

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
No.

FREDERICK ARNSTEIN, PETER BRUCE,)
 LAURA DUFFY, BERYL GILFIX, PHILIP)
 GRACEFFA, PETER F. HARRINGTON,)
 MARILYN JUSTICE, PETER MORRIS, JAMES)
 PACHECO, MOLLY-JANE RUBINGER, BRUCE)
 RUBINGER, DIANNE SANBORN, PAMELA)
 SHUFRO, and NORMA SWENSON,)
)
 Plaintiffs,)
 v.)
)
 CITY OF NEWTON and the)
 NEWTON HISTORICAL COMMISSION,)
)
 Defendant.)

5/23/2022

NH

RECEIVED

COMPLAINT

1. This case, brought by more than ten taxable inhabitants of the City of Newton (“City”), seeks to restrain the unlawful erection of a building over a public park, restrain the unlawful expenditure of public funds to do so, and to correct errors in the proceedings of the Newton Historical Commission (“Commission”), which declined to accept the landmark nomination for the historic building that the City plans to raze in order to construct a new building over the park.
2. No record of the Commission’s vote was ever recorded with the City Clerk, and no minutes of that meeting have been published yet. A transcript (“Tr.”) of the Commission’s March 24, 2022 hearing on this matter is attached as Exhibit A.
3. The City’s planned demolition and park conversion, and the Commission’s vote in violation of its own criteria, would result in the loss of one of Newton’s most iconic buildings, originally the Newtonville Branch Library, located at 345 Walnut Street (“Subject Property”).

4. The City's planned demolition of a historic building and construction of a new building over a public park violate Article 97 of the Amendments to the Massachusetts Constitution.

5. The Commission's vote to reject the landmark nomination constitutes an abuse of discretion that is arbitrary, capricious and not supported by substantial evidence in the record, and should be annulled.

Parties

6. Plaintiff Frederick Arnstein, who resides at 7 Briar Ln., Newtonville MA, is a "Person aggrieved" as defined in Newton Ordinance 22-60 because his home lies within same historic district as the Subject Property, the Newtonville Historic District. He is also a taxable inhabitant of Newton.

7. Plaintiff Peter Bruce, who resides at 11 Claflin P., Newtonville MA, is a taxable inhabitant of Newton.

8. Plaintiff Laura Duffy, who resides at 447 Lowell Ave., Newtonville MA, is a taxable inhabitant of Newton.

9. Plaintiff Beryl Gilfix, who resides at 121 Cherry St., West Newton MA, is a taxable inhabitant of Newton.

10. Plaintiff Philip Graceffa, who resides at 33 Bemis Rd., Newton MA, is a taxable inhabitant of Newton.

11. Plaintiff Peter F. Harrington, who resides at 157 Lowell Ave., Newtonville MA, is a taxable inhabitant of Newton.

12. Plaintiff Marilyn Justice, who resides at 37 Walden St., Newtonville MA, is a taxable inhabitant of Newton.

13. Plaintiff Peter Morris, who resides at 22 Walnut Place, Newtonville MA, is a “Person aggrieved” as defined in Newton Ordinance 22-60 because he owns adjoining property within a hundred feet of the Subject Property. He is also a taxable inhabitant of Newton.

14. Plaintiffs James Pacheco and Dianne Sanborn, who reside at 48 Circuit Ave., Newton MA, are taxable inhabitants of Newton.

15. Plaintiffs Bruce Rubinger and Molly-Jane Rubinger, who reside at 47 Cabot St., Newton MA, are taxable inhabitants of Newton.

16. Plaintiff Pamela Shufro, who resides at 20 Blithedale St., Newtonville MA, is a taxable inhabitant of Newton.

17. Plaintiff Norma Swenson, who resides at 144 Ridge Ave., Newton MA, is a taxable inhabitant of Newton.

18. Defendant City of Newton is a municipal body, corporate and politic, established under a municipal charter in 1971. The City’s principal place of business is located at Newton City Hall, 1000 Commonwealth Ave., Newton MA.

19. Defendant Newton Historic Commission is a municipal body designated as the approval authority under the Newton Landmark Preservation Ordinance, s. 22-60. The Commission’s principal place of business is located at Newton City Hall, 1000 Commonwealth Ave., Newton MA. Each of the individual members of the Commission is sued in her or his official capacity.

Site

20. The Subject Property lies at the southwest corner of Walnut and Highland streets in Newtonville on a 26,000+/- square foot (.6 acre) lot.

21. The Subject Property includes a public park on some 4,000+/- square feet (15%) of land in front of the building along Walnut Street.

22. The Subject Property is part of the Newtonville Historic District, which includes 140-odd additional buildings spread over 1,720,689 square feet (39.5 acres) in Newtonville.

23. Plaintiffs Arnstein and Morris own and reside in the same Newtonville Historic District.

24. The Subject Property is listed on the National Register of Historic Places and treated at the “Preservation” Level outlined in the U.S. Secretary of the Interior’s *Standards for the Treatment of Historic Properties*, which places a premium on the retention of historic fabric through conservation, maintenance and repair.

History

25. The Subject Property was built in 1938 with government funds from the New Deal program known as Public Works Administration, which contributed a grant of \$49,500 accounting for about 45% of the cost of the library building.

26. The site was “taken in fee for municipal purposes” by the City of Newton “for a public library and library grounds purposes.” 9/20/1938 Deed, recorded at Middlesex South Registry of Deeds in Bk 6239, Pg 369.

27. A citizens group called the Newtonville Library Association, Inc. also raised funds that were contributed toward the acquisition of the Subject Property.

28. The Newtonville Branch Library, the largest of the half dozen branch libraries in Newton, was designed by renowned architect E. Donald Robb, a resident of Newton, whose firm also designed the National Cathedral in Washington, D.C. and the Cathedral of St. John the Divine in New York.

29. Incorporated into the design of the library were two stained glass windows, donated by fellow Newton resident Charles J. Connick, among the foremost stained glass craftsmen of his day, whose works remain national treasures featured in St. Patrick’s Cathedral and St. John the

Divine in New York.

30. The two stained glass window medallions that embellish the gabled wings of the library were designed to inspire readers by evoking two famous poems: Emily Dickinson's "There is no frigate like a book" and Robert Frost's "Mending Wall".

31. Mr. Frost, who was a friend of Connick's, attended the library's dedication on December 1, 1939 when he read his poem, which includes the apt lines: "Before I built a wall I'd ask to know / What I was walling in or walling out, / And to whom I was like to give offense. Something there is that doesn't love a wall, / That wants it down'." (Frost, "Mending Wall")

Rededication of the Newtonville Branch Library to a Senior Center

32. In 1992, after a new central library was built in Newton, the City transferred the Subject Property "to the Human Services Department for use as a senior center." (3/2/1992 Board of Aldermen Order #367-91, p. 1)

33. The 1992 Board Order mandated "That all feasible means be taken to preserve and/or replace the architectural elements, both interior and exterior, which give the building its historic character, including, but not limited to, doors, windows, casework and vaulted ceilings. Any necessary exterior alterations of the building or site shall be reviewed and approved by the Newton Historical Commission." (3/2/1992 Board of Aldermen Order #367-91, para. 2)

34. The Senior Center interior remodeling largely retained the architectural elements of the historic Newtonville Branch Library, including the Dickinson and Frost stained glass windows.

Public Park using Public Funds for a Public Purpose

35. In 2004, the repurposed Senior Center used \$271,210 in funds from the Community Preservation Act ("CPA") to upgrade the "library grounds" in front of the building deeded in trust since 1938 for "municipal purposes".

36. In the application for CPA funding for “The Park at The Newton Senior Center” (“Park”), the stated purpose was to “provide a fully accessible, passive recreation public park for people of all ages and abilities to gather, rest, read, play board games, talk, eat, and generally enjoy the conveniently accessible public space.” (10/15/2004 Application for Community Preservation Funding, The Park at the Newton Senior Center, p. 4)

37. The Park was developed in accordance with the City of Newton’s Recreation and Open Space Plan, as stated in the CPA Application: “The proposed Park at the Newton Senior Center will help the City fulfill the need for additional, small pocket parks. It will be both a neighborhood gem and a city treasure. Newton’s Recreation and Open Space Plan also defines the need to . . . serve the general population. . . . The Park at the Newton Senior Center is specifically designed to welcome people of all ages and abilities, and encourages interactions among these groups.” (Id. p. 5)

38. The Newton Community Preservation Committee recommended the use of public funds for the Park because a park for recreational use is an authorized use under the CPA: “The Park at the Newton Senior Center complies with the definition of recreational use under s. 2 which includes, but is not limited to . . . the use of land as a park.” (2/8/2005 Memo from CPC to Bd. of Aldermen)

39. The City of Newton through its Board of Aldermen appropriated the full sum (\$271,210) requested by the Senior Center and recommended by the CPC for the Park. (4/4/2005 Board of Aldermen Order #68-05)

Planned Demolition of the Historic Building and Conversion of the Public Park

40. On September 24, 2020, the City presented plans to the Commission that would raze the historic building on the Subject Property, and construct a new building on the site over the Park

(Project # 20090019, Newton Center for Active Living “NewCAL”).

41. If constructed, the NewCAL building would exceed 600 square feet in area on the ground where the Park is presently located.

42. The City has already expended public funds for the NewCAL project, including \$500,000 appropriated for the design from the American Rescue Plan Act in 2021.

43. According to the City, the total cost of the NewCAL project is currently estimated to be \$16.5 million.

44. As a result of the additional funds required for the NewCAL project, the City is about to raise or expend money or incur obligations that will bind the City.

45. The Commission determined unanimously (with one abstention) that the Subject Property is “historically significant” and “preferentially preserved” due to its “architectural integrity and historic context.” (10/2/2020 Newton Historical Commission Demolition Review Decision, Project # 20090019) As a result, the Commission imposed a demolition delay for 18 months until March 24, 2022.

46. At its meeting on that date, March 24, 2022, when the demolition delay expired, the Commission voted (2-5) to decline the nomination to landmark the building. (3/24/22 Tr. p. 7-8)

Commission’s Public Meeting and Vote Rejecting Landmark Nomination

47. At the outset of the meeting on whether to accept the landmark nomination, the Commission’s Chairman stated “the primary purpose of NHC [is] to preserve and protect Newton’s historic structures. Our view is to limit demolitions and encourage restorations whenever possible.” (Tr. p. 1)

48. The Chairman indicated that two City Councilors and three Commissioners made the nomination to landmark the Subject Property, and explained that if “NHC determines to accept

the nomination of the property, the NHC shall hold a public meeting prior to a vote on whether to designate the property as a Landmark.” (Id.)

49. The Commission received more than 1900 letters and petitions regarding the landmark nomination for the Subject Property.

50. Among other comments at the March 24, 2022 meeting, Commissioners stated:

- I don’t like seeing this building demolished. I think all of our commissioners share in that feeling. The building is clearly a service significant. We voted so and found the building to be preferably preserved in September 2020 and imposed an 18-month demolition delay that expires this month. (Tr. p. 2)
- We have volumes of information about the historical significance. My fellow commissioners, if you would vote “no” on the eventual designation, then there’s no reason to vote “yes” now and further delay the senior center process and create uncertainty that the Historical Commission could bring the process to a grinding halt and kill this location. (Tr. p. 3)
- this is becoming politicized in an interesting way that preservation is not inherently supposed to be. And I think, as a commission, our job is to...we’re not supposed to be thinking about function or use, right. Everyone’s making a comparison to, well, if this were a parking lot I would landmark it. We are looking at the architectural and historical significance, and if we feel that were that to be a parking lot, we should want to save this building, we should be wanting to save this building regardless. It is about, you know, whether we are retaining that history, or whether we are moving past it and demolishing it. (Tr. pp. 4-5)
- I think a more conclusive study needs to be completed. It’s the responsibility of the Historical Commission to take a good, solid look at these things and not make a political decision. (Tr. p. 5)
- And, you know, as far as the park goes, at the front of the building. It is a park. It was described by the Aldermen as a park when they funded it. It may not be on the City’s list of parks, but if it acts like park, and it looks like a park, and it’s called a park, you know, you gotta call it a park. And there are restrictions about using parks and for getting rid of parks under State law. So, I think we really need to study this more and I’m going to recommend and to look for a motion to accept the nomination, and to ask for further study. (Tr. p. 6)

51. Among the Commissioners who participated and voted at the March 24, 2022 hearing was John Rice, a recent appointee, who was formerly a member of the working group for the NewCAL project on behalf of the City.

52. At the hearing, Commissioner Rice stated: “I was on the building committee of the NEWCAL senior center from the beginning in 2018. I was the City Council representative, one of the City Council representatives for the building committee. So, I have literally been to hundreds of meetings as commissioner Morse has said and hundreds and hundreds of hours listening to people about this project.” (Tr. p. 3)

Newton Landmark Preservation Ordinance

53. The Newton Landmark Preservation Ordinance was enacted in 1993 for “the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the city of Newton, Commonwealth of Massachusetts or the United States of America.” (Newton Ordinances s. 22-60(a), citing Ord. T-288, 9-9-93)

54. In addition to that lofty goal, the Landmark Preservation Ordinance specifically discourages the “destruction of or damage to” historical resources and encourages compatible development. (Id.)

55. The Subject Property was eligible for landmark nomination under Section 22-62 of the Landmark Preservation Ordinance because it is listed on the National Register of Historic Places.

56. The Subject Property was nominated under Section 22-63 of the Landmark Preservation Ordinance by two City Councilors and three members of the Newton Historical Commission.

57. Under the Landmark Preservation Ordinance, once an eligible property has been nominated, “the commission shall determine whether to accept the nomination and conduct further study of the nominated property.” (Id. s. 22-63(c))

58. There are four criteria in the Landmark Preservation Ordinance that the Commission may consider in its determination whether to accept a landmark nomination, as follows:

The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:

(1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;

(2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;

(3) the property’s identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or

(4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America. (Id.)

59. Some of these same criteria for landmark nomination are repeated in the separate section for landmark designation, which would follow in a different public hearing after a property’s nomination has been accepted. (Newton Ordinances s. 22-64)

60. Based on a 2020 amendment to the Landmark Preservation Ordinance, additional criteria come into play at the designation phase, including “the property’s context in relation to the City’s policies and adopted plans and the property’s surrounding area.” (Id. s. 22-64(c)(3))

61. This criteria in section 22-64(c)(3) for the designation phase does not appear among the criteria for the nomination phase in section 22-63.

62. At least one of the Commissioners who voted against accepting the landmark nomination for the Subject Property cited the designation criteria of section 22-64: “I’m focused on our charge under section 22-64 of the landmark ordinance In determining to designate properties of the landmark, this commission must also consider the property’s context in relation to the City’s policy and adoptive plans.” (Tr. p. 2)

63. The Landmark Preservation Ordinance sets forth general factors to be considered by the Commission in all landmarking matters, including:

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, and material of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area. (Id. s. 22-67(a))

64. In the case of demolition or removal, the Landmark Preservation Ordinance specifies additional factors for the Commission to consider:

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship. (Id. s. 22-67(c))

65. The Landmark Preservation Ordinance prohibits the Commission from factoring into its decisional calculus criteria that do not relate to its “purpose of preventing developments incongruous to the historical or architectural characteristics of a building: The commission shall not make any recommendations or requirements except for the purpose of preventing

developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.” (Id.)

**Count I – Restrain Erection of Building on Park in violation of Article 97
(G.L. c. 45, s. 7)**

66. Paragraphs 1- 65 are re-alleged.

67. The “library grounds” on the Subject Property were taken by eminent domain in 1938, subject to the municipal purposes expressed in the deed in trust to the City.

68. That open space has been used as a park by the residents of Newtonville since 1938.

69. The Park on the Subject Property was improved using CPA funds that were expressly designated for a public park.

70. As such, the Subject Property is subject to the protections of G.L. c. 45, s. 3, because the City has taken that land by eminent domain and held it in trust since 1938.

71. The NewCAL building would exceed 600 square feet in area on the ground where the Park is currently located.

72. The erection of a building on greater than 600 square feet of a public park violates G.L. c. 45, s. 7.

73. The City may not lawfully construct the NewCAL building on the Subject Property without complying with Article 97 of the Amendments to the Massachusetts Constitution.

74. To date, the City has not sought to remove the Park from Article 97 protection.

**Count II – Restrain Illegal Appropriations in violation of Article 97
(G.L. c. 40, s. 53)**

75. Paragraphs 1- 74 are re-alleged.

76. The City is about to raise or expend money or incur obligations that would bind it, including an anticipated expenditure of \$16.5 million to fund the NewCAL project.

77. The City does not have the constitutional right or legal power to raise or expend such funds without complying with Article 97 of the Amendments to the Massachusetts Constitution.

78. To date, there has been no final determination of the City's appropriations, and the City has not sought to remove the Park from Article 97 protection.

**Count III – Certiorari
(G.L. c. 249, s. 4)**

79. Paragraphs 1- 78 are re-alleged.

80. An action in the nature of certiorari, "correct[s] errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or appeal." G.L. c. 249, § 4.

81. The Commission is the duly authorized municipal body that administers the Landmark Preservation Ordinance, s. 22-60 thru 22-74.

82. The Commission's proceedings are subject to judicial review under G.L. c. 249, s. 4 and the Landmark Preservation Ordinance, ss. 22-71 & 22-72.

83. Plaintiff timely appealed the Commission's March 24, 2022 vote.

84. The Commission's vote to decline the landmark nomination for the Subject Property was contrary to the expressed purposes for Landmark Preservation Nominations under section 22-60 of the Newton Landmark Preservation Ordinance.

85. The Commission's vote to decline the landmark nomination for the Subject Property was based on a misapplication of the incorrect criteria for Landmark Preservation Nominations under section 22-63 the Newton Landmark Preservation Ordinance.

86. At least one Commissioner impermissibly considered designation-phase criteria (s. 22-64) that does not apply to the nomination phase (s. 22-63).

87. The Commission's vote to decline the landmark nomination for the Subject Property was contrary to the permissible factors for Landmark Preservation under section 22-67 of the Newton Landmark Preservation Ordinance, including specific factors related to demolition and removal.

88. The Commission misinterpreted the Landmark Preservation Ordinance, relying on impermissible criteria, failing to consider germane factors, and operating beyond its remit, all in violation of the Newton Landmark Preservation Ordinance.

89. The Commission's vote to decline the landmark nomination for the Subject Property is not supported by substantial evidence in the record of its proceedings. To the contrary, there was overwhelming evidence in the record that the Subject Property qualified for landmark nomination under the correct criteria of the Landmark Preservation Ordinance.

90. The Commission's vote to decline the landmark nomination for the Subject Property was arbitrary and capricious where three Commissioners nominated the Subject Property but only two of those members voted to accept their own nomination.

91. The Commission's vote was also procedurally flawed when one of its members participated and voted despite a conflict of interest, which infected the integrity of the proceedings.

92. The Commission's vote should be annulled as it is not supported by substantial evidence, is arbitrary and capricious, exceeded the Commission's authority, and is based upon errors of law apparent on the face of the record.

Prayer For Relief

WHEREFORE, the Plaintiffs request that this Court:

1. Annul the Commission's vote;
2. Determine that the Subject Property qualifies for nomination under the criteria of the Landmark Preservation Ordinance;

3. Order the Commission to consider only the criteria set forth in the Ordinance in determining whether to accept the landmark nomination of the Subject Property;
4. Enjoin the City from erecting any building that exceeds 600 square feet over the Park before complying with Article 97;
5. Enjoin the City from expending money or appropriating funds on the NewCAL project before complying with Article 97;
6. Award Plaintiffs costs and fees in this action; and
7. Grant Plaintiffs such other relief as it deems just and proper.

Respectfully submitted,
PLAINTIFFS,
By their attorneys,

/s/ Dennis A. Murphy

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Dated: May 23, 2022

EXHIBIT A

1:15 Peter Dimond: I'm Peter Dimond, Chairman of the Commission. For those new to our work, the primary purpose of NHC to preserve and protect Newton's historic structures. Our view is to limit demolitions and encourage restorations when ever possible. We know that many of you are here for the discussion and vote on the acceptance of the Landmark nomination for 345 Walnut Street, the Senior Center. We will get to that soon as it is the second item on our agenda. In the meantime, please bear with us and thank you for your patience.

(Discussion of 236 Auburn Street.)

7:14 Peter Dimond: Next on the agenda is whether to accept the nomination of 345 Walnut Street. Currently, there are 30 Landmark properties in the city including the Masonic Hall, at Walnut and Newtonville Ave. Under the City's Landmark Ordinance, a property can be nominated for Landmark status by at least one City Councilor and one member of the Historical Commission. In this case, 2 Councilors and 3 members of the Commission made the nomination. From the Ordinance, and I'm just going to read the Ordinance so that everyone will understand what brought us to this place, so bear with me.

“At this or subsequent meetings, the Commission shall determine whether to accept the nomination and conduct further study on the nominated property. The Commission may accept the nomination of the building, structures, landscape, and places upon an initial determination that such property may meet one or more of the following criteria:

1. The property significantly represents an architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials and craftsmanship;
2. The property is meaningfully associated with a person or persons who significantly contributed to cultural, historic, architectural or archeological aspects of the City of Newton, The Commonwealth of Massachusetts or the United States of America.
3. The property's identification as a notable work an architect, designer, engineer or builder whose work is significant in the development of the City of Newton, The Commonwealth of Massachusetts or the United States of America.
4. Historic events or activities occurred at the property that made an outstanding contribution to, or best represents, some important aspect of the history of the City, the State or the country.

If the NHC determines to accept the nomination of the property, the NHC shall hold a public meeting prior to a vote on whether to designate the property as a Landmark. The public hearing shall be held not less than 30 days and not more than 90 days from the date of the NHC determination to accept the nomination.”

So, there you have what brought us here. Over the course of the last month or so, the Commission has receive more that 1900 hundred letters and signed petitions representing a full range of thinking by senior citizens, architects, historic preservationists, and other local residents and others living around country.

Newton Historic Commission Meeting – March 24, 2022

<https://newtv.org/recent-video/107-committee-meetings-and-public-hearings/7432-newton-historical-commission-landmark-application-for-senior-center>

Comments have included solid support for building a new senior center at the current site, building a new senior center on another site, and incorporating the new senior center as part of the existing building. Out of all the communication we received, not one, said, not one, that we do not need a new senior center. For your consideration, every one of the 1900 letters and signed petitions are posted on the Historical Commission's portion of the City's website.

Tonight, you will be hearing from two City Councilors who co-nominated 345 Walnut street for Landmark designation, Tarik Lucas and Julia Malakie. Following their comments, you will be hearing from the City's Commissioner of Public Buildings, Josh Morse, and his team.

So, that said, let's get started. Councilors Malakie and Lucas, please.

(Transcription continues when the Commissioners begin their discussion of the landmark nomination.)

1:23:53 Peter Dimond: Thank you, Josh. You can stop sharing now, please. OK, welcome back everyone. Do members of the Historical Commission have questions or comments?

1:24:07 Doug Cornelius: Thank you, Councilor Malakie and Councilor Lukas for their application and presentation, and thanks to Josh and his team for providing the background on the City's policies and procedures. You know we're charging the landmark coordinates to promote the educational, cultural, and general welfare of the public who preservation and protection of the distinctive architecture and other characteristics of buildings in Newton. That's section 22-60 of the landmark ordinance.

I don't like seeing this building demolished. I think all of our commissioners share in that feeling. The building is clearly a service significant. We voted so and found the building to be preferably preserved in September 2020 and imposed an 18-month demolition delay that expires this month. I'm focused on our charge under section 22-64 of the landmark ordinance pointed out by Josh's team.

In determining to designate properties of the landmark, this commission must also consider the property's context in relation to the City's policy and adoptive plans. I don't believe that this gives the City Carte Blanch to do whatever it wishes. It does require us to balance of the historical nature of the property against the City's plans and policies.

If the City were planning to tear down the building to pave over the site for a parking lot, it'd be an easy decision to intervene. But here we are presented with building a new senior center to replace the demolished senior center, a building that needs to have universal accessibility. The Americans with Disability Act is not a design law, it's a civil rights law. Those ADA design guidelines are merely minimums required not to violate the civil rights of those with mobility issues. I can't think of a building more important to have full and universal accessibility than the senior center.

I don't think the historical commission should be usurping the hundreds of meetings and thousands of hours of time that the City is has put into planning, designing and programming the new senior center. There are historical mitigations and plans while creating a universally accessible, barrier-free building. While the existing building has historical merit, I believe the City's plans and policies are much more important for this project.

Newton Historic Commission Meeting – March 24, 2022

<https://newtv.org/recent-video/107-committee-meetings-and-public-hearings/7432-newton-historical-commission-landmark-application-for-senior-center>

I am strongly opposed to landmarking the building and I don't think we need to further study the building. We have volumes of information about the historical significance. My fellow commissioners, if you would vote "no" on the eventual designation, then there's no reason to vote "yes" now and further delay the senior center process and create uncertainty that the Historical Commission could bring the process to a grinding halt and kill this location. Thank you.

1:26:38 Peter Dimond: Anyone else on the Commission have a comment or question?

1:26:43 John Rice: I'd like to follow on Doug's comments, but I support everything he said. I'd just like to follow up on a number of things.

I was on the building committee of the NEWCAL senior center from the beginning in 2018. I was the City Council representative, one of the City Council representatives for the building committee. So, I have literally have been to hundreds of meetings as commissioner Morse has said and hundreds and hundreds of hours listening to people about this project.

I appreciate what Councilors Lukas and Malakie for bringing this to the Historical Commission, because just to have this discussion and how historic can impact the future in the building. But I also appreciate what Commissioner Morse has done in the process of explaining with the limitations. I can be speaking because of all the hours I put into this project, I could be speaking forever. But I believe that Commissioner Morse has done a very good overview of all the issues and limitations about having it as a the senior center.

But the most important thing is how it is going to have a significant negative impact on accessibility, and we've so many meetings with people in the disability community about how this would have a significant negative impact on the use of the building.

And the other thing is this where the existing building sits on the site. I would love to have the building at grade level the closer to the edge on Wall Street, which would make it a much better opportunity to integrate the building into a new senior center. But where it sits on the side and how it's accessible doesn't work for the future of the senior center.

I think this is a great building, but as Doug Cornelius has said, if we were to turn it into a parking lot I would landmark it. I got my library card in this building in 1964. It was my library. And I think it's a great building, but it's not going to work as a future senior center. And there are hundreds and hundreds and there are thousands of people in the city who are going to benefit for having a much better senior center by having a new building.

I would also like to talk about, there's been a lot of feedback about well, if we get rid of the gym we can make it a much smaller building. We can push it back and re-use the existing site. For the last 17 years, I have been running the Hyde Community Center which has a gym in Newton Highlands. For the last 4 years we have been donating our gym to use for senior services to do Tai Chi, to do Zumba, to do Yoga and to do many athletic programming for the senior services, and people have been in that gym and they realize they need a bigger space. The need open space to do this kind of programming. We have a 5,000 square foot gym which matches up with the gym that would be in this new senior center.

Newton Historic Commission Meeting – March 24, 2022

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There's also a discussion about where we're destroying a park in the front of the building. As a city Councilor for 10 years, I was chairman of Programs and Services for 6 of those years. And I had a lot of interaction with the Parks and Rec. Commission⁴s and Parks and Rec. Department about different parks within the city. If you go to the website, it doesn't view this front of the senior center as parkland. I'm currently, after I left City Council after 10 years, I am now a Parks and Rec. Commissioner as well as being a Historic Commissioner. And the Parks and Rec. Commission... There's a number of things to be considered parkland. And it does not... So the front of the senior center does not have a park's restriction and it's not part of the Parks and Recreation open space and recreation plan. And so, in other words, yes, I was at the meetings where people were giving their feedback about Albemarle and that's when the Parks and Rec Commission decided that Albemarle was not the solution for the new senior center.

The space in front of the new senior center, the space in front of the senior center as it exists now is not parkland we would be losing because a significant amount of space that will be used for the community. For people to get together in passive and active recreation in front and by the sides of the senior center.

So, like Doug Cornelius, from the Historic Commission, I will not be voting for landmarking. I will not be voting for nomination of landmarking, and I believe that the delay of 6 months where this project has been starting in 2018 and with, it would be a significant impact on the seniors in the city and how it impacts the residents and the seniors as well. Thank you.

1:32:22 Peter Dimond: Thank you, John. Anyone else on the Commission have a comment or a question? Harvey. You're muted.

1:32:31 Harvey Schorr: I'd like to say that I wholeheartedly support the remarks that both of the other commissioners have made. I think Doug gave a great synopsis. I will admit that I was a little skeptical of landmarking at the outset, and actually found the work done by Epsilon to be extremely persuasive.

One of the, I mean it seems to me that it actually does the sort of things that a study of a study, landmark study would do. And one of the aspects that I thought which I thought was extremely interesting but wasn't included in tonight's presentation was the summary included in the materials furnished to the Commission members of classical and colonial revival buildings that had been landmarked.

Much as we might like the library, I think when you look at other examples of landmark buildings, it I pretty clear on its face that the library does not rise to the same level of these other landmarked facilities. So, I, too, will join the two preceding speakers in declining to proceed with a landmark study.

1:34:06 Peter Dimond: Amanda, you had your hand up.

1:34:10 Amanda Park: I have a lot of thoughts, but the preliminary or over-arching one is that this is becoming politicized in an interesting way that preservation is not inherently supposed to be. And I think, as a commission, our job is to... we're not supposed to be thinking about function or use, right. Everyone's making a comparison to, well, if this were a parking lot I would landmark it.

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We are looking at the architectural and historical significance, and if we feel that were that to be a parking lot, we should want to save this building, we should be wanting to save this building regardless. It is about, you know, whether we are retaining that history, or whether we are moving past it and demolishing it. And, I think, I'm just, sorry, stay with the main point, because I have a lot of other little ones if you're going into the nitty-gritty of the landmarking, or of the history that was presented by Councilors Lucas and Malakie, with I thought was super comprehensive and wonderful and interesting.

However, I feel like what we are tasked with is to assess the historical value, and to say well, we don't want to see this building adaptively reused, because it's too inconvenient or because we've had these meetings. That's just a different issue, and I think we need to keep it very black and white. Do we want to learn more information about this? Are we trying to protect our landmarks? Are we interested in protecting our possible landmarks, and knowing as much as we can know? Or, are we saying that we always, you know, kowtow to whatever the political agenda is of the City?

Sorry, I know that is a controversial statement, but I feel like that's the position we're being put in.

1:35:43 Peter Dimond: Thank you, Amanda. Anyone else on the commission? Comment?

Well, you know I've been looking at this for a long time, and I think that the argument has shifted from saving the building to building a great facility that seniors deserve. And I think everyone, everyone here believes that the seniors should have a great new building. The question is why is the City picking on the historic old library, senior center as a site?

I can't believe that there's not a better site in the city that has parking. This site has no parking and seniors are going to have to walk a far distance in ice and snow and cold to get to the building. It's a bad location, but it's set up, that the argument has been you either support the senior center or you support historic preservation. They are two totally separate things, and you can do an analysis of the building and say the building, well, the heights are wrong, and you know I think everyone would agree. The heights are wrong for a senior center, but it doesn't mean the senior center has to be at that location.

I think it really does a disservice to cram a building like that into a tiny space and say, well, this is a great facility for seniors. It's clearly not. It wasn't even in the top 6 locations selected by the committee who's working on this to say, what's the best location for this in the city. It wasn't in the top 6, and they're settling for an insufficient space because they think that there are no other spaces.

So, I'm disappointed by Epsilon's review, because they left out a lot of the historical details that were so interesting as presented by the City Councilors and in the material submitted to us, that I think a more conclusive study needs to be completed. It's the responsibility of the Historical Commission to take a good, solid look at these things and not make a political decision. I think it's grossly unfair that Josh, as tenacious as he is and I applaud him for that, made it saying, well, if you do another study that's going to cost us a half a million dollars. It's like, it's totally an unfair way to present to the Historical Commission. We're all volunteers, we're all taxpayers in Newton and to say you have to decide now otherwise it going to cost us, is totally inappropriate and I think. ou know, to move ahead.

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I talked to John Rice a couple of months ago and he said that he thought it was wrong the wrong location – unless I'm putting words in his mouth.

And, you know, as far as the park goes, at the front of the building. It is a park. It was described by the Aldermen as a park when they funded it. It may not be on the City's list of parks, but if it acts like park, and it looks like a park, and it's called a park, you know, you gotta call it a park. And there are restrictions about using parks and for getting rid of parks under State law. So, I think we really need to study this more and I'm going to recommend and to look for a motion to accept the nomination, and to ask for further study.

1:39:38 Douglas Cornelius: Peter, if I could just respond to Amanda's statement, saying, "You know that politics got involved." Again, we're tasked with preservation but we're tasked with administering the ordinance as it's written, and the ordinance as written says we DO have to take into account the City's policies and plans.

1:40:01 Peter Dimond: It doesn't mean it has to get torn down.

1:40:05 Amanda Park: Sorry, that is not how I would interpret it, and I don't think that it's sort of boilerplate kind of ordinance that other cities have and certainly that is not the interpretations across the country.

1:40:15 John Rice: Peter, can I also clarify your comment that you made that I said that it was the wrong location?

1:40:20 Peter Dimond: Yes.

1:40:22 John Rice: The discussion was, was it the best location. It wasn't, I wasn't, we weren't talking about, the discussion wasn't the wrong location. Because there's only so much open space in the city and we're not allowed the parkland. And we did have to cut down the amount of space for the building to fit into the site of the Newtonville Library. There were some better spots that weren't being able to be used because of recreation. So, it is the best land, the best opportunity to actually have a senior center that the seniors can actually use.

1:40:57 Peter Dimond: Is it not a park that would also have to be replaced?

1:41:02 John Rice: No. It would not have to be, it wouldn't be part of that whole recreation re-use process.

1:41:10 Peter Dimond: Ok. Harvey.

1:41:13 Harvey Schorr: I would like to take a different sort of tack. Let's assume for the sake of argument that the building is studied and landmarked, and the senior center finds a new home someplace else. It seems to me that the accessibility issues in this building are so monumental that it will never find a use and what we will end up with as a landmarked building that's an empty shell and basically of no particular good to anyone other than as a memento of the 1930's.

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1:41:55 Peter Dimond: You know, I've thought a lot about that, and I think the building might be used for maybe something like affordable housing. If it's landmarked and could be reused that way, or maybe the building could be exchanged with one of the new buildings space on Washington Street. That maybe the City can do some sort of exchange for the value of the senior center as housing first and have a new location on Washington Street with enough parking to serve everyone. So, I think there is some application for that building.

1:42:31 Harvey Schorr: Well, any of these scenarios would require substantial modification of the building. It doesn't lend itself to obvious reuse for any of the sorts of scenarios that you're suggesting. I mean I can't think of a practical use for this building that would end up being, that would allow us to have our cake and eat it too. To preserve the building and have a use in it that makes that preservation a virtue.

1:43:06 Peter Dimond: OK. Anyone else on the Commission have a comment or a question?

1:43:12 Mark Armstrong: Yeah, I'll chime in. You know, I think Harvey's really encapsulated it, and Doug as well. I think, you know, if this building rose to the level of detail and study of the neoclassical style, if it was a really good example of that, then, yeah, let's preserve it. But it's really, it's actually a pretty pedestrian example of this style. The mitigation efforts by the building department to preserve the details, the light fixtures and things like that, are really commendable. I think those are really the best parts of the building. The stained glass and things like that.

But I think that, if I can share my screen, let me see if I can. You know, we're not talking about a building like this which I am familiar with, which is a library in New England. What they've done is they've -- can you see this everyone? -- they have preserved the room, they've preserved the façade of the building. But what I want to call your attention to is the detail of the building. That is a beautiful building that they preserved, and that they've gone to the effort to preserve. We don't have in this situation.

We don't have that kind of building at our disposal that we really revere. That we really respect. It's a great place and it's been useful over the many years, but it was a one-off building. It's for a single purpose. And, it's really difficult to adapt. Now the picture that I showed you was a library being adapted and expanded as a library. So it made sense to do that. It was a beautiful facade. But in our case I don't think we have that and I don't think it rises to the level of nomination.

1:45:31 Peter Dimond: Ok. Anyone else have a comment? Would anyone care to make a motion to accept the nomination of 345 Walnut Street?

1:45:44 Amanda Park: I'll make the nomination.

1:45:47 Peter Dimond: OK. Anybody second. I will second the motion. Under section 22-63 of the City's Landmark Ordinance to authorize the City's Chief Preservation planner to conduct the study of its historical significance.

Mark, how do you vote: No.

Doug: No

Harvey: No.

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Nancy: No.

John: No.

I am a Yes.

Amanda: Yes.

The motion is defeated. It is not landmarked. Thank you all for your time and participation. We appreciate it very much. (ended 1:46:51)