



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, November 23, 2020

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

Also Present: Councilors Lipof, Bowman, Greenberg, Markiewicz, Laredo, Downs, and Malakie.
Planning Board Members Peter Doeringer and Sudha Maheshwari

City Staff: John Lojek, Commissioner of Inspectional Services; Barney Heath, Director of Planning; Jennifer Caira, Deputy Director of Planning and Development; Cat Kemmett, Associate Planner; Zachery LeMel, Chief of Long-Range Planning; Andrew Lee, Assistant City Solicitor; David Olson, City Clerk

#404-20 Appointment of Lisa Adams to the Economic Development Commission
HER HONOR THE MAYOR appointing LISA ADAMS, 40 Converse Avenue, Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on November 30, 2023. (60 Days: 12/18/2020)

Action: Zoning & Planning Approved 8-0

The Chair of the Zoning & Planning Committee introduced Lisa Adams and asked her to summarize why she would like to be part of the Economic Development Commission. Ms. Adams stated that she has lived in Newton since 2010. Professionally she began practicing law in employment and labor and recently she lobbied for cities and towns as a staff member for the Massachusetts Municipal Association (MMA). She now works for the state where she directs a workplace investigations unit in the executive branch. She has an interest in economic development and has lobbied in that area.

It was noted that her legislative background is really interesting and will be an asset to the commission. She is grounded in what happens at the local level and it is great that she has worked for the MMA. It is also impressive that Ms. Adams was able to get legislation passed at the State level to provide insurance for hearing impaired children.

She was asked how the city could be more helpful to small businesses during Covid-19. She responded that it is important to look around to see what is being successful in other cities, the state, the country and the world. Diversity in our local businesses is important and we need to make sure that our local businesses succeed.

Her appointment was approved unanimously.

#403-20 **Appointment of Eryn-Ashlei Bailey to the Economic Development Commission**
HER HONOR THE MAYOR appointing ERYN-ASHLEI BAILEY, 161 Edinboro Street, Newtonville, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on November 30, 2023. (60 Days: 12/18/2020)

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

The Chair of the Zoning & Planning Committee introduced Ms. Bailey, and asked her why she is interested in serving on this commission.

Ms. Bailey stated that she is interested in serving on the commission because now more than ever it is important to keep small businesses open. It is important to keep Main St. working as our community would be boring if the small businesses were to go away. The city needs to make sure that this is a premier destination for entrepreneurs. She went to high school in Newton and recently has moved back to the area.

It was noted that Ms. Bailey's high level, analytical, economic impact knowledge would be a great asset to the commission.

Her appointment was approved unanimously.

#448-20 **Proposal to amend Newton Zoning Ordinances Chap. 30. Sec 3.4 Garages**
COUNCILOR CROSSLEY, on behalf of the Zoning & Planning Committee proposing to amend Chapter 30, City of Newton Zoning Ordinances, by repealing Ordinance No. A-78 and amending the regulation of garages in residential zoning districts as set forth in Chapter 30, Section 3.4. The objectives are to prevent garages from dominating the streetscape, improve safety along the public way for all modes of travel and achieve consistency with climate action goals.

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

The chair of the Zoning & Planning Committee stated that the meeting will be primarily focused on amendments to the existing garage ordinance. Although the committee's work has been focused on crafting a new zoning ordinance, tonight's meeting will focus on crafting amendments to the existing garage ordinance, not crafting a new garage ordinance.

The committee will also have a presentation from the law department on what triggers a section 6 finding and the protections that the special permit process affords homeowners whose properties become nonconforming because of changes to the ordinance. The discussion around this topic will be focused tonight on what this would mean as applied to nonconformities that may result from an amended garage ordinance.

Cat Kemmett from the planning department presented the proposed amended garage ordinance (attached). Since the last meeting with the zoning and planning committee the planning

department has revised the draft ordinance based on the discussions that took place, along with discussions with the Inspectional Services department, the planning department, the public, and the building professionals' groups.

Garage Width

The first topic was garage width. Managing the width of the garage is one of the most important ways to make sure that the garage does not dominate the street. Under the proposal, the total width of all garage doors on a front facing garage will be measured JAMB to JAMB. Using this measurement will control how wide the garage is. This measurement was suggested by the building professionals' group and they recommended that the door widths be no more than 50% of the total width of the front elevation. After the discussion at the last Zoning & Planning Committee meeting the planning department suggests that front-facing garages be limited to 45% of the total width of the front elevation if the garage is accessed by single car width garage door or doors, and 40% of the elevation if it's a double car width garage door. The planning department believes it makes sense to set a smaller percentage for garages with a double door.



The proposed language states that front facing garages that only have single doors, may have up to 3 single doors (each a maximum of 9' wide) that do not total more than 45% of the width of the front elevation. Since double doors are a bit more imposing, such doors could be no more than 40% of the front elevation, and may be no more than 16 ft. wide.

The planning department looked at the current lot frontages and lot sizes using data from the Assessor's database to see if these numbers would be feasible and developed a table showing the number of lots that could accommodate a two-car front facing garage (attached). The larger SR1 and SR2 lots have greater percentages that would allow for a two-car garage. However, the majority of lots in most districts could accommodate two-car front facing garages under the proposed rules.

Zoning	Existing Conditions	Standards*	Two 9 Ft Garage Doors @ 45% One 16 Ft Garage Door @ 40%
District	Existing Lot Frontage (feet)	Side Setback (feet)	# of New Lot Frontage (feet)
SR1	25% conforming - 148 Ft 50% conforming - 130 Ft 75% conforming - 88 Ft	Old Lot - 25 Ft New Lot - 40 Ft	Old Lot - 65 Ft New Lot - 90 Ft +80% of lots
SR2	25% conforming - 305 Ft 50% conforming - 260 Ft 75% conforming - 210 Ft	Old Lot - 15 Ft New Lot - 30 Ft	Old Lot - 55 Ft New Lot - 70 Ft +70% of lots
SR3	25% conforming - 80 Ft 50% conforming - 72 Ft 75% conforming - 60 Ft	Old Lot - 15 Ft New Lot - 20 Ft	Old Lot - 55 Ft New Lot - 60 Ft +70% of lots
MR1	25% conforming - 85 Ft 50% conforming - 65 Ft 75% conforming - 50 Ft	Old Lot - 15 Ft New Lot - 20 Ft	Old Lot - 55 Ft New Lot - 60 Ft +60% of lots
MR2	25% conforming - 75 Ft 50% conforming - 60 Ft 75% conforming - 45 Ft	Old Lot - 15 Ft New Lot - 20 Ft	Old Lot - 55 Ft New Lot - 60 Ft +50% of lots
MR3	25% conforming - 84 Ft 50% conforming - 65 Ft 75% conforming - 45 Ft	Old Lot - 15 Ft New Lot - 15 Ft	Old Lot - 55 Ft New Lot - 55 Ft +50% of lots

*Based on Member's residential lots are considered Old Lots

Chair Crossley noted from the Building Professionals Working Group memo dated 11/22/20 advises that using the door width as a percentage of the front elevation is a good way to measure that, but would like the garage width to be 50% of the front elevation. They base this recommendation on case studies and providing a more easily understandable metric for builders to use.

Commissioner of Inspectional Services John Lojek was asked to provide his thoughts on the draft ordinance. He stated that he had discussed the enforceability of the proposed ordinance with the planning department. Inspectional Services does not want to get into the design of garages. He does not have an opinion on whether it should be set back or not, but would like to have

absolute numbers because he does not want to have to opine on a measurement. Either it's 40% or 50%, or not. He would like to know that whatever it is, it is absolute. He would like to have precise numbers and not have to interpret what it is.

Concern was raised by a committee member about the percentages used in the lot frontage table that was provided by the planning department. She asked for more clarity on what "majority" mean, and it was felt that the percentage numbers in the table didn't seem to make sense. The planning department responded that the percentages may be a little off, but are within the margin of error. The table is meant to show that as you move from an SR 1 district to an MR district it becomes less likely that a property can accommodate a two-car garage.

It was noted that most lots in Newton are already built out, so the percentages in the table represent what could happen if redeveloped.

The Committee discussed the draft ordinance text for front facing garages.

3.4.4 Garage Design Standards

C. Standards for Front Facing Garages

2. The sum of the **width length** of all garage doors on a Front Facing Garage may be up to the following:

- a. A Front Facing Garage that includes only Single Garage Doors may be up to 45% of the total width of the Front Elevation.
- b. A Front Facing Garage that includes a Double Garage Door may be up to 40% of the total width of the Front Elevation.
- c. A detached Front Facing Garage that is set back more than 10 feet from the frontmost wall of the Front Elevation is exempt from this requirement.

The Committee agreed that the standards in a. and b. were acceptable with two members against as they had concerns about going less than 50%. It was asked that a diagram be provided that illustrates what the percentage proportions mean, and how these proportions affect smaller lots. On c., the 10 ft set back exemption, where building elements 10 feet or more behind the main elevation would not be counted toward the "total front elevation", the Committee was in unanimous agreement.

Door Width

The planning department then looked at door width for front facing garages and recommended that the doors used for a single automobile may be up to 9 feet in width. Double doors may be up to 16 feet wide. For these wider double doors you may only have one per house. You may have a single door and a double door on a garage, but the combined door widths must be limited to 40% of the elevation.



The Committee discussed the draft ordinance text for door width.

3.4.4 Garage Design Standards

B. Definitions

4. **Garage Door.** The door to a garage that provides access for an automobile. Garage door ~~width-length~~ is measured as the exposed dimension between the door jambs from the exterior of the jamb.

a. Single Garage Doors are Garage Doors used for a single automobile to access a Garage. A Single Garage Door may be up to 9 feet wide.

b. Double Garage Doors are Garage Doors used for 2 or more automobiles to access a Garage. A Double Garage Door may be up to 16 feet wide.

It was suggested that the definition should be about garage door bays as opposed to automobiles. The Committee agreed that this standard was acceptable.

Front Elevation

The width of the front elevation is important as it is what is will be used as the denominator to determine how wide the garage may be. The definition of front elevation is the exterior wall of the building oriented in whole or in part to the primary front lot line. Any parts of the front elevation set back more than 10 feet will be excluded from this measurement because they are less visible from the street.



The Committee discussed the draft text for front elevation.

3.4.4 Garage Design Standards

B. Definitions

6. **Front Elevation** The exterior wall of a principal building oriented in whole or in part toward the Primary Front Lot Line. The Front Elevation does not include any exterior wall of a building more than 10 feet behind the front most exterior wall oriented in whole or in part toward the Primary Front Lot Line.

It was asked how the measurement of a home with front facing wings that project well in front of the house, how would front elevation be calculated? It was asked that the Planning Department look at this to better define what is the main body of the house.

Garage Placement

The goal for front facing garages is to reduce their prominence on the street. The planning department suggests that it must be set back at least 2 feet behind the front elevation of the house to help reduce the visual impact and impact to pedestrians and those at street level. The planning department's original proposal was to set it back further, but after hearing from the building professionals the planning department agrees that even a 2 foot setback would have a sufficient impact and create an effective differentiation between the living space and the space for cars.

Front Facing Garages (Sec. 3.4.4.C.1)



- Must be set back no less than 2 feet behind the Front Elevation of the house

At the suggestion of the building professionals' group, the planning department also looked at how they might be able to allow for garages that are pushed forward or in line with the front elevation if there were architectural features to mitigate the impact. The planning department looked into how they might provide more flexibility by right, but after speaking with the Inspectional Services Department, it would be very difficult and time consuming to develop and implement these rules at this time, as an amendment to the current ordinance. If the zoning and planning committee wants garages to be able to be placed in front of, or in line with, the front elevation there may be some ways to do that. The planning department suggests that either the council not regulate front-facing garage placement in the ordinance, or that if council decides that a setback should be required that more flexible placement options under certain conditions be allowed by special permit.

Side facing garages would be allowed forward of the building's main elevation, but not within the setback. The proposed amendment also requires a minimum of 10% fenestration along the garage wall facing the street for side facing garages that project in front of the house. This has been adjusted from the original proposal of 20% fenestration because after evaluating some local examples it became clear that a lower number was sufficient.

Chair Crossley noted from the Building Professionals Working Group memo dated 11/22/20 does not agree with not allowing garages in any other location than behind the main house by right. They identified many examples in Newton of successful designs so such regulation does not make sense. They also believe that there are architectural solutions to preventing overly dominant garages forward of the main elevation without having to go through the Special Permit process. Chair Crossley noted that the Zoning & Planning Committee had not come to agreement on garage placement at its last meeting.

It was noted in the draft that the placement of the garage does not matter if it is more than 70 feet from the front lot line. A councilor stated that this should apply to both the front and side lot lines when the property is a corner lot. The planning department noted that this was a good point.

There was some support for triggering a Special Permit in order to allow a garage that extends forward of the house; most committee members felt otherwise, citing concern that this would put an undue burden on the Land Use Committee and would be too subjective. It was felt that by having a special permit for garages that come forward of the house, it would make the developer think about the size and impact of the garage. It was also asked that the planning department provides some more information on just how many properties might need to come in for a special permit under this scenario. If it's a small number it may make sense to require a special permit.

It was asked why the ordinance could not be crafted to say that the garage could not come any farther forward than the front steps. The planning memo indicates that this is a difficult task. It can be done, but it is their recommendation that we don't go down that path. When you start to put in criteria like that, you need to define in the ordinance the mitigating architectural elements for each type of garage. The planning department is recommending that we don't undertake this at this time but to keep it simple and make it enforceable by the inspectional service department. The Chair noted that the more complicated criteria could be dealt with in Zoning Redesign.

It was felt by some that regulating the amount of garage on the façade will prevent the most egregious examples of garages that have been built in the city.

The Committee discussed the draft text for placement.

3.4.4 Garage Design Standards

C. Standards for Front Facing Garages

1. A Garage Wall of a Front Facing Garage may be no closer to the Primary Front Lot Line than 2 feet behind a minimum of 50% of the Front Elevation.

Five members of the Committee were not in favor of this definition, feeling that regulating the width of the doors would accomplish minimizing the impact of the garage. Three members felt that the garage should be set back and other configurations should be dealt with by special permit.

It was suggested, and supported by some, that the visual scale of a pulled forward garage could be mitigated by reducing the percentage of the facade and could eliminate the need for it to have a special permit.

It was asked what control do we have without a special permit if a builder wants to place the garage forward of the house without much of a driveway? It was stated that the existing setback requirements will control this which requires a garage to be set back at least 24 feet. Closer than that already requires a special permit.

The Committee discussed the draft ordinance text for side facing garages.

3.4.4 Garage Design Standards

D. Standards for Side Facing Garages

1. 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:
 - a. A minimum of 10% Fenestrations on the Garage Wall elevation facing the Primary Front Lot Line as measured from the exterior.
2. On Corner Lots, a garage facing a Front Lot Line that is not the Primary Front Lot Line is considered a Side Facing Garage.

Seven members of the Committee were in favor of this definition with several members hoping that the percentage of glazing could be a little bit higher. One was opposed to the regulation of fenestration as it is not a problem in the city.

One Councilor questioned whether fenestration on the rear wall of the garage is needed if that wall faces a neighboring property. There was also some concern about having both a side facing and a front facing garage on a corner lot if it requires multiple curb cuts.

It was asked if a special permit should be required for two garages. This was rejected by the committee.

Special permits

The planning department carried the special permit over from the current ordinance which allows for garages with more than three cars or more than 700 square feet to be possible by special permit.

Other changes

In the current ordinance a special permit is needed for more than one garage. The planning department is recommending that a homeowner may by-right have up to two garages, one attached and one detached. This has been added because it is not uncommon for an older home with an attached garage to want to create a detached garage. It should be allowed by-right as long as it does not exceed 700 square feet or provide space for more than three cars.

The planning department also suggests that there be a 6-foot separation between all accessory buildings and other buildings. This was requested by the Commissioner of Inspectional Services. It ensures that a detached garage which is exempt from the maximum width regulations will have reduced prominence due to the setback as well as the separation from the main structure.

A Committee member asked that if the garage IS 6 feet from the home, but there IS a porch or covered walkway between the two, would it still be considered detached. The commissioner of inspectional services responded that it would, at that point, be attached. He noted that the current ordinance does not require a distance between buildings, and builders have taken advantage of that by placing accessory buildings within inches of the main building, in order to

gain the smaller side-yard setback. They are so close that they look like they are attached, but not having them touch so that it can be considered a detached structure. The commissioner suggests that if there are two buildings on the lot, there must be a certain distance between them to consider them detached. This will also reduce the visual impact. Current ordinances allow a detached garage to be 5 feet from the lot line, an attached garage must meet the side setback. That is a big difference.

The committee reviewed design standards E. and F. and recommends that the word "Bay" be used instead of automobiles. to make it consistent with their recommendation for Garage Doors earlier in the discussion.

3.4.4 Garage Design Standards

E. Standards for residential buildings with one unit

1. There may be no more than 700 square feet in total garage space on a lot providing for no more than 3 automobiles , between a maximum of one attached garage and one detached garage.

F. Additional Standards for residential buildings with two units

1. Parking spaces in garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached.
 - a. For each residential unit, there shall be no more than one garage and each garage shall provide for no more than 2 automobiles.

Nonconformities

Attorney Andrew Lee presented nonconformities in relation to the garage ordinance and structures (attached). Structures may be nonconforming, but the structure must have been lawfully begun, or lawfully existed, prior to the zoning change. A lawful structure is one where the structure complied with zoning laws at the time the use first commenced or the structure was first constructed.

If there is a garage that complies with current zoning ordinances and the zoning is then changed after the building has been constructed, then that structure is legally nonconforming. Massachusetts law provides a baseline level of protection for nonconformities. If a lawful structure does not comply with requirements of a change in zoning law, then that now nonconforming structure automatically acquires protections. It becomes "legally nonconforming" and the protections do not need to be applied for or granted. There are also additional protections for single- and two-family residential structures. As long as a proposed change to a nonconforming structure does not increase its nonconforming nature, it can be allowed by-right.

If a municipality is considering to allow an increase in the nonconformity of a structure it must first identify exactly what the nonconforming nature of the structure is. It then must make a determination if the proposed change would make the structure more nonconforming or if it

would result in additional nonconformities. This determination is important because it determines the path forward for the property owner in order to get the authorization they need to make the change. If the proposed change does not apply to the nonconforming nature of the property or what is being proposed does not intensify the existing nonconformity than the applicant can proceed by-right as long as what they want to do is permitted by the current ordinance.

If the proposed change intensifies the existing nonconformity, then the applicant must obtain a section 6 finding or seek a variance. A section 6 finding can be granted to a nonconforming structure that increases the existing nonconformity, but this only applies to an existing nonconformity that is being intensified. This triggers the special permit process. This cannot be applied to a new nonconformity. The permit granting authority for the city can allow this intensification of the structural nonconformity as long as it finds that it is not more detrimental to the neighborhood.

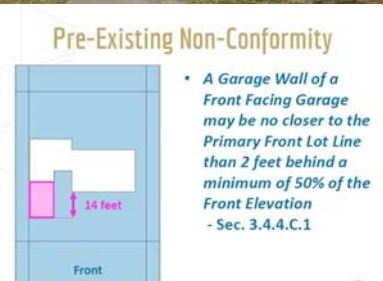
A new nonconformity cannot be allowed by a section six finding, any new nonconformity must comply with the current zoning. To create an additional new nonconformity an applicant must seek a variance. In Newton, variances are considered by the Zoning Board of Appeals.

The city's current zoning ordinance explicitly provides protection to nonconforming uses and structures as required by state law. The current zoning ordinance also permits section 6 findings and designates the special permit granting authority to make such findings.

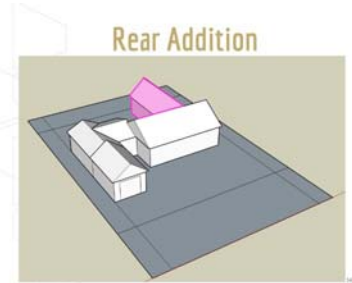
Chapter 30, Section 7.8 states:

"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 . . . 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 neighborhoods from injury."

City Planner Zack LeMel presented a garage ordinance nonconformity case study (attached). He showed a home in Newton that would become nonconforming if the ordinance as currently drafted were to be adopted. The property conforms to Newton's current zoning ordinance, however, with the adoption of the garage ordinance, the property would become nonconforming because of its garage. The garage is set 14 feet forward of the main facade of the house. The draft garage ordinance proposes that the garage be set back a minimum of 2 feet behind the front facade. Although the garage will be non-conforming, any proposed alteration or addition to the property that does not intensify the



existing nonconformity would be allowed by right. This property could add a rear addition, or a second story, by right. If they, however, wanted to expand the existing garage, then the section 6 finding would come into play. The owner would be taking a legally nonconforming addition and expanding upon it, thus intensifying the nonconformity, and triggering a section 6 finding.



Next Steps

The planning department expects to present a final garage ordinance text in December to the zoning and planning committee with a public hearing on that text in early 2021.

A motion to suspend the rules to allow for additional material presented to the Committee tonight was approved Unanimously by Voice Vote

A Memo from the Building Professionals Working Group dated 11/22/20

E-mail from architect Peter Sachs

E-mail from architect Deborah Pierce

The meeting adjourned at 10:45 pm.

Respectfully Submitted,

Deborah J. Crossley, Chair