



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, January 22, 2024**

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, Danberg, and Kalis

Also Present: Councilors Farrell, Kelley, Malakie, Leary, and Lucas

City Staff: Barney Heath, Director of Planning; John Sisson, Economic Development Director; Andrew Lee, Senior Assistant City Solicitor; Anthony Ciccariello, Commissioner of Inspectional Services; Andrew Mavrelis, Deputy Commissioner of Inspectional Services; Mollie Hutchings, CPA Program Manager; Ann Berwick, Co-Director of Sustainability; and Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - January 22, 2024 - YouTube](#)

**#71-24      Appointment of Councilor Albright to the Newton Affordable Housing Trust Fund**

PRESIDENT LAREDO appointing Councilor Susan Albright, 1075 Commonwealth Ave, Newton as a member of the Newton Affordable Housing Trust for a term of office to expire on December 31, 2025. (60 Days: 03/16/24)

**Action:**      **Zoning & Planning Approved 8-0**

**Note:**      Councilor Albright noted that when the Trust was initially created, she had wanted to serve on it but could not due to serving as Council President during the 2022-2023 term. Councilors expressed support for the appointment and voted 8-0 on a motion to approve from Councilor Krintzman.

**Referred to Zoning & Planning & Finance Committees**

**#22-24      CPC Recommendation to appropriate \$125,000 in CPA funding**

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of \$125,500 in Community Preservation Act funding from the FY24 Historic Resource Reserve Funds to the control of the Planning & Development Department for a grant to the Second Church in Newton for the restoration.

**Action:**      **Zoning & Planning Approved 6-0-1 (Councilor Oliver Abstaining) (Councilor Albright Not Voting)**

**Note:** The Committee was joined by Mollie Hutchings, CPA Program Manager, and Eliza Datta, Chair of the Community Preservation Commission (CPC). Ms. Datta described that this project includes preservation work on the Second Church to restore stonework with selective repointing, cleaning granite and limestone, rebuilding header, installing lead weather cap at gable, deep repointing at limestone window headers and belt course at east elevation, installation of copper drip edges in masonry at select locations, and replacement of the original 1915 copper roof over west church entrance. In this restoration work the materials will match the original materials wherever possible. Regarding funding, the project will have a total cost of \$260,600; with \$125,500 coming from this request for CPA funding, \$50,000 from funds received from the Massachusetts Historical Commission, and \$85,100 from other funds raised which includes money from the congregation and the churches endowment.

Councilors raised concerns that approving this proposal would open the door for other churches to seek this funding. Ms. Hutchings noted that similar discussions happened during the CPC meeting regarding this proposal, and the determination was that repointing was not regular maintenance to the building. Later in the discussion, Andrew Lee, Senior Assistant City Solicitor, noted that the Law Department has no concerns regarding the funding request. A Councilor also asked who is responsible if the project goes over budget. Laura Foote, Second Church Board Member, stated that the Church would be responsible.

Councilors voted 6-0-1 (Councilor Oliver Abstaining) (Councilor Albright Not Voting) on a motion to approve from Councilor Wright.

**#74-24 Discussion Regarding 40B Process Post 'Safe Harbor' Designation**

COUNCILORS OLIVER, BAKER, AND WRIGHT requesting a discussion with the Law and Planning departments regarding the process going forward for 40B projects since meeting the 10% 'Safe Harbor' designation. The discussion should address the different parameters that can or will be used to accept, deny and modify projects and the criteria allowed to be used by ZBA or any other approving authority.

**Action:** Zoning & Planning Held 8-0

**Note:** The Chair noted that Jonah Temple, Deputy City Solicitor, had previously written a memo to the Zoning Board of Appeals and the City Council regarding the City meeting the safe harbor designation. He also described that this discussion would be for Councilors to raise their questions regarding the process for 40B projects for the Law Department to include in an upcoming memo. The Chair and Vice Chair also included a memo with the agenda that posed some initial questions (attached). Michael Rossi, Chairperson of the ZBA, and Brooke Lipsitt, Vice Chairperson of the ZBA, joined the Committee. In calculating the SHI Barney Heath, Director of Planning,

Councilors raised the following questions.

- Can a project time a submission to be when we would briefly drop below the 10%?
- What would happen if when we are below the 10% a project comes in that has more units than needed to reach the 10%?
- Do 40B projects still go before the ZBA or will there be cases where they will go before the City Council?
- How often does the City need to recalculate the SHI?
- Does the process change for projects that are currently in the pipeline?
- How much control does the ZBA have over a project now that safe harbor has been met?
- Does the State need to certify that the City has met the safe harbor designation?

The Chair stated that the Law Department will be drafting a memo that answers these questions and outlines the updated 40B process. Once that memo is ready staff will be invited back for a follow-up discussion.

Committee members 8-0 on a motion to hold from Councilor Krintzman.

**#23-24      Update on Short-term rental ordinance compliance and enforcement**

COUNCILORS MALAKIE, WRIGHT, KELLEY, LAREDO, LIPOF, HUMPHREY, LUCAS, ALBRIGHT, DANBERG, AND OLIVER requesting an update on Short-term Rental ordinance compliance and enforcement, including data on registrations, complaints, investigations and fines issued; types of violations being found (e.g. non-owner occupied, room limits, annual time limits, other code violations like noise, health & safety, trash); ability to compare STRs registered with the city vs registered with the state vs listings on public platforms; ability to obtain listing information from STR companies; adequacy of resources or other obstacles to enforcement.

**Action:**      **Zoning & Planning Held 8-0**

**Note:**      The Committee was joined by Anthony Ciccariello, Commissioner of Inspectional Services, and Andrew Mavrelis, Deputy Commissioner of Inspectional Services. They noted that 31 addresses have been registered with the City and only one of them has renewed in 2024. In 2023 the Inspectional Services Department received 15 complaints and had a 67% success rate in bringing violators into compliance. A Councilor asked if the City checks the list of short-term rentals that are listed with the State. Mr. Mavrelis noted that the City does receive this list and that there are currently 181 registrations. Later in the discussion, he added that the State only requires a one-time registration while the City requires it annually. This has led to the State list containing entries that are no longer operating. Commissioner Ciccariello also noted that enforcement of this ordinance takes time as a case needs to be built for each violator. He encouraged anyone who knows of a violation to submit a request for zoning enforcement through the City's website.

Regarding fines, Attorney Lee stated that collection of fines is difficult and requires that they be pursued through the court system. He affirmed that this is an issue that other Communities also

face. When asked about using civil ticketing to collect these fines Attorney Lee noted that the City does have that capacity but that they will also end up in court eventually for noncompliance.

The Chair took the following public comment.

Marcela Hauck-Burke, 255 Adams St, described that a property near her is operating an illegal Airbnb and has been changing the address of the rental in online listings.

Committee members noted an interest in looking into amendments to the enforcement process of the ordinance to better encourage compliance. The Inspectional Services Department will be discussing potential amendments internally and will come back to the Committee at a later date.

Councilors voted 8-0 on a motion to hold from Councilor Krintzman.

**#24-24 Request for discussion and possible ordinance amendments relative to aiding small businesses impacted by development**

COUNCILORS ALBRIGHT AND KELLEY request the Planning Department with the assistance of the Economic Development Commission, research and develop mechanisms including ordinance changes or other means to assist local businesses impacted by development similar to the Somerville work. The goal of this docket item will be to help small commercial/retail/independent and locally-owned businesses remain in Newton as development occurs.

**Action:** **Zoning & Planning Held 8-0**

**Note:** The Chair noted the memo in the packet that gave an overview of the study that the City of Somerville did in partnership with the Harvard Kennedy School regarding aiding businesses impacted by development. John Sisson, Economic Development Director, noted that the Department has already discussed some of the results of the Somerville work internally. A Councilor asked where the City can help especially for development within the VCOD which allows for more by-right development. To help with this the City could help connect individuals, potentially developing affordability requirements for commercial space and Mr. Sisson also recommended that a merchant association could be helpful. Later in the discussion, a Councilor proposed that the City could develop resources for those looking to start a merchant association.

Director Heath noted that the Somerville report has many ideas and that it would be beneficial to talk with Somerville to see which of them they are pursuing. A Councilor also proposed looking into the Transformative Development Initiative which was mentioned at the recent MMA conference. Mr. Sisson noted that this program is focused on gateway cities and communities of color.

Mr. Sisson and the Planning Department will be examining the results of the Somerville work to see what proposed solutions could work within Newton.

Committee members voted 8-0 on a motion to hold from Councilor Krintzman

**#49-24 Discussion and possible adoption of an ordinance requiring electrification of all new construction and substantial renovations**

HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, DANBERG, LEARY, HUMPHREY, KALIS, DOWNS, LIPOF, WRIGHT, MICLEY, BIXBY, AND GETZ requesting discussion and possible adoption of an Electrification Ordinance that would require all new construction and substantial renovations in Newton to be all-electric. This is in conjunction with the City's recent conditional approval by the State Department of Energy Resources (DOER) for participation in the Ten Communities Program.

**Action:** **Zoning & Planning Held 8-0; Public Hearing Set for 02/26/24**

**Note:** Ann Berwick, Co-Director of Sustainability, joined the Committee and described that the draft ordinance was previously approved for submission to DOER in June of 2023. The ordinance has received approval without any changes by DOER for participation in the Ten Communities Program. For participation in the program, the Council must hold a public hearing and adopt the ordinance.

This ordinance would require that all new construction and substantial renovation be all-electric with some exceptions. Exceptions include hospitals, medical offices, lab space, free-standing outdoor cooking and heating, generators, portable hot water, and hot water in large commercial developments. A waiver provision is also included in the ordinance that allows the Inspectional Services Department to receive a certified statement from a building professional that complying with this ordinance would be more than 50% greater the cost than complying with the building code. Ms. Berwick added that these waivers are highly unlikely due to the City previously adopting the specialized residential and commercial energy code which is the most stringent building code.

A Councilor asked Ms. Berwick regarding a recommendation for setting an effective date. Both she and Director Heath recommended an effective date of either September 1, 2024, or January 1, 2025, to give time to notice the ordinance change and make sure ISD is ready to implement the ordinance. Committee members unanimously agreed to set an effective date of January 1, 2025.

Councilors voted 8-0 on motions to set a public hearing for Monday, February 26, 2024, and hold the item from Councilor Krintzman.

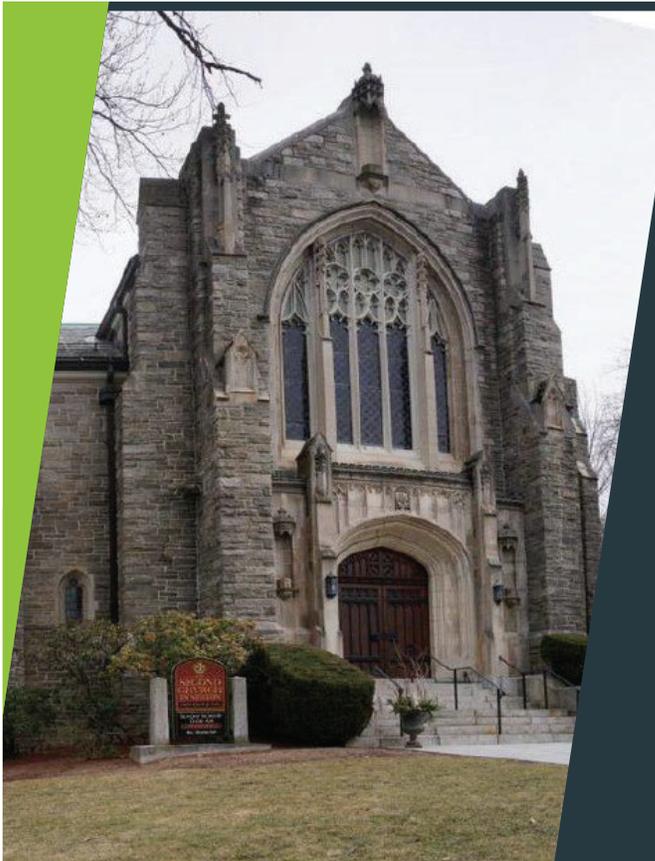
The meeting adjourned at 9:35 pm.

**Respectfully Submitted,**

**R. Lisle Baker, Chair**

# Second Church in Newton Restoration Project Recommendation

Community Preservation Committee  
Presentation to Zoning and Planning Committee  
January 22, 2024

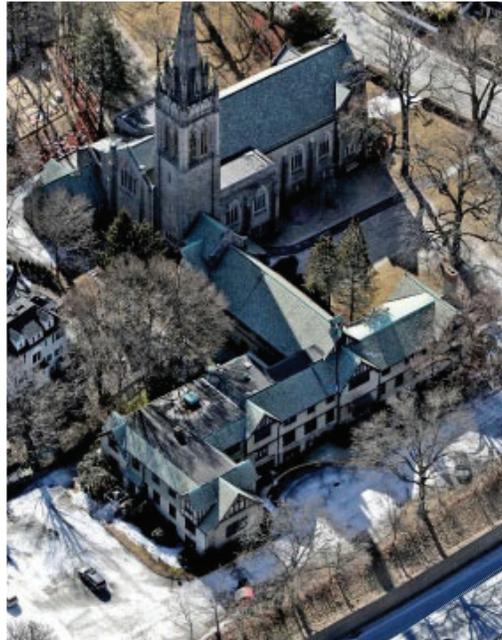


## Project Overview

- ▶ The Second Church in Newton is a 1916 Gothic Revival stone structure by architects Allen & Collens, with a Tudor Revival annex built in 1938.
- ▶ Second Church is listed on the National Register of Historic Places
- ▶ The applicant is seeking to restore the exterior fabric to avoid the risk of costly structural problems in the future, and to achieve this “Sharing Space” goal as an asset to the City of Newton.

## Scope of Work

- ▶ Work on this project includes the following preservation work. The specifications call for matching the original materials wherever possible.
  - ▶ Restoration of stonework, with selective repointing
  - ▶ Cleaning granite and limestone
  - ▶ Rebuilding header
  - ▶ Installing lead weather cap at gable
  - ▶ Deep repointing at limestone window headers and belt course at east elevation
  - ▶ Installation of copper drip edges in masonry at select locations
  - ▶ Replacement of the original 1915 copper roof over west church entrance
  
- ▶ The project is set to be completed by June 2024.



## Project Funding Sources

Funding Sources	Amount
Requested CPA Funding	\$125,500
Massachusetts Historical Commission Preservation Projects Funds (Received)	\$50,000
Other Funds Raised	\$85,100
<b>PROJECT TOTAL</b>	<b>\$260,600</b>

## Current Funding Recommendation

The current CPA funding request is for the FY24 Historic Resource funds needed to preserve and restore the masonry of the Second Church in Newton.

Recommended Sources of CPA Funding	
FY24 Historic Resource Reserve Funds	\$125,500



## Questions & Discussion

► Thank you!





To: Jennifer Caira, Deputy Director of Planning and Jonah Temple, Deputy City Solicitor  
From: Councilor R. Lisle Baker, Chair; and Councilor John Oliver, Vice-Chair  
Re: Docket #77-24 relating to G. L. c. 40B “safe harbor” status for Newton  
Date: January 18, 2024

## Memorandum

Colleagues:

The following item will be taken up at our next Zoning and Planning Committee meeting on the 22<sup>nd</sup>:

*#74-24 Discussion Regarding 40B Process Post 'Safe Harbor' Designation  
COUNCILORS OLIVER, BAKER, AND WRIGHT requesting a discussion with the Law and Planning departments regarding the process going forward for 40B projects since meeting the 10% 'Safe Harbor' designation. The discussion should address the different parameters that can or will be used to accept, deny and modify projects and the criteria allowed to be used by ZBA or any other approving authority.*

We also understand that the Zoning Board of Appeals meets next on Wednesday the 24<sup>th</sup>. It would be helpful in your information response to this item to clarify the substance and procedure of what happens to c. 40B projects once the safe harbor is reached. In addition to the language of the docket item itself, other issues that it would be helpful to clarify include the following:

1. Now that Newton has been reached ‘safe harbor’, what is the mechanism by which a safe harbor status is declared? Is some official action required by a Newton official or public body? For example, does the Newton Zoning Board of Appeals (ZBA) declare safe harbor status in response to a specific comprehensive permit application, or otherwise? If the applicant disagrees, how is the matter determined?
2. What if the ZBA (or other official so empowered) does not declare safe harbor status?
3. If safe harbor status is successfully declared, what is the effect on subsequent comprehensive permit applications and the power of the ZBA in response to them?
4. Is there a window of time between filing a comprehensive permit application and safe harbor declaration that may affect whether an applicant is bound by safe harbor status? If so, how is it determined?
5. Once safe harbor is declared, is there a project size threshold or other aspect which would affect the power of the ZBA to respond to it?
6. Once safe harbor is reached, do regular zoning and other Newton ordinances apply to 40B projects?
7. If so, does that also mean application by and approval by other regulatory bodies, such as the City Council acting as a special permit granting authority, or does the ZBA act in place of these other bodies but act in their stead but with their applicable standards and rules?

This list of questions may be supplemented by others at our meeting, but we hope these are helpful.

Regards,  
R. Lisle Baker, Chair  
John Oliver, Vice-Chair