

CITY OF NEWTON
IN BOARD OF ALDERMEN
ZONING & PLANNING COMMITTEE AGENDA
MONDAY JUNE 13, 2011

7:45pm Room 202

ITEMS SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor:

#164-11 ROBERT UNSWORTH, 34 Bradford Road, Newton Highlands, appointed as an alternate member of the Conservation Commission for a term of office to expire May 31, 2014 (60 days 08-05-11) [05/23-11. @ 3:47PM]

Appointment by His Honor the Mayor:

#165-11 RICHARD GALLOGLY, 114 Windermere Road, Auburndale, appointed as an alternate member of the Conservation Commission for a term of office to expire on May 31, 2014 (60 days 08-05-11). [05/23/11 @ 3:48PM]

#102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK, AND CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]

#94-11 ALD. HESS-MAHAN proposing an amendment to the accessory apartment ordinance by adding “no accessory dwelling unit shall be separated by ownership from the principal dwelling unit or structure, including, without limitation, conversion to the condominium form of ownership. Any lot containing an accessory dwelling unit shall be subject to a recorded restriction that restricts the lot owner’s ability to convey interest in the accessory dwelling unit, except leasehold estates” [03-24-11 @ 9:30AM]

#95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes,

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at KCahill@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor:

#163-11 BARBARA HUGGINS of 122 Albemarle Road, Newtonville, appointed as an alternate member of the Conservation Commission for a term of office to expire on May 31, 2014 (60 days 08-05-11). [05/23/11 @ 3:47 PM]

#162-11 ALD. YATES requesting a report from the Director of Planning and Development on the status of the update of the *Open Space and Recreation Plan*, particularly as it pertains to the Charles River Pathway. [05/12/11 @ 10:16AM]

Public hearing held on April 25, 2011

#65-11(2) TERRENCE P. MORRIS & JOSEPH PORTER proposing amendments to the Zoning Ordinance to revise the definition of "height" in Section 30-1 B) and to add a provision in Section 30- 15(m) to allow accessory structure height limits to be waived by special permit. [03-30-11 @ 4:12PM]
(Public Hearing closed 4-25-2011; 90 day expiration July 22, 2011)

#49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]

#81-11 ALDERMEN JOHNSON, CROSSLEY, HESS-MAHAN, LAPPIN & DANBERG requesting the Director of Planning & Development and the Chair of the Zoning Reform Scoping Group provide updates on the Scoping Group's Progress. These updates will occur at the frequency determined by the Chair of the Scoping Group and the Chair of the Zoning and Planning Committee. [3/14/2011 @ 11:16PM]

#26-11 HIS HONOR THE MAYOR submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to include a Mixed-Use Centers Element [01-07-11 @ 4:20 PM]
(Planning Board report submitted April 5, 2011)

- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05-10-11 @3:19 PM]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @11:34AM]
- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM].
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK, AND CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]
- #94-11 ALD. HESS-MAHAN proposing an amendment to the accessory apartment ordinance by adding “no accessory dwelling unit shall be separated by ownership from the principal dwelling unit or structure, including, without limitation, conversion to the condominium form of ownership. Any lot containing an accessory dwelling unit shall be subject to a recorded restriction that restricts the lot owner’s ability to convey interest in the accessory dwelling unit, except leasehold estates” [03-24-11 @ 9:30AM]

- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]

REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES

- #64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio. [02-22-11 @ 6:47PM]
- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.
- #253-10(2) ZONING & PLANNING COMMITTEE supporting the establishment of a Brightfield Solar Energy Array, subject to neighborhood input, on the Flowed Meadow site similar to the one in Brockton. [02-15-2011 @10:01am]
- #150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: "(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;" and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #311-10 HIS HONOR THE MAYOR submitting the FY'12-FY'16 Capital Improvement Program, totaling \$174,246,135 pursuant to section 5-3 of the Newton City Charter and the FY'11 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/18/10 @5:24PM]

- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.
- #207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]
- #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]

- #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]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.
FINANCE VOTED NO ACTION NECESSARY ON 3/8/10
- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]
- #475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]
- #288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2 , 3 and 4 districts.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.

Respectfully Submitted,

Marcia Johnson, Chairman

Robert E. Unsworth

CITY CLERK
NEWTON, MA. 02159

11 MAY 23 P 3 48

Experience

President, Industrial Economics, Incorporated, Cambridge, MA. 2005-2011.

Mr. Unsworth is a Principal and Partner with the firm of Industrial Economics, Incorporated (IEc). He joined IEc in 1985 as a Research Analyst, and was subsequently promoted to Associate, Senior Associate, Principal, Chief Operating Officer, and President.

IEc is an internationally recognized environmental policy, economics, and environmental science consultancy. Mr. Unsworth's practice at IEc focuses on helping clients understand the economic and social implications of environmental change, environmental regulation, and natural resource management.

- Mr. Unsworth is an expert in natural resource damage assessment, water economics, and environmental policy analysis.
- He serves as an advisor to the U.S. Department of Justice, the U.S. Department of the Interior, various state, local and Tribal governments, law firms and NGOs.
- He has served as an expert witness in cases involving adverse environmental change.
- He has conducted studies of the potential economic effects of climate change, Federal and state environmental regulations, and regional management of land and water resources.
- He has served on numerous expert panels for the National Research Council, California Energy Commission, European Union, U.S. Environmental Protection Agency, U.S. Department of the Interior, and other governmental and non-governmental organizations.

Education

B.S., Forestry, State University of New York (*magna cum laude*). 1984.

Masters of Forest Science, Yale University, School of Forestry and Environmental Studies. 1986.

Other

Mr. Unsworth has lived in Newton since 1994. He is married to Lisa Unsworth. Their daughter, Fiona, is a student at the Dana Hall School in Wellesley.

11 MAY 23 P 3 48
CITY CLERK
NEWTON, MA 02159

RICHARD J. GALLOGLY

Director and Member
of the Real Estate Department

EDUCATION

Boston College Law School, J.D., *cum laude*, 1987
Boston College Environmental Affairs Law Review, Managing Editor 1986-87
Admitted to Massachusetts Bar, 1987
Wesleyan University, B.A., 1976

EMPLOYMENT

Rackemann, Sawyer & Brewster, 1987 to Present
Town of Canton, Connecticut, 1980 to 1984, Director of Community
Development Department
Town of Canton, Connecticut, 1978 to 1980, Purchasing Agent

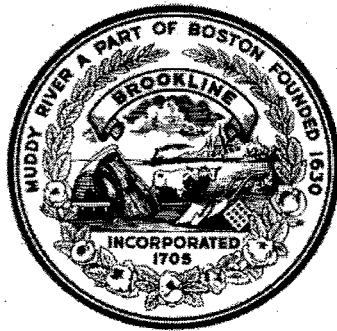
**PROFESSIONAL
AFFILIATIONS**

American Bar Association - Real Property, Probate and Trust Division
- State and Local Government Division
Boston Bar Association - Environmental Law Division
Real Estate Bar Association for Massachusetts - Zoning Committee
The Abstract Club
International Council of Shopping Centers
National Association of Industrial and Office Parks

PUBLICATIONS

"Opening The Door For Boston's Poor: Will Linkage Survive Judicial
Review?," 14 B.C. Boston College Environmental Affairs Law Review
447 (1987).
Co-author, "Pitfalls and Concerns of Development Moratoria,"
Landlaw 1988 Massachusetts Land Use Conference.
Co-author, "The Clean Air Act Amendments of 1990: A Brave New World
For Corporate America", Massachusetts Continuing Legal Education
Seminar, February 28, 1991.
Author, "Local Licenses, Permits and Approvals," Massachusetts
Continuing Legal Education Seminar, October, 1992.
Contributing Author, *Massachusetts Zoning Manual*, Massachusetts
Continuing Legal Education, Inc., 1995, 1999, 2002, 2007 and 2010.
Author, Commentary, *Land Court Reporter* and *Landplanner Magazine*,
Landlaw, Inc., 1995 - Present.

TOWN OF BROOKLINE



GENERAL BY-LAWS

**Inclusive through November 17, 2009
Annual Town Meeting**

Printed by
The Office of the Town Clerk

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Inclusive through May 26, 2009 Annual Town Meeting.

ARTICLE 5.2
CONDOMINIUM HEALTH AND SAFETY
AT TIME OF CONVERSION

SECTION 5.2.1 NOTICE OF CONVERSION

Within forty-eight hours after the recording of a master deed under G.L. c. 183A, the owner or owners who create a condominium shall file a copy of the master deed with the Building Department of the Town of Brookline and the Town shall thereupon inspect the condominium premises in the following manner:

(a) The Health Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of Article II of the State Sanitary Code as the same may be amended from time to time and all applicable rules and regulations of said Health Department; and

(b) The Building Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

SECTION 5.2.2 DEFINITIONS

"Owner", includes a legal or beneficial owner, lessor, sub-lessor, manager, assignee, or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing.

SECTION 5.2.3 ENFORCEMENT

(a) The Building Department shall be responsible for enforcing the provisions of Section 5.2.1 and may issue orders and promulgate regulations to effectuate the purposes of Section 5.2.1 and to establish procedures thereunder.

(b) Any owner who converts property in violation of Section 5.2.1 or of any regulation adopted or order

issued pursuant thereto shall be punished by a fine of not more than fifty dollars. Each unit converted in violation of Section 5.2.1 and each day of continued violation for such unit shall constitute a separate offense.

(c) The District Court Department, Brookline Division, and the Superior Court Department shall have jurisdiction over any action arising from any violation of Section 5.2.1 or any regulation adopted or order issued pursuant thereto and shall have jurisdiction in equity to restrain any such violation.

SECTION 5.2.4 TENANT PROTECTIONS

The protection of tenants of residential properties undergoing conversion to the condominium form of ownership shall no longer be regulated by this Article but instead shall be regulated by Chapter 527 of the 1983 Massachusetts Acts and Resolves as the same may be amended from time to time.

SECTION 5.2.5 SEVERABILITY

If any provision of this Article or the application of any provision to any person or circumstance shall be held invalid, the validity of the other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.

Date sent: **Thu, 24 Mar 2011 09:26:45 -0400 (EDT)**
Subject: **Docket Item Regarding Notice of Condo Conversion to be Filed with the City**
From: **"Ted Hess-Mahan" <thessmahan@newtonma.gov>**
To: **chavens@newtonma.gov,
dzaleznik@newtonma.gov,
jlojek@newtonma.gov,
mlawlor@newtonma.gov,
oyoung@newtonma.gov,
dnorton@newtonma.gov**
Copies to: **Clappin@newtonma.gov,
dolson@newtonma.gov,
dcrossley@newtonma.gov,
dkahn@newtonma.gov,
lfinucane@newtonma.gov,
lwalsh@newtonma.gov,
mjohnson@newtonma.gov,
rsmith@newtonma.gov,
rrooney@newtonma.gov,
sflennon@comcast.net,
szeren@newtonma.gov**
Send reply to: **thessmahan@newtonma.gov**

Dear All:

I attach a docket item (20110324 Docket Item.doc) which would require that notice of condominium conversion be filed with the Inspectional Services Department and that ISD and the Health departments inspect new condos to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. I have also attached a model by-law for this proposed ordinance which I obtained from Brookline's general by-laws (Brookline Bylaws Article 5.2.pdf).

I intend to ask the chair of the Zoning and Planning Committee to take this item up in the near future along with a companion item that would prohibit separate ownership of residences with accessory apartments, including by condominium conversion, and require that notice of this prohibition be recorded at the registry, either as part of the special permit board order creating an accessory apartment or separately in the case of an accessory apartment created through the administrative process, in order to put prospective buyers, mortgage lenders and the general public on notice of this prohibition. I attach a copy of that docket item

as well (20110323 Docket Item.doc).

There is some urgency to beginning discussion and to schedule a public hearing on this item and its companion item. Earlier this week, I was contacted by two condo owners who had purchased condos on the same lot. Unbeknownst to them, the previous owners had obtained a special permit to create an accessory apartment in the accessory building on the lot of a single family residence in a district zoned for single family residences. The previous owners then split ownership of the residential and accessory dwelling units by converting them into two separate condos, which could be a violation of the accessory apartment ordinance, which requires that dwellings with accessory apartments must be owner occupied. ISD did not become aware of this situation until the owner of one of the condos requested a building permit. If the city had a requirement that notice of condo conversion be filed with ISD, this situation could have been rectified before these innocent buyers purchased condos which they may not be able to sell or even occupy if it violates our zoning laws.

Moreover, I am concerned about ensuring compliance with applicable building, health and safety codes as well as zoning laws when a residence is converted to condominium ownership. ISD has discovered a significant number of illegal apartments all over the city and many involve serious building, health and safety code violations that must be fixed for the protection of the occupants as well as the general public. There may also be other reasons for such a requirement that you are aware of, about which I would be very interested in hearing from you. Please also feel free to pass this along to other city personnel who you think should be given an opportunity to provide input and/or city personnel who I may have neglected to include on the distribution list.

Please let me know at your earliest convenience whether you have any comments or questions concerning the attached draft docket item. I would also appreciate it if someone from the law department would contact me to discuss, in particular, where this provision should be added in the city ordinances (e.g., under ISD, Health, or somewhere else).

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,

Ted Hess-Mahan
Alderman-at-Large Ward 3



TOWN of BROOKLINE

APPLICATION FOR CERTIFICATE OF CONDOMINIUM CONVERSION

Michael W. Shepard
Building Commissioner
(617)730-2100

FEE: \$100.00 PER UNIT

DATE: _____

In accordance with the provisions of the Town of Brookline By-Law, Article 5.2, I hereby apply for a Certificate of Inspection for Condominium Unit located at the following address, or addresses.

CONDO ADDRESS: _____

Owner: _____ Owner's Cellphone: _____

Condominium Name: _____

Certificate to be issued to: Owner Applicant

Name of Contact Person for Inspection: _____

Address: _____

Location of Condo within Building: _____
(ie. 2nd floor, left or right unit)

Does property contain Commercial Units: YES NO

Signature of Applicant: _____

INSTRUCTIONS

- 1) Make check payable to Town of Brookline.
- 2) Return this application with your check to Building Department, Town of Brookline, 333 Washington Street, Brookline Massachusetts 02445.

FEE: _____ AMOUNT: _____ RECEIPT NO: _____

CERTIFICATE NO: _____ ISSUED: _____

(SEE BACK OF PAGE FOR FURTHER INSTRUCTIONS)

By-Laws of the Town of Brookline

Article 5.2 through 5.2.6 inclusive

Within forty-eight hours after the recording of a master deed, under General Laws C. 183A the owner or owners who create a condominium shall file a copy of the Master Deed with the Building Department of the Town of Brookline and the Town shall inspect the condominium premises in the following manner:

- (A) The Health Department shall make an inspection within a reasonable time of said premises.**
- (B) The Building Department shall make an inspection within a reasonable time of said premises to determine if the same are in compliance with all applicable provisions of the State and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.**

- 1. Condominium Master Deed Registered with Building Dept. Date; _____**
- 2. Condominium Certificate of Inspection Issued Date; _____**
- 3. This Building was not a building of four or more units on August 20th 1982.**