

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING AND PLANNING COMMITTEE REPORT

MONDAY, MARCH 14, 2005

Present: Ald. Yates (Chairman), Ald. Lappin, Sangiolo, Hess-Mahan, Baker, and Johnson

Absent: Ald. Danberg and Lennon

Also present: Ald. Merrill and Harney

City staff: Ouida Young (Associate City Solicitor), Marie Lawlor (Assistant City Solicitor), Lara Kritzer (Historic Planner), Mike Kruse (Director of Planning & Development), Linda Finucane (Clerk)

#18-05      NEWTON HISTORICAL COMMISSION submitting in accordance with M.G.L. Chapter 40C, Section 3, a recommendation that ARTICLE III., HISTORICAL COMMISSION AND DISTRICTS, of the City of Newton Revised Ordinances, 2001, be amended by establishing a local historic district in AUBURNDALE.

ACTION:      APPROVED 5-1 (Lappin)

NOTE: The Committee held a public hearing on this item on February 28, 2005. An introduction was given by Newton Historical Commission Chair John Rodman in which he explained that the NHC had acted as the Study Committee for the proposed historic district and recommended its approval. The District had been reviewed by the Massachusetts Historic Commission which recommended that it be approved. Preservation Consultant Gretchen Schuler then presented a detailed slide show of properties in the District that deserve to be preserved because of their architectural beauty or because of their association with the several phases of the history of the area.

Several property owners residing in the district spoke against it. They felt that they could be trusted to maintain their property and to upgrade it responsibly and they did not want an agency of government to restrict their freedom to use their property as they see fit.

The Attorney for Lasell College said that the College would like several of its properties to be excluded from the District and that if they weren't, the college would sue. The properties in question were the Bragdon Hill block and several properties from adjoining blocks and the block on the north side of Aspen Avenue containing a playfield and a building used as a child care center. The Chair asked how the Dover Amendment which was the basis for the suit and is a section of Chapter 40A of the Zoning Laws could prevent establishment of the Historic District under Chapter 40C. The attorney said that any attempt by a community to use any other regulatory power to prevent a Dover protected use would be struck down by the Courts. (He subsequently submitted a letter to the City Solicitor's office citing a case in which the denial of a rooming house license by the town of Brookline for a proposed Newbury College dorm was overturned by the Court. The Associate City Solicitor Ouida Young explained a the Working

Session that efforts to deny Dover –amendment protected uses would be struck down, but that Historic District efforts to control their appearance were clearly permissible.)

The Chair also asked how the College could sue until it had been denied permission to actually build something. The Attorney said that property owners can seek declaratory judgements on their rights. In the working session, Ms. Young agreed that such requests are possible though they could be fought on the basis that the matter was not ripe for decision. Even if such a motion was taken up, it would still lose on the merits unless the City clearly overstepped its bounds and tried to wipe totally rather than regulate a Dover Amendment use.

More than a dozen owners of homes in the district spoke in favor of the district as a means of protecting the historic character of the neighborhood which some had enjoyed for decades and some had recently purchased their homes to enjoy. Teardowns and inappropriate redevelopment still threatened the district although district proponents had accepted one teardown and replacement on Williston Road.

In a show of hands, the owners of approximately 37 homes in the district supported it, and the owners of 6 homes in the district opposed it. Ruth Schuman, Lasell Director of Institutional Advancement, restated the College's position that it wanted several of its properties removed from the district. If they were, the school would not sue.

Ms. Schuler said that she would be shocked if the properties, most of which are on the National Register of Historic Places, were removed from the district.

Mention was made of the adverse vote of the Planning Board on this district. A proponent stated that several of the Planning Board members who voted against it did so out of a general dislike for historic districts, not because of any specific objections to this one.

Alderman Sangiolo distributed the letter of a couple living at 4 Leighton Road who wanted their house at the edge of the district removed from the district's jurisdiction. After some discussion of the house which is a 1931 Colonial Revival, the Chair asked if anyone was proposing an amendment on this topic. No Committee member was.

At the working session, the testimony was recapped and the letter from the Lasell Attorney explained by the Law Department. Ms. Young was certain that a district Commission that did not overstep its bounds by prohibiting zoning-allowed uses would not be overturned by Court.

After the Lasell proposals were explained on a wall map of the proposed district, the Chair asked if anyone wanted to make any motions on the topic. No one on the Committee did.

There was then some discussion of the relationship of the district before the Committee to one previously voted on the Board. The boundaries of the proposed district are the same as those previously approved by the Committee and which received 15 votes on the floor of the Board but nonetheless failed because passage requires 16 votes.

The boundaries voted on by the previous Board and Committee were somewhat reduced from the original boundaries recommended by the previous Study Committee (the Upper Falls Historic District Commission) and the Newton Historical Commission and Massachusetts Historic Commission.

It was pointed out that the two Commissions did accept the smaller district when it was returned to them for their input and that an additional reduction that had been considered but never accepted would have gone too far for the Commissions. This would have eliminated the lower part of Central Street and at least one house listed separately on the National Register. The Chair pointed out that this section of Central Street had been the site of some of the teardowns that precipitated the move to a district. The Chair also pointed out that the area south of Aspen Avenue was of different character from the rest of the district and contained no individual Register listed properties and only one even surveyed for historic significance. The other section that had been removed was focused on Central Close, which is a private way. Since several of the properties in this section could only be seen from a private way and others were only partially visible from a public way, the exclusion of these properties was not exposing many publicly visible properties to possible alteration and preventing the Commissions from visibility controversies

The Committee finally voted on the District as recommended by the Newton Historical Commission serving as an Historic District Study Commission. The vote was five (Yates, Baker, Sangiolo, Hess-Mahan, Johnson) in favor with Alderman Lappin opposed and Aldermen Lennon and Danberg absent. Alderman Lappin said that since this plan was identical to the one she had previously voted against and that there were still 20% of the homeowners in the area opposed to it, she would still vote against it. If it did pass, she hoped it would be as successful as the Newtonville Historic District which had apparent universal neighborhood support as far as she could tell from the public hearings.

The Committee then adjourned mercifully early.

Respectfully submitted,

Brian Yates, Chair

NOTE: A wall map of the proposed district will be available in the Chamber on Monday evening.