



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, June 1, 2020

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

Also Present: Councilors Kelley, Laredo, Bowman, Markiewicz, Downs, Greenberg, Lipof, Malakie, and Gentile

Planning Board: Peter Doeringer (Chair), Sonia Parisca, Kevin McCormick, James Robertson, Sudha Maheshwari, Jennifer Molinsky, and Chris Steele

City Staff: Barney heath, Director of Planning and Development; Zachery LeMel, Chief of Long-Range Planning, Gabriel Holbrow, Community Engagement Specialist; Jonathan Yeo, Chief Operating Officer; Nathan Giacalone, Committee Clerk

#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.

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

Notes: Zachery LeMel first presented a draft summer schedule through October, and the ZAP Committee discussed its scheduling options for the ongoing Zoning Redesign discussions. Mr. LeMel reiterated that the current timeline estimates a final vote on the revised ordinance to take place in December, 2021. In order to advance the schedule, three meeting dates were proposed for June, followed by additional meetings in July and August based on the availability of the Committee.

Mr. LeMel then began the main section of the presentation.

The draft proposes that Building Components are architectural features and small additions that a homeowner may install on their house by-right under certain conditions. Mr. LeMel notes that many examples of building components are found throughout Newton, such as front porches, balconies, window boxes or bays, corner features (turrets), and side/rear additions.

For new construction or by-right additions, the house must conform to required setbacks and not exceed the maximum lot coverage. He said that allowing certain building components can be a

tool to achieve smart and predictable growth for neighborhoods, a simpler process for increasing habitable space, and encourage variety and individuality in design. The objectives are to deter the influx of boxy and oversized homes often built through teardowns.

Because building components are a new concept, Mr. LeMel described the De Minimis rule within the current ordinance because it functions in similar ways to building components. The current De Minimis rule allows limited extensions of existing non-conformities so long as those extensions comply with the prescriptive standards. De Minimis and the new concept of building components are not apples to apples. De Minimis only applies to non-conforming structures, whereas building components would apply equally to non-conforming and conforming structures.

According to Inspectional Services, this rule is infrequently used. Mr. LeMel presented a generic case study to demonstrate how the current De Minimis rule might apply to a home, including for dormers, second floor additions, bay windows, and enclosing a porch.

Mr. LeMel then described issues with the current draft language. In the current draft, building components count toward the overall building footprint. If building types are limited in total square footage and measured and classified by footprints, as proposed in the new ordinance, this could disincentivize the use of building components, possibly continuing boxy buildings. To solve this, building components would not be counted toward the building footprint or maximum square footage, while still complying with setback and lot coverage requirements.

The Building Professional Focus Group suggested that the roof types section and some language in definitions promote certain architectural styles, an issue Zoning Redesign is meant to avoid. To solve this, the proposed ordinance will use more objective language and eliminate the roof types definitions section.

Instead, a clear definition of half-story is proposed. Currently, two and a half stories are the maximum allowed in residential districts, for single-family homes. Mr. LeMel presented a diagram proposing that any roof type that has a pitch between 19-49 degrees and/or any construction that is set back seven feet from the main wall of the building would be considered a half-story. Any construction that exceeds the 49-degree pitch would be considered a full story, while any pitch below 19 degrees would be considered zero stories.

Another challenge is using special permits to allow increasing building footprints. The recommendation is to remove this option and replace it with building components. Building components could allow for a similar outcome to expanding the building footprint with greater flexibility, variety, and without the need for a special permit.

Councilors and Planning & Development Board members discussed the presentation. Questions, answers, and comments followed:

Q: With the variety of possible building components to add, is the homeowner still confined to the building footprint limit for their house type?

A: The total square footage building components may add is dependent on the standards set within each building component and on the setback and lot coverage standards.

Q: What in Newton's current zoning code promoted the shift to the oversized and boxy houses Zoning Redesign is now seeking to deter?

A: It was other conditions, more than the zoning code which drove this trend. Land values are high, and Newton is a desirable place to live. Banks lend money to developers based on how much the developer can build. This in turn leads to a higher cost which must be recouped. These conditions push developers to build to lot maximums and because of Newton's desirability, a buyer can always be found.

Q: Can you provide more details on the setbacks for half stories?

A: The thinking is that a full height space can be considered a half story if that floor is set back a minimum of 7 feet from the floor below. The setback mitigates the visual impact of the upper floor from the public realm below as to be perceived as a half story, and therefore can be categorized as one. In addition, the setback allows for a small terrace, which can function as another visual element to enhance the look and feel from the public realm below.

C: Currently, it is possible to create *de facto* third stories; the half story regulations could make this problem worse.

A: This is a good point which is why Planning is working to test these standards and make sure they are not easily manipulated. A main goal should be to allow residents to expand their properties and enhance their neighborhoods. It is better if these half stories can be designed so as not to be perceived dominating the neighborhood from the street.

Q: Are you going to be eliminating special permits?

A: No. The recommendation discussed here is to specifically remove the ability to ask for a Special Permit to increase the house type building footprint.

C: I think the diagrams used to demonstrate the half-stories under roofs show much higher houses than what is currently allowed.

A: The diagram in the presentation is just that, a diagram. Of course, any proposal will have to comply with the set height/story maximums for that building type.

Q: How will cellars impact the measurement of building height, especially in cases where high

water tables require cellars to be raised significantly above ground level?

A: This is a great question and cellar manipulation to create *de facto* three-story buildings is a problem the Planning Department is aware of and trying to address. This issue will be discussed more in depth with ISD and members of the building community. More language in the draft ordinance could solve this and case studies will be developed as an aid.

Q: Could building components be added while a house is being built?

A: Yes, building components could be added to new developments as well as renovations.

Q: Will you still be able to enclose porches?

A: Yes, that will be allowed. The standards will be laid out within the building component.

Q: Can a porch be enclosed if built into a setback?

A: The draft ordinance, as well as an amendment Council passed in the previous term allows front porches, enclosed or not, to be built into the setback.

C: If certain houses are made nonconforming, they would still be able to renovate with building components.

C: There are good things about building components as they can make houses more attractive and valuable, but the Council should be careful with them. They could potentially allow for an oversized mass on a small lot. The Council should review each component individually to determine if they should be allowed by-right or not. The proposed ordinance also needs to clarify the language that allows detached structures ranging from playsets to detached garages to be built encroaching on setbacks. Large lots should not be subjected to the same house size constraints that will be on smaller lots as the proposed language appears to do.

Q: If reducing nonconformity is a goal, then why are we willing accept so much nonconformity from the proposed ordinance? Who has the Planning Department been speaking with during this process?

A: Planning has spoken with its consultant, Utile, as well as members of the architectural focus group. A list of the group's members is attached to this report. The Planning Department welcomes Councilors to forward the names of any other interested architects and builders who are willing to donate their time to this process. Invitations have been made based on how well the administration knows them and if they have shown interest in being involved.

Q: I have some questions for the Planning Department to think about as they move forward with Zoning Redesign

- If a homeowner has maxed out their lot coverage, are they only able to add building components which do not touch the ground?
- How do we encourage builders and developers to leave porches and decks open?
- How do we achieve a balance between home sizes and open space?
- Will the proposed ordinance address features such as in-house elevators that may appear more as the population ages?

C: The half-story classification is confusing, and Zoning Redesign should make story clarifications clearer. Based on the earlier diagram, 12 feet high should be considered a full story. Otherwise, do not refer to it as a half story.

C: The 4-8 unit classification seems odd to use as 5 units is usually considered the cut-off for commercial property.

C: Without effective constraints on building components, developers may try “pyramiding” them on top of each other.

Q: If some components can intrude into the setbacks, does this interfere with what a neighbor may do with their property?

A: This problem has been identified since the De Minimis rule often creates a condition with neighbors racing against each other to build to the setback first, preventing the other property from doing so.

C: Building components look like a good addition as they are less prescriptive, decrease the need for special permits, and simplify the redesign process.

Q: Will there be clarification on rooftop guidelines? Will they create more nonconformities?

A: Planning will look into this and collaborate with ISD on better enforcement.

Q: In addition to being less prescriptive, is the goal of using generic terms to describe the building components supposed to make the zoning code more accessible?

A: Yes. The terms will hopefully be simplified to only imply volume/mass, not style. There will be outreach to the community (building professionals and general public) to explain what features are permitted and how to utilize them.

Q: Are you able to estimate how many special permits would not have been required had the proposed building component guidelines been in effect?

A: Planning is currently working to answer this question with assistance from local architects.

C: There are certain issues with this proposed language which still need to be revised. Under

some measurements, this language could ban the gambrel roof. The language also needs to answer whether additions should be treated differently if they require a foundation. There is a fine line in the answers to these questions between crossing into design regulations.

Q: When will the Committee be discussing building components again? This could be a long discussion taking up more time than what was anticipated.

A: The Planning Department expects to return to this conversation by the end of June.

Q: What are the next steps for the discussion on accessory structures?

A: There is consensus on accessory structures, but more work needs to be done to build understanding on a few outstanding points. As each section of the proposed ordinance is covered, it builds on the general understanding of Zoning Redesign as a whole. This will hopefully allow ongoing conversations to occur at a faster pace.

C: As discussions continue with expert input, it should stay in mind that architects and builders may have an implicit bias in favor of more building whether or not that is the majority will of the Council and Committee.

C: Whether or not there is a redraft of the available proposed ordinance language by the end of June depends on how fast the additional case studies can be developed.

Mr. LeMel then led a presentation and discussion to respond to questions raised in previous meetings. He restated the main goals of regulating garages and driveways to be to promote safety, sustainability, and more quality design.

Councilor questions addressed the sources of the draft language, reasons for some of the proposed regulations, details of previous driveway materials and their costs, and other parking regulations. He closed his presentation with a brief summary of the next steps in the Zoning Redesign discussion process.

Councilor and Committee member questions, answers, and comments followed:

C: In some historic narrow lots, there is parking space in the side setbacks, a distinction the proposed ordinance needs to be aware of.

Q: If I need to rebuild an existing nonconforming garage, what should I do?

A: Under the proposed ordinance you may rebuild an existing nonconformity. In addition, State Law, MGL CH 40A, provides specific rights to existing non-conformities.

Q: Based on how the proposed ordinance is written, on some two-family houses it could allow

the whole front side of the house to be a garage depending on the size of the house.

A: The Planning Department is aware of this and is working with a consultant on it.

Q: Why have the pervious paving costs you presented to us changed so much?

A: The initial numbers only accounted for installation. The new figures have been updated to include other factors such as maintenance and other cost requirements (i.e. stormwater retention) that is often required on traditionally paved driveways to manage stormwater.

C: If the Council supports the 10-foot restriction for driveway entrances, it will make most houses in Newton nonconforming.

C: The Committee should see better data supporting the 10-foot driveway entrance. We should also see better vetting of the costs of alternative paving substances. It is also fair to count stormwater management into new construction. The Committee also needs to discuss how to handle the new nonconformities the proposed ordinance will make. If the driveways are counted separately from the house it could remove the need for more special permits.

C: The future of single-family housing is in multi-unit buildings. The driveway drainage system costs on pervious surfaces for single-family houses will have little real impact on affordable housing.

C: Concerns about the 10-foot driveway entrance could be remedied by disentangling driveway nonconformities from building nonconformities.

C: Newton also faces the climate risk of flooding and the city should start preparing now to incentivize pervious surfaces to mitigate possible flood damage and save property values.

Councilor Laredo submitted a letter commenting on the proposed language regulating garage doors and driveways to the Clerk's Office for attachment to the report.

Councilor Krintzman moved hold which carried 8-0.

#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.
Action: **Zoning and Planning Held 8-0**

#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.

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

The meeting adjourned at 10:19PM.

Respectfully Submitted,

Deborah J. Crossley, Chair