

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MARCH 9, 2015

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

Absent: Ald. Kalis

Also Present: Ald. Albright and Crossley

City Staff Present: James Freas (Acting Director, Planning Dept.), Katy Holes (Senior Planner), Maura O'Keefe (Assistant City Solicitor), Doug Greenfield (GIS Director), Karyn Dean (Committee Clerk)

#448-14 ALD. SANGIOLO requesting a discussion with the Newton Historical Commission regarding their process and policy of reviewing demolition applications. [11/13/14 @ 2:03pm]

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: Katy Holmes, Senior Planner addressed the Committee. She explained that the demolition delay ordinance evolved from the Historic Preservation Act (NPA) of 1966 and was incorporated in Newton in 1985. The NPA is a national law which in its directive does not discriminate on whether the resource is big or small, ugly or pretty, expensive or inexpensive. She has surveyed over 1500 historic buildings in 8 states over 32 years and has worked in both the public and private sectors.

She presented a PowerPoint presentation which is attached to this report. It documents some background and the process and policy of the Historical Commission in reviewing demolition applications. She also included several pictures of homes that were found preferably preserved and others that were ultimately saved from demolition through the delay process.

Committee Questions and Comments

Appeals

Ms. Holmes explained that a staff finding of *historically significant* may be appealed at a Newton Historical Commission meeting. A homeowner can come back with documentation that contradicts the findings of the NHC and the ruling can be changed as a result. Because Ms. Holmes does not have access to the interior, a homeowner may have information that is unavailable to her. A finding of *preferably preserved*, however, cannot be appealed. The ordinance does not have a provision for appeal. However, after a 4-month waiting period, the demolition delay may be waived based on a review and approval of proposed plans.

Ald. Baker asked Ms. Holmes if a building is found to be not historically significant, could that decision be appealed. She said the ordinance does not provide for an appeal process. The information about buildings found not historically significant are generally not forwarded to the

NHC members. Ald. Sangiolo suggested that a list of those buildings should be forwarded to Commission members so that if they receive any calls from residents, they can refer to the list and know which properties went through administrative review.

Conservation/Neighborhood Districts

Ald. Yates asked how Cambridge made its determinations. He was surprised they only had a 6 month demolition delay. Ms. Holmes said Cambridge uses many different tools in addition to their Historical Commission. They also have Architectural or Neighborhood Conservation Districts which are a little less stringent than a Local Historic District (LHD). These do not fall under Chapter 40C the way an LHD would. Ald. Johnson would like to get information on what setting up and administering a Conservation District would entail.

Mr. Freas said that Brookline is considering adopting two conservation districts and will make them administrative with a set of guidelines to be followed. One of them focuses on a particular area of development of townhouses and the other is near Brookline Village.

Current Guidelines

Ald. Albright asked if a building that is ramshackle but has historical value would still be found preferably preserved and Ms. Holmes said in most cases, yes.

Ald. Hess-Mahan said because of the 50-year limit, the NHC is now looking at houses that were built in his lifetime. He is troubled that 83% of the houses fall in this category. Shoddily built ranches and split-level homes on slabs in subdivisions, that are small and old, have bad insulation and terrible windows are under regularly under review. The only people that would seem to benefit from a long demolition delay are developers who can afford to wait out that period of time. It's highly unlikely that individual home buyers would be able to and that affects both buyers and sellers. He is concerned that homeowners are going to be hamstrung and what will prevent any future NHC to find all of these homes to be found preferably preserved and hang up every purchase and sale in the City for two years. Nancy Grissom, Chairman of the NHC said she and Ms. Holmes have been reviewing these kinds of houses and look for really good context. Some have good design and those are the ones worth saving.

David Morton, former member of the NHC said that context is important. If other homes in the neighborhood have already been changed then the context is lost. There were complaints that intact neighborhoods were being destroyed by McMansions. So some houses aren't architectural gems, but an intact neighborhood is something they look at saving.

Ms. Holmes said that while the guidelines do not change, the housing stock does. In 50 years homes built today will be considered historic and she's not sure how that will go, considering some of the current design trends. Other communities may have different ways of handling this, but most surrounding communities use the 50-year rule and it is a national criteria. Belmont, Concord and Medford may use different criteria and make lists of properties instead. The Massachusetts Historical Commission doesn't really like that because the community may miss an opportunity to find a property that could be historical if vetted in a different way.

Ald. Sangiolo saw that a member of a historic district commission was presenting a property for a demolition permit at the Historical Commission. She felt that this was a conflict of interest and would like to have this considered some more.

It was asked how the guidelines for the NHC were developed. Ms. Holmes said she wasn't completely sure, but the enabling legislation in Chapter 40C is very likely the source. The local historic district commissions wrote up guidelines using Chapter 40C. There are some new design guidelines that have been adopted, but the process guidelines are the same. Ald. Crossley felt that may be intentions should be added to the guidelines so it's clear what the goals are.

Oak Hill Park

Ald. Sangiolo felt that Oak Hill Park would fall under the category of historically and/or architecturally significant by reason of period because the City specifically gave money to build those homes at a for a particular group of individuals. There was an Oak Hill Park Preservation committee that had guidelines, but that fell apart quite a while ago.

David Morton said he would try to find those and provide them. There was a time that Oak Hill Park was treated differently than any other area of the City. Any change to any home in that area was reviewed within the context of those guidelines. The feeling was that too many homes had changed and no one from Oak Hill Park ever came to meetings for years to say things shouldn't be changed and that the neighborhood was being ruined. Lately, that has been happening, but not at the time. An inordinate amount of time was being spent trying to save something that from all appearances, nobody cared about. Some felt the guidelines were sufficiently restrictive and the result was terrible architecture. They were not great guidelines in his opinion, and enough of the Commission felt it was time to stop using those guidelines and stop treating Oak Hill Park differently.

Ald. Sangiolo said that years ago, former Ald. Lipsitt had suggested that an ordinance be added to require separate review for any changes to structures in Oak Hill Park, but that was not voted through. Part of the reason they did not approve the ordinance was they felt that the Historical Commission would provide sufficient review. It is unfortunate that those properties were not protected. Nancy Grissom said that at a certain point it was difficult to tell the one or two homeowners that their house had to stay intact when all those around them had already been altered. When they do find a neighborhood that is intact, they do their best to save it. But ultimately, after the delay period is through, a home can be demolished.

Wetherall House

Ald. Yates felt that the Wetherall House, which was demolished, was associated with an historic person, was historically important for its period style and builder, was contextually very similar to other buildings in the Upper Falls Historic District and was within 100 feet of that district. He doesn't understand why it wasn't found preferably preserved. Ms. Holmes said it was an unfortunate chain of events. It went through the process and was vetted but had an unfortunate outcome. There was a question in Committee as to why this house was not landmarked.

Nancy Grissom said that landmarking is a good tool to use and there are 28 such properties in the City. Landmarking acts as its own local historic district and often an alderman will approach the Commission on behalf of a particular property. The Commission can develop a report that goes to the Massachusetts Historic Commission for review and approval. Ald. Sangiolo asked if the survey of historic buildings in the City has been completed. Ms. Holmes reported that it is still in the process and they are in their 4th grant round. Ald. Sangiolo felt the survey would be a wonderful tool for determining which properties should be landmarked. Ald. Danberg asked that Ms. Holmes contact the Ward aldermen when a property comes in for a demolition review that might be a good candidate for landmarking.

Follow Up

- Ald. Johnson asked that the ordinances for demolition delay and landmarking be provided. They are attached.
- The guidelines requested can be found online at:
<http://www.newtonma.gov/gov/planning/histpres/reports/default.asp>
- The Rules and Regulations of the Historical Commission are attached.
- Ald. Johnson would like to get some information on setting up Conservation Districts.
- She also wondered if there was some interest in amending the ordinance to allow for an appeal process, as previously discussed.

Ald. Sangiolo hoped this conversation made the process clearer to everyone. She moved No Action Necessary on this item and the Committee voted in favor.

#265-14 ALD. BLAZAR, YATES AND DANBERG requesting:

1. to amend Section 22-50 to increase the time period for determinations of historical significance to 30 days, and to increase the time period for hearings, rulings and written notice on appeals from historical significance determinations to 60 days;
2. to amend Section 22-50 to increase the time period to hold a public hearing as to whether or not a historically significant building or structure is preferably preserved to 60 days;
3. to amend Section 22-50 to increase the demolition delay period for buildings and structures on or eligible for listing in the National Register of Historic Places to 30 months;
4. and to amend Section 22-50 to increase the demolition delay period for all other preferably preserved buildings or structures to 24 months.

[07/07/14 @ 12:35PM]

ACTION: **HELD 7-0**

NOTE: Ald. Johnson said that the Committee would like to hear from Ms. Holmes and the Historical Commission members on these proposals. Nancy Grissom, Chair of the NHC agreed that the proposed extensions of time would be strongly supported by the NHC and felt that many developers in the City would strongly opposed them.

Ms. Holmes said that if these extensions of time are adopted, the waiting period to come in for a waiver would also be extended to perhaps 6 or 8 months.

David Morton said that the job of the NHC is to protect the City's historic resources. The argument that the developers will stop building in Newton is preposterous. It might make things harder for some of them but there is ample evidence that many have deep pockets and can sustain themselves, nonetheless. He has found that whenever changes are made, the developers find another way to work around them. It's a constant battle.

Committee Questions and Comments

Ald. Sangiolo asked when these changes might be able to go into effect. Ald. Johnson said the Committee needs a memo from the Planning Department and then she would like to hold a public comment meeting. Committee members would like to know what impact these changes might have on homeowners, buyers and developers, and also what other communities are doing in regard to transference of ownership and the demolition delay. They would also like to know if a longer demo delay is effective in saving homes from demolition in the long run.

Ald. Crossley wondered if there might be some guidelines so that the issues they are concerned with might be targeted without hurting those who simply want to improve their own home to live in. There was some concern in Committee about property rights and for those who would like to demolish their home and rebuild it for themselves. There were a couple of examples of residents trying to make improvements to their homes and the negative impact a longer delay might have on their lives.

Ald. Danberg would like to know how many post-World War II houses have come before the NHC in the last 10 years and what their outcomes were.

Ald. Albright noted that there are very few examples in the City that reflect the current, modern vernacular of architecture. As desirable as the historic homes are, she would love to see more of that, which is important as well, and see that protected.

Mr. Freas said he would look at staff time to predict when he would be ready to bring this back to Committee.

The Committee voted to hold this item.

#23-15 ACTING DIRECTOR OF PLANNING & DEVELOPMENT requesting amendments to the official zoning map in order to correct discrepancies between Board of Aldermen actions and the boundaries of zoning districts as shown on the map and to better align zoning district boundaries with property lines and other features to reduce the number of split lots and other map anomalies. [01/09/15 @ 10:09AM]

ACTION: **HELD 7-0**

NOTE: Mr. Freas, Acting Director of the Planning Department, presented the proposed changes to the official zoning map, as described in the docket item. These were all illustrated in the Planning Memo that was previously provided to the Committee and was attached to the online agenda. There are a number of places on the official zoning map where the line between districts is designated by a numerical factor, such as 700 feet from a road. Historically it created a clean line that cut across property boundaries and left small portions of some lots in different districts. They would like to snap the lines to the property lines to clean that up. If the lots were very large and cut by the line, they chose whichever district the majority of the lot was in. There were very few of these.

Mr. Freas explained that it appears when split lot issues have come up under special permits, part of the special permit is to eliminate the split lot. In some cases the Board did approve changing the zoning as part of the special permit, but the Board Orders were never recorded. He thinks they will probably have to bring those back for action.

Ald. Hess-Mahan asked if these changes might result in houses becoming non-compliant as opposed to non-conforming. Mr. Freas said he did not believe so and in most cases, the district lines barely move. Ald. Hess-Mahan asked that Mr. Freas be very careful with this. He agreed they would take some time to look at those which may be close.

Committee members asked what the Mass Pike land was zoned. Mr. Freas said it was all zoned as Public Use District, which was the same designation of all the City's streets. When the state acquired the land, it was "un-zoned" and the Board subsequently decided to designate all un-zoned land Public Use.

Mr. Freas said that all property owners will be notified and these changes would have to go to public hearing.

Follow Up

Mr. Freas explained that he will be in consultation with the Law Department to determine if they need different language for a public hearing. He will also dig deeper into the properties where larger changes are being proposed so that issues will not be created for property owners.

Ald. Danberg moved to hold the item and the Committee voted in favor.

#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: Mr. Freas explained that there are two outstanding issues to be resolved before the zoning ordinance can go to public hearing: digital or paper map; definitions for "lot" and "site".

Map

Mr. Freas explained that the proposal is to retire the old paper map that has deteriorated and is out of date, and instead use a GIS generated digital map as the official zoning map for the City. All paper copies of the map will be generated from this digital map.

Mr. Freas noted that previous discussions of the map raised questions relative to the security of the technology. He has spoken to Joe Mulvey, the City's IT Director, as well as Doug Greenfield the City's GIS Director. Mr. Greenfield was in attendance for any questions the Committee might have. Mr. Mulvey assured Mr. Freas that the technology was secure and no one from outside the City could access the actual datasource for the GIS layers. All GIS data layers are backed up on a daily basis. Mr. Greenfield explained that what is displayed on the website is a copy of the data and not the data itself. Even if someone managed to hack into the system, they still could not get the actual data, just a copy of that day's data. Every time the map is updated, the previous version is kept as well. The map can be printed out as an independent document at any time as well and kept on file in the Clerk's office, as required by the proposed ordinance. Each time the map is updated, multiple copies are made for the Clerk's Office as they are sold to anyone who might want one.

Ald. Baker wanted to clarify that the zoning change is officially made when the Board Order is signed and the 20-day appeal period has passed. If there is a delay in making the change to the map, the Board Order trumps the map. Maura O'Keefe said she would speak with Marie Lawlor to confirm that. Ald. Hess-Mahan said that any amendments made to the zoning ordinance are attached to the last version of the printed zoning ordinance and that combination of documents is the official version. He felt the same would essentially be true for any map changes – the Board Orders represent the most up-to-date changes.

Ald. Johnson suggested developing some standard operating procedures so that each access to and change made to the system would be documented to leave an audit trail. She would like to see what that might look like and Mr. Greenfield said he would provide that. She would also like procedures to ensure that when the changes are voted by the Board, that the Board Orders are recorded and the changes are indeed made to the map. As was discussed in the previous item, some changes were never made to the map, so having some established procedures really are necessary.

Ald. Johnson took a straw vote of the Committee relative to switching from a paper map to a digital, GIS-based map as the official zoning map. The vote was 6-0-1 with Ald. Sangiolo abstaining.

Lot and Site Definitions

Mr. Freas explained that there were previous discussions of defining these terms. The terms are found throughout the zoning ordinance and are basic terms that have never been defined.

Ald. Baker would like to be sure that there is no mistaken impression that all lots are developable. He is concerned about how this plays out in the lot merger problem and does not want there to inadvertently change the carefully constructed result of the lot merger issue. Other

Committee members said the rules would still apply to the lot – that doesn't change. He would like a ruling from the Law Department on this question in time for the next meeting. Ald. Baker was still was concerned about how this definition would apply throughout the ordinance and wanted a chance to see that what the impact might be. He was not comfortable to move forward at this point with these definitions.

Ald. Crossley felt these definitions were very simple and were fundamental to the ordinance. She asked that the Committee move forward with these and if there is some concern at the public hearing, then they can be revisited. Ald. Leary agreed. Ald. Sangiolo said the Committee had been ready to move forward to public hearing and take up these definitions as part of Phase 2. There was some desire to define these terms, so she would like to take the time necessary to do so, or move forward without them.

Ald. Johnson took a straw vote on accepting the proposed definitions of "lot" and "site" The Committee voted 5-2-0 with Ald. Sangiolo and Baker opposed. The proposed definitions are:

- Lot: A parcel of land either vacant or occupied intended as a unit for the purpose, whether immediate or for the future, of transfer of ownership, or possession, or for development.
- Site: Any lot or group of contiguous lots owned or controlled by the same person or entity, assembled for the purpose of a single development.

Follow Up

- Ald. Baker asked for another redlined version will all the changes to date prior to the public hearing. Mr. Freas said that would be provided.
- Ald. Baker would also like a ruling from the Law Department that the definition of "lot" would not adversely affect the lot merger issue, as previously discussed.
- A public hearing will be held on April 13th.

#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 voted to hold this item with no discussion.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

(e) The limited commission review herein established shall not affect the district commission's authority to regulate exterior architectural features open to view from a public street, way, park or body of water, even if such features are located on property containing exterior architectural features subject to such limited review, nor shall it affect the commission's authority under sections 22-60 et seq., and 22-50 of the Newton Revised Ordinances relating to landmark preservation and the demolition of structures, respectively. (Ord. No. T-155, 6-17-91; Ord. No. V-100, 12-16-96)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-43. Newtonville Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Newtonville Historic District, bounded and described as shown on the map entitled “Proposed Newtonville Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of 12-Aug-2002. (Ord. No. X-29, 9-3-02)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-44. Auburndale Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Auburndale Historic District, bounded and described as shown on the map entitled “Auburndale Proposed Local Historic District,” prepared by Newton Geographic Information System (GIS), with a date of January 05, 2005. (Ord. No. X-135, 03-21-05)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Secs. Reserved 22-45—22-49. Reserved.

DIVISION 2. DEMOLITION DELAY

Sec. 22-50. Demolition of historically significant buildings or structures.

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The commissioner of inspectional services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

- (1) *Items requiring review by the commission at a hearing.* Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.
 - a) Additions or ell's determined to be architecturally significant by commission or commission staff.
 - b) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.
 - c) Porches determined to be architecturally significant by commission or commission staff, except open decks, staircases, and entryways, which are excluded from review.
 - d) Removal or envelopment by subsequent additions of 50% or more of any single exterior wall surface. Each wall is calculated by square footage individually.
 - e) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff.
 - i) Brackets
 - ii) Crown molding
 - iii) Porch columns and railings
 - iv) Bay windows
 - v) Dormers
 - vi) Chimneys
- (2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*
 - a) Removal or alteration of the roof structure.
 - b) Repair or replacement of existing and original porches with similar materials to match existing.
 - c) Demolition or construction of additions or alterations not visible from a public way.
 - d) Removal or envelopment by subsequent additions of 50% to 100% of any single exterior wall surface. Each wall is calculated by square footage.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

- a) Open porches and entryways consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.
- b) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single exterior wall.
- c) Removal or alteration of less than 50% of the roof structure
- d) Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

Historically significant building or structure: Any building or structure which is in whole or in part fifty or more years old and which

- (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
 - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
 - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or
 - c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

Preferably preserved: An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) *Procedure.*

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.
- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old,

the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:

- a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
 - b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
 - c) a description of the proposed plans for demolition and the reason(s) therefore.
- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
- a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
 - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:
- a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a

plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and

- b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

- (6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

- a) For a building or structure listed in the National Register of Historic Places or determined eligible for listing in the National Register of Historic Places by the Massachusetts Historical Commission no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure until eighteen (18) months after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such eighteen (18) month period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:
- i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
 - ii) has agreed to accept a demolition permit on specified conditions approved by the commission.
 - iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.
 - iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds
 - (a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,

- (b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.
- v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.
- b) For all other buildings and structures not covered under section (6)a) above, no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure found preferably preserved until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:
 - i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
 - ii) agreed to accept a demolition permit on specified conditions approved by the commission.
 - iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.
 - iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds
 - (a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,
 - (b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.
 - v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.
- (7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.
- (8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.
- (9) If the applicant is someone other than the owner or his designated agent a demolition review application

cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non compliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of

the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstatement of the fine for non-compliance with this ordinance.

(f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.

(i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.

(j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.

(k) *Applicability.*

(1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

(2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances.

(Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V-98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08; Ord. No. Z-76, 02-07-11)

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.
- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

Secs. 22-52—22-59. Reserved.

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the Commonwealth of Massachusetts and the City of Newton and through the maintenance and improvement of settings for such buildings, structures, landscapes, and places and through the encouragement of compatible development and the discouragement of destruction of or damage to such resources. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this section, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: the applicant, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for designation.

All buildings, structures, landscapes and places currently listed on the National Register of Historic Places as individual sites or otherwise listed as eligible for said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites.

Buildings, structures, landscapes, and places listed on the National Register of Historic Places as part of an historic district, but not individually, or which are eligible for said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the commission determines that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape or place if it determines that such property lacks sufficient historical or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register as certified by the Massachusetts Historic Commission.

Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.

Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-65 and 22-66 as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Designation.

(a) Members of the board of aldermen, the mayor, the director of planning and development or the commissioner of inspectional services may, in addition to the commission, nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to the commission. The commission shall notify the owner of the property upon receipt of the written nomination.

(b) The commission by three-quarters (3/4) vote may, after public hearing, designate as a landmark any property within the city being or containing a structure or landscape which it determines to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made. Designation of a landmark or amendment or rescission of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein.

(c) The commission shall consider the following conditions:

- (1) that the location and setting is compatible with future preservation and use;
- (2) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
- (3) that the existing or proposed use is compatible with the preservation and maintenance of the site.

(d) The commission shall hold a public hearing prior to any designation of landmarks. The commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the assessing department), and to the mayor, the planning board, and the city clerk.

Prior to the public hearing, the commission shall transmit copies of the agenda to the planning board for its consideration and recommendation.

(e) The Newton Landmark Preservation Sites shall be recorded as follows:

- (1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the board, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission or board deems appropriate.
- (2) Newton Landmark Preservation records.
 - a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or board of aldermen deems appropriate.
 - b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06).

Sec. 22-64. Additional powers and duties of the commission.

Rules and Regulations of the Newton Historical Commission

Meetings

1. There shall be one regular meeting per month held on the fourth Thursday of each month commencing at 7:30 PM or 7:00 P.M. if needed due to a long agenda. Meetings which fall on holidays will be rescheduled as needed. Additional meetings shall be held at the call of the Chairman or at the request of two permanent members.
2. Notice of all meetings shall be duly posted with the City Clerk in compliance with the Open Meeting Law (M.G.L. c. 30A, §§ 18-25). Notices will be posted at least 14 days before the meeting. Notice shall include the date, time, and location of the public meeting. Notices and agendas shall be routinely mailed to Commission members and others who have requested notification.
3. A quorum of four voting members, which may include alternate members, is necessary to hold a meeting.
4. At the beginning of each meeting, the voting members shall be named by the Chairman. In the absence of one or more permanent members, alternate members shall be appointed by the Chairman to vote at the meeting. Alternate members who are present and who are not appointed to vote in place of an absent permanent member shall be entitled to participate in all other aspects of such meetings and hearings, but may not vote or make motions.
5. All meetings shall be recorded and minutes shall be filed with the City Clerk. Records of Action for any votes of the Commission shall be recorded with the minutes and additional copies shall be on file with the Planning and Inspectional Services Departments.
6. There shall be one organizational meeting per year on the fourth Thursday in July at which a Chairman and Secretary shall be elected from the permanent members. The City Clerk shall be notified of the elections.
7. The Commission reserves the right to amend their rules and regulations at any time.

Chairman

1. The Chair shall conduct properly noticed monthly meetings and hearings in accordance with the Open Meeting Law (M.G.L. c. 30A, §§ 18-25). In the absence of the Chairman, the Secretary or an Acting Chairman elected by a quorum of those members present (and alternates if a quorum of voting members is not present) shall preside.
2. The Chair shall work with Commission Staff to publish the agenda for meetings and hearings 14 days prior to the scheduled meeting or hearing time.

Secretary

1. The Secretary or staff shall take minutes at all regular meetings and hearings, which proceedings shall be recorded by a digital recorder. The Secretary shall also draft or assist staff in drafting Commission letters, notices, and other written materials.
2. The Secretary shall work with Commission Staff to publish minutes including decisions made by the Commission and shall distribute copies of the minutes to all permanent and alternate members as well as the City Clerk and other officials requesting minutes.

Public Hearings and Rulings

1. Notice of public hearings on any new application shall be posted at least 14 days prior to the meeting and shall include the date, time, location, and address of the property for which the hearing shall be held. Notice of a hearing shall be filed with the City Clerk who posts all City meetings. Notice of a hearing shall be sent to the applicant, to all abutters, and to any other City officials and persons who have requested routine notification.
2. The Commission anticipates following the set agenda and posted agenda times per item as well as using Roberts Rules of Order for public hearings as noted below:
Welcome applicant and sign in;
Remarks from Staff;
Brief presentation by applicant;
Comments from Commission members, individually in order around the table, after recognition by the chair;
Chair will ask for final comments by commission or staff, if any;
Chair will request motion(s);
Comments from general public after recognition by the chair;
Commission will vote on the motion(s).
3. In reviewing each application, the Commission shall consider the historic and architectural value and significance of the site, building, or structure involved. Also to be considered is the general design, arrangement, texture, and material of the features involved and the relation of such features to similar features of buildings and structures in the district. The Commission will not try to design projects for applicants, but offer specific criticisms as to how to avoid loss of historic fabric, make the design more historically appropriate or offer advice on historic preservation principles as applied to the specific application. Commission members may ask the applicants questions about proposed projects, but the chair may limit their inquiries to areas relevant to the Commission's jurisdiction.
4. In the case of applications for full demolition of buildings and structures, if the Commission finds the building or structure preferably preserved the Commission shall not review plans for a replacement building or structure for consideration of a waiver of

the demolition delay for a period of four months from the date in which a building or structure is found preferably preserved. This period is intended to promote the preservation and reuse of historic buildings and does not affect applications for partial demolition.

5. In the case of new construction or additions to existing buildings or structures, the Commission shall consider the appropriateness of the size, shape, and design of the building or structure, both in relation to the land area upon which it is situated and to buildings and structures in the district.
6. Members of the Commission shall recuse themselves from the commission and remove themselves from the table during discussion and voting on an application when there is a conflict of interest. If the member is (a) the applicant, (b) a relative, close friend or business associate of the applicant, (c) an abutter to the applicant, or (d) one with a financial interest in the application, the member will remove himself/herself from the process. Commission members may participate in discussion as a private citizen during the public comment period.
7. A majority vote is required for any decision of the Commission.
8. Each member's vote shall be recorded in the minutes.
9. A quorum of four members is required for any public hearing.
10. Extended discussions will be placed on Second Call and continued either at the end of the regular agenda or, with the applicant's approval, to the next meeting of the Commission. Second Call may be opened by either a motion made and seconded by members of the Commission or at the discretion of the Chairman and is subject to a majority vote of the members present.

Decisions and Records of Action

1. Each Record of Action shall be made available to the applicant and a copy shall be filed with the Commissioner of Inspectional Services, the City Clerk, and the Director of Planning and Development.
2. An applicant wishing to make design changes after a set of plans has been approved must file a new application for the changes.

Local Landmark Reviews

1. Certificates of Appropriateness, Certificates of Non Applicability, and Certificates of Hardship are issued by the Commission following the approval of an application.

2. Each certificate shall be dated and signed by the Commission Chairman or Secretary or by another person specifically authorized by the Commission to do so.
3. Applications for Certificates of Non Applicability shall include a statement of reasons why the proposed alteration is not subject to review by the Commission together with evidence such as photographs, plans, or title documents that may be necessary to support the application.
4. The Commission may consider and vote upon an application for a Certificate of Non Applicability at any regular or special meeting.
5. The Chairman, Secretary or staff of the Commission may, without vote of the Commission, issue a Certificate of Non Applicability with respect to alterations falling within the exclusions set forth in the Local Landmark Preservation Ordinance.
6. If an application for a certificate has been disapproved, the Commission shall record the reasons for such determination and shall send a notice of these reasons to the applicant, the Commissioner of Inspectional Services, City Clerk, and Director of Planning and Development. See Sec. 22-97 of the City Ordinance governing Landmark Preservation Determinations.
7. No application for a Certificate of Appropriateness, Non Applicability, or Hardship under Newton Rev. Ord. 1995, Section 22-40 or 22-42, as amended, which has been unfavorably and finally acted upon by the District Commission shall be acted favorably upon within one (1) year after the date of final unfavorable action unless the said Commission finds, by a vote of two-thirds (2/3) of those members present, specific and material changes in the condition upon which the previous unfavorable action was based, and the Commission accordingly describes such changes in the written record of its proceedings, but only after due notice is given to parties in interest of the time and place of the proceedings when the question of the existence of such specific and material changes will be considered.

Department of Planning and Development



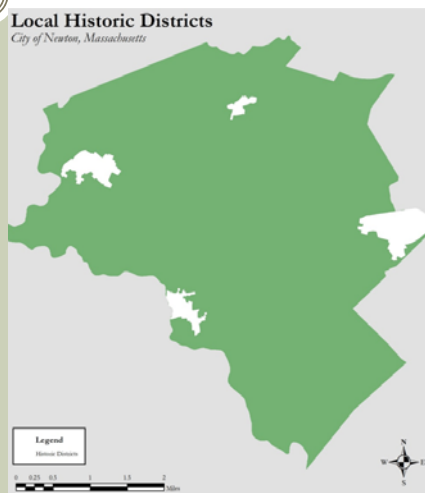
NEWTON DEMOLITION DELAY
PROCESS
MARCH 9, 2015

Newton Historical Commission



**NHC Area of
Jurisdiction**

Total properties: 23,325

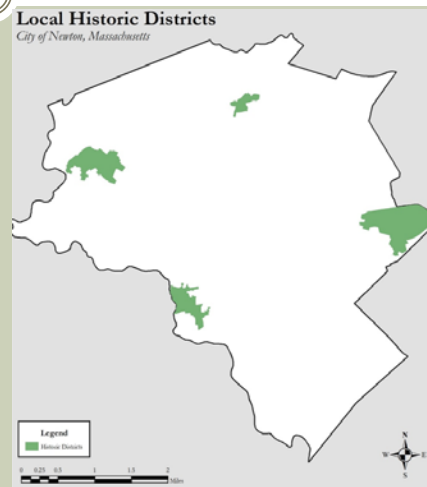


Local Historic Districts (4)

LHDs:

**Auburndale
Chestnut Hill
Newtonville
Upper Falls**

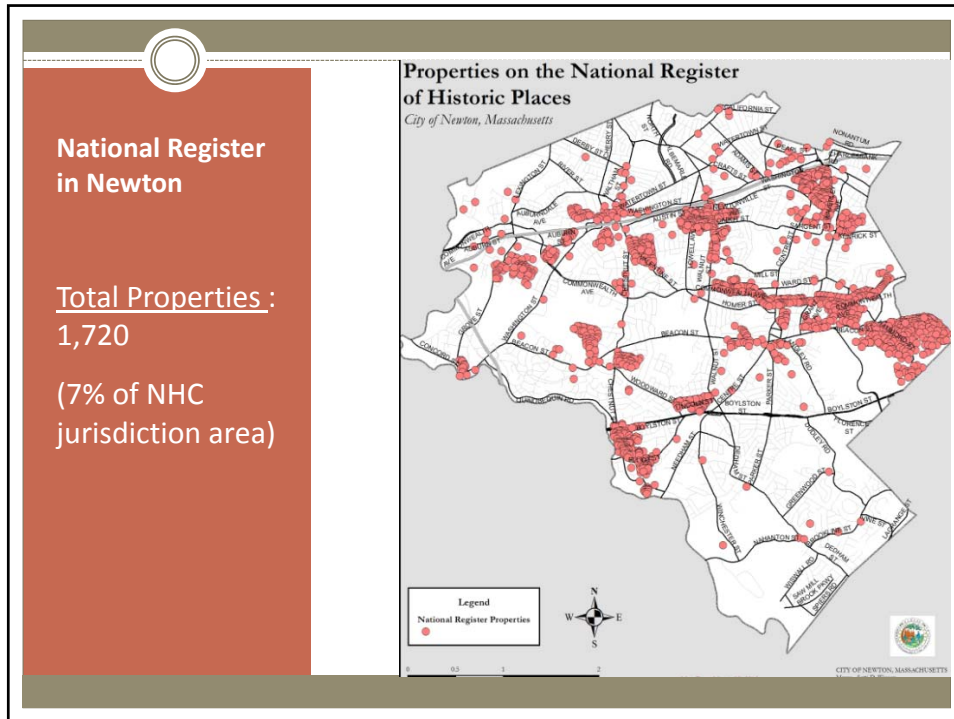
Total properties: 887



Little Known Fact:

There is no demo delay in local historic districts. In an LHD,

NO MEANS NO



National Register of Historic Places

- *The National Register of Historic Places is the official list of this country's historic places worthy of preservation. Nominations are written locally and approved at the state level.*
- *Authorized by the National Historic Preservation Act of 1966.*
- *A national program to coordinate and support efforts to identify, evaluate, and protect America's historic and archeological resources.*

Massachusetts Historical Commission (MHC)

The state body responsible for administering state and federally-funded preservation programs for Massachusetts. Nationally this entity is known as the state historic preservation officer, or **SHPO**

Demolition Delay Ordinance

Full or partial demolition of any building 50 years or older

Benefits of law are economic, social, cultural, historical, resource-sustainable and also aesthetic

Newton Property Math

**23,325 properties in NHC jurisdiction
area**

**19,440 properties over 50 years old
83% are historic**

Our NHC Members

- **Architects (2)**
- **Realtors (2)**
- **At-Large members (4)**
- **Rep. From Historic Newton, Inc.**
- **Rep. From CPC (also architect)**

A Complete Application Includes:

- An application for demo review signed by current owner
- Photographs of all elevations and streetscape
- Assessor's map or site plan of property
- Reasons for demolition

Definitions

- | | | |
|--|---|--|
| • Over 50 years old | = | <i>Historic</i> |
| • Meets demo delay ordinance criteria | = | <i>Historically Significant</i> |
| • Removing 50% or more of any façade | = | <i>Partial Demolition</i> |
| • NHC agrees on historical significance at hearing | = | <i>Preferably Preserved</i> |
| • Demo delay is waived with NHC approved plans | = | <i>Waiver</i> |

Assessment of Historical Significance

“The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member.”

Section 22-50 (c)(3)

A property is *historically significant* if 50 years or older and is:

- Listed on the NR or determined eligible for listing;
- Listed on NR or in LHD and not visible from a public way;
- Associated with historic persons, events, architectural or social history of the city;
- Historically or architecturally important for its period, style, architect, builder or context; or
- Within 150 feet of a historic district and shares contextual similarity with district.

**Sources used to make this
determination:**

HISTORIC MAPS **CITY DIRECTORIES** PERMITS
ASSESSOR'S DATABASE **MACRIS LIST**
WATER RECORDS *VISUAL*
ASSESSMENT REGISTRY OF DEEDS
ANCESTRY.COM
HISTORY BOOKS **JACKSON**
HOMESTEAD

**Are 83% of Newton's 50 year-old
buildings historically significant?**

NO.

What does *historic context* mean?

According to Newton's Demo Delay ordinance, *context* is defined as:

"Historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures."

Can the assessment of historical significance be done in one day?

YES.

(We have 15 days to research each application; some are easier than others.)

May a finding of *historical significance* be appealed by an applicant?

YES. (at an NHC hearing)

May an NHC determination of *preferably preserved* be appealed by an applicant?

NO.

How is *Preferably Preserved* Defined?

A historically significant building, structure, or architectural feature is *preferably preserved* if its demolition would be a detriment to the city's historical and cultural heritage

Demolition Delay

If structure is determined *historically significant* and *preferably preserved* by NHC, then a one-year or 18-month delay of demolition is imposed.

Waiving the Demolition Delay

A demolition delay may be waived by NHC at a regularly scheduled hearing four months after a determination of *preferably preserved*. The NHC may grant a waiver based on review and approval of proposed plans.

What happens after the demo delay expires?

NHC has no jurisdiction over the fate of the historic property for two more years.

What happens if a property has *no historical significance*?

As per the ordinance, a determination may be made that the property is not historically significant and the application is approved administratively

9 Burdean Road – C.1700



391 Dedham Street – C.1800



1054-56 Beacon Street - 1868



44 Indian Ridge Road - 1946



35 Crestwood Road - 1959



61 Esty Farm Road - 1965



Demo Delays in other towns

Brookline:	12 months; 18 months for NR-listed
Cambridge:	6 months
Lexington:	12 months
Medford:	6 months
Somerville:	9 months
Waltham:	12 months
Watertown:	12 months

Factoid:

Neither the demo delay ordinance nor listing on the National Register of Historic Places save buildings from demolition.

However, here are some Newton success stories:

131 Charlesbank Road – c.1880



15 South Gate Road



15 South Gate Road – c.1910



A 6964 The North Gate Club, West Newton, Mass.

Dear Olive -

Civil War Soldiers' Monument



28 Sumner Street – c.1835

