



## **Zoning & Planning Committee** **Report**

### **City of Newton** **In City Council**

**Thursday, October 15, 2020**

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

**Also Present:** Councilors Downs, Laredo, Bowman, Malakie, Greenberg, Kelley, Kalis, Lipof, and Humphrey

**Planning & Development Board:** Peter Doeringer (Chair), Sonia Parisca, Kevin McCormick, and Jennifer Molinsky

**City Staff:** Cat Kemmett, Associate Planner; Zachery LeMel, Chief of Long-Range Planning; Jennifer Caira, Deputy Director of Planning; Andrew Lee, Assistant City Solicitor; Katy Hax Holmes, Chief Preservation Officer, John Lojek, Commissioner of Inspectional Services; Jonathan Yeo, Chief Operating Officer; Nevena Pilpovic-Wengler, Community Planning/Engagement Specialist; Nathan Giacalone, Committee Clerk

**#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.

**Action:**      **(2)      Demolition Delay: Zoning & Planning Held 7-0 (Councilor Ryan not voting)**

**Notes:**      The Chair noted that the working group (Councilors Albright, Kelley, Baker, and Crossley, NHC Chair Doug Cornelius and staff: Katy Holmes, Attorney Andrew Lee, and Planning Director Heath) continues to meet normally every Friday morning to further its work updating and clarifying the Demolition Delay portion of the historic ordinances. The working group has not completed its recommendations but wants to provide a status report to ZAP.

Attorney Lee and Ms. Holmes joined the Committee. Atty Lee presented an overview and flow chart of the current demolition delay process for partial and full demolitions (PowerPoint attached). Currently, to demolish all or portions of any building 50 or more years old requires NHC approval. If NHC does not find the building historically significant sufficient to deem the

building “preferably preserved,” then the demolition may proceed. However, if NHC determines a building should be “preferably preserved” a delay is imposed.

Attorney Lee stressed that the demolition delay is distinct from landmarking; landmarking is reserved for more historically significant properties and provides a much higher degree of protection whereas a demolition delay will eventually expire. The demolition delay is meant as an incentive to preserve existing historical structures.

The working group seeks to reorganize and update the ordinance to make it easier for all parties to understand, decide if the 50-year benchmark should be moved, clarify the definitions of historically significant and preferably preserved, and clarify the NHC review and appeals processes.

The working group is considering how to set the age of the property that triggers NHC review. Fifty years means all buildings up through 1970 must be evaluated by the Commission, which includes over 85 percent of Newton properties. Should the date be left the same, move the date to a static date before 1970 (1945 is suggested), or increase the age trigger to 60 or 70 years. The working group is also considering how to capture significant properties regardless of age such as those on the National Register.

Atty. Lee finished his presentation, saying that although many items are still under consideration the working group has completed an initial discussion of all items except for the appeals process.

#### *Committee Discussion*

**C:** Working group members noted that it has been extremely valuable to the working group have the advice from both Atty. Lee and Ms. Holmes during this process to both understand NHC decision making to date and how to capture and codify what is working.

**C:** For full demolition, several years ago NHC was considering plan alternatives and ruling on delay early. The ordinance was amended to prevent this from happening in the first four months to avoid creating a backdoor design review process.

The delay period for National Register properties was also set to 18 months to ensure that enough thought and research was done before such a property could be demolished.

#### *Other Councilor Comments:*

**C:** Has the demolition delay had any effect on properties that otherwise would have been preserved? Are there any changes or shortcomings to the delay?

**A:** Currently the working group is talking about how to make the delay more effective, and while the one-year delay has not come up as a specific target, the working group is looking at properties that meet this criterion by targeting the process.

**C:** How effective has the delay been? Are there any available statistics on it?

**A:** The working group has addressed the demolition delay as a means to promote preservation. There are several properties that have gone through this process, resulting in plans that maintain the existing structure versus demolishing it.

**C:** The working group is constantly thinking about how to promote preservation, regularly considering the question. If the goal is to encourage restoration and maintenance, then over-regulation must also be avoided so as not to push people away from this process.

Councilor Krintzman moved Hold which carried 7-0 (Councilor Ryan not voting).

**#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 & Planning Held 8-0

**Notes:** Deputy Director of Planning Jennifer Caira, and Chief of Long-Range Planning Zachery LeMel joined the Committee for a discussion (PowerPoint attached), focusing on the proposed regulations for alternative lot/building configurations and parking requirements, as well as the calendar for the remainder of 2020.

**Alternative Lot/Building Configurations**

***Rear Lot Developments***

Rear lot developments are meant to facilitate additional housing opportunities. One way the proposed ordinance can do this is to regulate the second home built on a rear lot so as to be subordinate to the primary building. The current ordinance allows these buildings to be built as a rear lot development to be equal in scale to the existing or primary building, but the required lot size is larger as well. The proposal is to allow only House Type C for rear lots, and though there is no minimum lot size for rear lot additions in the proposed ordinance, the setback requirements need deep lots and there are fairly few lots which can accommodate this.

The proposed ordinance also seeks to simplify the setbacks required between the lots and allow the rear home to be built anywhere within the setbacks. A special permit could still be required to develop a rear lot.

There were two guiding questions for the Councilors from this section:

**-Should a House C, developed as a rear lot, be allowed to increase the building footprint by 25 percent using building components?**

**-If the proposal achieves the City Council intent, and addresses community concerns, should rear lot development be allowed by-right? If not, are there any circumstances where a rear lot development should be allowed by-right?**

### ***Courtyard Cluster Housing***

The proposed ordinance seeks to enable courtyard clusters as a tool to increase non-subsidized housing that is affordable to more people. Cluster housing is possible only on a minimum lot size of three quarters of an acre, of which under 50 lots exist in Newton.

In a prior version of the proposed ordinance, numerous house types could be used for a courtyard cluster. Now, a single courtyard cluster building type is proposed to reduce the building footprint and square footage. The proposal includes a minimum required distance of 15 feet between buildings, and a maximum of two units per building.

The lot at 473 Waltham Street has been previously used as a hypothetical case study for how a courtyard cluster could work. In this version of the proposed ordinance, the building footprint must be smaller, allowing five dwelling units on the site.

Mr. LeMel said that while the courtyard cluster will have limited applicability, it can still be used to enable more middle income housing opportunities in Newton.

There were two guiding questions for the Councilors from this section:

**-Does the new proposed Building Type better facilitate development in scale and proportion with the intent and definition of Courtyard Clusters?**

**-Should the parking requirements be reduced since Courtyard Clusters are limited to areas walkable to public transit and village centers?**

### **Discussion**

All five Committee members who spoke on rear lot subdivisions felt strongly that the special permit should remain in place. Three committee members felt a special permit should be required for courtyard clusters as well. Councilors noted that rear lots have historically been controversial projects and should be evaluated individually. Two Committee members spoke about the potential impact on neighbors of these developments. Two Committee members spoke favorably about the smaller house sizes for courtyard clusters, saying that they would better promote affordable housing. One Committee member said that each unit should have a parking space for at least one car.

### ***Committee Comments***

**C:** When will the Planning Department review driveways in the proposed ordinance?

**A:** Some driveway questions from last meeting were addressed in the Planning Memo, but driveways will be covered more in depth at future meetings as we must give the department reasonable time to pursue addressing the garage ordinance. The Chair reminded that the Committee will be discussing the calendar later tonight.

**C:** For rear lot developments, is there a minimum amount of space for emergency vehicle access?

**A:** No matter what the ordinance does with parking requirements and easements, the fire department code on this takes precedence and it should not be addressed in ordinance. Depending on density, the Fire Department may require a minimum width of up to 20 feet on drivable material (not necessarily pavement).

**C:** Based on the data of what is required to make a rear-lot subdivision in an MR1 lot compared to the proposed conditions, there are probably more eligible lots for rear lot subdivisions under the proposed ordinance than the Planning Department says.

**A:** The analysis performed here specifically looks at what is the minimum lot size within each proposed Residence District that could accommodate the maximum size development on a rear-lot subdivision. The Planning Department began by looking at the minimum frontage required per district and extrapolated from there to arrive at roughly 25%. That said, it is correct that lot size adjustments (i.e. lot width) and building dimensions (i.e. width and depth) could lead to additional lots which could accommodate a maximum size rear-lot subdivision. Staff could not calculate every possible permutation. That said, staff believe 25% is within a reasonable margin of error.

**C:** Courtyard clusters do not seem contextual to Newton.

**A:** The large houses being built to replace teardowns are not contextual to Newton, such as the recently developed building at 473 Waltham. A courtyard cluster of smaller buildings is more in keeping with the physical character of the City, and it is important to remember that this is just one tool. While a courtyard cluster may be out of context for some parts of the city, it is unfair to say they would be for all of Newton.

**C:** At one point, the Council debated eliminating the rear lot subdivision entirely, feeling that these should be the exception rather than the rule. It is important that the special permit remains a part of the process because even a small building built as a rear-lot addition can have a substantial impact on the neighbors' backyards. One last thing that is important to consider is that if driveway access to a rear building needs to be 20 feet wide, there needs to be an effective buffer between the neighboring lot within the setback.

The current ordinance has a provision for cluster zoning in which a large lot can be subdivided in a conventional way with a special permit. This distinction is important because a courtyard cluster would have a big impact on neighboring lots, such as rear yards becoming the side yards for adjacent neighbors. Abutters need some form of protection as courtyard clusters are a more intense use of the land.

**A:** There are district setback requirements designed to be contextual. The rear lot of the cluster house would also require a 40-foot minimum rear setback.

**C:** Rear-lot subdivisions always bring controversy, and fewer applications have been made for them over the last few years. Often, they are done under financial hardship of the owner who seeks to remain in their home. Though it is good to see the smaller House Type, would the owner of the lot have the same financial incentive to develop the smaller home? The building components section could be an issue, so perhaps there should be a set maximum square

footage for the house. Another problem to consider would be large lots that just barely miss out on the requirement for a rear lot subdivision and what can be done to address this.

The unit sizes permitted for the courtyard cluster still seem too big, and if the goal is to promote more affordable housing then size should be limited. Further, the townhouse style should be explored to make cluster housing even more affordable.

**C:** There is plenty of opportunity for these rear lot subdivisions in Nonantum, though there is also the concern over neighbor privacy that other councilors have raised. The rear lot subdivision can work well in some cases, such as with extended families, and the House Type C further helps to this end. The special permit should remain for cluster housing as well.

It is a good idea to keep courtyard clusters having smaller building footprints as this will leave great opportunity for more public greenspace. Parking requirements should be reduced on developments close to transit centers.

**C:** Would the rear lot subdivision be allowed if there is no house on the property?

**A:** The ordinance addresses this and only if a minimum depth is required.

**C:** It will be good to use as much lot space as possible for housing in a neighborhood if it is contextual. Cluster housing buildings should be smaller in order to be more affordable as a goal of the proposed ordinance is to create more economic housing diversity. There are some areas of the city where cluster housing simply will not work. Limiting the size of cluster houses is important because sometimes these developments are unaffordable.

Oak Hill Park was brought up earlier and it is a good example of what the proposed ordinance hopes to do. It was designed as a walkable community to have all amenities nearby to eliminate the need for a car. The economic housing diversity this will create will keep housing costs down and benefit everyone in Newton.

**C:** Rear-lot subdivisions should be done by special permit only as these houses should be made contextual in size to the other homes in the neighborhood. The special permit should also remain for cluster homes as there are only a few lots that could accommodate them. Cluster housing will be a new opportunity to make more and smaller affordable homes. However, these homes would need to be able to accommodate the car needs of their owners and meet the Fire Department guidelines.

**C:** An important aspect of cluster developments is whether the community faces in or out, and the special permit can help answer this question. The Council also needs to understand the potential impact on the city's finances from these changes.

**A:** There have been conversations with the Newton Housing Partnership trying to define the scope of an economic analysis to understand the potential impact.

**C:** With rear lots, the sense seems to be to keep them under special permits. Perhaps a better term would be lot subdivision. It is a good idea that the rear house be smaller and limited to a certain footprint. The rear lot setbacks should be reexamined, and if no special permits are

required the standards need to be clearer. Courtyard clusters are a very interesting idea though there is limited opportunity for them. In such developments, residential units would face the courtyard, which would be viewed from the street. There should also be one parking spot per unit to start.

#### *Other Councilor Comments*

**C:** When done properly rear lot subdivisions can work well and serve a variety of needs and the special permit process is key for them. There have been few numbers of these approved. In some cases, the rear house is still large and in at least one recent case, the proposed ordinance would have prevented a good project because the existing building is on what became the rear lot. The driveway width needs to be consistent with fire code. The proposed ordinance will create more eligible lots and while they have an important role to play, the Council needs more information on this topic.

On courtyard clusters, Oak Hill Park is a great example of a community designed to be pedestrian friendly. However, unlike the courtyard cluster design Oak Hill Park was built on vacant land. The courtyard cluster also needs a special permit. If fronts of buildings are supposed to be welcoming, how will this work on courtyard clusters? If parking requirements are reduced, the winter parking ban must remain in place. The courtyard cluster is an interesting concept but inconsistent with Newton.

**C:** Several rear lot subdivisions have come before the Land Use Committee, and one recently is a front-lot subdivision because the main house remains in the rear. These should still be special permit situations. In addition to rear-lot subdivisions, townhouses are another good tool to be used with other methods to increase housing variety.

**C:** Rear lot subdivisions come in many varieties, so the ordinance should maintain flexibility and be in context with the neighborhood. Cluster housing is a good option for odd lots, and it is important that they still appear welcoming from the street.

**C:** The side effects of the rear lot subdivisions should not be ignored. Big backyards are a good thing as they balance out smaller yards and add to the total tree canopy of the city. If more rear lot subdivisions are built, then the total tree coverage will fall. While financial hardship may be a common factor in constructing these buildings, zoning needs to focus on city-wide policy and is not the right vehicle to address these problems.

**C:** One consideration for courtyard cluster front doors is the built-in environment and community aspect placing of the front doors. The door placement is meant to foster community building on courtyard clusters by facing each other across the central courtyard.

**C:** The reduction in size of courtyard cluster buildings is good, and while a unique opportunity it is unfortunate that there will not be much of it. For the subdivisions, either way it is a rear lot subdivision no matter where the new home is built on the property. For at least the past 18 years, there is usually only one rear lot subdivision proposal that comes before the Land Use

Committee and they are usually among the most contentious items. For these reasons it should remain under the special permit to ensure that those that do get built occur under the right conditions.

**Parking Requirements:**

Mr. LeMel then continued with a presentation on parking requirements. As previously discussed, this past summer, the main goal continues to be to plan around sustainability. One tool to promote sustainability would be to require a special permit for any parking beyond the maximum and requiring this extra parking to be made of pervious materials. The proposed revisions to parking requirements will open more access to opportunities for local businesses as well. The sense of the Committee has been that on-street parking should only count toward the requirements for non-residential uses.

Staff had previously proposed that non-residential uses with up to 5,000 square feet of leasable floorspace should be exempt from parking requirements, though the Committee did not discuss this proposal.

Mr. LeMel said that the proposal to eliminate parking minimums is part of a larger national trend across North America, and that eliminating parking minimums would give more agency to developers and property-owners to determine how much parking they need or want and could result in less paved surface.

The following guiding question was offered to the councilors:

**-Do you agree with the reduction in parking minimums and the proposal to create parking maximums?**

**Discussion:**

One Committee member spoke in favor of implementing parking maximums and no Committee members spoke against this. The general sense of the Committee was that the more space set aside for cars will be filled with more cars. Regarding the elimination of parking minimums, the opinion of the Committee was split as four Committee members were skeptical that developers would provide adequate parking if minimums were not in place. Two Committee members said that eliminating parking minimums would allow residents and developers to make better choices regarding parking needs.

*Committee Comments:*

**C:** Would the new proposal eliminate parking maximums on homes?

**A:** In the latest draft, one- and two-unit homes are exempt from parking requirements. The decision will now be up to the homeowner to decide how much parking they want.

**C:** Eliminating parking minimums may lead to too few parking spaces being built and lead to more on-street parking.



**Q:** If there is a winter parking ban, homes need parking spaces to be saleable. Can the winter parking ban be added to the zoning code?

**A:** This is not a good idea. If the goal is onsite parking, the zoning code should just require it and refrain from referencing the winter parking ban at all.

**C:** Less space for cars means more space for people, and with the winter parking ban in effect on-site parking needs to be required to reduce on-street parking.

**C:** The need for marketability ensures that homes need to have parking as people will still own cars for the foreseeable future, even if they own fewer. There is no guarantee that developers will be responsible and not take advantage of no parking minimums. There were several condos sold in Newton Centre without onsite parking, which burdens the downtown public lots. Parking requirements should be reduced to one stall and the winter parking ban should remain.

**C:** There will need to be parking until other problems in the city such as public transit limitations are fixed. More limited bans resulting from specific snow emergencies would be a better idea than the current winter parking ban. The winter parking ban may be applicable in certain areas of Newton such as those near colleges. Another good idea may be to limit the number of cars per multifamily unit. As the average home price in Newton remains at \$1 million, people will continue to expect parking at their homes.

**C:** To clarify, the proposal is not to eliminate parking but to change who decides how much parking is needed. Individuals and developers are better equipped to make this decision than a city mandate.

**C:** The Council should work to reduce car reliance and the market will help this process as well. Less space needs to be set aside for cars. There should no longer be a citywide winter parking ban, but it could still be needed in some parts of Newton.

**C:** Cars are continuing to get more environmentally friendly as green technology continues to advance. This region gets cold in the winter and it can be difficult to function without a vehicle. Standards need to be set in order to keep cars parked off the street and to maintain neighborhood character.

**C:** An overnight parking ban would benefit not just winter driving conditions, but it would also moderate free parking spaces. Brookline has an overnight parking ban all year which makes road maintenance easier. Newton could follow suit as it would make street sweeping easier which would improve stormwater management.

**C:** The current need for parking is mandated by zoning requirements. Eliminating the parking minimum would free developers from building parking when they do not want to.

**C:** There is no guarantee that the market will solve Newton's parking issues, but if the city continues to require parking then it is not a fair system. The Council should be setting the rules for the framework and the future to meet our goals.

*Other Councilor and Planning Board Comments:*

**C:** Is the proposal written for a minimum of one parking space per dwelling unit and a maximum of two?

**A:** It is written so that one- and two-family homes are exempt from parking requirements, anything above is subject to them.

**C:** The parking maximum on single- and two-family homes should be two parking stalls because the more spaces there are, the more cars there will be. A lack of parking bans and parking minimums will lead to more cars being parked on the street. The right combination is needed to reduce the need for cars.

**C:** Nearby communities like Boston, Somerville, and Cambridge have difficult winter driving because of the on-street parking. Brookline has a year-round overnight parking ban. The Council should not place car maximums on peoples' property because for many families, they own two or three cars out of necessity. If developers are not required to build onsite parking, they will not do it, leading to more street parking. However, one parking stall should be enough for lots near public transit stops.

**Planning Board:** There should be less parking near public transit where walking and other options are more feasible. Areas with less public transportation need more parking. Newton should be thought of as a city of people and not tied to cars and village centers can be areas where people do not need cars. Only multi-family housing should require parking.

**C:** Parking reduction is a good idea because reducing transportation emissions is key to stopping climate change. There is a direct correlation between the number of parking spaces and cars, which in turn reduces green spaces and drives up affordable housing costs. Single- and two-family will probably get one or two parking spots each but this should not be by a mandate. More neighborhood shops will promote walkability and reduce car dependence.

**PB:** Zoning is a poor way to reduce the number of cars in a city. Discussion so far has placed a surprising amount of faith in the market to minimize parking. Since people often park wherever they need to, markets will not be enough to solve this problem and the city should explore other means such as increased ticketing to reduce on-street parking. The Council should determine if the market is helping other communities to solve their own parking problems.

**PB:** There needs to be a better assessment of the impact of parking on housing costs, air pollution, and other associated costs.

**C:** Requiring someone to add parking to small spaces may push underground parking, potentially adding \$1 million to a project and making it unfeasible. Parking requirements will not help Newton meet its goals and they hurt affordable housing as well. A surface parking spot can add about \$25,000 to the cost of a project while the cost for structured parking is even higher.

The Chair said that she felt there was no strong sense of consensus between the Committee and other Councilors and that it may be helpful to think about the different kinds of housing developments and their unique parking needs.

**Calendar:**

Mr. LeMel presented the calendar outlining the remaining ZAP meetings in 2020 (attached). The Building Professional Working Groups have been invited to the October 26<sup>th</sup> and November 5<sup>th</sup> meetings to discuss driveway standards and dimensional standards respectively. Following meetings will cover legal nonconformities, multi-unit conversions, and engagement strategy updates. The goal is to have the first public hearing on the proposed ordinance in late January. Meanwhile, the work on revising the garage ordinance will also continue as a standalone amendment to the current ordinance, per Committee recommendation.

Mr. LeMel concluded his presentation.

**Discussion:**

**C:** It is good that the Planning Department has carved out time to address the garage ordinance on its own, as well as legal nonconformities. However, it is concerning that there is no time set aside to have a discussion on the basic premise of zoning redesign itself because I am not yet convinced that the entire code needs to be overhauled rather than just fixed where needed.

**C:** I appreciate that the schedule extends out to January, but it appears too tight overall and the committee needs more time to discuss dimensional standards and house types. There should also be a whole meeting devoted to the map and building components. A calendar should also include January and February as well.

The Chair said that the current calendar and meeting schedule for November, December, and into next year will be reexamined to be realistic with respect to the Committee's ability to carefully deliberate all recommendations.

Councilor Danberg moved Hold which carried 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 & Planning Held 8-0**

**Notes:** Councilor Danberg moved Hold which carried 8-0.

The meeting adjourned at 10:26pm.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**