

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING AND PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 24, 2003

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

Absent: Ald. Mansfield

Also present: Ald. Lipsitt and Harney

City officials: Mike Kruse, Director of Planning and Development; Alexandra Ananth, Planner; Michael Baseman, Assistant City Solicitor; Linda Finucane, Chief Committee Clerk

Appointment by His Honor the Mayor

#438-03 STEVEN KONOWITZ, 36 Selwyn Road, Newton Highlands, appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on July 7, 2006 (60-day Board action 12/19/03).

ACTION: APPROVED 7-0

NOTE: Mr. Konowitz is an attorney with a practice focused on business matters. He has attended a meeting of the EDC and is eager to join the Commission. Alderman Baker pointed out to him that the Commission's approval of the new market in Chestnut Hill might not reflect the views of others in the city. Alderman Yates gave him a copy of the six months old memo from the EDC considering three items before the Committee with the hope that the EDC will proceed actively on them in the New Year. The Committee then approved his appointment 7-0.

Appointment by His Honor the Mayor

#439-03 HARVEY CREEM, 110 Huntington Road, Newton, appointed as an ASSOCIATE member of the ZONING BOARD OF APPEALS to fill the vacancy created by the resignation of Francesco DeVito, which term will expire on September 30, 2004 (60-day Board action 12/19/03).

ACTION: APPROVED 7-0

NOTE: Mr. Creem is well known to several members of the Committee since his wife, Senator Creem, also served several terms on the Board including a term as President. Mr. Creem is a retired accountant who wants to devote some of his new free time to public service. Alderman Baker commented that his business expertise would be particularly valuable in assessing the financial assertions of Chapter 40B applicants. The Committee approved his appointment 7-0.

Appointment by His Honor the Mayor

#440-03 DOUGLAS DICKSON, 17 Oxford Road, Newton Centre, appointed as a member of the NEWTON CONSERVATION COMMISSION to fill the vacancy created by the resignation of Eric Reenstierna, which term will expire on February 16, 2005 (60-day Board action 12/19/03).

ACTION: APPROVED 7-0

NOTE: Mr. Dickson is well known to Committee members as a member of several city boards including the Landscape Advisory Committee, the Integrated Pest Management Committee, and the Community Preservation Committee (CPC). He had been a mayoral appointee on the Committee representing recreation interests in Wards 5 and 6. After he is confirmed as a Conservation Commission member, the Commission will appoint him to the CPC to replace Mr. Reenstierna (no other Commission members are interested). Committee members questioned the possible overrepresentation of the Conservation Commission on the CPC. Mr. Dickson said that the members do not just represent their own interests but bring their general expertise to bear on the matters before them. An updated CPC list and Mr. Dickson's resume are attached.

Re-appointment by His Honor the Mayor

#404-03 JOSEPH COSGROVE, 125 Shornecliffe Road, Newton, re-appointed as an Associate member of the ZONING BOARD OF APPEALS for a term to expire on September 1, 2004 (60-day Board action 12/6/03).

ACTION: APPROVED 7-0

NOTE: Mr. Cosgrove is an attorney who is a life-long resident of the city and formerly served as a City Assessor. He pointed out that Chairman Meizler has made a conscious effort to spread the hearings among all ten full and Associate Members of the ZBA so that the burden and amount of interesting work are evenly distributed.

Re-appointment by His Honor the Mayor

#402-03 SELMA URMAN, 90 Shady Hill Road, Newton Highlands, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire on September 30, 2006 (60-day Board action 12/6/03).

ACTION: APPROVED 7-0

NOTE: Ms. Urman is an attorney who serves as a Hearing Officer for the Department of Telecommunications and Energy. DTE procedures are different (sworn testimony, months to make decisions, etc.), but the roles are somewhat similar. The Committee voted 7-0 to approve her re-appointment.

Re-appointment by His Honor the Mayor

#405-03 BERNARD SHADRAWY, JR., 789 Commonwealth Avenue, Newtonville, re-appointed as an Associate member of the ZONING BOARD OF APPEALS for a term to expire on September 30, 2004 (60-day Board action 12/6/03).

ACTION: HELD 6-0 (Lennon not voting)

NOTE: Mr. Shadrawy is an Attorney who formerly served as the Boston Commissioner of Real Property. Alderman Yates had spoken to an observer of the ZBA who said that he had participated actively and valuably in the Teddy Bear Club hearing and deliberations. Attorney Baseman confirmed from his participation in ZBA work that Mr. Shadrawy is a very useful member of the Board. Alderman Johnson said that she was not familiar with Mr. Shadrawy and since he is a resident of her ward, she would prefer not to vote on him yet. His passive approval date is December 6, 2003. The Chair will ask the Mayor to withdraw this appointment and resubmit it next year. The Committee held the item 7-0.

#332-03 ALD. LIPSITT requesting discussion of possible ordinance amendment to control construction of fences or walls on or near property lines.

ACTION: HELD 7-0

NOTE: The purpose of this item is to prevent fences from obstructing the view of traffic and pedestrians and from causing closed in sidewalks. The Committee discussed what sizes and types of fences should be exempted. The Mass Turnpike and Route 128 were exempted as limited access highways with large volumes of noisy traffic. Alderman Yates pointed out that many residents of Route 9 have fences for similar reasons, but the matter was left unresolved. There was extensive discussion of minimum heights of fences in non-residential districts, but ultimately the security exemption seemed to cover this situation. It was noted that the Urban Design and Beautification Commission that would be the appeals board for this item were unaware of this possible addition to their role. Alderman Baker was concerned about the Historic Districts. Mr. Baseman noted that under MGL Chapter 143, Sec 3 (excerpt attached) in the event of a conflict between building code and historic district, the district prevails. The staff took numerous notes and agreed to have a revised version ready for Committee discussion at the meeting on December 8. Alderman Lipsitt hoped that it could be reported and passed by the Board while she is still serving. Alderman Johnson said that although she supports the idea, she feels that an issue with such a broad public impact should definitely be the subject of a public hearing and that she would not be willing to vote for it without a public hearing. A majority of the Committee agreed. Nevertheless Alderman Yates said that it was important that the best possible text be developed while the matter is still fresh in the Committee's minds. The Committee voted to hold the item for discussion at the December meeting.

The remaining items on the Agenda fell into three categories. The first were those that will be held until December 8 at which time the sponsor will be able to make a case for referral or allow a No Action Necessary vote. The items that fell in this category and were Held 6-0 (Alderman Lennon not voting) were the following:

#61-03 ALD. LENNON requesting a discussion with the Planning Department and other relevant departments the scheduling of Community Development Block Grant projects.

#419-02 ALD. GENTILE requesting a discussion with the Commissioner of Inspectional Services on possible action by the Board of Aldermen that will help the department better enforce existing zoning regulations and bring violators into compliance, i.e., greater ticketing power, additional staffing, etc.

- #231-02 ZONING & PLANNING COMMITTEE requesting that further studies be done by the Planning and Public Works Departments with maximum feasible participation by the neighborhood (using special permit mitigation money to hire consultant(s) if necessary) to answer questions and address issues raised in Zoning and Planning Committee on June 10, 2002 about how to reduce the possibility of further over development in Thompsonville and ways to measure its impact.
- #194-02 ALD. GERST seeking a new ordinance regulating temporary structures in residential zones.
- #433-01 ALD. STEWART proposing that Sec. 20-6(a) be amended to allow gasoline service stations to open at 6:00 a.m. without a special permit.

The second category was those items that the sponsor or the Committee agreed had outlived their usefulness in their current form and thus could be voted No Action Necessary 6-0 (Alderman Lennon not voting):

- #195-02 ALD. SANGIOLO requesting a discussion of possible zoning amendment to height and setback requirements in residential districts.
- #430-01 ZONING & PLANNING COMMITTEE proposing discussion of the “phantom parking credit” in Sec. 30-19 (c)(2)a).
- #409-01(2) ZONING AND PLANNING COMMITTEE requesting discussion of limitation of building permits for new residential units while reviewing possible changes to the city's zoning ordinances, including learning from recent experience with density, dimensional controls, or special permits.
- #366-98 ZONING & PLANNING COMMITTEE requesting discussion and possible recommendation of further ordinance or statutory amendments to enhance the enforcement of Newton Zoning and other Land Use Ordinances.
- #82-99(3) ZONING & PLANNING COMMITTEE requesting provision of Ordinance V-111 clarifying definition of height for residential districts be extended to clarify its application to other zoning districts.
- #127-00 ALD. YATES proposing an amendment to the ordinance governing the Upper Falls Historic District to prohibit the construction of attached garages facing public ways or facing private ways but visible from a public way.
- #422-00 ALD. SANGIOLO requesting adoption of an ordinance that would require filings every two years by non-profit and educational institutions of a growth management or master development plan.

- #315-01 ALD. SANGIOLO requesting that notification to abutters for zone changes and special permits be increased to 600 feet.
- #297-00 ALD. YATES & SAMUELSON proposing that Chapter 30 be amended to require a minimum lot area of 5,000 square feet for a single-family dwelling and 7,500 square feet for a two-family dwelling in Multi Residence Districts.

The following items were all referred to the next Board 6-0 (Alderman Lennon not voting).

- #511-03 ALD. SANGIOLO requesting that Section 22-44, Demolition of historically significant buildings or structures., be amended to require applicants for demolition permits to submit proposed plans to and receive from the Historical Commission approval of plans for the new structure prior to receiving permission to demolish an historic structure.
- #512-03 ALD. SANGIOLO requesting discussion with the Inspectional Services Commissioner and possible ordinance amendment requiring demolition permit applicants to give notice to abutters prior to actual demolition re demolition dates; and that any and all plans for proposed construction on the same site be submitted and approved by the Inspectional Services Department.
- #311-02 ALD. JOHNSON & SANGIOLO requesting that Section 30-23 be amended by including design guidelines to address aesthetic impacts that renovation or new construction have on the surrounding environment.
- #294-03 ALD. BAKER, YATES, JOHNSON AND MANSFIELD requesting analysis and discussion of possible remedies for demolition of modest housing and replacement with oversized structures out of character with the surrounding neighborhood, including examining the experience of other communities, including those out of state, who have worked to address this problem.
- #355-03 ALD. LINSKY & JOHNSON proposing that footnote 7(4) of Table 1 contained in Section 30-15 be amended by deleting the word "second."
- #267-03 ALD. SANGIOLO, JOHNSON, STEWART, & SAMUELSON proposing that Sec 30-5(a)(3) of the Zoning Ordinance be amended to include public safety concerns and a cap on the number of students based on lot size.
- #59-03 ALD. SANGIOLO proposing amendments to Chapter 30-19 Section (j), *Lighting, Surfacing, and Maintenance of Parking Facilities*.
- #60-03 ALD. SANGIOLO proposing an ordinance requiring that all City Boards and Commissions under the Zoning and Planning Committee's purview report to the Committee annually.

REFERRED TO ZONING & PLANNING & FINANCE COMMITTEES

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- #168-02 HIS HONOR THE MAYOR requesting that the Board of Aldermen establish new civil fines under Section 20-21 of the City of Newton Ordinances for the violation of various environmental provisions enforced by the Conservation Commission.
- #330-02 ALD. JOHNSON, BULLWINKLE, LINSKY requesting a discussion regarding revamping the home business ordinance to reflect current uses (allowable/not allowable).
- #234-02 ALD. PARKER & MANSFIELD requesting discussion of limits on restaurant hours, particularly with respect to criteria and procedures for granting exemptions.
- #128-02 ALD. JOHNSON & LINSKY requesting a discussion regarding protection of residential areas abutting Business and Manufacturing districts, e.g., required screening.
- #432-01 ALD. SANGIOLO proposing to add a definition for “recreational facilities” to Sec. 30-1.
- #373-01 ALD. SANGIOLO proposing an ordinance requiring setbacks for athletic fields and structures occupying athletic fields from abutting residential properties.
- # 86-02 ALD. MANSFIELD proposing to amend Secs. 30-11(a)(9) and 30-11(d)(9) to require a special permit for restaurants having not more than 50 seats that are within 300 feet of a Residence District.
- #371-01 ALD. PARKER, YATES, SANGIOLO, BASHAM, LIPSITT proposing an ordinance to require an appropriate review and approval process to control drainage and other environmental impacts in cases of major excavation or other topographic changes.
- #372-01 ALD. SANGIOLO proposing that the requirement for a special permit for a grade change of more than 3 feet be moved from Section 30-5 to 30-15.
- #128-00 ALD. YATES proposing an amendment to the ordinance governing the Upper Falls Historic District to make failure to complete a project approved by the Commission within one year of the issuance of the permit a violation of the ordinance.
- #128-00(2) ZONING & PLANNING COMMITTEE requesting the Law Department and the Inspectional Services Department develop an ordinance based on the City’s Home Rule powers requiring property owners to complete reconstruction once begun in a reasonable time and
- #128-00(3) ZONING & PLANNING COMMITTEE requesting that the Planning, Law and Inspectional Services Departments develop an effective way to prevent in the

historic districts the construction of structures that do not require building permits but nonetheless have impact on the historic character of the districts.

- #287-01 ALD. SANGIOLO proposing an ordinance to require a permitting process for the construction of parking lots.
- #304-01 ALD. SANGIOLO proposing an ordinance that would detail what percentage of new building or additions would trigger a special permit in residential districts.
- #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.
- # 20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.
- #40-02 ZONING AND PLANNING COMMITTEE requesting a discussion of how the zoning ordinance might be amended to control the conversion of existing commercial uses to other uses which have more impact because of size or type.
- #237-01 ALD. MANSFIELD proposing to amend Secs. 30-1, 30-11, 30-12, and 30-13 of the Revised Zoning Ordinances to clarify the definitions of and specify the distinctions between restaurants, retail food establishments, fast food establishments, and food processing and preparation as allowed and permissive uses in Business, Manufacturing and Mixed Use Districts.
- #238-01 ALD. MANSFIELD & SAMUELSON proposing to amend Sec. 30-1 and 30-11(g)(5) of the Revised Zoning Ordinances to clarify the definition of and restrict the permissive use "drive-in food service establishment" to Limited Manufacturing Districts only.
- #239-01 ALD. MANSFIELD proposing to amend Secs. 30-1, 30-11, 30-12, and 30-13 of the Revised Zoning Ordinances to establish a definition of and to specify appropriate zoning districts in which to conduct food catering businesses.

ITEM REFERRED TO ECONOMIC DEVELOPMENT COMMISSION:

- #366-95 ALD. YATES proposing the establishment of a "Recycling Market Development Zone."

ITEM REFERRED TO ECONOMIC DEVELOPMENT COMMISSION:

- #367-95 ALD. YATES proposing the establishment of a subzone of the "Foreign Trade Zone of the Port of Boston" within Newton.

ITEM REFERRED TO ECONOMIC DEVELOPMENT COMMISSION:

#326-99 ALD. YATES proposing amendments to Chapter 30 to encourage railroad related uses in Mixed Use Districts land adjacent to railroad.

ITEM REFERRED TO ECONOMIC DEVELOPMENT COMMISSION

#20-03(2) ZONING & PLANNING COMMITTEE requesting the Economic Development Commission to evaluate the economic and housing impacts of the current hotel linkage provision of the Zoning Ordinance and of a possible increase in the percentage from 10% to 15%, while taking into consideration the impacts of different types of hotel use.

ITEM REFERRED TO THE "INCLUSIONARY ZONING TASK FORCE:"

#291-95 ALD. PARKER, BALSER, LIPSITT, MANSFIELD, & SAMUELSON requesting that Sec. 30-24 of the City of Newton Rev. Ords., 1995, be amended to require all large commercial development(s) to make a cash payment to be used for affordable/low-income housing. Such payments to be calculated individually for each development on the basis of costs incurred by the city; demands on infrastructure and services; increased need for area affordable housing; and other impositions to the city and community that result from the construction of such projects.

ITEM REFERRED TO THE 30-15 TASK FORCE:

#216-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit to demolish an existing single-family dwelling on a pre-1953 lot that does not meet the current dimensional requirements for a lot in a Multi Residence District and replace it with a two-family dwelling.

ITEM REFERRED TO THE 30-15 TASK FORCE:

#217-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more containing one or more residential units in any residential district.

ITEM REFERRED TO THE 30-15 TASK FORCE:

7-99 ALD. PARKER requesting discussion of possible zoning amendments to create additional residential districts with different FAR and lot size requirements.

Respectfully submitted

Brian Yates, Chairman