



CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Date: August 5, 2014

Subject: Carlone, et al. Zoning Petition

Recommendation: The Planning Board does not recommend adoption.

To the Honorable, the City Council,

The Carlone, et al. Zoning Petition proposes to designate the City Council as the granting authority for Project Review Special Permits pursuant to Article 19 of the Zoning Ordinance. At its public hearing, the Board heard numerous points both for and against the proposal.

While we are sympathetic to the issues that were raised and agree with many of the points that supporters of the petition have made, we do not believe it will achieve the desired goals and therefore the Board does not support the approach proposed in this zoning petition. The concerns expressed by Board members at the August 5 hearing are summarized below. The Board feels particularly encouraged by the suggestions made for improving the review process, which are discussed toward the end of this recommendation.

Zoning vs. Project Review

One point of concern raised at the public hearing was that the Planning Board had been approving projects that are larger than desired, and that developers were being allowed to build “whatever they wanted.” The Board notes that proposals seeking a Project Review Special Permit are limited by the strict development standards set forth in the Zoning Ordinance, and this special permit represents an additional set of requirements for projects that otherwise conform to the district zoning requirements. In many districts the ordinance is structured to require review by special permit to allow height, density, uses, setbacks and parking arrangements contemplated by prior planning for these districts, but the Planning Board cannot approve a special permit for development if it is not expressly allowed by the Zoning Ordinance.

The Board believes it is vital for the Zoning Ordinance to establish clear expectations for what is allowed under zoning and for the special permit granting authority to apply the City’s policies in a rational and judicious way. This helps to ensure a fair process that guards the rights of property owners, whether they are abutting or nearby a proposed development or seeking permits to develop property themselves.

As the final authority in establishing the City’s zoning regulations, the City Council sets the rules for property owners within its powers under the state’s Zoning Act (Chapter 40A). The special permit granting authority is a quasi-judicial role that is intended to apply the criteria in the

zoning to specific proposals on a case-by-case basis. The intent is for special permits to “normally be granted” when the criteria are met, as set forth in the Zoning Ordinance, unless the granting authority finds that the particulars of the project – not the particulars of the zoning – cause it to be to the detriment of the public interest for a specific reason. The review process provides the opportunity for significant changes to projects, and over time this has resulted in projects that do a better job of meeting the zoning and planning criteria and responding to comments and concerns expressed by neighbors, staff and the Board.

Cambridge’s development process can be contrasted with the process in the City of Boston, which is exempt from some provisions of Chapter 40A. In Boston, development can be negotiated on a case-by-case basis and approved by the Boston Redevelopment Authority (BRA), a political entity appointed by the mayor with discretion to approve or deny projects regardless of whether they conform to zoning. This does not necessarily result in smaller projects; often, projects seeking approval from the BRA are larger than what zoning would allow. Such a process can favor variable political considerations over pre-established policies and criteria, and creates more uncertainty for property owners and the public.

Another concern raised in public comment was the consideration of cumulative impacts in project review. The pace of growth is always a major concern when market cycles create an uptick in new development. However, the Board’s view is that cumulative impacts should be addressed through district-wide or citywide planning efforts. Due to the judicial nature of special permit cases, in which each application is evaluated individually on its own merits, it is possible to require modifications to projects to coordinate with present or future development on other properties but not to deny permits solely because of the existence of these developments. Cumulative impacts should be evaluated when establishing zoning limitations for a particular district, and have been part of such planning efforts in the past, including the Citywide Rezoning and Eastern Cambridge Rezoning of 2001, the Concord-Alewife Plan and Rezoning of 2006, and the more recent Kendall Square Central Square (K2C2) Planning Study. In special permit review, decisions should be based on whether the impact of a specific development proposal is consistent with the established plans and policies.

As directed by the Council, the City is beginning a new comprehensive citywide planning effort, which will require significant attention from the City Council in order to address these policy questions. The Board supports the Council in this effort and cautions whether the added responsibility of conducting project review will be a distraction from these broader issues.

Planning Board and City Council Roles

Because of the issues noted above, the Board believes that land use regulation benefits from a separation of powers, with a legislative body empowered to create policy and a quasi-judicial body empowered to guide the implementation of that policy.

The Planning Board brings particular skills and qualities to its role as a special permit granting authority. Its members reside in different parts of the city, with varied professional experience in planning and urban development, and provide different perspectives on the cases they review.

Planning Board members devote significant time and attention to reviewing applications, asking questions, listening to advice from the public and staff, studying design iterations, and formulating conditions to be attached to special permit approvals. Members view their work as a public service, and while reasonable people may disagree on certain issues, the goal is to achieve the best result for the city. As an independent, appointed volunteer body, Board members are also buffered from financial and political considerations that might divert a special permit granting authority from deciding a case on its merits.

Despite the Board's political independence, the role of the public is still a critical part of the process. Planning Board members value the time and effort spent by residents and neighborhood groups reviewing a project and articulating their concerns to the Board. These comments provide valuable information about a neighborhood's interests and help Board members shape projects in the public interest. Neighborhood concerns are often reflected in the conditions applied to special permit approvals.

The City Council has also played an important role in the process because Councillors have the freedom to work more directly with developers and neighbors to broker agreements and resolve disputes outside the purview of the special permit case. A recent example is the Hathaway Lofts proposal on Richdale Avenue. In its first iteration, the proposal to demolish most of the existing building and construct a new housing development raised concerns from the Planning Board along with neighbors, City Councillors and the Historical Commission. Discussion between developers and neighbors, supported by multi-agency approval requirements (and with the City Council retaining its power to rezone), resulted in a reformulation of the project into an adaptive reuse that was broadly supported by neighbors and City agencies. The Planning Board, in granting the final approval for that project, was able to incorporate many of the agreements made during the process into enforceable conditions of the Project Review Special Permit.

Although there are other communities that designate legislative bodies as special permit granting authorities, testimony indicated that this approach does not produce better results. Moreover, despite the petition being proposed as a temporary measure, the Board acknowledges that in a political environment, temporary laws have a tendency to become permanent, and can be especially troublesome when they relate to the assignment of governmental powers.

Procedures

As a technical matter concerning the zoning proposal, the Board notes that under current zoning, a development proposal requiring a Project Review Special Permit along with other special permits (including PUD special permits, multifamily or townhouse special permits, or various special permits that may be granted by the Planning Board or Board of Zoning Appeal) is heard by the Planning Board as a single case. The zoning petition proposes that the City Council have the authority to grant Project Review Special Permits but does not explain how other special permits would be decided for the same project. Therefore, it is possible that some projects would require simultaneous special permit approvals from the City Council and the Planning Board and/or the Board of Zoning Appeal. This system could be very difficult to administer and could result in confusion for applicants and the general public alike.

Improvements to Process

The Board especially appreciates suggestions made by members of the public on ways to improve the review process. Board members agree that there have been recent occasions when the Planning Board's process has not met community expectations, and are encouraged to help find ways to address those issues along with others in the city government and community.

Lately, there have been misunderstandings about the role of the Planning Board and its members relative to other officials and agencies within the city. The Board wants to be open and transparent with the larger public about its role and responsibilities, and the process by which those responsibilities are carried out. If members of the public are better informed about the project review process and how it shapes development, they can participate more effectively in improving the work of developers and the Board, with better results for the community.

The review process itself could also be improved to encourage more constructive involvement by community members. The formal public hearing process, which the Planning Board is required by law to conduct, is not always conducive to constructive dialogue. However, some meetings, such as the most recent hearing on the 40 Thorndike Street case, have been more successful in promoting a civil exchange of ideas despite the length of time required to ensure a thorough hearing and the complex and often emotional issues being considered.

There was a suggestion to require dialogue with neighbors before a project is heard formally by the Planning Board. The Planning Board and staff already encourage this and many developers take on that responsibility, but the dialogue could be strengthened by providing support, clearer expectations for developers, or City Council action to amend the zoning requirements to mandate this in more cases.

Another suggestion was made regarding impact studies and analysis provided by developers in a special permit application. Because members of the public might be suspicious of studies directed by a project proponent, it was suggested that the Planning Board could commission its own studies or peer review to verify the findings or acknowledge limitations. This is an idea worth exploration by the City to determine an appropriate way to devote resources to this effort when city departments lack specialized expertise.

Finally, the issues reflected in this recommendation might benefit from a closer dialogue between the City Council and Planning Board on issues related to planning and development. Board members welcome the opportunity to engage in such a dialogue if the Council shares that opinion.

Respectfully submitted for the Planning Board,



Hugh Russell, Chair.