



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, January 27, 2020

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

Absent: Councilor Ryan

Also Present: Councilors Norton, Kelley, Bowman, Downs, Malakie, Greenberg, Gentile, Kalis

City Staff: Zachery LeMel, Chief of Long Range Planning; Jennifer Caira, Deputy Director of Planning, Katy Hax Holmes, Senior Planner; Andrew Lee, Assistant City Solicitor; Nathan Giacalone, Committee Clerk

Referred to Zoning & Planning Committee

#37-20

Amend ordinances by creating a temporary suspension on landmark designation
COUNCILORS ALBRIGHT, AUCHINCLOSS, CROSSLEY, DOWNS, KELLEY, LIPOF, GREENBERG, KRINTZMAN, NOEL, LEARY, AND DANBERG proposing an amendment to Chapter 22 of the Revised Ordinances of the City of Newton, 2017 to temporarily suspend nominations made by the Historical Commission and the City Council for landmark designations of any land, buildings and structures in the City of Newton in order to allow the City adequate time to review the landmark ordinance and consider what revisions are appropriate. The temporary suspension will prevent and suspend the processing, and approval of any property currently under consideration for landmark designation and will temporarily suspend future landmark designations made by the Historical Commission and the City Council. Landmark nominations made by the Mayor, Director of Planning of Development and the Commissioner of Inspectional Services shall not be affected. This temporary suspension shall end no later than December 31, 2020.

Action: **Zoning and Planning Approved 5-2 (Councilors Baker and Wright opposed)**

Notes: Councilor Kelley introduced the item to temporarily suspend landmarking while the Committee addresses parts of the ordinance which are unclear or no longer functional, including:

1. The nomination process; the imbalance of Newton Historical Commission (NHC) members being able to vote as well as nominate properties.
2. The lack of inclusion of property owners and;
3. The appeals process for landmarked properties

Senior Planner Katy Holmes presented an overview of what landmarking properties means and how it currently works. Ms. Holmes explained that landmarking is the highest level of regulatory protection that can be imposed on a building to protect it from demolition or modification. An owner wishing to make any exterior change to a landmarked property or building must then petition to the Newton Historic Commission (NHC) for approval. Currently, Ms. Holmes said that properties can be nominated by one or more members of the NHC, City Council, the Mayor, the Director of Planning and Development, and/or the Commissioner of Inspectional Services. While the owner must be notified two weeks prior to the required public hearing before the NHC, there is currently no requirement that the owner must consent to the designation nor be notified that the property is under consideration to be nominated as a landmark. Assistant City Solicitor Andrew Lee confirmed that a comprehensive permit according to 40B policy extends beyond demolition and may be able to trump local landmarking protections. Deputy Director of Planning, Jennifer Caira confirmed that for a 40B developer who can prove such landmarking would make a project uneconomic, landmark protections would be overridden.

Chair Crossley opened the public hearing.

Rich Heald, 45 Eliot Ave-Rises in opposition to the landmarking moratorium and thinks it is unwise to cede landmarking authority to the executive branch. He was also concerned about the reasons to suddenly enact this policy. Mr. Heald felt that the City Council has been overly favorable to developers and has not pushed them enough to construct more affordable housing.

John Von Bargaen, Cambridge-Mr. Von Bargaen is the prospective resident of 279 Fuller Street, Newton and read a letter which he wrote to the Mayor that is attached to this report. He and his family were on the verge of closing a deal with the Galligan family for the house on 279 Fuller Street. However, days before it was finalized, Mr. Von Bargaen said that a paper trail surfaced from the NHC that the property could be designated a landmark in Newton. He said this posed an undo burden on both him and the Galligan family. Mr. Von Bargaen said he wanted to demonstrate the effect of the landmark ordinance and to help the Galligan family sell their home.

Bill Rosner, 1058 Walnut Street-Mr. Rosner said that he felt not enough NHC members were represented in the ordinance Working Group. Ms. Holmes clarified that there was an NHC member on the Working Group.

Jane Rosenof, 9 Vincent Street-Ms. Rosenof urged the Committee not to suspend the landmark ordinance, citing her appreciation of the historical character of West Newton. She said this was especially necessary in the face of much impending development in the village. Ms. Rosenof also wanted to see the City commit to varied historical architecture promised in the Washington Street Vision Plan.

Carol Caroll, 325 Lake Avenue-Ms. Caroll wanted to know why only landmarking was being proposed for suspension while the Working Group was also studying the demolition issue.

Natalie Galligan, owner of 279 Fuller Street-Ms. Galligan spoke as one of the owners of the property Mr. Von Bargen had attempted to purchase. She said that her parents purchased their house before the establishment of the NHC and that they did not know about landmarking until they attempted to sell the home. Though the house was not landmarked, the prospective that it could be was enough to persuade the buyer to cancel the deal. She continued that the conditions for landmarking were unclear to the average person and that this caused a burden for the family. Her full letter is attached to this report.

Mary Francis Galligan, 279 Fuller Street-Ms. Galligan read the letter of Aron Ain which is attached to this report. In his letter, Mr. Ain gives his support for the landmarking suspension until the ordinance is rewritten to a standard he sees as more fair and reasonable to property owners. He is troubled by how little homeowner consent is required in the process and views the threat of landmarking as a “cloud.” Mr. Ain wants the final say of landmarking to rest with the City Council.

Christian Rivero, 126 Eliot Ave-Mr. Rivero read a letter from his wife. The letter read that placing a hold on landmarking without suspending other development methods was the City picking winners. It warned that this suspension would allow for the demolition of iconic buildings that define the neighborhood character and asked the Committee to decline the suspension.

Frank Stearns, 11 Grant Avenue-Mr. Stearns said that just the possibility that a certain property could be nominated, even if it has not, creates a significant additional challenge to the property owners for any changes they wish to make to the property. He asked the Committee to endorse the landmarking suspension.

Lynn Weissberg, 5 Alden Street-Ms. Weissberg urged the Committee to adopt the landmark suspension, citing the experience of the Von Bargens and Galligans as well as Councilor Kelley’s critiques of the current ordinance. She said that if the Council was considering changing the landmarking ordinance, then she felt it inappropriate for landmarking to continue.

Alan Schlesinger, 117 Westchester Road-Mr. Schlesinger said that while he is in favor of landmarking in general, he supports the suspension as he believes that the process in Newton is flawed. He said that it lacks transparency, has low standards, is sometimes abused as an anti-development tool, and has no appeal process. His full comments are attached to this report.

Jerry Reilly, 12 Spring Street-Mr. Reilly supports the use of landmarking to protect historic properties recognizable to all citizens. He said that he investigated the seven buildings recently nominated on the same block and is critical of the landmarking process and supports the landmarking suspension.

Nathaniel Lichten, 53 Pine Crest Road-Mr. Lichten was doubtful that this suspension would keep to its purported time limit and wanted the Committee to include a measure ensure that work continued in a timely manner and that the suspension has a specific end date. He said that this

would help ensure that the landmark suspension is used for its stated purpose, not a means to undermine historic preservation.

Doug Cornelius, Newton Historic Commission-Mr. Cornelius said that he was opposed to the last moratorium as he said it was based on false information. He said that a moratorium may be worth considering to figure out what is going on with landmarking in light of the seven recent nominations.

Carol Clark, 1058 Walnut Street-Ms. Clark asked if a landmarked building was treated differently than one located within a historic district. Ms. Holmes answered that they are treated the same. Ms. Clark then asked if the landmark suspension would impact anything within the historic districts and Ms. Holmes answered that it would not.

Rena Getz, 192 Pine Ridge Road-Ms. Getz said that it was not in the public interest to enact the landmark suspension. She said that Newton has historically not supported moratoriums of ordinances while reviewing them. Ms. Getz said that the City has not had a much-needed conversation of how to balance historic preservation and redevelopment.

Chair Crossley summarized a letter submitted by Councilor Markiewicz. In his letter, Councilor Markiewicz gave his concern that a member of the Historic Commission could approve a property they nominated. His suggestion to avoid the suspension was a measure to have another qualified party be the determinant in a landmarking request when the case was initiated by the Historic Commission. The letter is attached to this report.

Chair Crossley summarized a letter submitted by Robert Fox who supports the landmarking suspension. The letter is attached to this report.

Councilor Kelley summarized a letter sent by Malcom Hodge who supports the suspension in a letter attached to the report.

Chair Crossley summarized a letter submitted by Greg Reibman on behalf of the Newton Needham Regional Chamber. Mr. Reibman supports the landmark suspension, seeing the current ordinance as flawed and susceptible to abuse. He says that the suspension is necessary for the City's business interests. His letter is attached to this report.

Councilor Kelley summarized comments from Treff LaFleche who supports the landmark suspension. Mr. LaFleche supports the suspension because of his concern over the unilateral ability of the NHC to nominate properties over the wishes of the homeowners. His comments are included in this report.

Chair Crossley motioned to close the public hearing, which passed 6-1 (Councilor Leary opposed).

The Committee deliberated on item #37-20 and came up with the following points of support and criticism.

Committee comments and questions were as follows:

For properties not already on the National Register of Historic Places, the Mass Historical Commission is no longer weighing in on eligibility, so this crucial part of the ordinance is non-functional as it stands.

There is no appeals process in place for property owners and the process is generally unclear. The Metropolitan Area Planning Council (MAPC) is no longer fulfilling this role. The Committee asked what the appropriate appeals body would be in place of MAPC.

Property owners do not have enough say in the process and their consent is not required for the final decision.

Based on the comments of some residents, they asked whether 50 years was appropriate for eligibility considering that almost 90 percent of Newton's building are this age.

Historic landmarking, or even just the possibility of it provides an undo burden to property owners who wish to sell or renovate their property.

Some property is improperly landmarked and there is no process to remove this designation.

Concerns that some are using the landmarking process to promote an anti-development agenda rather than genuinely preserving historic properties. The Committee asked if the intent of the ordinance was historic preservation or the prevention of development.

While most of the recent landmark nominations have been clustered in Ward 3, more will likely soon be seen across the City.

The Committee agreed on having a landmarking process.

The recent surge of landmarking has been in response to the surge of development in West Newton.

The NHC does not treat landmark nominations with a rubber stamp and of the seven recently submitted, two were rejected.

The City Council should retain its authority to nominate historic structures for landmark status.

If landmark nominations were to be temporarily suspended, then demolitions could also be temporarily suspended while the best balance in a new ordinance is crafted.

It was pointed out that demolition delay may be up to one year from filing.

Councilors described their positive experiences of living in historic properties as being free of onerous conditions due to the landmark ordinance.

There is no clear timeframe for getting the ordinance revisions done within the suspension and this temporary measure could easily become *de facto* permanent.

This suspension will allow the demolition of more historic buildings within Newton. Though living in a historic district can be a tough adjustment at first, it is something many residents come around to when these districts keep out teardowns.

After its deliberations, the Committee reached consensus that if it were to proceed with the suspension, then it should stipulate a shorter timeframe within which to accomplish the work. Six months was suggested and agreed, with a three-month report from the working group to the Committee.

Councilor Baker moved to hold the item, which failed 2-5 (Councilors Crossley, Danberg, Albright).

Councilor Danberg moved approval on item #37-20 as amended to a six-month term and a review in Committee in three months. The Committee voted 5-2 to approve (Councilors Baker and Wright opposed).

Chair's Note: *It is the Chair's intention to take up only part a)*

#31-20 **Amend zoning ordinance special permit criteria related to energy conservation**
COUNCILORS CROSSLEY AND ALBRIGHT seeking a review and possible amendments to Section 7.3.3.C.5 of Chapter 30, Newton Zoning Ordinance, to:
a) further inform the objectives of reducing energy consumption and limiting use of natural resources, and b) consider reducing the threshold for compliance to apply the requirement to buildings 10,000 sq. ft. and larger.

Action: **Zoning and Planning Held 7-0**

Notes: As per the request of the Chair, the Committee discussed only part a) of the item.

Jennifer Caira, Deputy Director of Planning, presented to the Committee on item #31-20. The full presentation is attached to this report.

The Chair noted that the proposed amendment is re-docketed from 2019, she reminded the Committee of the several ordinances passed in December of 2019 resulting from related discussions that address building energy efficiency, but that amending the special permit criterion itself was deferred.

Ms. Caira explained that the current zoning ordinance special permit criteria stipulates that any construction or addition to a property over 20,000 square feet must “contribute significantly” to the efficient use and conservation of natural resources and energy. The proposed change would seek to clarify this criterion by adding on more specific language that seeks to inform the petitioner as to what kinds of measures to address. These would include minimizing the operating energy, use of fossil fuels, and reduction of the overall carbon footprint. Ms. Caira said that this language was developed in collaboration with the Green Newton Building Standards Committee.

After receiving multiple questions from the Committee, Ms. Caira made the following clarifications.

Minimizing embodied carbon, as stipulated in the proposed language, is just one focus area and not every new project will have to hit every single one of these points. Some councilors asked if more education about embodied carbon could be provided as they wanted to learn more about it. Some councilors expressed desire to see stronger language put in place.

The Committee reached consensus on the use of the proposed language. A Chapter 30 amendment requires a public hearing. It was agreed to set the hearing for February 24.

Councilor Danberg moved hold, which was approved 7-0.

Referred to Zoning & Planning Committee

#88-20 **Discussion and review relative to the draft Zoning Ordinance**

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Action: **Zoning and Planning Held 7-0**

Notes: Zachery LeMel, Chief of Long-Range Planning, presented to the Committee on this item.

Mr. LeMel gave a presentation which reviewed the recent history of zoning redesign efforts in Newton and context-based zoning codes. His presentation (attached) summarizes context-based zoning tools as a more adaptable form of zoning guidelines which will be better able to take neighborhood character into account than the current “traditional” Euclidian zoning. He continued that context-based zoning would solve some of the issues of continuing concern such as teardowns and the large developments that are built over them. Context based codes can also reduce the high rate of nonconformity which applies to most Newton properties. His presentation offered comparisons to similar situations in other cities that have adopted context-based zoning such as Denver, Philadelphia, and Somerville. Mr. LeMel concluded by asking councilors to find the worst example of a teardown/rebuild in their Ward and provide the information to the Planning Department for analysis.

Ms. Caira clarified that context-based zoning standards would not be subjective, but rather derive from the existing features of the neighborhood.

Councilors expressed concern that FAR was failing to meet the challenges posed to Newton demonstrated by the high number of special permits now required and general inability to rule consistently on special permits requesting more FAR, given the degree of subjective decision making required.

Councilor Danberg moved hold which carried 7-0.

The meeting adjourned at 9:59 PM.

Respectfully Submitted,

Deborah J. Crossley, Chair

RECEIVED
Newton City Clerk

Summary to ZAP re: Historic Landmarking and Demo Delay
2020 JAN 27 AM 10:23

Dear Chair Crossley and members of ZAP,
David A. Olson, CMC

Historic landmarking is the highest bar of historic preservation, so it is timely and important that the review and update to Newton's city ordinance Chapter 22 has begun. A working group has started this process but progress has been slow. I submit this summary of progress to date and outstanding issues to you.

As you know, it is difficult to craft ordinance language with a large group of individuals. Several members, including city staff, have commented on the lack of efficiency since our first meeting, which was only able to cover a few sections.

It is generally agreed that clarity, consistency, consideration of all sides, public good, fair process, and owner notification are crucial. In brief, unresolved issues center around the **nomination process**, **owners' rights**, the **appeals** processes, and **definitions** of eligibility.

Specific aspects of the current ordinance that have not resolved in agreement nor even begun a discussion of include:

- **Nominating:** which individuals may nominate a property for landmark consideration?
- **Owners' rights:** should, and if so when, may property owners' be notified that their property may be nominated, do they play a role or have a voice? Many landmarking decisions have been against the owners' will.
- The **appeals processes** (Administrative Review Sec. 22-69) is currently not functional as the MAPC is not fulfilling this role as laid out in the ordinance. What other body or process would best serve this key aspect?
- **Definitions:** differences between "preferably preserved" and "historically significant" are not defined.
- Definitions such as "structure", "important" architect, builder or "historic person"(Sec. 22-50 Historically significant building or structure) are vague and subjective.

Other:

- Overall **intention** of the ordinance is not laid out
- is **50 years** still the appropriate age to initiate a review, given that close to 90% of Newton properties are this old?
- If not already on the **National Register of Historic Places**, which is needed to consider landmarking a property, what body is best suited to weighing in on the eligibility for that status, as the Mass. Historical Commission is no longer providing this required input?
- should the **roles of the "planning board" and City Council be reconsidered? Sec. 22-63(d)**

- How does the “purpose of **preventing developments incongruous to the historical or architectural characteristics** ” (Sec. 22-66(c)) get weighed with respect to the goal of historic preservation?
- **Landmark designations are irreversible**; if information later available indicates that a decision should be rescinded, is not possible to remove the landmarked status

Consideration of other key factors in Newton’s goals such as economic development, housing production, environmental sustainability, balancing historic preservation with property owners’ rights, have not played a connected or significant role in this review process to date. There is legal language that needs to be reviewed and edited for overall redundancy, intention and clarity.

Andrea Kelley, Councilor at-Large, Ward 3
January 26, 2020

RECEIVED
Newton City Clerk

2020 JAN 27 PM 2: 22

David A. Olson, CMC
Newton, MA 02459



Chair Deborah Crossley
Land Use Committee Newton City Council
1000 Commonwealth Avenue
Newton, MA 02459

Jan. 27, 2020

Re: #37-20, Temporary suspension on landmark designation

Dear Chair Crossley:

The chamber is frequently asked how the council can support our small, independent business owners.

One important way that council could do this is to reevaluate our landmarking process.

As seen by the recent proposal by one of your colleagues to landmark seven buildings in West Newton, this process is deeply flawed and subject to abuse. In this example, one councilor's ability to exercise her authority to seek "urgent" landmarking, sent these private, law-abiding, property owners into an entirely unnecessary frenzy; regardless of the historical quality of their buildings or whether or not they were even contemplating changes.

None of these owners were provided the courtesy of a conversation in advance from your colleague. Then with two weeks' notice, they were forced to quickly bone up on a confusing process and decide whether or not to incur the expense of legal counsel.

Of course, we all know that the intentions behind this "urgent" request had nothing to do with preserving the historic qualities of these specific properties and everything to do with an alternative agenda. This cynical use of the "urgent" landmarking authority is disrespectful to Newton's property owners, who are guilty only of paying taxes and playing a critical role in our village life. Our small commercial building owners depend on these properties for their livelihood, to send their children or grandchildren to college, or their retirement. They deserve a fairer, more respectful, process.

Preserving the historic properties that respects Newton's rich history is a goal we can all embrace. But this process is not respectful. The chamber urges the council to quickly adopt #37-20, which would create a temporary suspension on landmark designations.

A temporary suspension of the current rules will allow the council, the city and our property owners to engage in a thoughtful review of this process and prevent the misguided abuse of landmarking that we've just witnessed.

Sincerely

A handwritten signature in black ink, appearing to read 'Greg Reibman', with a long, sweeping horizontal line extending to the right.

Greg Reibman
President
Newton-Needham Regional Chamber

CC: President Albright, Mayor Fuller, Zoning & Planning Committee

From: [David A. Olson](#)
To: [City Council](#)
Cc: [Nathan Giacalone](#); [Barney Heath](#)
Subject: FW: #37-20 Temporary Suspension of Landmark - Submitted by Councilor Markiewicz
Date: Monday, January 27, 2020 3:32:31 PM

From: Christopher J. Markiewicz <cmarkiewicz@newtonma.gov>
Sent: Monday, January 27, 2020 3:24 PM
To: David A. Olson <dolson@newtonma.gov>
Subject: #37-20 Temporary Suspension of Landmark - Submitted by Councilor Markiewicz

Mr. Olson, would you please distribute to the Council and other concerned parties, Thank you.

Colleagues,

I am unable to attend this evening's ZAP meeting where #37-20 will be taken up in committee.

My understanding of the genesis of the subject item was that it was in response, at least substantially, to a concern that the Historic Commission could both nominate and approve a property for landmarking. As such it allows the initiator to approve its own request. This is a legitimate concern along the lines of maintaining a proper segregation of duties and responsibility.

Nonetheless, I think there is a more simple approach than a suspension (which might be called a moratorium, and recall the Council majority opining last year their disapproval of moratoria in general). In cases where the Historic Commission initiates a request, specify that some other qualified party be the determinant (or as Mr. Bush #43 like to say - " the decider"). This would eliminate the need to suspend the current privileges. I also think that eliminating Councilors as potential proposers, but leaving the Executive Branch unencumbered with such limitation upsets the balance of power and is a slippery slope with respect to governance in general.

I respectfully ask you to consider modifying this item in the manner which I suggest above. Thank you for your attention.

Regards,

Chris

From: [David A. Olson](#)
To: [Nathan Giacalone](#)
Subject: FW: Support for Docket #37-20
Date: Monday, January 27, 2020 3:56:48 PM

From: Hodge, Malcolm [REDACTED]
Sent: Monday, January 27, 2020 3:50 PM
To: City Council <citycouncil@newtonma.gov>
Cc: Andrea W. Kelley <akelley@newtonma.gov>
Subject: Support for Docket #37-20

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Dear Council,

Thank you for considering input from Mimi and I.

The Historic Commission does great work in many areas to preserve our neighborhoods which I know must take many unpaid hours on their part.

We support docket #37-20 as it will allow a thorough review of the land-marking process which has not been reviewed in almost 30 years. We believe that it is a fair and prudent course of action to impose a temporary halt to land-marking decisions for a period of time to allow the ordinance to be reviewed. Having the review, whatever the outcome, will further strengthen the work of the Committee and the support that they will have from the community which they serve.

Regards Malcolm and Mimi Hodge

Malcolm C. Hodge, FFA, CFA, FSA, Senior Partner

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expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be used for any other purpose without our prior written consent.

January 27, 2020

I am not able to attend today's meeting, however, I would like to provide the following statement related to docket item #37-20.

I am a resident of Newton and have recently become aware of the initiatives of the Newton Historical Commission (NHC) to landmark properties. My understanding is that there is ambiguity and subjectivity involved in this process. In light of this, I support the suspension of landmarking until the ordinances can be rewritten and the process have more transparency.

Many aspects of this practice trouble me, including my understanding that any person can begin the process to landmark a home without the consent of the homeowner.

In my judgment this is not fair or reasonable. I have become aware of how owning an older home may cause the homeowner real trouble including reducing the value of the property. The threat of landmarking creates a landmarking "cloud". This "cloud" may make it very difficult, maybe impossible, to sell the property at any value. How is this fair or reasonable?

Does the NHC understand the impact of its actions on the homeowners? On potential buyers?

As a homeowner no one is asking me or my neighbors about our views on the future of our city as it relates to landmarking. In conjunction with speaking out in this way the residents should be able to rely on its representatives to shape the city's development and future. Like some of our neighboring communities the City Councilors should be the ones voting on the landmarking of a property. It is not clear to me who the NHC is representing. It does not appear to be representing the homeowner. Certainly not me.

I would encourage the elected officials in Newton, vs. the appointed NHC members, to take a more active role in the current practices, immediately modify or suspend as needed, toward being more understanding and supportive of the homeowners and tax payers in the City.

Aron Ain

RECEIVED
Newton City Clerk
2020 JAN 27 PM 5:11
David A. Olson, CMC
Newton, MA 02459

Good evening. My name is John Von Bargen and I'm here as someone that offers a unique perspective on landmarking having spent a great deal of time and money last year trying to buy 279 Fuller St., a residential house in West Newton that has proven to be unsalable given NHC's sole view it should be landmarked. I'm a prospective resident of Newton and wanted City Counselors tonight to hear a letter I wrote Mayor Fuller last fall.

Ruthanne,

My wife and I are long time Bostonian's having spent over 20 years in the city. We call Cambridge home for our three young boys and have been searching to move to a home for over a year in West Newton. My wife and I spent the summer and fall getting to know the Galligan family, which consists of three siblings that grew up in Newton and are trying to find a family to buy their family's home after their mother's passing. As of a few weeks ago, we were days away from transacting with the Galligans until a paper trail surfaced that was drafted and sent by NHC to Massachusetts Historic Commission establishing the grounds for what could become a National Historic Registered home and a home deemed a "landmark" in the town of Newton.

I'd welcome the opportunity to meet with you to seek guidance for my family. To be candid, my sense is the challenges the Galligan's face selling their home and the risk that exists for me as a buyer are not conducive to the long-term growth of a town like Newton. I've spent an exorbitant amount of time online, time and money with attorneys, builders and architects, and despite NHC's proposal, I have collectively drawn the following conclusions about 279 Fuller...

- 1) While an older home, it's not historic in that prior residents would be unknown by citizens of Newton as historically significant people (i.e., the Obamas didn't live at 279),
- 2) the architecture is not unique or representative of a specific style but rather an odd blend of architectures that architects have told me is "architecturally insignificant",
- 3) the Galligan's have been paying taxes on an assessed value that is far greater than if the home was landmarked,
- 4) the house is out of code, has very low ceilings, and is non economical to preserve given the work involved, and
- 5) my hunch from numerous conversations, the neighbors around 279 would vote in favor of a fresh new and modest home to complement the scenic drive of Fuller Street.

Ultimately, we are a family looking to become long term residents of Newton and raise our boys in the community and neighborhood schools. 279 Fuller is the place we would like to call home for the next 40 years but unfortunately the risks in the ordinances and what appears to be the opinion of NHC to landmark 279, has left the Galligans and my family, as prospective buyers, little visibility into what NHC will determine feasible. Further, and in complete transparency, I met with NHC in person a few weeks ago and effectively heard "anything can be renovated and we should really consider collaborating with NHC" on 279 Fuller, which given my extensive and third party diligence and facts above, feels like NHC is bordering on eminent domain.

I'm proud of my family and what they can bring to a town like Newton and I thought you would be interested in the history and facts about 279 Fuller, which may present similar obstacles for other prospective residents of Newton.

Regards, John Von Bargen

Also worth noting and outside of the letter, unfortunately, even with this proposed ban on landmarking, my family still can not consider buying 279 Fuller because of the 12 month demolition delay which would lapse this ban and pose the same uncertainty regarding landmarking. So, I'm here purely to help the town recognize the implications of the landmarking ordinances and to help the lovely Gallighan family hopefully find a salable path for their home.

RECEIVED
 Newton City Clerk
 2020 JAN 27 PM 5:25
 DAVID A. OLSON, CMC
 NEWTON, MA 02459


RECEIVED
Newton City Clerk**279 Fuller St. - Aron Ain's neighboring property**

John Von Bargen <johnericvonbargen@hotmail.com>

Tue 10/29/2019 11:59 AM

To: rfuller@newtonma.gov <rfuller@newtonma.gov>

2020 JAN 27 PM 5:25

David A. Olson, CMC
Newton, MA 02459 1 attachments (3 MB)

nwt_3945 (2).pdf;

Ruthanne,

I hope this finds you well. I believe Aron Ain may have emailed you or spoken with you about my family and our quest to own the property next to his home on Fuller St. As background, my wife and I are long time Bostonian's now having spent over 20 years in the city. We currently call Cambridge home for our three young boys and have been looking for a home for well over a year around Brae Burn or north into the West Newton Hill area. As it relates to this email and 279 Fuller St., my wife, Emily and I spent the majority of the summer getting to know the Galligan family, which consists of three siblings that grew up in Newton and are now trying to find a young family to buy their home at 279 Fuller St. The Galligan's mother passed in early 2019 and they have been interviewing families and trying to conduct a private and more personal real estate transaction. As of a few weeks ago, we were days away from transacting with the Galligans until a paper trail surfaced that was drafted and sent by Newton Historic Commission to Massachusetts Historic Commission establishing the grounds for what could become a National Historic Registered home and a home deemed a "landmark" in the town of Newton. Katy Holmes is the signatory on these documents, which I attached hereto to the extent helpful for you or your Chief of Planning.

I'd welcome the opportunity to meet with you and or whomever else you feel would be helpful to provide guidance for my family. To be candid, my sense is the challenges the Galligan's face selling their home and the ambiguity that exists for me as a buyer are not conducive to the long term growth of a town like Newton. I've spent an exorbitant amount of time online, time with attorneys, builders and architects and collectively have drawn the following conclusions ...

- 1) 279, while an older home, is not historic in that the prior residents would not be known nor appreciated by the citizens of Newton, Mass or America as historically significant people (i.e., the Obamas didn't live at 279, or a former mayor of Newton, etc),
- 2) the architecture is not unique or representative of a specific style but rather an odd blend of architectures and what professional architects I have spoken with have said is "architecturally insignificant",
- 3) the Galligan family has been paying taxes on assessed values for decades that are not indicative of a home reassessed as a landmark property,
- 4) the house is out of code, has very low ceilings, and is non economical to preserve given the work involved, and
- 5) my hunch from numerous conversations, the residents of the neighborhood would welcome a fresh new and modest home to complement the scenic drive of Fuller and newer architectures on the street.

Ultimately, we are a family looking to become long term residents of Newton and raise our three boys in the community and neighborhood schools. 279 Fuller is the place we would like to call home for the next 30-40 years but unfortunately the ambiguity in the legislation and what appears to be the opinion of Katy Holmes to build a file deeming this house historic, has left the Galligans and my family, as prospective buyers, little visibility into what NHC will determine feasible. Further, and in complete

transparency, I met with Katy Holmes in person a few weeks ago and effectively she said "anything can be renovated and we should really consider collaborating with NHC" on 279 Fuller, which given the diligence and facts above, feels like NHC is bordering on eminent domain.

Thanks for your time here. I totally understand if you deem this something for someone else's desk. I'm particularly proud of my family and what they can bring to a town like Newton and I thought you would be interested in the history and facts above, which may present similar obstacles for other prospective residents of Newton.

Best regards,
John Von Bargaen
cell 617-817-2071

From: [Andrea W. Kelley](#)
To: [Nathan Giacalone](#); [Deborah J. Crossley](#)
Subject: Fw: docket item #37-20 temporary suspension of landmark designations public hearing
Date: Monday, January 27, 2020 6:13:09 PM

Dear Chair Crossley and Nathan, not sure if the CC received this letter directly from Stefano Efstratoudakis, to enter into the record and share with ZAP committee members.

From: Stefano Efstratoudakis [REDACTED]
Sent: Monday, January 27, 2020 5:40 PM
To: Andrea W. Kelley <akelley@newtonma.gov>
Cc: Peter Sachs [REDACTED]; Alan J Mayer [REDACTED]; Alan Schlesinger [REDACTED]; maryfrances [REDACTED]; Robert Fox [REDACTED]; Malcom Hodge [REDACTED]; Vir Bhansali [REDACTED]; Laurence Lee [REDACTED]; [REDACTED]
Subject: docket item #37-20 temporary suspension of landmark designations public hearing

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Hello Andrea,

I also like to ask to respectfully submit the following for the record:

Dear councils,

This is a great opportunity, and the only one in the last thirty years to temporarily put on hold a very unjust and extremely one sided by-law.

Linda and I are in strong support of docket item #37-20.

The least a government body can do is put on hold a process that is one sided.

The existing bylaw has very vague and broad criteria that gives the Historic Commission the right to landmark a property.

There are no specific guidelines or rules to follow for why a property should be Landmarked. i.e. A house owned by a successful businessman is not a good enough reason for it to be landmarked. Neither is the fact that a house is old. If that is a reason then most houses in Newton should be Landmarked.

The process itself is very specific and one sided.

First, the homeowner has no say on the matter whatsoever. This fact alone is unjust and unfair.

Second, the vague criteria is presented to the Historic Commission and the Commission always votes for Landmarking.

Third, after that vote, the homeowner has no other due process to

appeal this decision. One has to look to the courts.
Fourth, the City relies on the Historic Commission alone for such decision. There are no checks and balances in this process.

So, we take a vague and broad definition, that is designed to include almost all old houses, and a very specific one sided process and the Landmarking is a done deal.

Unfair, and Unjust.

Landmarking is a very serious thing. It is there forever. It affects every single decision one has to make on a property, not just the house.

Landmarking should be accompanied with pride and absolute justification.

It should not be a tool to stop development - as it has become - and docket #37-20 is an opportunity for the city to put the current process on hold and make it more balanced and fair for all.

Respectfully

—

Stefanos & Linda Efstratoudakis
128 Highland Street, Newton, Ma 02465

From: [Andrea W. Kelley](#)
To: [Nathan Giacalone](#)
Cc: [Deborah J. Crossley](#)
Subject: Fw: docket item #37-20 temporary suspension of landmark designations public hearing
Date: Thursday, January 30, 2020 1:01:45 PM

Nathan, I didn't realize that Treff's letter was not copied to the CC in full, or you. Here it is.

From: Treff LaFleche [REDACTED]
Sent: Monday, January 27, 2020 9:53 AM
Cc: Treff LaFleche [REDACTED]
Subject: RE: docket item #37-20 temporary suspension of landmark designations public hearing

[**DO NOT OPEN** links/attachments unless you are sure the content is safe.]

Hi Andrea,

I'm so sorry that I can't be at the ZAP meeting tonight, but would like to submit the following comment. If you could read this into the record, that would be much appreciated:

I strongly support docket item #37-20 to temporarily suspend the current landmarking process while Chapter 22 of the City Ordinances is being reviewed. The current unilateral capability of the Newton Historic Commission to landmark a structure without a property owner's right to early notification, full participation in the process and/or the right for appeal is a clear challenge to democratic fairness and due process. The goals, criteria and process for Landmarking are in desperate need of review and re-evaluation given the changes we are ALL experiencing in our city: significant growth in land values, the importance of the sustainability of our built environment and the need to provide diverse and affordable housing. I support stepping back for a time and looking at all of these issues holistically in order to achieve a balanced, integrated and forward-looking solution.

Thanks and good luck with the hearing.
Treff

Treff LaFleche, AIA, LEED AP
Principal
617 500-1608

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Andrea W. Kelley

**Councilor At-Large, Ward 3
Newton City Council
1000 Commonwealth Ave.
Newton, MA 02459**

857-297-2177

akelley@newtonma.gov

When responding, please be aware that the Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.

RECEIVED
Newton City Clerk

Thank you City Councilors for taking up the matter of Landmarking. I am here in support of the suspension of landmarking until the ordinances have been rewritten and the clear goals of the City of Newton in regard to development and preservation have been established.

David A. Olson, CMC
In April, I became a fourth generation Newton homeowner. Several branches of my family have lived in Newton for over a hundred years. One set of great grandparents settled here in the mid-1800s. Another branch in the early 1900s. So my family has invested in and enjoyed all that Newton has to offer. My parents owned 3 homes in Newton in the span of 70 years. First they bought a starter home in Newton Highlands, then moved to Waban and finally for the last 46 in West Newton. My parents bought the house in West Newton before the establishment of the Historical Commission. I am not so sure they would have made that same decision again seeing the burden their choice has placed on me and my siblings in the current state of affairs. My mother who was born here at Newton Wellesley hospital died last April and my sister, brother, and I inherited this house.

Our first knowledge of landmarking came when my siblings and I went to sell the house. We received an offer and were very excited that a young family would move into and enjoy living in Newton as we did.

It was then we were asked if the house was landmarked or could be landmarked.

We replied, "We never heard of landmarking and No we didn't think so". No one had ever mentioned it to my mother in all the 46 years she owned the house. Still, the idea that the house could get landmarked scared the prospective buyers away and they rescinded their offer. I am not sure if it is a coincidence or not but the prospective buyer had visited City Hall to gather information on the house and next thing: on the day of the signing of the P&S he backed out. This was incredibly disappointing and prompted us to look into landmarking.

Now we were thrust into the mysterious world of landmarking. How does Landmarking happen? What's the procedure? Who decides? Is it something we had to worry about? We read up on various landmark cases in the past few year. Wow. They are all different. Nothing seems to be clear-cut. Is there a set criteria for landmarking? Oh my Gosh are we are going to have to hire a lawyer? All we want to do is sell our house to a nice family. Just like we were sold the house 46 years earlier.

We looked at the criteria posted on the Newton website and asked ourselves the questions: Is the house on the National Registry? No. Did someone famous live in the house? No. Was it designed by a famous architect? No. So why are people worried? It's just an old house.

Subsequently we received another offer - a full-price offer. We accepted it as we had the previous offer. These prospective buyers also did their due diligence and went to City Hall to ask questions and promptly rescinded their offer. Through our brokers we received a note stating they remain very interested in the house but need written assurance from City Hall/NHC stating that the property will not be landmarked. Oh no not again.

As you can see we have had very interested buyers scared away by the threat of landmarking. Many more people have shown interest as well but are too fearful about the possibility of landmarking. The important word is the idea or possibility of landmarking! My siblings and I look at each other in disbelief. I am going to assume the best in that the well-intentioned people of the community did not think of these consequences and the harm being done to the homeowners of Newton by Landmarking or the possibility of landmarking. No one would want a family to go through this experience.

So here we are 10 months after the death of my mom. Facing another tax bill on Friday and unable to sell our house. 10 months of sleepless nights, researching, meeting with lawyers. Treading water. All we want to do is sell our house. We don't have the resources or the plan to renovate. That's up to the new owners. We are waiting, handcuffed to the house with no light at the end of the tunnel.

The events of the last few years and the overwhelming number and type of houses and commercial properties put up for landmarking in the City of Newton has created fear among home buyers which results in homeowners' inability to sell our houses. This can't be right!

The citizens and homeowners of Newton need to know about this and you, the representatives of these people, need to do what is fair to all. This is a country which celebrates freedom and me and my siblings' freedom to sell our house is being taken away. The 88% percent of people in this city that have a home older than 50 years should be alarmed. This story could be theirs. This story could be yours! You 88% could find yourself in a similar predicament.

You, as representatives, should suspend the landmarking process until a well-developed vision for the development and preservation of the properties in Newton is clear and transparent to the community. We need to clarify that OLD does not mean HISTORIC! That Landmarking is NOT to be used by a select few people as a way to stop change. These select few people should not have the ability to interfere with a person's right to sell his or her home.

It is important when thinking about this issue that 82% of the city's budget is property taxes and it is paramount that we all realize that decisions made in the area of landmarking affect all our property values and reaches into every part of the community.

I ask you to discuss that, because this is such a significant issue connected to the future of Newton, the Landmarking of a home, commercial or city building should be voted on by the Councilors. In the meantime please suspend the landmarking process until we can get it right!

Thank you for listening.

Zoning & Planning Committee
January 27, 2019

○

#31-20 – AMEND ZONING ORDINANCE SPECIAL PERMIT CRITERIA RELATED TO ENERGY CONSERVATION

1

Special Permit Criterion 5

○

- **COUNCILORS CROSSLEY AND ALBRIGHT** seeking a review and possible amendments to Section 7.3.3.C.5 of Chapter 30, Newton Zoning Ordinance, to:
 - a) further inform the objectives of reducing energy consumption and limiting use of natural resources, and,**
 - b) consider reducing the threshold for compliance to apply the requirement to buildings 10,000 sq. ft. and larger.

2

Existing Language

Section 7.3.3.C.5:

“In cases involving construction of building or structures or additions to existing buildings or structures, if those proposed buildings or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.”

3

Proposed Language

“In cases involving construction of building or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy, **including in particular: minimizing building operating energy, embodied carbon, the use of fossil fuels and the carbon footprint for transportation to and from the site.**”

4



Newton Zoning Redesign

ZAP Presentation
01.27.20

Shared Goal

The Zoning Redesign initiative aims to create a more flexible, predictable, and amendable *context-based* Zoning Ordinance derived from the existing fabric of Newton while directing growth and economic development to the most appropriate areas.

Welcome Back!

Zoning 101

A Context-Based Approach

Looking Ahead

Questions & Comments



Zoning 101



Zoning Is...

Zoning shapes our city. It ensures that buildings and uses of land promote positive outcomes for the community and are consistent with the neighborhood context.

Zoning is the regulation of our built environment: types of buildings, their locations, and their uses.

#88-20

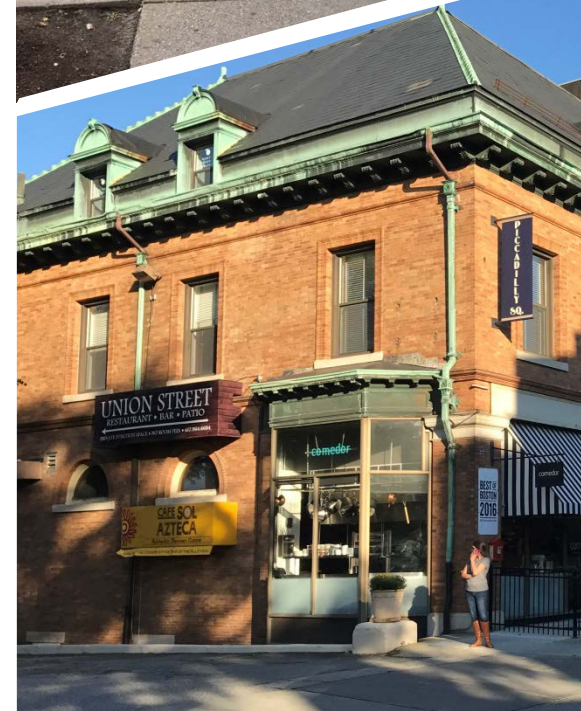


Traditional Zoning

Traditional or “Euclidian” zoning is designed around the principle of separation of land uses and guidelines designed to facilitate the approval process for proposed developments that conform to the code.

Context-based Zoning

Context-based zoning is an evolution in thinking when it comes to zoning policy. In place of an ordinance that attempts to regulate simply by land uses (e.g. residential, commercial, industrial, etc.), context-based zoning aims to understand, respect, and build from the design and character of existing neighborhoods to help steer new development/ redevelopment efforts.



Context-based Zoning: A Hybrid Approach

For Newton, context-based means a hybrid approach that draws from the best practices of different zoning models (conventional, form-based, performance, etc.).

Doing so will not only allow the City to place added emphasis on development that matches a desirable physical character (form-based), but also more strongly regulate the negative effects of development such as traffic and environmental degradation (performance).



Trend towards *Context-Based*

By 2016 in the U.S.

1. Over 360 such zoning codes adopted
2. Over 250 such zoning codes in development



Trend towards *Context-Based*

Advantages

1. Stronger connection between City vision and development
2. Calibrated to existing desirable conditions
3. Encourages diversity and quality
4. Strongly links the public and private realms

Why A New Format for Newton

1a. FAR Working Group (2010)
determined the existing Zoning
Ordinance cannot be reasonably
altered to stop tear-downs:

*“...the City’s existing residential
zoning districts are too blunt to
account for the range of
neighborhood character...”*

#88-20



Why A New Format for Newton

1b. FAR Working Group (2010)
determined the existing Zoning
Ordinance cannot be reasonably
altered to stop tear-downs:

*“...a number of elements of
massing cannot be regulated by
FAR limits, or indeed, by other
dimensional controls”*

#88-20



Why A New Format for Newton

2. The existing Zoning Ordinance does not function as “zoning” rather it manages non-conformity

#88-20



Why A New Format for Newton

3. The existing Zoning Ordinance does not align with the City's values.

- *Easiest thing* - tear-down a small home and built a significantly larger one
- *Hardest thing* - build contextual residential units around village centers with access to public transit and amenities

#88-20



How and Why We Got Here

1. Respond to the Comprehensive Plan
2. Respect the existing built environment
3. Reflect the values of Newton's residents and businesses

#88-20





A Context-Based Approach

Models from Around the U.S.

1. Denver, CO
2. Philadelphia, PA
3. Somerville, MA

#88-20



Models from Around the U.S.

#88-20

Denver, CO

Type of code: Context-based
(hybrid)

Adopted: 2010

Duration: 2005-2010



Neighborhood Context

The Denver Zoning Code is organized by neighborhood contexts. A context-based approach sets standards for compatible development. The neighborhood contexts are distinguished from one another by their physical and functional characteristics including but not limited to:

- street, alley and block patterns
- building placement and height
- diversity, distribution and intensity of land uses
- diversity of mobility options



Suburban Neighborhood

Curving streets, single-family residential and shopping centers.



Urban Edge Neighborhood

Curving and grid street patterns, single family residential and shopettes.



Urban Neighborhood

Regular street grid, single-family homes, main streets and corner stores.



General Urban Neighborhood

Predominantly multi-family grid and alley block pattern, main streets and corner stores, multi-modal.



Urban Center Neighborhood

Mixed use with both residential and commercial, high pedestrian activity, multi modal transportation.



Downtown Neighborhood

Mixed use, transit hub, tallest buildings, high pedestrian activity, historic areas.

 **Photo of a special context area**

Special Context and Districts

For areas that typically serve a principal purpose.

Models from Around the U.S.

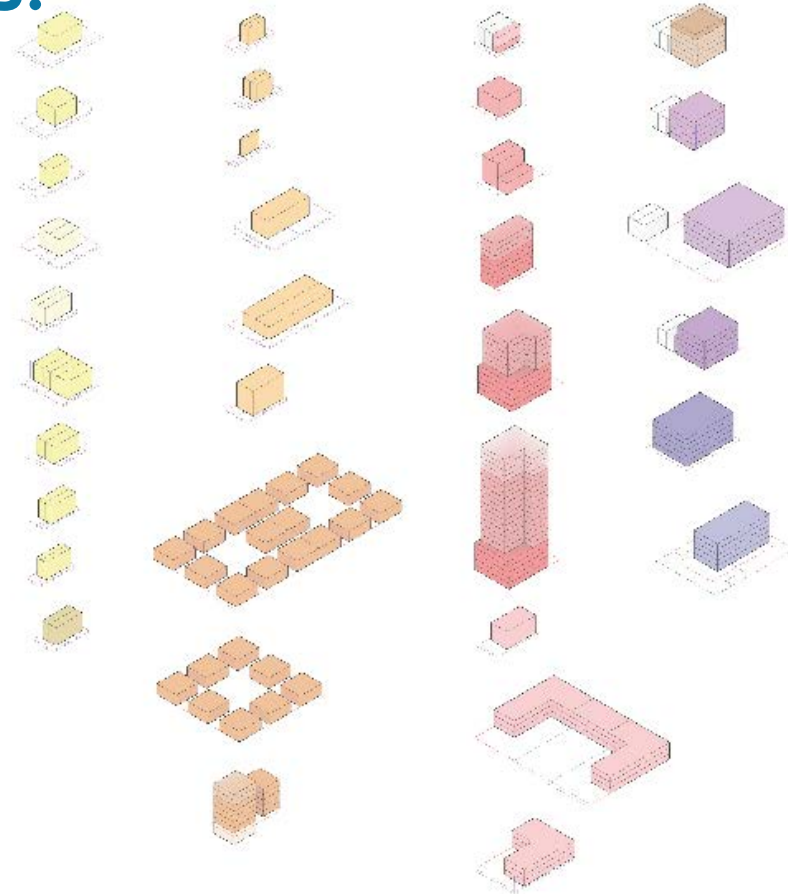
#88-20

Philadelphia, PA

Type of code: Hybrid

Adopted: 2012

Duration: 2008-2012



2016

PHILADELPHIA CITY PLANNING COMMISSION

PHILADELPHIA ZONING CODE
INFORMATION MANUAL: QUICK GUIDE



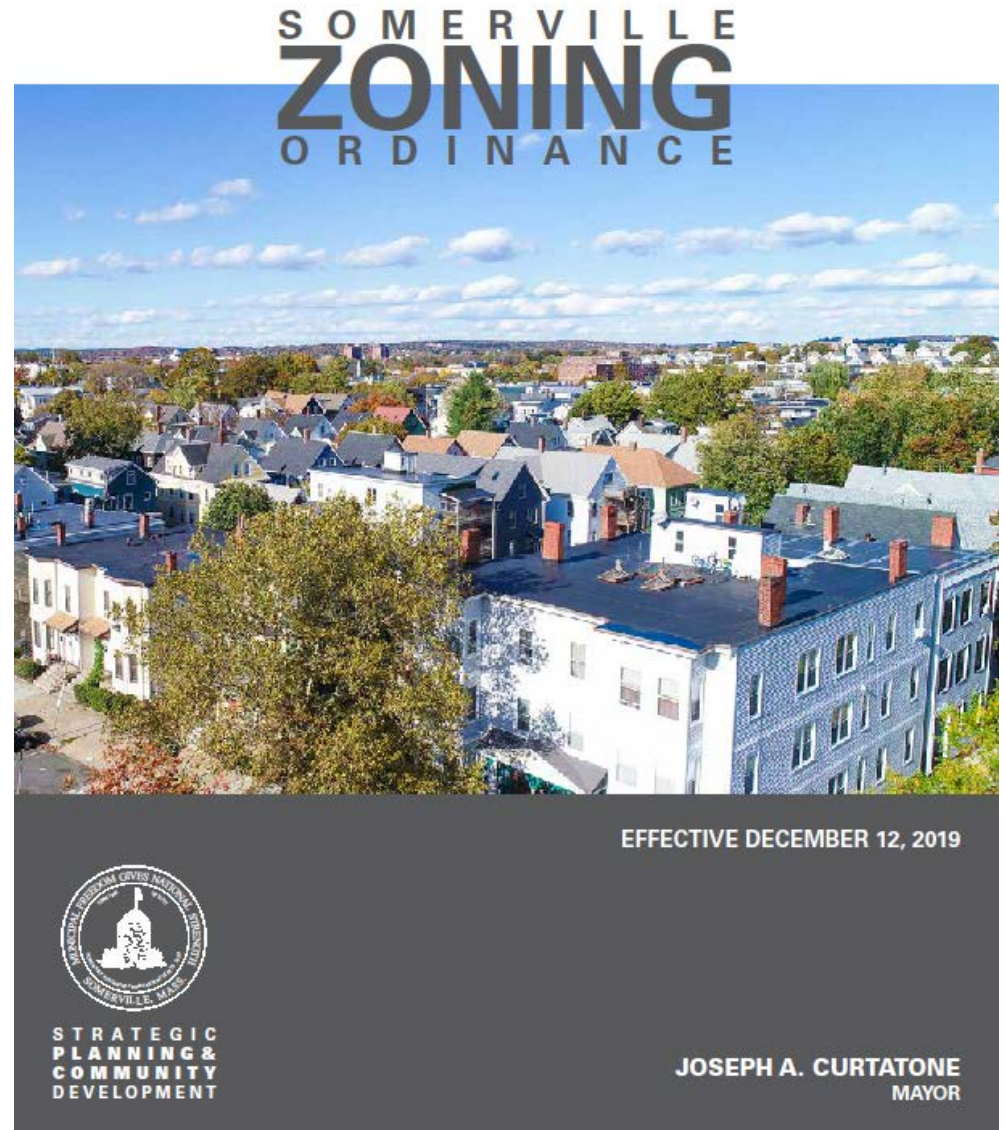
Models from Around the U.S.

Somerville, MA

Type of code: Hybrid

Adopted: 2019

Duration: 2012-2019



Looking Ahead



Zoning Redesign is Our Main Priority

1. Build from the draft Zoning Ordinance
2. Frame individual zoning projects and priorities within Zoning Redesign




Next Steps

February 10th Meeting – Discussion of Zoning Redesign process and timeline

Homework

Share the most egregious residential project in your Ward for the Planning Department to analyze



Question & Comments