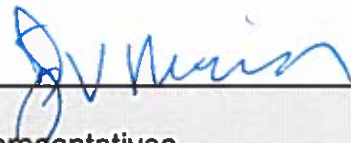


Memo



<b>From:</b> James Minor, Special Counsel, Law Department
<b>To:</b> Valerie Rosenson, Legislative Officer, Board of Representatives
<b>Re:</b> LU30.025 & LU30.026 –Petition for Appeal of Amendments to the Master Plan for B&S Carting Site (Planning Board Master Plan Applications MP-432 & MP-433) pursuant to Charter §C6-30-7
<b>Date:</b> February 11, 2019

You have asked whether the Board of Representatives can consider the Master Plan Amendments adopted by the Planning Board in both MP-432 and MP-433 under the subject Petition.

**Answer:**

As you determined (with my concurrence), the Petition is valid to appeal MP-433 but not to appeal MP-432. The Master Plan amendments adopted by the Planning Board in MP-432 cannot be validly considered by the Board of Representative as part of its consideration of the appeal of MP-433 because the changes adopted in MP-432 are separate and distinct from those adopted in MP-433, were sought in separate applications by different applicants, and were noticed, presented and voted on separately by the Planning Board.

**Discussion:**

The Board of Representatives has received a referral from the Planning Board, pursuant to C6-30-7 of the Charter, objecting to amendments to the Master Plan Map which were adopted by the Board based upon two applications, MP-432 and MP-433. The Planning Board amended the Master Plan Map by changing the category designations of identified areas within the property area subject to each of the applications. In MP-432, Area I was changed from Category 4 (Residential – Medium Density Multifamily) to Category 5 (Residential – High Density Multifamily), Area II was changed from Category 6 (Commercial – Neighborhood) to Category 5, Area III was changed from Category 6 to Category 5, and Area IV was changed from Category 4 to Category 5.

The parcels subject to Application MP-432 (submitted by The Strand/BRC Group LLC) are commonly known as 707 Pacific Street; 5, 9, 17, 21 23, 25, 29, 39 & 41 Woodland Avenue; and 796.

The parcels subject to Application 433 (submitted by the City of Stamford) are commonly known as 701 & 705 Pacific Street; 13 & 43 Woodland Avenue; 0, 784 & 804 Atlantic Street; and 12, 18 & 20 Walter Wheeler Drive.

By a memo dated 1/30/19, Valerie Rosenson has determined that the petition does not meet the requirements of Charter C6-30-7 for Application MP-432, but does meet the requirements of Charter C6-30-7 for Application MP-433.

The Land Use Committee of the Board of Representatives on January 30, 2019 recommended that the Board of Representatives did not have jurisdiction over the petition for MP-432, but did for MP-433.

The petitioners have requested that the Board of Representatives change the analysis, by treating the two applications as one application to determine if there is jurisdiction.

Section C6-30-7 of the Stamford Charter provides:

If twenty (20) percent or more of the owners of the privately-owned land in the area included in any proposed amendment to the Master Plan, or the owners of twenty (20) percent or more of the privately-owned land located within five hundred (500) feet of the borders of such area, file a signed petition with the Planning Board within ten days after the official publication of the decision thereon, objecting to the proposed amendment, then said decision shall have no force or effect but the matter shall be referred by the Planning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations and reasons.

MP-432 and MP-433 are separate applications that resulted in separate amendments to the Master Plan. They had

- Different applicants,
- Different application numbers, and requested Master Plan amendments for
- Different properties and property owners.

The Planning Board treated each application separately:

- Each application was noticed separately in the Stamford Advocate
- Separate notifications were sent to neighboring properties within 100 feet of the areas proposed for change
- Each application was presented separately by separate proponents at the public hearing before the Planning Board

- The Planning Board voted on two separate motions to adopt distinct and separate changes to the Master Plan when it voted to approve each separate application
- Minutes of the Planning Board for January 2, 2019 show that MP-432 was approved by a vote of 4-0-1, and MP-433 was approved with a unanimous vote of 5-0.
- The decision on each application had a separate legal notice published with a separate map which identified the separate property involved in each decision.

In summary, the two applications involved separate applicants, application numbers, property boundaries, amendments, legal notices and decisions.

On 1/30/19, the Land Use Committee unanimously recommended rejection of the petition as it related to MP-432.

The Board of Representatives cannot combine two separate applications concerning amendments to separate and distinct properties to determine whether it has jurisdiction.

C6-30-7 specifies that a petition must be filed either by 20% or more of the owners of "the privately-owned land in the area included in any proposed amendment to the Master Plan" or by owners of 20% or more of the privately owned land located within 500 feet of the borders of "such area" to be heard by the Board of Representatives.

The process by which a Master Plan amendment which affects a limited area may be appealed under C6-30-7 has been considered by both the Connecticut Supreme Court and Connecticut Appellate Court.

In Stamford Ridgeway Associates v. Board of Representatives of City of Stamford, 214 Conn 407 (1990), the Supreme Court reversed a lower court decision which held that the Board of Representatives did not have jurisdiction of an appeal that was brought under C6-40-5, a parallel provision in the Charter which allows an appeal of a zone change to the BOR. The Zoning Board had adopted, on its own application, a comprehensive rezoning of the entire City. A few specific landowners sought to appeal the zone changes that directly affected their properties. The lower court ruled that they could not meet the Charter requirements to appeal because their appeals did not meet the signature threshold required for a petition to appeal changes that affected the entire City. However, the Supreme Court reversed, holding the affected landowners were entitled to appeal the zone change that affected them only based upon their meeting the petition requirements for the changes to the specific areas they were challenging. The Court reasoned that the "area" at issue for the appeal under the Charter provision is the area where the specific change being appealed was made.

Similarly, in Hanover Hall v Planning Board of the City of Stamford, 2 Conn App 49 (1984), the Appellate Court upheld an appeal challenging a Master Plan change adopted by the Planning Board because the map that was published included the entire “area” of the City on the premise that the entire City was potentially affected by the changes. The Appellate Court reasoned that the notice, as given by the map, was defective because it did not identify the specific properties that would be redesignated by the proposed Master Plan amendments. The Court held that, although the entire area of the City might be “affected” by the proposed amendment, under the Charter, the notice had to identify the “area” of the proposed amendment(s).

The conclusion to be drawn from the language of the Charter and these cases is that the “area” identified by C6-30-7 in the phrase “the area included in any proposed amendment” refers to the area where the change occurs rather than to the entire area which might be affected by the change.

For these reasons, the Board determines jurisdiction based not upon the “area” which might be affected, but rather based upon the area where the specific amendment is located.