



Zoning & Planning Committee

Report

Part 2

City of Newton

In City Council

Monday, March 8, 2021

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

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

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

Others Present: NewTV

Planning Board: Peter Doeringer (Chair), Kevin McCormick, James Robertson, Chris Steele, Jennifer Molinsky and Barney Heath

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

#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.

(1) Landmarking - Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstaining) on 05/19/2020; Approved as Amended by Full Council on 06/22/2020

**(2) Demolition Delay -Held in Committee 06/22/2020, 10/15/2020 and 02/22/21
Public Hearing to be Assigned**

ACTION: Zoning & Planning Held 8-0 and set public hearing date for April 12, 2021

NOTE: Katy Hax Holmes, Senior Planner, Planning & Development Department joined the Committee for discussion on this item.

Chair Crossley stated that tonight, she intends the Committee will set a date for a public hearing.

Ms. Holmes provided a PowerPoint presentation (attached). Ms. Holmes stated that she will present information briefly tonight to address committee questions from the previous meeting. She intends to provide a fuller presentation at the public hearing.

NHC review data (napkin math) in one year

Ms. Holmes stated that NHC has been reviewing demolitions for decades.

Data was collected from 2018 and 2019, thinking that would be more representative of a normal pattern (pre-COVID)

The following slides were presented in in answer to most questions.

How many demolition applications are received each year?	A. approximately 300
How many full demo apps each year (including Garages?)?	A. approximately 150
How many partial demo apps each year?	A. approximately 150
How many are found preferably preserved?	A. approximately 60
How many waivers are issued each year?	A. approximately 25
<i>(Demo delay can end in the middle of the year if NHC approves plans).</i>	
How many administratively approved* full demos?	A. approximately 50
How many garages administratively approved* each year?	A. approximately 20
<i>(Note administrative approval means the property does not go before NHC)</i>	

Post -1945 (napkin math) in one year

Ms. Holmes stated that this data was collected on post WWII properties.

How many bldgs. were built between 1946 -1970?	A. approximately 4400
How many bldgs. built 1945 to present?	A. approximately 7100
How many post-1945 buildings have been surveyed?	A. approximately 1200
<i>(MA Historic (MHC) records properties of historic significance)</i>	
How many post-1945 demo applications?	A. approximately 75
How many post-1945 properties go to NHC?	A. approximately 30
How many post-1945 are found preferably preserved?	A. approximately 15
How many post-1945 partials are partially preserved?	A. approximately 2
How many post-1945 delays are waived?	A. approximately 5

Councilors and Committee members questions, answers comments and suggestions:

Q. What eventually happens to the small percentage of the post-1945 buildings that are preferably preserved? Do they wait out the delay period then demolish the building anyway?

A. Ms. Holmes answered that the NHC does not track what happens to them after they leave the NHC. There is a gap between where the Planning Department responsibility ends, and where ISD takes over with actual demolition applications. It could be tracked and followed

through within the two departments. If NHC, imposes a delay, and the demo period ends, then the NHC no longer has jurisdiction over that property and does not follow up.

Q. Do they (most property owners whose properties are found preferably preserved) wait out the delay period and then demolish the home anyway, or do residents then consider renovations? Must they resubmit plans to NHC (for renovations) to get a waiver?

A. Ms. Holmes answered yes, if it were during the delay period or if they were adding an addition after the delay period ended, although if it were less than 50% of any one side, it would not come back to the NHC.

Q. It is important to know what happens to post-1945 homes after NHC finds “preferably preserved”. What happens to the final 25%?

A. Ms. Holmes answered that prior to May 2016, when the City Council changed the law and the transferability of ownership during a demo delay, agendas were full of speculative listings from realtors, and people who were thinking of selling their homes but were not sure and wanted to start a delay and did not know the outcome. Approximately 1/3 of the Planning Department agendas at that point were of properties where demolition was never intended. After 2016, it appears that because that sort of marketing incentive was removed from our ordinance, when properties come in now for full demos it is highly more likely that they are going to come down.

Q. Can the NHC handle the volume the City is receiving regarding 50-year demo delays?

A. Ms. Holmes answered yes, in her opinion.

Q. Between 1945 and 1970, there are almost 3200 homes that were not surveyed. The City receives MHC funding to survey 110-120 homes per year. Is it therefore correct that it would take approximately 30 years to complete the inventory?

A. Ms. Holmes answered yes.

Q. Does it make sense to include post 1945 buildings because there are homes that may be missed over the next 30 years, if the home is not surveyed.?

A. Ms. Holmes answered yes.

Q. Is it true that from 1946 to 1971, 3200 homes have not been surveyed?

A. Ms. Holmes answered yes. Of about 4400 buildings built in the City between 1946 to 1971, 1200 of those have completed surveys, that leaves 3200 buildings that have not been surveyed.

Q. Are any of the 3200 homes listed on the national registry?

A. Ms. Holmes answered no, that would be included in the 1200 homes, a formal survey for historical designation.

Q. What happens to the properties in the post-war category that are not surveyed and are not on the national or state registry? How many were deemed insignificant? The sense of proposed amendments would remove some of the jurisdiction from the NHC over some of

these properties. What is Newton losing? One of the values of the demo delay ordinance, regardless of the property age was to encourage conversation and to think through the possibility of completing a partial demo and renovation rather than a complete teardown. To understand if this is successful, please provide how many (“preferably preserved” properties that requested full demolition, then migrated into the partial delay process. These would be places where the NHC process made a difference. What is the City gaining by having properties go through the additional NHC review process and what would the City lose if we removed them?

A. Ms. Holmes answered that specific addresses, photographs and story lines could be made available. Many properties are received as partial demolition requests. Therefore 75% of the total applications received by the NHC each year are administratively approved by staff and the Chair. Approximately 150 partial demos are requested each year. It is important for Newton residents to know that their project will be approved faster if they apply for a partial demolition. (See numbers above)

Q. Over 1000 communities in the USA use the 50-year benchmark. Some states have a 25 to 30-year benchmark. Is the City allowing what developers desire versus what the City is trying to preserve?

A. Chair Crossley answered that the NHC recently submitted a letter where they also raised that 1000 communities use this benchmark. The question is 1000 communities out of how many in the USA? (there are 19,502 municipalities in the US) Should Newton be looking at communities of similar size or age? How shall this be determined?

C. A Councilor stated that Massachusetts alone has 351 communities; 1,000 is not a significant percentage.

C. Pleasanton, CA set their benchmark date to 1942, and their ordinance requires a review every 10 years. Perhaps the Planning Department could discuss the benchmark date with Pleasanton, CA to determine if it has proven to be successful.

C. Data impact analysis remains necessary.

C. 93% of Newton housing stock is 50-years or older, so currently subject to NHC review.

C. History does not stop at 1945. It is important not to lose older homes.

S. Please review other communities to determine their benchmark date.

S. Perhaps the City of Newton should review their City Ordinance every 10 years.

S. The National Trust for Historic Preservation wrote an article “50-years Reconsidered” indicating where the 1000 communities are from. Please contact the author to receive additional information.

Without further discussion, Councilor Danberg made a motion to hold this item. A public hearing is scheduled for April 12, 2021. Committee members agreed 8-0.

#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, 02/22/21

ACTION: Zoning & Planning Held 8-0

NOTE: Zach LeMel, Chief of Long Range Planning, Planning & Development Department joined the Committee for discussion on this item.

Chair Crossley stated tonight is for the committee to discuss the annotated Draft Article 3. The intent is to determine if it sufficiently incorporates committee discussion points, the work that remains, analyses and data required, before we lay it aside and move on to village centers. Councilors Baker and Wright have submitted written comments to the Planning Department.

Mr. LeMel stated that he has worked to update the annotated draft to ensure it reflects where the Committee stands, and to create a clean version of the draft ordinance that is annotated with comments on the side.

Mr. LeMel then stated that tonight, the Committee could address sections of the draft where the word ‘agreement’ was used in the notes, as two members questioned this. Also, he had interpreted the discussion in late December as he should remove the suggestion of allowing two units by-right throughout the city, as well as multi-unit conversions of existing homes by-right from the Draft, particularly in areas that are the “most suburban” (large lots / furthest away from village centers and transit) in the city, which would be generally R1 and R2 districts.

Councilor Baker questioned the process of reviewing the Draft and sending comments in writing to the Planning Department (as was agreed in the prior month’s ZAP meeting). He asked for the department to produce a revised memo rather than to try and walk through each of these items in committee. He then said that he could repeat his comments that were put in writing but is that is that a productive use of our time? Councilor Baker then stated that he would like to go through the ordinance and provide further comments to the department, as his comments so far are only on the memo.

Chair Crossley answered that Committee members had agreed to review the annotated draft redlined with comments that was provided about six weeks ago, and any questions or specific areas of disagreement about how the work is framed, would be discussed tonight.

Mr. LeMel stated that his recent memo highlights areas of agreement and disagreement from the comments received (on the ideas discussed last year) and relates to the notes in the margin in the annotated draft. Councilors’ comments will also be added to the website.

Councilor Baker stated that his comments have not been reflected in the document and is trying to understand if the comments made and clarifications are necessary as opposed to having a document and the ordinance presented, leaving it for people to sort out what the comments mean. He was hopeful that department's recording would be clarified.

Councilors and Committee members questions, answers comments and suggestions:

Q. I'm generally okay with how the Draft captures where we left off but have a few questions/comments. Is it too late to submit them?

A. Mr. LeMel answered no.

C. Because the document is 48 pages, it would be preferable to have a red line, clean and an updated version. It is concerning that the red line version contains items in the past which should have went to black ink, items were crossed out that should not have been, items were removed, and items were changed without being redlined.

C. I do not think that Mr. LeMel's was a correct interpretation, (regarding removal of the ideas of two family by right and multi-family conversions.)

Chair Crossley stated that we did discuss and agree on removing these ideas from 'throughout the city by-right' and especially from the most suburban residential areas. The Committee must move on to village centers and some residential areas touch and are sometimes within village centers. It will be necessary to be open minded as the Committee assesses those areas of the City as we look for opportunities to meet (housing and sustainability) goals. As we study the maps, we must consider some of the surrounding residential districts that abut our busiest villages and ways to transition from mixed use districts to residential.

It was premature to call the August Draft of Article 3 as a "proposal", it was a Draft – a catalogue of ideas that came forward at many of our discussions in Committee including suggestions from Committee members, Councilors and Planning Board. It was never stated that the City would allow six-unit apartment buildings by-right everywhere in the City; the idea of Multi unit conversions of existing homes came from a desire to both preserve larger homes and address housing goals.

In addition, the draft posed a question about whether one or two units should be allowed? It was never agreed that two units would be allowed by-right everywhere.

In December, the Committee agreed to take these off the table.

Perhaps the Committee does not want to expand two family by-right districts, as many people desire. The way the draft is annotated it is clear that this was not resolved. There were more Councilors who were interested in expanding two family by-right districts near public transportation and village centers.

C. Before moving forward to discuss village districts, the Committee needs comparisons. Differences should be noted between Article 3 and the City's current ordinance.

C. The Committee is trying to clarify where they agreed and disagreed which would be helpful for the Planning Department to produce a revised version. When Article 3 is discussed again, the department will have had the benefit of the comments.

C. The memo includes provisions that were not discussed fully in Committee including frontages. The challenge we have as a Committee, is that we are going to be explaining to our colleagues and the public the difference between the current zoning and the proposed zoning ordinances. Comments in the Article 3 draft assume that we agree it is an appropriate document.

Chair Crossley disagreed, and stated that we have the draft ordinance on the entire Chapter 30 from October 2018, that is still on the table. Nobody has referred to that Draft as a Proposal. The Committee has not gone through most sections of the 2018 Draft, and there are sections of Article 3 that we have not deliberated, which should be clear by the notes.

Q. How can the Committee determine what areas should be considered for multifamily zoning or for increased density?

A. Chair Crossley answered that the Committee is not there yet. The Committee task now is simply to review draft Article 3 as annotated and decide if the annotations are correct so that we can move on. It seems clear the committee is not yet prepared to do this tonight.

C. There is a lot of confusion about the annotated copy and the memo. The documents have been discussed in pieces. The map was mentioned but the Committee never actually discussed the map.

Mr. LeMel said that it would be fine to have comments added if you think the annotations do not cover a suggestion that has been made.

Chair Crossley stated that she is hopeful Committee members will read the annotated draft. It is not to add new content, it is to make sure comments are adequately reflected in the notes. If there are omissions, the omissions should be added.

Chair Crossley stated it would be helpful to send written comments within two weeks to the Planning Department so that they can be assimilated.

Q. Will Committee members receive a revised version of the memo and draft before it is discussed again?

A. Mr. LeMel answered yes, once he receives comments from Committee members.

Mr. Heath stated that Mr. LeMel has done his level best to capture the comments from the many months of discussion. In the opinion of some Committee members, he may not have gotten it exactly right, which is to be expected. It would be fine to have Councilors' comments added as footnotes or addendums, making a clear record when there was not agreement from all members of the Committee. When this is discussed again, comments will be preserved including notes from members who may have disagreed. Mr. LeMel can create a summary.

Mr. Heath agreed that it does not make a whole lot of sense to go through the document line by line.

Councilor Baker felt the summary should reflect all Committee members comments.

Mr. Heath countered that if one Councilor wants something changed, but three Committee members do not agree with it, that's a problem. The department must come forward with an annotated document and come to an agreement with Committee members. If Committee members feel that the Planning Department does not have it right, the document can be updated, so that it is on record.

Chair Crossley again asked Committee members to submit comments specific to the annotated draft if they think something is not properly reflected in the notes.

Without further discussion, Councilor Baker made a motion to hold this item. Committee members agreed 8-0.

#60-21 Requesting a trial to assist restaurants by modifying minimum parking requirement

COUNCILORS ALBRIGHT, BOWMAN, CROSSLEY, DANBERG, DOWNS, KELLY AND NOEL requesting a trial to assist restaurants by modifying minimum parking requirement calculations to exclude outside seating.

ACTION: Zoning & Planning Held 8-0

NOTE: Barney Heath, Director of Planning & Development joined the Committee for discussion on this item.

Chair Crossley stated that it was her intent to entertain a motion of no action necessary (NAN) on this item.

Mr. Heath stated the status under Governor Baker's order allows communities the ability to waive parking requirements to allow for outdoor seating during the pandemic. There is a longer-term question of what will happen after the Governor lifts the State of Emergency and the 60-days thereafter on what communities will be allowed to do. There are some things that the City can accomplish but there are also some state and building code issues that will need to be addressed. All communities are beginning to look at what the implications may be after the emergency order is lifted.

Councilor Bowman stated that she docketed this item because the Governor's order, and the Mayor's acceptance does not address the longer-term issues. Concerns have been raised by the restaurants asking what would happen after 60 days is lifted? She then stated that restaurants would like to have outdoor seating for as long as possible as it is important to their recovery. What will happen if that emergency order is lifted before August 1 or September 1?

The City may see themselves in a situation where the restaurants might have to remove outdoor seating making it difficult for additional business. Councilor Bowman then suggested to hold this item.

Councilors and Committee members questions, answers, comments and suggestions:

C. The City needs to look at the general plan and what the comprehensive plan has proposed.

Q. The City needs to look at getting more people outdoors, expanding the ability of restaurants serving people on the sidewalks and City streets. Currently, the City does not have the ability to do this ONCE the Governor lifts the Emergency Order. What does the City need to do on the municipal or state level to make necessary changes to expand?

Q. Lessons were learned with COVID. Will the City have the ability to move forward post COVID, around shared streets, restaurant and pedestrian access?

C. The City should remain nimble and address the needs of businesses in the short term.

C. The City should continue thinking about use of streets, parklets, and sidewalks, not just for restaurants, but for many kinds of shared uses.

Q. If the Committee chooses to hold this item, does it have to be heard again within 90 days?

A. Chair Crossley answered that since this item was discussed tonight, within the timeframe allowed by the City rules. The docket item does not ask for a zoning change specifically it is requesting a trial.

Councilor Danberg stated that the reason a trial was requested is because a trial can be done quicker than a zoning change. If the City can trial this docket item and COVID restrictions are lifted before the end of the season, restaurants could conduct their business allowing them to keep outdoor dining.

Councilor Bowman asked if Attorney Lee could look into to whether, because the docket is requesting a trial and not a zoning change would this document expire without an action? Attorney Lee agreed.

Without further discussion, Councilor Albright made a motion to hold this item. Committee members agreed 8-0.

At approximately 9:40 p.m., the Committee adjourned.

Respectfully Submitted,

Deborah J. Crossley, Chair