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Barney S. Heath  
Director

**MEMORANDUM**

**DATE:** January 24, 2020  
**TO:** Councilor Deborah Crossley, Chair, Zoning & Planning Committee  
Members of the Zoning & Planning Committee  
**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director of Planning & Development  
Zachery LeMel, Chief of Long Range Planning  
**RE:** **#88-20 Discussion and review relative to the draft Zoning Ordinance**  
**DIRECTOR OF PLANNING** requesting review, discussion, and direction relative to the  
draft Zoning Ordinance.  
**MEETING:** January 27, 2020  
**CC:** City Council  
Planning Board  
John Lojek, Commissioner of Inspectional Services  
Alissa O. Giuliani, City Solicitor  
Jonathan Yeo, Chief Operating Officer

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At the previous ZAP meeting (Jan. 13, 2020) the majority of the committee generally expressed confidence in the restated shared goal of the Zoning Redesign Initiative:

*The Zoning Redesign initiative aims to create a context-based Zoning Ordinance derived from the existing fabric of Newton that is more flexible, predictable, and set up to be more easily amended in the future.*

Councilor Crossley, committee chair, was not in attendance but expressed similar confidence in a subsequent meeting with the Planning Department. This confidence implies a readiness to build from the draft context-based Zoning Ordinance released on October 19, 2018 and begin the difficult work of refining the specific content in order to achieve our goal of full adoption by December 2021.

However, some committee members would like additional information on how the Administration, Planning Department, and ZAP Committee jointly arrived at the *context-based* approach. In addition, committee members wanted to see models of context-based zoning ordinances implemented in other cities. To address these, the Planning Department will present briefly on both requests utilizing previously shared material, and new findings, on these topics.

## Introduction

The Planning Department released the first draft of the new context-based Zoning Ordinance on October 19, 2018. The decision to develop a context-based approach, which fundamentally differs with Newton's existing Zoning Ordinance, began in spring 2015 following the completion of Zoning Redesign Phase I. Through consensus the Planning Department, Zoning and Planning Committee, City Council, and Mayor affirmed this path by approving and authorizing the release of the Zoning Redesign Phase II RFP and contract award to Sasaki. At the onset of Phase II Sasaki, with the Planning Department, presented at the Zoning and Planning Committee on August 22, 2016 defining the project's success as "yield[ing] a context-based zoning ordinance that provides guidance and rules for the development and redevelopment of Newton's neighborhoods and village centers..."

## What is context-based zoning? A hybrid Approach.

Context-based zoning places greater emphasis on the design elements of zoning over more traditional zoning ordinances such as Newton's. This type of ordinance is more specific about issues of building scale, setback, and height – rather than simply setting minimums or maximums, in many cases precise ranges are identified. Generally, these ordinances do not regulate architectural style, addressing only the aspects of building design relating to scale, mass, and placement relative to the street. Land uses are still regulated in these codes similar to traditional zoning ordinances.

For Newton, context-based means a hybrid approach that draws from the best practices of different zoning models (conventional, form-based, performance, etc.). Doing so will not only allow the City to place added emphasis on development that matches a desirable physical character (form-based), but also more strongly regulate the negative effects of development such as traffic and environmental degradation (performance). When it comes to regulating the built environment there is no *best* approach and tackling such diverse goals and issues as sustainability, affordable housing, land conservation, appropriate urban form, etc. requires solutions from various perspectives.

## Why context-based zoning?

*The FAR Working Group Report (2010) determined the existing Zoning Ordinance could not be altered sufficiently to solve the problems facing Newton, such as tear-downs.*

The FAR Working Group was appointed in June 2009 to the study floor area ratio (FAR) in the City of Newton and to propose amendments to the Zoning Ordinance designed to ensure that FAR regulations more accurately reflect current conditions, are easier to apply and enforce, and result in new construction that is in keeping with surrounding structures and the Newton Comprehensive Plan. Two critical findings that both the Zoning Reform Group and the Zoning Redesign efforts used to justify a new Zoning Ordinance format are:

- The City's existing residential zoning districts are too blunt to account for the range of neighborhood character, yet acknowledged the need, at present, to develop FAR recommendations that work within existing zones.

- That a number of elements of massing cannot be regulated by FAR limits, or indeed, by other dimensional controls, but that these nonetheless influence neighborhood character.

*Newton's existing Zoning Ordinance no longer represents the stated values within the City's Comprehensive Plan.*

By definition the Comprehensive Plan (2007) sets forth policies to govern the future physical development of the entire City and guide future actions by the elected officials concerning land use and development regulations. When functioning properly the Zoning Ordinance aligns with the Comprehensive Plan and is a critical tool in implementing its policies. Newton's current Zoning Ordinance substantively remains in the 1950s based on a suburban ideal that simply did not exist then and still does not exist today over the majority of the City, resulting in widespread non-conformity. In reality this means one of the easiest things to do under the current Zoning Ordinance is to tear down a small home and build a significantly larger one out of context with the neighborhood (suburban ideal), while one of the hardest things to do is build modest residential development around village centers with access to public transit and amenities (Comp. Plan ideal).

*Newton's current Zoning Ordinance does not truly function as zoning, rather it manages non-conformity.*

Over 90% of Newton's zoning lots are non-conforming. The Zoning Ordinance can and should provide easy to use rules for making improvements or redeveloping property and ensure that changes in neighborhoods are in keeping with its scale and character. Non-conformity allows individual projects to waive the very components of the Zoning Ordinance put in place to perform the above. Finally, the impact of non-conformity spreads well beyond the built environment and directly into the very functioning of City Hall since many projects most would deem negligible require extensive City Staff and City Council time through the special permit process.

### **Context-based zoning in the U.S.**

Context-based zoning, by definition, is a hybrid approach which means no two codes are the exact same. That said Newton can look at successful models around the United States and draw information and comparisons.

#### [Denver, Colorado](#)

Denver began the process of overhauling its Zoning Ordinance in 2005 and adopted the new code in 2010. It is a hybrid model that pulls heavily from form-based code principles. Like Newton, Denver began their overhaul by analyzing the existing physical and functional characteristics to base their new code on (i.e. Newton's Pattern Book). In addition, the new code drew from the goals stated within Denver's adopted planning documents, which included managing growth in determined areas of change, maintaining areas of stability like desirable residential neighborhoods, promoting its sustainability goals, and achieving excellence in design. Like Newton, Denver's old code contradicted these goals by allowing haphazard and unwanted land use patterns, not supporting mixed-use and pedestrian friendly development, and limiting investment in amenities and services desired by citizens.

Since adoption in 2010 many amendments have been adopted to correct technical issues and clean up, while others were single-topic issues dealt with as they emerged. Overall, users reported satisfaction

because of the stronger framework and rationale for decision making, ease of use and clarity, reduction in special permits, and a simpler administrative process. Finally, an academic review performed in 2017 by UC Irvine professors found that development under the new code more strongly addresses sustainability than achieved under the old conventional code.

### [Philadelphia, PA](#)

Philadelphia updated its Zoning Ordinance between 2008 and 2012. Under the old ordinance the City was hearing between 3,000 and 4,000 variances and conditional permit use (i.e. special permit) requests per year. Through the overhaul, this number was drastically reduced by bringing more properties into conformance and recategorizing many conditional uses as as-of-right uses. City staff now agree the code is easier to use and enforce. To ensure a smooth transition for the code users the City continues to offer trainings for citizens, the development community, and elected officials.

### [Somerville, MA](#)

After 7 years of work Somerville adopted its context-based Zoning Ordinance in December 2019. Like Newton, Somerville extensively analyzed its existing context to properly align the new code to what its citizens knew and loved already, but also responded to the future needs and demands from major infrastructure projects like the Green Line extension, as well as other trends. It is too early to say how the code is functioning, but Somerville is the first and largest municipality in the Boston metropolitan region to adopt a citywide form-based code (FBC) that also incorporates best practices from performance-based and use-based zoning to achieve more than 180 objectives of its Comprehensive Plan.

## **Looking Ahead**

To achieve our goal of adopting Newton's new *Context-Based Zoning Ordinance* by December 2021 the Planning Department requests that the Zoning and Planning Committee approve the context-based approach that the City has been working from officially since 2016. Doing so will frame the City's efforts and establishes a clear focus moving forward to build from the existing draft Zoning Ordinance.

At the next Zoning and Planning Committee meeting (Feb. 10, 2020) the Planning Department would like to present an outlined facilitation process that will allow the committee to manageably hear, review, edit, and adopt this large and complex project Article-by-Article. This committee focused facilitation will be accompanied by a broader engagement strategy built on openness and transparency. Jointly working on, and agreeing to, such a strategy will ensure a clear and efficient path forward.

## **Attachments**

Attachment A Annotated Bibliography, Context-Based Zoning