

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 9, 2015

Present: Ald. Johnson (Chairman), Danberg, Kalis, Sangiolo, Baker, Hess-Mahan and Leary
Absent: Ald. Yates; Also Present: Ald. Gentile, Ciccone, Norton, Brousal-Glaser, Rice Blazar and Lappin

Planning & Development Board: Scott Wolf (Chairman), Roger Wyner, Peter Doeringer, Jonathan Yeo

City Staff Present: James Freas (Acting Director, Planning Dept.), John Lojek (Commissioner, Inspectional Services Dept.), Marie Lawlor (Assistant City Solicitor), Maureen Lemieux (Chief of Staff), Josh Morse (Commissioner, Public Buildings), Shawna Sullivan (Committee Clerk), Karyn Dean (Committee Clerk)

REFERRED TO ZONING & PLANNING, LAND USE AND FINANCE COMMITTEES

#104-15 ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department with the following information: How many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify to be included on the State's Subsidized Housing Inventory List. If a property is not currently on the list, what can be done to make it eligible.
[04/09/15 @ 12:00PM]

ACTION: **FINANCE HELD 7-0 ON 11/09/15**
HELD 6-0 (Ald. Hess-Mahan not voting)

NOTE: Please see the November 9, 2015 Finance Committee Report for the details of this discussion.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#296-15 HIS HONOR THE MAYOR requesting authorization of the addition of 1 FTE position in the Inspectional Services Department and authorization to transfer the sum of fifty thousand dollars (\$50,000) from Budget Reserve to the Full-time Salaries line item in the Inspectional Services Department budget to fund the addition of a full-time Building Inspector. [10/19/15 @ 11:54 AM]

ACTION: **FINANCE APPROVED 7-0 on 11/09/15**
APPROVED 7-0

NOTE: Please see the November 9, 2015 Finance Committee Report for the details of this discussion.

#293-15 11 JOHN STREET LLC petition to rezone land known as Section 65, Block 8, Lot 70 at 11 JOHN STREET from MULTI RESIDENCE 1/BUSINESS 1 to BUSINESS 1. [10/09/15 @1:00PM]

ACTION: **HEARING CONTINUED; HELD 7-0**

NOTE: Ald. Johnson introduced the item and opened the public hearing. Laurence Lee, representing the 11 John Street LLC addressed the Committee. He explained that the site is quite unique as it bisected by two zones, making it both MR1 and B1 on the same property. In 1922 the lot was bisected into these two zones and a house was built later in 1985 through a by-right process and an attached commercial building was added which housed the Johnson String Company until about 2 years ago when his client bought the property. Originally, his client tried to keep the house as a residential use and the business building as a business use. They came across some information that the Johnson's may have migrated the commercial use into the residential home. The non-conforming use of the residence was abandoned, however, therefore the building could not entirely be used as a residence. The second floor was a by-right use in the business district, and a portion of the first floor was a combination of residence and business use. After a lot of thought, his client felt that it would be better to move the zone line so that it was either entirely business or residence. His client looked at all aspects of this and since the lot is predominantly in a business zone, felt it made sense to shift the line over and rezone it business in its entirety. There are residences on one side of this lot and a number of commercial uses on the other side of the lot.

Mr. Lee explained that until this public hearing, he was unaware that any of the neighbors had concerns about the rezoning. After having some conversations with the neighbors in the hallway, he felt it would be beneficial to hear from the Commissioner of Inspectional Services, John Lojek, on the issues they have been discussing. Mr. Lee would then like to continue the public hearing and have an opportunity to continue discussions with his client and the neighbors.

Commissioner Lojek noted agreed that in this situation, there is a business in half the lot and residential home in the other, and one of the buildings is bisected by the lot line which had a non-conforming use in it for a number of years. That use has been declared abandoned and now a business use cannot go back in there, by law, which leaves that portion of the building unusable. He stated that lots should be in a single zone and it is senseless to do otherwise. A determination has to be made to decide what is in the best interest of the owner, the neighbors and the City.

Public Comment

Turin Leung, 10 John Street, said he is a long-time resident and saw when the building was put in at 11 John Street. At first it was just the residence and they tried to convert it to a commercial building and it was voted down by the Board. They then built something they considered to be by-right. The basic concerns now are parking and traffic. There are parking spaces behind the house and in front of the house which are insufficient. It was used as an office space before Johnson String bought it and that brought traffic problems on the weekends especially. The parking spaces are awkwardly situated and made it difficult to move in and out of spaces without hitting parking cars. He would like to see it zoned residential.

Lev Goffman, 18 John Street said it would be quieter and better for John Street to have the lot zoned residential. Having a commercial space on this small street would be problematic. Having a commercial use there would cause security, parking, traffic and house value problems for the street.

John Lee, 14 John Street stated that his residence is exactly across the street from 11 John Street. He shared the same sentiments as the other speakers. He has lived on the street his whole life. The street is not conducive to a business. Johnson String had a detrimental effect on the street and brought too much traffic and chaos to the street. People would use his driveway to pull in and turn around all the time and the street was parked up by people going to Johnson String.

The Dalfonso's, 21-23 and 27 John Street said they own 3 lots on John Street and they have been in their family over 70 years. The street has been pretty quiet and residential much of the time. The street is narrow and a dead end and it not suitable for a business. She doesn't see what benefit it would bring the City or the neighborhood to zone that lot business.

Committee Questions

It was asked what was on each side of the lot in question. Mr. Lee answered that there is a Sunoco Gas Station on one side, and residences on the other. The residence and the commercial building are currently unoccupied.

The Committee asked that Mr. Lee bring some pictures of the lot and surrounding area to better understand the lay of the land when this item comes back for a working session.

The Committee voted to continue the public hearing to a date to be determined and held the item, as did the Planning & Development Board.

#227-15 SEANA GAHERIN et al. petition to rezone land known as Section 51, Block 041, Lot 0011 from MULTI RESIDENCE 1 to BUSINESS 1. [09/03/15 @ 1:15 PM]

ACTION: **APPROVED 7-0**
PLANNING & DEVELOPMENT BOARD APPROVED 3-0 (Wyner abstaining)

NOTE: A public hearing was held on this item on October 26th and was closed on that date as well. In summary, the lot at 342A Elliot Street was purchased by Mr. Dunn, Ms. Gaherin and Mr. Kopelman. It is a land-locked lot which consists of 6,0568 square feet and is located in an Multi-Residence 1 (MR1) zoning district. They would now like to divide the lot. The subdivision would result in 2,951 square feet of land which would be used by Dunn Gaherin's Restaurant for additional parking and the balance of 3,107 square feet would be added to Mr. Kopelman's property. Parking is at a premium in this neighborhood and this rezoning would allow six additional parking stalls which would be a great help. Without the rezoning, the restaurant and Mr. Kopelman's property each would be partly situated in a BU1 district and partly in a MR1 district which is not ideal.

James Freas, Acting Director of Planning explained that Commissioner Lojek, Inspectional Services agreed that having a lot zoned in one zone only is desirable. There is no Planning rationale for not rezoning the lot to Business 1. There are requirements in the zoning ordinance itself which deal with the issue of buffering between business and residential uses. There had been concern at the public hearing from neighbors on Hale Street that there was no buffering and there was a problem with the dumpster being up against their property line with no fence or shelter in between. There was discussion at the public hearing, relative to erecting a fence to shield the neighbors from the lot and dumpster and parking within it.

The lot has not yet been configured, so a special permit may be needed, or it may be allowed by-right. Stephen Buchbinder, representing the petitioners explained that they would like to try to avoid the special permit process. If the parking lot is more than 5 stalls then there are certain requirements that might be triggered, therefore, they could alter the plan to include only 5 spaces and not 6. Relative to the fence, they do have plans for a perimeter fence. He drafted deeds as half the lot will be going to Ms. Gaherin and the other half to Mr. Kopelman. He added a restriction to the deed that the grantee and their heir successors and assigns would construct a fence and keep it in perpetuity. It is difficult to make a contract with all the surrounding neighbors, so he added that the deed would run to the benefit of the grantor and also the City so the City would have some rights of enforcement. A publicly held restriction does not lapse if it is not re-recorded, whereas a private restriction lapses in 29 years and needs to be re-recorded. The City is not likely to be a very powerful enforcer, however, considering the workload of the Inspectional Services Department.

Ms. Gaherin explained that there was a fence there at one point, and when the barn that was on the property came down, the fence came down with it. Since then the neighbors have had no buffering from the property for about 9 months and she understands their frustration. They were going to erect the fence, but the City had told them not to do anything to the property as there had been issues with the barn being demolished. She would like to get the fence up as soon as possible along the entire back lot line and that a fence had been selected months ago in conversations with the neighbors. Mr. Buchbinder said they could put the stipulation in the deed that goes with the parcel but they have not gotten the neighbors involved because there are 5 parcel owners surrounding the lot and it would be a difficult proposition.

Follow Up

The Committee wants to get consensus from the neighbors at 9-11 Hale Street and 15 Hale Street on the fence to show the Committee prior to the full Board's vote. The Committee asked proof of that be sent to the Clerk next week for review by the Law Department and inclusion in the Friday packet in order to vote it at the full Board meeting on November 16th.

Mr. Buchbinder noted that when the barn came down there were some issues with the City and the Inspectional Services Department put a no-work order on the parcel, therefore, a fence was not put up. Commissioner Lojek said his department would give the property owners a permit to erect a fence. If the property owners are willing to put up the fence and the neighbors are amenable to the fence, that would satisfy the Inspectional Services Department.

The Committee voted to approve the item and will expect the requested materials in order to vote it at the Full Board meeting on November 16th.

The Planning & Development Board also voted to approve the item 3-0 with Mr. Wyner abstaining.

#23-15(2) 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 as follows:

1. Change from SR2/SR3 to SR2:
120 Olde Field Road SBL 81-051-0050E
71 Brandeis Road SBL 81-051-0062
2. Change from SR2/SR3 to SR3:
127 Olde Field Road SBL 81-051-0050C
84 Brandeis Road SBL 81-051-0050D
76 Brandeis Road SBL 81-051-0063
61 Brandeis Road SBL 81-051-0061
3. Change from SR3 to SR1:
121 Rachel Road SBL 83-027-0043

ACTION: **APPROVED 7-0**
PLANNING & DEVELOPMENT BOARD APPROVED 3-0 (Wyner
abstaining)

NOTE: Mr. Freas noted that there had been a policy that would re-zone lots towards what the majority of the district was for any particular lot. However, that rule was broken for the rezoning of 84 Brandeis Road. After speaking with staff, the determination was that there was no significant impact on the property between the old and new zone, and that there was a greater interest in having the block be one zoning district instead of one odd lot out from the block. Therefore, the entire block was incorporated into the SR3 zone.

Ald. Kalis was to speak to some of the property owners, but he did not do that. He spoke with Mr. Freas and was satisfied that letters were sent to each of the property owners and had conversations with any that were concerned.

The Committee voted to approve the item unanimously.

The Planning & Development Board also approved the item 3-0 with Mr. Wyner abstaining.

#222-13(2) THE ZONING AND PLANNING COMMITTEE proposing to amend **Chapter 30**, City of Newton Zoning Ordinances, to regulate the dimensions and setbacks of front facing garages in residential zoning districts. [08/03/15 @ 10:15AM]

ACTION: **HELD 7-0**

NOTE: A PowerPoint was presented on this item and is attached. Mr. Freas noted that the Committee has discussed on many occasions the problem of new development wherein garages are the dominant feature facing the street. One of the key points is the protection of the public realm which is shared by the entire street and the City. The character of the community and a sense of place is alluded to in the Comprehensive Plan and the value of that is very high. These types of homes do not add to that sense of place and community, public safety or the maintenance of the street. The literature shows that when there is no sense of direct connection between a home and a pedestrian, or the street, there is a diminished sense of community and ownership between property owners and the public realm. It makes a community appear as a drive-in and drive-out community instead of one where people interact and get to know each other. There are great expanses of asphalt that are unwelcoming and long expanses of driveway for pedestrians to traverse. The issue exists in older homes as well, and not just in new development.

There are ways to prevent this and pass the “trick-or-treat” test which means it is easy and intuitive to find the front door of the home. The proposed regulations at this point in time are relatively simple after looking at many across the country and state that a garage wall that faces a street may be no closer to the front lot line than the longest street-facing wall of the house; the length of the garage wall facing the street may be up to 50% of the length of the street facing building façade; and that with multiple garages, the garage walls must be separated by a minimum of 10 feet of living area. Mr. Freas doesn’t really want to get into the language as much as finding out if this is the direction the Committee would like to go.

The next steps would be to review with Law and ISD the specific languages and discuss with the Urban Design Commission and local architects as well. He would then like to finalize a proposal to bring back to Committee.

Ald. Hess-Mahan felt this is the right direction. The corner lot tends to be a problem particularly in MR zones and needs to be explored and some definition put in place as to where the front is. The garage setback provision is fine, but he really does not want any garage to be proud of the house especially if it’s at 50% of the front façade. Ald. Danberg would prefer to see a 5 foot setback from the house. Ald. Hess-Mahan would like the Historic Commission to be contacted as well as they do have some rules of their own on garages. He also wonders if 50% is a good number or if it should be lower. He is fine with it but only if the garage is not proud of the house itself. Ald. Hess-Mahan was a little uncertain of the 10 feet of living space provision. Mr. Freas said they needed to put something in that would disallow the houses that have been built connected by two garages in between them. This sort of provision has not been seen in other ordinances so they are trying to figure this one out. The 50% provision could solve the problem entirely, but they would like to look at this a bit more. This refers to two garages, not two bays in one garage. Some Committee members felt that adding a purpose and intent statement could be helpful.

Ald. Leary also felt that garage should be less than 50% and it should be set back from the house as well. Ald. Hess-Mahan felt the larger the garage, the more he would be in support of a setback. If the garage were only one-third, then he would be fine with it being flush with the

homes. Mr. Freas said there are many ways to accomplish what they are trying to accomplish. In some forward projecting garages, for example, a porch can be built which brings the façade of the house forward. In Phase Two, there will be an inventory of the built environment and there will be more opportunity in the future for more specific requirements.

Ald. Johnson noted that the larger driveways contribute to the impervious surface on a street and that is also a problem. Ald. Danberg said there should be some restrictions on the amount of driveway that can be impervious surface and patio block or pavers could be a better solution.

Commissioner Lojek said it would be important to consider the size of the home and what percentages would make sense. When people try to put their garages on the side, they need more impervious surface to get to the garage, so it is a difficult balance. The provision for 10 feet between garages is a perfect opportunity for builders and architects to find a way around it, which is something to consider. The setbacks for garages could produce some very strange houses with second floors protruding forward, perhaps, or some other odd designs. Also, the zoning ordinance states that no building needs to be set back further than the buildings nearest to it. These are all things to consider.

Follow Up

Mr. Freas will bring discuss this with the UDC, Law and ISD as mentioned and come back with further. The Committee voted to hold this item.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

Zoning and Planning Committee

1

REZONING
132 Elliot Street

11/09/15

ELLIOT ST

CHESTNUT ST

HALEST

ELLIOT PL

1064-1070

344-346

342

336
7

330-332

1076

342

9-11

12
12-14
14

15

16

1084

19

20-22

23-25

28

Zoning and Planning Committee

3

ZONING MAP CLEAN-UP **Proposed Rezoning**

11/09/15

Brandeis – Olde Field Road Area

4



Rachel Road

5



Zoning and Planning Committee

6

GARAGE REGULATIONS



11/05/13







11/09/15





Proposed Regulations

13

- Garage Setback in line with building façade.
- Up to 50% of street facing building façade.
- Where two garages are present, separated by a minimum of 10 feet of living area.

Next Steps

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- Review with Law and ISD
- Discuss with UDC & local architects
- Work on final language and dimensions