



Zoning & Planning Committee Report

City of Newton In City Council

Monday, October 24, 2016

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

Absent: Councilor Sangiolo

Also Present: Councilors Crossley, Norton and Auchincloss

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

Referred to Zoning & Planning and Finance Committees

#270-16

Request to Amend Demolition Delay Ordinance

COUNCILORS HESS-MAHAN, LEARY, SCHWARTZ, AUCHINCLOSS, SANGIOLO, AND BAKER requesting amendments to Chapter 22, Division 2. Demolition Delay, of the Revised Ordinances to increase sanctions for failure to comply with the conditions of a demolition permit and/or demolition of a structure without an appropriate permit. [07/21/16 @11:40 AM]

Action: Zoning & Planning No Action Necessary 7-0

Note: Peter Dimond, member of the Historical Commission joined the Committee. He noted that he was speaking no his own behalf, however. In his two years on the Historical Commission, it has seen 500 applications for demolition permits. A house on Commonwealth Avenue was torn down without a permit, circumventing the entire reason and process for Historical Commission review for a demolition permit. The penalty for that action seems to be fairly minor; a percentage of the building permit. It diminishes the authority of the Historical Commission and the intent of the City to regulate demolitions. He feels there should be a delay of 3 years, for example, as a penalty for unpermitted demolition.

Katie Holmes, Historical Planner, said that in the 4 years she has seen two examples of this. One went through demo review and was signed off as a partial demolition, but the entire house was taken down. The house on Commonwealth Avenue did not apply at all and no permit was issued.

Marie Lawlor, Assistant City Solicitor, noted that the current ordinance does have fines for noncompliance in two ways: Failure to comply with the demo delay ordinance; and building code violations. The demo delay ordinance violation levies fines to the limit allowed by state law, which is \$300 a day per violation and this is enforced by the Historical Commission. The Commissioner of ISD can issue a stop work order until noncompliance has been remediated; can refuse to issue a certificate of occupancy; or can refuse to issue a permit required by state building code pertaining

to any property on which any historic structure has been demolished, up to two years. The way the ordinance is structured, the Historical Commission is authorized to enforce the ordinance section. The Commissioner has the additional authorities as mentioned above and then has the ability to take other actions under the state building code as well and may ticket \$1000 a day. Fines can only be collected under the ordinance by applying to the Newton District Court for a criminal complaint. This is a state law and usually gets people's attention pretty quickly. Fines are generally negotiated in settlement out of court. The fines under the building code are more direct. Ms. Holmes noted that a Historically Significant structure there is a definite system in place to deal with violations. There is a less punitive process if the structure is not deemed historically significant.

A Councilor noted that a previous violator was required to pay into the Historical Commission a fine of \$15K and take a mortgage for \$75K which was discharged if they stayed on the property for five years. This prevented the property from being "flipped" into something else. This was unusual and the Historic District Commission had to approve whatever else happened on that property. There is a difference between the Historical Commission and an Historic District Commission in terms of authority. This situation was a negotiated solution.

Commissioner Lojek noted that he is also able to take certain steps to make it difficult for those who violate the ordinance. He can ticket for the initial fine of \$1000 and the work is stopped. Then the Historical Commission is consulted and they have 15 days to determine if the house is historically significant. If so, they can take a period up to two years to delay the process. If not, the Commissioner then has up to 30 days to issue a building permit, and he may take the full time to do that. If there are problems, he can delay for another 30 days and so on. The carrying costs are significant on all these delays are a disincentive for people to violate the ordinance. They also have a criminal complaint and criminal record against them if they do not settle before an arraignment on the fines - people are fingerprinted and are in the "system". These are all definite disincentives.

The fines in the ordinance are the maximum allowed by state law. The fines, delays and other disincentives are at the disposal of the Historical Commission and the Commissioner of Inspectional Services. This is not a pervasive issue by any means. The Committee felt there was nothing more to be done to the demolition delay ordinance to address the issue.

The Committee voted No Action Necessary on this item 7-0.

#122-16 **Discussion with ISD re procedures to protect abutters during demo projects**
COUNCILORS NORTON AND AUCHINCLOSS requesting discussion with the Inspectional Services Department relative to the City's procedures to protect abutters during demolition projects and whether Newton is requiring developers to take sufficient steps. [03/25/16 @ 12:07 PM]

Action: **Zoning & Planning No Action Necessary 7-0**

Note: Commissioner Lojek explained that the City requires contractors who are demolishing a structure to have a 6 foot fence around the property, provide sufficient water to keep dust and

debris down during the demolition and provide hay bales and silt fencing as well. This is a City requirement and contractors are given a handout on the requirements. A Councilor asked if that list could be posted on the website. Any complaint that comes into the office is responded to immediately in most cases. If a code enforcement official is not available, he can call the district inspector to get there as soon as possible. If there are problems, the general practice is to stop work until the contractors fulfill all the requirements. Projects have been delayed for up to a week, at times. He believes that word has gotten out and they do not receive as many complaints as they used to. Either police or inspectional services can respond to complaints.

A Councilor said that some people have concerns that there might be asbestos in the air with a demolition, but Commissioner Lojek said the homes go through an inspection and if asbestos is present they have to get a sign off from the Health Department showing it has been abated.

Councilors Lipof and Crossley both noted that they have had and have heard of positive experiences with Inspectional Services dealing with construction and demolition site issues.

A Committee member wondered if there should be a sign requirement on a construction site as to who neighbors might contact if problems arise, on the construction fence. Different ideas included a contact person at the construction/contracting company; the police or Inspectional Services. Committee members felt that most people know how to get in touch with someone to help with a problem and a demolition usually only takes a day or two. Perhaps there should be a list of what is allowed and not relative to a construction or demolition site so people know what to look for. There was also an idea to have notification sent to neighbors. Councilor Norton said she would like to docket an item for notification and with that notification a list of what is required.

The Committee voted No Action Necessary 7-0.

#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: Zoning & Planning Held 7-0

Note: Councilor Hess-Mahan explained that the City Council voted to defer the effective date of the garage ordinance to December 31, 2016. That deferment will go into effect on November 7th. This item offers a transitional set of amendments so that the garage ordinance as amended in June

would not go back into effect on January 1st, 2017 and instead these would take its place. Any new amendments need time to consider and he did not want to rush into making any other suggestions to be passed immediately. If anything otherwise is to be done before the end of the deferment, it would be almost impossible.

Councilor Albright had some amendments to offer, however, they include a special permit amendment which cannot be acted upon under the advertised item. It would have to be docketed as a separate item with a public hearing. All other amendments could be considered under #222-13(5) she believed. The Chair asked her to meet with Marie Lawlor and James Freas and if there are amendments that can be taken up within the scope of the advertisement, that could happen in the near future.

Councilor Baker felt the original amended ordinance was a good one and would need more time to look things over relative to any amendments that could be made under the scope of the advertisement. He's not sure what he would vote for at this point. Many Committee members had the same opinion that the options need to be vetted. Others felt that there was a short time frame in order to get this right before the deferment date ended as a temporary measure until zoning reform looks at this issue in the context of that overall project.

Councilor Lipof said he would like Commissioner Lojek to speak up in the process so that there is clarity on what makes sense and what can be enforced. Everyone wants two-car garages in Newton and he wants to know how much work is actually necessary on the ordinance and what exactly is the problem those changes would be addressing.

Councilor Crossley explained that she was unclear of the intent of the ordinance and what it is trying to address. She would like to understand the objective. It seems to her that the intent is to control design which impacts the street scape and the impression of the massing of the building and controlling aesthetics. She understands protecting the public way and the pedestrian way and that makes sense, but that is not what she has heard in the conversations. A Committee member noted that the March 25, 2016 Planning Memo gave a very good statement of intent.

Councilor Hess-Mahan said the comprehensive Committee reports and the Planning Department memos demonstrated the intent that this was related to many issues of urban planning including dimensional controls. He encouraged anyone who is unclear to re-read the reports and memos. Councilor Baker and Councilor Kalis agreed, and noted that the purpose is to prevent the garage from becoming the prominent feature on the front of a house by exercising certain dimensional controls.

The Committee voted to hold this item and bring the conversation back to Committee as soon as possible, likely on November 28th. He wants to have something in place on December 31, 2016, otherwise A-78 will be back in effect on January 1st.

#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: Zoning & Planning Held 7-0

Note: The Committee held this item 7-0. See note above.

Public hearing assigned for November 14, 2016:

#343-16 Zoning amendment relative to accessory apartments

HIS HONOR THE MAYOR, COUNCILOR HESS-MAHAN, ALBRIGHT, CICCONE, CROSSLEY, AND NORTON proposing to amend Chapter 30 Section 6.7.1 Accessory Apartments and Section 5.1.4 Number of Parking Stalls in order to create a new accessory apartment ordinance that expands the availability of accessory apartments. [10/07/16 @ 10:03 AM]

Action: Zoning & Planning Held 7-0

Note: Councilor Hess-Mahan explained that he wanted to introduce the amendments to the accessory apartment ordinance at this meeting. The item is scheduled for a public hearing on November 14th and will be taken up in further depth at that time.

James Freas, Deputy Director of the Planning Dept. addressed the Committee. He explained that accessory apartments were a priority item in the Housing Strategy that was introduced in June. It is also cited as a municipal best practice to make accessory apartments more available on a wider basis in order to expand the supply of housing options within the City and create options, for seniors and others, the financial ability to stay in their homes. This also allows the City to address the problem of illegal apartments by removing barriers presented by the zoning ordinance, rectify safety issues and legalize many apartments.

The ordinance reinforces the idea that the apartments are meant to have very limited impact on neighborhoods, and are effectively invisible and dispersed throughout the City. The ordinance also does not expand what is already allowed within a home in terms of occupancy. Owner Occupancy remains a requirement in the ordinance, and allows the owner to live in either the main unit or the accessory unit.

There is a removal of the parking requirement. Currently one parking space is required for an accessory unit. The proposed amendment removes the single parking space currently required for an accessory apartment but does require that the property have all other required parking spaces, which for a single-family home is two spaces.

Internal accessory apartments would be allowed by-right, however, any external change must match in style and character of the existing house. For example, another door cannot be added to the front of the house as to make appear as a two-family.

Detached accessory apartments would also be allowed by right, however, external changes to existing structures must also match in style and character. Allowance for historic accessory structures and carriage houses conversions to proceed by right is also included with approval of the Historical Commission or Local Historic District Commission on design.

The Planning Memo which was provided in the Friday Packet has more detailed information and included a redlined draft ordinance.

Committee Comments/Questions

A Committee member noted that these changes to the accessory apartment ordinance are significant. Currently, accessory apartments can be allowed by right and special permit with certain limitations. Special permit apartments include detached structures because they are likely to have more impact on abutting properties. There are currently overlay districts which are deleted in the proposed ordinance and would allow apartments anywhere in the City, essentially converting it from primarily single and two family zones to 1.5 and 2.5 family zones. He did not feel this was desirable and felt it would be extremely difficult to enforce in terms of number of occupants, in particular. There has historically been a concern in areas around colleges about the proliferation of student housing in a context that is not appropriate. The Councilor asked that the Accessory Apartment Report which was written in 1989 be made available.

It was asked how the ordinance might deal with historic carriage houses that are very close to property lines. Mr. Freas explained that a detached accessory unit has to be a minimum of 15 feet from any other residential unit. If the unit is to be closer, it must go through the special permit process. The decision was to use the unit instead of the property line as a base of measurement.

A question was asked about occupancy limits. Mr. Freas explained that the current ordinance allows as many residents in the accessory apartment as could be allowed in the main body of the house. The proposed ordinance states that the total combined number of residents living in the principal and accessory units may not exceed the number allowed in the principal dwelling unit alone. No lodgers are allowed in the main unit.

It was asked what the biggest barriers to legalizing an apartment might be. Mr. Freas explained that until the zoning is settled, nothing else can even go forward. Once the zoning makes the apartment legally possible, then the issues around building codes and safety can be addressed.

A Committee member asked for information relative to how many apartments have been legally approved in the City. Mr. Freas said he would be able to provide that information for the public hearing. He will also be able to supply the data from the Accessory Apartment Incentive Program

from which no apartments were created as the zoning was the primary impediment. A Councilor said that the deed restriction was a significant barrier as well in that program.

Councilor Crossley joined the Committee and explained that the work on revising the ordinance began two years ago in a subcommittee. The first step was to clean-up the ordinance and remove some process language that did not belong there. Also, in certain parts of the City there are a number of illegal apartments, especially in smaller houses on smaller lots and many violate fire and safety laws. Councilor Ciccone brought this problem forward and proposed some sort of amnesty program to address these serious issues. An additional focus of the subcommittee was to look at the ordinance as it is unduly restrictive and prevents people from living out their lives in the City due to lack of resources. Also the changes would offer an opportunity for smaller, more affordable dwelling options. Otherwise, bigger homes are forever limited to the small number of people who are allowed by right.

It was asked how the number of residents requirement would be enforced. Mr. Freas explained that Commissioner Lojek is starting to work with the educational institutions to determine where students might be living in illegal or dangerous situations so that can be tracked more closely. Councilor Crossley also noted that because the homes are owner occupied, this would be self-regulating to a large extent. People would likely not want to be living in their homes packed with people while they are also living there. Mr. Freas noted that there is a staff-based Committee composed of three members of Inspectional Services, the Law Department, Planning Department and the Historical Commission. Several pieces of the ordinance relative to enforcement were drafted by the Commissioner of ISD and he feels they are sufficient and useful. There was some concern that this might also open up too many opportunities for Air BnB type rentals which could have unintentional consequences to the neighborhoods and complicate enforcement. It was noted that there is an item docketed relative to Air BnB type companies so this will be addressed in the near future.

A Councilor asked how the City can gain access to a home since they cannot legally enter without permission. Mr. Lawlor, Assistant City Solicitor explained that a tenant is legally able to give permission as well as an owner. The City could also obtain an administrative search warrant from Newton District Court, with probable cause. The City has done that on occasion when all other avenues failed. Police and Fire personnel tend to be among the first to recognize and have access to illegal apartment situations, so ISD has done training with them on how to recognize, report and handle those situations. Commissioner Lojek agreed.

Councilor Hess-Mahan re-iterated that this will be taken up in public hearing on November 14th. The Committee voted to hold this item.

Referred to Zoning & Planning, Programs & Services and Finance Committees

#256-16

Request to extend notification area of notice for special permit petitions

COUNCILORS COTE, NORTON, HARNEY, BLAZER, BROUSAL-GLASER, AND LEARY

requesting an amendment to the City Council Rules, Article X; Section 6 – Additional

Notification Requirements, to include that the area of notice for special permit petitions be expanded beyond the abutters to abutters within 300' required by Massachusetts General Law Chapter 40A to also include property owners within 600' of the subject property. This notification will apply to all classes of building except for residential 1 and 2-family units that will remain 1 or 2-family units after receiving a special permit. Only abutters to abutters within 300' will be entitled to the rights conferred by Massachusetts General Law Chapter 40A. [07/01/16 @2:09 PM]

Action: **Zoning & Planning Discharged item to Land Use Committee 7-0**

Note: This item is properly before the Land Use Committee as the notifications referenced are relative to special permits. The Committee voted to discharge this item from Zoning & Planning Committee to the Land Use Committee 7-0.

Respectfully Submitted,

Ted Hess-Mahan, Chair