



Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

#238-16  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney Heath  
Director

---

## MEMORANDUM

**DATE:** July 12, 2017

**TO:** Councilor Ted Hess-Mahan, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
James Freas, Deputy Director  
Rachel Blatt, Long Range Planner

**RE:** #238-16: COUNCILOR HESS-MAHAN proposing to amend Chapter 30: Zoning Ordinance, Section 7.8.4.C by amending the definition of "exempt lots" to include lots changed in size or shape as a result of an adverse possession claim.

**MEETING DATE:** July 17, 2017

**CC:** City Council  
Planning and Development Board  
Donnalyn Kahn, City Solicitor

#

#

---

The proposed amendment addresses the relatively rare but potentially significant issue of an adverse possession claim resulting in a residential property becoming non-compliant with Newton's Zoning Ordinance, resulting in the potential loss of the right to occupy the home. The issue arises due to the unusual construction of the Ordinance and a lack of clarity as to how exemptions to the pertinent regulation apply in relation to adverse possession claims. The proposed amendment appears to be consistent with the intent of the section, but would clarify that intent, thereby reducing the risk that property owners find their property to be non-compliant. In short, the proposed amendment adds changes in lot size or shape due to adverse possession to the list of exemptions to the rule found in section 7.8.4 that a building shall not be used when a change in lot size or shape leaves the lot no longer consistent with the requirements of the ordinance.

Newton's Zoning Ordinance is relatively unique in having parallel time-based standards for residential lots, defined as old and new lots. In essence, where a lot was created before December 7, 1953 it

utilizes one set of standards, which were adopted by the City in 1940 and, conversely, where a lot was created after that date, it must meet a different set of standards which generally require significantly higher lot sizes, setbacks, and other dimensional controls. As the City was more than 70% built by 1949, the significant majority of lots in the City do not meet these new lot standards. Thus, any change in the lot configuration transforms an old lot into a new lot and, where that lot cannot meet new lot standards, therefore requires that the home no longer be used.

Section 7.8.4.B and C recognize this potential issue for homeowners and makes clear that the intent of the ordinance is to prevent voluntary changes in lot size or shape that result in lots becoming non-compliant. In section B the ordinance states that only where there is an active step to legally change the lot does this section apply. Further, section C exempts from the requirements of this section specific scenarios where the size or shape of a lot might change outside of the control of the property owner such as where eminent domain is used by the City to acquire a portion of a property. The proposed amendment would add adverse possession to the list of exemptions in section C.

Adverse possession is a legal doctrine that allows a person to claim land owned by another where that person can demonstrate continued use of the land over time as well as the apparent abandonment of said land by the actual property owner. Such situations can occur inadvertently where a misplaced fence or lack of clarity on the location of a property line leads to one neighbor controlling a piece of land owned by the other. Over a long enough period of time, this situation can lead to adverse possession.

The below shows the language proposed to be added to section 7.8.4.C:

C. Exempt Lots. For purposes of implementing this Sec. 7.8.4, no lot, building or structure shall be deemed in noncompliance with the provisions of this Chapter if the lot was changed in size or shape:

1. Solely as a result of a taking of a portion of the lot for a public purpose; or
2. As a result of a conveyance of a portion of the lot by the owner thereof to the City of Newton, any other body politic, or any agency or department thereof, in lieu of such a taking; or
3. As a result of an adverse possession claim, action to quiet title or as a result of any other judgment by a court of competent jurisdiction; or
4. In compliance with the requirements of the remainder of this Sec. 7.8.4.

### **Next Steps**

Following discussion by the Committee, this item will need to be scheduled for a public hearing.