



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, June 13, 2016**

Present: Councilors Hess-Mahan (Chair), Baker, Albright, Leary, Kalis and Yates

Absent: Councilors Sangiolo and Danberg

City Staff Present: James Freas (Deputy Director, Planning Dept.), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

**#197-16      Mayor's appointment of Michael Rossi to the Zoning Board of Appeals**

HIS HONOR THE MAYOR appointing Michael Rossi, 20 Rose Drive, West Newton, as a member of the Zoning Board of Appeals for a term to expire June 30, 2019 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      Approved 6-0

**Note:** Mr. Rossi joined the Committee. He explained that he has been an associate member of Zoning Board of Appeals for the last three years and is a life-long resident of Newton currently residing in West Newton. As a litigation attorney, he works with individual and corporate clients handling employment, business and real estate disputes. Serving on the ZBA has provided an opportunity to marry his personal and professional interests and to contribute to the City. The ZBA has been very busy these past few years and has heard a variety interesting and sometimes contentious projects for consideration, especially potential 40B projects. He is pleased to continue serving on the ZBA.

A Councilor noted that the ZBA has invoked the 1.5% rule relative to affordable housing and asked Mr. Rossi's thoughts on that in general. Mr. Rossi said that he has voted to invoke the 1.5% threshold in cases that have come before the ZBA. The members have been briefed and educated on the topic by the Planning Department and have been walked through the evidence in support of it and against it. It was his judgement that it is not indicative at all on how someone might vote on a project or would be unsupportive of a project. It is just a means of providing additional leverage to the City and the Council if the threshold can be successfully invoked because of the way it changes the standards.

A Committee member asked Mr. Rossi how he felt about the need for housing in the City. He said he certainly has personal thoughts, views and beliefs on housing. He explained that he follows the issues in the City closely and feels strongly about the need for more affordable housing in Newton. He is fortunate enough to have been able to buy a home here, but many of the people he has grown up with have not been able to and that is disappointing. A diverse housing stock is needed and also one that continues to be developed and improved as well. He feels sensitivity to both sides of the issue but his role on the ZBA needs to be as neutral as possible. He firmly believes that

his role on the ZBA, unlike perhaps that of an elected official, is not to take a position or advocate for a policy, but to take the zoning ordinance and the statutes and apply those to the proposals that come before the ZBA. It is not his role to advocate for one point of view over another. The ZBA should be a fair and impartial hearing board and not a political board.

A Councilor asked Mr. Rossi to comment on the Wells Avenue deed restriction issue. Mr. Rossi noted that there was a threshold issue as to whether the ZBA could waive the deed restriction. The Board determined that they could not waive the deed and that would instead be the purview of the City Council. Because of that, he abstained from the vote on the merits of the proposal as he felt the decision had been made and the discussion was over. It felt to him, at that time, that it was not appropriate to comment further or take a position.

Councilor Baker moved approval and the Committee voted in favor unanimously.

Clerk's Note: Mr. Rossi was under the impression he was being re-appointed as an associate member, however, the Mayor's office has confirmed that this is a new appointment as a full member as represented in the appointment letter. Mr. Rossi was very pleased to serve in this capacity.

**#198-16**      **Mayor's appointment of Michael Brangwynne to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR appointing Michael Brangwynne, 28 Ash Street, Auburndale, as an associate member of the Zoning Board of Appeals for a term to expire June 30, 2017 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Held 6-0**

**Note:** Mr. Brangwynne had been invited to join the Committee and confirmed that he would attend, however, he was absent this evening. The Chair recommended holding this appointment until Mr. Brangwynne could be present. The Committee voted to hold, unanimously.

**#199-16**      **Mayor's appointment of Joshua Lewin to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR appointing Joshua Lewin, 89 Lowell Avenue, Newtonville, as an associate member of the Zoning Board of Appeals for a term to expire June 30, 2017 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Approved 6-0**

**Note:** Mr. Lewin joined the Committee and explained that he moved to Newton to attend Boston College Law School and has remained there these last 16 years. He is primarily a business litigation attorney but has some background experience in litigating real estate and zoning issues mostly in the telecommunications industry. He has been looking for an opportunity to get involved with the City and considering his professional background, felt this would be a good fit.

It was asked if Mr. Lewin has been able to attend any ZBA meetings. He explained that he has not but he has tried to listen to the audio of the meetings posted online. Unfortunately, only the agenda portion of the meeting was recorded. Mr. Freas said he would look into this.

A Councilor asked about the balance between historic preservation and economic development and housing development. Mr. Lewin noted that he lives in the first house that was built on Lowell Avenue which was originally a single family home. It is now a two-family house. This demonstrates the changing needs of the community and how the City needs to adapt. He agreed with the comments of Mr. Rossi on the balance of new growth and providing diverse housing opportunities. He also agreed with Mr. Rossi's views on the role of the ZBA.

Councilor Albright moved approval and the Committee voted in favor unanimously.

**#200-16**      **Mayor's re-appointment of Michael Quinn to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR re-appointing Michael Quinn, 115 Staniford Street, Auburndale, as an associate member of the Zoning Board of Appeals for a term to expire June 30, 2017 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Approved 5-0-1 (Councilor Yates abstaining)**

**Note:** Councilor Yates asked what Mr. Quinn's voting record was on the invocation of the 1.5% limit. Mr. Quinn was not in attendance as it is the custom of the Zoning & Planning Committee to not require candidates for re-appointment to appear. Councilor Albright moved approval and the Committee voted in 5-0-1 with Councilor Yates abstaining as he would like to know Mr. Quinn's voting record.

**#201-16**      **Mayor's re-appointment of Treffle LaFleche to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR re-appointing Treffle LaFleche, 1603 Commonwealth Avenue, West Newton, as an associate member of the Zoning Board of Appeals for a term to expire June 30, 2017 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Approved 5-0-1 (Councilor Kalis abstaining)**

**Note:** Councilor Albright moved approval and the Committee voted in favor with Councilor Kalis abstaining. Councilor Kalis did not give a reason for his abstention.

**#202-16**      **Mayor's re-appointment of Harvey Creem to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR re-appointing Harvey Creem, 110 Huntington Road, Newton, as an ~~associate~~ member of the Zoning Board of Appeals for a term to expire June 30, 2019 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Approved 6-0**

**Note:** The Committee Clerk noted that Mr. Creem is being re-appointed as a full member of the ZBA as requested in the letter from Mayor Warren. The word "associate" was added in error by the Committee Clerk and will be stricken.

Councilor Leary moved approval and the Committee voted in favor with no discussion.

**#203-16**      **Mayor's re-appointment of William McLaughlin to the Zoning Board of Appeals**  
HIS HONOR THE MAYOR, re-appointing William McLaughlin, 117 Hammond Street, Chestnut Hill, as a member of the Zoning Board of Appeals for a term to expire June 30, 2019 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

**Action:**      **Approved 6-0**

**Note:** Councilor Baker noted that Mr. McLaughlin is a principal in Avalon Bay and does recuse himself from matters which might be in conflict or are related. Councilor Baker moved approval and the Committee voted in favor unanimously.

#### Committee Comments/Questions

Councilor Yates asked why Barbara Huggins, who is a current full member, is not being re-appointed to the ZBA. Mr. Freas responded that her term has expired and the Mayor has chosen not to re-appoint her. He was not involved in those conversations and has no further information on cause. Councilor Yates said that she has specific expertise on some matters that come before the ZBA and this was a concern and an obvious omission.

Councilor Sangiolo submitted a note to express her concern that the ZBA does not adequately reflect the diversity of the community and she would like more information about the other candidates who applied for appointment, but were not selected. She will not support any of the appointments or re-appointments until the information is made available.

Mr. Freas explained that process for appointment starts with an application that is available on the website for those interested in serving on any board or commission. The applications are then submitted to the Mayor's office and interviews for the ZBA are conducted typically by the Planning Director or members of the Planning staff as well as members of the Law Department. A recommendation from those interviews is then presented to the Mayor's office and he ultimately makes the decision. While Mr. Freas agreed that there is a lack of diversity amongst the membership of the ZBA, to his knowledge all of the applications received for the ZBA were from white males. Also to his knowledge, the Mayor does not conduct interviews himself but instead delegates those to staff who work with a particular board or commission.

Councilor Leary said she understood Councilor Sangiolo's point of view and also commented that many of the members are lawyers or developers. Councilor Albright asked if the Mayor typically likes to appoint lawyers to the ZBA as a policy. Mr. Freas said that while some are lawyers, they are not specifically sought out. The desire is to have as diverse a Board as possible, however, there is no active recruiting for membership. The opportunities are advertised in the Tab and on the website and then they choose from those who have applied.

Committee members felt it would be advantageous to do some outreach in order to attract a more diverse membership.

**#222-13(2) Zoning amendment to regulate front-facing garages in residential zones**  
THE ZONING AND PLANNING COMMITTEE proposing to amend **Chapter 30**, City of Newton Zoning Ordinances, to regulate the dimensions and setbacks of front facing garages in residential zoning districts. [08/03/15 @ 10:15 AM]

**Action:** Approved as Amended 6-0

**Note:** James Freas, Deputy Director of Planning addressed the Committee. A draft ordinance was presented in the memo which had been distributed in the Friday Packet. The draft incorporated comments received at previous discussions of this item and the public hearing.

The amendments include modifications to the proposed exemption process and a specific provision which allows an exemption to houses which are setback more than 70 feet from the street. The reason for this particular exemption is that a house which is setback that far from the street essentially loses its connection to the public realm. Mr. Freas distributed an illustration for this exemption, which is attached to this report. The illustration demonstrates two of the standards eligible for exemption. It shows that the garage setback has to be in line with the building or further back; and it also illustrates that the garage wall when facing the street can be no more than 40% of the overall width of the building.

In the draft ordinance those standards can be found in Sections 3.4.4D and 3.4.4 E.1.as follows:

*D. Garage setback. A garage wall may be no closer to the front lot line than the longest street-facing wall of the dwelling unit measured at abound level.*

*E.1 Garage Dimensions. The length of a garage wall facing a street may be up to 40 percent of the total length of the building parallel to the street, inclusive of the garage wall, or 12 feet, whoever is great. This requirement does not apply to detached garages.*

It was suggested that these provisions be called out in the exemptions section itself.

It was asked what sort of situations would invoke exemptions relative to “protection of the historic integrity of a building” or “preservation of mature trees or similar natural features” as provided in F.1.iv and v. Mr. Freas explained that, for example, there may be an old stone wall or a large mature oak tree that would be disturbed or destroyed with the placement of the garage as required in this ordinance. If the petitioner would like to preserve those sorts of features by placing the garage a few feet forward of the house then that could be considered for an exemption under these provisions. It was noted that someone could apply for the exemption, build the garage and then remove the tree or the wall. Mr. Freas said there is a risk that could happen but

discretion does not have to be exercised and it included in the ordinance is the statement that the rules shall be followed to the greatest extent possible. A Councilor asked if conditions could be added to the exemption process. Mr. Freas said he would consult with the Law Department on that

A Committee member asked why the exemption granting authority would be the Commissioner of Inspectional Services in consultation with the Director of Planning. Mr. Freas explained that the decisions of the Commissioner are appealable to the Zoning Board of Appeals (ZBA). Marie Lawlor, Assistant City Solicitor, explained that the exemption process is contained within this ordinance and then the option of appeal would be to go to the ZBA. The ZBA can overturn the decision of the Commissioner of ISD with a super-majority vote. The Chair noted that the case would look at *de novo*, or anew, as if they were the Commissioner and decide the merits on that basis. Mr. Freas also noted that a waiver in an historic district would still be reviewable by the local historic district commissions.

It was asked if there was a role for the Urban Design Commission (UDC) in this exemption review process. Mr. Freas said he is attempting to set up a fair, simple and efficient process which stays away from issues of design and focuses on a basic, non-subjective set of clear criteria. It was noted that the ordinance does mention design requirements, so while they will be looking for some design elements to be incorporated into the garage to mitigate its overall presence, they do not want to dictate "design". There is an urban designer on the Planning staff who is able to review if necessary. It was suggested that if there is ever a vacancy in the urban designer position it would be beneficial to have the UDC available for review. Mr. Freas said the UDC has a broad mandate which states that anybody who would like to discuss an issue of urban design may do so. In operation, the UDC currently reviews signs and fence waivers but they did join the Orr project conversation and did a very good job. Mr. Freas said the plan is to involve the UDC more but would like to keep this process simple.

The Committee asked that the language be amended to include the underlined words as follows: *"The Commissioner of ISD, in consultation with the Director of Planning & Development and/or the Urban Design Commission, may grant an exemption..."*

The Chair invited public comment:

**Philip Herr**, Marlboro Street, addressed the Committee. He provided several photos of dwellings wherein the garage extends closer to the street than the rest of the façade. Pictures are attached. They are compliant in other respects. In many cases this does not interfere with the connection between the house and the public realm. He suggested removing section 3.4.4.D . *Garage setback. A garage wall may be no closer to the front lot line than the longest street-facing wall of the dwelling unit measured at ground level.*

**Simon French**, Glen Avenue mentioned the notice requirement in the proposed ordinance which states that a copy of the exemption request shall be provided by the petitioner to the neighboring

properties within 300 feet fronting on the same street. He wondered if it should be all abutters within 300 feet. Mr. Freas said the impact would be on those on the same street. Mr. French also asked about *section 3.4.2.4 which states that accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences*. He wondered why multi-families are not included. Mr. Freas said this is existing language of the ordinance and has not been changed. He could look into this.

The Chair noted that the public hearing on this item was closed on March 28<sup>th</sup> and the City Council has 90 days to act after that date. He would prefer to see a vote this evening in order to avoid another public hearing in the summer months.

The Planning & Development Board recommended approval of the proposed ordinance as presented at the March 28<sup>th</sup> public hearing with the further recommendation that the garage wall be no more than 45% of the front façade. The memo is attached.

#### Next Steps

The Committee asked that the Law Department provide a draft ordinance for the City Council meeting on June 20<sup>th</sup> with the amendments which include:

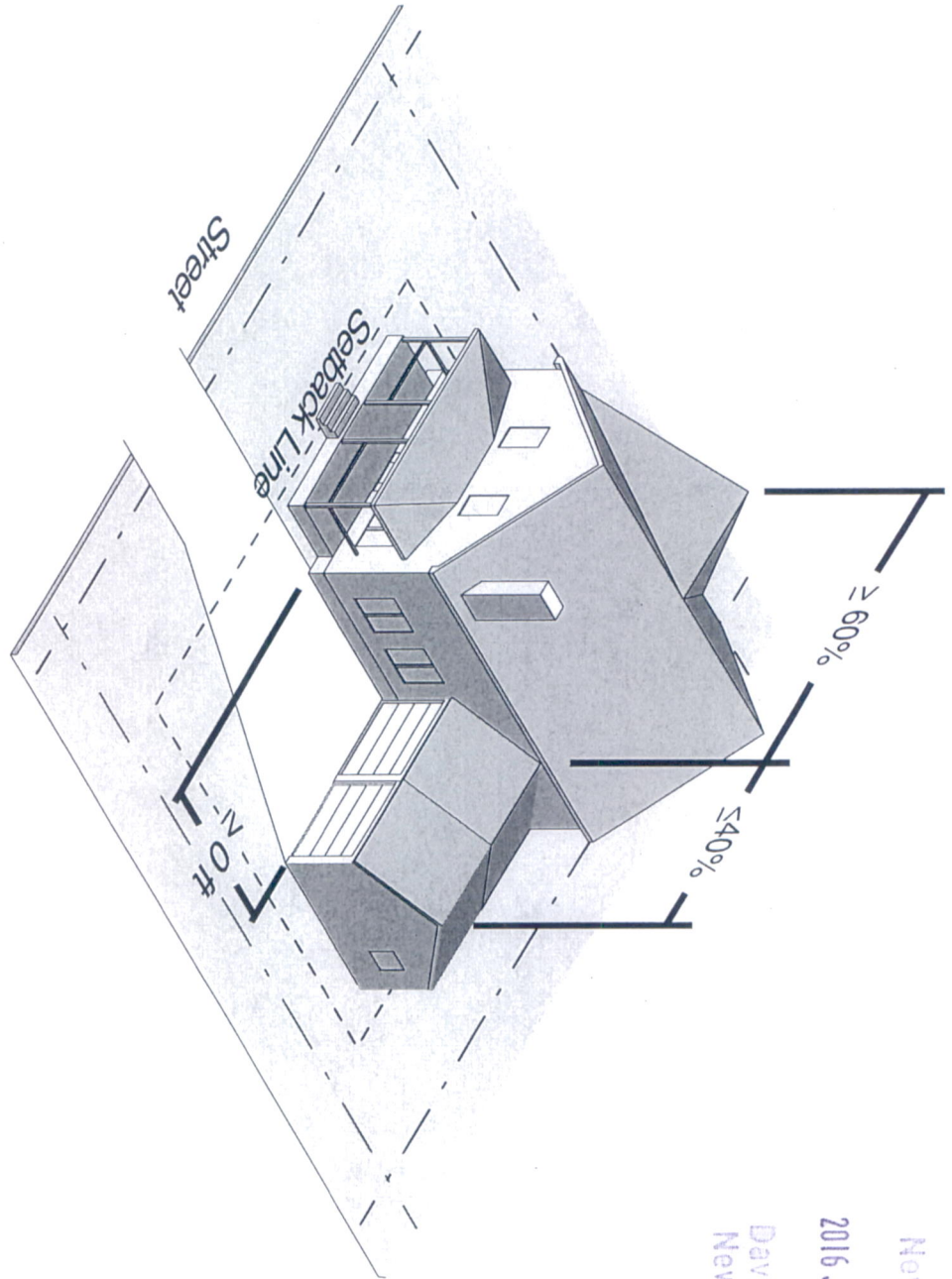
- Addition of the underlined language to 3.4.4F.1. *“The Commissioner of ISD, in consultation with the Director of Planning & Development and/or the Urban Design Commission, may grant an exemption...”*
- Addition of language to allow the ability to impose conditions to a granted exemption.

The Committee voted to approve the ordinance as amended 6-0.

Meeting adjourned.

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**



RECEIVED  
NEWTON CITY ENGINEERING

2016 JUN 14 AM 10:45

David A. Olson, OHC  
Newton, MA 02459



**PHILIP**

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**From:** "PHILIP" <ppherr@msn.com>  
**To:** "Ted Hess-Mahan" <thessmahan@newtonma.gov>  
**Sent:** Monday, June 13, 2016 10:40 AM  
**Attach:** Garage setbacks.docx  
**Subject:** Snout houses

Ted,

A week ago I spent late afternoon and evening at a party on the back yard lawn of a house lovely despite its protruding garage near my home (which like its neighbors has no garage). I noticed that the party was only a block away from a very different house with protruding garage I had photographed many years ago as an admirable new home. I then went looking further in that wealthy hillside neighborhood, and found five more houses with protruding gargages, all but one quite attractive and not significantly impeding the relation of the house to the street. The ugly one is ugly for reasons unrelated to having a protruding garage. The photos of the seven "offenders" are on an attached WORD file, along with an 8th case from elsewhere in the City, illustrating the really bad cases.

By adopting the proposed amendment with the exception of Section 3.4.4.D the number of nonconforming cases would plunge greatly, but the real offenders would still be addressed. In my view, that would be a huge improvement. I'm also disturbed by the review process, but if 3.4.4.D goes away the number of cases involving proposal reviews would be tiny, so I wouldn't question the process.

Phil



CASE A

CASE B







CASE C

CASE D





CASE E

CASE F







CASE G

CASE H





Setti D. Warren  
Mayor

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Director

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**M E M O R A N D U M**

To: City Council  
From: Planning and Development Board (meeting as the Planning Board)  
Date: June 17, 2016  
Re: **Garage Ordinance Recommendation**

**BOARD RECOMMENDATION:**

1. **#222-13(2)** THE ZONING AND PLANNING COMMITTEE proposing to amend Chapter 30, City of Newton Zoning Ordinances, to regulate the dimensions and setbacks of front facing garages in residential zoning districts.

The Planning Board recommends approval of the proposed amendment to the Zoning Ordinance relative to the setback and width of garages. The Board further recommends that the Council approve language that allows no more than 45% of the building frontage be garage wall.