

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MARCH 8, 2010

Present: Ald. Johnson (Chairman), Baker, Swiston, Lappin, Lennon, Shapiro, Yates and Sangiolo

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

Others Present: Jen Molinsky, Marie Lawlor and John Lojek

#46-10            ALD. CROSSLEY, HESS-MAHAN & LINSKY requesting adoption of an ordinance to provide for as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable or alternative energy manufacturing facilities in designated locations in order to satisfy the requirements to qualify as a Green Community under MGL Chapter 25A, §10 (c).  
[02/09/10 @ 7:25 PM]

**ACTION:**        **HELD 8-0**

#46-10(2)        ALD. CROSSLEY, HESS-MAHAN & LINSKY requesting adoption of an ordinance to create an expedited application and permitting process under which renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable or alternative energy manufacturing facilities may be sited within the municipality and which shall not exceed one year from the date of initial application to the date of final approval, in order to satisfy the requirements to qualify as a Green Community under MGL Chapter 25A, §10(c). [02/09/10 @ 7:25 PM]

**ACTION:**        **HELD 8-0**

**NOTE:** *This note includes discussion of items #46-10, #46-10(2), and #475-08.*

Ald. Crossley explained that #46-10 and #46-10(2) part of the process of obtaining a Green Community designation for the City of Newton from the state. Five criteria need to be met in order to be awarded such a designation and #46-10 and #46-10(2) would satisfy 1. and 2. below.

1. Provide for as-of-right siting of renewable or alternative energy generation, R&D, or manufacturing facilities in designated locations.

2. Adopt expedited permitting for these sites (under 1 year)
3. Establish energy use baseline for municipal buildings, vehicles, traffic and street lights and put plan in place to reduce baseline by 20% within 5 years. *There is an item currently before the Public Facilities Committee addressing this. The City can establish the baseline energy year as FY07. The City will go beyond the 20% reduction in the 5-year period through 2012. The Mayor's office is behind this initiative and is working to coordinate City departments to establish the baseline.*
4. Commit to purchase only fuel-efficient vehicles whenever available and practicable. *There is an item currently before the Programs & Services Committee addressing this. The Executive Department is working to form a policy. Further discussions are forthcoming in Committee.*
5. Require energy efficiency in construction (Stretch Code). *This requirement has already been met by the City of Newton. Cambridge is the only other community in Massachusetts to adopt the stretch code thus far.*

The Green Community Act was signed into Law in Massachusetts in 2008 and provides a grant program with up to \$10M available each year to designated communities by application. This year, the grant program has \$7M and no community has yet earned the Green Community designation, although it is believed that several others are working towards it as well. The grant money can be used for a wide variety of energy efficiency and renewable energy projects, both large and small. A community can receive up to \$1M a year for these projects. The deadline for submitting the application to the state is May 14, 2010. The deadline for applying for a grant is May 28, 2010.

#### Criteria One

Ald. Crossley explained that Newton already allows R&D in Manufacturing and Mixed Used districts as-of-right up to 20,000 square feet, and over 20,000 by special permit. Jen Molinsky has spoken to Joanne Bessetta of the Department of Energy Resources (DOER) and she agreed that the current language in the ordinance satisfies the requirement for Criteria One. Until the application is submitted, however, the City won't know that for sure. Marie Lawlor stated that the City would need to send a letter to DOER as part of the application that included the language in the ordinance that DOER already agreed (in discussions) met the requirement; maps from the Planning Department that show that there are parcels with a total of 50,000 square feet of space available, including existing buildings; and a letter from the Law Department supporting this as well as certifying that Newton allows "green" R&D.

#### Criteria Two

Ald. Crossley said the expedited permitting process could not be demonstrated through current Newton ordinance. The City would have to agree that Departments would get the permitting process complete within a year - this would include historic, building and conservation permitting – in order to meet Criteria Two. Commissioner Lojek said that

the building permit process would likely not be difficult. He explained that that as long as the applicant was applying for a permit based on the built environment with an allowed use within a proper district, Inspectional Services would be able to grant a permit within a week or so. He felt that historic and conservation review should not take terribly long if it were required. The zoning restrictions would be the problematic part of this.

#### Chapter 43D

Ald. Crossley noted that Criteria Two could be satisfied by adopting MGL Chapter 43D which provides for different criteria for expediting permitting and is not what this docket item addresses. This process would also take a much longer time and considering the deadline for this application, may not work for this purpose. This docket item addresses the guideline as described in the Green Communities Act and could be a simpler process than adoption of Chapter 43D.

#### Two Options

Jen Molinsky explained that there could be two avenues to meeting the Criteria Two requirement. One would be a zoning amendment guaranteeing that permits are given within the year. The other option would be an administrative guarantee. Ms. Molinsky said the best case would be if DOER would allow an administrative guarantee provided that the City can prove it has 50,000 square feet of existing, ready-to-go space that could be used for one of the specified uses. Marie Lawlor said the DOER was still working on clearer guidelines for communities and hoped to have that within a week or so. This is making things a little more difficult in determining what Newton actually needs to do to satisfy the requirements of Criteria Two. The likely outcome would be that the City would need to adopt a zoning amendment to allow expedited permitting for all uses in Multi-Use and Manufacturing districts.

#### Grant Projects

Ald. Sangiolo asked if the City would have a project ready to submit for a grant if Green Community designation was achieved. Since the grant application deadline is May 28<sup>th</sup>, they would need a plan ready to go as soon as possible. Ald. Crossley said the Long Range Planning Committee has been discussing this and they plan to speak to it at their next meeting (March 10). She said Bob Rooney, Candace Havens and other members of the Planning Dept. as well as Art Cabral from Public Buildings have been involved in the discussions. Ald. Yates asked if the project would need to be “shovel-ready”. Ald. Crossley said it would not.

#### Site Maps

Jen Molinsky showed maps of the City that showed sites that could possibly meet the 50,000 square foot requirements. She looked for sites that had buildings ready-to-go, as well as sites that would need redevelopment. She said they are trying to determine if just a particular use within a designated zone could receive expedited permitting, or would all uses within that zone qualify under Chapter 40A. The DOER has not clarified this yet.

Public Comment

*Jonathan Kantar, Chestnut Street, Newton.* He said that the DOER was eager to have communities meet the designation and award some grant money. They are willing to work with communities in order to make that happen.

Public Hearing and Follow Up

Ald. Johnson has proposed a public hearing date of April 12<sup>th</sup> for these items should a zoning ordinance amendment be necessary. She asked for clarifying language from the Planning Dept. and the Law Department. Ald. Lappin would also like to know what sort of project the City would have in mind for the grant money.

The Committee voted to hold #46-10, #46-10(2) and #475-08 unanimously.

#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]

**ACTION:**      **HELD 8-0**

**NOTE:** Please see note for above items.

#164-09      ALD. HESS-MAHAN proposing the following amendments to the accessory apartment ordinances: (1) amend Sections 30-8(d)(1)a and 30-9(h)(1)a to explicitly allow the homeowner to live in the accessory apartment; (2) amend Section 30-9(h)(1) to allow accessory apartments in a single family residence located in Multi Residence 1 and Multi Residence 2 zoned districts; and (3) amend the provisions of Sections 30-8(d)(1)b and 30-9(h)(1)b to allow accessory apartments in residential buildings built 10 or more years before an application for a permit is submitted; (4) delete the provisions of Sections 30-8(d)(1)(h) and 30-9(h)(1)(h) that require landscape screening for fewer than 5 parking stalls; (5) amend Sections 30-8(d)(1)(d), 20-8(d)(1)(e), 30-8(d)(2)(b) and 30-9(h)(1)(d) to allow exterior alterations and add that any exterior alterations, other than alterations required for safety, are subject to FAR provisions. [06/09/09 @ 4:55 PM]

**ACTION:**      **HELD 8-0**

**NOTE:** Ald. Johnson noted that a public hearing was held on this item on January 22, 2010.

Ald. Hess-Mahan said he and Ald. Baker had a mutual concern regarding enforcement of the existing laws to prevent abuses of accessory units. Ald. Hess-Mahan spoke to the Zoning Enforcement Officer, David Norton, who estimates 400-700 illegal units around the City. Ald. Hess-Mahan said some developers are building new structures with accessory units built in and marketing them as such. That would not be allowed under

the proposed amendments nor would it allow any other new use of an accessory apartment. Ald. Hess-Mahan reminded the Committee that accessory apartments were limited to at most 1/3 of the square footage (400 -1,000 square feet for a single family, up to 1,200 square feet for a two family) of a house and he was in no way trying to increase that. At the Public Hearing, Dave Norton expressed a desire to have the minimum square footage for accessory apartments reviewed. He said he has seen some smaller units (approximately 325 square feet) that were suitable, safe and livable and felt they should be allowed. Ald. Hess-Mahan said that could be reviewed at another time.

Brookline and Watertown have been very successful in creating accessory apartments with 122 and 175 units respectively. Newton has 35 units out of 29,000 dwellings in the City. Ald. Hess-Mahan said these proposed amendments would not create a radical escalation of additional accessory units. Instead, they would address some discrete problems that could be helpful for some people to be able to stay in their homes.

#### Accessory Apartment Incentive Program

Ald. Hess-Mahan explained that there was an accessory apartment incentive program (AAIP) put into place several years ago to encourage residents to create units. There had been anecdotal reports that people wanted to create units but could not afford to do so. The AAIP had regulations to provide for use of Community Preservation Funds in order to create accessory units that were considered affordable. Approximately 350 residents came forward with an interest in the program but none of them created any units. The residents expressed several reasons for not going forward. It was also found that some of the requirements were too restrictive, thus disqualifying them from going forward. These proposed amendments address those issues, as well as some of the regulations in the accessory apartment ordinance that have proven too restrictive.

#### Concerns

Ald. Baker said that the proposed amendments to the accessory apartment ordinance are well-intentioned. He did not disagree with their desire to enhance housing opportunities. He wanted, however, to determine where and under what circumstances it would be appropriate to relax some of the current requirements for accessory apartments. He explained that he was on the Subcommittee 20 years ago that brought the opportunity for accessory apartments to be available by-right. Prior to that, they were available only by special permit.

Ald. Baker said he was looking at this issue not as one of affordable housing, but of the zoning density of the City. He said they had to look at the impact of the individual unit that may be created as well as the impact of the community as a whole and to the City financially.

Ald. Baker stated that Newton has 17,000 single family houses representing \$13B in value with average value per home at about \$800K. The single family house is the major source of revenue in the City. There are 3,000 two-family houses representing about \$2B in value with an average value of \$600K (\$300K for each unit), and 300 three-family houses generating about \$200M in value with an average value of \$600K (\$200K for

each unit). Jeff Pontiff submitted letters to the Tab and to the Board stating that a single family house next to multi-family house is worth less, and a multi-family house next to a multi-family house is worth less. Ald. Baker asked the City Assessor, Elizabeth Dromey about this but she was unable to determine if Mr. Pontiff's assertions were correct because she did not know how the data was calculated. Ald. Baker said he was not asserting that the information was correct, just that it brought up a concern about the fiscal impact. Ald. Baker said they need to consider the impact on abutters of an accessory unit. He wanted to be sure that any changes fit into the character of a neighborhood. He showed several slides demonstrating legal accessory units in the City. He said the depending on the location and set-up of each accessory unit, the impact varies. He just wanted to be sure that loosening the restrictions did not have an adverse affect upon abutters and the finances of the City. He noted that he has been approached by people concerned about students moving into the accessory units.

Ald. Baker said he questioned whether the increased density in the City was something they really wanted. Ald. Johnson stated that density is increased throughout the city on a regular basis every time a single family home is torn down and a bigger house, or two houses or condos are built on the lot. The difference is that particular increase in density is not addressing the issue of affordability for people struggling to stay in their homes.

#### Assessments

Ald. Hess-Mahan said sometimes the assessor's database is not always accurate in accounting for the accessory units. The designation of single family with an accessory unit, or multi-family could be dependent on how old the units were and when they were assessed, among other things. He said a single family with an accessory unit allows the house to continue to be assessed as a single family. He noted that Mr. Pontiff used the data from the assessor's office. He also focused on just one area and didn't take into consideration many other factors in determining a property's value. Mr. Pontiff's basis assumption is that greater density drives down property values and Ald. Hess-Mahan does not think that is correct. Every home that has created an accessory apartment has either maintained its assessed value, or increased it, with one or two exceptions. The abutter's property values grew or were maintained at comparable rates to others in their neighborhoods.

#### Amendment 1: Allow homeowner to live in accessory unit.

##### *Straw Vote 5-0-3*

Ald. Shapiro was concerned about families moving into the main dwelling with children and adding to the population of the schools. Ald. Hess-Mahan explained that in a single family home, one would expect a family to live there. The accessory unit would still only have, perhaps, one child at the most because of the size of the unit. He did not expect a student population escalation. Most likely, the older owners of a home would move into the accessory unit, and their own family would move in to provide additional financial and social support. If the older owners had to move and sell their single family home because they could no longer afford to live there, or could no longer live alone, a family with children would most likely buy it and move in. There would be no net increase in the number of children.

**Amendment 2: Allow accessory unit in single family residence in MR1 & MR2.***Straw Vote 7-0-1*

Ald. Baker said one part of this amendment is to clarify that a two family option exists because it is not clear. The second part is to determine if you can have an accessory unit in a detached structure in a two-family zone. Ms. Molinsky said you can do that; it's just unclear if the detached structure can be associated with a single-family or a two-family. Ald. Baker said an accessory unit ought to be an allowed opportunity as opposed to taking a single-family all the way to a two-family. Ald. Hess-Mahan said this amendment would be clarifying that you can have a detached structure as an accessory unit to a single-family home in a two-family zone. You can not currently do that right now.

**Amendment 3: Ten year look back.***Straw Vote on the concept of a moving look back of a number of years (undetermined at this point) in place of a date in time, 8-0*

Ald. Hess-Mahan said the date in the original ordinance has never been changed since 1989. He wanted to update this otherwise accessory apartments would not be allowed in buildings unless they were more than 20 years old at this point. In order to encourage people to preserve the existing housing stock and use existing infrastructure and services rather than build new structures, they wanted to have some sort of look back period and decided 10 years made sense. He came to this number by calculating that the average homeowner owns their home for 20 years. If half way through this period of time, they find they need an accessory apartment, he felt that was reasonable. This also prevents people from building a new home and immediately adding an accessory apartment. This also provides more rental opportunities in the city as opposed to tearing down a single family home and replacing it with two townhouses that are ownership opportunities only. Ald. Hess-Mahan reiterated that the Inspectional Services Department has estimated that there are 400-700 illegal units in the City. He said this spoke to the demand for this kind of living opportunity. Ald. Swiston felt there should be a longer look back period. Ald. Baker thought it would be an incentive for people to build a house knowing that in 10 years they could create an accessory apartment. Ald. Hess-Mahan did not think that was reasonable. Ald. Baker would like to see a look back of 15 years as he felt this should be designed to preserve the older housing stock. Some members felt that perhaps the look back period should be connected to the length of time a homeowner lives there versus the age of the house. Ald. Hess-Mahan did not want that because people's needs arise when they arise. Ald. Johnson said they would get further guidance of the number of years.

**Amendment 4: Screen of parking stalls***Straw Vote 2-2-4*

Ald. Baker felt that the screening requirement should remain, as in existing units. He said the screening was a hedge or fence for the one extra space. Ald. Lennon said that some properties may not lend themselves to screening so he was undecided on this point. Ald. Hess-Mahan said he was looking for a modicum of fairness. If one needed to provide three stalls, then the parking and screening requirements for three stalls should be

required. If one had 5 stalls, then the same should apply. But he sees many families with more than 3 cars and he doesn't care as much about how it looks if it's a family.

**Amendment 5: Exterior alterations**

*Straw Vote 1-3-4*

Commissioner Lojek said that as far as Inspectional Services is concerned, a single-family house with an accessory apartment is a two-family house; a two-family house with an accessory apartment is a three-family house. The Building Code requires that. They can not make any requirements on who might live in the accessory unit. Ald. Baker pointed out that the accessory unit runs with the land and is not temporary. He said this was building two-family opportunities. The original unit may be built for a family member, but the next owner may have a different use.

In terms of exterior alterations, Ald. Hess-Mahan said the administrative process through the Planning Department could determine if the exterior alterations were in keeping with the character of the neighborhood and the home.

**Comprehensive Plan**

Ald. Johnson referred to the Comprehensive Plan which was adopted by the Board of Aldermen in 2007: In part, it states:

*Retaining the physical, aesthetic and economic diversity of the existing housing stock is a key means of accomplishing our intentions since the city's development potential is so limited that the future housing stock will largely be housing which already exists.*

- *We need to encourage, promote, and assist with the preservation and continued residential use of existing housing units that, although still having a useful potential as housing, are threatened with demolition or conversion to non-residential use.*
- *We need to provide assistance to homeowners for improving conditions not meeting building and health code requirements.*
- *We need to facilitate modifications to existing housing that can serve housing goals, such as creating accessory apartments, where appropriate.*

Ald. Baker added a reference to other language in the Comprehensive Plan supporting accessory apartment rule refinements "*where it would not be disruptive of the neighborhood fabric.*"

The Committee voted to hold this item.

Respectfully submitted,

Marcia Johnson, Chairman