

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JANUARY 12, 2015

Present: Ald. Johnson (Chairman), Danberg, Baker, Yates, Kalis, Sangiolo and Leary

Absent: Ald. Hess-Mahan

Also Present: Ald. Crossley and Albright

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

Appointment by His Honor the Mayor

#7-15 JUDITH MALONE NEVILLE, 68 High Street, Newton Upper Falls, appointed as a member of the Newton Upper Falls Historic District Commission for a term to expire January 26, 2018 (60 days - 03/06/15) [12/29/14 @9:14 AM]

ACTION: **APPROVED 5-0 (Ald. Sangiolo and Leary not voting)**

NOTE: Ms. Neville joined the Committee. She noted that she has been before the Newton Upper Falls Historic District Commission (NUFHDC) as a petitioner in the past and has also gone to hearings to learn about things happening in the neighborhood. She and her family live in a house in the Upper Falls that was built in 1868 and she is very interested in history. Her family is only the second owner of the home and the previous family had lived there for three generations. It was a bit of a disaster when they bought the house at auction in 1980 and was filled with many historical documents and artifacts. She has contributed many of those items to the Newton Historical Society. Ald. Yates noted that Ms. Neville and her husband received a historic preservation award for the restoration and rehabilitation of their home.

Ald. Danberg asked if it would make sense to expand the historic district. Ms. Neville said there are pockets of architectural distinction all over the City. Her concern in Upper Falls is the density that has been created by converting single-family homes into multi-family units. There is a balance between preservation and progress in a community but she would like to help bring an understanding of density and scale in neighborhoods. She noted that the Crowley house on Chestnut Street was taken down and four houses put in its place, but they are in scale and in keeping with the neighborhood. Ald. Baker stated that historic district commissions have the authority to adjust dimensional controls and zoning.

Committee members acknowledged her past and continued service to the City. Ald. Yates moved approval and the Committee voted in favor.

#482-14 HISTORIC NEW ENGLAND requesting acceptance by the City of a preservation restriction on property located at 7 Norman Road, Newton Highlands [12/08/14 @ 12:26PM]

ACTION: **APPROVED 5-0 (Ald. Sangiolo and Leary not voting)**

NOTE: Joseph Cornish from Historic New England (HNE) joined the Committee. He shared some photos of 7 Norman Road with the Committee. They can be found attached to the agenda for this meeting along with the full application online at:

<http://www.newtonma.gov/gov/aldermen/committees/zoning/2015.asp>

Mr. Cornish explained that HNE currently holds 95 preservation restrictions in New England, with 36 house museums as well. HNE has been working with Diana Korzenik, the owner of 7 Norman Road for over 10 years to create a preservation restriction that meets her goals and HNE's goals. This agreement protects interior features as well as features not visible from the public way. The house is listed on the National Register but otherwise has no protections in place.

Massachusetts Law requires approval by the Massachusetts Historic Commission (MHC) and the municipality in which the property is located in order for the document to be perpetual, otherwise it would have to be re-recorded in 30 years. The MHC and the Newton Historical Commission have both approved this restriction and their letters of recommendation were attached to the agenda. Board approval is the last housekeeping piece of this agreement.

This property could qualify for a federal tax deduction if public access were made available, however, the homeowner decided against that. The desire of the homeowner is primarily to keep the home intact historically. HNE monitors the property and does annual site visits. They give advice and provide recommendations for maintenance and provide consultation with architects and other vendors when and if work is to be done. They also help with marketing when the property goes on the market and provide all the needed information for real estate brokers and to potential buyers of their obligations under the restriction.

Ald. Yates asked that the site plan be included with this report and is attached. It can also be found in the application online, as noted above.

Ald. Yates moved approval and the Committee voted in favor.

#80-13 THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]

ACTION: **HELD 7-0**

NOTE: The Committee continued its review of the Phase I Draft Zoning Ordinance, starting with Section 6.5 Industrial Uses.

Document Review

The revised draft zoning ordinance can be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/62957>

This report references the sections which had any questions or comments.

Section 6.5.3. Boat Building

Ald. Sangiolo asked if boats could be stored within 100 feet of a residential district if it is not in the manufacturing district. Mr. Freas said that is how it is currently written. She asked that this be flagged to look at in Phase 2.

Section 6.5.9. Laboratory and Research Facility

Ald. Baker said there is a gap in the ordinance as currently written, which inadvertently only allows rDNA in a business zone. The Atrium Mall is coming in for a possible rDNA facility under a special permit, and one of the Land Use attorneys determined that all they have to do is ask for a laboratory use which is permitted, but it does not have the restriction that other districts have for rDNA.

Marie Lawlor said the rDNA ordinance is antiquated at this point in terms of technology. There is still an extensive vetting process with the Health Department and the Biosafety Committee. It's a trend in municipalities now to be more welcoming to scientific businesses and this will be looked at more closely in the coming months. Mr. Freas said there will be more work done on determining what the common practices are now in the rDNA field. The Biosafety Committee will be looking closely at the rDNA ordinance to exclude those things that are no longer of concern and remove those from the special permit process to some other process, to be determined.

Section 6.5.11 Manufacturing

Mr. Freas noted that the biggest change in this section is the expanded definition of Manufacturing. Mr. Freas said he has made a note to determine if a line should be added to the list of what manufacturing might include that says something like "and other similar uses" as a catchall.

Section 6.6.2 Indoor Recreation Facility

Again, perhaps a line should be added about similar uses to this category.

Section 6.7 Accessory Uses/Accessory Apartment

Ald. Baker noted that the Accessory Apartment Detached definition would usually say that it is not located within a single family dwelling but in a detached structure. This definition leaves "but in a detached structure" out of the definition and should be included. It needs to indicate where it is as well as where it isn't. Mr. Freas will check on this.

Subsection D. 1. deletes some language relative to separate ownership and Ald. Baker was concerned about this. Mr. Freas said he has a notation to look into this and will report back.

Ald. Johnson asked that the rest of this section be set aside as the Accessory Apartment Subcommittee is going over this in detail. They will report back to the Committee with their recommendations very soon.

Section 6.7.2 Commercial Vehicle Parking

There is some confusion about where commercial vehicles can park. One commercial vehicle can be parked in the setback and be registered to the owner of the property. Beyond that, Mr. Freas said he would look into this to make sure things are clear and consistent.

Section 6.7.3 Home Business

Subsection B. 2. Eliminates part of a sentence about gross floor area and Committee members were unsure why. Mr. Freas said the phrasing is difficult and will flag this for further consideration.

Section 6.9.4. Wireless Communication Equipment

Ald. Baker said the section needs to be transferred over wholesale, but it will need to be revisited in the future as regulations change.

Section 6.10.3 Registered Marijuana Dispensaries

Ald. Sangiolo mentioned that there is an item in Programs & Services Committee regarding additional regulations on RMDs. These regulations would not be incorporated into the zoning ordinance, however, and would most likely be under the purview of the Health Department.

Ald. Baker noted that “lot” was used throughout this section in place of “site”. Ald. Crossley felt strongly that both these terms should be defined, along with other terms, in Phase 1. Mr. Freas said the decision was made by the Zoning & Planning Committee not to define these terms and that it would not interfere with the understanding of the ordinance. Mr. Freas said he would be happy to present the definitions again. Ald. Johnson said perhaps this should be revisited. Ald. Sangiolo said that all definitions should be looked at.

Article 7. Administration

Ald. Yates wondered if there should be a reference to the law that establishes Zoning Boards of Appeal everywhere. Marie Lawlor said the state law reference is not part of the text, but could be a link.

Subsection 7.1.6 E.1.a. should strike the word “their”.

Subsection 7.1.6. E.2. references Chapter 40B. Ald. Baker said this should say “to grant a comprehensive permit” – not “grant an affordable housing development”. The next paragraph starts with Variance for Hardship. It was recommended to remove “for Hardship”.

Section 7.2. Amendments

Ald. Baker felt the word “ordered” should be removed and replaced with “designated” in paragraph A or some other word that is appropriate.

Section 7.3 Special Permit Review

Subsection B.1.a. Ald. Baker asked if “development” is a defined term and it is not. Mr. Freas said that this is language that is carried over from the existing ordinance.

Section 7.3.3 Grant of Permit

Subsection C. deletes exceptions but the defined uses and exceptions can be found in a different section. Mr. Freas couldn’t recall the exact location but would look into it.

Section 7.3.5 Special Requirements for Recombinant DNA Research or Technology.

There are several references to Revised Ordinances Chapter 12 and those need to be confirmed and changed if necessary. Add “as amended” in subparagraph 4. after “Code of Regulations”.

Section 7.4 Site Plan Review

7.4.1 Purpose, the reference to Chapter 808 is deleted. Ald. Baker felt this should probably remain because 808 is one of the few places that speaks to aesthetic quality and not just public safety.

Section 7.7.4 Plans

Subsection paragraph F deletes thereof but Ald. Baker feels this makes the requirement unclear. Mr. Freas will flag this for clarity.

Section 7.4.5 Procedures

There was a general question relative to a majority vote of the Board of Aldermen. It should be clear, for each instance, whether the vote requires a majority of those present and voting, or a majority of the full Board of Aldermen. The language that was added may change the meeting and needs to be looked at and clarified.

Section 7.5 Administrative Site Plan Review

Ald. Baker feels language here is too broad in stating that the Director of Planning has the authority to approve applications for site plans for religious or educational uses. This is new language. It’s important to identify the instances in which the Planning Department, the Board of Aldermen and Inspectional Services each have their authority to act on site plan review.

Section 7.6 Variances

7.6.1 D. states that the “desired relief must be granted...” but the Committee feels it should be “may” and not “must”. Mr. Freas and Ms. Lawlor will consult the statute for clarity. Overall, several members find the entire paragraph quite confusing.

Section 7.6.9. Record

There is mention of notice to parties in interest. Ald. Baker wondered if there is a place that notice provisions are referenced for special permits and variances. There is dispute regarding who parties in interest are for purposes of standing to challenge. It is different than who is entitled to receive notice. Mr. Freas noted that this refers back to 7.6.3. Notice which references Section 11 of MGL and the Rules of the Board.

Section 7.7.9. Record

The word “forthwith” has been deleted. Perhaps it should be replaced with a different word or phrase such as “in a timely manner”. Ald. Baker felt “forthwith” should be kept in place.

Section 7.8 Nonconformities

Subsection 7.8.1.C.2. has both Exemptions and Exceptions. One or the other should be used, not both.

Ald. Baker said the term “or any amendment” should not be deleted as suggested. Mr. Freas said that amendments to the ordinance are the ordinance. He will sort this out with the Law Department.

Section 7.8.2 Nonconforming Uses

Ald. Baker noted that first there is mention of a nonconforming building or structure, then it goes on to mention nonconforming use. There is a change effected when taking out the term “nonconforming” before “building or structure”. A nonconforming building or structure has a different meaning than a building or structure that has a nonconforming use in it. This is a provision that people really pay attention to because there are quite a few nonconforming structures in the City. He wants to be sure deleting that word is not changing the original meaning of the ordinance.

The Committee will continue review of Article 8 at the next meeting. Mr. Freas noted that decisions still need to be made about the official zoning map and the definitions of “site” and “lot” as well. The Committee voted to hold this item.

#376-14 PLANNING & DEVELOPMENT DEPARTMENT requesting that **Chapter 30 ZONING** be deleted in its entirety and replaced with the Zoning Reform Phase 1 Zoning Ordinance. [10/22/14 @ 7:48PM]

ACTION: **HELD 7-0**

NOTE: The Committee decided that setting a public hearing date is still premature and voted to hold this item.

#352-14 ACCESSORY APARTMENT SUBCOMMITTEE proposing that §§30-8(4)(a) and 30-9(2)(a) re proof of existence for pre-existing accessory apartments in Single Residence and Multi Residence districts be amended to change the date an owner-occupant seeking validation of an existing accessory apartment must prove its existence from December 31, 1979 to December 31, 1999. [09/29/14 @ 11:20AM]

**HEARING CLOSED; ZONING & PLANNING APPROVED 5-1-1 (Baker opposed; Sangiolo abstaining) ON 12/8/14
ZONING & PLANNING HELD 7-0 AT FULL BOARD ON 12/15/14**

ACTION: **APPROVED 4-1-1 (Ald. Baker opposed; Ald. Sangiolo abstaining;
Ald. Leary not voting)**

NOTE: Ald. Johnson explained that this item was a result of discussions in the Accessory Apartment Subcommittee. The goal of the subcommittee has been to simplify and clarify the process for creating legal accessory apartments. One step in the process could involve proving that an accessory unit was in existence prior to December 31, 1979, however, that look-back period is quite long at this point in time. The proposal is to change the look-back to a more manageable period of time, which would be 15 years from the current 35 years. It can be quite difficult to find documentation from 35 years ago.

Commissioner Lojek had reported in the December meeting that the intent was to make more of the units legal and safe. By easing the look-back period, he believes many more homeowners who have units that are now unregistered, and unknown, will come forward and that is in everyone's best interest in terms of life and safety issues.

Ald. Baker reiterated his continued concern that this is creating a new window of opportunity to legalize what may have been illegal units. The original ordinance was intended to protect nonconforming structures that had been in existence prior to the zoning ordinance.

Ald. Johnson noted that the Committee held this item pending the Planning & Development Board's (P&D Board) public hearing. That hearing took place on January 5th and the P&D Board voted to approve the amendment. Their recommendation was attached to the agenda.

The Committee voted to approve the amendment with Ald. Baker opposed and Ald. Sangiolo abstaining.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

PEABODY-WILLIAMS HOUSE
7 NORMAN ROAD
NEWTON, MA

EXHIBIT D
SITE PLAN
(Not to Scale)

