

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, APRIL 13, 2015

Present: Ald. Johnson (Chairman), Yates, Baker, Sangiolo, Hess-Mahan, Leary, Danberg and Kalis

Also Present: Ald. Laredo, Crossley and Albright

Planning & Development Board Present: Scott Wolf (Chairman), Peter Doeringer, John Gelcich and Jonathan Yeo

City Staff Present: James Freas (Acting Director, Planning & Development), Eve Tapper (Acting Associate Director, Planning & Development), Judith Menon (Community Development Program Manager), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#376-14      PLANNING & DEVELOPMENT DEPARTMENT requesting that **Chapter 30 ZONING** be deleted in its entirety and replaced with the Zoning Reform Phase 1 Zoning Ordinance. [10/22/14 @ 7:48PM]

**ACTION:**      **HELD; PUBLIC HEARING CONTINUED 8-0**

**NOTE:** Ald. Johnson opened the public hearing and invited James Freas, Acting Director of the Planning Department, to address the Committee. He explained that Phase 1 of zoning reform consists of reorganizing and clarifying the existing zoning ordinance and modernizing the document. To facilitate those goals, more illustrations were added, a new organization system was introduced, tables were constructed, and links were added to connect related sections of the ordinance for ease of use. Mr. Freas provided a PowerPoint presentation which is attached to this report.

Pertinent Documents

The Zoning Reform Group report was the genesis of the Phase 1 project and can be found at <http://www.newtonma.gov/civicax/filebank/documents/45333>

Another key document, the Assessment Memo laid out the plan for the project and can be found at <http://www.newtonma.gov/civicax/filebank/documents/50141>

The Phase 1 Draft of the Zoning Ordinance can be found at <http://www.newtonma.gov/civicax/filebank/documents/65171>

Mr. Freas noted that a significant amount of work has gone into Phase 1. The project kicked off in March, 2013 and has been 2 years in the making. At least 8 meetings have taken place in the Zoning & Planning Committee reviewing and discussing the document line by line. Countless staff hours with the Planning and Law Departments were invested as well. The Zoning Reform Advisory Group was incredibly helpful at the beginning of the project and assisted with

refinements along the way. Mr. Freas thanked everyone involved in the project for their hard work.

### Substantive Changes

The goal of Phase 1 was also to avoid substantive changes, which would be taken up in Phase 2. There were 2 substantive changes that did fall into Phase 1: changing the official zoning map to a digital map; and the introduction of a set of guidelines for the Commissioner of ISD to determine the “use” of a property that does not currently exist in the ordinance.

### Public Comment

*Ron Mauri, Bradford Road* submitted comments via email and they are attached to this report. His public comment was consistent with the submitted comments. He also mentioned that the Look Up Table was only posted on the website this past Friday at 5pm and he felt more time was needed to review that as well as the entire document and a longer period of public review would be reasonable. He asked that the public hearing be continued for these purposes.

*Peter Nannucci, Cask Avenue* spent time reading through the draft ordinance and he found cases where inconsistencies have either remained or have been introduced. Mr. Nannucci submitted his comments via email and they are attached to this report. His submitted comments were consistent with his public testimony.

*Alan Schlesinger, Westchester Road*, said the current ordinance is complex, opaque and rife with internal inconsistencies. He was pleased to serve on the review Committee and finds this important work. The perfect should not be the enemy of the good and the ordinance as proposed is a very significant improvement and the key to move forward with Phase 2. Even if Phase 2 did not move forward, the work on the document is a big improvement.

*Phil Herr, Marlborough Street*, agreed with previous speakers. He decided to use the new version of the ordinance alongside the current version to see if one was easier than the other. In the one example he tested, he did not find anything that was incorrect, just differences in the way things were expressed. It would be a good thing if the City could publicize that it was anxious to hear from people to learn where improvements could be made in order to make the document clearer. The new draft is a great improvement on the current ordinance and the process should move forward.

*John Koot, Winchester Street*, praised the immense effort that has been made to make the ordinance more user-friendly and most methods used have been highly successful. He found, however, that the regulations on development of rear lots, on accessory apartments, on the development of wireless mesh networks, and on the building of structures for religious or educational uses, that in each of these cases there is a provision that says the applicant shall also notify in writing immediate abutters and the aldermen of the ward in which the device/project is to be erected. If a permit is issued, if it's for something that effects the height, mass or footprint of a building and it doesn't require a special permit abutters do not need to be notified. The onus is on the resident to do a weekly check to see if a permit has been issued for a nearby property. If a resident doesn't catch this, the 30-day appeal period can pass. There is a tab on the assessors

database to get a list of abutters to any property. He felt that any permit that would affect the neighborhood should require abutter notification.

*Rena Getz, Pine Ridge Road*, said James Freas and Marie Lawlor did an incredible job on this document. She thinks it is important for the document to reach a final stage that will stand any legal challenge. Between the old and the new document, there should be a final check to be sure everything is there and where it should be. Maybe an external audit should take place to be sure of that. There are some issues with 30-26 and she will send those concerns to Mr. Freas. She didn't want this to come back with problems.

Seeing no request for further comment, Ald. Johnson closed public comment for this evening.

#### Committee Comments/Questions

Committee members thanked James Freas, Marie Lawlor and all those who worked so diligently on this project.

It was asked if referral of controversial use determinations can be sent to an independent body, such as the Planning Board, instead of to the Commissioner of ISD as the sole arbiter. Mr. Freas said the language for that provision is existing language and noted that it is standard language and a common provision in many zoning ordinances. Any discussion of a change to that would be reserved for Phase 2.

Some Committee members urged the Committee, Planning and Law Departments to make an effort to make this document as error-free and clean as possible and get it to the full Board with the fullest confidence. Other members hoped that the process would not be too bogged down by over-analysis so that it can continue to move forward.

The Planning & Development Board asked if the online version or the hard copy version in the Clerk's office would be the official version of the zoning ordinance once this is complete. Mr. Freas said there are ongoing discussions with the Clerk's office and the desire is to have both versions simultaneously updated and available. There has been an unnecessary degree of confusion at the ISD counter and having matching versions would solve that problem. It was explained that the official version of the rest of the ordinances would still be the hard copy held in the Clerk's office. Just the zoning ordinance would have an official online version.

It was asked if a Municode system would be used and if the zoning ordinance would be separate from the rest of the ordinances. Other communities use this system and she has found it very easy to do searches and Newton's systems is not easy. Mr. Freas said the City will not be using Municode and the zoning ordinance will be incorporated into the rest of the ordinances. It will be in a pdf format with active links. Municode, in the past, does not deal with illustrations very well. The prospect of using Municode is something that the City Clerk and the full Board should discuss. Ald. Sangiolo would like to have that conversation and perhaps docketing an item to do so would be most effective.

Follow Up

Ald. Johnson will continue the public hearing and this item will be taken up at the May 11 Zoning & Planning Committee meeting. She welcomed input from all interested parties but asked that they send in any comments as soon as possible and prior to the May 11 meeting. Mr. Freas said he has documented all the comments that were made this evening and will review the ordinance. He invited any interested parties to meet with him and walk through the document and the comments that were submitted. He acknowledged that errors were pointed out by the speakers, some points made were misunderstandings that could be explained, and some issues were purposefully being held over to Phase 2. The goal is to have a final, accurate document that the Committee can recommend to the full Board.

The Committee voted to hold the item and continue the public hearing to May 11<sup>th</sup>.

#80-13            THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]

**ACTION:**        **HELD 8-0**

**NOTE:** This item was discussed in conjunction with the previous item, therefore, the Committee voted hold.

#426-13            ALD. HESS-MAHAN requesting periodic updates on development of the Consolidated Plan for the City of Newton Housing and Community Development Program and the WestMetro Home Consortium. [12/06/13 @ 9:51 AM]

**ACTION:**        **HELD 7-0 (Ald. Danberg not voting)**

**NOTE:** Eve Tapper, Acting Associate Director of the Planning Department, explained that the Consolidated Plan has been in development for a long time and must be submitted to the Department of Housing and Urban Development (HUD) by April 15, 2015. The Board of Aldermen must vote to submit the document in order for the City to be eligible to receive grant funding. If it is not submitted by the deadline, the City will forfeit the almost \$3M in grants.

The Consolidated Plan is a 5-year plan which is a guide to how the money will be spent. The Annual Action plan for FY16 is a specific plan for how the money will be spent in the fiscal year. The Citizen Participation Plan was revamped and the rules were changed in 2013 to allow the Board to review and authorize submittal of the Plans to HUD. A docket item was submitted to allow that approval and will be on the April 27<sup>th</sup> Zoning & Planning Committee agenda and then go to the Full Board on May 4<sup>th</sup>.

Ms. Tapper presented a very detailed PowerPoint presentation which is attached to this report which explains the process and the details of the Consolidated Plan and the Annual Action Plan. The Consolidated Plan/Annual Action Plan can be found at <http://www.newtonma.gov/civicax/filebank/documents/65555>

Committee Questions/Comments

It was asked if each project has to be specifically described in order to receive funds. Ms. Tapper said there is a requirement to submit a Consolidated Plan to HUD to explain how the money will be spent. If they are not as specific as they would like in the plan, there is a process that includes recommendations from the advisory committees, the Planning & Development Board and the Mayor's signature for individual projects over the 5 years so there is a process to change things. As long as Newton is an entitlement community and the plan is submitted, it will receive the money.

Ms. Tapper explained that the Consolidated Plan contains a section on needs assessment and asks the City to identify financial and regulatory barriers. HUD then asks how the City will overcome those so they need strategies and ideas but the plan is to work with other agencies in the City and the Board of Aldermen to make changes, if changes are possible.

It was asked if there will be about \$88K a year under the new CDBG plan for neighborhood projects. Ms. Tapper explained that in FY16 that 5% of the total grant is \$88K. The plan for each year is to have 5% allocated towards neighborhood improvement projects. If the City receives more or less money, that will be adjusted accordingly. Ald. Yates said the Upper Falls Greenway needs about \$80K to complete. He asked how they could request those funds. Ms. Tapper explained that the plan first needs to be submitted and the neighborhood advisory committees need to be appointed as the current terms of members all end with the end of the last Consolidated Plan. Upper Falls would have to appoint their advisory committee at the beginning of the fiscal year. It was asked if the area councils could be involved. Ms. Tapper said not all areas have area councils so it is up to the neighborhood. The Mayor needs to appoint people but the meetings are all open to the public.

It was asked how the 800 units of affordable housing could be accomplished over 6 years as proposed. It does not seem realistic. Ms. Tapper said it is challenging but possible. She said there is a distinction between units that can be eligible for listing on the subsidized housing inventory. If a rental development has 25% of its units affordable, all the units in the development are listed on the subsidized housing inventory – Avalon is an example. It doesn't mean all the units created are actually affordable units. The Consolidated Plan's goal is 800 units and there is some funding to help the City get there, but more is needed and the Planning Department is working on a housing strategy. Some members think this sounds like a housing production plan and hope this moves forward.

There was some concern and some were offended by a particular sentence in the Consolidated Plan "Due to political pressures in the City, larger-scale housing projects that could create a significant number of affordable housing units without the need for large public subsidies face long approval processes. These barriers, including coordinated neighborhood opposition, make such projects cost-prohibitive for a developer to attempt." These large projects are projects that the Planning Department has spoken out against, Wells Ave., Rowe Street for example. It was felt that language like that did not belong in a city document and was inappropriate.

Ms. Tapper said a lot of time was spent coming up with the needs of the community and then they go into the document. HUD has very specific questions they want answered so some of that language goes to answering their questions. It is a very cumbersome document which in great part is due to the format and requirements from HUD. The language is in direct response to HUD's request for an analysis to the impediments to affordable housing. It is not meant as a criticism, it is just a discussion of the process that takes place in the City. It is meant as a factual statement as to the impediments and not a judgement and not meant to be offensive. Ald. Johnson felt there was a bit of editorializing on this and there could be a better way to describe the process.

It was asked how the Economic Development Funds will be dispersed and for whom will they be used. Ms. Tapper said these funds are not new monies and are in the revolving funds and have been used for loans to microenterprise and other types of projects. The funds come into the City through that account as program income. It is federal money but it has been churning over a number of years. In the past, there has been trouble finding programs under the EDC umbrella that are doable in this City and do not cause regulatory issues for the entrepreneurs so they have not always been well used. They did a much deeper evaluation this year and they have about \$140K in that account. The Plans can be amended to add more money to these funds going forward if something worthy develops that require more resources.

The Planning & Development Board stated that neighborhood improvement funds should be targeted to low and moderate income and the Planning & Development Board is going to carefully evaluate each project to make sure the money is being well spent and targeted in that direction.

#### Follow Up

Ald. Johnson asked for a grid of some kind to synthesize this information. The Consolidated Plan is a lengthy document and it would be helpful for the Board and for the public to have a 2-3 page document in order to crystallize the pertinent information. She would like to have that available for the April 27<sup>th</sup> meeting. The Committee voted to hold this item.

#6-15      ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]

**ACTION:**      **HELD 8-0**

**NOTE:** James Freas, Acting Director of the Planning Department addressed the Committee. He noted that the Planning Memo and the RFP which were provided have laid out an objective for a context-based zoning ordinance. Mr. Freas provided a PowerPoint presentation and it is attached to this report.

### Building Types

The notion of a context-based ordinance is to allow development in the City to fit within the context of existing neighborhoods, village centers and commercial corridors: the right buildings in the right places with avoidance of the wrong buildings in the wrong places. One key tool in context-based zoning is building type. It is another category of regulation that states that within a zoning district certain buildings can or cannot exist. In the current ordinance a small bookstore and a large-box bookstore would be considered the same since it is a use-based ordinance. In a context-based zoning ordinance, the design would be more closely studied to determine where it should be located based on its design and size. A smaller store front would be appropriate to a village center, whereas a large-box bookstore would be more appropriate on a commercial corridor. Use is still considered and remains an important part of the ordinance, however.

The dimensional requirements can vary depending on zoning district and within districts you can vary the different types of buildings that are allowed. There might be different categories of residential houses and with the recognition that some of those would be appropriate in some zoning districts but not in others. The current system is relatively uniform regardless of the differences in areas.

### Pattern Book

A Pattern Book would be developed based on the pattern of development that has happened in the City. A map (attached) was developed at the inception of the Comprehensive Plan that shows the development patterns in Newton over time. A Pattern Book starts at this level, looking at existing building types, density, modes of transportation and other issues. Those areas with similar attributes would be grouped and regulated similarly. A Pattern Book looks at existing building stock and creates regulations and general representations of different building types that are found. Basically, the building types represent a palette of opportunity within each district and guide what is desirable for that district.

### Committee Comments/Questions

Committee members asked for an example of context-based zoning use in another community. Mr. Freas said context-based zoning is similar to form-based zoning and Somerville has a draft ordinance pending. Some Committee members were very pleased with this approach. George Proikas from Somerville was mentioned and the YouTube videos he produced. It was asked if Mr. Proikas could come to Newton to discuss how this is working in Somerville and Mr. Freas said he would ask him. If he cannot attend, perhaps the YouTube videos could be played at a Zoning & Planning Committee meeting. The Chairman thought they were very informative.

It was asked what goal is being met by going in this direction. Mr. Freas said he is trying to address the problems that have been identified in the Zoning & Planning Committee in the past year, in particular the “monster” homes and two-family issues as well as problems in the commercial zones.

Some Committee members felt this is a completely different framework, is unexpected and could not be supported. It is unclear whether this could be successful and as many resources as it

would take to work within the current framework, it would take considerably more to make these changes. Perhaps some exploration along these lines might be valid with a pilot study to see what the impacts might be, but a wholesale change is not comfortable at this point. A major shift takes an enormous leap of effort and understanding. It may commit the City into a policy and path that may not prove fruitful as was demonstrated in the village study of several years ago. Mr. Freas said this is his recommended approach and he does not believe the issues that have been identified in this Committee can be addressed within the existing zoning ordinance's framework. The intention is to create a more predictable land use regulation system. It was asked how communities evolve using this approach. Mr. Freas said context-based zoning ordinances are based on either the existing or the desired context, so a conversation has to happen to determine that direction.

It was asked how this might mesh with more sustainable, walkable communities and related issues. Mr. Freas said that would all depend on what policies were adopted with the zoning ordinance to address those issues.

Interim or temporary measures are not precluded as work begins on Phase 2 and that is included in the RFP. Some Committee members asked others to keep an open mind as this could be very effective in protecting the assets that need protecting, but it does need to move forward in the meantime.

Committee members asked if Mr. Freas could create a grid to show the process the Planning staff went through to determine context-based zoning would be the best solution. Take a particular issue and compare how other types of zoning approaches would resolve it compared to the context-based approach. Mr. Freas said he would attempt that. It was also asked that a similar comparison be done between the current ordinance and a context-based ordinance.

Some Committee members were concerned that a pattern book would be choices of cookie-cutter templates and Mr. Freas assured that was not what a pattern book would be.

Ald. Crossley specifically identified storm water as a topic to be addressed in the interim process. She is also looking for clarity on how the physical work of this will be rolled out, how the community will be engaged. Mr. Freas said a working group of Board members would work with the consultant to identify that process at the beginning

#### Resources

The books *A Pattern Language*, by Christopher Alexander and *Image of the City* by Kevin Lynch were mentioned. They might be helpful for the Committee to understand how this might work. She would like to not argue over semantics before even engaging in the process. Jane Jacobs was also mentioned as someone to read as well as William F. White.

Follow Up

Ald. Johnson would like to have Mr. Proikas in to speak to the Committee. She asked the Committee to keep an open mind and think big. Mr. Freas will work on the two grids comparing other types of ordinances, including the current Newton ordinance, and context-based zoning. The Committee voted to hold this item.

**Ald. Johnson asked the Committee to review the memo that references these remaining items and it is attached to this report for easy reference. She would like that to be part of the discussion at the May 11<sup>th</sup> meeting. The following items were held without discussion:**

#154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @11:34AM]

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#220-12 RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a be clarified with respect to “lot width,” “lot area,” or “lot frontage.”

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#219-12 RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#218-12 RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#217-12 RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#216-12 RECODIFICATION COMMITTEE recommending that the definition of “Space, usable open” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.

**ACTION: HELD 7-1-0 (Ald. Yates opposed)**

#65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.

**ACTION:** **HELD 7-1-0 (Ald. Yates opposed)**

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman