



# Zoning & Planning Committee Report

REVISED

City of Newton

In City Council

**Monday, April 12, 2021**

**Present:** Councilors Crossley (Chair), Danberg, Albright, Wright, Krintzman, Baker, Ryan and Leary; also Present: Councilors Greenberg, Ryan, Downs, Lucas, Lipof, Bowman, Malakie and Humphrey

**City Staff Present:** Director of Planning and Development Barney Heath, Associate City Solicitor Andrew Lee, Deputy Director of Planning and Development Jen Caira

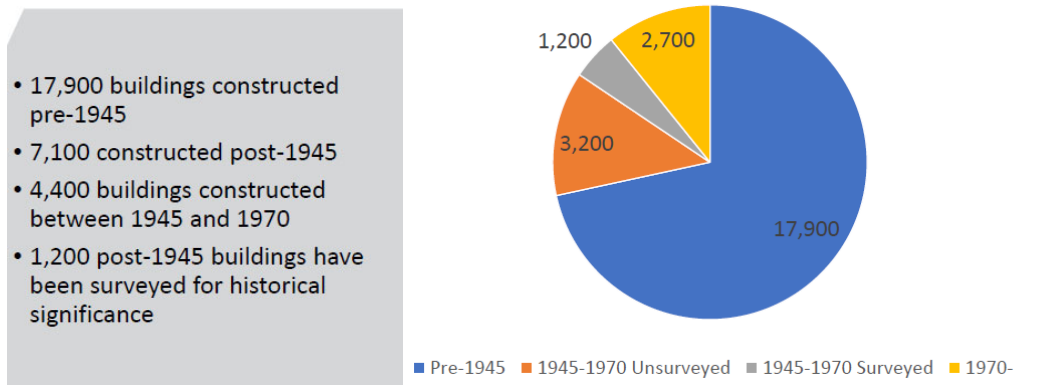
**#29-20(2) Review and possible amendment of Demolition Delay and Landmark Ordinances**  
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.  
**(1) Landmarking - Approved as Amended by Full Council on 06/22/2020**  
**(2) Demolition Delay - Held in Committee 06/22/2020, 10/15/2020 and 02/22/21**

**Action:** **Zoning & Planning Held 8-0; Public Hearing Continued**

**Note:** The Chair introduced the item. The Chair explained that the Council established a subcommittee of the Zoning & Planning Committee to revise the landmarking and demo delay ordinances in response to improve the organization, clarity and mitigate confusion, to update the appeal process (which was no longer available), to set optimal triggers for historic review (noting that the the 50-year period became controversial and encompassed 90% of Newton properties.), and to balance historic preservation. She explained that the subcommittee has been working to revise the landmarking and demolition delay ordinance for over a year with regular updates to ZAP. The landmarking ordinance was approved in June 2020.

The Committee was joined by Director of Planning & Development Barney Heath, Deputy Director of Planning & Development Jennifer Caira, Preservation Planner Katy Holmes, the Planning and Development Board, members of the Historic Commission and other community groups. Ms. Caira presented historical background of the demolition delay ordinance, which was established in 1985, 10 years after the creation of the Historic Commission to identify and protect historically significant properties. The demo delay ordinance is intended to protect historically and/or architecturally significant properties as well as properties of a certain age. Ms. Caira provided an overview of the existing housing

stock in Newton as shown on the attached presentation. The below images reflect the age of structures in the City's existing housing stock.



Ms. Caira noted that 3200 homes within the City have not yet been surveyed. She explained the process for surveying the remaining buildings, as outlined in the attached presentation. It is anticipated that the City would have to engage a consultant to conduct the survey, using City funds, as the state does not provide funding for surveys.

Ms. Caira noted that there are 154 communities in Massachusetts with demo delay ordinances/by-laws. The review process varies in each community based on structure age, a rolling date and/or a static date. In Newton, there are approximately 300 applications to the Historic Commission split evenly between full and partial demolition each year. Ms. Caira broke down the types of applications (full demo/partial demo), whether they are addressed administratively or sent for a public hearing before the Historic Commission and what determinations are made (12-month delay, 18-month delay, demo delay waived). Details of each scenario are shown in the attached presentation.

Associate City Solicitor Andrew Lee provided an overview and details of the consideration for historic review and the process as it applies to different types of structures. A copy of his presentation and the redlined draft of the ordinance can be found at the end of this report. Atty. Lee noted that the proposed amendments seek to codify existing practices, but the process is unchanged. The proposed amendments additionally better clarify the process and instructions for property owners by placing them in a sequential order. He explained that the working group considered changing the 50-year requirement to a 75-year rolling date. Additionally, the working group discussed the inclusion of language that requires Council reconsideration of the date every ten years. The working group discussed including language that requires the Historic Commission to consider the degree to which historic/architectural value can be preserved through restoration and/or preservation and whether the imposition of demo delay would cause excessive hardship on property owners. Finally, the waiver process has been updated so that any waiver of the 4-month demo delay period (after 30 days) must be a 2/3 vote of the NHC. Currently, an applicant could receive a finding of preferably preserved and a waiver of the demo delay period simultaneously, with the submission of plans satisfactory to the Historic Commission. Atty. Lee noted that the working group's outstanding items include; the change in the 50-year requirement, the extension to properties located within 150' of the historic district, delegation of historic significance determination to staff and a designated Commission member, and a review of the criteria for review for designating a structure as preferably preserved (I. whether the historic/architectural value can be restored or preserved or II.) whether the demo delay would cause excessive hardship.

In response to questions from the Committee, Preservation Planner Katy Holmes confirmed that while the Historic Commission has jurisdiction over all sides of historically significant properties, less visibility from the street is preferred and additions are more appropriate away from the street view. She noted that the landmarking of properties is infrequent (up to twice each year). A Councilor noted that properties located in historic districts are not accounted for in the data shown in the attached presentation. Atty. Lee confirmed that the City may change the demo delay periods.

#### The Public Hearing was Opened

Sean Roche, noted that the post-war period of undistinguished buildings has transformed to include a mix of nice and undistinguished buildings. He encouraged the Committee to adopt consideration for preferably preserved buildings that any plans submitted should try to further the City's Comprehensive plan and whether the demolition of a building would result in more, particularly affordable housing.

Jay Walter, 83 Pembroke Street, recommended that the Council approve the fixed 1945 date. He stated that a fixed date is clear for homeowners as opposed to a moving target. Mr. Walter noted that the City should not review every house for historical appropriateness as it costs time and money for the homeowners. He stated that the 150' extension around historic districts is a way to extend the boundaries of the historic districts. Mr. Walter noted that the staff's current historic review is timely and appropriate but should not be burdened by the extra volume. He suggested that hardship as a criteria should be further defined.

Laura Foote, Otis Street, does not support the proposed changes. She does not support leaving post WWII houses off of review and is supportive of maintaining a diverse housing stock (smaller, more affordable units). Ms. Foote emphasized the impact of demolition on carbon footprint and noted that preservation should be used as a tool to reduce the carbon footprint and achieve diverse housing. She expressed concern that builders and property owners are often trying to get out of preservation and these houses may be significant.

Peter Dimond, member of the Historic Commission, noted that the Commission voted 5-0 to oppose the change of the 50-year limit. He noted that the 1945 limit would exclude a lot of homes from review. He stated that opening it up to allow demolition without review would be harmful to the historic nature of different streets within the city. Mr. Dimond noted that of the houses that haven't been surveyed, it will be difficult for homeowners to find out if/where their homes are listed locally or with the state. In terms of hardship, Mr. Dimond stated that most of the requests are typically by developers – not by homeowners. He suggested that the developers know how to preserve the front and design primarily to the rear.

Lisa Monahan, 1105 Walnut Street, stated that it is great that the Committee is continuing to look at the demo delay ordinance. She expressed her surprise to see that there are equal amount of communities that have chosen no date as they have chosen a 75-year requirement. She noted that there is plenty of value in the more modest homes within the City which provide great housing opportunities. Ms. Monahan noted that the City needs modest housing opportunities and emphasized the importance of maintaining diverse housing options that represent different periods of time. Ms. Monahan noted that the waiver process seemed difficult to understand.

Alan Schlesinger, 173 Westchester Road, expressed support for the changes, noting the improvements in clarity. He questioned what the purpose is. He noted that some people probably don't come in because they may be deterred by the process. Atty. Schlesinger noted that the four-month approval period waiver really is tied to design review, not historic review. Atty. Schlesinger expressed support for conducting the survey to determine which houses are and aren't significant. He noted that the judicial review process for appealing a determination has no purpose and noted that it lapses after the lapsing of the demo delay period.

Schuyler Larabee, Noted that going to a set date of 1945 will effectively dismisses 32,000-37,000 buildings from consideration. Mr. Larabee is opposed to a fixed date vs a rolling date. He noted that currently the extent of notifications is 300'. He suggested that notifications should be extended to at least ½ mile and/or published in the Newton Tab and noted that expansion of notification may generate more interest from neighbors.

Alan Maier, 479 Walnut Street, Architect, noted that he primarily works on residential renovations in Newton. He recognizes that the current ordinance can be problematic, but not that the core issue is not a matter of revising the 50-year rule, but defining when context matters. Mr. Maier noted that currently similar buildings located near each other can be determined preferably preserved even when they would not be architecturally or historically significant. Criteria for judging context should be different than judging specific houses. Mr. Maier noted that the interpretation of the ordinance has changed over time to expand the jurisdiction of the NHC.

Amanda Park, Architectural Conservator, Commissioner on the NHC, has experience working on over 100 landmarks. Ms. Park noted that the 50-year age restriction repeats itself in more than 1000 state and local preservation ordinances. The theory behind historic preservation is not to create villages that are frozen in time, but to allow for community evolution including like growth and modernization and all those things that we all want to create a living, breathing cityscape. Ms. Park noted that pegging the City's period of significance to a specific year, rather than a rolling timeframe, effectively freezes the City. She emphasized the importance of evolving and incorporating styles of homes that have occurred over time. She suggested that if the aim is to reduce the load or purview of the NHC, it makes more sense to rewrite the context clause, rather than to set an arbitrary age limit. Ms. Park explained that context encompasses what is thought of as elegant stylistically cohesive streetscapes, like Auburndale, Italian homes or print streets, Victorians, as well as planned communities, famous ones being tuxedo Park in New York, or Seaside, Florida as well as groupings of functional, needs based housing enclaves that support a certain class of workers or an ethnic community, also called vernacular architecture. She suggested that it is wrong to think that there is historical significance in all of our visually similar streetscapes. A full copy of her comments can be found attached to the end of this report.

Ellen Fitzpatrick, serves on the Newtonville Historic District Commission, expressed opposition to the draft revisions. She explained that the proposed changes make the ordinance more complicated while it is currently quite clear. She noted that the intent seems to be to allow demolition of existing homes in Newton. Ms. Fitzpatrick stated that there are multiple tiers are laws with similarities in purpose and definitions. She explained that too often preservation is reduced to a level of thinking that historical significance means that the architecture is nice or attractive, or old, or George Washington slept here. And that's not what historical significance means. Ms. Fitzpatrick emphasized that historical significance

is not fixed and/or limited to architecture and noted that history doesn't end so using 1945 leaves off the second half of the 20<sup>th</sup> century.

Isabell Albeck, 240 Windsor Road, noted that in two instances, she worked with a developer to revise plans. She stated that a 50-year date makes sense and expressed support for the work of the Historic Commission.

Doug Cornelius, Chair of the Historic Commission, explained that the ordinance is an incentive to preserve worthy properties an alternative to tearing them down. He stated that preservation is good for the environment, streetscape, neighborhoods and property values. He noted that there is a lot of mass produced housing which may be less durable, from the post war era. He noted that a lot of these homes are reaching the end of their useful lives and preservation can be costly. He suggested that any property should be subject to demo delay as long as it is subject to a historical survey.

Jane Frantz, 12 Glastonbury Oval, expressed support for the demo delay time. She aligned her comments with Larua Foote, Lisa Monahan and Peter Dimond. She noted that there have been an increasing number of teardowns and noted that hardships are usually on the developer, not the homeowner. Ms. Frantz noted that the proposed changes would have an inequitable impact on different parts of the City as some areas have much more smaller houses than other areas and stated that the proposed amendments will change the character of certain neighborhoods. She expressed concern about unintended consequences in neighborhoods where there are more homes built after 1945 and urged the Committee to consider the historic significance of the landscape changes.

Rena Getz, noted that if the City adopts a fixed 1945 date, it will essentially green light the demolition of approximately 25% of the housing stock without recourse. Many houses have not had the benefit of a historic review and this could require planning to approve demolition of many homes built after 1945, not on the MACRIS database. Ms. Getz noted that houses built from 1946-1970 contribute to the housing stock and provide housing for people at affordable levels. Ms. Getz noted that the City's long term health is dependent on having housing options throughout the community at various income levels. She noted that demolition of existing homes is costly to the environment and to the carbon impact. Ms. Getz stated that preservation will contribute to the City's goal of becoming carbon neutral and stated that partial demolition is preferable over full demolition, particularly for the environment. She noted that the current ordinance is working as intended and expressed support for no age requirement for historical significance.

Councilors expressed gratitude for the comments made by members of the public and emphasized the importance of holding public hearings. Councilors expressed support for review of the age/date every ten years and noted that additional review is necessary for the judicial review process. Committee members were supportive of leaving the public hearing open and holding the item for continued discussion. With that Councilor Leary motioned to hold the item which carried 8-0.

#### **#528-20**

#### **Requesting review and possible amendment to Local Preference in Chapter 30**

COUNCILORS ALBIRGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting a review and possible amendment to the Local Preference Ordinance in Chapter 30 sections 5.11.8. This section requires an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all

Inclusionary Units which provides for a local preference for up to 70% of the Inclusionary Units. Various groups including The Fair Housing Committee and the Newton Housing Partnership have questioned whether the percent of local preference to current Newton residents should be lowered with the goal of increasing racial diversity in Newton.

**Action:** **Zoning & Planning Held 8-0**

**Note:** Barrett Planning Group Consultants Judy Barrett and Catherine Dennison joined the Committee for discussion on the review of the City's Local Preference Ordinance. The Barrett Planning Group wrote the WestMETRO Home Impediments to Fair Housing. Currently, the City has a 70% threshold for local preference. During 2020, the Housing Partnership recommended that the Local Housing preference policy be eliminated altogether. The Planning Department began to analyze options and determine whether changes might be needed to the local preference ordinance. The City engaged Barrett Planning Group to look at the City's policy, the public benefit, whether it outweighs barriers to fair housing, etc.. Ms. Barrett reviewed the scope of the analysis, data, discussion of policy rationale and next steps. A copy of her presentation can be found at the end of this report.

Ms. Barrett noted that Barrett Planning Group was tasked with looking at a set of recent projects to identify if the City's current local preference policy is effective. As part of the review process, she was asked to evaluate affirmative fair housing marketing plans, review lottery and lease-up data. Ms. Barrett noted that during the review, she spoke with developers and lottery agents to understand data and consider the implications. She explained that the data collection and reporting is somewhat inconsistent and cannot be clearly correlated. Three case studies were conducted; TRIO, Austin Street and Hancock Estates. Ms. Barrett reviewed findings as shown in the attached presentation and noted that the findings suggest that white, non-Hispanic households are the most benefitted from the City's local preference policy. She noted that the data for local preference in households requiring accessible units is not clear.

Ms. Barrett reviewed a breakdown of the local preference application over the three case studies. She noted that the City received considerably more applications than the number of available units from local, non-local, minority and non-minority applicants. As such, the City had a sufficient pool and mix of applications and was not required to balance the pool to incorporate a larger applicant mix. The data shows that some households saw selection rates that exceeded their application rates. Ms. Barrett noted that based on the limited sample, the local preference policy does not appear to be aiding in the objective of diversity and white applicants appear to be favored. She noted that the data cannot be correlated because there are a lot of variables that can affect leasing after lottery selection (incomplete applications, income, credit, etc.). She suggested that the City should consider what the expectations and goals are and whether the policy is meeting the City's expectations.

Committee members noted that additional analysis is needed. Ms. Berman explained that local preference is determined by self-identification. The criteria for qualification include; living in Newton, working in Newton and/or having students that attend school in Newton. Applicants considered "local" have a higher chance of being selected because they are counted in the local preference pool as well as the general pool for the applicable units. The Committee expressed support for continued analysis. With that, the Committee voted 8-0 in favor of a motion to hold the item from Councilor Danberg.

**#106-21 Request authorization, pursuant to the 2020 Revised Citizen Participation Plan**

HER HONOR THE MAYOR requesting City Council authorization, pursuant to the 2020 Revised Citizen Participation Plan, to submit the FY22 Annual Action Plan to the US Department of Housing and Urban Development (HUD) for the City of Newton Community Development Block Grant (CDBG) and Emergency Solution Grant (ESG) funds and the WestMetro HOME Consortium.

**Action:** **Zoning & Planning Approved 8-0**

**Note:** Planning & Development Director of Housing Amanda Berman presented the request to authorize the FY22 Annual Action Plan to the Department of Housing and Urban Development (HUD) for the City of Newton Community Development Block Grant (CDBG) and Emergency Solution Grant (ESG) funds on behalf of the WestMetro HOME Consortium. Ms. Berman provided an overview of the use for funding programs as detailed in the attached presentation. The WestMetro HOME Consortium is a 13-community consortium of contiguous communities (Newton, Needham, Sudbury, Waltham, Watertown, Wayland, Bedford, Belmont, Brookline, Concord, Framingham, Lexington, Natick). Funds received through the consortium are from HUD. The Consortium created a 5-year consolidated plan for FY21-FY25, which was approved last fall. 1-year action plans are submitted annually and a lookback period is conducted each fall to review the consolidated annual performance and evaluation report. This lookback includes a review of what funds were spent and what activities and goals have been achieved. Ms. Berman presented goals and ongoing initiatives underway which include; the creation, preservation and rehabilitation of affordable housing (Coleman House, West Newton Armory, Newton Housing Authority owned units), a down payment assistance grant program, achieving fair housing through continued partnership and education about fair housing. The Human Services component of the program includes; providing financial support and stability to the low and moderate income population. The Human Service program is capped at 15% of annual allocation + FY21 program income. Funds in FY21 were awarded for human service programs, emergency solutions and architectural access to various non-profits for different uses as outlined in the presentation. Ms. Berman noted that the Planning & Development Board recommended approval of the plan on April 5, 2021. There is a 30-day comment period that will lapse on May 4, 2021 and all comments are welcome. The Committee expressed no concerns relative to authorizing the Mayor to submit the plan to HUD. Councilor Danberg moved approval which carried unanimously.

With that, the Committee adjourned at 10:45 pm.

**Respectfully Submitted,**

**Deborah J. Crossley**