

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, OCTOBER 27, 2008

Present: Ald. Yates (Chairman), Linsky, Swiston, Harney, Baker and Lappin

Absent: Ald. Ciccone and Danberg

Also present: Ald. Hess-Mahan

City staff: Michael Kruse (Director of Planning & Development), Marie Lawlor (Assistant City Solicitor) and Jennifer Molinsky (Planner)

Appointment by His Honor the Mayor

#360-08 HILLARY S. BROWN, 39 Crescent Avenue, Newton Centre, appointed as an *associate member* of the ZONING BOARD OF APPEALS for a term of office to expire September 1, 2009 (60 days 12/19/08).

**ACTION:** **HELD 6-0**

**NOTE:** Ms. Brown could not be present at the meeting tonight. Her resume was attached to the committee agenda. She will attend the committee meeting on November 10, 2008.

#110-07(2) ALD. HESS-MAHAN proposing that §30-15(t), **Dormers**, as established by Ordinance Z-20, dated April 7, 2008, be amended by repealing the provision prohibiting dormers in accessory structure except by special permit.

**ACTION:** **APPROVED 5-0-1 (Baker abstaining)**

**NOTE:** Alderman Hess-Mahan explained that this provision in the restrictions on dormers had not been discussed by the committee or the full Board, when the Board passed Docket Item #110-07. Mr. Lojek said that he had never had a complaint of any sort about dormers in accessory buildings before the passage of Docket Item #110-07. Since the passage of the item, he has received several complaints from property owners, who had designed accessory buildings with dormers. These owners did not want the expense and delay of getting special permits, so they went with alternative designs that were less attractive than the original designs in his view. He strongly recommended approval of the item, as did the Planning Director. The attached Planning Board Notes also recommend approval of the item. Other than the possible infringement on privacy from dormers in buildings closer to the lot line than the main buildings, there appears to be no valid reason for this restriction and its necessity was not clear. Based on the strong recommendations of the Inspectional Services Department and Planning Department and a lack of a clear-cut reason for keeping the existing provision in place, the committee voted five in favor and one abstention (Baker) to approve the item to repeal the prohibition on dormers in accessory buildings.

#236-08 ALD. HESS-MAHAN proposing that the definition of “floor area, gross” in §30-1 be amended to clarify that the floor area in a half-story located immediately above the first floor is included in the calculation of floor area ratio.

**ACTION:** **APPROVED 4-0-2 (Swiston and Lappin abstaining)**

**NOTE:** Ms. Molinsky presented a slide show of buildings built under this provision (see attached.) Mr. Lojek explained how the buildings were caused by the existing provision and the excessive density in these cases due to the exclusion of the spaces under these bizarre dormers. He said that the impact of such gross overdevelopment was cushioned by the large sizes of the subject lots. Overbuilt buildings on smaller lots would have a more significant impact.

All members who had served at the time of the passage of the half-story ordinance agreed that it was intended only to apply to construction over two stories. The committee therefore voted to approve the item by a vote of four in favor with two abstentions (Swiston and Lappin.)

#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:** HELD 6-0

**NOTE:** Since the item was heard by the committee, the Planning, Law and Inspectional Services Departments have changed their minds and now recommend that this topic be covered by repealing the much abused 50% Demolition Provision and passing an item allowing reconstruction of buildings destroyed by “catastrophic events” and perhaps by reconstruction in-kind of non-conforming buildings. This led to an extensive discussion of the various issues entailed in it. Ultimately, the item was held until the docketing and hearing of a “catastrophic event: ordinance with or without a nonconforming use reconstruction provision.

Respectfully submitted,

Brian Yates, Chairman