



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, January 27, 2020

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

Absent: Councilor Ryan

Also Present: Councilors Norton, Kelley, Bowman, Downs, Malakie, Greenberg, Gentile, Kalis

City Staff: Zachery LeMel, Chief of Long Range Planning; Jennifer Caira, Deputy Director of Planning, Katy Hax Holmes, Senior Planner; Andrew Lee, Assistant City Solicitor; Nathan Giacalone, Committee Clerk

Referred to Zoning & Planning Committee

#37-20

Amend ordinances by creating a temporary suspension on landmark designation
COUNCILORS ALBRIGHT, AUCHINCLOSS, CROSSLEY, DOWNS, KELLEY, LIPOF, GREENBERG, KRINTZMAN, NOEL, LEARY, AND DANBERG proposing an amendment to Chapter 22 of the Revised Ordinances of the City of Newton, 2017 to temporarily suspend nominations made by the Historical Commission and the City Council for landmark designations of any land, buildings and structures in the City of Newton in order to allow the City adequate time to review the landmark ordinance and consider what revisions are appropriate. The temporary suspension will prevent and suspend the processing, and approval of any property currently under consideration for landmark designation and will temporarily suspend future landmark designations made by the Historical Commission and the City Council. Landmark nominations made by the Mayor, Director of Planning of Development and the Commissioner of Inspectional Services shall not be affected. This temporary suspension shall end no later than December 31, 2020.

Action: **Zoning and Planning Approved 5-2 (Councilors Baker and Wright opposed)**

Notes: Councilor Kelley introduced the item to temporarily suspend landmarking while the Committee addresses parts of the ordinance which are unclear or no longer functional, including:

1. The nomination process; the imbalance of Newton Historical Commission (NHC) members being able to vote as well as nominate properties.
2. The lack of inclusion of property owners and;
3. The appeals process for landmarked properties

Senior Planner Katy Holmes presented an overview of what landmarking properties means and how it currently works. Ms. Holmes explained that landmarking is the highest level of regulatory protection that can be imposed on a building to protect it from demolition or modification. An owner wishing to make any exterior change to a landmarked property or building must then petition to the Newton Historic Commission (NHC) for approval. Currently, Ms. Holmes said that properties can be nominated by one or more members of the NHC, City Council, the Mayor, the Director of Planning and Development, and/or the Commissioner of Inspectional Services. While the owner must be notified two weeks prior to the required public hearing before the NHC, there is currently no requirement that the owner must consent to the designation nor be notified that the property is under consideration to be nominated as a landmark. Assistant City Solicitor Andrew Lee confirmed that a comprehensive permit according to 40B policy extends beyond demolition and may be able to trump local landmarking protections. Deputy Director of Planning, Jennifer Caira confirmed that for a 40B developer who can prove such landmarking would make a project uneconomic, landmark protections would be overridden.

Chair Crossley opened the public hearing.

Rich Heald, 45 Eliot Ave-Rises in opposition to the landmarking moratorium and thinks it is unwise to cede landmarking authority to the executive branch. He was also concerned about the reasons to suddenly enact this policy. Mr. Heald felt that the City Council has been overly favorable to developers and has not pushed them enough to construct more affordable housing.

John Von Barga, Cambridge-Mr. Von Barga is the prospective resident of 279 Fuller Street, Newton and read a letter which he wrote to the Mayor that is attached to this report. He and his family were on the verge of closing a deal with the Galligan family for the house on 279 Fuller Street. However, days before it was finalized, Mr. Von Barga said that a paper trail surfaced from the NHC that the property could be designated a landmark in Newton. He said this posed an undo burden on both him and the Galligan family. Mr. Von Barga said he wanted to demonstrate the effect of the landmark ordinance and to help the Galligan family sell their home.

Bill Rosner, 1058 Walnut Street-Mr. Rosner said that he felt not enough NHC members were represented in the ordinance Working Group. Ms. Holmes clarified that there was an NHC member on the Working Group.

Jane Rosenof, 9 Vincent Street-Ms. Rosenof urged the Committee not to suspend the landmark ordinance, citing her appreciation of the historical character of West Newton. She said this was especially necessary in the face of much impending development in the village. Ms. Rosenof also wanted to see the City commit to varied historical architecture promised in the Washington Street Vision Plan.

Carol Carroll, 325 Lake Avenue-Ms. Carroll wanted to know why only landmarking was being proposed for suspension while the Working Group was also studying the demolition issue.

Natalie Galligan, owner of 279 Fuller Street-Ms. Galligan spoke as one of the owners of the property Mr. Von Bargen had attempted to purchase. She said that her parents purchased their house before the establishment of the NHC and that they did not know about landmarking until they attempted to sell the home. Though the house was not landmarked, the prospective that it could be was enough to persuade the buyer to cancel the deal. She continued that the conditions for landmarking were unclear to the average person and that this caused a burden for the family. Her full letter is attached to this report.

Mary Francis Galligan, 279 Fuller Street-Ms. Galligan read the letter of Aron Ain which is attached to this report. In his letter, Mr. Ain gives his support for the landmarking suspension until the ordinance is rewritten to a standard he sees as more fair and reasonable to property owners. He is troubled by how little homeowner consent is required in the process and views the threat of landmarking as a “cloud.” Mr. Ain wants the final say of landmarking to rest with the City Council.

Christian Rivero, 126 Eliot Ave-Mr. Rivero read a letter from his wife. The letter read that placing a hold on landmarking without suspending other development methods was the City picking winners. It warned that this suspension would allow for the demolition of iconic buildings that define the neighborhood character and asked the Committee to decline the suspension.

Frank Stearns, 11 Grant Avenue-Mr. Stearns said that just the possibility that a certain property could be nominated, even if it has not, creates a significant additional challenge to the property owners for any changes they wish to make to the property. He asked the Committee to endorse the landmarking suspension.

Lynn Weissberg, 5 Alden Street-Ms. Weissberg urged the Committee to adopt the landmark suspension, citing the experience of the Von Bargens and Galligans as well as Councilor Kelley’s critiques of the current ordinance. She said that if the Council was considering changing the landmarking ordinance, then she felt it inappropriate for landmarking to continue.

Alan Schlesinger, 117 Westchester Road-Mr. Schlesinger said that while he is in favor of landmarking in general, he supports the suspension as he believes that the process in Newton is flawed. He said that it lacks transparency, has low standards, is sometimes abused as an anti-development tool, and has no appeal process. His full comments are attached to this report.

Jerry Reilly, 12 Spring Street-Mr. Reilly supports the use of landmarking to protect historic properties recognizable to all citizens. He said that he investigated the seven buildings recently nominated on the same block and is critical of the landmarking process and supports the landmarking suspension.

Nathaniel Lichten, 53 Pine Crest Road-Mr. Lichten was doubtful that this suspension would keep to its purported time limit and wanted the Committee to include a measure ensure that work continued in a timely manner and that the suspension has a specific end date. He said that this

would help ensure that the landmark suspension is used for its stated purpose, not a means to undermine historic preservation.

Doug Cornelius, Newton Historic Commission-Mr. Cornelius said that he was opposed to the last moratorium as he said it was based on false information. He said that a moratorium may be worth considering to figure out what is going on with landmarking in light of the seven recent nominations.

Carol Clark, 1058 Walnut Street-Ms. Clark asked if a landmarked building was treated differently than one located within a historic district. Ms. Holmes answered that they are treated the same. Ms. Clark then asked if the landmark suspension would impact anything within the historic districts and Ms. Holmes answered that it would not.

Rena Getz, 192 Pine Ridge Road-Ms. Getz said that it was not in the public interest to enact the landmark suspension. She said that Newton has historically not supported moratoriums of ordinances while reviewing them. Ms. Getz said that the City has not had a much-needed conversation of how to balance historic preservation and redevelopment.

Chair Crossley summarized a letter submitted by Councilor Markiewicz. In his letter, Councilor Markiewicz gave his concern that a member of the Historic Commission could approve a property they nominated. His suggestion to avoid the suspension was a measure to have another qualified party be the determinant in a landmarking request when the case was initiated by the Historic Commission. The letter is attached to this report.

Chair Crossley summarized a letter submitted by Robert Fox who supports the landmarking suspension. The letter is attached to this report.

Councilor Kelley summarized a letter sent by Malcom Hodge who supports the suspension in a letter attached to the report.

Chair Crossley summarized a letter submitted by Greg Reibman on behalf of the Newton Needham Regional Chamber. Mr. Reibman supports the landmark suspension, seeing the current ordinance as flawed and susceptible to abuse. He says that the suspension is necessary for the City's business interests. His letter is attached to this report.

Councilor Kelley summarized comments from Treff LaFleche who supports the landmark suspension. Mr. LaFleche supports the suspension because of his concern over the unilateral ability of the NHC to nominate properties over the wishes of the homeowners. His comments are included in this report.

Chair Crossley motioned to close the public hearing, which passed 6-1 (Councilor Leary opposed).

The Committee deliberated on item #37-20 and came up with the following points of support and criticism.

Committee comments and questions were as follows:

For properties not already on the National Register of Historic Places, the Mass Historical Commission is no longer weighing in on eligibility, so this crucial part of the ordinance is non-functional as it stands.

There is no appeals process in place for property owners and the process is generally unclear. The Metropolitan Area Planning Council (MAPC) is no longer fulfilling this role. The Committee asked what the appropriate appeals body would be in place of MAPC.

Property owners do not have enough say in the process and their consent is not required for the final decision.

Based on the comments of some residents, they asked whether 50 years was appropriate for eligibility considering that almost 90 percent of Newton's buildings are this age.

Historic landmarking, or even just the possibility of it provides an undo burden to property owners who wish to sell or renovate their property.

Some property is improperly landmarked and there is no process to remove this designation.

Concerns that some are using the landmarking process to promote an anti-development agenda rather than genuinely preserving historic properties. The Committee asked if the intent of the ordinance was historic preservation or the prevention of development.

While most of the recent landmark nominations have been clustered in Ward 3, more will likely soon be seen across the City.

The Committee agreed on having a landmarking process.

The recent surge of landmarking has been in response to the surge of development in West Newton.

The NHC does not treat landmark nominations with a rubber stamp and of the seven recently submitted, two were rejected.

The City Council should retain its authority to nominate historic structures for landmark status.

If landmark nominations were to be temporarily suspended, then demolitions could also be temporarily suspended while the best balance in a new ordinance is crafted.

It was pointed out that demolition delay may be up to one year from filing.

Councilors described their positive experiences of living in historic properties as being free of onerous conditions due to the landmark ordinance.

There is no clear timeframe for getting the ordinance revisions done within the suspension and this temporary measure could easily become *de facto* permanent.

This suspension will allow the demolition of more historic buildings within Newton. Though living in a historic district can be a tough adjustment at first, it is something many residents come around to when these districts keep out teardowns.

After its deliberations, the Committee reached consensus that if it were to proceed with the suspension, then it should stipulate a shorter timeframe within which to accomplish the work. Six months was suggested and agreed, with a three-month report from the working group to the Committee.

Councilor Baker moved to hold the item, which failed 2-5 (Councilors Crossley, Danberg, Albright).

Councilor Danberg moved approval on item #37-20 as amended to a six-month term and a review in Committee in three months. The Committee voted 5-2 to approve (Councilors Baker and Wright opposed).

Chair's Note: *It is the Chair's intention to take up only part a)*

#31-20 **Amend zoning ordinance special permit criteria related to energy conservation**
COUNCILORS CROSSLEY AND ALBRIGHT seeking a review and possible amendments to Section 7.3.3.C.5 of Chapter 30, Newton Zoning Ordinance, to:
a) further inform the objectives of reducing energy consumption and limiting use of natural resources, and b) consider reducing the threshold for compliance to apply the requirement to buildings 10,000 sq. ft. and larger.

Action: **Zoning and Planning Held 7-0**

Notes: As per the request of the Chair, the Committee discussed only part a) of the item.

Jennifer Caira, Deputy Director of Planning, presented to the Committee on item #31-20. The full presentation is attached to this report.

The Chair noted that the proposed amendment is re-docketed from 2019, she reminded the Committee of the several ordinances passed in December of 2019 resulting from related discussions that address building energy efficiency, but that amending the special permit criterion itself was deferred.

Ms. Caira explained that the current zoning ordinance special permit criteria stipulates that any construction or addition to a property over 20,000 square feet must “contribute significantly” to the efficient use and conservation of natural resources and energy. The proposed change would seek to clarify this criterion by adding on more specific language that seeks to inform the petitioner as to what kinds of measures to address. These would include minimizing the operating energy, use of fossil fuels, and reduction of the overall carbon footprint. Ms. Caira said that this language was developed in collaboration with the Green Newton Building Standards Committee.

After receiving multiple questions from the Committee, Ms. Caira made the following clarifications.

Minimizing embodied carbon, as stipulated in the proposed language, is just one focus area and not every new project will have to hit every single one of these points. Some councilors asked if more education about embodied carbon could be provided as they wanted to learn more about it. Some councilors expressed desire to see stronger language put in place.

The Committee reached consensus on the use of the proposed language. A Chapter 30 amendment requires a public hearing. It was agreed to set the hearing for February 24.

Councilor Danberg moved hold, which was approved 7-0.

Referred to Zoning & Planning Committee

#88-20 **Discussion and review relative to the draft Zoning Ordinance**
DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Action: **Zoning and Planning Held 7-0**

Notes: Zachery LeMel, Chief of Long-Range Planning, presented to the Committee on this item.

Mr. LeMel gave a presentation which reviewed the recent history of zoning redesign efforts in Newton and context-based zoning codes. His presentation (attached) summarizes context-based zoning tools as a more adaptable form of zoning guidelines which will be better able to take neighborhood character into account than the current “traditional” Euclidian zoning. He continued that context-based zoning would solve some of the issues of continuing concern such as teardowns and the large developments that are built over them. Context based codes can also reduce the high rate of nonconformity which applies to most Newton properties. His presentation offered comparisons to similar situations in other cities that have adopted context-based zoning such as Denver, Philadelphia, and Somerville. Mr. LeMel concluded by asking councilors to find the worst example of a teardown/rebuild in their Ward and provide the information to the Planning Department for analysis.

Ms. Caira clarified that context-based zoning standards would not be subjective, but rather derive from the existing features of the neighborhood.

Councilors expressed concern that FAR was failing to meet the challenges posed to Newton demonstrated by the high number of special permits now required and general inability to rule consistently on special permits requesting more FAR, given the degree of subjective decision making required.

Councilor Danberg moved hold which carried 7-0.

The meeting adjourned at 9:59 PM.

Respectfully Submitted,

Deborah J. Crossley, Chair