



Zoning & Planning Committee Report

City of Newton In City Council

Monday, July 26, 2021

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

Also Present: Councilors Lipof, Bowman, Malakie, Kelley, Humphrey, and Oliver

Planning & Development Board: Peter Doeringer (Chair), Jennifer Molinsky, Kevin McCormick, and Kelley Brown

Newton Historical Commission: Peter Dimond (Chair), Doug Cornelius, Jennifer Bentley, and Amanda Stauffer Park

City Staff: Barney Heath, Director of Planning and Development; Nadia Khan, Acting City Clerk/Assistant Clerk of the Council; Andrew Lee, Assistant City Solicitor; Lara Kritzer, CPA Program Manager; Amanda Berman, Director of Housing & Community Development; Eamon Bencivengo, Jini Fairley, ADA Coordinator; Jonathan Yeo, Chief Operating Officer; Nathan Giacalone, Committee Clerk

#265-21 Appointment of Lee Breckenridge to the Planning and Development Board

HER HONOR THE MAYOR appointing Lee Breckenridge, 173 Berkeley Street, Newton, as an alternate member of the PLANNING AND DEVELOPMENT BOARD for a term to expire on February 1, 2026. (60 days: 09/10/21)

Action: **Zoning & Planning Approved 7-0 (Councilor Baker not voting)**

Notes: The Committee invited Ms. Breckenridge to speak to her interest in joining the Planning & Development Board. Ms. Breckenridge said that having lived in the city since the 1990s, she has followed land use issues with interest. Her primary professional interest is environmental regulation, and she has work experience in both the Massachusetts Attorney General's office and teaching at Northeastern Law School. At Northeastern, Ms. Breckenridge teaches natural resource, environmental, land use and property law. Ms. Breckenridge said that she is now looking for a good place to use her skills close to home and felt that the Planning & Development Board would be a good fit.

The Committee expressed its appreciation for her willingness to serve.

Discussion:

C: Your background is extremely well suited for the issues ZAP is currently discussing, such as economic stability and sustainability.

C: You have an impressive list of publications, particularly regarding sustainability.

Councilor Leary made a motion to approve which carried 7-0.

Referred to Zoning & Planning and Finance Committees

#281-21

CPC Recommendation to appropriate \$1,440,344 in CPA funding

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of one million four hundred forty thousand three hundred and forty-four dollars (\$1,440,344) in Community Preservation Act funds, with \$288,068.80 to come from the Open Space Prior Year Reserve (Act# 5840-3599) and \$1,152,275.20 to come from the Prior Year Undesignated Fund (Acct# 5800-3599), to the control of the Planning & Development Department for the implementation of the approved and permitted designs for Levingston Cove including the construction of new erosion controls, plantings, accessibility improvements and the installation of new public amenities including new pathways, benches and decks.

Action: **Zoning & Planning Referred to Full Council 7-0 (Councilor Baker not voting)**

Notes: The Chair introduced the item, saying that since this project is being run by the Parks, Recreation and Culture Department, that it should have been referred to the Programs & Services committee. Further review has shown that there is more time for the project than initially thought as bidding will not occur until early 2022. Director Heath confirmed with other staff members that there is enough time to send this back to Council and refer this item to Programs & Services for consideration. President Albright will confer with the Acting Clerk to determine proper committee reassignments.

Councilor Danberg made a motion to refer the item back to the full Council which carried 7-0 (Councilor Baker not voting)

Referred to Zoning & Planning and Finance Committees

#280-21

CPC Recommendation to appropriate \$441,755.29 in CPA funding

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of four hundred forty-one thousand seven hundred fifty-five dollars and twenty-nine cents (\$441,755.29) from the Community Preservation Act FY22 Historic Resource Reserve Fund Account to the control of the Planning & Development Department to provide the remaining recommended funding needed to complete the Grace Episcopal Church Tower Restoration project for the stabilization and preservation of the historically significant ca. 1872 conical stone spire, tower and belfry.

Action: **Zoning & Planning Approved 6-1 (Councilor Ryan opposed, Councilor Baker not voting)**

Notes: The Committee was joined for discussion on this item by Ms. Kritzer.

The Chair introduced the item, noting that this funding amount was already approved by the City Council, but the money appropriated for this project in the historic preservation category was not available until after receiving the FY'22 allocation. Approving this item will move the funding and complete the appropriation.

Discussion:

Is there anything in the contract with Grace Church that says if funds raised are more than anticipated, that money will return to the city (CPA fund)?

A: Yes, the grant agreement was drafted to say that if they (Grace church) receive any funding in excess of what is expected, the benefit will come return to the CPA accounts.

Councilor Danberg made a motion to approve the item which carried 6-1 (Councilor Ryan opposed, Councilor Baker not voting)

Referred to Zoning & Planning and Finance Committees

#252-21 Appropriation of \$643,215 for the Newton Housing Authority

DIRECTOR OF PLANNING & DEVELOPMENT requesting the appropriation of six hundred forty-three thousand two hundred and fifteen dollars (\$643,215) of Inclusionary Zoning funds to the Newton Housing Authority (NHA) to support the creation of 55 new units of affordable senior housing at the NHA's new Haywood House development.

Zoning & Planning Approved 7-0 (Councilor Baker not voting)

Notes: The Committee was joined on this discussion by Mr. Heath and members of the Newton Housing Authority.

The Chair introduced the item, saying that this item related to the percentage of the inclusionary housing funds which the Council has previously approved should be allocated to the housing authority. The topic of this item is how the funding will be used. Mr. Heath confirmed that moving these funds is provided for in the ordinance, but that the Housing Authority rarely requests a portion of the Inclusionary Zoning (IZ) fund. Ms. Zarechian said that there have been construction cost increases for the Haywood House, particularly lumber prices rising post COVID shutdowns causing material shortages, which is why this request was generated.

Councilor Leary made a motion of approval which carried 7-0 (Councilor Baker not voting).

#438-20 Request for creation of Trust in Newton to support affordable housing development

COUNCILORS ALBRIGHT, CROSSLEY, HUMPHREY, DANBERG, MALAKIE, KELLEY, BOWMAN, KALIS, GREENBERG, DOWNS, WRIGHT, RYAN, NOEL, LEARY, LIPOF AND NORTON requesting the Planning Department analyze mechanisms already in use in other cities and towns, identify funding sources, and create a Housing Trust in Newton to facilitate and foster the development of affordable housing in Newton.

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

Notes: The Committee was joined by Director Heath and members of the Newton Housing Partnership.

The Chair clarified that no final vote would be taken on this item tonight. The Planning department has drafted an ordinance for consideration, identifying multiple decision points for the Council to consider.

Mr. Heath presented (PowerPoint attached) and said that this item was a continuation of a discussion from last November. Since 2006, about 100 Massachusetts communities have formed a Municipal Affordable Housing Trust (a Trust), many of which use CPA funding as the primary source of funding. The Trust, as part of city government must follow all rules of a public body. Research shows that Trusts can serve as the vehicle to deliver funding to the entities most experienced in creating affordable housing. The enabling legislation outlines multiple funding sources, but for Newton, CPA and inclusionary zoning payments would likely be the primary sources of funding, along with developer fees, special ordinance payments, and private donations. Regarding Trust members, communities have at least 5, but sometimes more members. The draft model proposes to have seven members, consisting of the Mayor (required by statute), a City Councilor, a CPC member, and four at-large Newton residents with experience relevant to creating affordable housing. The Planning Department would likely provide the appropriate staff. Powers that may be assigned are listed in the enabling legislation. While some communities may use an on-call housing consultant, most use in-house Planning staff. The Trust would meet at a minimum of four times a year. There will be a more in-depth conversation in the CPC on August 10 concerning their role.

Questions and Answers

What are the details of how the CPC makes its initial decision for funding and how is a discussion formed on the objectives of using the Trust?

In most cases, once the Trust is set up, it prepares its own internal bylaws before requesting funding from the CPC. In most communities surveyed, the Trust submits a specific annual request to the CPC which is likely how Newton's would operate.

How does a housing project come before the CPC and what is the (usual) funding timeline? How would this be improved under a housing Trust?

Mr. Heath said that it is hard to say how a Trust would be better in theory, but this timeline should be examined further. The CPC review and public hearing is removed from the process, but there would still be a special permit application (and its public process).

How much of the housing funds would go into the trust?

Ms. Kritzer said that CPC has a goal of spending about 35% of its annual funds on affordable housing projects. It is up to the trust in putting together their application to ask for the funding on an annual basis and to work with the CPC. She said that this amount would likely be between the 10% minimum and the average 35% amount. There would still be undesignated funds in case the need arose.

What funds would be reserved for other purposes

This will be an annual request from the trust for funding and it will be up to the CPC to decide what is appropriate each year. If another big project arises, the CPC may become more flexible with what it provides to the trust. It is still possible that applicants will come to both the trust and CPC for funds.

It would be good if this was used to increase the total amount of funds for affordable housing. Is there something that could be done about possibly increasing revenue, or could there be an organization to create the necessary revenue?

Once a trust is established, that group will be able to be creative with its funding sources and how it allocates the money. In most communities studied, they received the bulks of their funds from CPC, inclusionary zoning, land donations, and similar ways. Some communities raised taxes or used bonding.

Cambridge has maximized its funding potential at 3%, but they have not increased their taxes for this.

Newton Housing Partnership (NHP) Chair Lizbeth Heyer then spoke to the committee on behalf of the NHP, supporting the idea of a Trust as a means to increase affordable housing production and identify, secure, and manage increased funding. She said that the Trust would be a signal that Newton is serious about creating affordable housing by promoting early strategy and goal setting before arriving at a specific project. The Trust could be empowered to collaborate with the city, look for and suggest sites, and ideally initiate projects as well, even on public land. Ms. Heyer said that a Trust would stimulate development by planning over multiple years how to use its funding. Once the Trust receives money, it stays there for however long the strategy needs, showing how the Trust can be flexible in ways the CPC cannot be as the CPC can only fund projects that come before it. She said that currently CPC takes about 6-8 months to approve a project while the Trust would take a fraction of this time. Ms. Heyer concluded the presentation saying that while it would make sense to go beyond the 35% funding contribution, going up to 80% as Cambridge does for example would not be necessary.

The Committee thanked Ms. Heyer for her presentation.

Comments:

If we want to enable a Trust to be more proactive, that needs to be clearly built into the ordinance.

It is important to know how much housing Trusts (operating in other communities) have created to determine how well it can work.

There are many good details in this draft ordinance that strengthen the long-range planning aspect. While Trusts allow other communities to be more flexible, the long-range planning descriptions need more details. The Council should also clarify that there remains a clear public role in this (special permit) process.

Creation of this Trust would remove CPC from the housing process, but other communities should be examined to see how this move has worked.

Having a separate fund for affordable housing would be a good idea as it would assist non-profit developers and increase support for affordable housing in Newton.

Questions and Answers:

Newton is one of the few communities with a full time CPC staff person, while Trusts are often used for communities with less involved CPC programs the presentation showed many ways Newton

could use this Trust. How much housing has been created in the state with Trust money? Has the grant agreement already been discussed?

Mr. Heath said that the grant agreement would have to clearly describe the rules it would follow. The numbers are tricky to find as there are no requirements for a Trust to report its numbers, but Planning can study this.

Is it possible for Newton to increase the CPC tax percentage to raise funds for a Trust?

Atty. Lee said this would be unlikely since these funds usually go under CPC purview and probably cannot be predesignated. He said that he would confirm this.

Many citizens have asked about swiftly acting to acquire open space when it becomes available. This has similar characteristics to housing purposes. Could there be something in the decision-making process to reassure the public that CPA funds can be used for multiple purposes?

The Chair said that Planning staff will continue to discuss this item with the NHP and return for further discussion in ZAP either mid-September or October.

Councilor Krintzman made a motion to hold which carried 8-0.

#528-20 Requesting review and possible amendment to Local Preference in Chapter 30
COUNCILORS ALBRIGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting a review and possible amendment to the Local Preference Ordinance in Chapter 30 sections 5.11.8. This section requires an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units which provides for a local preference for up to 70% of the Inclusionary Units. Various groups including The Fair Housing Committee and the Newton Housing Partnership have questioned whether the percent of local preference to current Newton residents should be lowered with the goal of increasing racial diversity in Newton.

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

Notes: The Committee was joined by Mr. Heath and Ms. Berman for discussion on this item

The Chair introduced the item, saying that both the NHP and Planning staff have been discussing the impacts of the percentage given to local preference in the ordinance, and both recommend reducing the threshold for local preference.

Director of Housing and Community Development Amanda Berman then presented to the Committee (PowerPoint attached). She said that the local preference discussion has been ongoing for about a year, culminating in the results of the Barret Planning Group's analysis and now final report. She said the local preference conversation gained momentum last July (2020) when the NHP voted to recommend a 0% local preference for the proposed Riverside mixed-use development. The impetus to study local preference policy and its impacts on fair housing was in part motivated by the Black Lives

Matter protests ongoing at the time. She said the NHP wanted to send a message that Newton does not perpetuate housing policies that keep non-white people out of Newton. Newton, as a member community of the WestMetro HOME Consortium was also required by the Department of Housing and Urban Development to identify barriers to fair housing. She said that one of the guiding questions for this discussion was whether local preference policies were accomplishing their stated goals or if they were barring minorities from seeking housing in Newton. Local Preference is authorized by the state through Chapter 40B. Newton's policy is embedded in its inclusionary zoning (IZ) ordinance, which allows up to 70% (state maximum allowed) of units in an affordable housing project to be designated "local preference." This means that the application process for the local preference units is weighted toward current Newton residents, municipal employees, local business employees, and households with children attending Newton schools. For example, if a project contains 20 affordable units, up to 14 of these can be reserved for local preference applicants. The remaining six units are available to all applicants, including both local preference and non-local preference applicants.

Referring to the Barrett Report, Ms. Berman said that it found Newton's racial makeup to be 83% white, 12.4 % Asian, with the remaining 4.6% split between Black or African American, "Other," and two or more races. The Barrett Report then took lottery data from three recent rental developments: TRIO/Washington Place, 28 Austin Street, and Hancock Estates, which in total have 71 affordable units. 1,157 applications were received for these units, 61 of which were leased out at the time of data collection. While the applicant pool was split 27% local applicants to 73% non-local applicants, the initial lease-ups were inversed: 72% of units were leased to local applicants and the remaining 28% to the non-local applicants. The Local Preference applicant pool comprised 51% white and 49% minority applicants. Local Preference Tenants (44/61 units) are 61% white and 39% minority. The non-local preference applicant pool comprised 30% white and 70% minority applicants, while the tenants (17/61 units) are 12% white and 88% minority. In the general applicant pool, 35% of applicants were white and 65% were minorities and the total tenants were 47.5% white and 52.5% minority. Ms. Berman said that the Barrett Report also reveals that only 4 units were initially leased to applicants with disabilities and that further study is required on this topic, though it is suspected that pricing at 80% AMI may be a factor.

Ms. Berman said that the NHP and Planning Department feels that the local preference percentage should be lowered. Additionally, more needs to be done for disabled applicants. However, local preference was identified as just one exclusionary rule that works as a barrier against minority applicants. Other barriers include credit history, pricing, and landlord references.

The Committee thanked Ms. Berman for her presentation.

Questions and Answers:

Are the applicants in the lottery pool primarily white or is the lottery itself biased in some way?

Over half of the pool is non-local minorities. The white local applicants receive an outsized chance in the process, in part because they get two chances. Those with local connections not selected in the

local preference pool, automatically go into the general pool. Other factors as presented earlier prevent income-eligible applicants from being approved as well.

Applicants submit basic information for the lottery, is this where they sometimes run into problems?

The collected data did not specify who made it to the top of the waitlist. For example, it is unknown if a minority family made it to the waitlist and was determined income-eligible, but then the leasing agent made a decision that prevented them from moving forward. This is something to study further.

How many people in the waitlist qualified? What prevents an applicant from being qualified?

The first step is the lottery application, and there are many more who apply and are not income eligible. Then lottery agents choose from the top of the waitlists and afterwards, leasing agents get involved. It is likely at the step of the leasing agent where many get turned away.

How did you narrow in on 35%?

The Planning Department recommendation is to pick between 35 and 50%, but the NHP did not want to put a number forward without more analysis. There can be more details delivered at a later meeting.

Does the state determine the affordable housing prices? What can Newton do?

There are things Newton could do, such as using inclusionary zoning to provide 30% AMI units. This process has been looked at in great detail in recent years. It is a challenging question, but Newton could amend its ordinance to provide this. Rent is calculated based on state statute.

When some applicants are denied due to poor credit, could this be because they are forced by circumstance to pay so much income on rent? Should we study this further?

Yes, we can do that.

(Planning Board) Returning to the fundamentals, what is the purpose of local preference? Is it a question of using local resources locally or is something else at work? What is the legislative history to Newton's adoption of this?

The exact reason for Newton's use of local preference is unclear, but as stated earlier it was meant to give preference to local residents in need of affordable housing. It has also been the case where some Councilors' votes on projects hinged on units being available for the local population, such as teachers, firefighters, or other city workers who cannot afford to live in Newton. While local preference may have been enacted with good intentions, in practice it hinders racial diversity.

Comments:

Do we plan for recent college graduates who may need housing as a group, or disabled adults who continue to live at home?

Most Committee members said that they are in favor of reducing the local preference percentage, seeing it as a barrier to diversity and inclusion.

While reducing the local preference is probably a good idea, this should be done carefully and not before asking more questions about the details of its impact.

It seems that local preference is working exactly as it was supposed to, but the Council needs to ask if it wants that to continue. Perhaps there are adjustments that can be made to local preference in order to help assure racial diversity?

Along with lowering the local participation percentage, other barriers to attaining housing should be examined. Some experience shows these to be things like criminal records and citizenship status. Also, (we should examine) the threshold between section eight funding and the actual making up the difference.

Newton ADA Coordinator Jini Fairley spoke to the Committee regarding barriers to people with disabilities inherent in this process. While these buildings are Group 1, meaning they are adaptable and can meet changing needs, and the Fair Housing Act covers people with disabilities, she said they represent a minority group within the community. Ms. Fairley said the Barrett Report probably did not include this point, but if the lottery pool is not racially diverse, another lottery will bring in applicants from the open pool. There was also a building in the Barrett Report that did not have a fully accessible apartment. If local preference is going to be reduced, the new ordinance should say that in both the local and general pool, fully accessible apartments must be available. 80% AMI is usually more than what some of people with disabilities can afford. There is more involved as to why some people were not determined eligible for the fully accessible apartments and more details are needed on this to demonstrate how those with disabilities can use this housing to improve their living conditions.

Ms. Heyer spoke with appreciation on hearing all the valuable discussion tonight. NHP will continue its research and discussions and meet again with Planning and ZAP at a later date. She noted that a voucher or operating subsidy could also help to make affordable housing opportunities more widely accessible.

Councilor Krintzman motioned to Hold which carried 8-0.

#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

Action: Public Hearing Closed 8-0
Zoning & Planning Held 8-0

Notes: The Committee was joined for the discussion on this item by Director Heath, Atty. Lee, and members of the Newton Historical Commission.

The Chair introduced the item, saying that Atty. Lee and Councilor Kelley (who originated the item) would speak first, then members of the Newton Historical Commission (NHC), prior to reopening the public hearing. She said that the conversation would focus on the unresolved points from the discussion at the previous ZAP meeting in June: the role of historic context in finding historic significance and the appeals process for the aggrieved.

Atty. Lee opened the conversation, saying that he wrote a memo which was included in the packet which tried to summarize the discussion from the June meeting, during which multiple straw votes were held to gauge the Committee position on some outstanding items. While consensus has largely been reached, the threshold date for NHC consideration of a property still requires discussion as the straw vote to adopt a rolling date of 75 years failed 3-4 with one abstention.

Councilor Kelley spoke, agreeing that the timeline threshold is one of the biggest items in need of consensus. She said that the role context plays needs to be clarified as the current language in the ordinance can be read to use context as a sole criterion to impose a demolition delay. In her research, Councilor Kelley said that she found 13 projects in which context was used as the sole reason for a delay. Her second area of concern was the appeals process, which she said places an unfair burden on homeowners since they must go to Middlesex county Superior Court - a long and expensive process. Finally, an area in need of attention is enforcement and what are the consequences for illegal teardowns. She was pleased that the NHC is working with the Law Department on the latter.

NHC Chair Peter Dimond spoke on the benchmark date, reminding that the NHC took a 5-0 vote against substituting 1945 as the cutoff date, with one abstention (5-0-1). Former NHC Chair Cornelius said he abstained because he thought the working group had put together an effective compromise. He said that he shared concerns about changing the date but said there are very few success stories for newer (post WWII) houses and ultimately most tend to lead to a house remaining vacant for a year or more before being torn down anyway. This extends the time in which a new family could have moved into Newton.

NHC Alternate member Ms. Bentley said that the 50-year rolling date is model (for 1000 communities) across the country and that we need to appreciate the recent past as well, including many smaller homes built during the 1960s. She added that the NHC will not be burdened by the extra work.

Public Comment

Laura Foote, Otis Street: ZAP members should think about how these policies relate to other city goals rather than in isolation of each other. A loss of preservation also leads to a loss of affordable housing. Teardowns are also incredibly unsustainable. Instead, we should be thinking about how we strengthen preservation for our existing houses. There is a risk that ZAP's actions show it is reducing the NHC's role and moving towards weaker preservation.

Rena Getz, Pine Ridge Road: A fixed date of 1945 or a 75-year rolling date would accelerate the demolition of historic housing stock. Either of these dates would allow 26% of housing stock to be approved administratively for demolition. Homes built during 1946-1970 are diverse and increase affordability. Concurrent ordinance balances property review with the homeowner interest. New construction also carries much embedded carbon.

Jane Frantz, Glastonbury Oval: The loss of context can happen quickly over a short period of time. Just two houses being torn down can weaken the context of a neighborhood, making subsequent demolitions easier. This is devastating to the more affordable neighborhoods in the city.

Jay Walter, Pembroke Street: I am probably one of the few dissenters on this, but it is not appropriate to put the entire city under NHC purview for demolition. The demolition delay was meant purely for historical preservation and it is being used inappropriately for other reasons.

Robert Fizek, Forest Street: Newton is being mined for its property values, not affordable housing and concerns about appeals being too onerous towards Newton homeowners are not accurate. Enforcement does need to be improved. Many homes that ultimately get torn down are still useful properties and should not be demolished.

No more residents wished to speak.

Councilor Leary made a motion to close the public hearing which carried 8-0.

Comments:

The 50-year threshold question was clearly resolved at a prior discussion, just with a close straw vote. The question of context was also resolved in the prior discussion. There is no necessity to make a change from the initial working group recommendation which did not address context. This is also true for the appeal. The delay is often shortened by the application for a waiver, so the review process is not onerous enough to warrant a change. The Committee should carry on with the ordinance as produced which clearly includes the 50-year threshold, identifies the role of context, and says that there is no need for another review other than the existing judicial review process. Regarding enforcement, the court has the ability to deprive the wrongdoer of the benefit of the wrong. One method is a constructive trust which could apply to the case on Greenwood Avenue.

The Chair reminded that while the Committee took straw votes, there were still many comments and requests left unresolved. Nobody disputes that context matters, but there are discussions over how the law is read. We can decide whether it this issue can be answered administratively or if it needs to be done through the ordinance. There is also lingering confusion on this topic that needs to be addressed.

After the demolition of the landmarked building at 29 Greenwood, which had been required to be restored, there need to be discussions on special enforcement mechanisms so as to prevent such violations from happening in the future. Mr. Dimond noted that it likely was not an accident.

The amended landmarking ordinance establishes that a three-person board may be created to hear appeals from aggrieved property owners. Could a similar structure be established for appealing an NHC decision to impose the demolition delay?

The concept of context-based zoning is being considered in zoning redesign as a way of controlling scale and proportion in a neighborhood. The NHC has not been involved in these deliberations despite all of the conversations about the significance of context.

There have been conflicting responses and opinions in various discussions on whether 'context' alone is enough of a criterion to (find that a property should be preferably preserved and so) impose a demolition delay. Something is wrong as much of this should be done through zoning and NHC is doing a lot of zoning work. We need to clarify whether this work should fall within the zoning or NHC purview.

The static 1945 date is a bad idea along with anything less comprehensive. There are many cases of postwar houses being saved through the use of context. Concerns over developers sitting and waiting on projects are not enough to reduce coverage. For improved enforcement, one idea is that the City could provide a preservation expert to supervise the demolition.

Reforms need to be made to areas of the demolition delay ordinance leading to unintended consequences. Whatever the rolling date cutoff is to be, the static date should not be used.

The current appeals process is unfair to homeowners and needs to improve. Context should be used to maintain the look of neighborhoods, but infill needs to be allowed (as it complies with zoning) as it can be an improvement. Teardowns used to create megastructures also needs to stop. While a fixed date for the timeline is a bad idea, too many homes fall under the NHC purview than is necessary. Some (significant) architect-designed homes should be protected, but it is the job of the zoning ordinance to protect affordable housing, not the NHC.

The 50-year rolling date is fine, but even less time would be better. The NHC has also said that it can handle the workload, so this should not be a concern. The 50-year rule helps delay demolition, which often hurts the environment with the waste it creates to build new, less sustainable homes.

There have been homes found preferably preserved by NHC citing context alone as the relevant finding – meaning that the home is found to be contextually similar to others in the area. This should not be the case and there are opportunities to create more efficient homes.

It would be good to see a proposal for a new appeals process.

The Chair said that reducing the work of the NHC was not an objective of the working group, rather it was to revisit, clarify, and improve the language used to create an ordinance that serves the best interests of the community. She said that the ongoing discussion is trying to determine the correct role of the NHC, which has the mandate to protect and preserve historic property. How to accomplish other goals, such as promoting affordable housing and combatting climate change, is the job of the zoning ordinances. These objectives belong in zoning reform and are not part of the job for those who have signed up to protect historical integrity. The Chair said that it is disappointing when small homes are torn down, but the current demolition delay does not protect them as they often are demolished anyway, after waiting out the delay. Often, as earlier pointed out by Mr. Cornelius, the property sits vacant for the year, during which time a new family could have moved into Newton. Enforcement and compliance is another topic which will need to be addressed, and an appeals process more reasonably accessible to the homeowner needs to be developed as well.

Atty. Lee said for the appeals it would make sense for ZAP to have a more robust discussion on the appeals process, including how it works with other processes and how effective similar models are in other communities.

It seems like the Committee is not ready to vote on the final draft ordinance. This discussion boils down to whether preservation (NHC authority) should be weaker or maintained. Adding more appeal options to the delay will benefit developers rather than homeowners.

The discussion is not about making it weaker at all. The role of context as a criterion needs clarification.

The Chair asked Committee members if the next discussion for this item should focus on the appeals process, to which they agreed.

Ms. Bentley asked for more specific examples of properties NHC found preferably preserved citing context for these discussions. Councilor Kelley said she would share her research showing thirteen properties in the last three NHC meetings, where “context” was the focus of deliberations, and the only criterion cited as justifying preservation.

Ms. Park suggested that the NHC put together a presentation on how context is used in other communities and how it could be used here.

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

The meeting adjourned at 10:37pm.

Respectfully submitted,

Deborah J. Crossley, Chair