

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, DECEMBER 10, 2012

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

Absent: Ald. Sangiolo

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

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

Re-appointment by His Honor the Mayor

#404-12 TABETHA McCARTNEY, 155 Hunnewell Avenue, Newton, re-appointed as a member of the PLANNING AND DEVELOPMENT BOARD for a term to expire February 1, 2017 (60 days 02/01/13) [11/19/12 @ 9:51 AM]

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

NOTE: Ald. Johnson asked that all re-appointments on this agenda be held until updated resumes are submitted. The Committee voted to hold all three re-appointments.

Re-appointment by His Honor the Mayor

#332-12 DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of THE CONSERVATION COMMISSION for a term to expire October 25, 2015. (60 days 01/04/13) [10-25-12 @ 10:51AM]

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

NOTE: See above note.

Re-appointment by His Honor the Mayor

#405-12 WILLIAM McLAUGHLIN, 117 Hammond Street, Chestnut Hill, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire November 7, 2015 (60 days 02/01/13) [11/19/12 @ 9:51 AM]

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

NOTE: See above note. Ald. Johnson also asked that Mr. McLaughlin come in for a short discussion when his re-appointment is back on the agenda.

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

ACTION: **HELD 7-0**

#61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

ACTION: **HELD 7-0**

NOTE: Seth Zeren, Chief Zoning Code Official, addressed the Committee. He said it made sense to discuss items #164-09(2) and #61-10 together because they address the large and complex problems of accessory apartments in the City.

Mr. Zeren said the Planning Department is approaching this from a policy point of view and what the Committee would like to address in regard to accessory apartments. The Planning Department would like to get a sense of that so they have a direction to follow in the coming months.

History

Accessory apartments were first allowed in Newton in 1987 and approximately 50 have been approved or legalized since then. The current rate is about 1-3 per year. In 2006-2009 the Accessory Apartment Incentive Program (AAIP) was active. About 350 people showed interest in legalizing or creating accessory apartments. The City provided assistance through the Community Preservation Act by way of grants or loans in the AAIP but ultimately no new units were created. The two largest barriers seemed to be zoning standards, in particular minimum lot size; and the affordability deed restriction was too limiting in the opinion of homeowners.

Approval

Units can be approved through administrative review (RAAP), special permit, or by legalizing units in existence since 1979 (lot and building size standards do not need to be met). Accessory apartments cannot be created in homes built within 10 years.

Comprehensive Plan Housing Objectives

Mr. Zeren explained that the Comprehensive Plan looks to preserve a diversity of housing to meet different social, economic and life-cycle needs; to increase the number of rental and home-ownership opportunities for low, moderate, and middle income families and senior citizens; and to facilitate modifications to existing housing that can serve these housing goals, such as creating accessory apartments where appropriate.

Problem Statements

The Planning Department looked at the docket items as well as their own broader experience with the issue of accessory apartments to identify a couple of problems.

The first problem statement is that the number and type of legal accessory apartments created under the current zoning regulations does not significantly contribute to the goal of creating diverse and affordable housing as established by The Comprehensive Plan. The second problem statement is that many illegal apartments may contribute to those same goals, but if there are building code violations, they represent a public safety problem that must be remedied.

Committee Response

Ald. Baker said he did not agree with the first problem statement. He did not think it was a problem at all that only a relatively few number of units have been created. The challenge they ran into when initially creating the accessory apartment ordinance was not to create two-family structures in single family zones, he said. The integrity of the building should be maintained to the public view as well. The units need to be truly accessory and the committee worked hard to put parameters around their creation to keep this in check. As far as providing affordable housing, Ald. Baker felt that accessory apartments are not necessarily affordable. Homeowners want to charge market rate rents. He thought that if homeowners were offering the units for less than market rate, perhaps that was because they were not safe units. He thinks it makes more sense to examine making minor adjustments in the ordinance that could be helpful. For example, reducing the square footage requirement might be an appropriate thing to do, thereby keeping the units small, which he feels is desirable, and automatically making some of the units legal. However, changing the rules just because people are breaking them does not make sense to him and he wants to be careful of that. He would like to see more enforcement to make sure existing units are safe and legal.

Ald. Hess-Mahan said that he helped design the AAIP. One concern was a lack of affordable housing (not as defined by HUD, but just a lower rent for a smaller space). Accessory apartments provide housing in a much less expensive range. Another concern was for seniors who could not afford to stay in their homes in Newton. Having a family member or a caretaker rent space in their home could help in that way. Ald. Hess-Mahan said the market is there and people are creating these units under the radar. Half the people who showed interest in the AAIP could not move forward because the lot size was insufficient even with a special permit. The other reason was there was an affordability restriction that went with the property. When homeowners would sell their home, the restriction would remain with the new owner unless they converted the unit back and returned any grant or loan money to the City. Ald. Hess-Mahan suggested that the low hanging fruit is lowering the square foot requirement of a minimum 400 square feet as there are units that are smaller, safe and really nice living spaces. A lot of the housing is in MR districts and more densely populated areas and those are the areas that are usually closer to transit and village centers. It makes sense to have accessory units there but the lot size requirements would prohibit them. He thinks that is something to be looked at as well.

Ald. Baker said he doesn't agree with the idea that somehow accessory apartments are a positive addition to the community in and of themselves. However, perhaps, Ald. Hess-Mahan

articulated, there are circumstances under which it is appropriate to have additional density, but not an additional full scale dwelling unit. He felt that was appropriate and could be endorsed. He agreed with Ald. Hess-Mahan that focusing on some interventions would be helpful, such as lowering the square footage and lot size restrictions in some parts of the City.

Ald. Swiston said the reason there is a perception that we are not “missing” this housing stock is because it does in fact exist. It is just not out in the open. As a realtor, she goes into houses and sees signs of this quite often. She feels they need to find a fair and reasonable way to acknowledge these units in the City to get a more accurate picture of what exists, and be sure that they are safe. Homeowners are afraid to come forward, however. Mr. Zeren said they learned from the AAIP that many illegal apartments cannot be legalized under the current regulations. The only way to legalize some of those would be to change some of the regulations.

Ald. Danberg noted that if a family moves out of a house, and a couple moves in and creates an accessory apartment for one or two more people, the density has not been increased. She agrees that the exterior character of the house needs to be maintained and not give the appearance of a two or three family. There are also opportunities with carriage houses that need to be looked at. On the topic of using Community Preservation funds, Ald. Danberg felt that it was well-intentioned but not very practical. The people who would need the money in order to create or renovate an accessory apartment are not the people who could likely afford to rent it at a reduced rent as required.

Ald. Crossley said that the City really could use more small housing units. There have been discussions around Single Residence Occupancy units and whether there could be a licensing procedure and a series of inspections to allow them. But for 25 years at least the discussions have been ongoing about finding and creating smaller units for housing needs and to help homeowners make ends meet. She wonders where does the interest in this matter most reasonably dovetail with the overall zoning reform effort that they are trying to undertake. There are several issues that need to be overlaid such as geography, density, design, etc. She would really like to see progress as this issue is not going away and wants to figure out the best way to accomplish that.

Inspectional Services Response

Commissioner Lojek commented that there is a real mistrust of government. Homeowners are quite wary about coming forward to look for help, because they are afraid the City will shut down their accessory apartment, or that it will cost them a lot of money. He believes it would be much better if people could feel comfortable coming forward and having the restrictions that were in place with the AAIP were real problems. People did not want to be told who could live in their homes and what they could charge for rent. He would like to see the 1979 “amnesty” date moved forward and relax the lot and unit size requirement. Then there are fewer hurdles to clear for these existing units. He would like to provide the opportunity for positive action instead of finding out about illegal units from the fire department after a tragedy. Second means of egress and properly inspected electrical, gas, and other health and safety components are essential. The Building Code has to be followed. The more units they know about, the more units they can be sure are safe and his department’s job is to make sure the existing units

meet all safety and building codes. He does not want to ignore the fact that these units exist. He would also like people to know there is a good, friendly process in the City to help legalize and make their units safe. Ald. Lennon agrees with Commissioner Lojek. The issue should be addressed and dealt with in a reasonable, cooperative and safe way. An education and outreach program would probably be needed. Ald. Baker pointed out that some units may not meet all the requirements and cannot be made legal.

As for carriage houses, they are being demolished in the City. Brookline has a program of preservation for those types of buildings and it's a question as to whether Newton was interested in a similar incentive program. Many carriage houses are not used and people can't afford the upkeep. He said that there is no real design review for accessory apartments and thinks the Urban Design Committee's expertise could be utilized for this purpose.

Recommendation

Ald. Johnson asked Mr. Zeren what the recommendation of the Planning Department would be. He said he heard disagreement from the Committee about whether the current ordinance is creating the right number of units, should create more, or should create more in different places than it does now. The existing regulation speaks to questions of geography, density and design. He would like to find a problem statement that can help the Planning Department move forward on some recommendations and solutions.

Mr. Zeren described three options that might provide opportunities for increasing the number of accessory apartments: Comprehensive review; targeted reforms; and inclusion in Phase 2 Zoning Reform.

Option 1: Comprehensive Review

Mr. Zeren said a comprehensive review might recommend looking at an overlay approach around village centers and surrounding residential areas which opens the geography question. The lot and building size changes speak to density issues. The lower the numbers the more parcels an area could have accessory apartments and the higher the numbers, the fewer parcels an area could have them. Design of the structure seems to be an important concern. It is possible to shape the design to keep the single family feel. This would be a major effort on a widespread scale. It requires looking at every residential zoning district in the City and considers density, dimensional standards, and design of residential structures. Planning would recommend a working group of professionals that would participate and work with their Department to come up with recommendations and Mr. Zeren believes this would take a full year to accomplish.

Option 2: Targeted Reforms

Targeted Reforms would recommend looking at lowering the minimum unit size. This would make it easier to either legalize or create accessory apartments in buildings where space is tighter. This by itself would have only a slight increase in legalized apartments but lot size requirements still exist. It is a simple change as it does not open up questions of geography as lot size changes would. There are communities that have removed all such restrictions and they have not had a doubling of density. Accessory units can be quite expensive to develop and not everyone wants people living in their homes.

Another targeted reform would be to look at easing rules to permit conversion of historic carriage houses to accessory apartments. The Planning Dept. catalogued 300 existing historic carriage houses but they do face some challenges. They are detached structures which would require a special permit. This adds time (about 3 months) and expense to the project. Also, some are quite large and there is a maximum size limit of 1200 square feet for an accessory apartment. It would be easy to identify the ones that might be eligible since the numbers are quite small. In order to make this viable, some sort of administrative process would be put in place by which the units could come in and satisfy certain historic characteristics and then move through the process. The Urban Design Commission could be involved. This could also take about 3 months. Ald. Baker was concerned about the carriage houses because they are closer to lot lines and would be larger detached units. Mr. Zeren said they were considering this because many of these historic structures were being lost to demolition.

Option 3: Phase 2 Zoning Reform

Mr. Zeren said that Zoning Reform will also be taking a comprehensive look at policy issues. Accessory apartments in residential neighborhoods will certainly come up in that review and open for discussion. There will be more resources at that time in terms of consultant support who have expertise and knowledge about how this issue has worked in other communities. In the interim they would suggest that the Planning Department continue to collect quantitative and qualitative information to help set the parameters of the challenge for the consultants. This is intended to begin within the next year, so at some point the ordinance needs to stop changing so that Zoning Reform can happen.

Ald. Yates, Kalis, Hess-Mahan and Johnson were in favor of Option 3. Ald. Hess-Mahan and Johnson were also in favor of Option 2, as were Ald. Baker, Swiston and Danberg.

Subcommittee

The Committee felt a subcommittee would be helpful in working through the issues with the Planning Department and Inspectional Services. Ald. Crossley, Swiston and Baker volunteered for this and will come back with recommendations to Committee. The Committee voted to hold this item.

#11-12 ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

ACTION: **HELD 7-0**

NOTE: James Freas addressed the Committee. This was first brought to the Committee in the context of a certain case on Turner Terrace. It has been recommended that this discussion focus on the broader issues and not on any specific property. Mr. Zeren said that Planning had a meeting with the Engineering and Inspectional Services Departments. The goal was to understand the process the plans go through and how they are reviewed particularly in terms of

drainage. Currently plans are submitted to ISD for review for building and zoning code issues. It would route those plans to Engineering for any drainage, grading or other engineering issues. Assuming both departments sign off of the plans as accurate, they will be issued a building permit and construction can begin. During construction, the property could be inspected for foundations and other features by ISD, and Engineering could come to inspect drainage facilities on the site, but they also have control over sidewalk features and utility features in the public way. The project is then completed and an as-built plan is then submitted to ISD for review. If it matches the original plans, then a Certificate of Occupancy is issued.

The concerns that were discussed were that ISD is the enforcement agency; they are not engineers. Engineering is not an enforcement agency; they provide services for public works and technical consulting expertise to ISD. Mr. Zeren said they looked at ways in which the process could be made better between the two Departments and both have committed to the following: They will work to ensure that all construction or site alteration proceeds per the approved plans; if there are unexpected changes in the plans, Engineering will review the new plans on behalf of ISD and confirm that they are acceptable; Engineering will ask ISD for a stop work order if they find that construction does not match the approved plan in regard to infiltration or drainage systems or issues; if Engineering determines that a project is not built to plan, ISD will not issue a Certificate of Occupancy; ISD will work with Engineering to be sure plans are submitted with all drainage information including information on drainage on adjoining parcels or historic drainage patterns where relevant and available.

These are all administrative changes in process, communication and submittal of materials. He did not believe any changes needed to be made to the ordinance. Both department heads are aware of this plan and have participated in the discussion. They are speaking to their staffs and Planning will distribute some worksheets to help with the process. Both departments will be talking to people submitting plans about what is expected. Mr. Zeren believes these changes will help avoid problems in the future.

Commissioner Lojek said that in the past, not much attention has been made to changes in landscaping plans. However, these changes can have an impact and that has become more apparently recently. They will be much more stringent about enforcement of these plans as they can have an impact on drainage. Work will be stopped if projects are not being built to plan. If work continues, fines will be issued. Commissioner Lojek believes that any review beyond the initial review and approved plan should come with a fee. He also said that some builders have been using the City as their own private quality control consultants and they expect ISD and Engineering to “fix” their plans as they go along and “fix” their plans. He wants to discourage this practice. Ald. Lennon wanted to be sure that builders are aware of any changes.

Ald. Johnson said she would like to see some more specifics around what exactly can be done and how the new process will work. She would like to see a flow chart showing the new process. Ald. Hess-Mahan expressed his gratitude for the Departments for having this discussion and working through the potential problems. He recommended voting No Action Necessary for this item. Ald. Linsky asked that this item be kept open for further discussion. The Committee voted to hold this item.

Respectfully Submitted,

Marcia Johnson, Chairman