



Zoning & Planning Committee Report

City of Newton **In City Council**

Thursday, October 13, 2016

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

Absent: Councilor Sangiolo

Also present: Councilor Lennon

Planning & Development Board: Megan Risen, Jonathan Yeo, Peter Doeringer and Barney Heath

City Staff: James Freas (Deputy Director, Planning Dept.), Marie Lawlor (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]

Planning & Development Board Held 4-0

Action: Held 7-0

#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]

Planning & Development Board approved 4-0 with amended date of 12/16/16

**Action: Zoning & Planning approved 4-1-2 with amended date of 12/31/16
(Councilor Baker opposed; Councilors Yates and Hess-Mahan abstaining)**

#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]

Planning & Development Board Held 4-0

Action: Zoning & Planning Held 6-1-0 (Councilor Baker opposed)

Note: Councilor Hess-Mahan explained that the public hearings on these items were closed on September 26th. The Committee is now meeting, along with the Planning & Development Board, for a working session. He would like to first define the problems that have arisen from the adoption of Ordinance A-78 as expressed in the public hearing in order to find a proper solution and appropriate relief. Please note that all items were discussed in tandem.

Planning Presentation

James Freas, Deputy Director of Planning presented a PowerPoint which provided a brief history of the process, proposed amendments and options to provide applicant relief. The presentation is attached.

There was an issue in determining which subset of people should be eligible for relief. Mr. Freas explained that the only class they could define for relief would be those who have already applied for a building permit, within a set date range, which are now nullified due to the adoption of A-78. This class of people can be readily and easily identified. In consultation with Planning, Law and Inspectional Services Departments, it was determined that the cleanest way to deal with the issue is to defer implementation of the ordinance. This would cast a wide net and wouldn't leave those out who were turned away from the Inspectional Services counter based on the newly adopted ordinance.

Inspectional Services

John Lojek, Commissioner of Inspectional Services (ISD) spoke to the exemptions that are in the current ordinance. Those exemptions relate to irregular lot shape, topography, configuration of existing structures on the lot, protection of historic integrity of the building and preservation of mature trees or other natural features. Commissioner Lojek did not think it was reasonable to put the authority of granting those exemptions with one person. He believes these are subjective and not objective judgments and the next Commissioner may have completely different interpretations. There should be bright lines. Further, he believes these exceptions are best left to the special permit process. He is not in favor of the exemptions and said it was a dangerous position to put him in. Perhaps there could be some exception for historic reasons, but that could be decided by a group of people and not just the Commissioner of ISD. He feels the requests for exemptions would be numerous.

Committee Comments/Questions***Exemptions***

It was asked if the tree warden, the Urban Design Commission, the Zoning Board of Appeals (ZBA) or some other boards or commissions might be helpful in determining who might be eligible for exemptions. Mr. Freas said that was not discussed and would require a new process. No other communities use that sort of delegation of authority. The ordinance as proposed does not put the sole responsibility on the ISD Commissioner, but allows for consultation with the Planning Department in its entirety. The Planning staff includes many of the boards and commissions that could be helpful. Commissioner Lojek said involving more people would make it more complicated. It would be far simpler and efficient to apply for a special permit. The City Council is the body to grant exceptions to a zoning ordinance, other than the ZBA, and he sees no role for the ZBA in this.

A Committee member felt requiring the Commissioner of ISD to grant exemptions was inappropriate and that the requests should go through the special permit process or go to the ZBA. It was also proposed that an official memo should come from the Commissioner of ISD on zoning amendments as is done by the Planning Department. Committee member proposed that a statement of purpose be added to this and all zoning ordinances going forward in order to make the intent clear.

Deferral

President Lennon joined the Committee and advocated for a deferment of the effective date of the current ordinance. In his role as President, and the only person who voted against the ordinance, he has received a large number of calls about the issues it has caused. There should be a simple solution to capture as many people as possible for relief that got caught in limbo. He does not believe there will be a rush of people building garages and applying for building permits during this deferment period. It would be a good faith effort by the Committee and the City Council to help people who have spent time and large amounts of money on projects that are now not allowed to go forward. He would make a compromise to an end date of December 31, 2016 from his proposed February 1, 2017 date. It would be possible to hold 2 or 3 meetings which include members of the professional community during the deferment period to carefully draft amendments.

Councilor Baker expressed that the ordinance, as passed, is a good ordinance. The process was followed correctly and it is proper that it become effective as of the date of first advertisement. This is how the process works and it is the law. Otherwise, an unintended opportunity is made available to allow those things that the new ordinance was created to prevent. Deferring the effective day of an ordinance is relatively unusual and not a precedent he would like to see adopted. Instead, he would rather offer amendments to exempt a specific subset of people from the current ordinance. He was concerned that people would use the opportunity to come in before the deadline and more houses will be built that they are attempting to avoid. He would not vote for a deferment.

Several Committee members felt that some sort of deferment would be a reasonable, simple interim measure.

Amendments

President Lennon felt that passing any substantive amendments at this meeting would be unwise as this has to come to a vote in full Council on Monday and this is Thursday. The item would likely get sent back to Committee and then no one would get any relief on their projects. He would like to take the time, and engage the professional community to draft amendments and come to a good solution.

The Chair asked how many people might fall into the class of those who applied for building permits during this period of time; and if there was a way to determine who might have come to the counter and were turned away. Commissioner Lojek said there are 9-10 who applied and now cannot go forward; there is no way to know all those who might have come to the counter and were turned away. Once ISD sees a zoning violation they are sent away and there is no official record.

Councilor Baker moved an amendment to vote on the proposed amendment (4) of #222-13(5) that would exempt those who applied for a building permit and received one in the time between the advertisement of the public hearing on A-78 and the effective date; anyone who had been approved by a local historic district commission but had not yet received a building permit; and anyone who had been through Historical Commission review and received a waiver for demolition delay. He did not want to include the other proposed amendments and he did not want a blanket deferral. The Chair asked for more discussion before voting on this proposed amendment.

Ms. Lawlor, Assistant City Solicitor, was asked if the amendments offered by Councilor Baker were proper based on the advertised language. She noted that while the Historic District Commissions and Historical Commission were not mentioned in the advertising language, the amendment could be perceived as being less restrictive than what was advertised. In effect, the exemption would be granted to a wider subset of people which would be considered less restrictive than what was advertised. Councilor Hess-Mahan said when he offered the amendment in #222-13(5), his intent in using the word "permit" was to include a building permit, a demolition permit, a permit from the local historic district, a comprehensive permit, etc. Ms. Lawlor noted that since it is not ascertainable who came to the counter to request a permit, it is not possible to include that particular class.

Mr. Freas said the language in the redlined ordinance in the Planning Memo is based on the language in #222-13(5). He proposed making the following changes, however:

b. Where the length of a front facing garage is no more than 40% of the total building length, the front facing garage may be no closer to the front lot line than the building setback line.

He would like to add *“or 24 feet, whichever is greater”*. He also proposed removing the exemptions in Section F. except for the one related to the Historical Commission/Local Historic District Commissions.

Councilor Hess-Mahan explained that the amendments in #222-13(5) were meant to be a transition from A-78 to whatever will come out of Zoning Redesign. He drafted the proposed amendments by looking at plans that have gotten caught in limbo and each amendment covers the issues he has seen. Mr. Freas said those plans would become approvable with these amendments. There was concern by several Committee members that all the plans might not have been reviewed and some people could be left out unintentionally.

He felt that it was very unlikely that new amendments (outside of those proposed in #222-13(5)) could be drafted by the end of the year. The garage ordinance was taken up at the request of the Committee as one of the interim measures that many felt was necessary to deal with in the short-term, with the idea of re-visiting it within the realm of Zoning Redesign. The pattern book is slated to be completed this winter and ordinance language worked on in the spring and summer. A draft ordinance is expected to be delivered in the fall. He feels the best solution is to go with the amendments in #222-13(5) which will give some breathing room to go through Zoning Redesign and tailor the ordinance to lots or neighborhoods or whatever the criteria may be, and allow a robust community engagement process.

He also noted that a special permit provision was not advertised and cannot be taken into consideration within these items.

Planning & Development Board

Peter Doeringer wondered if the deferment period could be shorter, thereby reducing the number of people who might rush to take advantage of the opportunity. Also, he wondered whether there were any other subsets of people that could be included in the exemptions.

Mr. Freas noted that there needs to be enough time for the Committee and City Council to deliberate and vote. There is also a need to allow people a reasonable amount of time to come into ISD and continue the process they were either stalled in or were turned away from. Commissioner Lojek agreed and said there are people who spent \$20K-\$30K on plans and came to the counter and were turned away, so there needs to be some time for those people to know about the exemption and come in. He felt that the Committee may not understand that getting to a building permit is a long process with pre-approvals coming from Engineering and the Fire Department. People are not going to run out and buy a property tomorrow so they can build a house with a bigger garage and spend \$30K on plans. These are projects that have been in the pipeline for a long period of time. New projects cannot be put together in a matter of days so that should not be a consideration.

Councilor Danberg noted that the Historical Commission can rescind a demo delay if the petitioner comes back with a revised set of plans which are approved. This could be another category to

include in those exempt from the ordinance. Councilor Albright noted that at least one project was granted a special permit, which the City Council approved, and that is another category to consider.

The Planning & Development Board voted to approve #222-13(4) with an amended date of December 16, 2016 unanimously, and voted to hold #222-13(3) and #222-13(4) unanimously. They would like to hear more from the Zoning & Planning Committee on the amendments item.

Councilor Hess-Mahan explained that the Planning & Development Board must provide a report of their recommendations before 21 days has elapsed since the close of the public hearing and that date would be the day of the City Council meeting on October 17th. If the report is not forthcoming within that time frame, the City Council may vote without their recommendation.

Zoning & Planning Committee Vote

Ms. Lawlor reminded the Committee that per M.G.L Chapter 40A, the City Council must take action on the items within 90 days of the close of the public hearing, otherwise the items must be re-advertised and another public hearing held. The 90 days would expire on 12/25/16.

#222-13(5)

Councilor Baker moved to amend his earlier amendment. He would like to move approval of #222-13(5) in its entirety with adding language to (4) to limit who could be exempt to those who have received a building permit, special permit, Certificate of Appropriateness from a Local Historic District Commission, or a Demolition Delay waiver from the Historical Commission. He would also move to include the amendments as previously proposed by Mr. Freas. A redlined draft of the ordinance as amended is attached. Councilor Baker and the Chair asked for a straw vote on the attached draft:

In Favor: Councilors Baker, Kalis, Yates and Hess-Mahan

Opposed: Councilors Danberg, Leary and Albright

Councilor Baker moved approval on his proposal, as above. Councilor Hess-Mahan said he was going to abstain on this vote. He agreed with Councilor Baker that the policy of deferral is a bad precedent. He does not want to be responsible either for sending something to the full Council that is not ready. If this vote is not successful, he would like to have it held in Committee for further work.

The motion to approve as amended failed to carry 2-4-1 with Councilors Baker and Yates voting in favor and Councilors Kalis, Albright, Leary and Danberg opposed; and Councilor Hess-Mahan abstaining.

Councilor Albright moved Reconsideration and the Committee voted in favor 7-0. Councilor Albright moved to hold the item and the Committee voted in favor 6-1-0 with Councilor Baker opposed.

#222-13(3)

The Committee voted in favor of holding this item 7-0.

#222-13(4)

Councilor Leary moved approval with an amended deferred effective date of December 31, 2016. The Committee voted approval as amended 4-1-2 with Councilor Baker opposed and Councilors Yates and Hess-Mahan abstaining.

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair

Zoning and Planning Committee

1

GARAGE SETBACK & DIMENSION REGULATIONS

#222-13(4)(5)



11/05/15

Proposed Regulations

3

- Consolidates garages related regulations into one section
- Places Garage Setback in line with building façade.
- Up to 50% of street facing building façade.



Process

5

Planning Department

- Researched example ordinances
- Developed ordinance language
- Reviewed with Urban Design Committee, 2 meetings

Zoning & Planning Committee

- Discussed over several meetings.
- Held a Public Hearing

Typical Process

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Planning Department

- Research issue/examples
- Host multi-departmental meetings
- In some cases, establish community-based committees, reach out to community experts or focus groups, or conduct community meetings.
- Meet with Boards/Commissions

Zoning & Planning Committee

- Discuss over several meetings
- Hold a Public Hearing

Zoning Redesign Process

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Planning Department

- Researched example ordinances
- Host multiple community meetings, workshops, and events
- Create online engagement tool
- Work with multiple focus groups

Zoning & Planning Committee

- Actively involved in project scoping
- Involved in data collection
- Regular project updates
- Discuss over several meetings
- Hold a Public Hearing

Proposed Amendments

8

- Front Facing Garages only
- Up to 50% of building width
- Still in line with front building façade, but:
 - May come forward in line with a front porch or
 - Come forward to the building setback if no more than 40% of building width
- Retain exceptions
- Explicit exception for Historical Commission approved projects

Applicant Relief

9

- Defer Implementation
or
- Define and Exclude in Ordinance

3.4.4. Garages

A. Defined

1. An attached or detached structure intended primarily for the storage or parking of one or more automobiles. A detached garage is an accessory building.

2. A Front Facing Garage is a garage on which the primary garage door or doors through which automobiles enter the garage faces the street. On corner lots, a Front Facing Garage faces the same street as the primary frontage or entrance to the house.

A garage wall is any wall enclosing a garage including that wall containing the garage entrance.

B. For each dwelling unit there shall be no more than 1 garage and a garage shall provide for no more than 3 automobiles, except by special permit.

C. Where more than one garage is provided as part of a building and they are placed side-by-side, there shall be living area connected by a shared wall above both garages.

D. Garage Dimensions and Setback

1. The length of a garage wall front facing garage facing a street may be up to 40 50 percent of the total length of the building parallel to the street, inclusive of the garage wall, or 12 feet, whichever is greater. This requirement does not apply to detached garages.

2. A garage wall front facing garage may be no closer to the front lot line than the longest street-facing wall of the dwelling unit measured at ground level except as follows:
a. Where there is a front porch at least 6 feet deep the front facing garage may be no closer to the front lot line than the front of that porch.

b. Where the length of a front facing garage is no more than 40% of the total building length, the front facing garage may be no closer to the front lot line than the building setback line or 24 feet, whichever is greater.

3. The ground floor area of an accessory building containing a garage or an attached garage shall not exceed 700 square feet, except by special permit.

E.—Garage Dimensions

1. The length of a garage wall front facing garage facing a street may be up to 40 50 percent of the total length of the building parallel to the street, inclusive of the garage wall, or 12 feet, whichever is greater. This requirement does not apply to detached garages.

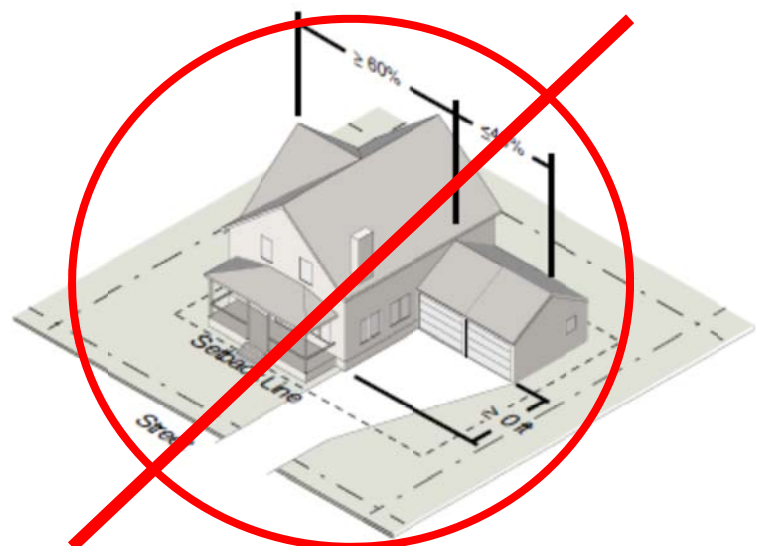
2. On corner lots, only one street-facing garage wall must meet the standard above.

3. The ground floor area of an accessory building containing a garage or an attached garage shall not exceed 700 square feet, except by special permit.

F. Exemptions

1. The Commissioner of ISD, in consultation with the Director of Planning and Development ~~and/or the Urban Design Commission~~, may grant an exemption, subject to such conditions as ~~he the Commissioner~~ may require, to the garage length and setback requirements (section 3.4.4.D) ~~and garage wall length facing the street (section 3.4.4.E.1) requirements, where, based on one or more of the following factors, strict adherence to these requirements would be impossible:~~
 - a. Irregular lot shape;
 - b. Topography of the lot;
 - c. Configuration of existing structures on the lot;
 - d. Protection of the historic integrity of a building, as determined by, and with the approval of, the Historical Commission or a Local Historic District. ~~and~~
 - e. ~~Preservation of mature trees or similar natural features.~~

2. ~~Any exemption request shall be reviewed relative to the~~



~~intent of minimizing the amount of building frontage devoted to garage walls and ensuring a clear connection between the front entrance and living space of a dwelling and the street, meeting the requirements of this section to the greatest extent possible. All exemption requests shall present design features including, but not limited to windows, architectural details, screening, and landscaping and these shall be generally consistent with the remainder of the house.~~

32. A request for exemption shall be on such form and shall provide such information as the Commissioner of ISD may require.

43. The applicant shall provide written notice of an exemption request and shall provide a copy of the request application to neighboring properties within 300 feet fronting on the same street.

54. Where the house is more than 70 feet from the street, the garage length and setback requirements (section 3.4.4.D) ~~and garage wall length facing the street (section 3.4.4.E.1) requirements~~ shall not apply.

5. Garages permitted between March 14, 2016 and September XX, 2016 are not subject to the requirements found in Sec. 3.4.4.D.1 and 2. For the purposes of this section, permitted projects shall include those that received a building permit, a special permit, a Certificate of Appropriateness from a Local Historic District Commission, or a Demolition Delay waiver from the Historical Commission.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

October , 2016

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS
FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are
hereby further amended with respect to **Chapter 30 ZONING as most recently
amended by Ordinance A-78** as follows:

1. The effective date of Ordinance A-78 shall be December 31, 2016.

Approved as to legal form and character:

DONNALYN LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor