



Zoning & Planning Committee **Agenda**

City of Newton **In City Council**

Tuesday, May 19, 2020

The Zoning and Planning Committee will hold this meeting as a virtual meeting on Tuesday, May 19, 2020 at 7:00 pm. To view this meeting, use this link at the above date and time <https://us02web.zoom.us/j/887899578>. To listen to the meeting via phone dial 1-646-558-8656 and use the Meeting ID 887 899 578.

Items Scheduled for Discussion:

#178-20 Adoption of the Open Space and Recreation Plan Update

DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

Zoning and Planning Held 8-0 on 05/07/2020

#29-20 Review and possible amendment of Demolition Delay and Landmark Ordinances

COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.

Zoning & Planning Held 8-0 on 05/07/2020

#88-20 Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Zoning and Planning Held 8-0 on 04/27/2020

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Chair's Note: *The following three items, #30-20, #38-20, and #148-20, are to be taken up within the context of zoning redesign and specifically as they relate to Article 3.*

#30-20 **Ordinance amendment to repeal Zoning Ordinance 3.4.4 Garages**
COUNCILOR ALBRIGHT requesting amendment to Chapter 30 of Newton's Zoning Ordinance, section 3.4.4 on garages (delayed implementation until July 1). This ordinance has been delayed five times.

Zoning and Planning Held 8-0 on 04/27/2020

#38-20 **Request for discussion relative to single-family attached dwellings**
COUNCILOR LAREDO requesting a review of the zoning requirements for single-family attached dwelling units.

Zoning and Planning Held 8-0 on 04/27/2020

#148-20 **Request to amend Chapter 30 to eliminate parking minimums**
COUNCILORS ALBRIGHT, AUCHINCLOSS, BOWMAN, CROSSLEY, DANBERG, DOWNS, GENTILE, GREENBERG, KALIS, KELLEY, LIPOF, MARKIEWICZ, NOEL, KRINTZMAN, AND RYAN seeking amendments to Chapter of the Revised City of Newton Ordinances to eliminate mandated parking minimums to improve vitality of local businesses, reduce the cost of housing, and support the climate action goals.

Zoning and Planning Held 8-0 on 04/27/2020

Respectfully Submitted,

Deborah J. Crossley, Chair



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 15, 2020

TO: Councilor Crossley, Chair of the Zoning and Planning Committee
Members of the Zoning and Planning Committee
Peter Doeringer, Chair of the Planning and Development Board
Members of the Planning and Development Board

FROM: Barney Heath, Director of Planning and Development
Jennifer Steel, Chief Environmental Planner

RE: **#178-20 Adoption of the Open Space and Recreation Plan Update**
DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

MEETING DATE: May 14, 2020

CC: Luis Perez-Demorizi, Open Space Coordinator
Nicole Banks, Commissioner of Parks, Recreation, and Culture
Jonathan Yeo, Chief Operating Officer
Gabriel Holbrow, Community Planner

Thank you all for your contributions at the May 7th joint ZAP/P&D public hearing/public meeting. There were a few issues raised at the meeting that are being addressed and will be reflected in the next draft.

Strategic Implementation Team

Crafting this update of the Open Space and Recreation Plan (OSRP) has been a huge task as the team worked to develop a clear picture of the City’s open space resources and a clear vision for the future.

An OSRP lays a foundation for implementation and provides general guidance for the City and it satisfies a state requirement for future grant funding; an OSRP is not intended to be a detailed implementation plan. This OSRP update follows the outline required by the state. It provides baseline information and databases; it spells out broad visions; and it identifies goals, objectives, and actions desired or intended to be undertaken over the next seven or more years. The OSRP is not intended to be a detailed implementation plan for individual actions or projects. The details of implementation will require in-

depth analyses of priorities and budget capabilities, metrics of priority and success, careful prioritization, the detail action plans, community engagement, and partnerships. Implementation will, therefore, require lots more input from City staff, engaged citizens, and area experts.

The concept of the OSRP implementation management team was intended to mimic the highly effective Climate Action Plan (CAP) implementation management team: a team of City staff most intimately involved with implementation, who collectively have been tasked with helping to ensure that the CAP gets implemented. Members of that team meet regularly as group, have each taken the lead on individual aspects of the CAP, and have created working groups on individual efforts that involve citizens and experts, as needed. This team is charged with reporting progress to the Mayor and to City Council on a regular basis. The CAP implementation team efforts have been evolving as dedicated staff and engaged citizens work together to determine the most effective ways to accomplish the goals and objectives of the CAP. The crafters of the OSRP anticipate a similar genesis, and evolution, as the OSRP strategic implementation team gets established and develops pathways forward. The language of the OSRP will be edited to reflect this.

Prioritization of Actions

As noted above, this OSRP update is not intended to establish distinct priorities for all 117 proposed actions. Decisions about the timing and funding of individual actions/projects will be made with the help of the implementation team and the City departments/commissions that will be responsible for funding and overseeing those actions/projects. This OSRP update will serve as guidance to many more detailed discussions and deliberations in the future.

The language of the OSRP will be edited to appropriately reflect the current uncertainty of the timing of individual projects.

Efficient Management of Open Space Resources

The OSRP tried to reflect the interest of City staff, the OSRP Advisory Committee, and members of the public who noted that there may be opportunities to improve efficiencies in the land management and maintenance responsibilities of Conservation and Parks, Recreation & Culture (PRC). It was felt that the City should always strive to evaluate its operations and seek improvements in efficiency through open-minded, forward-looking discussions including evaluations of needs, capabilities, bidding, contracting and oversight. There is no assumption that current land management responsibilities be changed.

The language of the OSRP will be edited to remove specific suggestions for consideration and will simply note the interest in ensuring that such conversations about coordination and efficiency are held.

Public Comment

Below, as requested, are summaries of the comments from the public received to date:

- Provide permanent protection for Cold Spring Park and other city parks (this same comment was received from a number of residents)
- Complete the stone dust renovation of the Cold Spring Park Life Course trail (this same comment was received from a number of residents)
- Develop and implement priority plans to greatly reduce invasive species
- Elevate the desire for legal protections for parks
- Elevate the importance of investment in the improvement, maintenance and protection of recreation, green and open spaces, including but not limited to] natural areas, athletic fields, parks,

[the city's outdoor pool,] water resources, and the urban tree canopy. Athletic fields were top-ranked as a concern and yet aren't discussed in detail.

- Elevate the fact that nearly 70% of respondents said that the quality of parks were poor
- Eliminate the idea of transferring management of Bullough's Pond away from the PRC.
- Establish a coalition of "Friends" groups to work together and seek multiple sources of funding.
- Ensure that all laws and plans address the need for trees, habitats and an end to fossil fuel consumption
- Consider the possibility of converting Landfill area on Pine Street to a recreational area
- Consider Pine St lot, next to the Burr School, for cleanup and conversion to park, playing field, etc.
- Provide protected bike lanes on south-to-north routes in the city
- Connect Memorial Spaulding Sch. to Kennard Park via a multi-use shared path along to Dudley Rd
- Provide a sidewalk on Nahanton Street (with Nahanton Park and Heyn Conservation area and Cutler Park on the other)
- Quinnoqueen Road needs safer access
- Provide a sidewalk along Vine Street for safe access to Kessler Woods from Oak Hill neighborhood
- Provide a pedestrian crossing on the Sudbury Aqueduct over the T tracks next to the Eliot T station
- Lobby the golf courses for PILOT payments and suggest voluntary donation of CRs on portions of the golf courses
- Acknowledge Newton's Age Friendly designation

Please note that at the request of the public and City Councilors, the public comment period will remain open until May 18th.

We look forward to the discussion on May 19th.

Electronic Link: City of Newton Open Space and Recreation Plan 2020-2027, dated 4/30/20

<http://www.newtonma.gov/gov/planning/lrplan/os/default.asp>



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 19, 2020

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Katy Hax Holmes, Chief, Preservation Planning

RE: **#29-20 Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.
Zoning & Planning Held 8-0 on 05/07/2020

MEETING: May 19, 2020

CC: John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

The Working Group is nearing completion of its review of the Local Landmark ordinance. Four remaining points of discussion remain. The Group presented a summary of its work at the May 7th hearing of ZAP and continues to meet weekly to work on possible revisions to the historic preservation ordinances. The working group is comprised of Councilors Lisle Baker and Andrea Kelley, ZAP Chair Deborah Crossley and President Susan Albright; Doug Cornelius, member of the Newton Historical Commission; and Planning Director Barney Heath, Assistant Solicitor Andrew Lee, and Katy Hax Holmes, Chief of Preservation Planning. The following provisions in the Local Landmark ordinance are presented tonight for discussion and a possible decision:

- **Nominations:** If Councilors are able to nominate properties, should at least one nominating Councilor be from within the ward in which the property is located? (See proposed 22-63 (a)(2) below, purple highlighted section)
- **Nominations:** Should two members of the NHC alone be able to nominate a property, or should the second nomination be from outside that body? (See proposed 22-63(a)(4) below, purple highlighted section)

Sec. 22-63. Nomination

(a) Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:

- (1) all record owners of the nominated property;
- (2) members of the city council elected from the ward in which the property is situated, provided that at least one (1) member of the commission must co-petition the nomination;
- (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
- (4) any two (2) members of the commission.

- **Criteria:** Should color be included in the ordinance as a required category of review? (See proposed 22-61 below, purple highlighted section)

Sec. 22-61. Definitions.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

- **Appeals:** should there be a local administrative body and to what degree should its role be substantive versus procedural? (See 22-70 below; all new section language)

**Sec. 22-70.
Administrative
review.**

- (a) There shall be a landmark review commission to review final determinations of the Newton historical commission at the request of any person aggrieved by such determination.
- (b) The landmark review commission shall consist of three (3) members as follows:

- (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The landmark review commission shall hold a public hearing prior to rendering a finding on the written request for administrative review. The landmark review commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the subject property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (e) After the public hearing and within forty-five (45) days after the request was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor.
- (f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the city of Newton, Commonwealth of Massachusetts or the United States of America;
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this Division 3. Landmarks, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Formally listed as eligible for listing: a determination has been made by the keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in

accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance in accordance with Section 22-64.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: all record owners of the subject property, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred (100) feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for nomination.

- (a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:
- (1) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
 - (2) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
 - (3) has been determined by the commission or its designee to be historically significant after a finding that it is:
 - i. importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; or
 - ii. historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.
- (b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.
- (c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-66 and 22-67

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as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Nomination

- (a) Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:
- (1) all record owners of the nominated property;
 - (2) members of the city council elected from the ward in which the property is situated, provided that at least one (1) member of the commission must co-petition the nomination;
 - (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
 - (4) any two (2) members of the commission.
- (b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the record owner(s) of the property by certified mail and a notice to the immediate abutters by regular mail. The notice to the record owner(s) and abutters shall include the petition for nomination and the date of the commission meeting.
- (c) At this or a subsequent meeting, the commission shall determine whether to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or

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which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.

- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning and development board of such acceptance.

Sec. 22-64. Designation.

- (a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (b) At or after the public hearing, the commission by three-quarters (3/4) vote, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.
- (c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:
- (1) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
 - (2) that the property, location and setting is compatible with future preservation and maintenance; and
 - (3) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.
- (d) The planning and development board may make a recommendation which evaluates the relationship of the

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proposed designation to the city's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

- (e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.
- (f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).
- (g) The Newton Landmark Preservation Sites shall be recorded as follows:
 - (1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the commission and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission deems appropriate.
 - (2) Newton Landmark Preservation records.
 - a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.
 - b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)

Sec. 22-65. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

- (a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.
- (b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.
- (c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-66. Review authority.

- (a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of

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appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof.

(b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.

(c) The commission shall issue a certificate of appropriateness to the applicant:

- (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
- (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.

(d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark; or
- (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark's general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-67. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, material, and color of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-68. Determination.

The commission shall determine promptly, and in all events within sixty (60) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the

application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-69. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance

thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-70. Administrative review.

- (a) There shall be a landmark review commission to review final determinations of the Newton historical commission at the request of any person aggrieved by such determination.
- (b) The landmark review commission shall consist of three (3) members as follows:
 - (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The landmark review commission shall hold a public hearing prior to rendering a finding on the written request for administrative review. The landmark review commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the subject property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (e) After the public hearing and within forty-five (45) days after the request was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor.
- (f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

Sec. 22-71. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty (20) days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-72. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. 22-73. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to

sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-74. Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Sec. 22-75. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;

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(10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;

(11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-65(a); or

(12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-72.

(e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.

(2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-64(a). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (g) herein, the Commission may vote to:

a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;

b) secure the building or structure against further deterioration or other loss;

c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-72; and

e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

(3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however,

that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.
- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 5, 2020

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Andrew Lee, Law Department
Katy Hax Holmes, Chief, Preservation Planning

RE: **#29-20 Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.

MEETING: May 7, 2020

CC: John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

Established in 1993 under City Ordinance Chapter 22, Sections 22-60 through 22-75, Newton's Local Landmark Ordinance was created to serve as a municipal tool to preserve the City's most historically significant buildings. The Landmark Ordinance in the City of Newton provides the highest level of protection for properties determined to be the most architecturally or historically significant. Under the Landmarks program, the Newton Historical Commission identifies buildings, structures, landscapes, and places that define the historic character of the city and have, over time, helped to establish a sense of place.

Under the current ordinance, in addition to the Newton Historical Commission, the Mayor, members of the City Council, the Director of Planning and Development or the Commissioner of Inspectional Services may nominate properties as Landmarks. Landmarks are designated at a public hearing of the Newton Historical Commission by a 3/4 vote of the Commission. In order to be eligible for Landmark status a property must be listed in or eligible for listing in the National Register of Historic Places.

Once a property becomes a local Landmark, the Newton Historical Commission reviews proposed changes to Landmarked properties as though they were included in a local historic district. This means that any alterations to the exterior of the structure, such as demolition, additions, renovations, deterioration by neglect, or new construction, must be reviewed and approved by the Newton Historical Commission. Designation of a local Landmark means that the decision is filed with the Registry of Deeds.

In practice, the Local Landmarks ordinance has been invoked when the city's historically significant buildings become the subjects of applications for full demolition. Newton currently has 23 Local Landmarks.

The Working Group was formed to examine issues City Councilors raised with regards to the City's current Landmark designation process. The Working Group is comprised of President Albright, City Councilors Crossley, Kelley, and Baker, Doug Cornelius from the Newton Historic Commission, and is assisted by Barney Heath and Katy Hax Holmes from the Planning Department, and Andrew Lee for the Law Department. Issues with the current local Landmark Ordinance included concerns that it is poorly organized and difficult to interpret.

The Working Group met weekly over the past three months to review and recommend changes to the Local Landmark Ordinance. In its review of the ordinance the Working Group examined National Landmark practices, undertook comparisons of other communities' local Landmark provisions and sought to incorporate best practices. The Working Group's recommendations include:

- (i) restructuring the organization of the ordinance so that it sequentially sets forth the process including identification of properties that are eligible for nomination, the nomination process, the designation process, and appeals options;
- (ii) setting requirements that provide sufficient notice periods for interested parties, including the owner of a nominated property, through all steps of the Landmarking process; and
- (iii) defining clear and objective criteria for eligibility of properties for nomination, acceptance or rejection of a nominated property, and designation of a property as a local Landmark.

The complete redlined version and clean version of the Working Group's proposed amendments to the Landmark ordinance are attached for your review. Identified below are sections of the ordinance which received the most attention:

Purpose (reorganized)

"This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the city of Newton, Commonwealth of Massachusetts or the United States of America;

- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)”

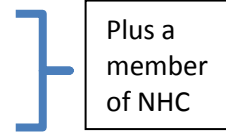
Criteria for Nomination/Designation (Revised)

- Remove Massachusetts Historical Commission from eligibility process
- Adopt National Park Service criteria language used for designating National Landmarks in guiding the Newton Historic Commission for both the nomination and designation phases of the local landmark process.

Nomination (Revised)

- WHO CAN NOMINATE? Owners of property or two members of the NHC
or

City Council members, or Mayor, or Director of Planning and Development, or Commissioner of Inspectional Services



- WHEN? NHC must hold meeting to consider nomination. Meeting must be held 45 to 90 days from date of receipt
- WHAT THEN? NHC must determine to accept or reject any nomination. Additional investigation by NHC will follow

Designation (Revised)

- Public hearing must be held 30 to 90 days from vote to accept nomination.
- Minimum of 14 days’ notice of public hearing
- Notice by publication and certified mail to owner
- Notify Planning and Development Board (PB) upon acceptance of nomination
- PB recommendation in concert with City’s policies and adopted plans
- NHC by 3/4 vote of members present, must be minimum 4 affirmative votes

Notice (Revised)

- Notice sent at least 14 days after NHC receives nomination. Certified mail to owner and regular mail to immediate abutters
- Notice must include petition and date of commission meeting to review nomination

Appeals (Pending)

- Law office waiting to hear from MAPC
- Retain superior court language and provision

This item was originally docketed as #244-30 in July 2019 and was subsequently held by the Council. The item was re-docketed this year as #37-20. The current landmark suspension is slated to expire on June 30, 2020.

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the ~~Commonwealth of Massachusetts and the City of Newton and through the maintenance and improvement of settings for such buildings, structures, landscapes, and places and through the encouragement of compatible development and the discouragement of destruction of or damage to such resources~~ city of Newton, Commonwealth of Massachusetts or the United States of America; ~~(Ord. T-288, 9-9-93)~~
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this ~~section~~ Division 3. Landmarks, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces [AL1] and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Formally listed as eligible for listing: a determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in

accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance in accordance with Section 22-64.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: the applicant, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred (100) feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for ~~designation~~nomination.

(a) All buildings, structures, landscapes and places ~~currently are eligible to be nominated for landmark designation~~ if such property:

(1) ~~is individually listed on the National Register of Historic Places as individual sites^[AL2], or otherwise formally listed as eligible for listing on said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites., individually;~~ is individually listed on the National Register of Historic Places as individual sites^[AL2], or otherwise formally listed as eligible for listing on said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites., individually;

(2) ~~Buildings, structures, landscapes, and places is listed on the National Register of Historic Places as part of an historic district, but not individually, or which are formally listed as eligible for listing on said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the; or~~ Buildings, structures, landscapes, and places is listed on the National Register of Historic Places as part of an historic district, but not individually, or which are formally listed as eligible for listing on said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the; or

(3) ~~has been determined by the commission determines or its designee to be historically significant after a finding that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses it is:~~ has been determined by the commission determines or its designee to be historically significant after a finding that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses it is:

i. ~~importantly associated with one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape historic persons or place if it determines that such property lacks sufficient historical events, or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually with the architectural, cultural, political, economic or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register as certified by the social history of the City of Newton, the Commonwealth of Massachusetts Historic Commission or the United States of America; or~~ importantly associated with one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape historic persons or place if it determines that such property lacks sufficient historical events, or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually with the architectural, cultural, political, economic or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register as certified by the social history of the City of Newton, the Commonwealth of Massachusetts Historic Commission or the United States of America; or

ii. ~~historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.~~ historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

(b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any

land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.

(c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-~~6566~~ and 22-~~6667~~ as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Nomination ~~Designation~~.

(a) ~~(a) Members~~ Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:

- (1) all record owners of the nominated property;
- (2) members of the city council, ~~–~~ elected from the ward in which the property is situated^[AL3], provided that at least one (1) member of the commission must co-petition the nomination;
- (3) the mayor, the director of planning and development, or the commissioner of inspectional services may, in addition to the commission, nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to the ~~–~~, provided that at least one (1) member of the commission. ~~The~~ must co-petition the nomination; or
- (4) any two (2) members of the commission^[AL4].

(b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission’s receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the record owner(s) of the property by certified mail and a notice to the immediate abutters by regular mail. The notice to the record owner(s) and abutters shall include the petition for nomination and the date of the commission meeting.

(c) At this or a subsequent meeting, the commission shall determine whether to reject the nomination or to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:

- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
- (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the Unites States of America;
- (3) the property’s identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
- (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.

~~(d) Upon an initial determination to accept the nomination, the commission shall notify the owner of the property upon receipt of the written nomination.~~ planning and development board of such acceptance.

Sec. 22-64. Designation. ~~(b) The commission~~

~~(a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than (90) days from the date of the commission’s determination to accept the nomination. The commission shall give not less than fourteen (14) days’ notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days’ notice of such public hearing to the mayor, the planning and development board, and the city clerk.~~

~~(b) At or after the public hearing, the commission by three-quarters (3/4) vote may, after public hearing, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to be either (1) importantly associated with meet one or more historic persons of the following criteria:~~

~~(1) the property significantly represents an architectural type, style or events design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;~~

~~(2) the property is meaningfully associated with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made. Designation of a landmark or amendment or rescission of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein; a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the Unites States of America;~~

~~(3) (e) The property’s identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or~~

~~(4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.~~

~~(c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:~~

~~(1) that the location and setting is compatible with future preservation and use;~~

~~(1) ⇔ that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;~~

(2) (3) that the existing or proposed use property, location and setting is compatible with the future preservation and maintenance of the site; and

~~(d) The commission shall hold a public hearing prior to any designation of landmarks. The commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the assessing department), and to the mayor, the planning board, and the city clerk.~~

~~Prior to the public hearing, the commission shall transmit copies of the agenda to the planning board for its consideration and recommendation.~~

(3) (e) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.

(d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the city's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

(e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.

(f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).

(g) The Newton Landmark Preservation Sites shall be recorded as follows:

(1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the ~~board~~commission, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission ~~or board~~ deems appropriate.

(2) Newton Landmark Preservation records.

a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.

b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)-)

Sec. 22-6465. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

- (a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.
- (b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.
- (c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-6566. Review authority.

- (a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof.
- (b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.
- (c) The commission shall issue a certificate of appropriateness to the applicant:
 - (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
 - (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.
- (d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark; or-

- (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in

accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark’s general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-667. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, material, and color of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-~~67~~68. Determination.

The commission shall determine promptly, and in all events within ~~forty five (45)~~sixty (60) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-~~68~~69. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance

thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-~~69~~70. Administrative review.

There shall be a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC).^[AL5]

The finding of the person or persons making such review shall be filed with the city clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-~~70~~71. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-~~71~~72. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. 22-~~72~~73. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9,

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1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to

sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-7374.
Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Sec. 22-74—22-75. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) ~~Reserved.~~ Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;

(10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;

(11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-65(a); or

(12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-72.

(e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.

(2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-64(a). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (g) herein, the Commission may vote to:

a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;

b) secure the building or structure against further deterioration or other loss;

c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-72; and

e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

(3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

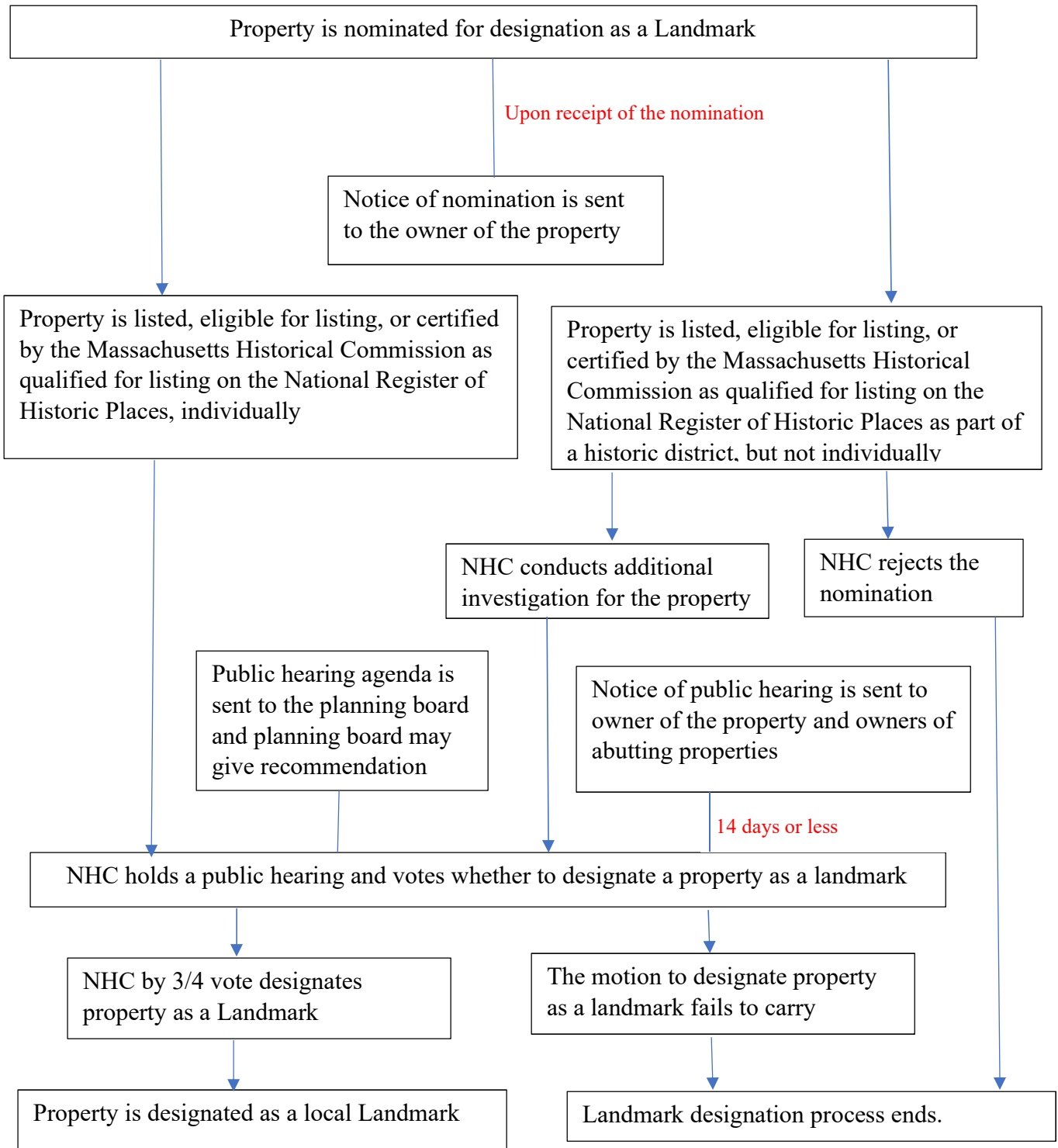
The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject

such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however, that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.
- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

LANDMARK ORDINANCE - CURRENT



DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the city of Newton, Commonwealth of Massachusetts or the United States of America;
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this Division 3. Landmarks, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces [AL1] and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Formally listed as eligible for listing: a determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in

accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance in accordance with Section 22-64.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: the applicant, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred (100) feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for nomination.

- (a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:
- (1) is individually listed on the National Register of Historic Places^[AL2], or formally listed as eligible for listing on said National Register, individually;
 - (2) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
 - (3) has been determined by the commission or its designee to be historically significant after a finding that it is:
 - i. importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; or
 - ii. historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.
- (b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.
- (c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-66 and 22-67 as a condition to any building permit to insure that such new building or structure is not detrimental to the

landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Nomination

- (a) Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by the following:
- (1) all record owners of the nominated property;
 - (2) members of the city council elected from the ward in which the property is situated^[AL3], provided that at least one (1) member of the commission must co-petition the nomination;
 - (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
 - (4) any two (2) members of the commission^[AL4].
- (b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the record owner(s) of the property by certified mail and a notice to the immediate abutters by regular mail. The notice to the record owner(s) and abutters shall include the petition for nomination and the date of the commission meeting.
- (c) At this or a subsequent meeting, the commission shall determine whether to reject the nomination or to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of

- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning and development board of such acceptance.

Sec. 22-64. Designation.

- (a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (b) At or after the public hearing, the commission by three-quarters (3/4) vote, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.
- (c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:
- (1) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
 - (2) that the property, location and setting is compatible with future preservation and maintenance; and
 - (3) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.
- (d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the city's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any

other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

- (e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.
- (f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).
- (g) The Newton Landmark Preservation Sites shall be recorded as follows:
 - (1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the commission, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission deems appropriate.
 - (2) Newton Landmark Preservation records.
 - a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.
 - b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)

Sec. 22-65. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

- (a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.
- (b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.
- (c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-66. Review authority.

- (a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit

issued therefor by the city or any department thereof.

(b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.

(c) The commission shall issue a certificate of appropriateness to the applicant:

- (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
- (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.

(d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark; or
- (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark's general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-67. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, material, and color of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-68. Determination.

The commission shall determine promptly, and in all events within sixty (60) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-69. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance

thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-70. Administrative review.

There shall be a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC).^[AL5]

The finding of the person or persons making such review shall be filed with the city clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-71. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-72. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. 22-73. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to

sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-74. Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Sec. 22-75. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;

- (10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;
- (11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-65(a); or
- (12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.
- (d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-72.
- (e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.
- (2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-64(a). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (g) herein, the Commission may vote to:
- a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;
 - b) secure the building or structure against further deterioration or other loss;
 - c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;
 - d) assess penalties as set forth in section 22-72; and
 - e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.
- These remedies shall be cumulative and not exclusive.
- (3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

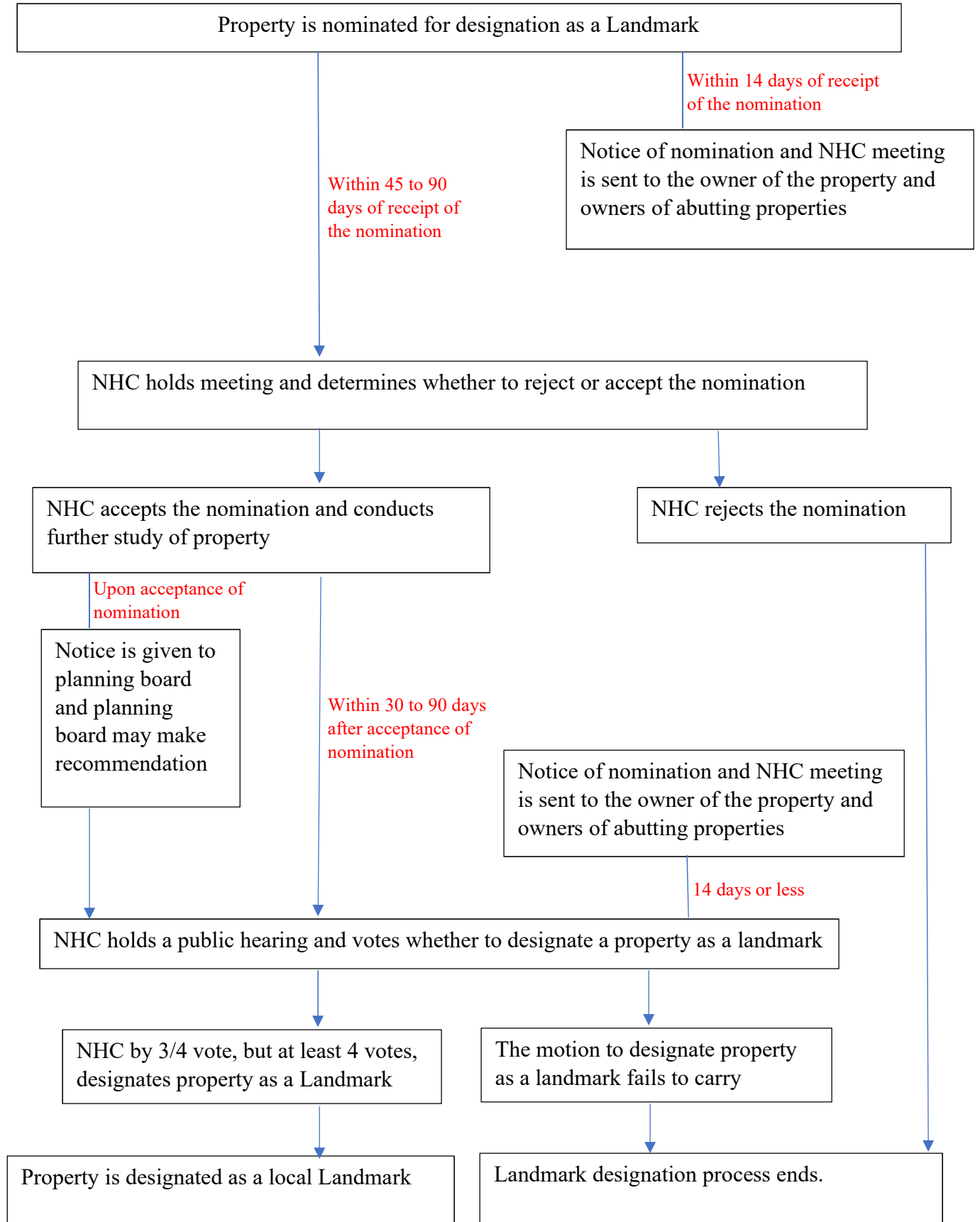
The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however,

that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.
- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

LANDMARK ORDINANCE - PROPOSED





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 15, 2020

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning

RE: **#88-20 Discussion and review relative to the draft Zoning Ordinance**
DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.
Other docket items to be taken up within the context of Zoning Redesign include #30-20, #38-20, and #148-20

MEETING: May 19, 2020

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

At the April 27, 2020 ZAP meeting, the Planning Department held the third *workshop* on Article 3 – Residence Districts, the discussion focused on Garage Design Standards (sec. 3.4.2) and Driveway Access (3.7.1.E). In addition, the second part of the presentation introduced Building Components (sec. 3.3).

Moving forward, staff plan to focus the upcoming ZAP discussion on the revised zoning text for Garage Design Standards and Driveway Access (Attachment A) and how these standards achieve the goals/outcomes discussed at the April 27 meeting. Staff will present case studies and diagrams that visualize these standards. In addition, the Committee should discuss the requirements for taking these sections out separately as amendments to the current Zoning Ordinance to replace the currently deferred garage ordinance that goes into effect July 1, 2020.

Finally, staff plan to focus the second part of the presentation around a deeper dive into Building Components. Specifically, reiterating goals, while diving deeper into the technical elements underlying them.

Part I – Garage Design Standards and Driveway Access

Garage Design Standards (Sec. 3.4.2)

Utilizing form-based mechanisms the draft zoning language creates standards to achieve the goals outlined in Sec. 3.4.2.A. The draft ordinance breaks down how residential building types can provide garages in a variety of configurations that respond to the variety of Newton's lot sizes and layouts, without compromising on these goals. In this way, the new language greatly increasing both the level of predictability and flexibility for developing garages as part of new construction or an addition. Highlighted below are some of the key mechanisms and standards, which will be covered in more detail through case studies and figures within the presentation.

- A Front-Facing Garage (Sec. 3.4.2.C.1) must be setback from the front elevation by 10 feet, unless certain design requirements are met, and may not exceed 50% of the building front elevation/facade (see fig. 1).
- Garages providing parking for two or more motor vehicles that face the street must be designed with individual doors, each no wider than 9 feet (see Fig. 2).
- Narrow lots may incorporate:
 - A Side-Facing Garage (Sec. 3.4.2.C.2), which can be placed in front of the building front elevation provided certain design requirements are met (see Fig. 3); or
 - A rear garage, attached or detached, accessed from a driveway running along the side of the building (see Fig. 4).

City staff believe that the draft language not only achieves the stated goals, but also encompasses most of Newton's residential properties. A section for exemptions (Sec. 3.4.2.G) has been added to provide relief for the outlier residential properties.

Driveway Access (Sec. 3.7.1.E)

The discussion of garages must include driveway access because the two function together within a property and where that property meets the public realm. The revised language helps achieve many of the stated goals guiding the overall Zoning Redesign effort.

- Sustainability (stormwater management)
 - Sec. 3.7.1.E.1 requires driveways to be paved with pervious materials, unless graded to direct runoff to onsite permeable areas, with ribbon driveways encouraged as another way to reduce impervious area.
 - Sec. 3.7.1.E.5 sets maximum widths of driveways from the lot line for a minimum of 10 feet into the property before widening out to provide necessary space for maneuvering (See Fig. 1).
- Safety
 - 3.7.1.E.6-9 restricts overly large curb cuts and the distance between curb cuts to ensure a more continuous public sidewalk for pedestrians. In addition, a narrower curb cut forces motor vehicles to enter and exit the driveway at slower speeds (See Fig. 2).

- 3.7.1.E.10 reinforces that the sidewalk or public right of way must be maintained clearly so that, although a motor vehicle may cross, the area between the curb cut and driveway remains part of the sidewalk

Part I – Looking Ahead

The currently deferred garage ordinance will go into effect on July 1, 2020 if no action is taken. At the previous ZAP meeting, staff enumerated the flaws within the deferred garage ordinance and recommend the Committee to either repeal or extend deferment. Once repealed or deferred, it is up to the ZAP Committee to decide if they would like to take on the draft zoning provided in this memo as a standalone amendment to the current ordinance or remain part of the overall Zoning Redesign project. Doing so will impact the overall timeline for Zoning Redesign.

The draft zoning provided in this memo is formatted for the new zoning ordinance, not the current ordinance. Taking up the garage ordinance as a standalone item will require either a second version formatted for the current ordinance or require adding/defining new terms to the current ordinance (like Primary Front Lot Line). Second, staff will need to consider if the draft zoning requires changes to other sections of the current zoning ordinance and/or to other City ordinances (ex. Ch. 26 – Streets and Sidewalks) to ensure enforceability and that no conflicts arise. Staff has begun looking into this with Current Planning, ISD, and the City Engineer.

At this time, staff cannot say how long it would take to adopt the draft garage ordinance as a standalone amendment especially as we enter the summer months, which is typically a slower time for the City Council. For reference a comparable amendment, the sustainable zoning amendments focused on sustainable design (#364-19) and building efficiencies (#363-19), passed in December 2019 took four months and were not presented concurrently with Zoning Redesign.

Part II – Building Components (Sec. 3.3)

Goals

Building Components are accessory features that attach to the building type and increase the habitable square footage or enhance the usefulness of a building (See Fig. 5). In addition, Building Component regulations will enhance predictability of growth for homeowners and neighbors. Finally, these components provide an important means for achieving variety and individuality in design of building facades and are permitted as indicated for each building type.

Building Components should be viewed as a by-right bonus, like the current ordinance De Minimus Relief (Attachment B), with standards that ensure such a bonus does not negatively impact the surrounding neighborhood or public realm. However, the draft language on Building Components and Building Types shared with the City Council previously does not fully achieve these goals.

Issues with Latest Draft Language and High-Level Proposed Changes

- Problem A - Building Components count towards Building Type footprint (Sec. 2.5.1.B)
 - Outcome – There is no incentive to utilize Building Components in new construction or renovations.
- Solution A – Building Components do not count towards Building Type footprint
 - Outcome - This will promote design individuality and increased habitable space. Components should be regulated by specific standards for each type as well as the

district lot coverage and setback requirements. Doing so ensures proportional Building Components relative to the surrounding neighborhood.

- Problem B – Language to directly implies style
 - Outcome - This regulation of style came up as a primary concern at the Architect Focus Group held on April 24, 2020. Architects felt the language inhibits creativity and is too prescriptive.
- Solution B – Building Components should be named generically
 - Outcome – As a form-based code tool, Building Components should only imply an appropriate volume or massing that designers are free to work within. Building Types accomplishes this through generic naming (House Type A, B, etc.) and this should apply to Building Components to the greatest extent possible. For example, a Turret (Sec. 3.3.2.J) could change to a *Corner Feature*. Additionally, Staff is looking at replacing individual Roof Types (sec. 2.6.3.D) with one set of standards, disconnected from formal roof styles (i.e. gable, hipped, etc.), and will be presented at the upcoming ZAP Meeting.
- Problem C – Building Type footprint increase allowed by Special Permit
 - Outcome – Taken with Building Components, which are allowed by-right, these two mechanisms attempt to allow for the same thing, controlled flexibility. The new ordinance should strive for simplicity, with one regulation solving one issue. Taken together, Building Components and an increase in footprint by Special permit allow for development to increase in size far too greatly.
- Solution C - Remove Building Type footprint increases by Special Permit and add new Building Components that allow for similar flexibility
 - Outcome – Doing so will directly address one of the goals found in the Zoning Reform Group Report, *simplify and streamline the permitting and review process*. Building components, by-right, are a cleaner and simpler mechanism to achieve the flexibility that Special Permits are now used for. This will also ensure that the additional volume created will be proportional to the surrounding neighborhood and configured to not negatively impact the public realm.

Part II – Looking Ahead

Because staff is proposing new Building Components, allowing increased square footage by-right, it is imperative that the standards used for each component is calibrated correctly. Staff is working with local architects to analyze their recent projects where they utilized what can be categorized as Building Components to get a baseline of standard dimensions. Additionally, staff will look to the existing De Minimus Relief rule for further guidance. Lastly, staff will review how the revised Building Components sections works with Building Type footprints, lot coverage, and setbacks. All these standards together will determine a developments overall volume, so changing one standard may warrant updating another. At upcoming meetings, staff will present these revised standards along with the logic behind them and case studies possible implementation.

Further Reading

The ZAP Committee should reread Sections 2.1 – 2.7 and Section 3.3, previously shared with the City Council in March 2020. These sections, in addition to the attachments will help guide an informed discussion on the revised garage/driveway language and the new framework developed for Building Components.

Attachments

Attachment A Revised draft Garage Design Standards (sec. 3.4.2) and Driveway Access (3.7.1.E).

Attachment B Sec. 7.8.2.B – De Minimus Relief (current ordinance)

Figure 1: Front-Facing Garage

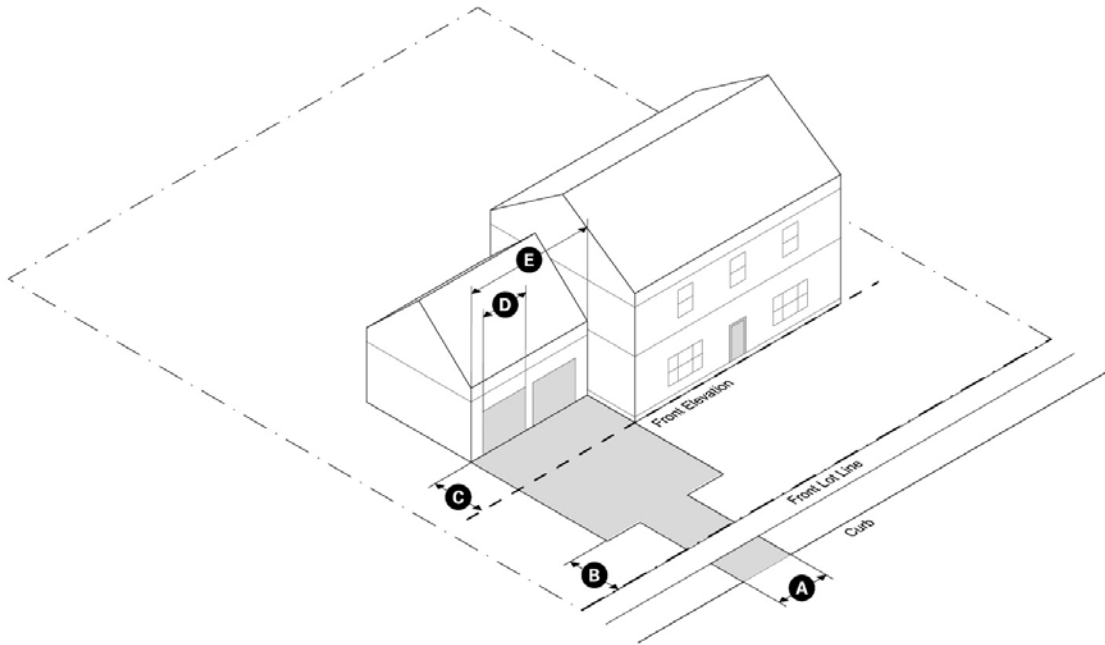


Figure 2: Individual doors for Front-Facing Garages (two-family)

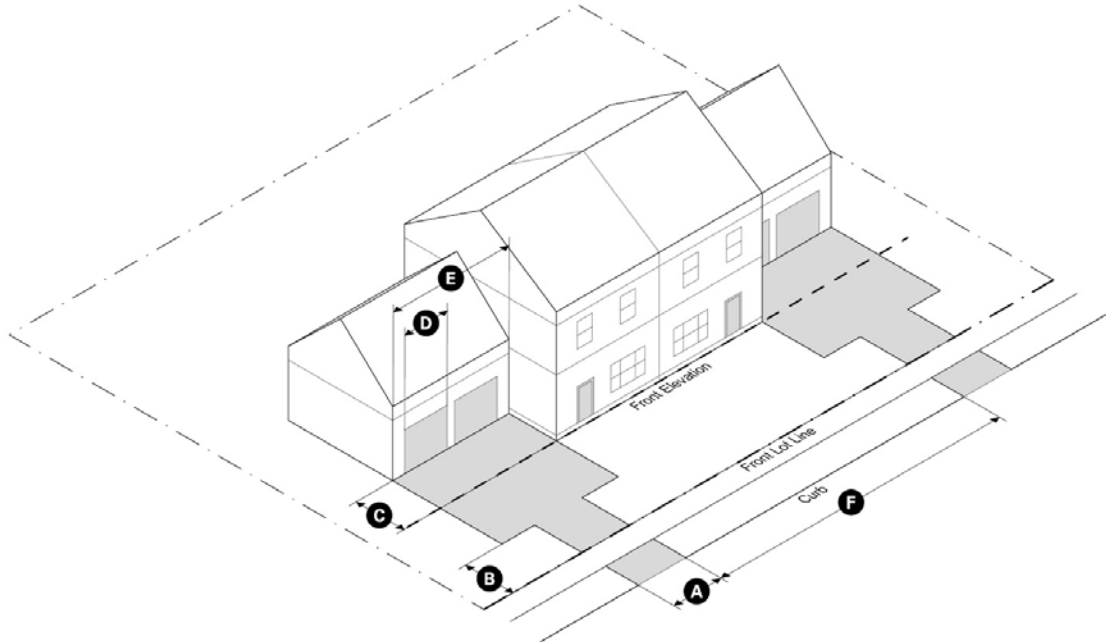


Figure 3: Side-Facing Garage

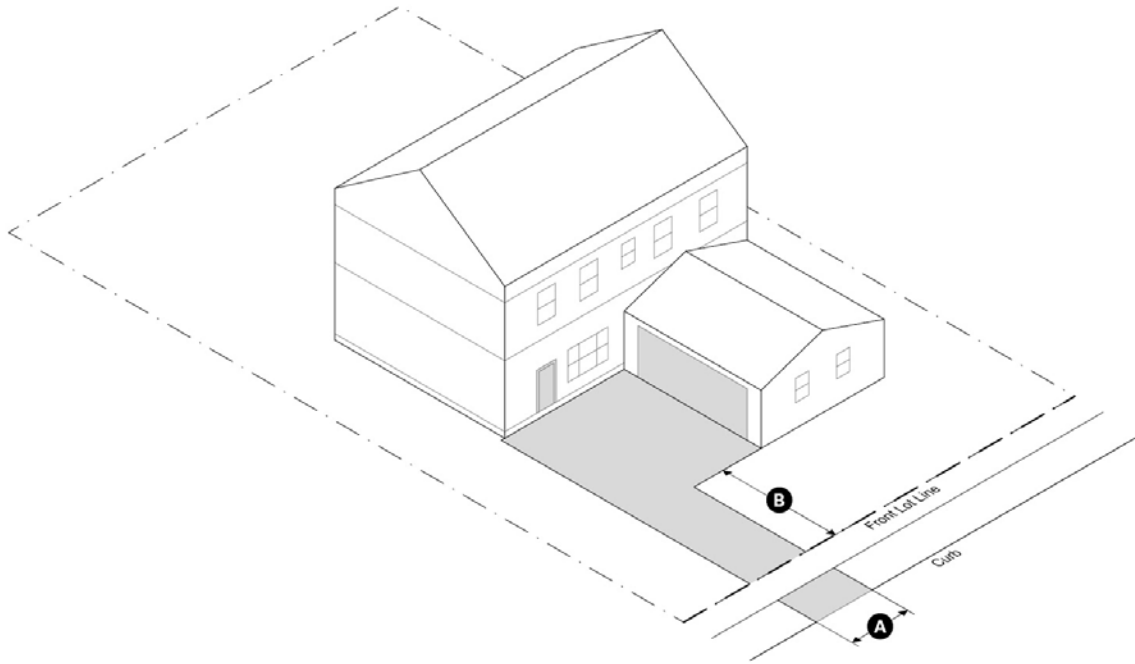


Figure 4: Rear Garage

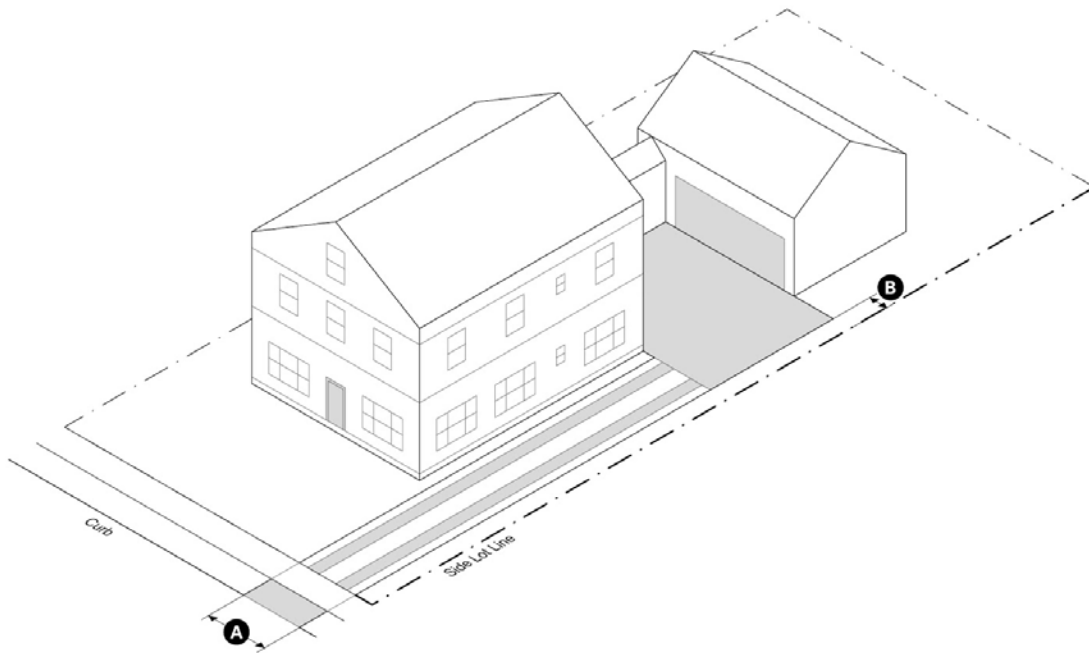
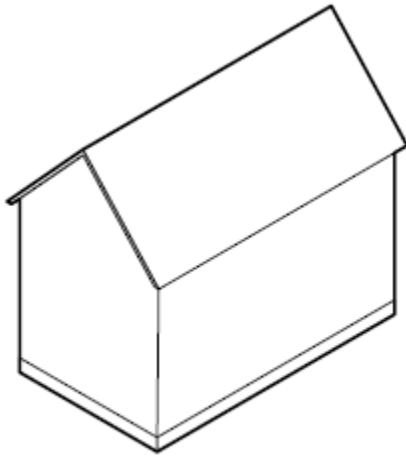
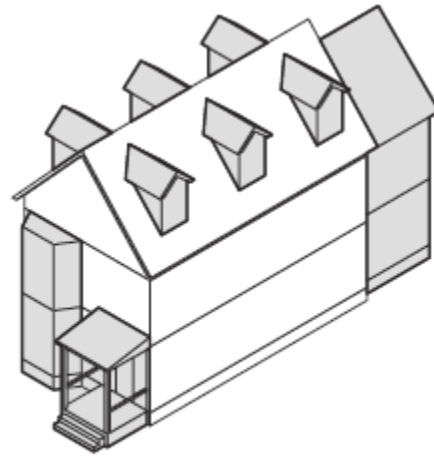


Figure 5: Building Components in Relation to Main Massing of a Building Type



MAIN MASSING of a BUILDING



Additional BUILDING COMPONENTS

3.4.2. Garage Design Standards

A. Purpose.

1. To prevent garages from obscuring the main entrance from the street and ensure that there is a physical and visual connection between the living area of residential buildings and the street;
2. Ensure that the location and amount of living areas of residential buildings, as seen from the street, are more prominent than structured parking or garages;
3. Ensure that the main entrance for pedestrians, rather than motor vehicles, is the prominent entrance;
4. Provide for a more pleasant pedestrian environment by preventing garages from dominating the views of the neighborhood from the sidewalk; and
5. Enhance public safety by preventing garages from blocking views of the street from inside the residence.

B. Applicability.

Garage Design Standards apply in all Residence Districts

C. Garage, defined.

An attached or detached structure designed primarily for the storage or parking of one or more automobiles. A detached garage is an accessory building (See Sec. 3.3.4).

1. **Front Facing Garage.** A garage, where the primary door or doors through which automobiles enter the garage faces the Primary Front Lot Line. On corner lots, a Front Facing Garage faces the Primary Front Lot Line.
2. **Side Facing Garage.** A garage, where the primary door or doors through which automobiles enter the garage faces the Primary Front Lot Line at an angle between 45 and 90 degrees.
3. **Garage Wall.** Any wall enclosing a garage including that wall containing the garage entrance.

D. General Standards

1. A Front Facing Garage may be no closer to the Primary Front Lot Line than 10 feet behind the Front Elevation of the building, except as follow:
 - a. A garage may be up to 6 feet in front of the Front Elevation if there is a Front Porch at the main entrance, but no closer to the Primary Front Lot Line than the Front Porch, so long as the Front Porch meets the following:
 - i. The Front Porch must be a minimum of 48 square feet in area, with no dimension less than 6 feet;
 - ii. The Front Porch must have a solid roof; and
 - iii. The roof may be no more than 12 feet above the floor of the Front Porch.
2. Garage doors on a Front Facing Garage providing spaces for 2 or more motor vehicles must provide individual doors for each space at a maximum width of 9 feet.
3. A Side Facing Garage may be located in front of the building Front Elevation, but not within the front setback, if it meets the following:

Sec. 3.4.2 Garage Ordinance

- a. Fenestrations on the Garage Walll elevation facing the Primary Front Lot Line, 20% minimum, 50% maximum; and
 - b. The garage roof type and roof components, if applicable, match or complement the primary building.
4. Where the building Front Elevation is less than 22 feet long, an attached garage is not allowed as part of that elevation.

E. Additional Standards for one-unit residential Building Types.

- 1. There may be no more than 700 square feet in total garage space on a lot providing for no more than 3 motor vehicles, between a maximum of one attached garage and one detached garage.
- 2. The length of an attached garage facing the Primary Front Lot Line may be up to 50% of the width of the Front Elevation or 12 feet, whichever is greater.
 - a. On corner lots, only one street- or right-of-way-facing garage wall must meet the standards of this subsection.

F. Additional Standards for residential Building Types with two-units or more.

Parking spaces in garages are counted toward the minimum number of accessory parking spaces required by Sec. 3.7. Garages may be attached or detached.

- 1. **Attached Garages.** The length of an attached garage facing the Primary Front Lot Line may be up to 50% of the total Front Elevation or 24 feet, whichever is greater.
- 2. **Detached Garages.** Centralized and underground garages are encouraged.
 - a. The number of detached garages on a property may not exceed one half of the number of units on the property, rounded down.
 - b. A detached garage of more than 700 square feet and providing for more than 3 vehicles is allowed by right if it meets the setbacks for a principal building.
 - c. By Special Permit, a detached garage of more than 700 square feet may be located within the setback, provided a minimum of 5 feet from the property line is maintained.
 - d. **Review Criteria.** In its discretion to approve or deny a Special Permit authorizing a detached garage in the setback, the Special Permit Granting Authority must find the application meets the following criteria:
 - i. The criteria for all Special Permits specified in Sec. 11.4.3.
 - ii. Design and siting are compatible with the neighborhood and adjacent residential properties.
 - iii. Strategies such as screening, landscaping, and window placement reduce effects on neighboring properties.

G. Exemptions.

- 1. In R1 districts where the house is more than 70 feet from the Primary Front Lot Line are exempt from the standards of this section.
- 2. Garages on lots which slope up or down from the Primary Front Lot Line with an average slope of 20% or more are exempt from the standards of this subsection.

3.7. Parking Requirements in the Residence Districts.

3.7.1. General Standards.

A. Required Accessory Parking Spaces.

Vehicular and bicycle parking must be provided as specified in Sec. 3.7.3, except as follows:

1. 1- and 2-unit residential buildings are exempt from the requirements of Sec. 3.7.3.
2. Ground story non-residential uses with 5,000 square feet or less of gross leasable floor area are exempt from the requirements of Sec. 3.7.3.
3. There are no parking requirements for accessory uses.
4. Parking may be shared between uses on the same lot and buildings within 500 linear feet as measured along the street in accordance with Article 8.
5. One on-street parking space, where permitted, for every 20 feet of lot width may be counted toward any minimum parking requirement for Building Types that do not include residential uses.

B. Vehicular Parking Space Types.

Accessory motor vehicle parking spaces may be provided as off-street surface parking spaces, structured parking spaces, and on-street parking spaces.

C. Unbundled Market Rate Parking.

1. Off-street motor vehicle parking spaces must be rented, leased, or sold as a separate option rather than a requirement of the rental, lease, or purchase of a residential unit or non-residential floor space.
2. Bicycle parking must be provided at no cost or fee to customers, visitors, employees, tenants, and residents.

D. Parking Design.

The design of all parking is subject to Article 8 of this Ordinance.

E. Driveway Access.

1. Driveways must be paved with paving stones, grass pavers, pervious concrete, or porous asphalt unless graded to direct runoff onto onsite permeable areas or granted a waiver by the City Engineer to mitigate adverse site conditions.
 - a. Ribbon driveways are highly encouraged
2. Ribbon Driveways must have paved tracks that are at least 2 feet in width and 5 feet on center with an unpaved area that is at least 3 feet in width.
3. Driveways may provide access from a front, side, or rear lot line and may be located within required front or rear setback areas. Driveways may be located within the required side setback area provided the driveways are located at least 3 feet from the side lot line.
4. No parking stall may be located within any required setback area, with the exception that up to 2 parking stalls may be located in a side setback area. No parking stall may be located between the building front elevation and the street.
5. For a minimum of 10 feet measured from the lot line where the driveway is accessed into the lot, driveways may be no wider than 10 feet if providing one-way

access to a parking area for residential Building Types with eight-units or less and no wider than 20 feet if providing two-way access to a parking area for residential Building Types with nine-units or more.

- a. Driveways widths may increase beyond the minimum 10 feet measured from the lot line where the driveway is accessed to allow for motor vehicles to back-in and back-out.
6. Driveways may provide access in whole or in part on or across an abutting lot(s), provided that an access easement exists among all affected property owners.
7. Only one curb cut is permitted per Lot, except;
 - a. A maximum of two curb cuts are permitted on a Lot with a residential Building Type with two-units or more, when a minimum distance of 35 feet between each curb cut is maintained.
 - b. Corner Lots and Through Lots may have a maximum of one curb cut per Front Lot Line.
8. Curb cuts must be located to minimize conflict with pedestrians, bicyclists, and motor vehicles on the thoroughfare they provide access to and from.
 - a. Curb cuts for residential driveways should be at least 20 feet from an unsignalized intersection and at least 40 feet from a signalized intersection.
9. Curb cuts may be no wider than 12 feet if providing one-way access to a parking area for residential Building Types with eight-units or less and no wider than 22 feet if providing two-way access to a parking area for residential Building types with nine-units or more, excluding flares or returned curbs.
10. The grade, cross slope, and clear width of the walkway of a sidewalk must be maintained between the driveway apron and the abutting driveway. The appearance of the walkway (i.e. scoring pattern or paving material) must indicate that, although a vehicle may cross, the area traversed by a vehicle remains part of the sidewalk.

F. Off-site Parking on a Contiguous Lot.

Required accessory vehicular parking spaces, excluding required parking for disabled persons, may be provided on a contiguous lot under the same ownership as the lot that the parking will serve with a Special Permit.

1. The following additional standards apply:
 - a. Pedestrian access to off-site vehicular parking must be via a paved sidewalk or walkway.
 - b. A lease, recorded covenant, or other comparable legal instrument guaranteeing long term use of the site must be provided to the Special Permit Granting Authority or Commissioner of Inspectional Services, as appropriate, and executed and filed with the Registry of Deeds.

Attachment B

- c. Has on it a single- or two-family dwelling that was constructed in compliance with a building permit and received a certificate of occupancy on or before December 22, 2011.

- e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. 303, 11/20/78; Ord. No. S-275, 02/05/87; Ord. No. T-115, 11/19/90; Ord. No. W-49, 07/09/01; Ord. No. A-24, 06/03/13)

7.8.2. Nonconforming Buildings, Structures, or Uses

A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:
 - a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;
 - b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;
 - c. Additional outdoor sidewalk seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and
 - d. Alteration, reconstruction, extension or structural change to a nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.

B. De Minimis Relief.

1. Regardless of whether there are increases in the nonconforming nature of a structure, the City Council deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to M.G.L. Chapter 40A, Section 6. The following alterations, enlargements, reconstruction or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that:
 - a. Relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming;
 - b. The resulting changes on the nonconforming side will be no closer than 5 feet to the side or rear property line;
 - c. The resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the 2 adjacent lots;
 - d. The resulting construction will meet all building and fire safety codes; and
 - e. The *de minimis* relief provided in this paragraph shall not apply to buildings in which the nonconformity is due solely to FAR requirements, nor shall it be used to increase the FAR beyond that shown in Sec. 3.1.
2. In accordance with Sec. 7.8.2.B.1, the following *de minimus* alterations are allowed:
 - a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;
 - b. Decks or deck additions or porches less than 200 square feet in size;

- c. First floor additions in the side and rear setbacks which do not total more than 200 square feet in size;
- d. Second floor additions which do not total more than 400 square feet in size;
- e. Enclosing an existing porch of any size;
- f. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;
- g. Bay windows which protrude no more than 3 feet into the front setback and are no less than 5 feet from the alteration to the lot line;
- h. Alterations to the front of the structure if within the existing footprint; and
- i. Alterations and additions to the front of a structure of not more than 75 square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

C. Special Permit Required.

- 1. A special permit from the City Council shall be required for any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in paragraph A. above.
- 2. A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided that a special permit is obtained. In granting such a permit, the City Council shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this Paragraph, the

word "establishment" shall include buildings, structures and lands.

D. Standards.

- 1. **Nonconforming Buildings or Structures.** Whenever nonconforming buildings or structures do not require a special permit, all otherwise applicable regulatory provisions of this Chapter, as amended, specifically including but not limited to Sec. 5.1 shall apply.
- 2. **Minimum Dimensions.** Whenever the operation of this Sec. 7.8.2 would reduce the area available for building a dwelling house upon any lot in a residence district to less than 20 feet in its shortest dimension, or less than 800 square feet in total area, the requirements of this Sec. 7.8.2 shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than 7½ feet, and second, if necessary, from street lines, but to not less than 15 feet.
- 3. **Replacing 3-Story Residential Structures.** Any residential structure that is replacing a previously existing 3-story residential structure shall be allowed 3 stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87; Ord. No. T-115, 11/19/90; Ord. No. T-313, 12/6/93; Ord. No. T-314, 12/6/93; Ord. No. V-113, 04/23/97; Ord. No. W-51, 07/09/01; Ord. No. X-39, 12/02/02; Ord. No. Z-51, 08/10/09; Ord. No. Z-77, 02/22/11; Ord. No. A-13, 03/18/13; Ord. No. A-99, 01/17/17)