

BOARD OF ALDERMEN

ITEM NO.: A(2)

AGENDA ITEM ABSTRACT

MEETING DATE: JUNE 12, 2012

TITLE: A Review of Land Use Ordinance Provisions Relating to Board of Adjustment and Board of Aldermen Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit

DEPARTMENT: PLANNING	PUBLIC HEARING: No
ATTACHMENTS: A. RESOLUTION ACCEPTING REPORT B. MEMO FROM AUGUST 2004 REGARDING PERMIT REQUIREMENTS C. LUO EXCERPT, SECTION 15-148	FOR INFORMATION CONTACT: MARTY ROUPE, 918-7333

PURPOSE

In early May 2012, there was discussion amongst Board members regarding the level of permit required for the proposed Family Dollar project at 100 Alabama Avenue and possible ordinance changes needed to ensure that projects with strong public interest reach the Board of Aldermen. This item provides background information on relevant, existing Land Use Ordinance provisions, and allows the Board an opportunity to discuss the matter further and, if needed, potentially request that staff draft modifications to the existing language.

INFORMATION

Background on Permit Requirements

As background reading, please find attached a memorandum from August 2004, which explains in some detail how the LUO's permissible use table and associated provisions are arranged (**Attachment B**). Only a portion of the memo speaks directly to the questions currently at hand (see section regarding LUO Section 15-148), but staff thought the entire memo may be useful for understanding the entire, related picture, given that the Mayor and multiple Board members have changed since its original distribution.

Current Questions and Discussion

Town staff understands, based on comments and emails, that the Board is interested in discussing further details related to how and when certain types of permits are required, with the Family Dollar project as a recent case or situation prompting the discussion. See below an excerpt from the staff report provided to the Board of Adjustment for the public hearing, as further explanation of how the project made its way to the Board of Adjustment:

“Of note, Land Use Ordinance (LUO) Section 15-146, Table of Permissible Uses only requires a Zoning Permit for this project. However, staff considered multiple factors, including proposed impacts to a stream buffer on the site, and ultimately determined it was appropriate to raise the required permit level to a Special Use Permit, in accordance with LUO Section 15-148. In this case, the only option was to raise the level to Special Use Permit, not a Conditional Use Permit. Accordingly, the Board of Adjustment is the permit-issuing authority for the project.”

As LUO Section 15-148 specifically speaks to how and when the permit type may be modified, it also is included as **Attachment C**. In the case of a project such as Family Dollar, Section 15-148(a) only allows for staff to raise the permit level to a Special Use Permit (SUP) (reviewed by the Board of Adjustment), not a Conditional Use Permit (CUP) (which would be reviewed by the Board of Aldermen). Section 15-148(a) does allow the permit required to be raised from a Zoning Permit (ZP) to a CUP in certain, specific situations as outlined in the text. The specific allowances for ZP to CUP involve situations where a project is proposed in specific University Lake Watershed zoning districts, i.e. C, B-5, and WM-3, and specific downtown zoning districts, i.e. B-1(c), B-1(g), B-2, and CT.

Town Attorney Mike Brough has spoken briefly to the language contained in Section 15-148(b), which allows a permit requirement to be raised from a ZP to a CUP when potential substantial impact may result to the general public. As noted though, to our knowledge this section has only been utilized in very limited situations because the language continues and specifies that an applicant may choose to submit a written request to waive a vested right and return the permit requirement to ZP level, i.e. staff-only approval with no public hearing involved.

The Board may wish to discuss the existing language as it relates to potential future projects in various zoning districts. If the Board desires to see changes to the applicable language, then please note that a resolution is provided (**Attachment A**) for consideration, on which the Board may choose to specify follow-up requests of staff. An idea offered by Aldermen Coleman is that a petition process possibly be established. His comments read as follows:

“One idea I had was that there could be something analogous to a protest petition that would place a decision before the BOA (us), perhaps requiring an SUP rather than a CUP. In other words, a threshold of neighbor signatures would move a matter from staff or Bd of Adj. review to BOA review.”

Note that Town Staff and the Town Attorney have not had an opportunity to discuss this idea to date.

Mediation Policy

Board member Michelle Johnson also raised the topic of mediation and asked whether the Town has a specific policy on it as related to development projects. She cited Vision 2020 Policy 2.1 and 2.11, which reads as follows:

*2.1 Avoidance of Adverse Effects on Public Health and Safety
2.11 Infill development should take place in a manner that fulfills the town's goals and enhances neighboring areas. The town should develop policies that mitigate the adverse impact of infill development, with particular consideration given to roads, sidewalks, and aesthetic compatibility. The town should develop a process to mediate disagreements between developers and residents of existing neighborhoods.*

Town Attorney Mike Brough responded as follows:

“With respect to mediation, the Board of Aldermen has in the past recommended to developers that they meet with neighbors of a proposed project, and I see no problem with adding to such a recommendation that the discussions be facilitated or mediated. If litigation arises out of the issuance or denial of a permit, court mandated mediation generally occurs as part of the litigation process. Other than that, however, the Town has no formal process or policy regarding mediation in such matters.”

The meeting between developers and neighbors, referenced by Mr. Brough, is what is commonly called a Neighborhood Information Meeting. Such meetings are held for most SUP and CUP applications, though it is a voluntary action on the part of the applicant. In other words, it is not a requirement of the LUO that such a meeting be held.

The Board may wish to discuss this topic as well as it relates to potential future development projects in various zoning districts. Again, a resolution is provided on which the Board may choose to specify follow-up requests of staff.

RECOMMENDATION

Town Staff requests that the Board consider adopting a resolution (**Attachment A**) accepting the report. If specific follow-up requests are desired, then such requests may be included on the resolution.