

Inspectional Services Department

City of Newton
Massachusetts

Inter-Office Correspondence

TO: Land Use Committee
FROM: John D. Lojek, Commissioner of Inspectional Services
DATE: August 5, 2016
RE: Special Permits

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Special Permit Process

I have been asked by Chairman Loreda to explain the process of Special Permit enforcement and tracking in ISD.

ISD becomes involved in most Special Permits (SP) early on in the process, usually when the client comes to make inquiry about a particular project. ISD informs clients that they are most likely in need of a SP while we are evaluating their proposal. They are then referred to Planning and Development (P&D) so that they can speak to a Land Use Planner usually to set up a Development Review Team (DRT) meeting to evaluate their particular situation and ensure that they get proper advice as to the type of relief that they need to request. Other than interaction with P&D staff, that is the initial extent of ISD involvement, other than questions of interpretation with the Commissioner, until the client completes the process and applies for a Building Permit.

When a building permit application is received for a SP project the client is told to supply a paper copy of the SP for the Plans Examiner so that he can check all the conditions that apply before the issuance of the Building Permit. When those pre-conditions are verified, the Plans Examiner can issue the building permit. (The Special Permit is scanned into Community Plus as an attachment.)¹ There may be additional conditions of the SP that need to be verified during construction, which are the responsibility of the local inspector, i.e. site conditions, practices, etc. Once the project is approaching completion the local inspector will review the conditions of the SP to see that these preceding conditions are met and what conditions must be met for the close out and Certificate of Occupancy (CO). The "prior to the issuance of a certificate of occupancy" section of most SPs usually spells out very specific items that must be completed prior to the project closing out and

receiving a C.O. These post construction conditions usually pertain to items that involve several depts. of the city, i.e. landscaping, as-built plans for utilities, certain public improvements, operational conditions, signage, affordable housing agreements, etc. These are the conditions that are the subject of most SP projects.

Special Permit Tracking and Enforcement

Inspectional Services has the responsibility to track and enforce SP conditions. During plans examination and construction the Plans Examiner and the local inspector are responsible to see that the permit is correctly issued and that the project is correctly built per the conditions of the SP. ISD employs an inspector in the position of Code Enforcement Officer who is ultimately responsible for the enforcement of SP conditions. Until recently SPs were not kept in the property file nor were they available in the permitting system, as they were recorded at the City Clerk's office. Few SPs made it into the property files. Tracking of SPs was all but impossible. ISD, with the help of the Clerk's Office and the City Archivist, must get SPs from the city archives or the newer ones from the Clerk's Office which have been scanned up to their system. Some SPs go back decades and there are properties that have multiple SPs. Through the cooperation of the City Clerk's Office, ISD and the Executive Office we have embarked on a scanning project to scan all property files into our permitting system. Our immediate goal is to transfer the SPs that are in the Clerk's office system to the individual property files within ISD. These properties will then be flagged as properties which are under SP so that we can track compliancy. This will be a time consuming project in the present format. The text of the SP may be available to the public as well. Because of the sheer volume of the SPs that are in effect we will still be reliant on complaints for the enforcement aspect to be triggered. We are working on the additional problem of properties that have multiple SPs over many decades. We have installed a system for requiring the applicant to update the former SPs to a current SP which controls the site. Many old SPs were granted decades ago and technically the conditions of those SPs still apply. The idea here is to have the last SP as the only SP so that all conditions are current and we need not track back to a much earlier SP to ensure site compliance.

Back in 2005 there were a couple of SPs that we were being asked to enforce and, being new to the system, I made the following observation as to what I could or could not do. I asked that SPs be very clear as to their intention, in that the conditions of the SP should be "Understandable, Quantifiable and Enforceable". To that end I would ask that the conditions of a SP be well vetted and should be settled at the LUC or by the Planning and Law Office. Conditions from the floor of the Council should be entered cautiously.

ⁱ Formerly a paper copy of the SP was placed in the building file.