



Zoning & Planning Committee

Report

City of Newton In City Council

Monday, June 28, 2021

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

Also Present: Councilors Malakie, Kelley, Greenberg, Downs, and Oliver; Newton Historical Commission Members Doug Cornelius (Chair), Jennifer Bentley, Peter Dimond, and Deborah Budd

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

City Staff: Jen Caira, Deputy Director of Planning & Development; Andrew Lee, Assistant City Solicitor; Cat Kemmett, Planning Associate; Devra Bailin, Economic Development Director; Katy Hax Holmes, Preservation Planner; Nathan Giacalone, Committee Clerk

#221-21 **Appointment of David Weinstein to the Newtonville Historic District Commission**
HER HONOR THE MAYOR appointing David Weinstein, 132 Cornell Street, Newton, as a full member of the NEWTONVILLE HISTORIC DISTRICT COMMISSION for a term to expire on June 30, 2024 (60 days: 08/06/21)
Zoning & Planning Held 8-0 on 06/28/21

Notes: Councilor Danberg made a motion to hold the item which carried 8-0.

Public Hearing

#150-21 **Requesting an amendment to Chapter 30**
DIRECTOR OF PLANNING & DEVELOPMENT requesting an amendment to Chapter 30 to allow for flexibility in building story heights without exceeding maximum building heights in business, mixed use and manufacturing districts and to clarify the maximum FAR in business and manufacturing districts where none is currently specified.
Zoning & Planning Committee Held 8-0 on 05/10/21, Public Hearing to be assigned June 14 or later.
Public Hearing Closed 8-0
P&D Board closed PH 5-0
Zoning & Planning Approved 8-0
Planning & Development Board Approved 5-0

Notes: Jen Caira, Deputy Planning Director and Cat Kemmett, Planning Associate, joined the Committee for discussion on this item.

Ms. Kemmett presented a PowerPoint (attached), providing current zoning, proposed amendments, proposed table format, proposed updates (clean-up items), and a summary of the item.

Ms. Kemmett stated that in the current ordinance, maximum building height is directly tied to the number of building stories in most of the Business Use and Manufacturing districts. This system prevents some desirable uses such as lab space for research and development and certain retail and restaurant spaces which require higher floor-to-floor heights. She said that the proposed amendments would allow flexibility in the number of story heights, without changing the maximum building height allowed either by right or by special permit. The amendments also contain some “clean-up” items to add information lost in the recodification adopted in 2015, clarify misleading statements and correct scrivener’s errors shown in an earlier red-line draft.

Ms. Kemmett said that the Planning Department has been working closely with the Economic Development Commission (EDC) to improve zoning conditions for research and development (R&D) in particular. The EDC identified the problem in the tables which entangle building height with number of stories. The 12-foot height limit in the current ordinance results from how the tables are organized. Labs and some other uses typically need at least 14-foot heights to accommodate large HVAC systems required for air quality control.

Ms. Kemmett showed a diagram (see attached presentation) to illustrate how current ordinance requires more, but shorter stories than the proposed amendment. The proposed amendment would sever the connection between maximum allowed height and the number of stories to allow for greater flexibility in floor-to-floor.

Ms. Kemmett then described the “clean-up” items that would bring over information lost during the 2015 recodification process, including Floor Area Ratio (FAR) requirements missing from the dimensional standard tables, and a missing reference to the Wells Avenue deed restriction.

Other corrections include an error for the MU height table, a formatting change necessary to properly format the FAR allowance table for buildings in BU5 and to properly reflect amendments to MU3 adopted in late 2019.

Chairman or the EDC Phil Plottel stated the EDC voted to unanimously support the proposed amendments, and that they are necessary to attract more life science R&D business to Newton.

Chair Crossley opened the public hearing.

Danielle Blake of Alexandria Real Estate Equities (ARE), a real estate life science development firm. She spoke in support of the proposed amendment to say that while 14 feet is a good target for story heights, Life Science uses may require up to 16 feet to accommodate ductwork and other

fixtures. Without this amendment, Ms. Blake said that life science labs would likely explore other communities to open in.

With no more members of the public wishing to speak, Councilor Albright made a motion to close the public hearing which carried 8-0.

The Planning & Development Board voted to close its public hearing 5-0.

Comments:

These changes are a good idea to expand economic opportunities in the wake of such a difficult year.

Questions and Answers:

If a building is in a zone that only allows three stories, this amendment would allow a building to instead be two stories. Is this condition (flexible) enough and does the Planning Department have any comments? Ms. Caira said that this conversation (to allow additional building height) may be more appropriate for the holistic zoning redesign discussions as this amendment is a short-term fix to allow flexibility without changing allowable building height.

Since Ms. Blake mentioned that some heights need to be 16 feet, does the proposed amendment still need to improve to better meet the needs of life science R&D? Ms. Blake answered that this ordinance is moving in the right direction, though heights (in the example given) of 14 feet are slightly lower than a typical target. It seems like this proposed amendment is focused on allowing developers to accommodate the needs of their tenants

In situations where these lab properties will be built adjacent to other properties of existing story heights, does Planning have any view on issues of visual compatibility? Ms. Caira answered that some of this currently exists in Newton where buildings have floor heights that do not neatly line up. She continued that most of these projects will likely need a special permit anyway as they will be over 20,000 square feet. Visual compatibility unrelated to allowing flexibility within the heights the ordinances currently allow.

Does a mixed use structure qualify as residential or commercial when it comes to counting the stories? Ms. Caira answered that this would apply to all commercial and mixed-use buildings.

Councilor Leary made a motion to approve which carried 8-0.

The Planning & Development Board voted to approve the item 5-0.

- #29-20(2) 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 06/22/2020, 10/15/2020 and 02/22/21
Zoning & Planning Held 8-0 on 04/12/21, Public Hearing Continued
Zoning & Planning Held 8-0 on 06/28/21, Public Hearing Continued

Note: The Committee was joined by Assistant City Solicitor Andrew Lee and Preservation Planner Katy Hax Holmes, who have worked extensively with the Historic Ordinance subcommittee (Councilors Crossley, Kelley, Albright and Baker and NHC Chair Doug Cornelius). The Committee was also joined by members of the Newton Historical Commission (NHC). The Chair noted the public hearing remains open, but that tonight's discussion will first include the Council, Planning Board and NHC members, who she invited to participate.

The Chair introduced the item, noting that it has been two months since the public hearing, so the materials in the packet were re-assembled and tonight's discussion will begin with a refresher. The Chair explained that the working group was established to examine the Demolition Delay ordinance and improve both its clarity and the appeal process. She explained that discussion of the item would begin with a PowerPoint from Atty. Lee (attached) summarizing the outstanding items on which the committee must reach consensus. In addition, there was one new item raised by current and former members of the NHC regarding how context has been used, inappropriately in their opinion, to determine of historic significance. After Attorney Lee's presentation concludes, the committee will discuss and take a straw vote on each point.

Ms. Holmes interjected to state that Amanda Stauffer Park, who had submitted testimony at and following the public hearing on this item now wishes to retract that testimony. The Committee said that to do this Ms. Park should request this in writing.

Ms. Caira clarified that while the P&D Board is in attendance for discussion, they are not required to vote on this item, as it is a separate ordinance, not in Chapter 30.

Attorney Lee said that his presentation was pared down from earlier versions to first review on the process as described in the existing and proposed ordinance, then focus on the remaining outstanding items. It began with a summary of the six-step demolition delay process.

Is the property over 50 Years Old?

If not, no delay is imposed, and demolition may proceed.

Is the proposed project de-minimis?

A de-minimis project would be one that only affects a small portion of the property and does not impact significant architectural features. These projects can be approved administratively.

Is the property historically significant?

If the NHC determines a property is not historically significant, the project receives no further review and demolition may proceed. Criteria used for this determination are some of the outstanding items for discussion.

Can the project receive administrative approval?

Some historically significant properties can still receive administrative approval if the project is small scale and makes no major changes to external architectural features.

Atty Lee then discussed the different waiver processes for partial and total demolitions. For a partial demolition, the homeowner may immediately seek a waiver from the NHC, based on the submitted plans. The property owner must abide by the conditions of this waiver. For a total demolition waiver, the property owner must normally wait four months to seek a waiver based on submitted plans.

A waiver may be granted sooner if by a 2/3 vote, the NHC determines that the waiver application proposes substantial or material changes. It may also be granted sooner if the NHC determines by a majority that the waiver application proposes to preserve the buildings.

The Chair said that the process for the evening would be that Councilors would take the outstanding items up one at a time using Atty Lee's presentation. She acknowledged that this item would likely need another meeting to complete.

50 Year Requirement

Currently, a property is subject to review if it is in whole or in part older than 50 years. If no part of the building is older than 50 years it is not subject to NHC review. The Working Group (4 of 5 voting members) first proposed to replace the rolling 50-year benchmark with a static date of 1945. 1 of the 5 members would retain the current 50-year mark. Two additional ideas were discussed at the February 22, 2021 and April 12, 2021 ZAP meetings. First, to use a rolling 75-year benchmark, and to require the City Council to review the age of buildings subject to the demolition delay at least every 10 years.

Comments:

Councilor Wright presented a slide showing a list of reasons to maintain the 50-year benchmark (attached). She summarized that this requirement provides time needed for the historic perspective, the NHC has not asked for this, and that setting a static date of 1945 would remove about 3200 homes from consideration (*homes between 50-75 years old*) and many would be lost until this problem could be resolved. She maintained it would take 30 years to complete the state MACRIS surveys on all of these properties. She also said that teardowns negatively impact the environment.

Another Councilor thought that the 50-year date promotes thoughtful discussion on preservation and the process works. It would be a mistake not to have a review of some of these newer properties as this gives developers and homeowners more time to consider more options.

Setting a rolling date of 75-years old with a review every 10 years seems like a good compromise. The 50-year rule has unintended consequences and some residents are put through a burdensome process. With so many Newton homes built in the 1950s it leads to the NHC becoming a design review committee.

Many architects say construction after 1945 changed significantly and these changes need to be taken into account. For the 3200 houses (in the NHC purview) if setting a static 1945 (or 75 year) date, it would likely not take 30 years to get them into database as was said. A first level review could be done (to sort the list before conducting full surveys on buildings thought to have historic significance) rather than saying it would take 30 years.

Deputy Planning Director Caria affirmed that, as per her earlier report, a survey of the 3,200 buildings built between 1946 and 1971 would be done in two phases with the first phases being much faster in order to identify the building to focus on during the more intensive second phase.

Ms. Caira also reminded of her research among communities in Massachusetts. The Planning Department reviewed all Massachusetts' municipalities and found that a rolling 75 years and no threshold (all properties are reviewed) were the most common with 38 communities each and a rolling 50-year threshold was the next most common, followed by a rolling 100-year threshold. Some also used static dates to trigger their historic reviews.

One Councilor felt the Council should not mandate a review for a future Council as it is bad policy to mandate the work of successive legislatures.

Many homeowners have come forward to describe the impact of the 50-year mark as this covers a huge percentage (93%) of properties in Newton. Many Working Group members thought few houses in this timeframe were historically significant. The 75-year rolling date is a good idea and a periodic review of this date is a good idea as well. Could the NHC perform this review?

The 50-year rolling date preserves affordable housing as it prevents homeowners from rushing into demolition.

It is compelling to hear that 90 percent of Newton properties are subject to the 50-year date. It may make sense for communities with much younger housing stock to use a 50-year rule, but there is value in having a review.

The 50-year review date places a burden on homeowners. Some of these older homes are thinly built and were a good idea at the time of construction, but the original houses have served their purposes. This ordinance is not intended to invite oversized homes and the zoning ordinances need

to address the scale of neighborhoods. This change should not be made just because Newton's neighbors have done so. There can and should be a survey of the truly historic buildings which will also help lift the burden off homeowners.

NHC alternate member Jennifer Bentley spoke in support of the 50-year rolling date. She said that Newton's implementation of this process has served as a model across the country and the city should not weaken its historic safeguards. She also said that setting a static year is a bad idea as preservation concerns change. For example, while Victorian homes are sought after today, they were not always thought worthy of preservation. A similar situation is possible for the ranch house. The NHC has often encouraged rehabilitation of older homes when possible.

NHC member Peter Dimond spoke to oppose changing the 50-year rolling date, saying that it would eliminate too many properties from protection before a proper survey could be completed. He said such a proposal seems to be a retreat from Newton's values on historic preservation.

Doug Cornelius, Chair of the NHC, said that the 50-year rolling date is something the NHC has struggled with as it is the problem of exclusion vs. inclusion. He also said that the reason some properties are not in the MACRIS system is because they are not important enough to survey for preservation.

NHC member Deborah Budd also spoke to support keeping the 50-year benchmark.

Though the NHC voted 5-0 to oppose changing the 50-year rolling benchmark, it has not been explained yet that this date presents a burden. It is also unclear if this ordinance is the best tool to pursue climate goals. Whether 50 or 75 years is used for the reference, a rolling date is better than using a static date for preservation.

Many older homes can be renovated for green construction, making the ranch house quite energy efficient.

The Committee took a straw vote for its position on this outstanding item:

Static date of 1945: None in favor

75-year rolling date: 3 in favor (Councilors Krintzman, Albright, and Crossley)

50-year rolling date: 4 in favor (Councilors Wright, Leary, and Baker)

One abstention (Councilor Danberg)

Context

Attorney Lee noted that in the current and proposed ordinance, a building can be found to be historically significant when it is determined to be

"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."

For example, under this criterion, a building can be determined to be historically significant if it is individually historically or architecturally important by reason of period, style, method of building

construction or associated with a particular architect due to such context. At the April 12, 2021 ZAP public hearing, it was said that this language was, in some cases, being interpreted to mean that the surrounding context could be a sole determinant of historic significance. Atty. Lee said this is not what the language says. He said the original language is clear in that when determining historic significance of a property there must be a finding that the building is historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, and that is the case whether the buildings stands alone or within a particular context. His suggestion to fix any confusion would be to parse it into two separate bullets.

Comments:

Context was a point addressed by resident testimony in the April public hearing.

While some have suggested that context is a sole criterion for preservation, this is not the case.

The language is clear, the concern is that it is not clearly applied.

If a house was designed by a famous architect but is not contextual, it could be deemed (historically) significant.

NHC member Bentley said that the NHC is familiar with how to properly interpret the ordinance and acts within best practices. The language is fine as is.

If a property is not architecturally important it is necessary to see what residents think is important. Context is a factor in this determination.

Historical significance needs to be based on the property itself in addition to whether it has significance within the context of other similar buildings. Context alone should not be enough to require preservation, but the whole group should be significant. The use of "or" gives the thought of it being adequate to be similar to other buildings.

Atty. Lee spoke to this point and said it was unclear how a property could be determined to be significant just by buildings around it being deemed historically significant.

NHC members have said to leave this language alone so it should remain.

To help guide conversation, the Chair asked if Committee members agreed that the current language clearly requires that context must be paired with another finding.

A property can be historically, but not architecturally significant due to context.

In order to be contextually significant, a property must be paired with another condition. The language should either be clarified or the original should be used.

Mr. Doeringer suggested that the conversation step back from the specific language and determine if there was agreement on what context brings to the issue and how it changes the eligibility of a property for preservation.

There are historic district boundaries for everything within them that tells a story and planned communities of a concept that is no longer what it once was. Does the language used meet the intent of the ordinance? Should the average home of a time passed be considered significant?

Since most members seem to agree on the big idea, could the clause: (whether) *by itself or in the context of a group of buildings or structures* just be relocated to the beginning of the sentence for clarity?

For example, if a property is one of the original models of a planned community such as Oak Hill Park, it is important to the context of the community, as it would be if it was the first one to change. Does a property need to be independently significant to be significant in context? The distinct language gives the NHC the ability to make this choice.

One councilor noted that on a section of Commonwealth Avenue, there are four center-entrance brick colonials. Is being built similar at the same time enough context to support (a finding of) historical significance for these houses?

Ms. Bentley said this group of four would not necessarily be subject to preservation but could be within context and other factors for preservation. The NHC already conducts significant research into these decisions and staff could conduct additional research on this. Context has never been a standalone factor for a decision, a point supported by Mr. Cornelius.

For a hypothetical example, could context be a factor to preserve four cinderblock structures next to each other? It was answered that context would not be a standalone factor for such houses. Ms. Holmes noted that elsewhere in the country, poured concrete homes are a type that has been considered historically significant, so the precedent exists.

The Committee took a straw vote to determine its stance on context language:

The statement should be left alone: 5 in favor (Councilors Leary, Wright, Danberg, Ryan, and Baker)

The sentence should be clearer when addressing context: 3 in favor (Councilors Crossley, Albright, and Krintzman)

Properties Near Historic Districts

Currently, a building located with 150 feet of the boundaries of a historic district can also be deemed historically significant if it is contextually similar to the buildings within the historic district. The working group recommends eliminating this consideration as it would be more appropriate to extend the boundary of the historic district within the ordinance which defines the historic district.

Comments:

If properties within 150 feet of the boundary of an historic district are subject to review, why not just extend the boundary? Three of the five working group members do not agree with the 150-foot extension.

The 150 feet extension should remain to preserve contextual similarity as without it, the NHC has said some historic buildings would have been lost. This rule would preserve buildings that simply were not included within the historic district.

If a building meets the other criteria that determine historic significance, there is no reason for this provision.

It is important to recognize that this language applies to any local or federal historic district as well. There needs to be a distinction between this and the previous outstanding item.

It is unclear why, if the extension is 150 feet, what additional protection would be given to the building and what it would get automatically if it stood on its own as an historic structure. If a property is not significant on its own, then it should not be considered. It was answered that the property may not be significant on its own but is significant through context to properties in the historic district.

This extension seems like a messy situation and a backdoor way to expand the historic district.

Ms. Holmes added that historical districts have political boundaries determined by the homeowners (on the periphery who may opt out) in the area and do not necessarily include all proper buildings.

The boundaries of the districts should be respected, rather than expanding to 150-foot beyond the boundary.

This extension should remain in place because it requires a closer look at houses near historic districts before demolishing them.

The Committee took a straw vote to determine its stance on keeping language in the ordinance to deem a property Historically Significant if it is within 150 feet of an historic district and contextual to it:

In favor of keeping this criterion: 3 (Councilors Baker, Ryan, and Wright)

Opposed to keeping this criterion: 5 (Councilors Krintzman, Albright, Leary, Crossley, and Danberg)

Staff Review

Currently, the determination of a building as historically significant may be made by either the NHC or the NHC may delegate the determination to Commission staff or a designated commission member. One working group member requested further discussion on a mechanism that would require full disclosure at NHC meetings of full demolition applications found not to be historically significant by preservation staff and a designated commission member.

Comments:

With the current process, preservation staff and a designated Commission member must agree that a property is not historically significant. There is no visibility for this due to staff's role and these decisions never show up on the NHC agenda. To serve the public interest, a mechanism should be added that requires the disclosure of any properties not deemed historically significant allowing demolition to proceed. This will produce an opportunity for a second look by the Commission.

Prior Committee discussions discussed that this procedure would be Council meddling in the NHC ability to conduct itself.

The NHC already does this through the disclosure of a staff memo which lists all properties that were granted a full demolition through administrative review in the prior month. Any additional level of review and consent would be problematic.

The many boards and commissions in Newton operate under their own rules but are still required to post agendas and other meeting materials. This type of constraint on how to conduct its daily business should not be made.

This proposal seems like unnecessary extra work for both staff and the NHC.

Ms. Bentley said that NHC members are already allowed to ask questions about properties they see on the list. The NHC has enough authority now, but it does not seem like it would make extra work so it would be fine to add this requirement.

Atty. Lee clarified that the delegation to staff is not mandatory and it is unclear if a separate procedure in the ordinance is necessary.

Mr. Cornelius was concerned about this requirement creating extra procedural pitfalls that do not currently exist. He said removing the bottom paragraph could help avoid these errors.

This procedure should be enacted because only recently have houses administratively approved for demolition been showing up in reports, and this will help ensure the practice continues.

Mr. Cornelius spoke about the proposed language, pointing out that the first two paragraphs describe the delegation to staff or a commission member while the proposal is to make it staff and a commission member. Atty. Lee clarified that a delegation is optional with authority lying with the NHC. Currently the NHC may delegate this ability to staff or a commission member and that the proposal would require this delegation to staff and a commission member. Additionally, he said that often when there are procedural items that are solely in the purview of a specific commission, those are addressed within the commission's specific rules.

The Committee took a straw vote to determine its stance on adding this additional procedural requirement for the NHC to disclose properties determined by staff to not be significant enough for preservation:

Straw vote to add to the current draft a procedural requirement that NHC must disclose demolition applications that are administratively approved.

In favor of adding this requirement: 3 (Councilors Baker, Ryan, and Wright)

Opposed to adding this requirement: 5 (Councilors Krintzman, Albright, Leary, Crossley, and Danberg)

Preferably Preserved Criteria

Atty. Lee said that the definition of Preferably Preserved has not changed and the Working Group determined that the NHC needs to look at a list of several factors to make this decision, including historic value and significance, general design arrangement texture and materials of the features, context to similar buildings in the surrounding area, and the extent of the historic fabric remaining in the buildable structure. Two more points that the NHC could consider as guiding criteria are the degree to which the historic/architectural value of the structure can be preserved through restoration/replacement or whether imposition of the demolition delay would cause excessive hardship for the homeowners.

Comments:

After much discussions, these two points were agreed to be dropped in the subcommittee.

Mr. Cornelius said the question of the hardship exception has been around a long time. The demolition delay does cause some hardship in order to incentive renovation rather than demolish, but the Working Group felt it should be discussed in Committee.

For example, there was a property in Ward 1 in bad shape which the NHC found to be Preferably Preserved. The attorney on behalf of the property owners said that the property would be very difficult to preserve and would be a hardship for the homeowners.

Excessive hardship should be more clearly defined. If it is going to be included, then the language should be located elsewhere.

Could somebody just buy a property and then declare preservation to be a hardship such as a developer? Mr. Cornelius answered that this concern has arisen, and the purpose of the delay is to create the incentive for renovation.

It is far too easy for a developer to abuse the excessive hardship exception and it is a mistake to leave this language in.

(Note this language is not in the proposed draft)

There is sympathy to homeowners prevented from doing work or a delay and the hardships this could create. The Subcommittee discussed how difficult this issue would be to address. There are truly some

structures that are well past their useful life which are not feasible to restore. However, the NHC is not in a position to make this judgement which is why the item was taken off the table in the Subcommittee.

Both sides of this question make good points, such as the potential difficulties faced by homeowners and concerns over vague language. While this point should be dismissed, Councilors should be aware of these issues.

As this discussion continues, ZAP should talk more about the appeals process and improvements to enforcement for non-compliance. The Chair answered that it would be helpful to discuss non-compliance at a future meeting, separate from this docket item.

Atty. Lee was thanked for his presentation and his work on this subject.

Councilor Wright made a motion to Hold which carried 8-0.

The meeting adjourned at 10:36pm.

Respectfully submitted,

Deborah J. Crossley, Chair