

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

November 8, 2006

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Soles

Commissioners: James Bowman
Chris Hamilton
Mary Lou McDowell
Joe Russell

Absent: Ralph Begleiter

Staff Present: Roy H. Lopata, Planning Director

Chairman James Soles called the Planning Commission meeting to order at 7:30 p.m.

**1. AGENDA ITEM #1: THE MINUTES OF THE SEPTEMBER 5, 2006
PLANNING COMMISSION MEETING.**

The minutes of the September 5, 2006 Planning Commission meeting were approved as received.

2. ELECTION OF OFFICERS.

MOTION BY BOWMAN, SECONDED BY HAMILTON THAT MR. SOLES BE ELECTED AS CHAIRMAN OF THE PLANNING COMMISSION.

VOTE: 5-0

AYE: BOWMAN, HAMILTON, McDOWELL, RUSSELL, SOLES

NAY: NONE

ABSENT: BEGLEITER

DISTRICT # 6 – VACANT

MOTION PASSED UNANIMOUSLY

Dr. Soles: Are there any nominations for vice-chairman of the Commission?

Mr. Lopata: Mr. Bowman is currently the vice-chair, by-the-way.

MOTION BY HAMILTON, SECONDED BY McDOWELL TO ELECT MR. BOWMAN AS VICE-CHAIRMAN OF THE PLANNING COMMISSION.

VOTE: 4-0

AYE: HAMILTON, McDOWELL, RUSSELL, SOLES

NAY: NONE

ABSTAIN: BOWMAN

ABSENT: BEGLEITER

DISTRICT #6 – VACANT

MOTION PASSED UNANIMOUSLY

MOTION BY BOWMAN, SECONDED BY RUSSELL THAT MS. DOWELL BE ELECTED AS SECRETARY OF THE PLANNING COMMISSION.

VOTE: 5-0

AYE: BOWMAN, HAMILTON, McDOWELL, RUSSELL, SOLES

NAY: NONE

ABSENT: BEGLEITER

DISTRICT #6 – VACANT

MOTION PASSED UNANIMOUSLY

Dr. Soles: I have suggested to Mr. Lopata and he has agreed that sometime after the first of the year, after the appointment of one additional member of the Planning Commission, that we hold a workshop and go through the steps of the process that brings us the materials that we study and then the hearing process, so that we all have some common background, and ask questions to understand the roles of the committees and the different City offices, since there are so many new members of the Planning Commission. I think that there are members of the public that would appreciate this as well. So, Mr. Lopata will be scheduling a workshop sometime after the first of the year.

You also received this week a group of articles dealing with the ethics of serving on the Planning Commission. Mr. Lopata found those, sent them to me, and I thought it was a good idea to send them to everybody. He made it clear to me that he did not think any of us were in violation. He just thought it would be a very good idea if we all understood what the best practices were, in this instance. I certainly think that considering what we read in the newspapers sometimes about things that happen that it would be a good reminder for us.

3. AGENDA ITEM #3: REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE PROVIDING FOR PROPERTY OWNER NOTIFICATION REGARDING SPECIAL USE PERMITS.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“Background

Recently the Planning Department has received inquiries regarding the public meeting and notification requirements for the City’s consideration of special use permits. Moreover, the City Council, based on Planning Department and Commission recommendations has added special use requirements for several important existing use categories, most notably apartments downtown and restaurants providing alcoholic beverages. As a result, the Planning Department believes that the Planning Commission and City Council should consider amending the Zoning Code to require notification of adjacent and nearby property owners for special use permits.

Currently, special use permit public hearings at the Planning Commission (required for sites one acre or larger) and City Council are advertised in local newspapers and on the City’s website in meeting agenda notices. Applicants are, in addition, routinely instructed to contact immediate neighbors prior to Planning Commission and/or City Council consideration of their special use permit request. Beyond that, for special use permits that accompany rezonings and annexations (which happens quite frequently), the Planning Department and City Secretary’s Office notify adjacent and nearby residents by letter regarding the project and the date of the relevant public hearing.

In any case, as a result of the expanded uses of the special use permit process, in addition to the current advertising system, the Planning Department believes it would be appropriate to require notification for all special use permit requests to adjoining and nearby property owners as described below.

Recommendation

After reviewing this report and receiving public input, the Planning Department suggests that the Planning Commission recommend that City Council approve an amendment to the Zoning Code, as follows:

Amend Zoning Code Section 32-78, Special Use Permit, Section (a)(4) by adding the following:

“A reasonable effort shall be made to give 10 days notice by mail of Planning Commission and/or City Council public hearings to all property owners of record, according to ownership data available at Newark, whose property is immediately adjacent to or within 300 feet of the property for which the special use permit is requested.”

I will be happy to answer any questions.

Dr. Soles: Do any Planning Commissioners have questions? If not, do any members of the public wish to comment on this proposal?

Mrs. Jean White: 103 Radcliffe Drive. I support this. I think it is a great idea, so I do not have any problems with it. But, I did have some questions for clarification. I had presumed that what had been said is that the recent case for the special use permit for the day care home was one of the impetuses for that. As I understand it now, for example, the day care home in the future or you have a special use permit would now have a notification part to it. Is that correct?

Mr. Lopata: Correct.

Mrs. White: Likewise, alcohol establishments – new ones – need a special use permit.

Mr. Lopata: As I mentioned in my report, we have changed our Code requirements. There are many more uses regarding special use permits currently than we might have had four or five years ago. For example, alcohol selling establishments and apartments downtown. So, yes, the same rules would apply.

Mrs. White: So, does that mean that for all special use permits, this notification process would be?

Mr. Lopata: Correct – every one.

Mrs. White: I was going through the Zoning chapter . . .

Mrs. White then read from the Zoning Code a lengthy list of uses needing a special use permit.

Mr. Lopata noted that all the uses read by Mrs. White would require notification.

Mrs. White: What I also wanted to ask is that in some cases it goes to the Planning Commission, if it is an acre or more, would you send one letter and then they don't get another letter for Council or would they get a letter both times?

Mr. Lopata: The reason it is “and/or” is because, if the use is required to go to the Planning Commission, the residents will get a letter for both Planning Commission and Council. If it is just Council, it is just Council. It is identical to the rezoning.

Mrs. White: With a rezoning, I thought the people only got the notice once.

Mr. Lopata: No, that is not correct.

Mrs. White: They get it twice for both. Thank you for setting me straight. Then, I had looked up the notification in terms of what the notification was, for example, for a

rezoning. It was actually very similar if not identical language, within 300 feet of the property, in that case, things relating to zoning. It had this additional sentence, which I did not know whether it was important to you or not – I don’t care – I am reading on page 3318 from Section 32-79 Amendment Procedure, and buried in a paragraph there has to do with the notification, for example rezonings. It has this sentence, “However, failure to notify by mail any individual or individuals qualifying for notice shall not invalidate any action taken by Council.” I did not know whether that was an important thing to put in so that somebody could not sue or whatever they might do.

Mr. Lopata: I was not concerned about it. We get sued anyway.

Mrs. White: I am not concerned about it, but since it was there before.

Mr. Lopata: I saw it, and I thought for rezonings it was more important. We could put it in, I suppose.

Mrs. White: I am not asking to put it in. I was just raising the question. Okay, I support it. Thank you very much.

Dr. Soles: Are there other public comments? Are there other questions or comments from the Planning Commission? If not I would entertain a motion at this time to amend Zoning Code Section 32-78 Special Use Permit.

MOTION BY BOWMAN, SECONDED BY HAMILTON, THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE THE FOLLOWING AMENDMENT TO THE ZONING CODE:

AMEND ZONING CODE SECTION 32-78, SPECIAL USE PERMIT, SECTION (A)(4) BY ADDING THE FOLLOWING:

“A REASONABLE EFFORT SHALL BE MADE TO GIVE 10 DAYS NOTICE BY MAIL OF PLANNING COMMISSION AND/OR CITY COUNCIL PUBLIC HEARINGS TO ALL PROPERTY OWNERS OF RECORD, ACCORDING TO OWNERSHIP DATA AVAILABLE AT NEWARK, WHOSE PROPERTY IS IMMEDIATELY ADJACENT TO OR WITHIN 300 FEET OF THE PROPERTY FOR WHICH THE SPECIAL USE PERMIT IS REQUESTED.”

VOTE: 5-0

AYE: BOWMAN, HAMILTON, MCDOWELL, RUSSELL, SOLES

NAY: NONE

ABSENT: BEGLEITER

DISTRICT #6 – VACANT

MOTION APPROVED UNANIMOUSLY

Meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission