



Zoning & Planning Committee Report

(Part 1)

City of Newton In City Council

Monday, February 8, 2021

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

Absent: Councilor Albright

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

City Staff: Jonathan Yeo, Chief Operating Officer; Marie Lawlor, Assistant City Solicitor; Jen Caira, Deputy Director; Cat Kemmett, Planning Associate; Zach LeMel, Chief of Long Range Planning; and Devra Bailin, Director of Economic Development, Planning & Development Department

Planning & Development Board: Peter Doeringer, Chair; Sonia Parisca, Vice Chair; Christopher Steele, Kevin McCormick, Kelley Brown and Jennifer Molinsky

Economic Development Commission: Phil Plottel and Beth Nicklaus

Others Present: NewTV

#485-20 **Economic Development Commission requesting City Ordinance amendments**
ECONOMIC DEVELOPMENT COMMISSION requesting an amendment of Sections 4.4.1 (Business, Mixed Use & Manufacturing Districts), 6.4.28 (Research and Development), and 6.5.9 (Laboratory and Research Facility) in order to clarify inconsistencies in the way Research and Development is treated in the use tables and definitions. Providing clarity in where Research and Development uses are allowed is necessary to diversity Newton's Economy, make Newton competitive with surrounding communities in attracting 21st century industries and jobs, and raise Newton's commercial tax revenue and implement recommendation from the 2019 Newton Strategic Plan (Camoin study).

Action: **Zoning & Planning Committee Approved 7-0, Public Hearing Closed February 8, 2021**

Note: Jen Caira, Deputy Director of Planning & Development Department provided a detailed PowerPoint presentation, attached.

Ms. Caira stated that this item is to clarify existing allowed research and development uses, and has been a collaborative effort BETWEEN the Planning Department and Economic Development Commission. The intent here is to correct some issues within our existing zoning to make it clearer that research and development is allowed, and to encourage these kinds of businesses to invest in Newton.

Beth Nicklas, Economic Development Commission representative, stated this corrective measure is in keeping with the Economic Development Plan that was adopted by the City Council in 2019. The strategies include: increasing lab space to capitalize on Massachusetts highly skilled workforce with scientific background and regional economic trends; increasing office space in Newton to attract and retain companies to increase the commercial tax base; targeting growth sectors that may provide good paying jobs for Newton citizens in life sciences, health, tech professional and technical services.

The rationale for putting this forward is to clarify the inconsistencies and ambiguities that the EDC found in the code, but it also provides a unique opportunity to increase the commercial tax base in Newton.

Ms. Caira stated the proposal is to strike the term “research and development “from the use table and rename it “laboratory, research and development” to better reflect the category of uses, rather than describing only one type of facility. The definition is now: “technical facility consisting of laboratory space, office space, storage space and space for assembly of materials for study research and development experimentation and prototype development in one or more scientific fields, including but not limited to life sciences biotechnology biomedical research, robotics, renewable technology, sustainable technology computer science, electronic technology or medicine.” Ms. Caira also stated that prior changes to section 6.7.4, which only applies to accessory scientific and research activities in civic and institutional uses, had been removed from the proposal due to being inadvertently left out of the public hearing notice. this includes striking a prohibition on RDNA uses, which will need to be addressed at a future time.

Ms. Nicklas stated that the EDC reached out to the Newton/ Needham Chamber of Commerce as requested. The NNC Chamber is very supportive of this corrective measure, believing that it will resolve some of the ambiguities in the current language of the ordinance. The EDC also received a comment from a Wells Avenue landowner expressing their support.

Chair Crossley opened the public hearing.

Ms. Debra Waller, address inaudible, expressed her concern that section 6.7.4 B. deletes an important prohibition, these omissions occur despite the fact, she said, that this would be the biggest thing suggested by this docket item.

Ms. Nicklas said that allowed uses would not be changed, but only clarified by this docket item. but Ms. Waller continued saying it would be a gigantic change to allow this use in all these residential districts. The disturbing thing about this docket item, is that no one noticed the proposed deletion; no one worried about the deletion of 6.7.4 B, that would add risk to the lives

of existing Newton residents in return for no increase tax revenue, because this 6.7.4 only affects institution and civic uses, who don't pay any taxes so we're getting risk, but no return. Ms. Waller demanded to know who asked for 6.7.4B to be deleted? She then claimed that Ms. Caira said that she believes that it should have been deleted in 2017 **WHEN** the City Council removed RDNA from the Zoning Ordinance. The Planning Department can't be writing code based on what they think the city council forgot to do three years ago.

Chair Crossley asked the Planning Department and the Economic Development Commission to speak to her complaint.

Ms. Caira said that she believes Ms. Waller is referring to Section 6.7.4, which only applies to accessory scientific and research activities in civic and institutional uses. This section prohibits RDNA as an accessory use, however in 2017 the city council removed RDNA from zoning and made it subject to the biosafety and institutional biosafety committees. however, amending this section was not specifically noted in the public notice and so will not be included at this time. amending 6.7.4 is not critical to the changes proposed that will clarify commercial and industrial laboratory and R&D uses.

Mr. Phillips said that the EDC originally focused just on the business, industrial and manufacturing use districts. When the EDC reviewed the ordinances, they saw that section 6.7.4 also references scientific and research uses in civic and institutional use districts and proposed changes. However, they are primarily focused on commercial and industrial districts. the EDC worked to simplify the code so it would be understandable and consistent.

Mr. Randall Block of Auburndale said that he would support Ms. Waller's statement. He is concerned about proposals to have life science buildings built at Riverside, as well as the adjacent Riverside management building given the proximity to residences.

Attorney Stephen Buchbinder said that he is a land use attorney with interest in the topic and is the attorney for Alexandria Real Estate, owner of Riverside Office Park. As Ms. Caira mentioned, there is some confusion in the current ordinance. These proposed text amendments are important.

Amy Sangiolo asked if there was any outreach to any of the community groups, neighborhood organizations or Area Councils? Chair Crossley answered that although the sections before us were properly noticed, that section of the ordinance that addresses residential districts was not, and is therefore postponed, but the intent is to vote on the portion of the ordinance that addresses commercial and manufacturing districts. Chair Crossley then said that she recommends Councilors reach out to constituents when the remainder of the item returns to ZAP, which will require its own public hearing.

Councilor Krintzman made a motion to close the public hearing. Committee members agreed 7-0.

Ms. Caira noted that the proposed language does not change allowed RDNA uses or definitions in commercial or industrial zones. the language and process will be the same as is in the current zoning ordinance.

Ms. Molinsky said that these proposed amendments rationalize the ordinance and make sense from an economic development perspective. It is important to know what manufacturing, even in an accessory capacity might involve. She asked how does the City know that in these mixed-use districts where a special permit is not necessary that the manufacturing won't produce fumes or noise or something that will disturb the neighbors? Would the City be open to linking that to 6.5.11, or is that too restrictive?

Ms. Caira suggested that the intent is that the addition of a new number 10 in the manufacturing definition for product and/or process development in connection with the lab research or development uses is meant to limit manufacturing just to that which is accessory to the lab or research and development use and would not permit heavy manufacturing.

Mr. Doeringer said that he has done some work on this kind of R&D prototype and understands the type of manufacturing necessary to ready prototypes for market. He suggested language that may sharpen the distinction between R&D prototypes that would distinguish manufacturing on a small scale and clarifying the transition to manufacturing activities, perhaps in non-manufacturing zones.

Mr. Doeringer suggested language could be added to Section C of the laboratory research and development definition, to clarify manufacturing accessory to the R&D use in districts that do not otherwise permit manufacturing.

Mr. Plottel said that the City tried to use language that was similar to that used in ordinances in our neighboring communities and is concerned about the unintended consequences of trying to provide too much definition.

Economic Development Director Ms. Bailin said that most municipalities do not define a limit on what constitutes an accessory manufacturing use, as it can vary significantly. The definition of accessory manufacturing has not been limited in its definition because doing so may inadvertently restrict or prohibit some sort of R&D use that you wish to attract.

It was asked how does a building inspector make a determination as to whether or not the company's accessory manufacturing activities comply with the allowed use if there's no definition?

Ms. Bailin and the Planning Department said that ISD must make this kind of determination all the time.

Mr. Steele noted that the City Council, this Committee and the EDC first began the conversation in 2012, to position the city of Newton similarly to other bio ready communities. Hence the reason for trying to adapt some language similar to what is in Watertown and Waltham Ordinances.

Committee members comments, questions and answers.

C: Several Committee members stated that they support and will approve this item.

C: The changes will be of great benefit to both the City, manufacturing and R&D companies.

C: It is very important that the City is working on attracting more lab, research and development uses.

C: Perhaps these uses should require a special permit, and not be allowed by right in the MU districts.

C: Members appreciated that planning and EDC have reviewed other town ordinances and bylaws, and agreed that it is difficult to define terms, especially in the biotech industry where protocols can change rapidly. If the ordinance tries to over define these terms, it would be difficult for building inspectors to make decisions.

Q: Please define an accessory use.

A: Ms. Caira answered that an accessory use is determined by the Inspectional Services Department Commissioner who determines the point at which accessory becomes the primary use in a building but certainly it's not the primary activity. There is always some manufacturing that happens before a product must go somewhere else for a full-blown manufacturing process.

C: This kind of Lab space should be accepted in limited areas in the City to be competitive with Boston, Cambridge and Somerville.

Q: Did City Council approve RDNA at the Atrium property?

A: Ms. Caira answered that she did not know but that it may have been before RDNA uses were removed from zoning and subject to the biosafety committee. Councilor Danberg stated that there was a discussion between the Land Use Committee and the Biosafety Committee regarding RDNA use at this site and that Dana Farber has moved into this building and may have RDNA activities.

Without further discussion, Councilor Danberg made a motion to approve the item, WHICH CARRIED 7-0.

The Planning Board made a motion to approve this item, WHICH CARRIED 6-0.

#448-20 Proposal to amend City of 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 Committee Approved as Amended 7-0, Effective Date of 04/01/21, Approved 7-0. Public Hearing Closed 01/25/2021

Note: Chair Crossley stated that the Planning Department provided a memo addressing the three questions remaining from Committee members. In addition, there has been much continued debate in the community about the definition of “front elevation” which determines the maximum amount a front-facing garage may be forward of the house, so we should take this up as well. She then stated that she would like to take a straw vote on each question, prior to voting the item.

The first question asks to clarify how corner lots will be treated. The second questions whether to keep the 70-foot exemption. The third question asks about using language alternate to the word “automobile” as part of the definition of a garage.

Ms. Kemmett provided Committee members with a PowerPoint presentation summarizing the three questions, attached.

Corner Lots

The proposed ordinance only regulates the placement and relative width of a garage when it faces the primary front property line, which on a corner lot is defined as that which the front door of the house faces. So, if the garage doors are entered from the side of the building facing the secondary front lot line, such garage would be treated as a side facing garage.

Ms. Kemmett pointed out that the City is not proposing any additional restrictions for corner lots. It is possible that under this ordinance garages on the secondary streets could be prominent, but corner lots are already subject to much stricter rules due to having the two front yard setbacks.

70-foot exemption

Ms. Kemmett described the exemption in section 3.4.4.G.1. that would allow garages setback 70 feet or more from the front lot line to be exempt from the standards for front-facing garages. This means that garages could have doors that are wider than 9 feet for single doors or wider than 16 feet for double doors. If, they were front facing, they wouldn't have to meet that 40 or 45% door width requirement relative to the front elevation. The concerns heard is that by removing that percentage of the front elevation requirements, it would be possible on lots that are long, but very narrow, to create a garage that is prominent and front facing, which is something the City has been trying to move away from back it would still be visible.

Ms. Kemmett stated that it is important to note that while such garages would be exempt from the standards for front and side facing garages, it doesn't exempt them from everything, garages would still be limited to a maximum of three cars and 700 square feet by right would require a

special permit. Based on analysis and conversations with builders and architects, Planning recommends keeping the exemption for now.

References to automobiles

Ms. Kemmett stated the Planning Department was asked to address the references to automobiles in the definition of garage. The ordinance focuses on the size, shape and look of garages, rather than how folks use the interior of the garage, so it was suggested that we consider defining a garage based on the mass of the structure rather than the interior use. The Planning Department has tried to find a few different ways to define a garage based on the door width within a certain range, but this created problems because there are common residential doors, such as French doors or sliding doors that can sometimes be just as wide as garage doors, which should not be held to the same standards as garages. Describing a door that opens vertically also doesn't work, because although rare, there are some garage doors that open horizontally. For these reasons, the Planning Department is recommending keeping references to automobiles. The references to automobiles will really only apply at the time that a garage is constructed to ensure strict standards that are in place for garages. Infrastructure is built and designed from the beginning to store cars. There is nothing in the garage definition now, that would prevent a change in interior use over time any storage, recreation, social distance or gatherings.

Finally, if approved, the Planning Department recommends setting the effective date, either on April 1, which is when the current ordinance is deferred to or later to ensure people have plenty of time to understand these rules.

STRAW VOTES

Corner Lots

All in favor of the language and the proposed ordinance that describes how corner lots are treated with respect to garages, where the garage on the side of the building is treated as a side facing garage. Approved 7-0.

References to automobiles

All in favor of the definition of garage, as it is currently stated in the proposed ordinance. Approved 7-0.

70-foot exemption

All those in favor of keeping the 70-foot exemption as drafted in the proposed ordinance which allows for garages that are 70-feet or more back from the front elevation to be exempt from the width restrictions. Three in favor, (Councilors Danberg, Crossley and Krintzman) of keeping the language as proposed in the draft proposed ordinance. Four opposed, (Councilors Wright, Leary, Ryan and Baker).

All those in favor of removing the 70-foot exemption. Four in favor (Councilors Wright, Baker, Leary and Ryan). Three opposed (Councilors Danberg, Crossley and Krintzman).

THEREFORE THE 70' EXEMPTION FOR GARAGES 70' OR MORE SETBACK WILL BE REMOVED FROM THE TEXT RECOMMENDED FORWARD TO COUNCIL.

Chair Crossley stated that the City's Building Commissioner made a suggestion to require a minimum distance between the main house and a detached garage. This is to prevent abuse of the rule which allows a detached accessory building to be only five feet from the side or rear lot line, while an attached garage must adhere to the same side and rear yard setbacks as the primary dwelling. The method he proposed to measure requires an inspector to come to the site with a ladder and a dimensional analyzer and measure gutter to gutter. Is the City saying a gutter is something that is a fixed part of a building? Committee members expressed concern and stated that a gutter is not a fixed part of a building. A suggestion was made to measure wall to wall. Chair Crossley then asked if Committee members would be interested in further amending the definition of how this distance should be measured?

How should the distance of a detached garage be measured?

STRAW VOTE

Are Committee members in favor of amending the definition to say the measurement is to be between the garage and the main house would be wall to wall? All those in favor of keeping the definition as it is currently penned in the ordinance. Three opposed (Councilors Danberg, Leary and Crossley). Four in favor (Councilors Baker, Wright, Krantzman and Wright). This definition will remain as in the Ordinance.

Chair Crossley stated building professionals studied the proposed Ordinance; most testified at the public hearing that council should move on with how the ordinance is currently written, which addresses the most pressing concern of overbuilding garages that dominate the streetscape. In order to measure the garage door width relative to the width of the front elevation, "front elevation" had to be defined. The Planning Department proposed that any portion of the building that is front facing and within ten feet of the wall closest to the front property line be included in the denominator.

If we include sections of the building that are positioned very far back from the front most wall of the building they don't really read as part of the front wall. The Committee chose a dimension of 10 feet. If the garage is going to be the element of the building that's forward of the main wall of the house, then it's going to be limited to 10 feet, because the Ordinance regulates the width of the garage door relative to that portion of the building. Architects and constituents have contacted this Committee showing us examples of perfectly well-designed projects that have larger setbacks than that, which then would not be allowed. Recommendations range from 12.5 feet up to 18 feet. The Committee choices are as follows: 1. Keep the language as is; 2. Keep the definition as measuring all within the ten feet distance but allow more by special permit with criteria to guide the decision-making process; 3. Choose a larger by right distance of 12.5 or 15 feet, with or without allowing more by special permit.

Committee members questions, answers and comments.

Q: What measurement is the Planning Department comfortable with?

A: Ms. Caira answered that the Planning Department initially approached this by not trying to decide how far forward garages could project but rather, at what point massing on a house is no longer really offsetting the prominence of a garage from the street. The department recommends 10 feet based on review of some homes, garages and in consultation with the architect consultants. Ms. Caira recommends Committee members set a hard number and keep it by right, rather than offering an open-ended special permit, because then evaluating circumstances gets tricky.

Q: If you've applied for a building permit, are you grandfathered in under the rules that applied at the time the permit is issued?

STRAW VOTES

Setting the distance

10 foot maximum by right and allow a special permit to cover other conditions. Approved 7-0. This carries and will be included.

Special Permit

Restrict special permit to only existing properties. Two in favor (Councilors Wright and Baker), Five opposed (Councilors Leary, Krintzman, Crossley, Danberg and Ryan). This fails.

Upper Limit on Special Permits

Two in favor (Councilors Wright and Baker), Five opposed (Councilors Leary, Krintzman, Crossley, Danberg and Ryan). This fails.

70-feet Removed.

Approved 7-0.

Without further discussion, Councilor Leary made a motion to approve the draft ordinance as amended (to remove the exemption for a garage 70 feet or more from the front property line, and to offer a special permit to increase the distance allowed forward of the main house.) 7-0, recommending an effective date of 04/1/21. committee members agreed 7-0.

#41-21 Zoning Amendments for Marijuana Establishments

THE DIRECTOR OF PLANNING AND DEVELOPMENT requesting amendments to the Newton Zoning Ordinance, Chapter 30, Sections 4.4 and 6.10, to amend the regulations for marijuana establishments to be consistent with the regulations put forth by the Cannabis Control Commission on January 8, 2021.

Action: **Zoning & Planning Committee Held 7-0**

Note: This item will be reported out at a later date.

Chair's Note: The Zoning & Planning Committee will continue its discussion with Planning Department staff on a Zoning Work Plan for 2021.

Note: This item will be reported out at a later date.

At approximately 10:40 p.m., Councilor Danberg made a motion to adjourn. Committee members agreed 7-0.

Respectfully Submitted,

Deborah J. Crossley, Chair