

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MARCH 22, 2010

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

Absent: Ald. Lappin and Sangiolo

Also Present: John Lojek (Commissioner, Inspectional Services Dept.), Marie Lawlor (Associate City Solicitor), Candace Havens (Interim Director, Planning and Development Dept.), Jen Molinsky (Planning and Development Dept.), Karyn Dean (Committee Clerk)

#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 6-1-0 (Ald. Yates opposed)**

Clerk's Note: This item was heard in a public hearing on February 22, 2010. The public hearing notice is attached. Please note that the language in the public hearing notice varies from the language in the docket item and is referenced in this discussion.

NOTE: Ald. Johnson explained that at the last discussion of this item, the Committee was able to come to some measure of agreement on proposed amendments (1), (2), and felt they had the needed information. On proposed amendment (4), the discussion was not resolved but dwindled as the night wore on. The Committee asked the Planning Dept to do additional research on proposed amendments (3) and (5) regarding the lookback period and exterior changes. She would like to focus this discussion on (3), (4) and (5).

Zoning Policy

Ald. Baker said that zoning policy is not generally made because of a financial hardship of an individual homeowner. Zoning variances do not allow that and it is generally not done across the board. He feels they have to look at what kind of policy is being served.

Having opportunity is an important policy and that is why they have an accessory apartment ordinance. He said the question is how much of a change and modification is worth doing to provide additional opportunity without doing injury to the other values of the policy.

Amendment (3): Age of Dwelling

This amendment would allow accessory apartments in residential buildings built 10 or more years before an application for a permit is submitted. Ald. Yates was in favor of this period of time but could be persuaded to support a 15 year age restriction. Ald. Baker is in favor of a 15 year age restriction that could possibly be reduced to 10 years by special permit. He wants to be sure the properties are older and he wants to preserve an age restriction pertaining to accessory structures on a site. He could be persuaded to support a 10 year restriction if it covered accessory structures as well. Mr. Lojek said the Inspectional Services Dept considers an accessory structure on a single family site a residential structure so this amendment would cover accessory structures. Ald. Hess-Mahan said he is more concerned about new construction creating accessory apartments or structures. The 10 year restriction would prevent that. He is not interested in causing any problems with accessory structures. Ald. Lennon is comfortable with a 10 year restriction.

Ownership Restriction

Ald. Shapiro feels there should be some restriction regarding the length of ownership of a home before allowing an accessory apartment. He said it could add density to a neighborhood more quickly than neighbors might like. He is concerned there could be an influx of new accessory apartment and families with children putting more stress on already crowded schools. Ald. Swiston said that accessory apartments are quite small so it is unlikely there would be schoolchildren moving into them. Even if the homeowners moved into the accessory apartment and a family moved into the main dwelling, it would not affect density. She noted that if the homeowners sold that home, a family would likely move in so there would be no net increase in the number of children in either case. Ald. Hess-Mahan said he does not want to be thinking about creating housing policy that dissuades families with children from moving to Newton. Ald. Shapiro said he wants the City to grow organically. He does not want to encourage policies that push it in a growth direction that it can not afford. He said he is not looking for a policy that discourages families from moving to Newton. He does however, think that the City has to live within its means and be sure that the people already living in the Newton get what they need. Ald. Crossley said she is not sure what Ald. Shapiro means by growing organically and is concerned about what image that might leave people with. She feels that housing opportunities need to be made available to a larger population and she does not want to lose diversity in this community. She supports the proposed amendments and said they were put together very carefully with input from many expert sources and careful consideration. The Planning Board voted in favor of the 10 year age restriction by a vote of 4-1.

Ald. Hess-Mahan also noted that having an ownership restriction does not have an affect on when or how density of a neighborhood might change. For example, someone living

in a house for 10 years could add an accessory apartment in June, or someone just moving into that same house in June could add an accessory apartment. Ald. Hess-Mahan said that a homeowner's need arises when it arises and how long they have lived in the home should not matter. Ald. Swiston is not sure why length of ownership would matter and is not concerned about that.

Amendment (5): Exterior Changes

This amendment would allow limited exterior alternations or additions. Ald. Baker said his concern is that this a key change in the ordinance compared to the other changes. The intent in the current ordinance is to allow the existing housing stock to be adapted in appropriate situations to have accessory apartments. If people are willing to make a trade-off inside a structure with minimal changes to the exterior that is different than expanding the structure. Expansion has been allowed via special permit and that seems like an appropriate process to ensure that the changes fit into the context of the community. He would prefer to keep the exterior changes minimal. If there is a modest adjustment needed to meet building code requirements, he would be willing to consider that. He is not prepared to support that people could build out to the FAR. The FAR Task Force has spent a lot of time and has come to a unanimous decision that they will present soon. Ald. Baker said it expands the overall FAR for smaller lots and balances that by somewhat more restrictive rules on larger lots. They have created a schedule that has a range of proposed FARs. If the Board were to follow those recommendations, one might see a larger FAR envelope in some of the smaller structures where accessory apartments might have greater impact. He views that as appropriate opportunities for special permits as opposed to as-of-right.

Ald. Swiston was concerned that people might add an accessory apartment by adding onto the footprint of their house, then remove the accessory apartment and just have a bigger house. She wondered if this was a loophole. Ald. Hess-Mahan explained that someone can just add on to their house up to FAR as soon as they move in. A loophole isn't necessary.

Ald. Hess-Mahan thinks the proposal from the March 19, 2010 Planning Department makes sense:

“Consider limiting additions (including additions to enclose egress stairs) to a specific size, such as a maximum of 10% of the floor area of the original building, up to some maximum (perhaps 200 to 300 sq. ft) and up to allowable FAR; or.....a maximum of 250 sq. ft., which is less than the minimum size of an accessory apartment, or 25% of the floor area of the new unit.”

He did not want people to be punished in the special permit process, however, by only being able to go up to FAR if they are already at FAR. He wants to get some relief on exterior alterations. Ald. Hess-Mahan thinks there is a compromise in the loosening of the requirements without opening the floodgates on by-right administrative process apartments and leaving the significant additions to special permits.

Ald. Hess-Mahan felt it might be better to wait until the new FAR information comes in from the FAR Task Force to deal with Amendment (5).

Amendment (4): Screening for Parking

Ald. Hess-Mahan said the screening requirement adds more cost. The current requirement imposes the same restrictions on 3 spaces as is required for 5 spaces. He noted that many families have 4 cars and they park in their driveway without any screening. He didn't think adding a modest size accessory apartment to a single family home and one additional car should require this type of screening. He thinks that 3 spaces should require the screening for 3 spaces – which is that no screening is required. If a two-family house is adding an accessory apartment, then screening should be required because there would be 5 parking spaces. He wants this to be equitable. Ald. Yates said he did not think they should allow new uses to follow the example of older uses and he thinks the screening requirement should remain. Ald. Crossley agreed with Ald. Hess-Mahan. Adding one additional car was a modest use of space. She wants to see the laws relaxed to increase the opportunity for this kind of housing. She feels there is an inconsistency in the law. It currently requires more of people who create accessory apartments than is allowed in general around the City.

Opposed to Amendment

Ald. Baker said he would like to put the parking requirements into the accessory apartment ordinance. The current requirement is there needs to be screening of 3 to 3.5 feet high depending on whether it is a fence or a hedge; no parking 6 feet inside the front setback; and the addition of one space. He would like to keep this screening for parking requirement as it is. It was not reported as one of the impediments to creating an accessory apartment on the CLN survey. Ald. Hess-Mahan said they there was some data that people were put off by the screening requirement. Ald. Baker said he was cautious because he did not want the changes to have a negative impact on abutters. He feels there should be some appropriate level of screening and would like to eliminate amendment (4). Perhaps they could add some measure of screening that is less than what is currently required. Ms. Molinsky read some language from the Lexington ordinances that require a lesser degree of screening. It is less specific and more general.

Discretion

Ald. Lennon said that some lots are very small and adding this type of screening would be impossible. He would hate to see this requirement become the only impediment for those with smaller lots. Ald. Baker wondered if the Planning Department could have some discretion with this requirement. He would feel more comfortable if each case could be reviewed and screening required if the situation called for it. Mr. Lojek said it was required that the petitioner follow the recommendation on screening of parking, if it is deemed that it is required. He felt the Planning Dept. should have some discretion in determining that. Ms. Lawlor reviewed the ordinances to determine if the Planning Dept has some discretion on screening requirements. There was some difference of opinion on whether or not they can exercise discretion on screening. The ordinance concludes with The Director of Planning would determine “.....whether in his or her opinion the

applicant has complied with the requirements of section 38(d).” Section 38(d) includes the current screening requirement. It does not say the applicant has to comply with recommendations that are outside the requirements.

Housing Philosophy

Ald. Johnson said the Committee needs to examine the goal of relaxing this policy. The aldermen as individuals and as a Board need to think about what the direction should be relative to housing policy and philosophy based on the Comprehensive Plan. Will the changes in this policy facilitate that philosophy or hinder it. She thinks relaxing this policy will facilitate it and enable people to stay in the City or live in this City. There are opportunities for people to build 3,000 square foot homes and she would like to see the opportunity for this kind of housing as well. She supports all of the amendments proposed, with the exception of (5) which Ald. Hess-Mahan has excluded. Ald. Swiston agreed with Ald. Johnson.

Ald. Swiston moved approval of the item, minus (5). Ald. Baker asked Ald. Swiston if she would accept a friendly amendment to include the Lexington model of less restrictive screening. Ald. Johnson said it would go against the goal of this amendment. Ald. Swiston would like to get this item approved and would be willing to consider some other ideas.

Amendment (2) and (6): Allowing Accessory Apts in Single Families in MR1 and 2

Hess-Mahan pointed out that Amendment (6) was added to the public hearing notice which is to “(6) amend 30-1, definition of “accessory apartment” to be consistent with changes listed above.”

Ald. Yates had some problems with Amendment (2) as written in the public hearing notice, which is different than the docket item language. Ms. Molinsky explained that typically, public hearing notices do contain a bit more detail than the language in the docket item but the intent is the same in both cases. The change is to allow one to have an accessory apartment in a detached structure whether or not it’s a single-family house or a two-family house in an MR district. Ms. Molinsky said this is a substantive change in allowing it in a single-family house detached structure and a clarification in regards to a two-family house detached structure in an MR district. These would be by special permit only.

Follow Up

Ald. Lennon said he was concerned that this item will generate lengthy discussions on the floor of the Board and get stuck. He would like to figure out a mechanism to inform the rest of the Board of the details of this discussion, beyond the Committee reports. He asked the Committee to reach out to other members of the Board as well. Ald. Johnson agreed. Ald. Johnson asked Ald. Hess-Mahan if he would consider holding the item to give the Law Dept. and the Planning Dept. some time to come up with some intermediate language on Amendment 4.

The Committee would like more clarification in Amendment (2) relative to special permits. They will look for some intermediary language regarding Amendment (4) so long as it did not require a new advertisement and public hearing. Amendments (1), (3) and (6) shall need no further review. Ald. Baker would like the exact language of what the Board would be voting on, including any references that are made within it. Jen Molinsky said she would work on a packet of information for further clarification.

Ald. Shapiro wanted to know how many new dwellings would be created through these amendments and what the impact would be on the resources of the City. Ald. Hess-Mahan said he expected an increase of about 18 units throughout the City and would be very surprised if it went up to 35. There are currently 35 legal units in the City. But it is really impossible to know for sure.

Ald. Hess-Mahan moved to hold this item and the Committee approved by a vote of 6-1-0 with Ald. Yates opposed.

#62-10 ALD. JOHNSON, LAPPIN, CROSSLEY, DANBERG AND HESS-MAHAN proposing a RESOLUTION to His Honor the Mayor to establish a Zoning Reform Scoping Group, to be appointed by the Mayor and the Board President in consultation with the leadership of the Land Use and Zoning & Planning Committees, for the purpose of developing a plan to reform Newton's zoning code. Responsibilities would include, but not be limited to, determining long and short term objectives, identifying funding options, researching best practices of communities that have undergone zoning reform and identifying potential resources to assist in the process.
[02/23/10 @ 6:46 PM]

ACTION: **APPROVED 6-0**

NOTE: Ald. Johnson explained that many people have talked about zoning reform and it seems everyone has a different idea of what that means. She would like to see a zoning reform scoping group formed to determine what there is to do in terms of reform. The Mayor is in support of this as are the directors of the Inspectional Services Dept. and the Planning Dept. They are all willing to provide resources to support this effort. This group would determine, for example, if the organization of the zoning ordinances needed work, or the content and policies of the ordinances needed work, or both. For example, Mr. Lojek said that he would recommend more illustrations in the ordinances to make them clearer for the public. But there could also be clearer language, cleaning up of references, or substantive changes in policy. It could be anything and that is what they would like to have determined. Ald. Baker wanted to be sure that any changes that ISD or Planning would recommend could be implemented independent of the recommendation of a reform group if they were deemed necessary and important.

Ald. Johnson noted that this would not be a zoning reform group – it would be a group to determine what the reform should look like. Ald. Hess-Mahan noted that the Comprehensive Plan recommends that this be done. Ald. Crossley said the

Comprehensive Plan provides a vision for the City and could be used as a guide for this group to find reforms that would support that vision.

The Committee voted to approve this item 6-0.

#18-10 ALD. YATES requesting a report from the Conservation Commission as to whether the Commission feels that the ticketing process for violation of wetlands laws proposed in docket #168-02, approved by Zoning & Planning in 2004 and subsequently voted No Action Necessary by the Board in 2009, would still be valuable in preserving the City's environment. [01/04/10 @ 8:16 PM]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Ald. Yates explained that he received word from Ms. Philips at the Conservation Commission who said this process would not be valuable to the City. He asked the Committee to vote No Action Necessary and the Committee did so.

Respectfully submitted,

Marcia Johnson, Chairman

CITY OF NEWTON
PUBLIC HEARING NOTICE
FOR
MONDAY, FEBRUARY 22, 2010

A Public Hearing will be held on Monday, February 22, 2010 at 7:45 PM, Second Floor, NEWTON CITY HALL before the ZONING & PLANNING COMMITTEE and the PLANNING & DEVELOPMENT BOARD, for the purpose of hearing the following petition, at which time all parties interested in this item shall be heard. Complete text is on file in the office of the clerk of the board of aldermen, first floor of Newton City Hall and on the city's website at www.ci.newton.ma.us under board of aldermen/committees/zoning & planning/2010.

Notice will be published Monday, February 8, 2010 and Monday, February 15, 2010 in the NEWS TRIBUNE and Wednesday, February 17, 2010 in the NEWTON TAB, with a copy of said notice posted in a conspicuous place at Newton City Hall.

#164-09 ALD. HESS-MAHAN proposing the following amendments to Chapter 30 of the City of Newton Revised Zoning Ord, as amended, 2007, relative to accessory apartments:

- (1) amend Sections 30-8(d)(1), 30-8(d)(1)a, 30-9(h)(1), and 30-9(h)(1)a) to explicitly allow the homeowner to live in the accessory apartment;
- (2) amend Section 30-9(h)(1) and 30-9(h)(2) to allow accessory apartments in a detached structure associated with a single-family residence in a Multi Residence 1 and Multi Residence 2 district and to clarify that accessory apartments are allowed in detached structures associated with two-family residences; and amend 30-9(h)(1) to clarify that a single-family dwelling located in a Multi Residence 1 or Multi Residence 2 district may be divided into a two-family dwelling according to other provisions of the zoning ordinance;
- (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), 30-8(d)(1)e), 30-8(d)(2)b), 30-9(h)(1)d), and 30-9(h)(1)e) to allow limited exterior alterations or additions, subject to FAR or other dimensional controls, to accommodate an accessory apartment; amend the conditions, where a special permit is required, for approval of exterior alterations or additions; and to remove the time limit before which additions and exterior alterations must be completed to meet the requirements of Table 30-8;
- (6) amend 30-1, definition of "accessory apartment" to be consistent with the changes listed above.
