



Zoning & Planning Committee

Report

City of Newton In City Council

Monday, August 16, 2021

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

Absent: Councilor Ryan

Also Present: Councilors Laredo, Markiewicz, Kalis, Malakie, and Greenberg

Planning & Development Board: Peter Doeringer (Chair), Kelley Brown, Sudha Maheshwari, Chris Steele, and Lee Breckenridge (alternate)

City Staff: Jen Caira, Deputy Director of Planning & Development; Cat Kemmett, Planning Associate; Marie Lawlor, Assistant City Solicitor; Zach LeMel, Chief of Long-Range Planning; Nathan Giacalone, Committee Clerk

#240-21 Requesting Ordinance Amendments to Chapter 30

DIRECTOR OF PLANNING AND DEVELOPMENT requesting ordinance amendments to the Newton Zoning Ordinance, Chapter 30 in order to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance.

Action: **Zoning & Planning Split Item #240-21 into (1) to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance; and (2) to amend the definition in Section 1.5.1.B Two Family Detached; Public Hearing Closed 6-0 (Councilor Leary not voting)**

Zoning & Planning Approved (1) 6-0 (Councilor Leary not voting)

Zoning & Planning Held (2) 6-0 (Councilor Leary not voting)

P&D Board Public Hearing Closed 5-0

P&D Board Approved (1) 5-0

P&D Board Held (2) 5-0

Notes: The Chair introduced the collection of proposed amendments to Chapter 30, referred to as “clean up” items, as mostly clerical in nature, but that amendments to clarify definitions and aspects of the garage ordinance may require more discussion. The full red-lined text of the proposed amendments is attached. The committee spent an earlier meeting reviewing these items in detail. Before opening the public hearing, Planning Associate Cat Kemmett will briefly present the proposed amendments. Next, Jay Walter will present on behalf of the Building Professionals Group, who have conducted their own independent review, and then collaborated with the Planning Department.

Ms. Kemmett began her presentation (PowerPoint attached), saying that some of the proposed changes are minor edits missed in the 2015 recodification effort while others are policy clarifications. She organized proposed amendments in three sections: 1. Housing Type Definitions, 2. Garage Ordinance, and 3. miscellaneous. Since the committee discussion in July, in further consultation with ISD, three previously proposed amendments were removed: Sec. 1.5.D Lot Coverage, Sec. 6.10.4 Recreational Marijuana Establishments, and Sec. 3.4.3.A.3 Accessory Buildings, special permit requirements.

Section 1: Definitions

Currently, adjacent garages in two-family buildings are not allowed because the definition in the current ordinance, Section 1.5.1.B Two-Family Detached, requires habitable space between the garages. Two-family homes constructed today separating the garages therefore have two-curb cuts, also resulting in additional paving. Ms. Kemmett then described two proposals meant to clarify this language. Both options would allow for more flexibility in garage placement. See attached text and illustrations. Additional minor amendments were proposed to the definitions of single-family detached, single-family attached, and multi-family housing, including using the word “building” in place of “structure”.

Section 2 Garages, Accessory Buildings

Front-facing garages set back over 10 feet are exempt from the maximum door widths. The proposed amendment would also exempt a detached or attached side facing garage behind the front elevation from the maximum door widths, except where the side facing garage is on a corner lot. Ms. Kemmett presented two options for this amendment. Option 1 would specify that a side facing garage must be located 10 feet or more behind the front elevation while Option 2 would not specify a distance. In addition, the special permit allowance for single-family homes would (1) be revised to allow for a second attached or detached garage, which was inadvertently removed and (2) clarify that someone seeking a special permit to exceed the 700 sf of garage space allowed by-right can do so in multiple garages, not just one.

Section 3: Miscellaneous

The proposed amendments in Section 3 comprise miscellaneous clarifications, cross references and scrivener’s errors.

Ms. Kemmett was thanked for her exceptionally well-organized work and clear presentation.

Public Comment

Jay Walter presented (PowerPoint attached) on behalf of the Building Professionals Group (Building Pros), which is a citizen led volunteer group of local building professionals who have been regularly scrutinizing aspects of zoning redesign. They conducted a close examination of the proposed cleanup items. The Building Pros support most of the proposed changes, with some specific recommendations. Mr. Walter said that regarding the definition of “Two-Family Detached”, Option 2 should be adopted as much simpler and clearer to enforce and to enable design flexibility. The Building Pros also recommended that the Multi-Family definition be revised to only specify the number of units and remove any language mentioning the number or configuration of entries. In addition, to commenting on the specific clean up zoning amendments, the Building Pros voiced their support that in the long-

term, zoning redesign should replace the terms “attached and detached” with clearer language, and that the term “dwelling unit” should be used in place of “family” when describing housing, since “family” is not defined in the code.

Architect Mark Sangiolo, a member of the Building Pros, said that imposing a 10-foot setback requirement behind the front elevation for side-facing garages would cause unnecessary design challenges, and that side-facing garages should be encouraged rather than set back from the main façade.

Architect Lisa Monahan a member of the Building Pros, elaborated on the Pros support of Option 2 as it would give the homeowner more options.

No other members of the public asked to speak. The Chair suggested leaving the public hearing open to allow the members of the Building Pros to contribute further to the deliberation as needed.

The Committee began by discussing the proposed revisions in Section 3.

Would the definition (proposed) in 1.5.4.D Basement.2. allow a basement to be six-feet above ground if the basement is 12’ tall, for a one or two-unit house that meets the maximum house height?

Ms. Caira answered that this amendment changes nothing regarding how single family or how grade and grade plane or basements are measured. Right now, there are two different sections relating to basements and grade plane and this proposed amendment will only clarify that one is not for single- and two-family housing.

The apparent change in definition of what constitutes the measurement of an accessory apartment (number 12 in the Section 3 list) is concerning as it could give the impression that more space is available than what is intended. Is there more clarification on this point?

Ms. Kemmett answered that the proposed definition is to clarify that accessory units are only not counted for the purposes of determining the housing type. Mr. LeMel added that the team met with Law, ISD, and Current Planning to confirm that this change would not at all alter how the calculations are made, rather clarify existing practice.

Councilors noted that in Land Use, there have been a number of situations when it has been unclear whether the applicant may calculate the accessory unit as a percentage of the entire building plus the accessory apartment or just the principle building. In addition, it has been unclear in the case of a two-family building, where one accessory unit is allowed, whether the applicant may calculate the size of the accessory unit according to the entire building or the unit to which it applies. Our understanding is the latter, and ISD only takes the principal unit into account and this change from Section 3 is helpful for clarification.

A straw vote on the proposed Section 3 amendments carried 6-0 (Councilor Leary not voting).

Questions and Answers:

It will be good (eventually) to remove the words “attached” and “detached”.

In the definition of two-family detached in 1.5.1.B, we describe one on top of the other or side by side. This does not allow Philadelphia style buildings or houses with small accessory units. Do these definitions prohibit those building types?

Ms. Kemmett said under Section 1 Option 1 this is correct, but Option 2 would allow for more flexibility as it removes the specifics of how to divide the unit.

The Committee then discussed the proposed revisions to Section 2.

Specific to whether there should be an exemption for door width on side-facing garages was whether to require that it (the garage door) be located a certain distance behind the front elevation.

Is this discussion about the width of the garage door? More interesting is what the door is facing, it is not necessary to mandate it to be 10 feet behind the front elevation.

Mr. LeMel answered that Planning did study this through two years of building permits. Single doors were typically 9-10 feet wide while some double doors were up to 18 feet wide. Cost and functionality limit the number of these large doors. The driveway also can have as much of a visual impact as the door.

It will be good if we can have an option for Section 2 that leads to less paving. The expense and oddity of large garage double doors will limit them as well.

It does not help neighbors to require that side-facing garages be 10-feet behind the front elevation.

Mr. Walter said the turning radius to get into side-facing garages can be a real (limiting) issue. He supported that it is not necessary to worry about large doors taking over the sides of buildings.

If Option 2 allows the homeowner to have an 18-foot wide door, does the homeowner still need to meet the 40/45% coverage on the side or can the house only be 20 feet deep and the garage door is most of the side of the house.

Ms. Kemmett explained that the Garage Ordinance, which the Council passed earlier this year, does not have percentage requirements, only door width requirements.

A straw vote in favor of the proposed amendment for Section 2, Option 2 carried 6-0 (Councilor Leary not voting). A straw vote in favor of all amendments in Section 2 carried 6-0 (Councilor Leary not voting)

The Committee then returned to discussing the proposed revisions to Section 1.

1.5.1. Building Types. B. Two-Family Detached

Why was habitable space required between garage units in the first place?

The current definition does not require it above the garages, but between them. At the time, two-family homes were being constructed that were thinly connected and the goal of these standards was to ensure that these homes were truly being built as units within a building.

Option 2 would be better as requiring habitable space above the garage makes the building overwhelming.

The Planning Department should pull the records from deliberations prior to this ordinance being adopted to help inform the specific problem this regulation was attempting to address.

(In the definition in Sec. 1.5.1.C.2. Single Family Attached) what is meant by “principle buildings”? How can they contain more than two dwelling units?

NOTE: This question pertains to the wording of the proposed edit: “A grouping of principal buildings containing more than two units in total.” Single Family, Attached structures may include more than two dwelling units, all of which are attached, or a grouping of three or more units in multiple buildings on a single lot.

Ms. Caira answered that **principle buildings are the primary structures on the site and are not accessory buildings**. Mr. LeMel added that based on the various zoning dimensional requirements for placing a single-family attached building, accessory buildings have different setbacks, and that the table in the Zoning Ordinance differentiates between principle and accessory buildings.

The single family attached definition can be addressed separately from rezoning the city.

The Chair noted that in deliberating the recodification adopted in 2015, it was proposed to use “dwelling unit” in place of “family” throughout the code, in part for clarity. This was rejected by the committee at the time.

Mr. Walter said that it may seem counterintuitive to have separate buildings in single family attached, but it helps reduce mass. He also said that requiring habitable space above garages was intended to limit “dog-bone houses” but (instead) led to more mass.

This section of the item should be held as there needs to be better understanding of the (consequential) differences between Options 1 and 2. Planning should explain in greater detail how it came to this proposal as it appears to be more than a simple ministerial change.

A straw vote to hold this one item as (2) Amend definition Section 1.5.1.B Two Family Detached which carried 6-0 (Councilor Leary not voting).

The Committee held a straw vote to approve the remainder of the proposed amendments in Section 1 which carried 6-0 (Councilor Leary not voting).

The Committee voted 6-0 to close the public hearing.

Councilor Danberg moved Hold (2) Amend definition Section 1.5.1.B Two Family Detached which carried 6-0 (Councilor Leary not voting).

Councilor Danberg moved to approval of all amendments covered by this item except (2) which carried 6-0 (Councilor Leary not voting).

The Planning & Development Board voted 5-0 to close the public hearing.
The Planning & Development Board voted 5-0 to approve the (1) and Hold (2)

Referred to Programs & Services Committees and Zoning & Planning Committees

#77-21 Request for review of Lab, Research and Development permitting process
COUNCILORS MARKIEWICZ, KRINTZMAN, CROSSLEY, LAREDO AND LIPOF requesting a discussion with Planning and Health and Human Services Departments in order to understand the process and controls under Chapter 30 and Chapter 12 of the City of Newton Ordinances, for obtaining Lab, Research and Development facility permits. (Ordinance 30 and Ordinance 12)

Action: Zoning & Planning NAN 6-0 (Councilor Leary not voting)

Notes: The Chair introduced the item, saying that it was docketed in order to better understand and illustrate the process and requirements governing laboratory uses, to more easily inform both the Council and the public. Ms. Caira joined the Committee to present on the item (PowerPoint attached).

Ms. Caira began by noting that lab research and development (R&D) is a strong industry in Massachusetts that has recently begun moving facilities out of higher-rent urban areas into more affordable cities and towns such as Newton. Research laboratories are highly regulated at the local, state, and federal levels. She said OSHA and the EPA are both responsible for the regulations to protect the personnel and the environment and MWRA and MassDEP provide additional regulation on the state level as well. In concert with the EDC, Newton's zoning in certain commercial and mixed-use districts was recently updated to remove some inconsistencies so as to accommodate certain modern uses such as laboratories. A special permit is required for new buildings and additions resulting in greater than 20,000 square feet, and the rDNA ordinance provides additional regulation and oversight from the Biosafety Committee. Ms. Caira said that because of the extensive regulations currently in place, no additional amendments or new ordinances are necessary. She said the only recommendation is a clarification that a change in tenancy should not require a new special permit, though the tenant would still need to satisfy all other required permits.

Ms. Caira was thanked for her comprehensive and clear presentation and attached memos on the item.

The Chair first recognized Councilor Markiewicz, lead docketer, who said that this discussion is very useful to help explain the regulations Newton already has in place as it seeks to attract more research laboratories. He said that one of the only remaining questions seems to be on the difference between industrial and commercial uses. He said this is an important question because commercial R&D is only allowed in an MU3 district, the only one of which in Newton, currently is Riverside. For the industrial uses, he said it was permitted in MU1, 2, and 4 without special permit (while still requiring other permits), and he wanted to know the rationale for this. Ms. Caira answered that labs are permitted by right in MU1, MU2, manufacturing, and limited manufacturing districts. These are primarily along the Needham Street corridor. Areas considered appropriate for manufacturing were also considered

appropriate for R&D, but most will likely still require a special permit. She said Newton also qualifies at the Gold level for the Mass Bio Ready designation.

Discussion:

The Land Use Committee has seen similar issues and welcomes the desires to promote this industry and make the process easier. Have R&D personnel provided any input on this?

Ms. Caira answered that yes, Planning spoke with Alexandria and their consultants at Code Red, and they were helpful in explaining their own process which is similar to Newton's. They recommended using Cambridge as a model for lab regulation.

When these requests come to Land Use, specific language in the special permit addressing the transfer ability to a new tenant will be helpful. Hopefully these projects will be simple matters for Land Use going forward and Planning should study how it can streamline the process.

Is the prohibition on Biosafety level 4 facilities provided for in an ordinance?

Ms. Caira said that yes, this is in the rDNA ordinance. Biosafety levels are based on the necessary protective measures, ranging from level 1 to 4 with level 4 addressing the most dangerous substances.

Councilor Krintzman made a motion to vote No Action Necessary which carried 6-0 (Councilor Leary not voting).

Chair's Note:

The Committee discussed scheduling and agenda items for the remainder of the year.

The Chair summarized the Draft calendar through December focusing first on zoning redesign for village centers then a number of other pending items before the committee. There are several nights where the agenda leaves time open to either continue items or possibly introduce new items, but as it is we have a full agenda. There are four meetings, one each month, where all or most of the meeting will focus on Zoning Redesign for village centers. Our consultant Utile will be joining us. In these meetings Utile and staff will bring forward all of the data collected over the summer. This includes both qualitative input from the citizen engagement process organized by Planning staff (which continues through the end of September), and quantitative analyses (Utile and others) on retail/housing mixes within the 'walksheds' for each of Newton's villages, access to the village/ transit options, parking availability/ requirements, etc. By November the committee will seek to reach consensus on policy objectives that may allow specific zoning recommendations to be introduced by the end of the year. Evaluating options would continue into the next term.

Alternate meetings this fall will seek to complete items underway such as the demolition delay ordinance and local preference percentage, advance certain specific proposals such as establishing a municipal housing trust, and proposed amendment to MU4 criteria, and introduce revisions to pressing development standards items like topography, retaining walls and stormwater controls.

Discussion:

One committee member suggested that the Committee should spend less time on issues like local preference and more on issues like the built environment, like tear downs, because these affect more people. Another asked that before the end of the term, could the Committee more specifically address teardowns and evaluate solutions.

Another member noted that the Committee will be pursuing many other non-zoning reform items (such as noted above) but both staff and committee have limited time left in the term so cannot add in too many different things.

The Chair reminded that regulating what may be built in place of homes that are torn down for new builds was the underpinning of work done last year (2020), when we were examining residential districts so as to control the scale of development. The committee unanimously agreed to set this down at the beginning of 2021, and focus on village center issues, as more data analyses/ evaluation of metrics was needed. Our work is now focused on village centers, but the Building Professional group is proceeding to examine and field test rules that could be employed to help better manage the streetscape in residential districts. This topic is broad and needs a comprehensive solution. There is just not enough time left in the term to take on both.

A committee member noted that the earlier mentioned permitting software upgrade will be an important discussion to have as it will be a tremendous improvement to what we currently have in place. This may be scheduled for the Council outside of regular ZAP meetings.

It was agreed that the committee has been talking with the Planning Department for months to make these decisions. While it is frustrating for one person's item or project to not be addressed when they would like, sometimes it works better to wait and address certain items together at a later time.

Scheduling the Committee agenda is an unenviable position as many important items need to be prioritized against each other. It is important to leave some slack in the schedule to allow for unforeseen items, such as the firearms ordinance, which wound up taking two months of the committee's time. Hopefully the Committee will be able to tie up any remaining loose ends on its list of items.

A councilor requested a discussion with the administration soon to hear its clear goals for housing. At this point in the term, if there are specific items that require attention, it would be helpful if the Councilor interested in moving those items came forward with a specific proposal.

(Follow Up: NOTE: A revised calendar will be issued the week after Labor Day)

The Committee adjourned at 10:27pm.

**Respectfully submitted,
Deborah J. Crossley, Chair**