

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

THURSDAY, FEBRUARY 19, 2015

Present: Ald. Johnson (Chairman), Yates, Danberg, Leary, Hess-Mahan, Baker and Sangiolo

Absent: Ald. Kalis

Also Present: Ald. Albright, Norton and Crossley

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

#338-14 ALD. HESS-MAHAN, KALIS, SANGIOLO AND DANBERG proposing a Large House Review ordinance requiring design review and approval of by-right single and multi-residence residential structures exceeding certain dimensional limits to be determined, to expire by December 31, 2015. [09/05/14 @ 9:39AM]

ACTION: **HELD 7-0**

NOTE: Ald. Hess-Mahan noted that he attached the Town of Wellesley's Large House Review (LHR) ordinance for the Committee to review. He consulted some architects and land use attorneys who work in communities that have these types of ordinances/by-laws. The issue that regularly comes up is that these communities do not have an FAR that applies to residential structures. The review process is the de facto FAR. It's complicated trying to tailor this kind of review to the Newton ordinance which was a residential FAR, demolition delay review, and special permits or variances.

Ald. Baker said on a vacant lot the FAR would tell you what you could build. If there is an existing structure and a demolition permit is required, however, then it is reasonable to ask if the scale of the replacement structure is appropriate. Ald. Hess-Mahan thinks it would be unfair to ask someone to go through LHR and the special permit process.

Ald. Baker explained that there is the special permit route, which should not be subject to LHR; building on a vacant lot which would allow building up to the FAR; and a situation where there is a demolition and the replacement structure would be by-right. With this last scenario, they should come through this intermediate LHR process to meet some additional criteria because an existing structure is being demolished.

Ald. Hess-Mahan noted that there are sub-classes under that as well such as partial demolitions which go through Historical Commission. The Historical Commission could grant the demolition permit based on approval of the addition. Or there could be a finding of preferably preserved for a total demolition and then get go through review for the replacement structure and get approval from Historical for that. He didn't think they should then have to go through LHR

as well. Ald. Sangiolo was concerned because not all demolitions go through the review by Historical and are administratively approved.

Ald. Hess-Mahan felt that people shouldn't have to go to the Historical Commission, get their approval for a demolition permit and then be told they then have to go through the Urban Design Commission as well. It's too much. Ald. Baker said there could be a provision that if the Historical Commission gives approval for a demolition then the homeowner would have to certify that the replacement structure would meet the criteria of the LHR. Ald. Hess-Mahan stated the Historical Commission is looking at criteria for historic purposes, and then to require people to go through a different process for the size of the house seems unreasonable. He didn't think people should have to seek relief for going below what is allowed by-right. This turns the idea of by-right on its head. Ald. Baker said for purposes of what one's right is, it changes if there is a demolition of an existing structure - the definition changes for that purpose. Ald. Baker felt this is solving the problem of the loss of smaller houses being replaced by larger houses. Ald. Hess-Mahan felt the problem being solved by LHR is neighborhood context.

Ald. Crossley wondered what the goal is of a LRH process. If the standard of by-right is going to change, how will it change and under what circumstance. Newton has one of the most complicated processes of the cities and towns she has worked with and is this just adding another layer. Ald. Baker said historic district commissions have been dealing with these questions for awhile so perhaps the historic planner can help with these questions.

Ald. Sangiolo said that several examples of other LHR ordinances were provided and she would like to put together a comparison chart for the Committee for the next discussion. The Committee will review the ordinances from Cohasset, Needham and Newburyport. Ald. Sangiolo asked for feedback from the members if they feel there are elements they see in any of those that would absolutely not work for Newton. She would like to get consensus about whether this would be an appropriate approach or not for the City.

The Committee voted to hold this item.

#222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances.
[06/07/13 @ 1:31 PM]

ACTION: **HELD 6-0 (Ald. Leary not voting)**

NOTE: Ald. Hess-Mahan referenced a drawing that was provided with the agenda that illustrates a structure on a long, narrow lot. Every other house on the street is either single or two-family. When the builder originally came in the design looked like this drawing but he was told he could not build it by-right because it was not a two-family, it was an attached dwelling. There are provisions for an attached dwelling and they require a special permit. With the advice of the building inspector, the builder inserted 6 feet of living space behind the garages, so that he could get a building permit. This change satisfied the common wall connector, common roof

connector requirement in the definition of a two-family dwelling. This structure is not a two-family – it looks like two single-family homes connected by two garages. The builder was honest in a neighborhood meeting, saying he wanted to get as much on the lot as possible and he would continue to build homes this way.

He went on to say that this is the problem and he's not sure what the solution is. These definitions were added to help solve the "linguine" house problem where houses were attached by a breezeway, but seem to have created yet another issue. It seems that having these long structures that don't face the street is problematic, but the Committee also feels it would be undesirable even if facing the street. The side-facing issue could be easier to solve. Newton does not use form-based zoning so solving this issue will take some consideration. Ald. Yates suggested that perhaps these types of two-family houses should require a special permit.

The current definitions are allowing for some exploitation and the results are not what was intended. Mr. Freas noted that he has looked at other ordinances and there are no definitions as they are meant to be self-explanatory. Ald. Sangiolo asked if there might be some historic definition that could solve this problem. Ald. Crossley said there were fewer patterns for buildings and homes historically and there was not much need to define them so particularly. Times have changed and now almost anything goes. Builders are not paying attention to neighborhood context or historic context. It's a difficult problem to solve.

Ald. Johnson asked how two-family could be defined in a more traditional way and she asked Mr. Freas to provide some guidance along with the Law Department. Ald. Sangiolo would like to bring this back to Committee before budget meetings begin. Ald. Crossley was mindful of the staff time this might take. Mr. Freas said he would create a scope of work and the time it would take to accomplish. He is doing this department-wise for all projects. Ald. Sangiolo said the docketers could contribute their time and effort if given some guidance on what needs to be done.

The Committee voted to hold this item.

#278-14 ALD. YATES proposing to amend Chapter 30 of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers. [07/31/14 @ 12:03PM]

ACTION: **HELD 6-0 (Ald. Leary not voting)**

NOTE: This was discussed in conjunction with the previous item. Ald. Yates asked if the APA has been consulted on this. Mr. Freas has not but said he might have some of their books available that might have a definition. Ald. Hess-Mahan found a definition in the Merriam-Webster dictionary for two-family as "a house divided either vertically in design for two families living side-by-side and separated by a party wall or horizontally and designed for two families occupying separate apartments one above the other."

Mr. Freas said the solution could be to eliminate the definition of two-family because the new language that was just added said the first place to look for meaning is a dictionary. The Committee felt this could also be problematic, however.

The Committee voted to hold this item.

#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, dated December 2, 2014

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 7.8.2 Nonconforming Uses

There is a general question about whether “nonconforming” is appropriately used in this section. Mr. Freas is speaking with the Law Department about this.

Ald. Hess-Mahan noted that the law is that a use variance cannot be granted unless there is specific provision in the zoning allowing that to happen. The Zoning Board of Appeals granted a variance of use for Engine 6. The TripAdvisor building is looking at the same issue in waiving setbacks and he’s not sure there is a provision to do that with a nonconformity. There is concern about the way ISD is interpreting this and if they have the authority to do so. There is an ongoing conversation with the Law Department on this. Mr. Freas said he would like to be involved in that discussion because there may need to be a clarification of language. Use variances are generally frowned upon. Not everything is subject to special permit – some things are just hardline issues.

Section 7.8.3 Nonconforming Buildings or Structures

DeMinimus Alternations, subsection e. Enclosing an existing porch of any size.

Ald. Danberg would like that flagged for Phase 2 for clarification.

Section 7.9 Enforcement and Penalties

It was noted that the reference to Massachusetts General Law is abbreviated as MGL. The Committee agreed it should be M.G.L. throughout the document. It is defined in Abbreviations in Section 8.2

Section 8.1. In General

This section is completely new language. There was a question about whether a ZBA decision that is different than the ordinance trumps the ordinance. Mr. Freas will add the question of whether a ZBA decision carries the same weight as a court decision versus local ordinance. Ald.

Baker said he would like to know if deference is given in the ordinance to an interpretation of ZBA as opposed to going to a court decision or terminology. They can make a decision that never gets challenged, but it may turn out to be erroneous and then the city is stuck with it. A decision overturned by a court decision is a different story. Ald. Hess-Mahan said such a decision would not have precedential value, it would alter or modify the language for a particular petitioner. Mr. Freas said it may prevent the ISD Commissioner from making that determination again, so in that way it could be precedential. The Committee would like an opinion from the Law Department on this.

Section 8.2 Abbreviations

MGL is defined in Abbreviations. This should be addressed with the M.G.L. as noted above. RAAP should be removed from Abbreviations as it is a term that will no longer be used in the Accessory Apartment section.

Section 8.3 Defined Terms

Affordable rental housing unit definition has been crossed out. There is some question here as to whether this was amended somewhere or else or what happened. The Inclusionary Zoning section has a different definition, which is why this may have been deleted. Mr. Freas will research this.

Institution, Multi-use definition is in red and Ald. Baker thought the definition was already in the ordinance. Mr. Freas will check on this.

Rear Setback Line definition is in red. Ald. Baker wondered whether measurements should be in a definition and is this a consistent pattern.

Porch definition states that a porch can share no more than 2 walls, but a wraparound porch would share 3 walls, but is still a porch. Ald. Danberg would like this flagged for Phase 2.

Roof flat and *Roof sloped* definitions state that the pitch is less than 1:12 and more than 1:12 respectively. Mr. Freas will check to see if this came from the Building Code.

Accessory Apartments

The Committee reviewed a memo from the Planning Department relative to the Accessory Apartment section of the zoning ordinance which reflects the changes recommended by the Accessory Apartment Subcommittee. The memo was provided in the Friday packet and can be found online attached to the agenda.

It was noted that the term “RAAP” is being deleted from the ordinance and replaced with Administrative Review (Admin. Rev.)

Section B.3 should more clearly state what needs to be recorded at the Registry of Deeds. The Commissioner of Inspectional Services does not “grant” the accessory apartment. This needs to be clarified.

Section D.1.a. The original text states “the accessory apartment shall be...33% of the total building size in the dwelling structure... It was changed to ...”33% of the total building size of the dwelling”. Ald. Baker felt deleting “in the dwelling structure” is inaccurate because there are other references to dwelling structure in relation to this. He would like to retain this language in all places and the deletion is an error. Ald. Hess-Mahan pointed out that the definition of Dwelling is a building or structure used for human habitation. Using Dwelling Structure would therefore be redundant. Ald. Baker would somehow like this inconsistency to be corrected in some way.

Section H. Preexisting Units. The newly adopted date of 1999 needs to be put in place of 1979 wherever appropriate throughout the ordinance. The term “second” dwelling unit needs to be changed to “accessory apartment”.

Follow Up

Ald. Baker felt a final redline version should be made available prior to the public hearing. The legislative history needs to be added back into the ordinance and the Committee has not had a chance to see that yet. Mr. Freas said that the March 9th meeting will take up the GIS map and the lot/site issue. He suggested that the final redline incorporating the changes from March 9th as well could be available for the March 23rd meeting.

Ald. Johnson would like to have the Public Hearing set for April 13th. 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 (Ald. Leary not voting)**

NOTE: A Public Hearing will be set for April 13th. The Committee voted to hold this item.

REFERRED TO ZAP, PROG & SERV AND FINANCE COMMITTEES

#397-13(3) ALD. SANGIOLO AND DANBERG requesting creation of an ordinance to protect trees deemed ~~historie~~ significant by the ~~Historical Commission and the City’s Tree Warden~~ with the advice and counsel of the Urban Tree Commission. [05/05/14 @ 4:32 PM] **AMENDED IN PROGRAMS & SERVICES 11/19/14**

ACTION: **NO ACTION NECESSARY 6-0 (Ald. Leary not voting)**

NOTE: This item had originally been docketed to the Zoning & Planning Committee because it requested that the Historical Commission be involved with this ordinance. The item, however, was amended in the Programs & Services Committee by the docketers, removing the Historical Commission from the request. It is no longer under the purview of the Zoning & Planning Committee. This item was voted No Action Necessary.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman