

Inspectional Services Department

City of Newton
Massachusetts

Inter-Office Correspondence

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NEWTON, MA 02159

TO: Zoning and Planning Committee
FROM: John D. Lojek, Commissioner of Inspectional Services
DATE: October 21, 2005
RE: Zoning Issues

During the Monday, September 26, 2005 meeting of the Zoning and Planning Committee I was asked to produce, for the October 24th meeting, a list of the most difficult parts of the City of Newton Zoning Ordinance.

For the purposes of the Inspectional Services Department the most difficult portions of this or any ordinance are those portions or sections that lack definition, clarity and enforceability. Consider that the permitting process involve customer relations, information dissemination, zoning and building plans review, interpretation of those plans for compliance with zoning and building code, interdepartmental considerations, processing of permits, field inspections and records keeping. Any part of this process that causes a delay in the issuance of a building permit can create ill will and frustration on the part of the permit-seeking public.

While I have identified certain systemic problems that cause delays, the zoning ordinance remains the greatest hurdle to the expeditious processing of building permits.

As requested, I have identified certain sections of the zoning ordinance that I believe cause us the most problems in the context of day-to-day operations. They include:

- 1) Section 30-15, Table 1, footnote 7, (3) (referred to as the 50% Demolition Rule)
- 2) Section 30-5 (b)(4) (referred to as the 3' grade change)
- 3) Section 30-1 Definitions. Story, half (referred to as ½ story, dormer policy)
- 4) Section 30-21 (3)(c) (referred to as the de minimis rule)
- 5) Various missing definitions and lack of clarity. There is a need for text addressing rebuilding after catastrophe or casualty, abandonment, substitution, etc.
- 6) Lack of a Table of Use Regulations
- 7) Lack of illustrations. Needed diagrams of: height measurement, corner lot determinations, average alignment, etc.

The following are some of my comments and recommendations.

The 50% Demolition Rule

Table 1, footnote 7 (3)

7 FAR requirements shall apply only to (1) all above-grade new construction; (2) total demolition of a single family residential structure or dwelling when the owner seeks to replace it with a two family structure or dwelling; (3) reconstruction where more than fifty (50) per cent of an existing structure is demolished; and (4)...

Problem:

- 1) The calculation of the % of demolition and the checking of the submittal for the % of demolition is unduly complicated and often impossible.
- 2) There is a lack of definition as to what demolition entails.
- 3) Demolition in the field seldom coincides with the submittal. Plans outlining demo are usually minimized for the purposes of permitting and routinely exceeded in the field.
- 4) Inspectors are put in the position of stopping jobs in progress when they have exceeded the % of demolition. Excuses abound for the contractor/owner as to why they had to do more demo than the 50% allowed, so as not to trigger the FAR. Most jobs have already progressed too far to reverse or re-design, meaning the foundations, etc. have been excavated and poured. Retro attempts at compliance usually result in bad architectural features and houses that lack the intended function. As a result ISD is then seen as the villain in the eyes of the homeowner.

Recommendation: FAR across the board. Allow FAR adjustments, perhaps bonus FAR for projects.

3' GRADE CHANGE

(b) In all districts, unless the use is otherwise permitted as of right, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for one or more of the following purposes:

- (1) Agriculture, horticulture, floriculture or viticulture on a parcel of less than five (5) acres;
- (2) For-profit educational purposes and such accessory uses as are not permitted in 30-5(a)(2);
- (3) The removal of sod, loam, subsoil, sand and/or gravel from the premises for the purpose of sale;
- (4) The placement or removal of sod, loam, clay, gravel or stone, or other solid material, where the existing contours of the land are to be altered by more than three (3) feet, except when a special permit has been issued for construction under the terms of this ordinance;

Problem:

- 1) Lack of specificity as to how the requirement is to be applied.
- 2) Clarification as to whether there are to be exceptions to the requirement, i.e. garage under, basement doors, terracing, etc.
- 3) Does the Special permit referred to in (4) mean that there is an implied consent to make any grade changes they want? Perhaps it should say "under the terms of this section of the ordinance"
- 4) Garage-under designs are one of the major reasons for problems with the 3' grade change application. They have been exempt from the 3' grade change under the current ISD interpretation. One of the reasons stated for the use of garage under is that if owners/builders are allowed to place garages below grade they do not count against FAR, whereas garages at grade count against the FAR.

Recommendation: Clarification of application and better definition of the meaning of a grade change and how it is to be applied.

Half Story / Dormer Policy

Story, half: A story directly under a sloping roof where the area with a ceiling height of 7'3" or greater is less than 2/3rds the area of the story next below.

Problem: Lack of understanding on the part of architects and the building public of the requirements of the half story / dormer policy. Builders are trying to maximize the square footage of their properties and have been exempted from FAR in the ½ story. The tendency therefore is to maximize the space under the roof and provide dormered space to create more saleable and useable space under the slope ceiling area. Need better definitions of the meaning and the parameters of the ½ story / dormer policy.

Recommendation: It should not be policy, as it is currently, but rather codified in the ordinance, with illustrations, showing exactly how the ordinance is to be interpreted.

De minimis Rule

(c) Regardless of whether there are increases in the nonconforming nature of a structure, the board of aldermen deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to chapter 40A, section 6 of the General Laws. The following alterations, enlargements, reconstruction of or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that (1) relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming, (2) the resulting changes on the nonconforming side will be no closer than five feet to the side or rear property line, (3) the resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the two adjacent lots, and (4) the resulting construction will meet all building and fire safety codes:

(1) Dormers that do not extend above the height of the existing roof peak and do not add more than four hundred (400) square feet of floor area;

and otherwise conform to the half story and dormer policy (definition)

(2) Decks or deck additions or porches less than two hundred (200) square feet in size; ? definition of deck vs. porch?

(3) First floor additions in the side and rear setbacks which do not total more than two hundred (200) square feet in size; ? How many times? Any restrictions?

(4) Second floor additions which do not total more than four hundred (400) square feet in size; ? How many times? Any restrictions?

(5) Enclosing an existing porch of any size; ? definition of deck vs. porch? Could a deck become a porch, become a room, become the base for a 2nd story addition?

(6) Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;

(7) Bay windows which protrude no more than three (3) feet into the front setback and are no less than five (5) feet from the alteration to the lot line;

(8) Alterations to the front of the structure if within the existing footprint; and

(9) Alterations and additions to the front of a structure of not more than seventy-five (75) square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

Does this mean the (75) square feet is the footprint at ground level or a total of (75) square feet on both the 1st and 2nd floors? How many times? Any restrictions?