



Zoning & Planning Committee Report

City of Newton In City Council

Thursday, July 9, 2020

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

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

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

City Staff: Barney heath, Director of Planning & Development; Zachery LeMel, Chief of Long-Range Planning; Gabriel Holbrow, Community Engagement Specialist; Cat Kemmett, Associate Planner; Nathan Giacalone, Committee Clerk

#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 and stated that the discussion would focus on input from and discussion with four local building professionals being consulted on the zoning redesign process.

Architect Mark Sangiolo presented two of his projects designed under the current ordinance to demonstrate what would be the effects of the proposed zoning ordinance. His presentation is attached to this report.

35 Fairlee Road: This property is currently under renovation. The house sits on an SR2 lot which would be zoned R2 under the proposed zoning. Mr. Sangiolo presented the floor plan of the existing home, showing portions to be demolished. A site plan of the project as approved at 2,879 sq. ft. shows additions to be constructed within the current setbacks which therefore require no special permit. A second site plan showed how the house would have to be modified to comply with the proposed zoning, which he believes could only consist of three separate additions and total 1,998 square feet.

659 Chestnut Street: As built, the house is 2,724 square feet. Under the proposed zoning that allows adding components, Mr. Sangiolo would have been able to design for up to 2,753 square feet, though he believes he would have been unable to connect all parts of the additions due to the proposed larger setback restrictions.

Councilor questions and comments (Note: answers are provided by the presenter)

Q: If you were to have started these projects under the proposed ordinance, could you have made them viable?

A: These projects could have been made viable, but they are better under the current ordinance. For example, the project at 659 Chestnut Street would not have been able to fit the addition within the proposed larger setbacks as one piece, requiring it to be split into two. The component zoning does not work well with rear additions on irregular lots. These lots may sometimes require a variance under the proposed ordinance.

Q: Do you think that the footprint limitation is too severe, or do you think that the component descriptions need to be modified?

A: Overall the footprint language is satisfactory. However, the lot coverage language can be problematic as it includes driveways. Properties that require driveways into the rear of the lot use up much of the lot coverage allowance. The component language is also good overall as its approach to have a dominant mass with features cascading off gives architects flexibility. However, it needs to allow more flexibility on the rear and sides of the building. It should focus the most on the front and one side and allow the other side to connect with rear components.

Q: You said that your original design was more graceful and set forth better with improved flow through the house. In this case, if the components were written differently, could they have worked for you?

A: Yes, it could have worked but it would be more difficult to design.

Q: If you had your choice, would you have used the proposed code or the current code for these projects?

A: The current code is preferable because it lacks the 30-foot rear setback requirement. The proposed code does not apply well to irregular lots such as 35 Fairlee Road.

Q: Should going beyond the 30-foot rear setback be allowed by special permit or should the code just be changed?

A: If the goal is to eliminate the special permit, increasing the setback from 15 to 30 feet is too much. In this case, a better option would be 20 or 25 feet.

Q: Is it correct that side and rear component additions can be two thirds of the house?

A: Yes. According to Mr. LeMel, the standards have not been created yet, but architects have been given template codes. These are measured by length, not square footage.

Q: Rooms do not normally have the trapezoid shape shown at 35 Fairlee in order to meet the proposed 30-foot setback requirement. This condition could make a hardship for people who want to expand the rear of their house. In this circumstance, how could it have worked? Is there a better setback than 30 feet?

A: Additions could be made on other sections than the rear of the house or the setback could be made closer to 20 feet.

Q: If the setback is about halfway between 15 feet and 30 feet as suggested, how big could a house with the maximum footprint get as building components are added to it?

A: The result would be close to the total square footage of the final project on 659 Chestnut Street. The result was a one-story addition, though this could have been made into a two-story space if the setback required it.

C: The Committee needs to understand the impact of all the elements and to have a better idea of how these setback changes could impact the density of lots in Newton.

Q: What would be the basic size house that could be built on this lot by-right?

A: Mr. LeMel answered that based on the lot and house type this size would be 1,400 square feet.

Q: What would the square footage of the components be?

A: Mr. LeMel said that there is no constant number, rather it is a formula based on a percentage of the floor area of a house.

Q: If you were a developer and operating with the proposed code and you were able to build a two or three family house on 35 Fairlee Road by-right, would you have done so?

A: Yes.

Q: Do you think the proposed system of building types and components is a simpler way of controlling building mass than the FAR system?

A: Currently it is not. However, there are aspects of the proposed code which improve upon the current FAR system (i.e. roof guidelines).

Residential developer Dan Powdermaker introduced himself as a longtime Newton resident and business owner within the city. He stated that most of his customers are families moving into Newton, often for the schools. He does not do teardowns or seek special permits and instead focuses on restorations of existing structures that he can do by right. He showed two of his projects, noting that each property was run down and explained that his design focused on improving the house to attract families. His presentation is attached to this report.

12 Irvington Street: Mr. Powdermaker stated that the house is approximately 100 years old and it had not been updated since the 1960s. For this project, Mr. Powdermaker tore down a free-standing garage and an old open side-porch. He constructed an attached garage connected by a

mudroom. The back of the house was pushed out to increase the size of the kitchen and the porch was also rebuilt. Mr. Powdermaker noted that this project worked well under the current zoning. He noted that under the proposed ordinance, the building would not have complied with lot coverage and side setbacks. He explained that if he reoriented the garage to be side facing to remain within the proposed setbacks, it would have taken up too much space on the lot in the backyard.

63 Bowdoin Street: Mr. Powdermaker stated that this was another house he refurbished on an irregular lot. In addition to extensive work inside the house, two rear-sheds were torn down which allowed him to attach a garage with rooms above and to shorten the driveway. Mr. Powdermaker said that under the proposed ordinance, the irregularity of the lot would mean that the rear garage would have to be made side facing, which would take up too much backyard and lot coverage. If the proposed zoning ordinance prevented the construction of a two-car garage, this would have reduced the value of the house. He stated that under the proposed zoning, this house would likely have been subject to a teardown.

Councilor Questions and Comments (Note: answers are provided by the presenter)

Q: Would a one car garage have killed the deal at 63 Bowdoin Street?

A: This probably would not have killed the deal because the house is near enough to an MBTA stop, but it would have decreased the value as typically when potential buyers are looking to spend large amount of money on a house, they want a two-car garage.

Q: On 12 Irvington Street, why did you tear down the existing rear garage only to build another rear garage?

A: The rebuilt garage is connected to the house with a mudroom behind a side-porch. To pull the garage forward at all would have conflicted with the porch and would have made a two-car garage impossible.

Q: Why would the proposed side-setback rule have hurt each project?

A: Both properties are currently zoned SR2 and the side setback is 7.5 feet, the proposed setback is 12.5 feet. The project at 12 Irvington Street would still be possible, though the garage would have to be placed in the rear of the house which would have added on more driveway and decreased the backyard space. The project at 63 Bowdoin Street would not have been possible (as designed) due to the irregular lot.

Q: How often do architects need to address irregular lots in Newton?

A: These lots are more common in the older areas of the city such as Newton Highlands and Newtonville.

Q: Since both properties are close to public transit stops, if the zoning code allowed you to convert them into multi-family housing, would you have done so?

A: Maybe not on 12 Irvington Street, but 63 Bowdoin Street would be a strong possibility. There is a smaller demand for multimillion-dollar homes than there is for townhouses and other more

affordable options. While there are some residents who do not want greater density, overall there is a greater push for more density.

Q: Have you ever needed to apply for a special permit?

A: Only once on a project during the early 2000s. The process was abandoned as architectural fees, legal fees, and delay costs piled up due to the special permit process to the tune of \$75,000.

Architect Jay Walter said his work is primarily additions, alterations, and restorations of older homes, mostly in Newton. Mr. Walter rarely does new construction and avoids teardowns. He focused his presentation on alternate lot and building configurations. Mr. Walter said that accessory dwelling units (ADUs) are increasingly popular across the country; one reason is that they allow multi-generational living while maintaining privacy. ADUs are a way to maintain neighborhood scale and character while increasing the amount of housing at the same time. There were few accessory apartments built before the Council amended the ordinance in 2017. Since then, the rate of constructing ADUs has been increasing. Mr. Walter said that he believes the ADU rules in Newton are still too restrictive, particularly by limiting the maximum size of the ADU, presenting an obstacle to achieving the stated housing goals. He provided examples of how the current rules have made his projects more difficult. Existing accessory buildings present another opportunity to provide additional housing and maintain neighborhood character at the same time.

Mr. Walter also spoke about multi-unit conversions of existing houses. Like the accessory apartment, he said that these are a way to both increase housing stock and maintain neighborhood character. In the current proposal, multi-unit conversions would only be allowed in Type A houses.

Mr. Walter recommended the following changes for the proposed ordinance:

- Remove ADU area limitations-it should not matter how the building is internally divided provided the primary residence takes up at least 51% of space.
- Remove other unnecessary ADU restrictions-these include the principle dwelling must have been constructed at least 4 years prior, the owner needing to annually file a compliance certificate, and exterior architectural integrity requirements.
- Allow Multi-Unit conversions in Type B and D houses
- Allow multi-unit conversions by-right and remove the need for a special permit
- Reduce the RU factor to reduce the incentive for teardowns
- Clarify the parking requirements

Councilor Questions and Comments (Note: answers are provided by the presenter)

C: It will be a good idea to allow more accessory apartments as they are proven to increase the quality of life for seniors.

Q: What is the difference between adding on a large accessory apartment and converting a home into a two-family house?

A: The biggest difference is that the owner must occupy one of the units in a house having an accessory apartment. This is not required in a multi-family house.

C: If multi-family homes are allowed according to the distances shown (from all existing public transit stops) in the Planning Department transit maps, then multi-family will be allowed by-right in about 83 percent of the city (about half of these areas are already zoned MR1 and MR2, allowing two units by right). This will mean accessory apartments will only realistically be needed in the remaining 17 percent.

(Follow up note: Currently an accessory apartment is allowed in one unit of a two-unit home in a multi residence district)

Q: Is there anything else you would change in the RU factor? Will nonconforming structures be a problem in the proposed zoning?

A: A sliding scale for RU's might be appropriate for the various building types. As for nonconformities, the projects presented tonight show that the proposed ordinance may in fact add more nonconformity to the City. But eliminating the lot size requirements eliminate many nonconformities around the city.

Q: Regarding existing carriage houses, you say they should be grandfathered for conversion. For new construction, should there be a square foot limitation?

A: The existing accessory structure limitations are appropriate.

C: It is important that the committee fully understand the collective impact of its actions changing the ordinance before making a decision on these rules based on a few situations.

Architect Peter Sachs then presented his opinion, focusing on why nonconformity is not a bad thing for Newton. Mr. Sachs said that he believes nonconformity can be a good thing as it often leads to the special permit process, which he believes works well. He also said that based on the other presentations given before him, the draft ordinance appears to create more nonconformity. Mr. Sachs attributed this to both a.) increasing setbacks and b.) the inclusion of driveways in lot coverage calculations. After speaking with multiple real estate attorneys, Mr. Sachs stated that he does not believe that increased nonconformity is necessarily unlawful. He used the example of the "snout house" (garages forward of and more prominent than the main house) to describe why the special permit process is necessary. In his example, he said that the special permit provides an easy and flexible way for the city to deter these constructions rather than a more prescriptive process which bars other types of construction. Elaborating further, he noted that the special permit process brings the community and others from the Planning Department together to create the best projects possible.

C: The conversations so far have missed the cases of small lots with big houses. Developers will often come to these lots and build as much as they can right up to the setbacks and overtake the scale of the surrounding neighborhood, threatening the physical character of the area.

Q: What does a special permit cost the client? Is the special permit appropriate for smaller projects?

A: The special permit will typically cost about \$3,000, but this is well worth it since it usually allows the homeowner to get exactly the house that they want. The special permit is appropriate for smaller projects, though the process for these could be improved. One possibility could be through an appointed body from the City Council outside of the Land Use Committee dedicated to the simple special permit applications.

Q: What are some other suggestions to improve the special permit process?

A: One thing would be to educate residents on what they can do to improve relationships with their neighbors, making the special permit process easier for everyone involved.

Q: It has long been stated that one of the main goals of Zoning Redesign was to reduce nonconformities in Newton. These presentations have shown that through the new setbacks it will create new nonconformities. Is there a sense for how much nonconformity it will create?

A: Mr. LeMel said that the specific numbers for this are in the build-out analysis. If new nonconformities are resulting, then they are happening for a reason. This reason is often that the new nonconformity helps to achieve the stated goals. Existing structures are unaffected, and it would only become a factor in the case of new construction. While reducing nonconformities has always been a goal, it was never the main goal so its ok to create more nonconformities if the ordinance moves closer to achieving the main goals.

C: A month ago, the Committee reasserted its primary goals for zoning redesign, and while reducing nonconformities is an objective, it is not a primary goal like achieving greater sustainability or facilitating increased housing diversity. If reducing nonconformities gets in the way of the larger goals, then choices need to be made.

C: Reducing nonconformities should not be the main issue in zoning redesign when there are so many more important ones and even some advantages to nonconformities. These advantages include greater diversity and variety of style. Rather than reducing nonconformities, the issues most brought up by constituents are housing diversity, affordability, and sustainability.

With no more questions or comments, Mr. LeMel gave an overview for the July 16th ZAP meeting. He said that this meeting will mirror the one from tonight as it will have more input from architects and builders. The Committee held item #88-20 unanimously.

The meeting adjourned at 10:01PM.

Respectfully Submitted,

Deborah J. Crossley, Chair