



## **Zoning & Planning Committee** **Report**

### **City of Newton** **In City Council**

**Monday, October 28, 2019**

Present: Councilors Albright (Chair), Leary, Brousal-Glaser, Krintzman, Downs, Danberg, Baker, and Kalis

Also Present: Councilors Kelly, Markiewicz, Greenberg, and Crossley

City Staff: Andrew Lee, Assistant City Solicitor; Barney Heath, Director Planning and Development; James Freas, Assistant Director of Planning and Development; Katy Holmes, Senior Planner Planning and Development; Alice Ingerson, CPA Program Manager; Jonathan Yeo, Chief Financial Officer; Ann Berwick, Director of Sustainability; Jennifer Steel, Senior Planner; Danielle Delaney, Senior Committee Clerk; and Nathan Giacalone, Committee Clerk

**#362-19      Conservation Restriction for 20 Rogers Street**

HER HONOR THE MAYOR requesting approval to grant a conservation restriction at the Crystal Lake Bathhouse and 20 Rogers Street; a 44,449 sq. ft. parcel of land bordering Crystal Lake to the Newton Conservators. The parcel at 20 Rogers Street was acquired by the City in 2007 with Community Preservation Act funds. Any parcels purchased using such funds must be bound by a permanent conservation restriction.

**Action:            Zoning and Planning Committee Approved 8-0**

**Note:**            Andrew Lee, Assistant City Solicitor and Alice Ingerson, CPA Program Manager, joined the Committee for discussion on this item.

Atty. Lee explained that the conservation restriction still needs approvals from city commissions, the City Council, and the Mayor's Office. He stated that the restriction will maintain the property as open space with conservation value and what the city will still be able to do on the property. It was clarified that the restriction was in regard to 20 Rogers Street, not the parcel with the Crystal Lake Bathhouse which it abuts. The gap from time of purchase in 2007 to the present was explained as due in part to staffing issues at both the Newton Law Department and the State level. The discussion then shifted to the conservation restrictions placed at the time of acquisition of 230 Lake Avenue. Councilor Danberg motioned to approve docket item #362-19, which passed with a unanimous vote of 8-0.

**#140-19(3)     Zoning amendments for Riverside project**

RIVERSIDE STATION/355 GROVE STREET AND 399 GROVE STREET requesting amendments to Chapter 30, Newton Zoning Ordinance, in Sections 4.2.3 and 4.2.4 relative to the Mixed Use 3 District.

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

**#187-19        Zoning amendment from Newton LFIA for Riverside Station**

LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE COMMITTEE & THE WARD 4 COUNCILORS requesting to amend Chapter 30, City of Newton Zoning Ordinance, Sections 4.2 and 7.3.5 pertaining to the Mixed Use3/Transit-Oriented zoning district.

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

**Note:**            Docket items #140-19(3) and #187-19 were introduced together but discussed and voted on separately.

Attorney Stephen Buchbinder of Schlesinger and Buchbinder, LLP addressed the City Council on this item as the firm which represents Mark Development. The developer is currently engaged in talks with the Lower Falls Improvement Association (LFIA). After discussions with the LFIA, the developer has agreed that a scaled down version of the original project (less total square footage, lower height, greater setbacks) is viable. The project has shifted to a 60/40 split between residential and commercial space respectively, in contrast to the initial proposal of 50/50. Attorney Michael Scott of Nutter, McClennen, & Fish Law Firm, then addressed the Committee, also representing Mark Development. Atty. Scott elaborated on the zones created for the Grove Street Corridor and how the heights of the buildings in each zone would be measured from grade on Grove Street due to varying grades at the site. Atty. Buchbinder explained that while these zoning limitations are unusual as zoning usually takes a general approach; unique circumstances require this revised approach. Attys. Buchbinder and Scott remained available for questions.

Liz Mirabile of the LFIA addressed the Committee. First Ms. Mirabile thanked Mark Development for working with the LFIA, then stated that the LFIA supports the proposed zoning amendment but called it a “fragile agreement.” However, she noted that the LFIA still has concerns as they have had to make compromises over the project proposal as well and reiterates the LFIA’s preference for a development focused on housing. Ms. Mirabile asked the Committee to keep in mind the impact of the development on the residents as it makes its decisions on what the final zoning amendment will be when proposed to the full City Council.

Speaking on process, Chair Albright clarified that a revision came to the city on the afternoon of Friday, October 25, not allowing the Planning Department time to review it and prepare a memo. This will be done for the November 7 meeting.

Discussion then opened to the rest of the Committee. A committee member requested that when the additional memo is delivered, visual renderings be included to clarify the extent of the new parameters.

A committee member asked for clarification on the continuing role of the Committee in the process if the LFIA and Mark Development have already reached a tentative agreement. It was clarified by another committee member who said that it was part of the City Council process and community outreach.

A committee member requested clarification on how the changing setbacks in the project would impact the disappearance of the stoop on Main Street. Robert Korff, CEO of Mark Development answered this question. Mr. Korff said that consultation with the neighborhood led to reduction of a wide sidewalk in the project. He also clarified that future renditions would deliver more exact predictions for the stoop. Mr. Korff addressed the Committee to say that once the new zoning restrictions are enacted, they will have almost no degree of flexibility to make the project economically feasible once the project moves before the Land Use Committee.

A council member responded to Mr. Korff's statement, noting that once the project moves to Land Use, the main question is over the benefit and negative impact of the development on the community and the objective is not to simply make a deal. After the Committee clarified that it could not make any guarantees regarding land use policy and asked for greater clarification, the Committee unanimously voted 8-0 to hold docket items #104-19 and #184-19.

**#204-19      Review and possible amendment of Demolition Delay and Landmark Ordinances**  
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, COTE, CROSSLEY, GREENBERG,  
KALIS, KRINTZMAN, LAPPIN, LEARY, LIPOF, MARKIEWICZ, NORTON, AND  
SCHWARTZ 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

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

**Note:**        Katy Holmes, Senior Planner of Planning and Development, joined the Committee for discussion on this item. Chair Albright said that Zoning and Planning should form a working group to work with the red-lined version. Ms. Holmes, in her introduction, described the background of the review of the ordinances of the demo delay.

A committee member emphasized the need to differentiate between the Historic District Rules and the Historical Ordinances. Discussion then shifted to process and the feasibility of completing this project before the end of the current City Council term. The use of a working group was discussed as a more effective method to accomplish this task.

A committee member then asked about how standards and criteria would be affected when accounting for residents, such as the elderly, who are unable to afford maintaining their homes within the historic guidelines. They also requested clearer language in some areas of the guidelines.

Councilor Krintzman motioned to hold the item and the Committee unanimously voted 8-0 to hold docket item #204-19.

### **Referred to Public Facilities and Zoning & Planning Committees**

**#143-19**      **Discussion/Adoption of Climate Action Plan/Citizens Climate Action Plan**  
COUNCILORS ALBRIGHT AND CROSSLEY on behalf of the Zoning & Planning and Public Facilities committees, requesting discussion and adoption of items within the Climate Action Plan and the Citizen's Climate Action Plan with the Sustainability Directors, Climate Action Planning team led by Jennifer Steel (Planning Department staff, MAPC and volunteers) and the Citizens' Commission on Energy. The focus will be to understand the synergies between the two complimentary plans and how items within the plans can be integrated to achieve

the significant reductions in greenhouse gas emissions called for in recent national and international reports.

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

**#13-19**      **Adoption of the Climate Action Plan**  
DIRECTOR OF PLANNING requesting discussion and adoption of the Climate Action Plan as an amendment to the 2007 Comprehensive Plan.

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

**Note:**      Docket items #143-19 and #13-19 were discussed together. Jennifer Steel, Senior Planner, and Ann Berwick, Director of Sustainability, joined the Committee for discussion on this item.

There was proposed a request from Halina Brown of the Newton Citizens Commission on Energy to discuss the scorecard (also referred to as energy audits). Atty. Lee brought an additional memo to distribute regarding the energy audits, which has been attached to this report. Atty. Lee's memo answered three questions about the City of Newton's authority to disclose the results of the energy audits and the Home Energy Rating System (HERS) ratings. His memo stated that the City does not have the authority to enact an ordinance to require the disclosure of energy audits in connection to the sale of residential property. For the second question, his memo stated that the City cannot require the public disclosure of energy audits on residential properties as the information is deemed privileged and confidential. On the third item, his memo stated that the City was able to disclose HERS ratings acquired through the permitting process for newly constructed buildings. These circumstances were clarified to be the

results of Massachusetts State Law. While Ms. Brown noted that similar proposals work in other states, Atty. Lee answered that those municipalities follow a different set of laws. r Atty. Lee concluded with his memo, Ms. Brown asked if the City could require disclosure of utility bills. Atty. Lee answered that the law department looked at this issue in the past and concluded that it could not. When Ms. Brown continued with further questions about the feasibility of energy scorecards in relation to the City's sustainability goals, it was suggested to give the scorecard issue its own docket item and discuss it at a later date. The energy rating disclosure was compared to similar items for building disclosure such as fire inspection, the difference being that fire inspections are derived from state law.

The discussion then focused on other parts of the Climate Action Plan. A committee member addressed the eliminations of parking minimums in the plan and the implementation of parking limits as items which necessitate further study and discussion before being included in the final version of the Climate Action Plan. This committee member then expressed concern over the requirements to retrofit older buildings to new environmental standards while approving of this practice for the construction of new buildings. This was part of the question of how to make the plan take into consideration those with difficulties switching to an all-electric system.

In response to this committee member, it was answered that the Climate Action Plan contains no text requiring individuals to make this large of a change. Another committee member added that they should emphasize the shift to 100 percent electric as a goal, even if debate remains about how to meet it or even if the City can meet it at all.

A committee member steered the discussion back to the topic of parking limits. They emphasized that having excessive parking would counteract efforts to reach the 2050 goals of reducing driving. They also felt that the transportation goals in the Climate Action Plan were modest and had room to expand. They then reviewed and addressed the need to explore different funding options for mass transit.

A committee member addressed the goals for Newton in the Climate Action Plan and expressed support, saying that the language did not appear to limit City actions.

A committee member expressed support for the difficulties presented by the Climate Action Plan due to the importance of the plan as well as its lack of mandates forcing residents to change their lifestyles. Rather, they approved that the plan operates by incentivizing the public rather than forcing them to adopt any change. The committee member also supported removing parking minimums in the plan, which would allow developers to make parking decisions.

The committee member doubted that using zoning ordinances was an effective way to reach the goal of reducing vehicle use. While agreeing with the main idea of goals for the city, they wanted to emphasize the need to take into account the financial difficulties some residents will face retrofitting their homes.

It was agreed to move the item to discussion at public hearing on November 14. Councilor Krintzman motioned to hold the item and the Committee unanimously voted 8-0 to hold docket items #143-19 and #13-19.

**#363-19      Amendment(s) to Chapter 30 relative to building efficiencies**  
DIRECTOR OF PLANNING & CO-DIRECTORS OF SUSTAINABILITY requesting discussion and adoption of amendments to Chapter 30, the Newton Zoning Ordinance to create exemptions to building envelope standards such as height and setback to facilitate the implementation of energy efficiency and alternative energy measures in buildings including external insulation, doorway vestibules, heat pumps, and solar panels among other features.  
**Action:      Zoning and Planning Held 8-0**

**#364-19      Amendment(s) to Chapter 30 relative to sustainable design**  
DIRECTOR OF PLANNING & CO-DIRECTORS OF SUSTAINABILITY requesting discussion and adoption of amendments to Chapter 30, the Newton Zoning Ordinance to create a new set of standards related to sustainable development design with requirements for new buildings and development projects to include environmental and energy efficiency features.  
**Action      Zoning and Planning Held 8-0**

**Note:**      Docket items #363-19 and #364-19 were discussed together. Mr. Freas joined the Committee for discussion on this item.

James Freas, Assistant Director of Planning and Development, addressed the committee on docket items #363-19 and #364-19.

He began by saying that the primary request was to docket one or both of the items for a public hearing at a later date. He described how the most work was done on reducing barriers to environmental building improvements. Mr. Freas described the question of how ultra-efficient air conditioning units may be given permission to encroach on the setbacks due to the greater value of their energy savings than what would be saved otherwise.

A committee member said that the issue of visual conditions must be considered. It was then raised that allowing an in-ground outdoor condenser could be less visually disturbing than window-AC units. The discussion then moved to whether or not to screen in-ground units. This requirement would have to abide by the technical limitations of the equipment as too much screening could negatively impact the performance of the units. Requiring screening would have to be done carefully so it would not create a disincentive to installing high-efficiency units.

The Committee agreed to take this section of the code to a public hearing. A committee member stated that with the focus on heat compressors they would be more

comfortable with more general language that would allow for potential alternate technologies.

During this discussion, Chair Albright invited a gentleman from the audience of Theodore Road to the podium who spoke as an expert on air conditioning units. The man recommended the variable refrigerant heat recovery systems (VRF) which employ similar external units to the traditional heat pump and this language should be broad enough. The man discussed with Mr. Freas how VRF is more efficient than current heating and AC systems and that it is becoming more popular with developers because of this. Based on this, Mr. Freas recommended that the language allow for VRF alongside heat pumps and be open for future technologies. A committee member warned that modifying the language in such a specific manner would make it difficult to change in future public sessions. The committee also discussed noise as it relates to new construction vs. retrofitting old buildings.

The discussion then moved to the topic of the 8-inch guideline for exterior insulation. A committee member said that while they understood the use of this for insulating older homes, they were concerned that this may disincentivize construction. It was answered that this would provide incentives to build on some of the smaller lots throughout Newton. It was also clarified that adding as much as 8 inches was rare in new construction and that because of this, the amount allowed for new construction could be reviewed. A committee member asked about how this would impact the appearance of houses and their setbacks.

The committee then discussed solar panels. It was said that the Committee would have to address the benefits against any negative impact from installing the solar panels. The ridgeline regulation was questioned for typical slanted roofs as solar panels are not normally installed above it due to wind and other factors. It does however impact those installed on flat roofs. It was agreed that this was an item that required more discussion. Related to solar panels, roof overhangs were brought up next along with other design features such as the *bris soleil*, a design feature used to control the amount of light and heat which enters a structure. The connection between these separate items, based on the comments of the committee members, is over how they interact with the visual character of the city and how to balance efficiency and sustainability with the character of the neighborhoods.

Mr. Freas addressed the Committee on docket item #364-19 and began by saying that no changes to docket #364-19 have been recommended since the initial proposal was submitted to the Committee. The Planning Department was concerned that reducing twenty thousand square feet to ten thousand square feet might stifle small-scale developments. Twenty thousand square feet was proposed initially, but Mr. Freas said only with additional analysis and input could the threshold be lowered as costs may be too high to make a project financially feasible. Mr. Freas expressed the interest of the Planning Department for this item to move to a public hearing in order to get community input on it.

A committee member offered their understanding for taking more time to review this item, but also optimism at seeing developers beginning to do this kind of work.

A committee member said that they would like to move forward with the item and explore reducing the square footage in the threshold.

Chair Albright said that this item could be brought to public hearing in order to hear from any interested parties about whether to keep the initial proposal at twenty thousand square feet or reduce it.

Chair Albright asked to get a consensus of the committee to move this item to the public hearing on November 14 to allow time for feedback. Councilor Krintzman motioned to hold the items and the Committee unanimously voted 8-0 to hold docket items #364-19 and #363-19.

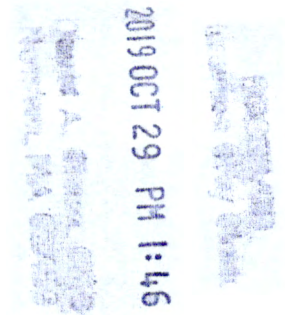
The meeting adjourned at 9:20 PM.

**Respectfully Submitted,**

**Susan S. Albright, Chair**



**CITY OF NEWTON  
LAW DEPARTMENT  
MEMORANDUM**



TO: Zoning and Planning Committee  
FROM: Andrew S. Lee, Assistant City Solicitor  
SUBJECT: Energy Audit Disclosure  
DATE: October 28, 2019

**Background**

At the Zoning and Planning Committee meeting held on October 16, 2019, the Newton Citizens Commission on Energy (the "Citizens Commission") gave a presentation regarding energy audits and the benefits of requiring disclosure of energy audits for residential buildings at the time of sale. The Citizens Commission also suggested that the City adopt an ordinance requiring disclosure of residential buildings' energy audits or Home Energy Rating System ("HERS") ratings on a publicly accessible database, such as the assessor's database. Questions have arisen as to whether the City has the authority to implement the policies requiring disclosure of energy audits and HERS ratings.

**Questions and Answers**

1. Does the City have the authority to enact an ordinance that would require sellers of residential real property to obtain and disclose energy audits to prospective purchasers prior to the sale of the property?

**Answer:** It does not appear that the City has the authority to require disclosure of an energy audit in connection with the sale of residential property. No state statute explicitly authorizes the adoption of such an ordinance. Additionally, the City's Home Rule

Amendment authority excludes the power to enact laws that govern civil relationships.

An ordinance requiring that the seller obtain and provide an energy audit to a prospective buyer in a private residential real estate transaction would likely be deemed a law that governs civil relationships.

2. Can the City require public disclosure of energy audits of residential properties?

**Answer:** The City cannot require public disclosure of energy audits as such information is deemed to be privileged and confidential by statute.

3. Can the City publicly disclose a residential building's HERS rating it acquires through the building permitting process?

**Answer:** The City may publicly disclose HERS ratings it receives as part of the building permitting process. Pursuant to the Stretch Energy Code, previously adopted by the City, new buildings must meet a HERS index rating target. Applicants must submit a HERS rating for the new buildings to the City. Documents submitted to the Building Inspector as part of the building permitting process are deemed to be public records.