

WARRANT ARTICLE 14

REPORT OF SUBCOMMITTEE ON LAND USE, ZONING, AND SUSTAINABILITY

Recommendation: Favorable action on Warrant Article 14 by a vote of 6-0 with 0 abstentions

Executive Summary:	The Department of Planning and Community Development has proposed this Article that gives the Town explicit authority to impose certain construction-phase mitigation requirements on a builder seeking a Special Permit, requirements to mitigate adverse effects on the neighborhood during construction. The Subcommittee discussed the requirements suggested in the Article – which include the builder’s submission of construction mitigation performance standards such as construction-related parking, a plan for communication with the neighborhood regarding the construction, and the appointment by the builder of a third-part liaison with the neighborhood paid for by the builder – and voted 6-0-0 in favor.
Voting Yes will...	The Article will facilitate the Town’s imposing requirements on the Builder that can prevent or mitigate adverse effects of building construction on the neighborhood. A third-part liaison paid for by the builder would refer complaints about the construction, etc., to the appropriate Town agencies, track the complaints and facilitate communication between the builder and the neighborhood. The Article is intended to prevent and solve adverse impacts imposed by the construction and save the Town the money and time of Town employees investigating and resolving complaints.
Voting No will...	The result of no action is that the Town would likely continue to follow-up on neighborhood complaints, investigate the complaints, and try to resolve them with the builder, which can be a painstaking, evidence-gathering, and dispute-resolving task.
Financial impact [if any]	This Article would likely have a favorable financial impact on the Town because, when its provisions were used, because questions and conflicts on neighborhood impact would initially be handled by communication between the builder and the neighborhood and dispute resolution by an on-site third-party liaison paid for by the builder.
Legal implications [if any]	None.

Introduction

This article would amend Article 9 of the Zoning By-Law, the By-Law that provides that building construction or alteration must be in accordance with a permit issued by the Town in accordance with the requirements in the Article. Where the builder seeks approval of a plan that

is not in conformance with the Town building requirements, it cannot proceed unless it has filed for and obtained a Special Permit from the Board of Appeals, in accordance with Article 9.05, determining that a number of conditions have been met. Article 9.05 sets forth mandatory conditions for approval, such as the appropriateness of the site for the use or structure requested, a determination that the use will not adversely affect the neighborhood, etc. Article 9.05 also provides that the Board of Appeals may require additional conditions and safeguards to protect the neighborhood, such as a requirement for front, side, or rear yards greater than the required minimum, modification of exterior features of the structure, regulation of off-street parking, etc.

Evaluation Methodology/Research

The Department of Planning and Community Development has requested an amendment to Article 9.05, “Conditions for Approval of Special Permit.” At present, the Article requires the Zoning Board of Appeals to issue Special Permits for construction that does not conform to Town building upon findings that the “specific site is an appropriate location for such a use...”, adequate and appropriate facilities will be provided...”, etc., and the Zoning Board of Appeals may attach conditions and safeguards to protect the neighborhood. What this Article adds are construction-phase requirements on the builder in order to prevent or mitigate adverse effects on the neighborhood during construction.

Such requirements may include submission of detailed construction mitigation performance standards such as construction-related parking or standards, requirements for details and frequency of communications to the neighbors, hosting a webpage that includes links to approved plans, construction updates, contact information for the builder and the appropriate Town employees, on-site signage showing the website and emergency telephone contact, and identification of a third-party liaison paid for by the builder whose role would include an on-site presence in support of the Town’s enforcement agencies as recommended by the Building Commissioner, which may include referring complaints to the appropriate Town agencies, tracking complaints and facilitating communication between the builder and the neighborhood.

Discussion

The Subcommittee held a public hearing on this Article on April 4, 2022. Present were Subcommittee chair Carlos Ridruejo, Scott Ananian, Anita Johnson, Linda Olson Pehlke, David Pollak, and Lee Selwyn. Kara Brewton, Director, Department of Planning and Community Development, spoke for the Department. Other members of the public also attended.

The Director of Planning and Community Development stated that the Town may have authority to impose these conditions, but that having clear, express authority will make the duties of the building applicant clear. The Department notes, and the Subcommittee agrees, that good communications and planning can prevent unnecessary adverse effects during construction. With good communication, the Town, the builder, and the neighborhood can stay on top of anticipated problems so as to mitigate the problems. Indeed, with good communication, the builder may identify and resolve issues before they rise to the level of requiring Town intervention, avoiding neighborhood disruption and hazard such as has occurred at Hancock Village, Babcock Place, and Harvard and Boylston. It is anticipated that the Article will result in less expense to the Town because the builder is required to handle, and fund, the measures set forth in the By-Law.

The Subcommittee has added the authority for the Town to impose “requirements for safe pedestrian and bicycle passage,” during construction, with the assent of the Department, based on fraught conditions imposed on pedestrians and bicyclists by recent building projects.

Recommendation

By a vote of 6-0 and no abstentions, the Subcommittee voted favorable action on this Article, as amended:

To see if the Town will amend the Zoning By-Law as follows:

By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood -- to add the following section:

“h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:

- (i) detailed construction mitigation performance standards such as construction-related parking or standards, and requirements for safe pedestrian and bicycle passage;
- (ii) details and frequency of communication from the applicant’s construction liaison to certain abutters and/or the neighborhood generally;
- (iii) an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact’s name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts;
- (iv) required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or
- (v) a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include: on-site presence in support of the Town’s enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and participating in and/or leading communication between the applicant and abutters or neighborhood.”

...or act upon anything else thereto.