



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, February 22, 2021

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

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

City Staff: Jonathan Yeo, Chief Operating Officer; Andrew Lee, Assistant City Solicitor; Jen Caira, Deputy Director, Katy Hax Holmes, Senior Planner, Barney Heath, Director and Zach LeMel, Chief of Long Range Planning, Planning & Development Department

Others Present: NewTV

Planning Board: Peter Doeringer (Chair), Kevin McCormick, Sonia Parisca and Barney Heath

Newton Historic Commission: Doug Cornelius (Chair), Amanda Park and Peter Dimond

#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.

Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstaining)
on 05/19/2020

- (1) Landmarking - Approved as Amended by Full Council on 06/22/2020**
- (2) Demolition Delay - Held in Committee on 06/22/2020 and 10/15/2020**

ACTION: **Zoning & Planning Held 8-0, Public Hearing scheduled**

NOTE: Chair Crossley stated that the Committee will hear a report of the working subcommittee on their recommendations to revise Chapter 22, sections pertaining to **(2) Demolition Delay**, discuss those recommendations and set a date for a public hearing.

Andrew Lee, Assistant City Solicitor, Katy Hax Holmes, Senior Planner for the Historic Commission and members of the Newton Historic Commission (NHC) joined the Committee for discussion on this item.

Attorney Lee presented the proposed revisions in a detailed PowerPoint, attached.

Attorney Lee stated that the working group (voting) members are Newton Historic Commission (NHC) Chair Doug Cornelius and City Councilors Albright, Baker, Crossley and Kelley, who have been working weekly for over one year to review and revise both the landmarking and demolition delay sections of Chapter 22 of the City Ordinances. In house planning and legal expertise was provided by Chief Preservation Planner Holmes, City Attorney Lee and Planning Director Heath.

The PowerPoint covered the current demolition delay process that NHC follows, key substantive revisions in the proposed amendments (policy decisions), current and proposed re-organization of the ordinance for clarity, the current 50-year threshold defining properties eligible for review versus a proposed cutoff date of 1945, other properties subject to demolition delay irrespective of the cutoff date, current and proposed definitions of historically significant, current and proposed preferably preserved criteria, demolition delay process, current and proposed waiver and judicial review.

In addition to a major restructuring of the ordinance in order to clarify the review process and criteria at several decision points, there were a few substantive changes proposed.

Attorney Lee stated that the working group proposed to change the age of a property that determines whether it is subject to NHC review under the demolition delay ordinance, so as to include all buildings built up through 1945. The current ordinance requires review of any building older than 50 years, which today means all buildings up to 1971. If a building is less than 50-years old, an owner may demolish the building. Importantly, to capture significant buildings built after 1945, certain categories of buildings such as those listed and eligible for listing on the National registry, and those published in a state survey of important historic buildings, would as well require NHC review under the ordinance.

It is noted that the state survey, called MACRIS, is incomplete, but that there are several ways the survey could be completed, over time, using paid professionals and/or volunteers.

The working group was not in total agreement on this point; there were four in favor (Cornelius, Kelley, Albright, Crossley) and one opposed (Baker).

Committee members also differed on whether the commission's review should include properties within 150' of a described historic district, regardless of age. This time, there were three in favor of keeping the boundary as described (Kelley, Albright, Crossley) and two opposed (who would extend the boundary another 150' beyond the adopted limit. (Baker, Cornelius).

Age of Building (1945 or 50-years)

Councilor Baker stated that he could not support the 50-year requirement proposed because the historical fabric of the City is growing. He expressed concern regarding the within 150' within a historic district and a full demolition ordinance. He then suggested that all full demolition requests should be reported to the NHC. He then stated that he would support judicial review, which provides an appeal process to the property owner.

Councilor Kelley stated that the original idea was to streamline, clarify and reorganize a confusing ordinance. Voting members of the working group, Law Department, Planning Department, NHC Chair Doug Cornelius were regular attendees at this over a yearlong effort, although not all were in agreement.

The Zoning & Planning Committee is now left to consider a couple of specific points to clarify on the 50 years versus 1945; this date was not arrived at arbitrarily. The working group came to the conclusion with input from members of the NHC and staff about where we are in history. Did structures start to become significant in a way that the 50-year mark leaves us with approximately 90% of structures. After review, that seemed excessive and burdensome. The goal was not to reduce the workload or the schedule of the NHC, but to make their work more effective, efficient and to focus on what are the structures and the buildings that are really important. 1945 was actually recommended by staff and Chair Cornelius.

Part of it relates to quality of design and construction, part of it is to not have 90% of our structures automatically come before the NHC when seeking proposed changes. There is a clause in the proposed ordinance intended to capture historically important buildings built after 1945. and maybe the Committee could still consider this, maybe there's more to add such as what if a building is only 10 years old? What are some ways to be able to not let things fall through the cracks, but not to include those 90% of all of our structures and I think that that the clause that we have in there about other criteria that could preempt the date alone is important.

This group needs to balance the importance of historic preservation with other efforts in the City around housing, inclusion and exclusion.

Committee members comments, questions and answers:

C. Draft ordinance material has substantially improved.

Q. Recent buildings have not been (fully) surveyed. What methodology is taken, is grant funding available to complete surveys to determine if buildings should be listed on the state register of historic places?

A. Ms. Holmes answered that the City has used survey and planning grant money from the Massachusetts Historical Commission for their annual grant round for several years to address some of these gaps in our survey record. That is one way that surveys can be paid for in other communities, including ours. Volunteer efforts have also produced survey forms that have been

checked by staff, and double checked by the MHC and have been also accepted that is part of its MACRIS program so there are a couple of different options.

Q. To complete the survey, how many years can the funding support? Is it a year's worth of work or six month's worth of work? Do you have any sense for how long it would take to do that work?

A. Ms. Holmes answered the grant money technically is granted over a twelve-month period, but the survey work is usually complete in five to six months. You have to produce drafts, that then get reviewed so the intent of the work is pretty intensive for five to six months.

Q. How many properties can the funding support?

A. Ms. Holmes answered typically between 120 to 130 forms, each time. The grants amounts are approximately \$25,000. The MAP uses a boiler plate number for the cost of forms.

Q. How many full demolitions are requested each year?

A. Chair Crossley answered that there are approximately 100 demolitions per year. Over the past 10 years, the City has received approximately 100 total demolition requests per year, but she does not know the requests for buildings under versus over 50-years old. Ms. Holmes answered that the City receives approximately 300 full and partial demolitions applications per year. Ms. Holmes said that she will provide a breakdown of the number of full and partial demolition applications. Ms. Holmes then stated that the 100 demolitions per year data was provided by ISD.

C. A Committee member suggested that the NHC should consider review of all demolition petitions for buildings aged 50 years or older, and all total demolition requests.

C. Several Councilors stated that they support the year 1945 as a cutoff date.

C. Some Councilors stated that they support the 50-year rule because since the survey is not complete, some homes will "fall through the cracks". Although 1945 is not old (75 years), each year that number will climb.

C. A Councilor reminded that there is an added clause so as to 'catch' historically significant buildings so they do not "fall through the cracks".

C. A Councilor stated that the advantage of a 50-year mark is that a future Council doesn't have to look at a date, every 5, 10 or 15 years and decide whether or not to reevaluate it. There is always a risk if you don't reevaluate it for some time. What is 75 years quickly become 100 years. Perhaps we are better off with a rolling number, keeps the statute current and relevant and avoids the need for constant review every few years.

C. A Councilor expressed support not removing properties (from NHC review) within 150' of historic districts.

Q. How many homes need to be reviewed?

A. Ms. Holmes answered that there are approximately 7,100 buildings that were constructed in Newton, between 1946-2021. 84% of those structures have not been surveyed. If a property owner did not get listed approximately 5,600 to 6,000 of those buildings can “fall through the cracks”. She then said that doing 1945 at this time, is not a prudent number to work with.

C. At the public hearing, it will be important to include a presentation on what properties fall in between 1945 to 1971 (50-year cutoff).

C. In the working group it was discussed whether the condition of a property, that is, whether it can be restored or preserved and what constitutes hardship to the applicant. The working group did not come to a conclusion on these subjects. It was decided not to discuss these criteria in this meeting.

Q. Do the restrictions make sense? Property rights need to be respected without overregulating them.

A. Chair Crossley answered that the subcommittee has been struggling with this question throughout; where to draw the line between not placing an undue burden on residents and wanting to preserve good and historically important buildings.

Q. Can the process be handled administratively to deter delays?

A. NHC Chair Cornelius, stated that the NHC has tried to make it clear what can be done administratively before residents come before the NHC. The difficult part is to draw the line between what is historically significant. Chair Cornelius said that when we consider post war buildings, we see building construction quality dramatically drop off. The NHC struggles with 1950's, 1960's etc. homes, which fall under NHC guidance. The compromise is to complete a historical survey to identify clearly properties to be subject to the demolition delay. NHC has found that even when we've imposed the demolition delay on the 50s and 60s and now 70s houses, all that happens is the demolition delay is imposed and it sits in a neighborhood with fencing around it for a year and then ends up getting demolished. He then said that he thinks the demolition delay is more effective on an older, prewar house to rethink about possibly renovating it. There's demand for renovated prewar housing. Some thought of the burden to the property owners and that 90% of the property owners end up potentially subject to our jurisdiction.

Mr. Dimond, NHC member, disagreed, saying that the 50-year threshold is used by over 1000 communities nationally, overseen by the National Park Service. Some cities have no age limit, others have 25, 30 etc. The working group has proposed a 75-year threshold for the City of Newton. History does not stop at 1945. Prior to City Council eliminating the ability of homeowners to transfer demolition delays to a buyer, the number of requests for demolition permits has declined from roughly 20 per month, to about 10-12 per month. Building quality reduced over time meaning that staff and the NHC review can pass on things quickly without being a burden.

Ms. Park, NHC member, stated it is not an issue of 1945 or 1970 or any specific year. The issue is whether a rolling date or fixed-in-point date is implemented. If you pick a fixed date, you are choosing styles desired and not looking any further. You want to have an evolved streetscape that reflects changes that have been made. If it is cut off at 1945, it prevents the NHC from looking past 1945 eliminating significant architecture. She then stated that she prefers a rolling number of years to a particular date.

Q. Is data available on the 7,100 constructed homes?

A. Ms. Holmes answered that 7,100 constructed homes are from 1946 to the present. She did not have data available for 1946 to 1971, but she agreed to provide this for the next meeting.

Q. Is data available on full demolitions sent to NHC? How many residents end up moving towards partial demolition and how many residents wait a year for the demolition delay?

A. Chair Crossley asked Ms. Holmes to provide a summary of the number of demolition requests on structures built up through 1945, the numbers from 1945 to 1971, and the number from 1971 to now and to distinguish how many are total versus partial demolition requests, and what happened to them.

Chair Crossley asked Committee members if they have thoughts on whether or not an historic district as currently bounded should be extended to include properties within an additional 150' that would also be sent to the NHC?

Finally, Councilor Baker stated that he recommends if there is a proposal for a full demolition that is waived because it is deemed not historically significant by the NHC Chair and staff, that this be reported to the NHC at a following meeting.

Chair Crossley asked Committee members to forward any additional questions to Committee Clerk Delaney, Chair Crossley and Ms. Holmes.

Committee members agreed 8-0, to schedule the demolition delay, part 2, of this item for a public hearing in about a month from now. Councilor Krintzman made a motion to hold this item. Committee members agreed 8-0.

Committee members and Councilors present thanked the NHC, Councilors, Attorney Lee and Ms. Holmes for their diligence.

Chair's note: *The Zoning & Planning Committee will continue its discussion with Planning Department staff on a strategy for proceeding with a Zoning Work Plan for 2021. Following this discussion, the committee will begin a review of the annotated Article 3. submitted in last week's Friday packet, for the purpose of setting down an accurate record of decisions made, questions remaining and analyses outstanding. It will be most helpful if committee members can be prepared to submit comments in writing (for clarity and recording accuracy) as well as offering*

them at the meeting. It is expected that this process may need to continue into the March 8 ZAP meeting.

Note: Planning Board members joined the Committee for this discussion.

Chair Crossley stated that this conversation began last meeting, with the intent that Committee members provide Planning staff clear direction on how the Committee would like to proceed. For this discussion, Chair Crossley asked Committee members to review the 2012 Zoning Reform Group report and consider the 11 themes for zoning reforms described within that report, which were distilled from the adopted Comprehensive Plan.

Tonight's discussion will focus on which way the Committee would like to head and the zoning work plan for the year.

Chair Crossley asked, to meet the challenges expressed in our agreed upon goals, which of those themes or sections of the Zoning Ordinance could be taken up independently and which must be considered as a whole? She then asked a second question: should any zoning tools in the toolbox be eliminated, by revising or reforming the zoning code? Some Committee members have maintained that form-based tools will not work and may be intended to control design decisions. The Chair noted that last session the Committee unanimously adopted the garage ordinance, which entirely used form-based tools to control the massing and relative size of the garage.

Committee members questions, answers and comments:

C. It was stated that hundreds of residents participated in the zoning redesign process prior to the 2018 draft, including workshops on economic development, commercial development, housing including multi-family housing, creative arts, buildings, village centers, zoning maps and the process. To weave together all of this means a comprehensive approach is necessary.

C. I've read a lot of other community's zoning codes. Some communities use form-based codes, some do not. Some communities use form-based codes and FAR. The City needs to fully explore form-based codes and the possibility of combining form-based codes a with FAR and take a comprehensive approach.

C. It is important to discuss small tear downs which are being replaced with larger homes. I think this is an issue because of the adjustments in the FAR and setbacks.

C. (In addition to comprehensive reform) We can discuss discreet issues such as parking requirements, storm water ordinance, climate change, special permit criteria, etc.

C. Walkable and bicycle friendly neighborhoods are necessary.

C. The Committee should discuss parking and traffic issues independently.

C. The Committee should concentrate on villages, village centers and the Washington Street vision plan. (Proposed) Washington Street buildings are going beyond the height of the vision plan.

C. Newton is a desirable community, but there is need for improvement. A specific problem remains with zoning in village centers.

C. A Councilor asked to please consider discussing parking minimums and parking maximums as a separate item.

C. Can we invite experts in to discuss and compare form-based codes and FAR?

C. Affordable housing and multi-family homes are necessary.

Ms. Parisca, Planning Board member, stated that Newton needs a comprehensive approach to tackle housing, transportation and broader topics linked by geography. She then said that she thought two years ago, an agreement was made to pursue the form-based code. The current ordinance has 75 years of corrections. The Zoning Ordinance was created based on segregated uses, retail/ commercial versus residential. It is necessary to increase greenspace, plazas, sidewalks, etc. The form-based code should be considered.

Mr. McCormick, Planning Board member, stated that he supports a comprehensive approach.

In general, Committee members agreed that a comprehensive approach is necessary, and that we can simultaneously take up some items separately. They agreed to keeping, using and adding tools to the toolbox.

STRAW VOTES

Councilor Leary proposed the following straw votes:

- 1) Keep all tools in the toolbox so as to explore the best solution. Committee members agreed 8-0.**
- 2) Approach solving larger problems with a comprehensive approach 5-2, Five in favor, (Councilors Albright, Krintzman, Crossley, Danberg and Ryan; Councilors Wright and Baker opposed, Councilor Leary not voting).**

Chair Crossley said due to the late hour, the Committee did not discuss annotated Article 3. Please submit questions and comments to Committee Clerk Delaney, which will be forwarded to staff to help prepare the discussion for our next meeting.

#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.

Zoning & Planning Held on 01/27/20, 02/10/2020, 02/24/2020, 03/09/2020, 03/23/2020, 04/13/2020, 04/27/2020, 05/19/2020, 06/01/2020, 06/15/2020, 06/29/2020, 07/09/2020, 07/16/2020, 08/13/2020, 09/14/2020, 10/01/2020, 10/15/2020, 11/05/2020, 11/09/2020, 12/14/20

ACTION: Zoning & Planning Held 7-0, Councilor Leary not voting

NOTE: This discussion is above in the Chair's note.

Councilor Danberg made the motion to hold this item. Committee members agreed 7-0, Councilor Leary not voting.

At approximately, 10:05 p.m., Councilor Danberg made the motion to adjourn. Committee members agreed 7-0, Councilor Leary not voting.

Respectfully Submitted,

Deborah J. Crossley, Chair

CITY OF NEWTON DEMOLITION DELAY

ZONING AND PLANNING COMMITTEE

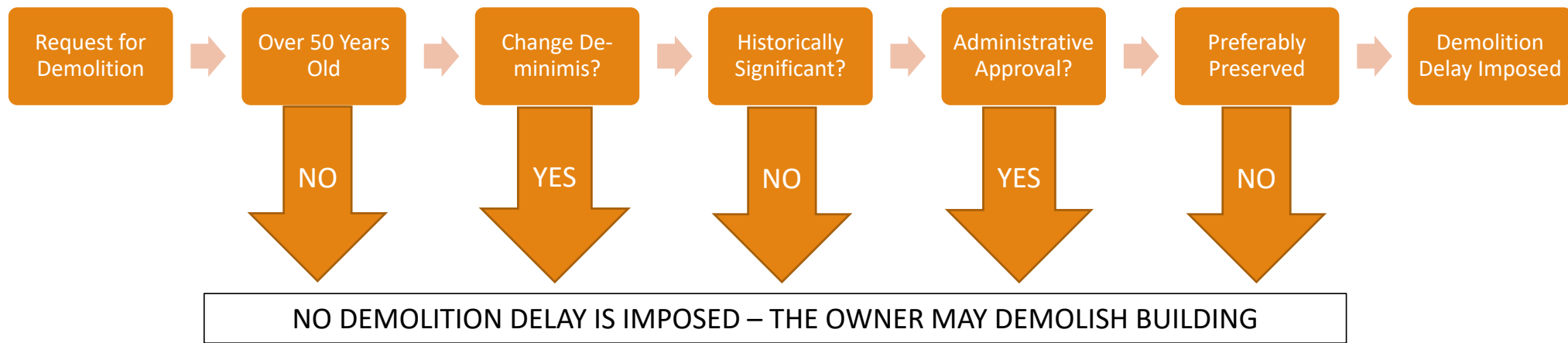
2/22/2021

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HISTORIC WORKING GROUP

The working group is comprised of Newton Historic Commission Chair, Doug Cornelius, and City Councilors Susan Albright, Lisle Baker, Deborah Crossley and Andrea Kelley.

Demolition Delay Process – Part 1



MAIN POINTS OF PROPOSED AMENDMENT

- The draft restructures and reorganizes the ordinance so that it is more navigable.
- The 50 year benchmark for properties subject to demolition delay is changed to properties built in or before 1945.
- There are new categories of properties which are subject to demolition delay regardless of the building or structure's age.
- The criteria for historical significance has been updated to match the definition in the amended Landmark Ordinance
- The draft provides that the NHC may delegate determinations of historical significant to staff and a designated commission member
- The draft proposes guiding criteria for Preferably Preserved findings.
- The draft seeks to clarify the waiver process with particular focus on waivers for total demolitions.
- The draft explicitly provides for judicial review of preferably preserved findings.

PROPOSED AMENDMENT – CLEAN UP

The demolition delay process is unchanged. The proposed amendment seeks to codify current practice.

- Alphabetize Definitions
- Include definition of “Formally listed as eligible for listing” and Inventory of historic and archaeological assets of the Commonwealth of Massachusetts”
- Require applicant to show proof of legal ownership
- Set forth notice provisions for hearings for Preferable Preserved determinations and applications for Waivers
- Require applicant to show proof of legal ownership
- Changed time in which the NHC must make a determination of historical significance from 15 days to 15 business days
- Make clear that after the expiration of the demolition delay period, the owner may only demolish that portion of the building shown on their application

ORGANIZATION

CURRENT

- The entire Demolition Delay process is contained in Sec. 22-50
- The criteria and process for findings of de minimis alterations and administrative determinations are contained in the definitions section
- The criteria for Historically Significant are contained in the definitions section
- There is no clear delineation in the text between the process for a finding of Historical Significance, Preferably Preserved or a Waiver

PROPOSED

The Demolition Delay ordinance has 10 separate sections:

- Sec. 22-50 – Intent and purpose
- Sec. 22-51 – Definitions
- Sec. 22-52 – Items considered to be de minimis
- Sec. 22-53 – Historically significant
- Sec. 22-54 – Preferably preserved
- Sec. 22-55 – Waiver
- Sec. 22-56 – Emergency demolition
- Sec. 22-57 – Non-compliance and enforcement
- Sec. 22-58 – Securing buildings and structures
- Sec. 22-59 – Applicability and Judicial Review

50 YEAR REQUIREMENT

CURRENT

A property is subject to the demo-delay ordinance if it is 50 years old or older

- 1971

PROPOSED

A property is subject to the demo-delay ordinance if it was built in or before 1945.

- There is not full consensus for this change. 4 members support the proposal. 1 member's preference is to retain the 50 year benchmark.

OTHER PROPERTIES SUBJECT TO DEMOLITION DELAY

The proposed amendment states that any property that meets any of the following criteria is subject to the demolition delay ordinance, regardless of when the building or structure was built:

1. the property is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
2. the property is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
3. the property is listed on the inventory of historic and archaeological assets of the Commonwealth of Massachusetts.

DEFINITION OF HISTORICALLY SIGNIFICANT

CURRENT

Any building or structure which is in whole or in part fifty or more years old and which

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or

(2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or

(3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

PROPOSED – MIRRORS LANDMARKING DEFINITION AND REMOVES ONE CRITERIA

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water;

(2) is individually listed on the National Register of Historic Places, or **formally listed as eligible** for listing on said National Register, individually;

(3) is listed on the National Register of Historic Places as part of an historic district, but not individually, or **formally listed as eligible** for listing on said National Register as part of an historic district, but not individually; or

(4) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

i) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or

ii) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

There is not full consensus on the removal of properties located within 150 feet of any federal or local historic district. 4 members support the proposal. 1 member's preference is to retain criteria.

HISTORICALLY SIGNIFICANT - DELEGATION

CURRENT

The determination of Historically Significant may be made by the NHC or the NHC may delegate the determination to commission staff or a designated commission member

PROPOSED

The NHC may delegate the determination to commission staff and a designated commission member

There is not full consensus on delegation to staff and a commission member for total demolitions. 4 members support this proposal. 1 member's preference is to permit delegation of determinations of historical significance to staff and a commission member for partial demolitions and require determinations for total demolitions be made by the full NHC.

PREFERABLY PRESERVED CRITERIA

CURRENT

If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved

PROPOSED

Items the NHC must consider in determining whether a building or structure's use would be detrimental to the historical or architectural heritage or resources of the City of Newton:

- The historic value and significance of the building or structure;
- The architectural value and significance of the building or structure;
- The general design, arrangement, texture and materials of the features and the relation of those features to similar buildings and structures in the nearby area; and
- The extent of historic fabric remaining in the building or structure.

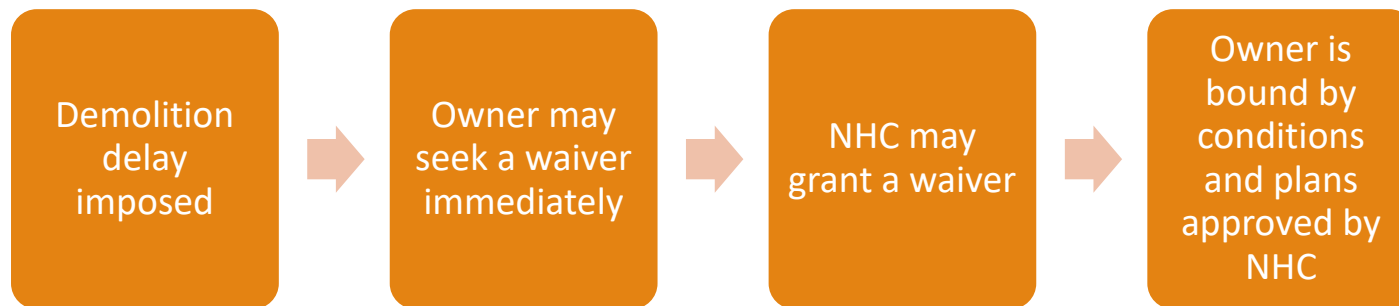
The working group has requested discussion in ZAP on the following 2 additional conditions:

The degree to which the historic and/or architectural value of the building or structure can be preserved through restoration or replacement.

Whether imposition of demolition delay would cause excessive hardship on the property owner(s).

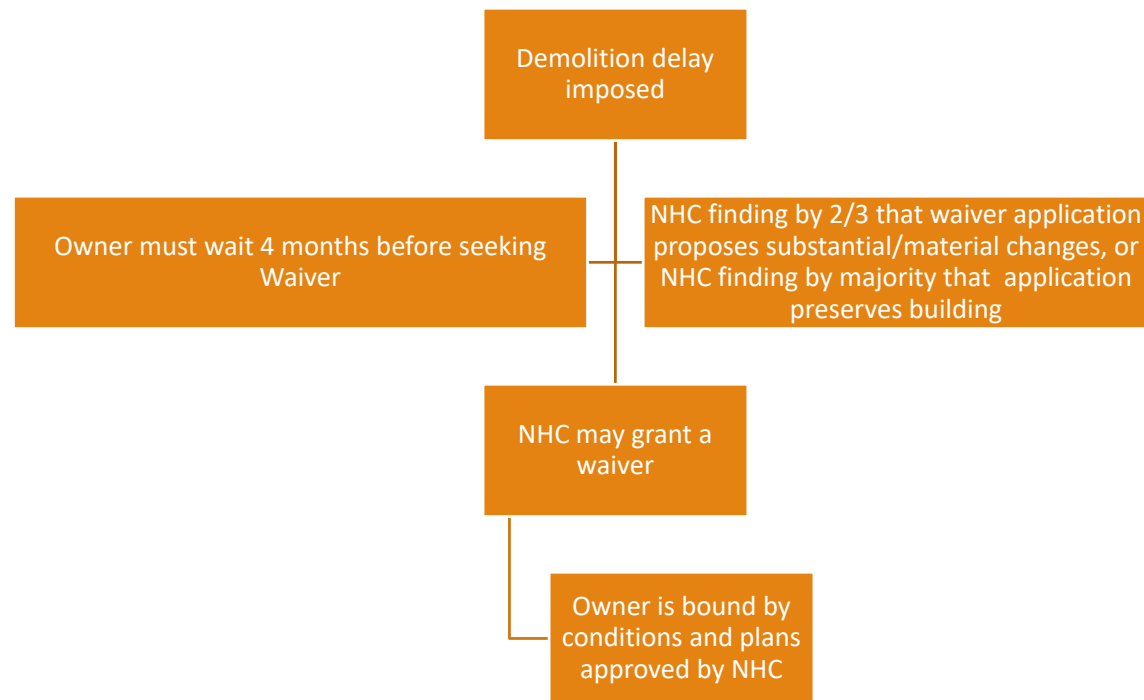
Demolition Delay Process – Part 2

Waiver - Partial



Demolition Delay Process – Part 3

Waiver - Total



WAIVER

CURRENT

- Waiver criteria – the owner has either:
 - made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
 - has agreed to accept a demolition permit on specified conditions approved by the commission.

Additionally, owners that applied for a total demolition may not seek a waiver until 4 months after the finding of preferably preserved unless the NHC finds:

- by a vote of 2/3 substantial and material changes are in the resubmitted application; or
- by a majority vote that the resubmitted application proposes to preserve the building or structure.

PROPOSED

The waiver criteria is unchanged.

Owners that applied for a total demolition must wait 4 months after the finding of preferably preserved unless the NHC finds by a vote of 2/3 that the resubmitted application either proposes substantial and material changes or proposes to preserve the building or structure.

The NHC cannot make such a vote until 30 days after the preferably preserved finding.

JUDICIAL REVIEW

The owner(s) of a building or structure determined to be preferably preserved under Section 22-54 of the Revised Ordinances, may, within twenty (20) days after the commission makes such determination, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the owner(s) of the subject building or structure. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court.