



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Tuesday, May 19, 2020

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Wright, Ryan, Krintzman, and Baker
Also Present: Councilors Kelley, Markiewicz, Kelley, Bowman, Laredo, Greenberg, Downs, Gentile, Malakie, and Humphrey

Planning Board: Peter Doeringer (Chair), Jennifer Molinsky, Sonia Parisca, Sudha Maheshwari, Kevin McCormick, and Kelley Brown

City Staff: Jennifer Steel, Senior Environmental Planner; John Lojek, Inspectional Service Commissioner; Barney Heath, Director of Planning and Development; Gabriel Holbrow, Community Engagement Specialist; Zachery LeMel, Chief of Long Range Planning; Claire Rundelli, Assistant Environmental Planner; Jini Fairley, ADA Coordinator; Andrew Lee, Assistant City Solicitor; Luis Perez Demorizi, Open Space Coordinator; Katy Hax Holmes, Chief Preservation Officer; Nathan Giacalone, Committee Clerk

#178-20

Discussion of Implementation of the Open Space and Recreation Plan Update

DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

The Zoning & Planning Committee split item #178-20 into three parts:

- 1. Send a letter to the State that it has reviewed the Open Space and Recreation Plan, Approved 8-0**
- 2. Adopt the Open Space and Recreation Plan as an amendment to the 2007 Comprehensive Plan, Held 8-0**
- 3. Further discussion on implementation for the 2020-2027 Open Space and Recreation Plan, Held 8-0**

Notes: Chair Crossley introduced the item, saying that the Zoning and Planning Committee has been asked to submit a letter saying that they reviewed the Open Space and Recreation Plan (OSRP), the only step the state requires of the Committee. She recommended that this would be voted on as #178-20(1). She further recommended that adoption of the OSRP as an amendment to the City's 2007 Comprehensive Plan be voted on as #178-20(2). The Council's decision is not related to grant funding eligibility from the state.

Ms. Steel clarified that the state does not require a letter of approval from City Council in order to conduct its review of Newton's OSRP. The state requires letters of review from the Mayor, the Metropolitan Area Planning Council, and the Planning & Development Board (P&D Board). A letter of support from the full Council would be helpful but is not required in order to receive state approval. The Zoning and Planning Committee may recommend to the full Council a letter from the Council stating that it has reviewed the OSRP and recommends the state approve it. State approval is necessary to make the city eligible for grant funding. Ms. Steel further explained that once the state approves the plan, it is not involved in any way in the implementation of the OSRP.

In response to comments received, Ms. Steel explained that the OSRP is designed to be a "living document" and that implementation will need to adapt to meet Newton's changing open space needs. The present draft includes stronger language linking open space to public health. Another stated priority is that the OSRP works in conjunction with goals set forth in other City plans such as the Climate Action Plan (CAP) and the Climate Vulnerability Plan. Public comments received have ranged from an emphasis on improving maintenance and field upkeep, an expanded role for Friends' groups, and suggestions for additional projects. Ms. Steel said that all public comments have been reviewed and will be acknowledged within the plan but emphasized that the implementation phase is where priorities will be set and implementation strategies formed.

A summary of public comments received as detailed in Ms. Steel's memo is attached to this report.

Ms. Steel's memo also addresses how the final OSRP will address three issues raised at the previous ZAP meeting, which she also summarized as follows:

Implementation Team:

Ms. Steel said that Newton has adopted many Open Space Plans over decades but has never had a team dedicated to their implementation. The CAP's Implementation team has proven successful in transforming its goals into results. The CAP implementation is led by city staff members who are responsible for ensuring that the CAP goals are being met. The CAP implementation team is composed of city staff who create working groups with stakeholders from the community to undertake individual efforts. The OSRP Implementation Team will imitate this model.

Prioritization:

Ms. Steel said that prioritization of individual actions, will be determined through the strategic implementation process. She explained that under normal circumstances, looking ahead seven years is challenging and that the COVID-19 pandemic has added extra uncertainty to which the Implementation Team will have to adapt.

Efficient Management:

Ms. Steel said that she has been studying the issue of coordination between the Conservation Commission and Parks, Recreation and Culture (PRC) which has been raised over the years and appears in past OSRPs. Rather than having a planned outcome, Ms. Steel said the OSRP notes that periodic

conversations between Conservation and the PRC are needed to ensure that the most efficient management structures and practices are being followed.

Committee member and Councilor questions, answers, and comments are as follows:

Q: When will the OSRP be submitted the state?

A: Conservation and PRC are going to meet on May 22nd and May 29th (if needed) to finish reviewing public comment and coordinate final edits to the current version of the OSRP. Once the OSRP maps are completed (with an estimated date on those for May 29th), the draft will be ready to be submitted to the state.

Q: What is the best way to design the Implementation Group?

A: Based on prior conversations in Committee, public comment, and input from the Mayor's Office, the best approach has been determined to be a staff-based team.

C: The OSRP can be a significant benefit for Newton. This was demonstrated recently as the then-current OSRP was used to help justify acquisition of the Webster Woods parcel and other trail maintenance expenses.

Q: As the P&D Board has discussed the OSRP, it has further questions on the role of neighborhood groups and more aggressive strategies to expand open space. What is the best way and time schedule and time frame for the P&D Board to get its comments on the OSRP to the drafting committee?

A: If Councilors or P&D Board members still have comments, they can email them as soon as possible to either Ms. Steel or Ms. Rundelli. The public comment period is closed as staff members need time to incorporate the changes. The P&D Board can share these comments with Ms. Rundelli as they move to the Zoom breakout room later in this meeting.

Q: With the current OSRP expiring at the end of May, is there any way to extend the existing plan to cover any gap in funding eligibility?

A: No, the current plan cannot be extended. However, the next grant deadline is not until July. Provided there is swift conditional approval from the state this will not impact Newton's grant eligibility.

Q: Are there any pending applications for private conservation grants?

A: No

Q: How does the OSRP address public/private partnerships?

A: It supports expansion of such partnerships.

C: The extent of invasive species present in Newton's open spaces, as well as stormwater management, are two worrying issues that should be addressed.

A: The Conservation Office and PRC are aware of this. There are efforts underway to address both. More education on invasive species will help support greater removal of them. Invasive species

education is not specifically addressed in the OSRP, but ecological health and trail maintenance are addressed, and so invasive species removal will be addressed.

The Committee divided item #178-20 into subsections: 1) Recommending the City Council send a letter to the state stating that it has reviewed the OSRP; 2) to consider adoption of the OSRP as an amendment to the 2007 Comprehensive Plan, and 3) to discuss how to structure the implementation team.

Note: The P&D Board voted 6-0 in favor to submit a letter of review and support for the OSRP to the state. Their letter is attached to this report.

The Zoning and Planning Committee voted 8-0 to approve #178-20(1) and 8-0 to hold items #178-20(2) and #178-20(3)

#29-20 **Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON
requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.

Action: **Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstained)**

Notes: The Chair introduced the item, noting that the working group has completed its review and provided a proposed draft ordinance to the Committee, highlighting issues that had not yet been resolved in Committee.

Mr. Heath, Andrew Lee, and Katy Hax Holmes joined the Committee to present on this item. Atty. Lee began the presentation from where the previous discussion ended at the May 7th meeting, emphasizing the remaining items to be resolved: who may nominate, Administrative and Judicial Appeal options, and whether to include paint color as an architectural feature that would require NHC review. His PowerPoint presentation is attached to this report.

Nominations

The working group did not come to a consensus on who may nominate a property for landmarking. As noted as well at the previous ZAP Committee meeting, there were two matters to decide:

1. Should it be required that at least one of the nominating Councilors be a resident of the ward in which the property exists?
2. Should two members of the NHC alone be able to nominate a property?

Regarding Councilor nominations, Atty. Lee noted that notification of the ward resident councilors could be required in lieu of requiring that the nominating Councilor be a resident of the ward. Regarding NHC nominations, it was pointed out that the concern here has been that since the draft revised ordinance has the NHC as the final deciding authority, NHC should not also be the only nominators. An NHC member is required to second all other nominations, unless the property is nominated by its owner.

The Committee took straw votes on each item

1. Regarding whether a Councilor from the ward of the property in question must be one of the nominators, the Committee straw vote was 3-4-1. The item failed.
2. Regarding whether two NHC members alone may nominate a property for landmarking the Committee straw vote was 3-5. The item failed.

Atty. Lee said that the working group was unable to come to a consensus on the issue of nominations. Specifically, he referred to two points. The first was whether or not to require that when two Councilors are nominating a property, at least one should reside in the ward in which the property is located. The second was whether or not to allow two Newton Historical Commission members to nominate a property or two require that an NHC member must be joined by a different individual empowered to nominate properties.

Administrative and Judicial Review Options:

The working group recommends forming a local appeals option for persons aggrieved by an NHC decision to landmark their property, for a flat fee of \$500. (versus the MAPC fee of \$1500.). The aggrieved may choose instead to go directly to superior court. The legal standard of “arbitrary and capricious” would govern the appellate decision. This is modeled on how the MAPC conducted appeals (who have declined to continue offering this service), and is the same standard used by the judiciary.

The Committee straw vote was unanimous in favor of this option.

The local appeals option would be convened at the time of the appeal, as per the draft proposed text Sec. 22-70.

The Committee straw vote was unanimous in favor of this structure.

Paint and Color:

The working group proposed that if the paint color of a landmarked property holds no historical or cultural significance, the property owner may change the paint color without needing to obtain a certificate of appropriateness, non-applicability or hardship. If paint color is found by the NHC to be a significant condition, it would be so noted in their findings. The recommendation is therefore to remove paint color from the ‘architectural features’ list.

The Committee straw vote was unanimous in favor of this option.

Effective Date

The working group proposed that the revised ordinance would go into effect immediately upon approval by the Council. Any property currently under NHC consideration to be landmarked, will be continued according to the provisions of the revised ordinance, from the point in the process that is comparable in the new ordinance.

The Committee straw vote was unanimous in favor of this option.

The Chair suggested that Committee members focus their comments primarily on matters not yet resolved, and that preceding a final vote on the main item, straw votes would be taken until each item is settled. Committee member and Councilor questions, answers, and comments are as follows:

Multiple Councilors thanked Atty. Lee, Ms. Holmes and the working group for their efforts revising the landmark ordinance.

Q: In Sec. 22-62(1), what does it mean when it says a property is eligible for nomination if it “is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on the National Register”?

A: “Formally listed as eligible for listing” is now a defined term under 22-61 Definitions. It is defined as “a determination has been made by the keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.” This refers to a list of properties eligible to be on the National Register but are not currently on the National Register.

Q: Is the local Administrative Body the first step for an aggrieved property owner before a Judicial Review or may they choose to go to a Judicial Review first?

A: The Administrative Review is optional, and the property owner can choose to go straight to a Judicial Review.

Q: The qualifications listed out in Sec. 22-64(b-1) for Designation, including significant “architectural type, style or design” is listed as a qualification for Designation. This seems like a broad category and while it may be appropriate for the nomination process, this should not be enough for designation. This line should be removed.

A: The process now uses these criteria as a basis for nomination, though they would not have been tested. The claim of significance will then be researched and vetted. By the time the landmarking process arrives at the Designation stage, the claims that would be used under Sec. 22-64(b-1) would have been thoroughly vetted.

Q: Additionally, councilors from the ward in which the property exists have been the nominators and a councilor from any other ward would notify a councilor from within the ward.

A: This has been a matter of best practice and consideration, but it has not been formally codified.

C: (In the case of two members of the NHC alone also nominators) It seems odd to limit the ability of the NHC to nominate. Though the two members would represent half of the minimum required votes that would be deciding on the landmark designation, some of their responsibilities involve identifying appropriate buildings for nomination.

Q: What would be the effective date of this ordinance?

A: The ordinance would be effective as soon as it is passed by the full Council. The working group decided that any nominations currently ongoing will be carried over to a comparable stage under the proposed ordinance.

Q: Important architectural style alone should not be enough for landmark designation. It seems a higher degree of historic importance should be included.

A: It was pointed out where language addressing this exists in the proposed ordinance.

C: One who can nominate a property for landmark designation should not also be able to sit on the administrative review board.

C: The criteria (legal standards) used in the Administrative Review and Judicial Review should be identical.

Q: Are architecture and other experts involved in the landmarking process at all?

A: Yes, there are two professional staff members with historic preservation masters degrees who are involved in the research and verification steps, and architects and real estate professionals appointed to the NHC.

There was a motion to add text in Section 22-63(2) requiring that Councilors from within the ward be notified immediately once a property is nominated:

The motion carried 8-0.

Councilor Baker motioned to strike the language “elected from the ward in which the property is situated” from Sec. 22-63(a-2), so that any Councilor would be able to nominate a property regardless of the ward they are from, as long as they are joined by a member of the NHC. The motion carried 6-1-1 (Councilor Albright opposed, Councilor Krintzman abstained).

Councilor Krintzman moved to strike Sec. 22-63(4) in its entirety, so that two members of the NHC alone would not be able to nominate. The Motion failed 3-5 (Councilors Albright, Baker, Leary, Wright, and Danberg opposed)

Councilor Baker moved approval of #29-20 as drafted and as amended which carried 7-0-1 (Councilor Krintzman abstained).

#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 8-0

Notes: The Chair introduced the item, noting that the focus of the meeting’s Zoning Redesign presentation would be on the associated items #30-20 and #148-20, garages, driveway access, and parking.

Zachery LeMel presented a PowerPoint to continue the discussion from the last meeting on Sec. 3.4.2 and Sec. 3.7.1.E, using case studies to illustrate the proposed garage design standards and driveway access regulations. He reviewed the flaws in the deferred garage ordinance as having no statement of

intent, too many restrictions, and broad exemptions. Since 2017, the ordinance has been deferred five times. The current deferral will expire on July 1, 2020 and the Council has until then to either repeal or extend the deferral. There is not enough time to amend the deferred ordinance before this date.

Mr. LeMel again noted the key objectives that proposed revisions to garages and driveway locations are intended to address, and how they would be inserted into the proposed new draft zoning ordinance (redlined attachment included in report).

The objectives of the revision are to prevent garages from obscuring the main entrance of the building, ensure that the main house and its primary entrance are the prominent features from the street, ensure that garages do not dominate neighborhood views, and enhance public safety by protecting the public way for pedestrians.

Mr. LeMel then used case studies of existing conditions to show how the proposed ordinance would require modifications to bring the properties into compliance. In many instances, Mr. LeMel stated that the modifications required under the proposed draft zoning language would be minimal.

1603 Commonwealth Ave

Currently zoned as SR1, under the proposed zoning the property would be an R1 single-family house. The existing 28-foot curb cut would be non-compliant under the new ordinance, which would require a maximum 10-foot curb cut with a depth of 10 feet before expansion. The garage is set in front of the main door which would be non-compliant. To be compliant, the garage would simply have to be pushed behind the pedestrian façade of the house. At a minimum of ten feet (sec. 3.4.1.D.1) or be in line with a front porch designed to certain standards (sec. 3.4.1.D.1.a).

6-8 Salisbury Road

Currently zoned as MR1, under the proposed ordinance the property would be zoned R3 Two-family house. The driveway curb cuts are currently 20 feet and would have to be shrunk to 10 feet to comply. The apron offset from the front would also have to be increased to 10 feet along with a two-foot increase to the distance between the curb cuts. The garages would need to be pushed back to be in line with the front porch at a minimum. The example provided showed the garages pushed back to be in-line with the front façade which is also allowed under the draft language.

9 Wyoming Road

Currently zoned as SR3, this property would be classified an R2 single family house. The property features a prominent front facing garage. To comply under the proposed ordinance, the garage could be developed as a side-facing garage, which requires the street facing façade to include certain design features, like windows, that make the garage appear to be a living space.

878-880 Chestnut Street

Currently zoned MR1, under the proposed ordinance the property would be classified an R3 two-family house. The property does not have any garages, but if they were to be added, this property could support rear-garages. Ribbon driveways are encouraged to reduce pavement in front of the house. The

example results in parking in the rear, or within a rear garage, would remove parking in front of the front façade and place the home forward on the lot to be in line with the homes on either side of the property.

Mr. LeMel said the work done to date assumes these changes would be integrated with new definitions and to meet the broader goals of the proposed revised ordinance, such as improving pedestrian safety, protecting the streetscape, reducing impervious surface and lot coverage.

He said that additional effort would be required to first amend the existing ordinance to repair its flaws and meet expanded objectives, which may as well require new definitions - and would take time away from pursuing more comprehensive zoning redesign and/or require additional meetings.

Mr. LeMel said that the proposed revisions to the garage ordinance would enhance pedestrian safety, promote sustainability, incentivize a reduction of auto-dependency, and promote community focused design,

Mr. LeMel said that given the time constraints on changing the deferred ordinance, the Committee had two options. Its first option is to take it up as part of Zoning Redesign and adopt it with full adoption of a new comprehensively revised ordinance by the end of 2021. A second option would be to take it up as an amendment to the current zoning ordinance. However, the timeframe on passing an amendment could exceed four months, by which time it would have gone into effect. If the second option is pursued, Council would still need to defer or repeal the existing ordinance section. Mr. LeMel concluded his presentation.

Committee member and Councilor questions, answers, and comments followed:

It was stated by several members that section 3.4.4 should not go into effect as drafted, as flaws in the ordinance were revealed when unwelcome unintended consequences occurred when first passed. For example, certain well-designed projects in the queue became suddenly non-compliant, and certain traditional building types non-conforming. In his presentation, Mr. LeMel noted several corrections that were. Instead the ordinance has been deferred.

Proponents of incorporating the objectives of limiting garage placement, driveway access and impervious surfaces into the proposed ordinance, stated the need to move ahead to address the larger goals more comprehensively. Some noted that the amount of changes that need to be made exceed what will be able to be done before Section 3.4.4 is scheduled to take effect (July 1, 2020). It was also noted that in order to fix Section 3.4.4 before its implementation, staff resources would have to be diverted, putting Zoning Redesign off schedule.

One Councilor noted that Mr. LeMel's presentation clearly pointed out the flaws in the garage ordinance. Only minor changes to the language are needed to fix these flaws. This is an opportunity for the Committee to have an "interim win." There is also no guarantee that Zoning Redesign will pass. If there is so much work involved with just the garage ordinance, then it is worth considering that Zoning Redesign will take much longer than December 2021. The ordinance may not be perfect, but it could help prevent teardowns.

If the deferred ordinance was fixed, would the problems cited in Mr. LeMel's presentation be fixed?

A: Some would be fixed, but in an overly restrictive way. Mr. LeMel referred back to the many restrictions to which the deferred ordinance offered no alternatives.

Councilor Albright moved to amend the effective date of the garage ordinance 3.4.4 January 31, 2022, which was approved as amended 6-2 (Councilors Baker and Wright opposed).

Given the late hour, it was decided to postpone the presentation of building components and hold further discussion of accessory structures, garages and driveways, and calendar planning, to the next meeting. In addition, the Chair suggested taking up calendar planning at the start of the next meeting.

Councilor Crossley requested a motion to hold which carried 8-0.

#30-20 Ordinance amendment to repeal Zoning Ordinance 3.4.4 Garages
COUNCILOR ALBRIGHT requesting amendment to Chapter 30 of Newton's Zoning Ordinance, section 3.4.4 on garages (delayed implementation until ~~July 1~~ January 31, 2022). This ordinance has been delayed five times.

Action: **Zoning and Planning Approved as Amended 6-2 (Councilors Baker and Wright opposed)**

Notes: Item #30-20 was discussed and voted on with item #88-20.

Councilor Albright moved to amend the effective date of the garage ordinance 3.4.4 January 31, 2022, which was approved as amended 6-2 (Councilors Baker and Wright opposed).

#38-20 Request for discussion relative to single-family attached dwellings
COUNCILOR LAREDO requesting a review of the zoning requirements for single-family attached dwelling units.

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

Notes: Items #38-20 and #148-20 were discussed and voted on simultaneously with item #88-20.

#148-20 **Request to amend Chapter 30 to eliminate parking minimums**
COUNCILORS ALBRIGHT, AUCHINCLOSS, BOWMAN, CROSSLEY, DANBERG, DOWNS,
GENTILE, GREENBERG, KALIS, KELLEY, LIPOF, MARKIEWICZ, NOEL, KRINTZMAN, AND RYAN
seeking amendments to Chapter of the Revised City of Newton Ordinances to eliminate
mandated parking minimums to improve vitality of local businesses, reduce the cost of
housing, and support the climate action goals.

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

Notes: Items #38-20 and #148-20 were discussed and voted on simultaneously with item #88-
20.

The meeting adjourned at 10:40 pm.

Respectfully Submitted,

Deborah J. Crossley, Chair