



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, September 26, 2016**

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

Absent: Councilor Baker

Also present: Councilors Crossley and Lennon

Planning & Development Board present: Scott Wolf (Chair), Megan Mierav, Peter Doeringer and Jonathan Yeo

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

**#222-13(3) Review of Garage Ordinance**

COUNCILOR LENNON, LIPOF, ALBRIGHT, CROSSLEY, LAPPIN, LAREDO, GENTILE AND CICCONE requesting a review of Ordinance A-78, which amends Chapter 30, Section 3.4.4 of the Revised Ordinances, for the purpose of amending, clarifying, and/or interpreting the Ordinance. [08/01/16 @ 4:53 PM]

**Action: Public Hearing closed; Held 5-2-0 (Councilors Sangiolo and Kalis opposed)  
Planning & Development Board Public Hearing closed 4-0**

**Note:** Chair of the Zoning & Planning Committee, Councilor Hess-Mahan opened the public hearing on all three items and they were discussed together. He invited President of the City Council, Councilor Lennon and the other docketers, to address the first two items .

### Docketers Presentations and Comments

Councilor Lennon explained that after the City Council voted in June to approve Ordinance A-78 which regulates garages, he received many calls from colleagues and residents who felt the review of the ordinance might need to be extended as there seemed to be some unintended consequences. He felt that deferring the effective date of the adopted ordinance might provide time for that review and docketed a discussion item as well. His intent with these items is to assist a number of architects, builders and homeowners who had already requested permits and were now hamstrung by the new ordinance, mid-project. Several years ago, the deletion of Footnote 7 from the zoning ordinance caused similar problems and this was the approach the Board used to review the ordinance.

Councilor Albright said she felt the original intent of the ordinance was meant to prevent snout houses and then it seemed to shift. She voted for it, but then almost immediately felt some regret. She started to hear from people whose projects were now compromised and she too wanted to find a way to provide relief and also review what the City Council would like to address with the ordinance. She would like to hear from architects in the community.

Councilor Crossley agreed with Councilors Lennon and Albright. Also, if design constraints are going to be imposed on homes, she felt that was a departure from the current zoning ordinance. She also said that it was not fair to institute an ordinance retroactive to the date of first notice and other communities did not do that. Building Code changes, which affect the entire state, are advertised widely and give the industry time to catch up. They go into effect on a well-publicized future date, not a retroactive date. She would also like to see a statement of intent drafted for each zoning amendment going forward so it is clear what the amendment is meant to address.

Councilor Hess-Mahan explained that this item was not about snout houses, specifically and solely. The garage ordinance arose from residents who were concerned with dwellings being built that were two side-by-side houses connected by garages on long narrow lots and calling them two-family houses. The effort began with finding a better way to describe and define two-family houses and the garage ordinance became a salutary effect of that. Overall, this is not an aesthetic issue or an attempt to impose design standards. This is purely a zoning issue.

Councilor Hess-Mahan also clarified that for the last 41 years, the entire state of Massachusetts has complied with M.G.L Chapter 40A (The Zoning Act). Massachusetts is a non-vesting state which means that once notice of a public hearing on a zoning amendment is advertised, everyone is put on notice that if they proceed with a particular project, they do so at their own peril. When and if that zoning amendment gets adopted, it relates back to the original advertising date. This is not a local Newton rule. It is state law and has been for 41 years. He pointed out if changes are made through these current items, people will still be proceeding at their own peril as this public hearing was noticed on August 14<sup>th</sup>.

He explained that the Zoning & Planning Committee had meetings over nine months on this ordinance, including a public hearing. All the agendas were posted per Open Meeting Law in City Hall and in several places on the City's website. The Public Hearing was advertised two weeks in advance in the same manner, as well as in the Boston Globe and The Tab. These notices were sent to the Planning Department and the Inspectional Services Department where they should be posted at the counter for those coming in with projects or to get building permits, to see and be informed. Notice is also sent to the Planning & Development Board and the Planning Boards of contiguous communities. These posting and noticing practices were performed as required by state law. It is then up to people to attend meetings if interested in particular issues and express concerns or offer input at that time.

President Lennon commented that he was not questioning or criticizing the process. This was just one of those situations that occur now and then and, for whatever reasons, this was something

that needed to be reviewed. Perhaps changes will come or not, but good work is done when there are constructive conversations. Councilor Hess-Mahan agreed and said that is why he offered these amendments tonight for further consideration.

Councilor Hess-Mahan presented a PowerPoint which is attached to this report. Please refer to it for details. It describes what the current ordinance allows and prohibits; what his proposed amendments to the ordinance would allow and prohibit; and some pictures for illustration.

#### Committee Comments/Questions

A Councilor asked if public hearing notices are posted at the Inspectional Services counter. President Lennon said it is practice for the notices to be displayed there. Many people that go to the counter use lawyers for their projects, but not everyone does so perhaps not everyone knew to look or understood the notice. Land Use Committee has been discussing ways to simplify and disseminate information on special permits.

It was asked if ordinances from other communities were used as a model and if snout house designs were defined. Mr. Freas, Deputy Director of Planning said many were used from around the country. They defined snout houses as garages forward of the front façade and generally settled on 50% as the maximum allowed.

A Committee member asked if an interim measure might be put in place if a delayed effective date is adopted. Not doing so could do damage. This was done when Footnote 7 was deleted. President Lennon said he had no interim measure in mind as happened with Footnote 7. He thought it may also result in unintended consequences.

It was asked if there might be other ways to tackle the problem of snout houses. Mr. Freas said that as the City moves towards a more context-based zoning ordinance, this and other issues can be dealt with in more tailored ways that better match the reality of neighborhoods and their context throughout the City.

Some Committee members felt the process of discussing, reviewing and revising this ordinance was a good and thorough process and did not feel any changes should be made. There was a public hearing and this item was in Committee for many, many months. Twenty-two members of the City Council voted in favor.

#### Public Comment

The Chair opened the meeting for public comment.

**Jim Corsi, 6 Edward Circle** said he has been caught in the cross hairs of the revised ordinance. He bought a house in April with a certain plan in mind and then the ordinance changed in June and he already had his building permit and work has started. This is a \$900K house to be historically restored on Perkins Street and he is not knocking anything down. This seems to have started with problems with two-family houses. One of the most beautiful houses in Newton on Commonwealth

Ave has a garage in front of the house. He asked how many in the audience were having issues with this and about 12 hands went up. He said there are more who are not in attendance. He understands the issue with two-families but this doesn't apply well to single-family houses. The exemptions in the current ordinance could help him, but if they are deleted it is problematic. The new amendments would not help him. Every day he has to wait it costs him \$200 a day and if this goes on for months, it has a huge impact. For other people it could be even more than that. He would like to see the ordinance change pushed off for several months. He said the Planning Dept. knew nothing about this when they reviewed his plans and said they were blindsided by it. The Chair asked if Mr. Corsi could send the plans for the house to the Committee Clerk.

**Carlos Garcia, 79 Westgate Road** said he was in the same situation and caught up in the middle. There was a partially condemned lot that he bought and wanted to build a nice L-shaped house. He got the approval from Engineering but then his building permit was denied. He stands in support of the proposed amendments in #222-13(5). There are situations that will never be able to taken into account so good guidelines for exemptions needs to be in place. Time is money and the longer this takes the worse it is for everyone.

**Philip Herr, 20 Marlboro Street** said he was pleased this is back for further consideration. The amendments proposed make sense to him and he supports #222-15(5). It is a great improvement.

**Peter Sachs, 20 Hunter Street** presented slides which are attached to this report. He has worked on these projects with the Historic Commission and received a number of approvals for the projects to move forward. These are projects commissioned by owners of single-family homes. He worked with Planning, DRT and Historic to come up with good designs and meet the objectives of what the City wants and they are all non-compliant now. He didn't feel the work that went into the garage ordinance was sufficient to show the unintended consequences. The proposed amendments are simply back pedaling. He said this ordinance or the "snout house" ordinance was never going to see the light of day, according to the previous Chair of the Zoning & Planning Committee, until the zoning reform process. He said he did not like being told he was irresponsible for being unaware of the state law or the meetings because no one knew what was going on.

**Marc Hershman, 162 Cynthia Road** said he was an architect and he concurred with the sentiment of the speakers. There are talented architects in the City and state and this is about aesthetics and there will be mediocre architects. He doesn't like to see those bad examples, but those who are devoted can take those bad examples and turned them into nice architecture. This is an automotive society and garages are desired. In Oak Hill, where he lives, there are two car garages and wide paving but they are happy streets. Basketball hoops go up and it's a happy community. Two family homes on smaller lots tend to be the problem. He felt ISD or Planning should pay more attention and notice a reckless design that might be stamped by an engineer or a homeowner instead of an architect. There need to be ways for homeowners to add to their home so they don't sell to a developer for a teardown.

**Mike Stuchins, 1535 Beacon Street** said he and Peter Sachs developed plans for the first house in Peters presentation. He closed on the property in June and was built in 1913. His plan was to renovate and not demolish, to bring it up to modern standards while keeping historical character intact. The proposed garage would be 42-42% of the length of the house. The street facing wall section of the ordinance is unclear and he can't get a ruling on it from anybody. He believes keeping the house intact would be preferable but this ordinance is penalizing him for trying to do that and perhaps he should apply for a demo permit. This ordinance does not promote the city's objective of keeping historical homes intact.

**Mitchell Bernstein, 57 Temple Street** said that the FAR Committee did things right by letting everyone know well in advance what was coming. He has 5 projects and as a realtor is advising friends. People have been working with an architect for years and now this is noncompliant and can't go forward. There is a huge financial burden on everyone and residents trying to add to their homes are paralyzed. He asked for an emergency vote on this and it is a disgrace that people are being put at financial risk. He wants to know who was actually complaining about garages. This can't wait for a couple more months and the changes were pushed through unfairly. This needs a full review.

**John Koot, 430 Winchester Street** said that many of the problems with garages are products of new houses built after demolition of smaller houses. This also happens when a two-family replaces a single-family. He hopes that this ordinance would not affect those doing historic preservation. He does not like snout houses and would like this ordinance to stand. The results have been terrible without it.

**Claudine Grossman, 1016 Centre Street** purchased a 1890 Victorian home and she loves the rich architectural styles in Newton. What they are trying to do is build a garage and have been working for almost a year with the Historical Commission which they finally approved and loved. They want to do justice to the home. The ordinance now brings them into the gray area and they can't build to their plan. She would like to have some process for projects that fall within this gray area to move forward.

**Ann Dorfman, 9 Henshaw Street** appreciated the 22 Councilors that voted in favor of this ordinance in June. It means they have listened to the frustration and anger of those residents who don't like what they see is happening. Architects, such as Peter Sachs, are designing houses that are sensitive and attractive houses in which the garages are farther forward or larger, but there are not complaints about those. The complaints were relative to the destruction of houses that are livable and the creation of the houses with the dominant garages. This ordinance is to discourage that and make it more difficult to create. Not everyone can afford an architect to design a home. The front facing garages are not being done by residents; they are being done by developers. Those homes don't meet the needs of the community. It is possible to make front facing garages if some architectural details are included. The aesthetic value mitigates the impact. She understands this is not an ordinance relative to aesthetics or design but it's something to think about. There are

28 people who are stuck in the middle of this ordinance change and they should be grandfathered in in some way, but the whole ordinance should not be changed going forward.

**Rick Dinjian, 22 Byrd Avenue** agreed with Ann Dorfman. He said he was at the public meetings in the spring on this ordinance and knows the motives and the work that went into it. This is a very good attempt at dealing with an issue that so many people are concerned with: houses being torn down and replaced with garages with houses attached. The owners and builders who are in mid-stream with projects have good projects. Reasonable exemptions and exceptions should be made with Historic Commission approval for historic preservation of homes. He supports this ordinance as written and as passed in June. Speculators are buying homes, tearing them down and rebuilding larger houses on small lots. This isn't happening with people who are living in those homes. The are neighborhoods in which lots were laid on in 1920s for houses that did not have garages and are not designed for garages in front.

**Terry Sack, 64 Dorcar Road** said he is speaking as a realtor and has done a few small developer projects himself and has homeowner clients as well. Most homeowners want a 2 car garage. Putting more restrictions does not thwart development , it promotes worse development. The two-family ordinance has created uglier homes and townhouses with different rooflines look better and buyers like that more. Everyone moving to Newton wants a 4 bedroom, 2.5 bathroom home. Affordable housing is becoming less and less available with more restrictions but it costs everyone more to live here with these changes. When the FAR changed, the basement regulations created many houses that are built up above grade with outer foundation walls. Most people would prefer not having their homes built that way.

**Stephen Vona, 77 Oldham Road** said Peter Sachs showed good examples of great development in Newton. The building community has taken the wrath of every ordinance change and everything that's ever gone wrong with building. There are many good building community professionals in Newton. He was on the zoning task force and was on the ZRG Committee so he has a good idea of what the City wants and needs. There was consensus in those committees to keep the building community involved in any changes and that has not happened. That community is a great resource and care about the City just as much as anyone. It is offensive to hear otherwise. They would like to be involved. There is some confusion as to whether this was about two family structures or single family structures. It needs to stop and the ordinance needs to be reviewed. Like Bradford Road, people were grandfathered in and then the new Bradford Road decision was implemented. That solution should happen here as well. He said he doesn't go on the website or look at City Hall to find out about any changes that might be in the works . Some of the examples that Councilor Hess-Mahan showed were 10-15 years old.

**Miriam Spear, architect for 1016 Centre Street** said that she worked with the residents and the Historical Commission. They got approval in July from them on their garage design and went to ISD for their building permit and were notified that they were noncompliant with the ordinance. The lot is 20K square feet on a corner. The proposed garage is off Centre Street and the front of the garage is 66 feet behind the side lot line. However, the existing house has a 2 story bay and its roof

does not connect with the roof of the main house. The language of the ordinance has Planning counting the 7 feet of the front facet of the bay, pushing the proposed garage back and making it nonconforming to the setbacks. She applauds the intent of the ordinance, but it may not apply to some older homes with nooks and crannies on larger lots. Architectural variety needs to be considered and not just the architecture that has been the culprit.

**Verne Porter, 3254 Eliot Street** said he appreciates the review of this ordinance and the amendments are helpful. There are some plans that are not very nice and the architects deal with the zoning ordinances they are given. All the two family houses with large bays seen to be the most egregious and maybe not the single family homes. He does not want to see four garage doors everywhere either, but there should be some reasonable solution and 50% is a good number. Different neighborhoods can support different designs. Most of the people in the building community are hard workers and doing the best they can

**Karen Bray, Stearn Street** agreed with Ann Dorfman relative to grandfathering in some of the people in mid-project. Otherwise she thinks the ordinance is very good as is and wants to keep it. There have been many tear downs in her neighborhood and while some developers are greedy some are very good. Right behind her house is a very bad example since many trees were taken down and it changed the feel of the neighborhood in a very negative way. The City needs to be less automotive friendly and more pedestrian and bike friendly.

The Committee voted to close the public hearing.

The Planning & Development Board voted to close their public hearing, as well.

Generally, Committee members and docketers felt the best way to deal with the issues that have come about is to find a subset of people who should be allowed to go forward with their projects. Whether that should be people who have building permits, or applied for building permits, or went through review, or just asked at the counter and were turned away, needs to be discussed further. Also exemptions and other amendments need to be considered further. Some Committee members felt a solution could be found and voted out at this meeting.

The Chair asked that the items be held in order to take this under further review at a working session on October 13<sup>th</sup> to determine how to move forward.

The Committee voted to hold the items 5-2-0 with Councilors Yates and Sangiolo opposed.

**#222-13(4) Zoning amendment to defer effective date of Garage Ordinance**  
COUNCILOR LENNON, LIPOF, ALBRIGHT, CROSSLEY, LAPPIN, LAREDO, GENTILE AND  
CICCONE proposing an amendment to Ordinance No. A-78, which amends Chapter 30, Section 3.4.4 of the Revised Ordinances, to implement a deferred effective date for the Ordinance of February 1, 2017. [08/01/16 @ 4:53 PM]

**Action: Public Hearing closed; Held 5-2-0 (Councilors Sangiolo and Kalis opposed)**  
**Planning & Development Board Public Hearing closed 4-0**

**#222-13(5) Zoning amendment to Garage Ordinance**

COUNCILOR HESS-MAHAN proposing to amend Chapter 30, Section 3.4.4. of Revised Ordinances as amended by Ordinance A-78, as follows: (1) allow front facing garages that are no closer to the front lot line than the longest front facing wall, or a front porch at least 6 feet wide, to be the greater of up to 12 feet wide or 50% of the total length of the building parallel to the street; (2) allow front-facing garages that are closer to the front setback than the rest of the building and at least 24 feet from the front lot line to be up to 40% of the total length of the building parallel to the street; (3) delete Sec. 3.4.4.F "Exemptions"; and (4) add a provision grandfathering permits requested or construction begun on or after the date of the notice of public hearing on Ordinance A-78 [08/01/16 @ 4:58 PM]

**Action: Public Hearing closed; Held 5-2-0 (Councilors Sangiolo and Kalis opposed)  
Planning & Development Board Public Hearing closed 4-0**

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**





**#222-13(5) Proposed Amendments to Chapter 30, Section 3.4.4 (Ordinance A-78)**

**September 26, 2016 Public Hearing**

# Ordinance A-78

- Regulates size and setbacks of attached garages
- Requires living space over side-by-side garages
- No more than greater of 12 feet wide or 40% of total length of front façade
- No closer to front lot line than longest street facing wall
- Applies to only one garage for houses on corner facing lots
- Exemptions where strict adherence is impossible due to irregular lot shape, topography, to protect historic integrity or to preserve mature trees or similar natural features



# What Does Ordinance A-78 Allow?

- Garages that are no wider than 40% of the front façade



# What Does Ordinance A-78 Allow?

- No closer to front lot line than longest street-facing wall



# What Does Ordinance A-78 Allow?

- And side-by-side garages with living space over them



# What Does Ordinance A-78 Prohibit?

- Snout houses



# What Does Ordinance A-78 Prohibit?

- Side-by-side garages with double-wide driveways and curb cuts, that take up a large part or all of the front setback on narrow lots and/or have no living space above



# What Does Ordinance A-78 Prohibit?

- Garages that are wider than 40 percent of the front façade with driveways covering a substantial part of the front setback and wide, pedestrian (and tree) unfriendly curb cuts





# What Does Ordinance A-78 Prohibit?

- Garages that are closer to the front lot line than the rest of the house which dominate the front façade



# Proposed Amendments to Ordinance A-78

- Allow front-facing garages no wider than 12 feet or 50% of front façade that are even with longest front-facing wall or a porch that is at least 6 feet wide
- Allow front-facing garages no wider than 40% of front façade to be closer to front lot line than the rest of the house up to front setback as long as it is at least 24 feet from front lot line
- Repeal “exemptions”
- Add grandfather provision allowing permits requested or construction begun on or after date of the notice of public hearing on Docket Item #222-13(2) [Ordinance A-78]

# Why Amend Ordinance A-78?

- To allow greater flexibility that is consistent with older garages without frustrating the original intent of Ordinance A-78
- To address ISD's stated concern that "exemptions" are difficult to interpret and administer
- As an alternative to deferring provisions of Ordinance A-78, which would temporarily allow issuance of building permits for "snout houses," side-by-side and oversized garages with double-wide driveways and curb cuts on narrow lots, and front setbacks mostly or totally covered in pavement
- Grandfather garages that comply with proposed amendments where previously permit was denied or construction was stopped due to retroactive application of Ordinance A-78
- Discourage removal of street trees to accommodate double-wide and relocated driveways

# What Would Proposed Amendments Allow?

- Garages no wider than greater of 12 feet or 50% of front façade that are even with longest front facing wall or a front porch at least 6 feet wide



# What Would Proposed Amendment Allow?

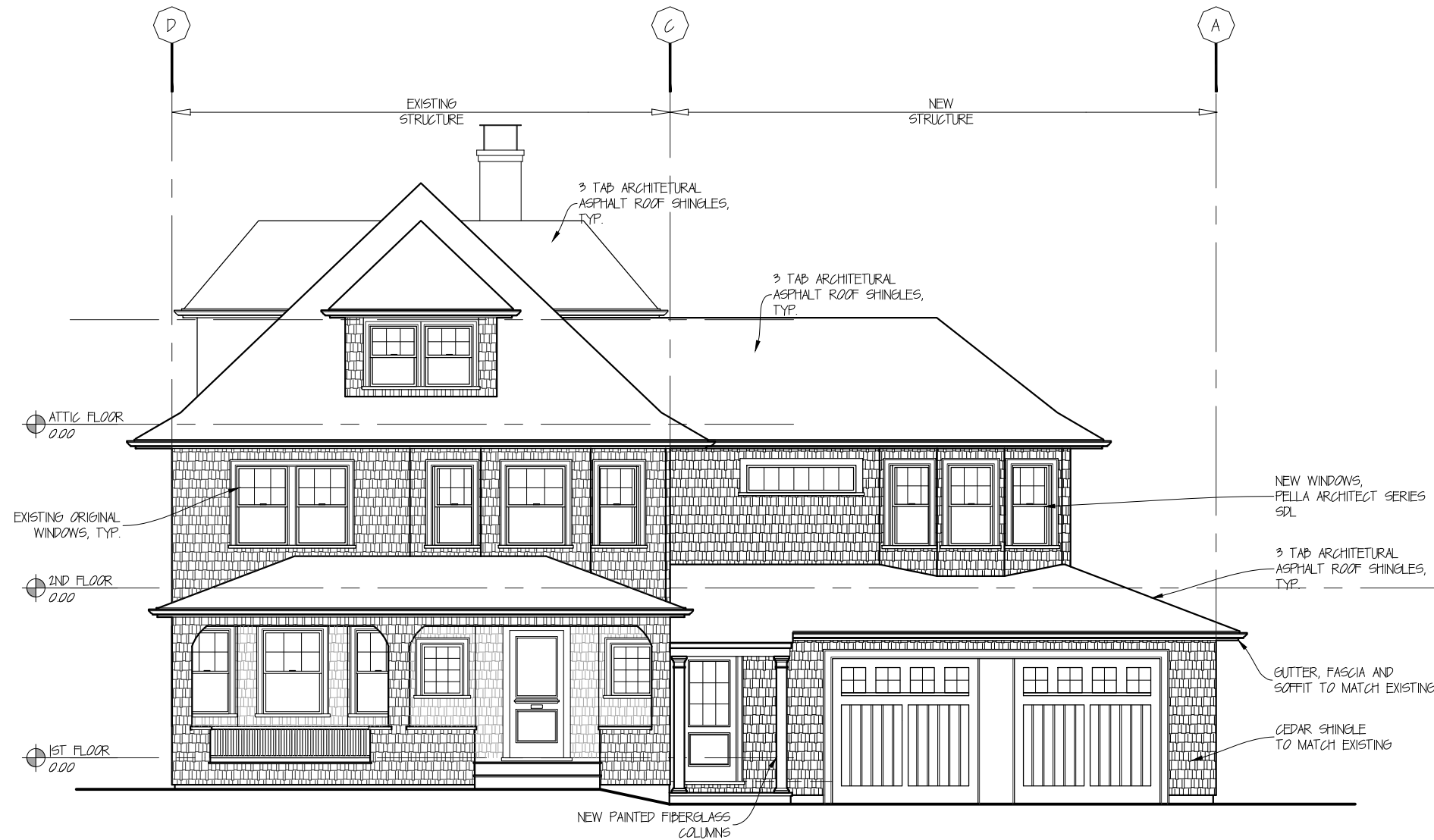
- Front-facing garages no wider than greater of 12 feet or 40% of front façade that are closer to the front setback than the rest of the house and at least 24 feet from front lot line



# What Would Proposed Amendments Prohibit?

- All of this stuff:





3/16/2016

1535 Beacon St. - Arch.dwg

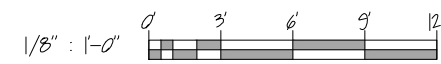
STUCHINS RESIDENCE FRONT ELEVATION  
 1535 BEACON STREET, NEWTON, MA SCALE 1/8" = 1'-0"

**Peter Sachs Architect** N.C.A.R.B. - A.I.A.  
 20 Hunter St.  
 Newton, MA 02465

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[www.petersachsarchitect.com](http://www.petersachsarchitect.com)

Date & Revision  
 06/15/16

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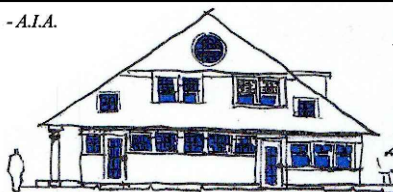


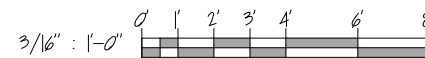


FRONT ELEVATION  
3/16" : 1'-0"

3/16/2016

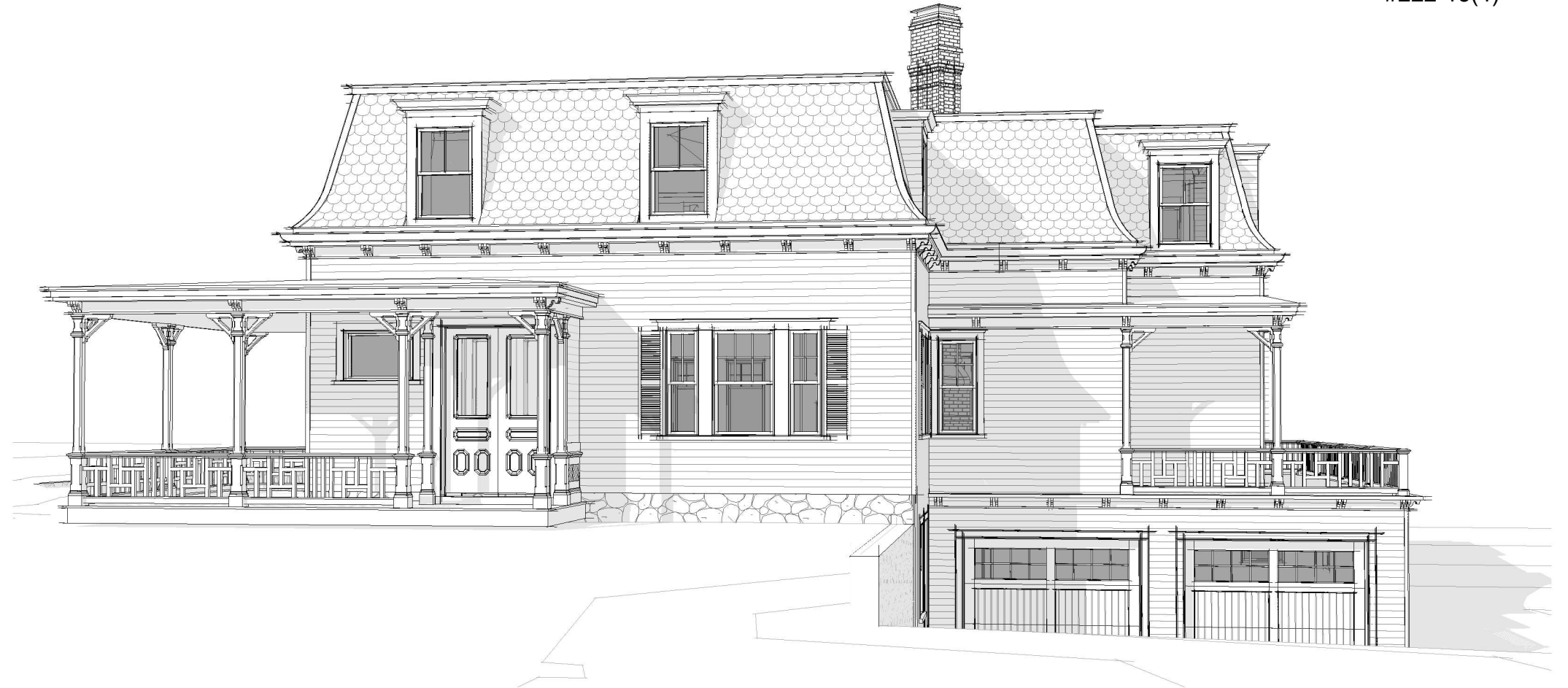
20 Morton Rd. - I - Arch (FR).dwg

WEST RESIDENCE		FRONT ELEVATION	
20 MORTON RD., NEWTON, MA		SCALE	3/16" : 1'-0"
Peter Sachs Architect N.C.A.R.B. - A.I.A.			
20 Hunter St. Newton, MA 02465			
Tel.: 617-527-5777 or Cell 617-312-5045		Date & Revision	
E-Mail: <a href="mailto:petersachs@gmail.com">petersachs@gmail.com</a>		08/02/16	
<a href="http://www.petersachsarchitect.com">www.petersachsarchitect.com</a>			A-6









PROPOSED



EXISTING

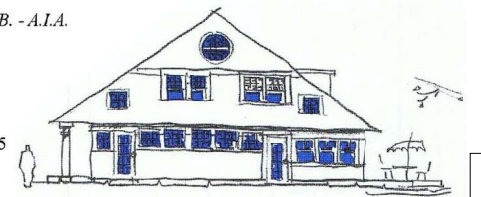
45 PERKINS  
NEWTON, MA

Right Front Perspective

SCALE

**Peter Sachs Architect** N.C.A.R.B. - A.I.A.  
**20 Hunter St.**  
**Newton, MA 02465**

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