assist the Planning Department and Newton Housing Partnership, but he could not support their recommendations because they had not been discussed by the Task Force, which had spent a long time in its effort to update the inclusionary zoning ordinance so that it would remain effective well into the future.

Associate Director of Housing and Community Development Steve Gartrell was asked to explain the Housing Partnership's recommendations. Mr. Gartrell said that the Housing Partnership felt there is no reason to tie the for-profit with the non-profit and withhold occupancy permits because it is more important for the for-profit developer to complete the development. Ald. Baker asked about changing "aggregate median income" to "median income." Mr. Gartrell explained that, as written, the "aggregate median income" could be interpreted to require that half the households would have to be above 65% of the Area Median Income determined the U.S. Department of Housing and Urban Development for this area. Ald. Baker asked if any thought had been given to changing the mean number itself. Both Mr. Gartrell and Mr. Dailey said no, it had taken a long time to reach that mean number, and the focus of lower-target income would bring the average down to the 65% level. Mr. Gartrell also noted the recommendations concerning the initial sale and subsequent resales to be determined by the City after notice of intent to sell and the determination of the unit price not at the time of the special permit application, but prior to the start of marketing activities.

Ald. Baker asked for clarification of the difference of opinion between the Task Force and Housing Partnership re off-site development. Mr. Dailey said, in his personal view, he wasn't sure the amendments, with the exception of the release of occupancy permits, suggested by the Housing Partnership were necessary. The Task Force this past summer discussed the release of occupancy permits, but reached no consensus. Mr. Gartrell reiterated that the Housing Partnership feels the non-profit developer is not under control of the for-profit developer. The Housing Partnership has suggested instead that the inclusionary units be offered for sale or rental in the same proportion of and concurrent with the market units.

There was no public comment and the public hearing was closed.

**THE FOLLOWING ITEMS WERE TAKEN UP IN WORKING SESSION:**

#415-04      NATIONAL ARCHITECTURAL TRUST requesting acceptance by the City of a preservation restriction on property located at 95 Lincoln Street, Newton Highlands.

**ACTION:**      APPROVED 4-0 (Ald. Danberg, Hess-Mahan, Yates not voting)

**NOTE:** The committee was joined by William Moonan of the National Architectural Trust. Mr. Moonan had been before the committee for a previous preservation restriction on Beacon Street and said he hopes to return as these restrictions become fairly routine. The U.S. National Park Service administers the Federal Historic Preservation Tax Incentive program. Internal Revenue Code Section 170(h) provides for charitable income tax deductions for contributions of partial interest in residential and commercial historic properties for the purpose of conservation. The donation of a façade preservation restriction to the National Architectural Trust protects the historic character of a property's exterior in perpetuity, requiring visible changes to the exterior of the building to receive prior approval from the National Architectural Trust. In response to a question from Ald. Baker, Mr. Moonan explained that there is no effect on local taxes; the tax deduction only applies to federal taxes. If anything, the market might perceive the property as more valuable. The committee thanked Mr. Moonan and voted 4-0 to approve the preservation restriction.

#225-01(3) ZONING & PLANNING COMMITTEE proposing a new section of the Ordinance governing rear lot subdivisions that would require explicit findings of specific public benefits and standards for mitigation of impacts that must be met before a special permit for this purpose could be granted. **(Hearing closed 9/27/04; 90-days 12/26/04)**

**ACTION:** APPROVED 5-0-1 (Ald. Lappin abstaining; Ald. Danberg not voting)

**NOTE:** This item was discussed at the committee meeting of October 25. At that meeting the committee reviewed the draft ordinance and suggested several small revisions. Mr. Baseman went through the text of the draft with the committee and affirmed the committee's wish to establish criteria in (t)(2) as part of the special permit process for rear lots, not for site plan approval, which is irrelevant.

Another revision was to include in subsection (t)(2)g), relative to the location of accessory structures, mechanical equipment, e.g., air conditioner units. The committee got into a discussion about "accessory structures" and how they are defined. Chapter 30 includes definitions for "accessory purpose" and "structure," but not "accessory structures." Since the term "accessory structure" is used throughout the draft ordinance, the committee suggested the term be changed to "structures used for accessory purposes;" Mr. Baseman agreed to do so when finalizing the draft. The committee then amended subsection (t)(2)g) to remove "garages, sheds, etc." and to add after "structures used for accessory purposes" the words "including but not limited to mechanical equipment." (Ald. Johnson has docketed an item to include in Chapter 30 a definition for "accessory structure.")

The committee agreed this ordinance will apply to all rear lots, in all zoning districts. A brief discussion ensued about the affordable housing waiver, and members of the committee concurred that a determination whether the unit(s) satisfies the requirements for provision of affordable housing and the granting of a waiver will be made by the Board of Aldermen *after* the filing of a special permit application and public hearing.

The committee voted 5-0-1 in favor, with Ald. Lappin abstaining because she wished think about the wide-ranging effect of the amendment.

#542-03 ALD. LIPSITT requesting amendment to Chapter 30 to allow "rear lot subdivisions" by Special permit only in cases where a) an as-of-right subdivision plan exists as an alternative, or, b) one or more units of affordable housing will be provided.

**ACTION:** NO ACTION NECESSARY 5-1 (Ald. Hess-Mahan; Ald. Danberg not voting)

**NOTE:** Since this item had been subsumed in #225-01(3), the committee voted No Action Necessary.

Please note, Chairman Yates, Ald. Hess-Mahan and Sangiolo were attending for most of the evening the joint meeting of Finance and Committee on Community Preservation. All other items were held without discussion and the meeting was adjourned at approximately 9:30 PM

Respectfully submitted,  
Cheryl Lappin, Vice Chairman