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#222-13(3), (4), (5)

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Barney Heath
Director

MEMORANDUM

DATE: October 7, 2016

TO: Councilor Ted Hess-Mahan, Chairman
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director

RE: #222-13(3) – COUNCILOR LENNON, LIPOF, ALBRIGHT, CROSSLEY, LAPPIN, LAREDO, GENTILE AND CICCONE requesting a review of Ordinance A-78, which amends Chapter 30, Section 3.4.4 of the Revised Ordinances, for the purpose of amending, clarifying, and/or interpreting the Ordinance.

#222-13(4) - COUNCILOR LENNON, LIPOF, ALBRIGHT, CROSSLEY, LAPPIN, LAREDO, GENTILE AND CICCONE proposing an amendment to Ordinance No. A-78, which amends Chapter 30, Section 3.4.4 of the Revised Ordinances, to implement a deferred effective date for the Ordinance of February 1, 2017.

#222-13(5) - COUNCILOR HESS-MAHAN proposing to amend Chapter 30, Section 3.4.4. of Revised Ordinances as amended by Ordinance A-78, as follows: (1) allow front facing garages that are no closer to the front lot line than the longest front facing wall, or a front porch at least 6 feet wide, to be the greater of up to 12 feet wide or 50% of the total length of the building parallel to the street; (2) allow front-facing garages that are closer to the front setback than the rest of the building and at least 24 feet from the front lot line to be up to 40% of the total length of the building parallel to the street; (3) delete Sec. 3.4.4.F "Exemptions"; and (4) add a provision grandfathering permits requested or construction begun on or after the date of the notice of public hearing on Ordinance A-78.

MEETING DATE: October 13, 2016

CC: City Council
Planning and Development Board
Donnalyn Kahn, City Solicitor

With implementation of the garage ordinance this summer, there were a number of people who found their current or planned house or garage projects blocked. At the same time, many in the design community have raised concerns about the content of the ordinance, suggesting that it may have gone too far in addressing the issues associated with garages dominating the streetscape. Councilors have docketed three items to revisit the ordinance and consider modifications to address some or all of the concerns raised. The Planning Department is presenting two approaches in response. One is an amended ordinance that offers fewer restrictions on the design and placement of garages while still addressing the concerns many have presented with garages. The second proposes deferred implementation as the simplest and most expedient way of allowing current projects to go forward.

Before going into the substantive aspects of the garage ordinance issue, it is important to look at the process that led to this ordinance. Public engagement and collaboration are core values of the Planning Department but in the development of this ordinance, these values were not fully realized. All zoning amendments, even those that are seemingly small or trivial, can have a significant impact on the residents and businesses of this City. It is therefore very important that significant effort be made in identifying potential stakeholders, engaging them in the process, and doing outreach so that all those who may be affected are aware of coming change and have had an opportunity to voice their opinions. Further, implementation of the zoning ordinance is a team effort with several different departments and committees involved, and it is very important that, as new ordinance language is developed, every effort is made to collaborate amongst this team so that the ordinances that are created are enforceable and accomplish the desired objectives. While there were certainly a number of efforts made towards engagement and collaboration, the full extent of what should have been done, and should always be done for any zoning amendment, were not done for this ordinance. The post ordinance implementation activities, the items docketed, the public hearing, and numerous conversations between citizens, designers, councilors, and City officials, that have occurred, though difficult for many, have served as a corrective for the lack of engagement as the ordinance was developed, so that the currently proposed changes are an improvement. For the Planning Department, the experience of working through this ordinance reaffirms those values of public engagement and collaboration, which will strongly guide how future zoning amendments are considered.

Amended Garage Ordinance

Attached is a redlined version of the garage ordinance proposing a number of specific changes. The following is a section by section description of those changes.

Sec. 3.4.4.A.2

This section removes the 'Garage Wall' definition and replaces it with a definition for 'Front Facing Garage.' In making this change, the ordinance is not clearly directed only at front facing garages where the garage doors are most visible and impactful to the street. The previous use of 'Garage Wall' fully precluded garages from being forward of the main house whatever their orientation in order to best facilitate connection between the private realm of the home and the public realm of the street. In only limiting front facing garages, much of this objective is still accomplished and the more

limited approach is more appropriate for the citywide application of this ordinance. On corner lots, this definition further clarifies that these regulations only apply to the side of the house considered to be the front so that side street facing garages are exempt.

Sec. 3.4.4.D

Setback and dimensional requirements have been combined in this proposed amendment. This new section includes three key changes to loosen the requirements for garages. The first is to go back to the original recommendation of a maximum garage width of 50% of the total house. This standard is the most common found in the other ordinances reviewed and represents the minimum restriction necessary to accomplish the objective of making the house front, rather than the garage, the more dominant feature of a house.

This section then makes two allowances. The first is to allow the a garage to be placed in line with a porch that meets a minimum depth of six feet and the second allows a garage to be placed forward of the house, up to the building setback line, if its width is no more than 40% of the total house. Both allowances offer flexibility while accomplishing the overall objective of the ordinance.

Sec. 3.4.4.F

The Planning Department proposes to retain the exemption section in this amendment in order to continue to offer some relief for unusual circumstances at the discretion of the Commissioner of ISD. With the greater flexibility offered by the proposed amendments to this ordinance, exemptions requests should be relatively rare. One notable change in this section is to allow projects approved by either the Historical Commission or a Local Historic District to proceed as approved by those bodies.

Ordinance Enactment Deferral

There was general consensus amongst members of the Zoning and Planning Committee that action needed to be taken to address homeowners who were in the midst of the permitting process and were stopped by the change to the ordinance. If the Committee approves the proposed amendment described above, as presented or modified, and there is a recommendation from the Planning Board, the City Council would be able to take the item up Monday night and provide immediate relief to those homeowners within the bounds of the standards set out in the proposed amendments. If the amendment is not voted out of Committee, some other form of relief will be necessary for this interim period until a final decision is reached on the garage amendments.

The Planning and Law Departments believe the simplest approach to addressing this issue is to defer implementation of the garage ordinance to an appropriate date as suggested in docket #222-13(4). With a deferment approach there is no need to define a class of applications allowing some projects to go forward while others not meeting the specifications of the defined class are left out. In addition, the deferment approach would not require another set of dates in the Zoning Ordinance, which create confusion and complication in the ordinance. Under this approach, garages would be regulated under the previous ordinance until the deferred date or until a different amendment is passed.

The alternative approach to this issue would be to define a period of time and allow those people who have submitted building permit applications during that time and were subsequently denied due to the garage ordinance to instead be granted permits. This approach would necessarily only apply to those people who submitted permit applications and were denied and not to people who were turned away at the counter without submitting an application. Below is sample language that would be inserted in the garage section of the ordinance.

Sec. 3.4.4.F.5

Garages permitted between April XX, 2016 and September XX, 2016 are not subject to the requirements found in Sec. 3.4.4.D.1 and 2.

Recommendation

The Planning Department, with the support of ISD, recommends that the Zoning and Planning Committee and Planning Board approve the proposed amendments to section 3.4.4 Garages of Newton's Zoning Ordinance. Further, the Planning and Law Departments recommend that, if the Committee does not approve an amendment to the garage ordinance at this time, that the Committee instead vote to defer the effective date of Ordinance No. A-78 to December 5, 2016.

3.4.4. Garages

A. Defined

1. An attached or detached structure intended primarily for the storage or parking of one or more automobiles. A detached garage is an accessory building.

2. A Front Facing Garage is a garage on which the primary garage door or doors through which automobiles enter the garage faces the street. On corner lots, a Front Facing Garage faces the same street as the primary frontage or entrance to the house.

A garage wall is any wall enclosing a garage including that wall containing the garage entrance.

B. For each dwelling unit there shall be no more than 1 garage and a garage shall provide for no more than 3 automobiles, except by special permit.

C. Where more than one garage is provided as part of a building and they are placed side-by-side, there shall be living area connected by a shared wall above both garages.

D. Garage Dimensions and Setback

1. The length of a garage wall front facing garage facing a street may be up to 40 50 percent of the total length of the building parallel to the street, inclusive of the garage wall, or 12 feet, whichever is greater. This requirement does not apply to detached garages.

2. A garage wall front facing garage may be no closer to the front lot line than the longest street-facing wall of the dwelling unit measured at ground level except as follows:

a. Where there is a front porch at least 6 feet deep the front facing garage may be no closer to the front lot line than the front of that porch.

b. Where the length of a front facing garage is no more than 40% of the total building length, the front

facing garage may be no closer to the front lot line than the building setback line.

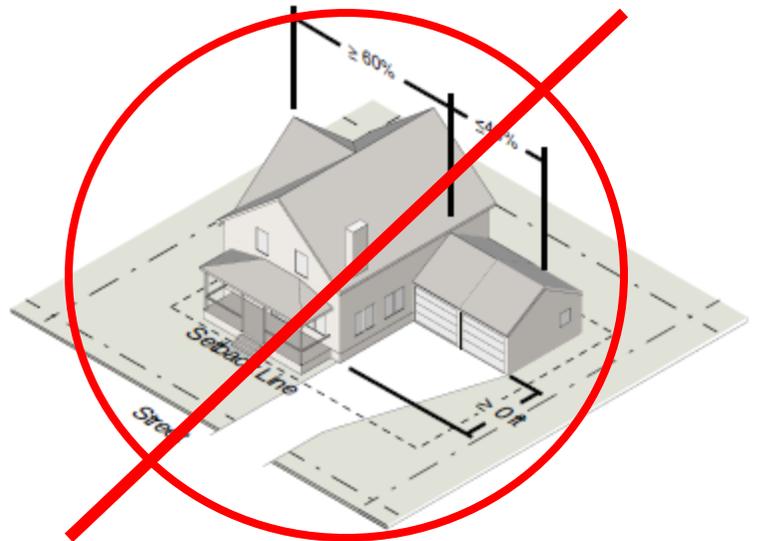
3. The ground floor area of an accessory building containing a garage or an attached garage shall not exceed 700 square feet, except by special permit.

E. ~~Garage Dimensions~~

~~1. The length of a garage wall front facing garage facing a street may be up to 40-50 percent of the total length of the building parallel to the street, inclusive of the garage wall, or 12 feet, whichever is greater. This requirement does not apply to detached garages.~~

~~2. On corner lots, only one street facing garage wall must meet the standard above.~~

~~3. The ground floor area of an accessory building containing a garage or an attached garage shall not exceed 700 square feet, except by special permit.~~



F. Exemptions

1. The Commissioner of ISD, in consultation with the Director of Planning and Development and/or the Urban Design Commission, may grant an exemption, subject to such conditions as ~~he~~ the Commissioner may require, to the garage length and setback requirements (section 3.4.4.D) ~~and garage wall length facing the street (section 3.4.4.E.1) requirements~~, where, based on one or more of the

following factors, strict adherence to these requirements would be impossible:

- a. Irregular lot shape;
- b. Topography of the lot;
- c. Configuration of existing structures on the lot;
- d. Protection of the historic integrity of a building, as determined by, and with the approval of, the Historical Commission or a Local Historic District; and
- e. Preservation of mature trees or similar natural features.

2. Any exemption request shall be reviewed relative to the intent of minimizing the amount of building frontage devoted to garage walls and ensuring a clear connection between the front entrance and living space of a dwelling and the street, meeting the requirements of this section to the greatest extent possible. All exemption requests shall present design features including, but not limited to windows, architectural details, screening, and landscaping and these shall be generally consistent with the remainder of the house.

3. A request for exemption shall be on such form and shall provide such information as the Commissioner of ISD may require.

4. The applicant shall provide written notice of an exemption request and shall provide a copy of the request application to neighboring properties within 300 feet fronting on the same street.

5. Where the house is more than 70 feet from the street, the garage length and setback requirements (section 3.4.4.D) ~~and garage wall length facing the street (section 3.4.4.E.1) requirements~~ shall not apply.