

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
ZONING & PLANNING COMMITTEE REPORT  
MONDAY, SEPTEMBER 8, 2008

Present: Ald. Yates (Chairman), Ald. Lappin, Baker, Swiston, Harney, Linsky, Danberg, and Ciccone; also present Ald. Hess-Mahan

Planning & Development Board members: David Banash (Chairman), Carol Beard, Tabitha McCartney, and Joyce Moss,

City staff: Michael Kruse (Director of Planning & Development), Marie Lawlor (Assistant City Solicitor), Jennifer Molinsky (Planner), Linda Finucane (Chief Committee Clerk)

***Public Hearing opened June 23 continued to September 8, 2008***

#108-07      ZONING TASK FORCE recommending amendments to Section 30-15, Table 1, Footnote 7(3), referred to as the fifty percent (50%) demolition rule, by deleting said provision and creating an ordinance with provisions: (1) specifying the method for calculating what constitutes 50% demolition based on total surface area of the walls and roof; (2) defining demolition to include the conversion of an exterior wall to an interior wall; (3) where less than 50% of the building is demolished, limiting total gross floor area of remaining portion of building plus any addition to 140% of the applicable FAR, provided that the resulting structure complies with all other applicable dimensional controls; (4) requiring that the Inspectional Services Department determine that an existing wall not proposed to be demolished is structurally unsound after demolition and/or construction has begun and review and approve plans for replacement with an identical wall prior to such replacement.

ACTION:      HEARING CLOSED

NOTE: This item was the subject of a public hearing on January 28, 2008, but the 90 days in which to act expired and a second hearing opened on June 23 and continued to September 8. The Commissioner of Inspectional Services had questioned whether the original intent of footnote 7(3) was to allow limited *reconstruction* of existing dwellings that already exceeded the FAR, but not enlargement of those dwellings. Over time, the provision has been employed to seek significant enlargements of existing dwellings without FAR limitation. Some applicants have actually gone as far as to incorporate the walls of the existing structures into the new large structure. The proposals contained in this item reflect the report of the 50% Demo subcommittee of the Zoning Task Force created in 2006 and chaired by Alderman Hess-Mahan. There was no public comment this evening, but testimony from the prior hearings has been incorporated into the record.

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At this evening's working session, Commissioner Lojek distributed two alternate amendments: one, suggested by Mr. Kruse, proposes to delete footnote 7(3), the other, written by Mr. Lojek, would add a definition of "reconstruction" to section 30-1. The Committee's objective is to make perfectly clear that an existing structure with existing non-conforming FAR may be reconstructed to its previous size and FAR, no bigger. When adopted in 1997, the intention of residential FAR was to help preserve the streetscape and fabric of neighborhoods by modifying the bulk of dwellings. From records, it appears that the 50% provision was intended to preserve reconstruction options, but it has evolved into a tool primarily for developers to maximize the scale of new structures without the control of FAR. Commissioner Lojek pointed out that most communities have a provision relative to reconstruction following a catastrophic event such as fire or flood, but Newton's ordinances lack any provision.

Dino Rossi is a resident of 248 Valentine Street and served on the Zoning Task Force. Mr. Rossi asked if the proposed amendment(s) would allow reconfiguration of the site. Commissioner Lojek said no, other than perhaps a slight increase in setback. Mr. Rossi spoke of how frustrating it was that a number of architects, land use attorneys, and developers devoted time and expertise to serve on the Task Force and now it appears their recommendations are being ignored. Alderman Baker said he understood, but observed that the subcommittees themselves did not always reach consensus. The Chairman remarked rather pointedly that the Board of Aldermen is the body that adopts legislation.

In conclusion, the Committee leaned toward a definition, but thought "essentially" a bit vague. What is the difference between 49% and 51%? Should 50% be the benchmark? Law and Inspectional Services were asked to work on the definition for the next meeting. The Committee suggested that illustration(s) be included in the ordinance.

***Public Hearing opened June 23 continued to September 8, 2008***

#109-07      ZONING TASK FORCE recommending amendments to Section 30-5(b)(4), referred to as the three-foot grade change ordinance, by deleting the existing language and: (1) add a provision defining structure in Section 30-1 to include retaining walls that exceed five (5) feet in height; (2) substitute language in Section 30-5(b)(4) to allow the Zoning Board of Appeals to grant a special permit for the construction of retaining walls that exceed five (5) feet in height; and (3) create an ordinance to require the Engineering Department to review and approve a drainage plan for construction or alteration of single and two-family residences that would increase impervious surface by the lesser of 5% or 500 square feet and for all other types of construction or alteration.

**ACTION:**      **HEARING CLOSED**

**NOTE:** This item was the subject of a public hearing on February 25. After the expiration of the 90 days, a second hearing was opened on June 23 and continued to September 8. Phillip Herr of 20 Marlboro Street was the only speaker this evening; however, testimony from the prior hearings has been incorporated into the record.

The requirement of obtaining a special permit for a change of grade in excess of three feet appears to be unique to Newton. Historically, finding public benefit has been difficult, usually the finding relates to drainage being contained on-site. This item resulted from recommendations of the 3-foot Grade Change subcommittee of the Zoning Task Force.

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Briefly at the working session, the Chairman said that a pending special permit petition at 62 Carlton Road made him re-think the issues involved in a 3-foot grade change and in particular retaining walls. He suggested:

- that the height should be 4 feet as referenced in the State Building Code and suggested by subcommittee member Mark Sangiolo;
- that the special permit granting authority not be delegated to another board or commission;
- that the Law Department develop with the Engineering Division of the Department of Public Works a draft ordinance that creates specifics for review and approval by the Engineering Division.

***Public Hearing opened June 23 continued to September 8, 2008***

#111-07      ZONING TASK FORCE recommending amendments to 30-21(3)(c), referred to as the de minimis rule, by amending the existing language with provisions: (1) clarifying the applicability to and effect of the rule on (a) the minimum distance between buildings; and (b) all applicable dimensional controls; and (2) creating a new procedure for approving a de minimis extension of the nonconforming nature of a structure.

ACTION:      HEARING CLOSED

NOTE: This item was the subject of a public hearing on January 28, 2008. After the expiration of the 90 days, a second hearing was opened on June 23 and continued to September 8. There was no public comment this evening, but testimony from prior hearings was incorporated into the record. The De minimis Rule subcommittee of the Zoning Task Force recommended this item.

Commissioner Lojek's comment was that this item is de minimis, i.e., clarification at this time is not as urgent as the items above.

***NOTE: Resumes for the following re-appointees were attached to the agenda. After Aldermen Lappin and Danberg moved approval of the re-appointments of Mr. Dickson and Mr. Lang, Alderman Baker moved approval of the remaining re-appointees, all of whom are well-known to most Board members, and suggested the committee review them as "first call items" with the caveat that any member could move hold and the individual would be invited to a future meeting. All re-appointments were approved unanimously, 8-0.***

Re-appointment by His Honor the Mayor

#232-08      DOUGLAS G. DICKSON, 17 Oxford Road, Newton Centre, re-appointed as a member of the CONSERVATION COMMISSION for a term to expire April 30, 2011.

Change in status of Appointment by His Honor the Mayor

#233-08      DONALD LANG, 999 Chestnut Street, Newton Upper Falls, currently an *alternate* member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION appointed as the *permanent* Newton Historical Commission representative member for a term of office to expire July 1, 2010.

Re-appointment by His Honor the Mayor

#234-08      JAMES H. MITCHELL, 83 Countryside Road, Newton Centre, re-appointed as an associate member of the ZONING BOARD OF APPEALS to a term to expire February 1, 2009.

Re-appointment by His Honor the Mayor

#279-08      JOSEPH G. COSGROVE, 125 Shornecliffe Road, Newton, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire September 30, 2011 (60 days: 10-10-08).

Re-appointment by His Honor the Mayor

#280-08      VINCENT FARINA, 24 Manemet Road, Newton Centre, re-appointed as an *associate* member of the ZONING BOARD OF APPEALS for a term to expire September 1, 2009 (60 days: 10-10-08).

Re-appointment by His Honor the Mayor

#281-08      BROOKE K. LIPSITT, 54 Kirkstall Road, Newtonville, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire September 30, 2011 (60 days: 10-10-08).

Re-appointment by His Honor the Mayor

#282-08      BERNARD F. SHADRAWY, 789 Commonwealth Avenue, Newton Centre, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire September 1, 2011 (60 days: 10-10-08).

Re-appointment by His Honor the Mayor

#283-08      WENDY PENNEBAKER MATTHEWS, 44 Concolor Avenue, Newton, re-appointed as a member of the NEWTON UPPER FALLS HISTORIC DISTRICT COMMISSION for a term to expire January 1, 2012 (60 days: 10-10-08).

Change of status of appointment by His Honor the Mayor

#284-08      ALFRED WOJCIECHOWSKI, 43 Halcyon Road, Newton Centre, currently an alternate member, appointed as a regular member of the HISTORICAL COMMISSION for a term to expire January 1, 2009 (60 days: 10-10-08).

Re-appointment by His Honor the Mayor

#302-08      SETA DER HOHANNESIAN, 14 Summer Street, Newton Upper Falls, re-appointed as a resident member of the NEWTON UPPER FALLS HISTORIC DISTRICT COMMISSION for a term to expire January 1, 2012 (60 days: 11/1/08).

Re-appointment by His Honor the Mayor

#303-08      DAVID MORTON, 148 Edinboro Street, Newtonville, re-appointed as a member of the NEWTONVILLE HISTORIC DISTRICT COMMISSION for a term to expire January 1, 2012 (60 days: 11/1/08).

Re-appointment by His Honor the Mayor

#304-08      RALPH ABELE, 15 Page Road, Newtonville, re-appointed as an alternate member of the NEWTONVILLE HISTORIC DISTRICT COMMISSION for a term to expire January 1, 2012 (60 days: 11/1/08).

All other items were held without discussion and the meeting was adjourned at approximately 9:45 PM.

Respectfully submitted,

Brian Yates, Chairman