

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JUNE 24, 2013

Present: Ald. Johnson (Chairman), Danberg, Lennon, Swiston, Sangiolo and Yates

Absent: Ald. Baker and Kalis

Also Present: Ald. Albright, Hess-Mahan and Crossley

Others Present: James Freas (Chief Long Range Planner), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#129-13 ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for "attached dwellings" in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**.
[05/25/13 @ 5:14 PM]

ACTION: **HELD 6-0**

NOTE: See note below.

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

ACTION: **HELD 6-0**

NOTE: Ald. Hess-Mahan explained that these two items can be discussed together. Land Use Committee sometimes sees applications for attached dwellings on parcels of land that one would otherwise not be able to build as many units. The protections for the neighborhood are that attached dwellings do require a special permit and there is a required setback of 25 feet on all sides of the property to keep the dwellings toward the center of the site and away from the neighbors. Also, dimensional restrictions control how large the dwellings can be and how much of the site they can occupy. The Land Use Committee has seen a series of these over the past several years and has had to look at the definition of "attached dwelling". The definition is basically that it is not a "two-family dwelling". The two-family definition states that there be a common wall connector and a common roof connector between the two units. Two-family dwellings do not require a special permit and can be built by-right.

The Inspectional Services department reviews the applications and building plans, and issues building permits. They have reported seeing an increased number of so-called two-families that resemble what most would think of as attached dwellings. These are two separate houses

attached by garages. The way they have been able to find the loophole in the definition of the two-family dwelling is that they build a common wall connector and a common roof connector over a living space between the two dwellings.

There was a property in Ward 2 that raised concerns about this issue. When construction began on this property, the neighbors were concerned at the size of the foundation and how big the structure was going to be. A meeting was called with the builder and the neighborhood to go over some concerns about the massing of the project (plans were attached to the agenda). The property was long and narrow and did not have much frontage (the long side of the property abuts 6 properties). This house does not look like a traditional two-family, but looks like two attached dwellings. No door faces the street. Because it is a long, narrow lot the side of the house faces the street, and the front doors are on the side of the lot. It is out of the nature and character of the neighborhood. When the builder first came in to submit his plans, it was to build two houses with a garage in between and it was denied by David Norton in ISD. The builder went back and looked at the definition of a two-family and then constructed a very narrow living space behind the garages and connected it with a common wall and a common roof. This does comply with the written definition of a two-family, but it does not comply with the spirit of what a two-family has been. This plan, as an attached dwelling, would not have met the special permit standards. For example, the setback is only 7.5 feet on each side, 25 feet in the front and 30 feet in the back instead of the required 25 feet all around for an attached dwelling.

Ald. Hess-Mahan felt the definitions needed to be improved. He would like the Committee to work with the Planning Department to come up with a better definition that is more in line with what a two-family dwelling has been, and how to differentiate that better from what an attached dwelling should be. He would like to prevent this kind of problem from happening in other neighborhoods. The neighbors of this development are very upset by what has been built there.

Commissioner Lojek agreed that ISD has seen many attempts at these types of plans. People want to live in an attached dwelling with a two-family price so the incentive is there for builders to build what they can and they have figured out a way to do it. He agreed that the definitions need to be changed and to look at what other communities might be doing in this regard. They could perhaps find a better way to allow the side-by-side structures in acceptable ways because they seem to be more desirable lately. The definitions should reflect what the City wants and not what the City does not want. James Freas, Chief Long Range Planner, said this is a good instance to look at some form based standards and these are part of the zoning reform discussions. This would set out what kinds of housing would work well on similar lots.

Ald. Yates asked why this project had not gone before the Historic Commission. Ald. Hess-Mahan explained that the house that had been on the lot had been vacant for four years and no maintenance had been done. Brian Lever, the historic preservation planner for the City, looked at the house and decided it was not preferably preserved since it was in such bad shape. Therefore, it did not go to the Historic Commission for review. If it had, Ald. Hess-Mahan felt there would have been a very different result. Commissioner Lojek said this house was not an historic house, however, and that requirement would not have applied.

Several neighbors of the mentioned project addressed the Committee. They were quite upset with the process and the result. They felt the developer took advantage of the situation and did not take the neighbor's concerns of privacy and views into consideration. They feel their properties have been destroyed by the huge structure abutting their property. They would like to be able to put very high hedges to block the view. The neighbors asked that the Committee take a look at the property to see how it looks. They are also concerned that this builder is planning other projects of this kind in the City.

Ald. Yates moved to hold this item and item #129-13 and the Committee voted in favor.

#282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*. [09-09-12]

ACTION: **HELD 6-0**

NOTE: James Freas explained that in December of 2012, the Planning Department completed and delivered the *Ramping Up: Planning for a More Accessible Newton* report to the Board of Aldermen. The purpose was to assist the City in moving towards better accessibility to residents with disabilities and their families. Several actions items came out of that report and are detailed in the Planning Memo and that table is attached to this report. Ald. Johnson asked that the steps taken so far also be tracked on the table.

Some highlights are that the Fair Housing Committee has started to work with the Planning Department to think about how fair housing relates to the upcoming zoning reform efforts. Zoning is an increasingly important issue at HUD because how properties are zoned can have a major impact on housing in terms of disability. The Housing and Community Development staff is working with the new accessibility coordinator to assess the supply and demand of accessible housing units in the City. They will also be working with the Commission on Disability on a survey to submit to major multi-housing property owners to assess their units' accessibility.

Commissioner Lojek said the new accessibility coordinator, Joel Reider, was hired only two weeks ago and the position is only 19 hours a week. He has sent Mr. Reider to as many seminars and learning experiences available and he is working with the Planning staff on getting acclimated. Architectural Access Board regulations are also something Mr. Reider has to be familiar with as well as ADA and 504 regulations. The code enforcement officer and the new public buildings inspector will be working with Mr. Reider as well on finding deficiencies and ways to improve the conditions. Education is the primary goal for Mr. Reider at this point and he will then be working on an implementation plan. Commissioner Lojek said if Newton really wants to meet their goals for accessibility in Newton, the coordinator's position would need to become full time at some point.

Ald. Yates asked about accessibility to playgrounds and ramps in certain buildings around the City. Commissioner Lojek said anything that is being renovated in a playground must be made accessible. Some ramps were put into buildings without the proper supervision. There is no

tolerance on slope according to the regulations. This means they have to be very exact in their construction and the slightest change can make it unusable for someone in a wheelchair. He felt that the Department of Public Works does a very good job with the curb cuts in the City.

Ald. Johnson asked that Mr. Reider join the Committee at a meeting in the fall.

The Committee voted to hold this item.

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

ACTION: **HELD 6-0**

NOTE: James Freas addressed the Committee and stated that they are half way through the zoning reform project. An outline was distributed with the agenda of the new zoning ordinances. The next step will be for the consultant from Code Studio to take the pieces of the zoning ordinance and place them within the outline. That document should be back to the Committee in August and will be redlined so that it is easier to see where the changes have been made. The Law Department is available for review of the changes to be sure they meet legal standards.

There was concern that “Employment Districts” was not a term usually used and using the terms “Business” and “Manufacturing” should be used instead. Mr. Freas said he will take that concern to the consultant. There was also a question about “Use Classifications” and “Open Uses”. Mr. Freas said he would talk to the consultant about clarifying these terms as well. Under Government Review Bodies, it was felt that the Board of Aldermen should be included as the special permit granting authority. There was also concern that “Nonconformities” were listed under “Administration”. There was also sentiment that the outline seemed very logical and easier to use than the current layout. Ald. Lennon felt there should be some sort of primer for the Board so that they have some foreknowledge of the process and not have to digest all the information at once.

Respectfully Submitted,

Marcia T. Johnson, Chairman

Newton Fair Housing Committee Architectural Accessibility Action Plan

January, 2012

The Newton Fair Housing Committee has identified seven priorities that if implemented will become significant steps in eliminating impediments to fair housing choice in Newton for people with disabilities. The matrix below organizes these priorities by identifying action steps for implementation including the role(s) of the Newton Fair Housing Committee, and by identifying and prioritizing other parties whose involvement is essential in ensuring successful implementation.

Actions	Newton Fair Housing Committee Role(s)	Primary Parties	Secondary / Outside Parties
1. ADA and SECTION 504 ADMINISTRATION*			
<p>Update ADA Plan, add Section 504, include measurable goals, periodic updates and reporting process.</p> <p>Remove internal and external communication barriers.</p> <p>Make ADA/Section 504 Plan available to public in a variety of locations and accessible formats.</p>	<p>Advocate for updated ADA Plan and integration of Section 504 requirements.</p> <p>Advise on incorporation and implementation of fair housing related activities.</p> <p>Review draft plan, measureable goals and periodic updates.</p> <p>Promote and participate in public process to revise plan, assist with plan dissemination.</p>	<p>ADA/Section 504 Accessibility Coordinator</p> <p>Fair Housing Committee</p> <p>Commission on Disability</p> <p>Planning and Development Dept.</p> <p>Inspectional Services Dept.</p> <p>City Clerk</p>	<p>All City Departments</p> <p>Community Advocates</p> <p>Disability Advocates</p> <p>Housing and Service Providers</p> <p>Elderly community</p> <p>Civic and Neighborhood Groups</p>
<p>Strengthen ADA/Section 504 Accessibility Coordinator position.</p>	<p>Advocate importance of position with other primary parties.</p> <p>Work with ADA/Section 504 Accessibility Coordinator.</p>	<p>Executive Office</p> <p>ADA/Section 504 Accessibility Coordinator</p> <p>Planning and Development Dept.</p> <p>Commission on Disability</p>	<p>All City Departments</p>

*Americans with Disabilities Act of 1990, as amended and Section 504 of the Rehabilitation Act of 1973, as amended.

Actions	Newton Fair Housing Committee Role(s)	Primary Parties	Secondary / Outside Parties
Strengthen ADA/Section 504 Accessibility Coordinator position <i>(continued)</i> .		Fair Housing Committee Law Dept.	
2. FEDERAL ACCESSIBILITY ENFORCEMENT SYSTEM			
Pursue federal accessibility inspection and notification system for City - administered residential projects. Begin planning for possible expansion of inspection and notification system for residential developments not using City - administered funds.	Advocate for inspection and notification system. Provide technical assistance and advisement on enforcement procedures for areas of noncompliance, as needed. Review work and results.	Planning and Development Dept. Inspectional Services Dept. ADA/Section 504 Accessibility Coordinator	Fair Housing Committee Commission on Disability Human Rights Commission
3. MONITORING AND EVALUATING ACCESSIBILITY NEEDS, CHANGE AND PROGRESS			
Develop self-reporting documents for use by housing providers regarding accessible units proposed and provided; assure their usage.	Advocate. Review proposed documents.	Planning and Development Dept. Fair Housing Committee	Housing Providers ADA/Section 504 Accessibility Coordinator Law Dept.
Periodically review accuracy of provided data regarding accessibility. Use survey and other tools to determine and update the number and type of accessible units in Newton's affordable housing inventory.	Review proposed survey and other tools. Encourage housing providers to respond to surveys. Review survey results.	Planning and Development Dept.	Housing Providers Fair Housing Committee Commission on Disability Human Rights Commission

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Maintain detailed records of 'Accessibility in Affordable Housing Guidance' usage and levels of accessibility achieved.	<p>Assist in reviewing and evaluating progress on periodic basis.</p> <p>Assist in determining best practices.</p> <p>Advocate for best practices once established.</p>	<p>ADA/Section 504 Accessibility Coordinator.</p> <p>Planning and Development Dept.</p> <p>Development Review Team</p>	<p>Fair Housing Committee</p> <p>Commission on Disability</p> <p>Newton Housing Partnership</p> <p>Housing Providers</p>
4. FAIR HOUSING MARKETING PLANS			
Develop guidelines and require use of marketing plans that ensure accurate accessibility information in all outreach and marketing.	<p>Advocate.</p> <p>Provide technical assistance, as needed.</p> <p>Review proposed documents.</p>	<p>Planning and Development Dept.</p> <p>Fair Housing Committee</p>	<p>Housing Providers</p> <p>Housing Lottery Agents</p> <p>Property Management Companies</p> <p>Real Estate Agents</p> <p>MassAccess Housing Registry</p> <p>Newton Housing Partnership</p>
Broaden fair housing marketing requirements to increase targeted efforts to people with disabilities.	<p>Advocate for implementation of broadened marketing.</p> <p>Assist in identifying effective marketing techniques.</p> <p>Assist in developing list of target organizations.</p> <p>Ensure additional recommendations are included in appropriate policies and procedures.</p>	<p>Planning and Development Dept.</p> <p>Fair Housing Committee</p>	<p>Commission on Disability</p> <p>ADA/Section 504 Accessibility Coordinator</p> <p>Housing Lottery Agents</p> <p>Massachusetts Rehabilitation Commission</p> <p>Independent Living Centers</p>

Actions	Newton Fair Housing Committee Role(s)	Primary Parties	Secondary / Outside Parties
Broaden fair housing marketing requirements to increase targeted efforts to people with disabilities <i>(continued)</i> .			MA Dept. of Mental Health MA Dept. of Housing and Community Development Newton Housing Partnership
5. DISPARATE IMPACT			
Review City plans for negative disparate impact on people with disabilities.	Review and monitor City plans related to housing to ensure disparate impact is addressed. Advocate for and provide education to relevant parties.	Planning and Development Dept. Fair Housing Committee ADA/Section 504 Accessibility Coordinator Commission on Disability	Board of Aldermen Law Dept. Newton Housing Partnership Planning and Development Board Community Preservation Committee
Advocate that housing developers not use forms of housing that have negative disparate impact regarding access.	Identify likely negative impact forms of housing. Collaborate with and provide education to relevant parties.	Planning and Development Dept. Development Review Team	Fair Housing Committee Commission on Disability Board of Aldermen Newton Housing Partnership

Actions	Newton Fair Housing Committee Role(s)	Primary Parties	Secondary / Outside Parties
6. REASONABLE ACCOMMODATION AND MODIFICATION POLICIES			
Require reasonable accommodation and modification policies (online if possible) of all housing providers receiving City-administered federal, state, or local funding.	Develop elements of a reasonable accommodation and modification policy based on the Joint Statements of the U.S. Department of Justice and Department of Housing and Urban Development for use by housing providers.	Planning and Development Dept. ADA/Section 504 Accessibility Coordinator Law Dept.	Housing Providers Fair Housing Committee
7. TRAINING AND EDUCATION			
Seek funding to provide accessibility training on such topics as design and construction standards, technical specifications including scoping and coverage requirements, and Section 504 implementation including policies and procedures.	Identify funding sources and provide technical assistance in securing funding, as needed. Advocate for ongoing and different types of training to various stakeholders.	Fair Housing Committee Commission on Disability ADA/Section 504 Accessibility Coordinator Planning and Development Dept.	Housing Providers Relevant City Departments Construction Professionals Design and Engineering Professionals
Explore joint fair housing training with the local real estate board.	Explore collaboration options.	Fair Housing Committee Planning and Development Dept.	Commission on Disability Greater Boston Real Estate Board Local Real Estate Agencies

