



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#240-21
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

DATE: September 24, 2021

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Cat Kemmett, Planning Associate

RE: **#240-21 Requesting an amendment to Chapter 30**
DIRECTOR OF PLANNING AND DEVELOPMENT requesting ordinance amendments to the Newton Zoning Ordinance, Chapter 30 (1) in order to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance.
Zoning & Planning Held 6-0 on 07/08/21
On 08/16/21 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) on 08/16/21
Zoning & Planning Approved (1) 6-0 (Councilor Leary not voting) on 08/16/21
Zoning & Planning Held (2) 6-0 (Councilor Leary not voting) on 08/16/21

MEETING: September 27, 2021

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Neil Cronin, Chief of Current Planning
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer
City Council

Overview

On August 16, 2021, ZAP held a public hearing to discuss Docket Item #240-21, zoning cleanup items. Committee members voted to approve all changes, except a proposed amendment to the definition of Two-Family, Detached (Sec. 1.5.1.B). Because this specific amendment represents a more substantive change compared to the other cleanup items, one Committee member requested additional details regarding the history and context of the current definition before considering a vote.

After analyzing Planning memos and ZAP reports documenting the creation of the current definition, summarized below, Planning staff recommend Option 2 as proposed at the August 16, 2021 ZAP meeting:

Current Definition (Sec. 1.5.1.B)	Proposed Definition (Option 2)
<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.</p>	<p>Two-Family, Detached. A building that contains 2 dwelling units. and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another. <u>Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.</u></p>

History

Prior to 2015, the Zoning Ordinance defined two-family buildings in the following way:

Pre-2015 Definition	Current Definition (Sec. 1.5.1.B)
<p>Dwelling, two-family. A building or structure that meets all of the following requirements:</p> <ul style="list-style-type: none"> (a) It contains (2) dwelling units; (b) It contains either: (1) a common floor-ceiling assembly between the upper and lower level dwelling units; or (2) a common wall connector and a common roof connector, as defined in section 30-1. 	<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.</p>

The current definition of Two-Family, Detached was created during the larger Zoning Ordinance Recodification process. At that time, the ZAP Committee made substantial changes to the language to prevent two-family buildings that had minimal mass connecting the two units, which some Committee members found aesthetically undesirable and not in keeping with the intent of the two-family housing type. The memos and reports in Attachment A outline in more detail the process ZAP took in 2015 that led to the current definition.

Creation of the Current Definition

Based on our analysis of the 2015 ZAP documents, even at the time there was hesitancy to make this shift toward stricter design parameters in the definition, including the below points:

- The current definition was given additional attention because of “a house that was built on Watertown Street...unlike anything else in the neighborhood.” The then ZAP chair based much of the project’s irregularity on the “garages in the middle connecting them.” (June 15, 2015 ZAP Report) The now adopted Garage Ordinance should prevent most of the types of development the then ZAP Committee was looking to prevent within the Two-Family, Detached definition.
- The Planning staff, then and now, agree that the issues around the new construction of two-family homes “are best addressed through the dimensional regulations and the composition of

district standards, rather than through the definition of the word two-family.” (June 16, 2015 ZAP Memo)

- The 2015 ZAP Committee researched how other communities define Two-Family and found that “most define it very simply and it seems to work well.” Based on this the then ZAP Chair said, “it was best to keep this [definition] simple and not include things that someone could not do.” (July 20, 2015 ZAP Report)
- The Commissioner of ISD spoke then of the unintended consequences of requiring the shared wall extend the entire height of the building would be buildings that “end up looking like boxes.” (August 17, 2015 ZAP Report) Based on reviewing newly constructed two-family homes, this seems to be true in most new developments.

Furthermore, the existing definition limits design options for two-family buildings. Currently, a garage is not considered part of a dwelling unit, because it is not habitable space. Living space (which does not include garages) must be touching living space in the adjacent unit for the full height of the separation. Because of this, having two attached garages touching is not allowed, nor is it allowed to have one garage touching living space of an adjacent unit. Building professionals and homeowners have pointed to this inflexibility as a barrier to good and varied design.

Revisions Considered

On August 16, staff presented two different definition options for ZAP and the Planning Board to consider. Option 1 is as follows: *“Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, including garages, and/or is divided horizontally so that one dwelling unit is above another. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.”*

Based on the understanding that some members find two-families only connected by the garages with no living space above to be undesirable, this Option 1 also included an amendment to Sec. 3.4.4.F requiring habitable space above the garages if they share a wall. 1 and 1 ½ story residences would be exempt from this habitable space requirement.

At this time, staff are recommending adopting the simplified language proposed as Option 2, shown above, which offers greater flexibility for Two-Family, Detached residences. This option removes the requirement for full separation between two units and would also allow garages to touch, or for garage space to touch living space in an adjacent unit. In addition, living space would not be required above garages that touch. The overall mass of a Two-Family, Detached building will still be controlled by FAR and other zoning dimensional controls such as setbacks and lot coverage, however this option would allow flexibility in how that mass is assembled. Most ZAP Committee members and several members from the building professional community voiced support for Option 2 at the public hearing.

Looking Ahead

Staff believe the proposed changes would make the definition of Two-Family, Detached clearer. This proposed amendment does constitute a shift in existing policy. However, based on our research we also believe this new definition is in line with much of the thinking that took place in 2015, when the current definition was last updated. In addition, staff believe the Garage Ordinance addresses most of the previous issues.

This revision is not intended to resolve all issues Committee members have raised associated with the current regulations for two-family buildings. Staff look forward to discussing possible tools to address these outstanding questions with Committee members in the future.

Attachments

Attachment A 2015 ZAP Memos and Reports