

**DEBRA WALLER**  
**Candidate for Ward 5 City Councilor**

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## Spotlight on the Proposed Rezoning's Severe Parking Restrictions

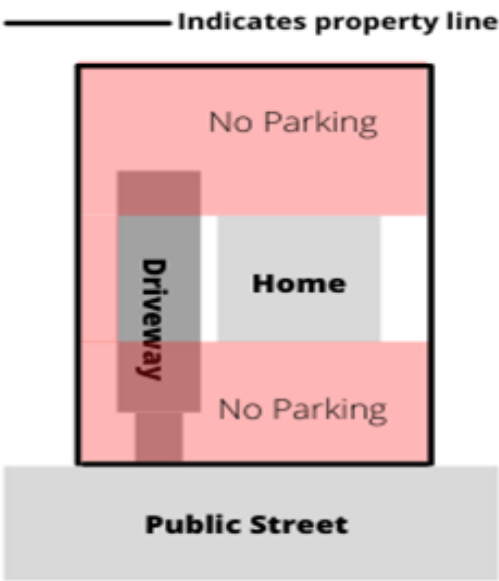
**Dear Neighbor,**

I am running for the office of Newton Ward 5 City Councilor in the November 2<sup>nd</sup> election. To read about me and all my positions, please visit [WallerForNewton.org](http://WallerForNewton.org). This Newsletter is focused only on the rezoning effort as it applies to parking.

If elected, I would vote AGAINST the Planning Department's proposed comprehensive rezoning of Newton. This comprehensive rezoning is in the form of a completely [new 232-page 10/19/18 zoning ordinance](#) and zoning redistricting map that was submitted to the City Council's Zoning and Planning Committee (ZAP) by the Mayor's Planning Department on 10/22/18. Since then, there have been 37 ZAP/City Council meetings and 1100+ PowerPoint slides about this proposed rezoning, most of them on the five drafts of Article 3 - the article that contains restrictions on properties in residential zoning districts, including restrictions on residential parking. Not much has changed over the course of these 37 meetings, 1100+ slides, and five drafts, however, from the initial 10/22/18 draft through the latest 4/26/21 draft when Article 3 was ambiguously "tabled" or "set aside for now."

What is unambiguous? It is unambiguous that Article 3 will come roaring back to life when the new City Council is installed in January 2022. More importantly, it is unambiguous that the new City Council will eventually be **voting** on Article 3 and the rest of the Planning Department's proposed comprehensive rezoning of Newton in its 2022-2023 term. **That is why it is important for the voters in the 11/2/21 election to understand the proposed rezoning now and to vote for me if they are against it.** If voters wait until the proposed rezoning is put before the 2022-2023 City Council for passage, that will be too late. I would be voting against the proposed rezoning for two reasons. First, many of the desired outcomes (fewer teardowns, more affordable housing), can be achieved by modifying the existing zoning. Second, the comprehensive rezoning is so huge and complex that it will have many undesired outcomes for residents, outcomes that residents are unaware of.

The Planning Department's proposed rezoning, especially the rezoning of the residence districts, contains many anti-resident and pro-developer features. These features are often disguised as solutions to important problems such as climate change or affordable housing, but they are often just ways to encourage owners of smaller and older homes to sell their properties by making the properties less livable. This increases the likelihood of teardowns and the continued replacement of smaller homes with oversized homes.



**Figure 1**

One of most important anti-resident features of the Planning Department’s proposed rezoning is the Article 3 severe parking restrictions, shown in Figure 1 and Table 1. The latest [4/26/21 proposed rezoning draft Section 3.7.1](#) prohibits parking in your own driveway in front of your home. There is also no surface parking in the rear setback, which the rezoning is increasing from 15' to 30' to 40' from the rear property line for most homes. In addition, there is no paving for 3' from the side property line and driveway entrances must be narrowed to 12'. Furthermore, the requirement to supply any parking spaces for one/two-families is removed, meaning clogged streets and tougher competition for limited on-street parking. These are all new rules about your private property and neighboring private properties. These are not new rules about street parking. If enforced, the new Section 3.7.1 will dramatically decrease private property parking, especially for smaller garage-free homes, and it will increase on-street parking.

Current and Proposed Residential Parking Zoning Rules for Single/Two-Family Homes as of 4/30/21		
Parking Zoning Rule	Current Zoning	Proposed Zoning
Parking space supply requirement.	Minimum of 2 parking spaces required per residential unit.	No parking spaces required.
Parking restrictions within minimum FRONT setback distance and/or in front of house.	One parking space allowed, no closer than 5' from the street.	No parking spaces allowed.
Parking restrictions within minimum SIDE setback distance from side property line.	Two parking spaces allowed.	Two parking spaces allowed, BUT driveways must now be located at least 3' from the side lot line.
Parking restrictions within minimum REAR setback distance [1] from rear property line	No restrictions.	No driveway parking spaces allowed. Detached garages still allowed.
Driveway Width Dimensions	The entrance/exit drive widths must be between 12' and 20'.	One-way driveways no wider than 12' at property line and this limit extends 5' to 10' back from line - depending on zoning district.
Specified power of the Newton government to selectively remove nonconforming parking spaces. Note that parking spaces are NOT grandfathered and protected by state law in the way that structures are.	No powers specified.	Proposed Section 10.5.3: "Reviewing boards or officials may require nonconforming site characteristics to be brought into partial or full conformance with the provisions of this Ordinance as a condition applied to the grant of a discretionary or administrative approval."
Rear setbacks are also being changed from 15' to 30' to 40' in the proposed zoning for most of Newton's single/two-family homes. This means that the proposed zoning prohibits parking in the rear 30' to 40' of most Newton single/two-family homes. A review of the zoning codes of the 60 densest Massachusetts municipalities did not reveal a single other instance of this severe prohibition.		

**Table 1**

**Newton’s Proposed Parking Specifications Seem Unusual. Are They?**

Yes. The proposed specifications for single/two-family homes shown in Figure 1 and Table 1 are both severe and unique, compared to all other moderate-to-high density Massachusetts

municipalities. This comparison is eye-opening in that it reveals how little the Planning Department understands Newton's physical environment or respects the residents who live in it.

Massachusetts has 351 municipalities, and I reviewed the parking zoning codes of the 60 densest ones, based on the U.S. Census 2019 estimates of municipalities with populations greater than 5K. This sample of 60 contains 53% of the Massachusetts population and ranges from Somerville at 19.7K people/sq. mile down to Marlborough at 1.9K people/sq. mile. Newton at 5K people/sq. mile ranks 22 out of 60, right between Worcester and Waltham. Here is what I found.

Newton's proposed rezoning removes the current zoning requirement that single/two-family homes supply two spaces/dwelling unit. Of the 60 municipalities in the sample, only four lacked a minimum parking requirement and all four had much lower densities than Newton - under 3K people/sq. mile, compared to Newton at 5K people/sq. mile. (While Somerville does require one space/dwelling unit, it does remove this requirement in transit areas.)

Newton's proposed rezoning changes the current code's front driveway allowance of one parking space (at least 5' from street) to zero parking spaces allowed in the entire front setback and/or in front of home. **The proposed allows no parking in the driveway in front of the home where many Newton residents park today.** Of the 60 municipalities in the sample, only six had prohibited front setback parking and all six had much higher densities than Newton - over 8.8K people/sq. mile, compared to Newton at 5.K people/sq. mile.

Newton's proposed rezoning changes the current code's rear setback's lack of any parking restrictions - to a total ban on surface parking within the rear setback, which the proposed zoning is also increasing from 15' to 30' to 40' from the rear property line for most single-family homes. **The proposed zoning allows no surface parking in the rear setback where many Newton residents park today.** Of the 60 municipalities in the sample, **none** had this type of rear parking restriction and most codes, in fact, encouraged rear parking. Note that the proposed Newton prohibition is ostensibly being done to reduce impermeable surfaces, but the rear setback ban is only on surface parking. Detached rear garages are still allowed in the rear setback even though driveways and garage roofs are both impermeable surfaces. And there can be a driveway to this garage, but no one can park on the driveway in the front or rear setback.

All of these three severe and unique parking specifications (no minimum parking requirement, no parking in front setback, no parking in rear setback) have been present in the Planning Department's proposed rezoning since their original 10/19/18 draft, but almost no residents know about them.

### **But Isn't my Entire Property Given Grandfathered Legal Exemptions from the Proposed Parking Rules?**

No. Unlike most other features (structures, uses, many lot dimensions) on your property, nonconforming parking spaces do not appear to be given grandfathered protections against enforcement under Massachusetts or Newton law.

When a zoning ordinance is changed, some properties may become legally nonconforming, meaning that they were conforming under the old zoning ordinance, but they are no longer conforming under the new zoning ordinance. There are both Massachusetts state laws and Newton zoning ordinance sections, however, that protect property owners from being forced to change most, **not all**, features of their properties to conform with any new zoning ordinance. **Many people think these laws give "grandfathered protections from enforcement" to all existing features on their single/two-family lots, but this is not the case.**

In Massachusetts, the relevant state law that protects legal nonconformities is [M.G.L. 40A, § 6 Existing structures, uses, or permits; certain subdivision plans; application of chapter](#). This law protects nonconforming structures and uses, as well as most, **not all**, lot dimensions for single/two-family homes. **None of these M.G.L. 40A, § 6 protections appear to apply to surface parking, such as parking in your driveway.**

In addition to state laws, there are also Newton zoning ordinance sections that protect property owners from being forced to change most, **not all**, features of their properties to conform with any new zoning ordinance. The current (11/5/20) Newton zoning ordinance section containing these protections is [Section 7.8: Nonconformities](#). The proposed Newton zoning ordinance section containing these protections is [Article 10: Nonconformity](#). **None of these Newton zoning ordinance section protections (current or proposed) appear to apply to surface parking, such as parking in your driveway,**

The current zoning's Section 7.8 does not mention surface parking at all nor any other feature that could be interpreted as surface-parking. The proposed rezoning's Article 10 is much more explicit, in a confusing reverse-order way, that A) existing "site characteristics" are not protected against the enforcement of new zoning regulations, and B) parking is a "site characteristic." Article 10 also gives Newton government the power to require parking, as a "site characteristic," to be brought into conformance as part of discretionary or administrative approval, something they could not require if parking was protected by M.G.L. 40A, § 6.

Importantly, however, there is nothing to stop the Newton government from selectively enforcing its severe new parking restrictions for any reason, even outside a discretionary or administrative approval process, **because there appears to be no protective law in place to stop them.** This means that residents can lose the use of nonconforming parking spaces on their property - even if they have used those parking spaces for decades.

In my opinion, the Newton government probably would not enforce the severe parking restrictions for everyone. Instead they would be selectively and subjectively enforced - which is worse. As with the rezoning ordinance's subjective house type assignments, the rezoning ordinance, if passed, would enable the Newton government to enforce the "no parking" rules on a property before the property's sale, but then stop enforcing them after a sale. Or if property owner A was objecting to new construction on abutting property B during a special permit process, property owner B could then use the new parking regulations as leverage against property owner A. Either way, Newton residents would be giving up important rights if the new parking regulations were passed.

### **[This is So Unbelievable and Complicated. What Does the Newton Law Department Say About Enforcement of the Proposed Parking Restrictions on my Property?](#)**

Nothing. The Law Department has said **nothing** about enforcement of the proposed parking restrictions at any Zoning and Planning Committee (ZAP) meeting. In fact, the Law Department has studiously maintained a three-year silence about the relationship of the proposed comprehensive rezoning and nonconformities during all 37 ZAP meetings about the comprehensive rezoning. **This has allowed the public and ZAP to assume that the proposed parking restrictions are given grandfathered legal protections when this appears not to be the case.** Indeed, the format of the [10/19/18 proposed comprehensive rezoning draft](#) seems designed to create this false assumption - with the severe parking restrictions being presented in Section 3.7 on page 54 and the lack of grandfathered protections against parking restrictions being presented in Article 10 on page 205, 150 pages later.

During the summer of 2020, it became apparent that the proposed Article 3 dimensional standards would greatly increase the nonconformity rates of single/two-family structures, requiring more expensive Special Permits for residential construction. The severity of the proposed Article 3 rezoning on homeowners was communicated to ZAP in a [9/30/20 letter](#) from a group of seven

building professionals who had been advising the Planning Department on the rezoning. In response to the building professionals' letter, Councilor Marc Laredo and two ZAP Committee members, Councilor Pam Wright and Councilor Lisle Baker, wrote a [10/5/20 letter](#) requesting, among other items, that ***"The Zoning and Planning Committee should be advised by the Law Department how homes which might become nonconforming under the proposed new zoning can be protected or find relief if changes need to be made;"***

ZAP Chair Deb Crossley and the Law Department, however, evaded this crucial City Councilor request about the protection of nonconforming homes under the comprehensive rezoning. Rather than the Law Department answering the Councilors' specific request to advise ZAP about how *"homes which might become nonconforming under the proposed new zoning can be protected,"* [the Law Department only discussed the proposed garage ordinance at ZAP on 11/23/20](#). The proposed garage ordinance was entirely separate from the comprehensive rezoning and only involved straightforward restrictions on garage structures, not surface parking.

Newton does not need an evasive ZAP Chair nor an evasive Law Department. **We need a Law Department that wants to publicly answer City Councilor questions so that Newton residents can understand what proposed legislation will mean to them personally – if enacted.** We don't need a Law Department that either avoids important questions or, even worse, gives a private answer to the City Councilors when legislation is being considered (*"Don't worry. Of course, residents can keep their parking."*) and then later uses the enacted legislation against residents (*"Sorry. Section 3.7 says your parking is illegal and neither M.G.L. 40A, § 6 nor Article 10 protections apply to parking."*) This Newton Law Department silence with regard to the rezoning will be pursued further in a subsequent newsletter.

## Reasons to Vote for Me

As a City Councilor, I would pledge to inform and be informed by residents as directly and simply as possible. My long career in mechanical engineering and in financial market risk management has given me an understanding of the quantitative trade-offs in problems and their proposed solutions. It has also given me the ability to acquire and present data in an accessible and complete manner such that everyone can understand these trade-offs for themselves. For more information, visit my website [www.WallerForNewton.org](http://www.WallerForNewton.org) or email me at [Debra@WallerforNewton.org](mailto:Debra@WallerforNewton.org).

Please vote for me on November 2<sup>nd</sup> as your Ward 5 City Councilor.

Debra Waller

