



Zoning & Planning Committee Report

Part 1

City of Newton In City Council

Thursday, October 14, 2021

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Ryan, Wright, Krintzman, and Baker

Also Present: Councilors Bowman, Malakie, Downs, Kalis, Lipof, Oliver and Kelley

City Staff: Director of Planning and Development Barney Heath, Deputy Director of Planning and Development Jen Caira, Chief of Long Range Planning Zachary LeMel and Assistant City Solicitor Andrew Lee

Newton Historical Commission: Peter Dimond (Chair), Doug Cornelius, Jennifer Bentley, and Amanda Park

Planning & Development Board: Peter Doeringer (Chair)

New TV

#180-21 Requesting a review and possible amendments to Section 4.2.5(A)
COUNCILORS LAREDO, LUCAS, LIPOF AND MARKIEWICZ requesting review of and possible amendments to Section 4.2.5(A) of the City of Newton Zoning Ordinance to clarify language concerning shadows and blocked views in the Mixed Use 4 district.

Zoning & Planning Held 8-0 on 09/13/21

Action: Zoning & Planning Held 8-0; Public Hearing Scheduled for November 8, 2021

Note: Councilor Danberg made a motion to schedule a public hearing for November 8, 2021. Councilor Leary made a motion to hold this item. Committee members agreed 8-0.

The report will be available at a later date.

#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.

Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstaining) on 05/19/2020**(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****Zoning & Planning Held 8-0 on 04/12/21, Public Hearing Continued****Zoning & Planning Held 8-0 on 06/28/21, Public Hearing Continued****Zoning & Planning Held 8-0 on 07/26/21, Public Hearing Closed****Action: Zoning & Planning Approved 8-0****Note: Assistant City Solicitor Andrew Lee joined the Committee for discussion on this item.**

Chair Crossley stated that on July 26, 2021, the Committee could not come to clear consensus on remaining items. Therefore, Attorney Lee recommended that the subcommittee convene once more to discuss those items and think through how to proceed. On September 17, 2021, the Historic Ordinance working group met to identify the outstanding items related to the proposed amendments to the Demolition Delay Ordinance. Councilors Albright, Baker, Crossley and Kelley, Newton Historic Commission (NHC) Chair Peter Dimond, Newton Historic Commissioner Doug Cornelius, Chief Preservation Planner Valerie Birmingham, Director Heath and Deputy Director Caira attended. The working group discussed the jurisdictional age requirement, historical context and appeals.

Chair Crossley referred to Attorney Lee's summary dated October 8, 2021 (as attorney Lee was experiencing a poor connection)

Appeal

Currently and under the proposed amendments to the Demolition Delay Ordinance, an applicant aggrieved by a 'preferably preserved' determination may appeal the Newton Historic Commission's decision to the Superior Court. The working group discussed the option of an administrative appeal process. The general consensus among the working group was that such an amendment requires a thorough analysis and further discussion that may be best addressed through a separate docket item.

Historical Context

Under the current Demolition Delay Ordinance, a building is Historically Significant if it is determined to be "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..." At the Zoning & Planning Committee meetings held on June 28, 2021, and July 26, 2021, the Committee discussed whether the foregoing criteria required clarifying revisions. On June 28, 2021, the Committee took a straw vote on the issue with 5 in favor of leaving the language unchanged and 3 in favor of including clarifying language. At the September 17, 2021, meeting, the working group discussed other measures that can be taken to provide clarification for findings of historically significant and preferably preserved on the basis that a building is historically or architecturally important in the context of a group of buildings.

Chair Crossley noted that what had been missing from NHC meeting records and decisions is a clear explanation of why a decision to preferably preserve is made. Some reports say that the reason for the decision is “context” period. A petitioner is due a rational and the record should be clear.

It was agreed by all in the subcommittee that going forward, both staff recommendations and motions to “preferably preserve” a property will explicitly identify why historical context is important and/or note the historical significance of a building by reason of period, style, method of building construction or association with a particular architect or builder. That said, the subcommittee does not recommend amending the language in the ordinance.

Jurisdictional Age Requirement

The working group did not come to agreement on whether to recommend retaining 50 years or extending the requirement to 75 years as the threshold. They agreed that further discussion in the Zoning and Planning Committee would be necessary.

Under the current Demolition Delay Ordinance, a property is subject to review if it is in whole or in part 50 years or older. As discussed at the Zoning & Planning Committee meetings held on June 28, 2021, and July 26, 2021, **the Committee narrowed the options to 1. Requiring Demolition Delay review if a property is 75 years or older; or 2. Retaining the 50 year jurisdictional requirement.**

The draft ordinance proposal has been updated from the last version circulated on July 23, 2021. The update is limited to changing the proposed Section 22-53(a)(1) as follows: “No demolition permit shall be issued by the commissioner except in conformity with the provisions of this Sec. 22-53, as well as any other applicable law, statute, ordinance or regulation, for any building or structure **that...is whole or in part _____ or more years old.**”

Chair Crossley then offered a proposal to the committee. She recommended retaining the 50 year jurisdictional requirement in the ordinance now but advancing a serious effort to complete the Massachusetts Cultural Resource Information Survey (MACRIS) for properties that were built between 50-75 years ago. This would be an important tool and basis for future determinations, necessary to competent management of historic resources. She then reminded that according to staff, there are 3200 properties 50 to 75 years old that have not been surveyed. The MACRIS now lists 472 historic properties in Newton, many of which are between 50 and 75 years old. During earlier committee discussions, it was said that it would take too long to survey so many properties and be cost prohibitive. Chair Crossley spoke with Director Heath, Deputy Director Caira and Chief Preservation Planner Birmingham who recommend completing the survey. They said that once the “windshield” survey is completed, Community Preservation funds can be used to conduct the surveys, shortening the time frame. In April, Ms. Caira provided a memo referring to a windshield survey which involves utilizing GIS information to identify the age range and location of the areas of interest which will reduce the list of properties to those likely to be of historical importance be carefully surveyed. Newton Historic Commission Chair Dimond also felt that this was a good idea.

Attorney Lee asked what would be the mechanism once the survey is complete to return to City Council for further amendments, or would it be addressed through a separate docket item? Chair Crossley answered yes, someone may docket an item to reconsider the 50 year threshold in the future.

Committee member comments, questions and answers:

For clarification, if we approve retaining the 50 year jurisdictional requirement and existing language for the appeal process, the survey would not be included? Chair Crossley answered yes, further discussion on the appeal process would only happen under a separate docket item if filed, but the survey will be discussed in more detail beginning early next term. Once the survey is complete a future Council may consider amending the ordinance.

It is necessary to complete the survey in a timely manner as it will benefit residents, staff and the Newton Historical Commission.

Great to hear funding has been found, it is critical to complete the inventory of historic places.

How long will the survey take? Chair Crossley answered that from discussions with staff, the windshield survey could be completed in the first year, then the detailed surveys may take 2-3 years. Staff said that in January after internal discussions they can return with more detail.

Are there other funds that can be added to CPC funds to fund the survey? Chair Crossley answered that budget is unclear until the windshield survey identifies a number of properties. Massachusetts' Historic money cannot be used for the initial windshield survey but can be used in addition to the CPC money. We've been told they may offer up to 25K per year.

Would the City benefit having volunteers assist with the windshield survey?

Chair Crossley suggested we wait for the more detailed proposal in January, but perhaps staff can consider this idea.

Committee members thanked Attorney Lee and the Planning Department for their diligence.

Without further discussion, Councilor Baker made a motion to approve this item. Committee members agreed 8-0.

Newton Historical Commission members comments:

Thank you for approving this item, the NHC members and members of the public have spent many hours and energy on seeing this docket item come to fruition.

The Committee adjourned at 8:50p.m.

Respectfully submitted,

Deborah J. Crossley, Chair