

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING AND PLANNING COMMITTEE REPORT

MONDAY, JUNE 25, 2001

Present: Ald. Yates (Chairman), Ald. Merrill, Johnson, Baker, and Sangiolo

Absent: Ald. Gentile, M. Lipof, and Mansfield

Section 30-15 (c) Task Force Committee Members Present: Ouida Young (Law Department), Mark Gilroy (Commissioner of Inspectional Services), Peter Bronson (Zoning Administrator), Lou Mercuri(Senior Planner), Attorney Mark White, Attorney G. Michael Peirce, Attorney Alan Schlesinger, Alderman Sangiolo (Although Alderman Baker attended most Task Force meetings, he was not an official member.)

Re-appointment by His Honor the Mayor

#122-01 DONALD TELLALIAN, 19 Crystal Street, Newton Centre, re-appointed as a member of the NEWTON UPPER FALLS DISTRICT COMMISSION for a term of office expiring January 1, 2004 (60-day Board action date 6/16/01).

ACTION: HELD 4-0 (SANGIOLO NOT VOTING)

Appointment by His Honor the Mayor

#186-01 DAVID H. FEINBERG, 24 Lee Road, Chestnut Hill, appointed as a member of the Chestnut Hill Historic District Commission for a term of office to expire July 31, 2003 (60-day Board action date 7-11-01).

ACTION: HELD 4-0 (SANGIOLO NOT VOTING)

Appointment by His Honor the Mayor

#224-01 PAUL GLICKMAN, 854 Chestnut Street, Waban, appointed as an Alternate member of the NEWTON UPPER FALLS HISTORIC DISTRICT COMMISSION for a term of office expiring July 31, 2004 (60-day Board action date 8/17/01).

ACTION: HELD 4-0 (SANGIOLO NOT VOTING)

NOTE: Since none of these candidates were present, all were held for the July 12th meeting of the Committee.

Appointment by His Honor the Mayor

#223-01 CAROLE DeJONG, 33 Old Orchard Road, Chestnut Hill, appointed as an Alternate member to the CHESTNUT HILL HISTORIC DISTRICT

COMMISSION for a term of office expiring July 31, 2004 (60-day Board action date 8/17/01.

ACTION: APPROVED 4-0 (SANGIOLO NOT VOTING)

NOTE: Ms. DeJong and her family have lived in the historic district for several years. She has attended Committee meetings concerning the Chestnut Hill School, and is eager to join the Commission. The Committee thanked her for her willingness to serve and voted 4-0 to approve her appointment.

#124-01 ALD. MANSFIELD, SANGIOLO, BAKER requesting the Chapter 30, **DIVISION 4. DENSITY AND DIMENSIONAL CONTROLS**, be amended by deleting the present text of Sec. 30-15 (c) which provides protections for certain residential lots created prior to October 11, 1940, and substitute therefor new regulations applicable to all residential lots, which regulations are similar to the protections afforded lots for single and two-family residential use pursuant to G.L. c.40A, §6, including the requirement that such lots contain a minimum of 50 ft. of frontage and 5,000 sf ft of area in order to be built upon. The proposed amendments would also modify the existing regulations pertaining to adjoining residential lots held in common ownership after 1950 and to residential lots which have been modified as to lot size or shape due to lot line changes by deed or plan.

ACTION: APPROVED 3-0-2 (MERRILL, SANGIOLO ABSTAINING)

#125-01 ALD. MANSFIELD & BAKER requesting that **Sec. 30-26. Alteration, etc., of structure when shape or size of lot is changed.** be amended by creating a new Section 30-26 with subsections (a) and (b). Subsection (a) will include the existing text of Sec.30-26 with proposed amendments. Subsection (b) will provide regulations amending and clarifying the dimensional controls of Sec. 30-15, Table 1 applicable to residential lots which have been modified as to size or shape by lot line changes by deed or plan.

ACTION: APPROVED AS AMENDED 3-0-2 (MERRILL, SANGIOLO ABSTAINING)

#126-01 ALD. MANSFIELD & BAKER requesting that **Sec. 30-21. Applicability of chapter to existing building; nonconforming uses; prior permits.** be amended by clarifying the provisions of 30-21(a)(1)a) to reflect the current practice of permitting alteration, reconstruction, extension, or structural change to a valid non-conforming single or two-family residential structure on a lot with substandard frontage or area provided that such alteration, reconstruction, extension, or structural change does not increase the nonconforming nature of the structure.

ACTION: APPROVED 3-0-2 (MERRILL, SANGIOLO ABSTAINING)

NOTE: These items were generated by the Task Force established by the Committee to deal with the issues concerning older lots. Until recently, they had been perceived as immune from more recent dimensional controls. However, strict readings of all provisions of the ordinance in recent years has lead to numerous pre-1953 or pre-1940 lots that had been altered slightly loosing their exemptions and thus becoming “non-compliant.” A non-compliant structure or use can not be sold or altered and theoretically should not even be occupied. Numerous property owners have needed to seek relief from the Zoning Board of Appeals. At least two of the ZBA cases per month for the past year have been in this category. At the very least, owners face expense. Those who are denied find themselves in a situation where they can not sell or improve their property. The provision of the ordinance concerning automatic merger (and loss of exemption) of older lots in common ownership has led to excruciating searches of the title not just of the subject parcel but of all abutting parcels. These are extremely time-consuming and expensive for property-owners and ISD staff as well. City officials and land use attorneys representing local property owners had reached the conclusion that the current language was creating severe hardships while serving no public purpose. At the request of the Chair of the Zoning and Planning Committee, a Task Force chaired by Alderman (and City Planner) George Mansfield met for several months to come up with amendments to the ordinance to deal with this issue. (It quickly became apparent that the issue of overdevelopment of older lots was too complex to be dealt with immediately) The Task Force met every other week for several months and generated the three items heard by the Zoning and Planning Committee on May 14th and by the Planning Board on June 4th.

The City officials described the impact of the current provisions and explained the means to eliminate it without providing undue development opportunities. The Land Use attorneys at the public hearing and at the Committee meeting on June 25 described the impact on their clients. Mr. Peirce made the point that the dozen or so clients that he and the others had taken through the ZBA process were only the tip of an iceberg. Other owners were trying to avoid difficulties. Many others were unaware of their difficulty, but are vulnerable to a future problem when they try to sell or improve their homes. One known case could indicate a dozen other lots with future problems. Ms. Anne Hadley of 448 Quinobequin Road described her current problem at the public hearing. She and her husband and family, unable to move into their newly purchased but non-compliant home, are staying with her parents. (The ZBA subsequently approved her variance.) The purchase of a million home is currently held up by the current ordinance. At best the current ordinance will continue to cause property owners expense and delays. At worst, it will stop them from using their property.

The Task Force attempted to overcome these problems in several ways. The Task Force attempted to achieve the following goals.

- To reduce the complexity of the section by breaking down various subsections into separate and distinctive parts.

- To minimally change the meaning or policy intent of the section which in parts creates realistic exceptions for merging of common lots.
- To improve administration of the section by only requiring tile and deed searches to 1995 with regard to common ownership of adjoining lot, rather than to 1950 as is presently required.
- To eliminate the ability to build on lots smaller than 5,000 square foot, which is the present minimum, required by State Law.

As is explained in the attached summaries from Ouida Young, items 124-01 and 125-01 work together achieve these goals. Item 126-01 simply allows the previous practice of not finding lots non-compliant for minor reasons. The issues raised in discussion of the items included a comment by Planning Board Chairman Roger Wyner that the items might allow for unintended new development ability in the larger single residence zones. Two new sections 5 and 6 were added to item 125-01 to preclude this. Alderman Gentile raised the issue of the possible impact of the raising of the minimum lot area to 5,000 square feet, the state statutory limit. Property owners with smaller lots might feel deprived of real property value. The Task Force's belief had been that such lots had been allowed for sixty years. It was now time to bring Newton's more generous limits into line with the state law. Mr. Mercuri provided the following statistics (and showed two maps that indicate where all such lots were):

- The total number of residentially zoned lots in the City: 22,549.
- 402 vacant residential lots are held in common ownership with adjoining properties
- 265/402 of those vacant lots are less than 5,000 square feet.
- 1,935 lots in the city are less than 5,000 square feet (total).
- Of the 265 vacant lots, 105 are less than 3,000 square feet (40%).
- 79/265 are between 3,000 and 4,000 square feet (30%).
- 81/265 are between 4,000 and 5,000 square feet (31%).

Alderman Merrill was concerned that some of the provisions of the amendments might allow overdevelopment of older neighborhoods. The Task Force members will continue to meet on the overdevelopment issues, but the change to 5,000 square feet might slightly reduce the overdevelopment of such neighborhoods.

At the meeting on June 25, Attorney Gary Arber of Whittier Road, who was not a member of the Task Force, said that he was aware of cases of serious hardship under the current law and strongly urged passage of the amendments. Jim Sullivan of the Bowen-Thompsonville Neighborhood Association said that passage of the items appeared to be being rushed and urged caution. The Committee felt that the ten meetings of the Task Force that preceded the public hearing on May 14th and the two working sessions of the Committee did not constitute haste. Alderman Johnson said that the latest memo from the Law Department had answered all her questions. The Committee voted 3-0-2. To approve the items as amended in that memo in response to previous Committee

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Concerns. Aldermen Yates, Baker, and Johnson voted yes. Alderman Sangiolo abstained because of her concern that the Planning Board's input should be sought on the amended version. Although the Planning Board had voted approval previously and the major change had been to respond to as an individual concern from Mr. Wyner, the Law Department agreed to send the amend version to the Planning Board members to allow them to raise any final concerns. Alderman Merrill abstained because of concerns about the issue cited above.

The Committee adjourned with the hope that these items could be voted on by the full Board at the July meeting since a delay to August would push them past their expiration date and require a new public hearing.

Respectfully submitted,

Ald. Brian Yates, Chairman