



## **Zoning & Planning Committee** **Agenda**

### **City of Newton** **In City Council**

**Monday, January 27, 2020**

**7:00 PM**  
**Chamber/Room 211**

#### **Items Scheduled for Discussion:**

##### ***Public Hearing***

#### **Referred to Zoning & Planning Committee**

- #37-20** **Amend ordinances by creating a temporary suspension on landmark designation COUNCILORS ALBRIGHT, AUCHINCLOSS, CROSSLEY, DOWNS, KELLEY, LIPOF, GREENBERG, KRINTZMAN, NOEL, LEARY, AND DANBERG** proposing an amendment to Chapter 22 of the Revised Ordinances of the City of Newton, 2017 to temporarily suspend nominations made by the Historical Commission and the City Council for landmark designations of any land, buildings and structures in the City of Newton in order to allow the City adequate time to review the landmark ordinance and consider what revisions are appropriate. The temporary suspension will prevent and suspend the processing, and approval of any property currently under consideration for landmark designation and will temporarily suspend future landmark designations made by the Historical Commission and the City Council. Landmark nominations made by the Mayor, Director of Planning of Development and the Commissioner of Inspectional Services shall not be affected. This temporary suspension shall end no later than December 31, 2020.  
**Zoning and Planning Held 7-0 on 01/13/20**

***Chair's Note: It is the Chair's intention to take up only part a) of the following item***

- #31-20** **Amend zoning ordinance special permit criteria related to energy conservation COUNCILORS CROSSLEY AND ALBRIGHT** seeking a review and possible amendments to Section 7.3.3.C.5 of Chapter 30, Newton Zoning Ordinance, to:  
a) further inform the objectives of reducing energy consumption and limiting use of natural resources, and b) consider reducing the threshold for compliance to apply the requirement to buildings 10,000 sq. ft. and larger.

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The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

**Referred to Zoning & Planning Committee**

**#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.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

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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:** **#31-20 Amend zoning ordinance special permit criteria related to energy conservation**  
**COUNCILORS CROSSLEY AND ALBRIGHT** seeking a review and possible amendments to Section 7.3.3.C.5 of Chapter 30, Newton Zoning Ordinance, to:  
a) further inform the objectives of reducing energy consumption and limiting use of natural resources, and b) consider reducing the threshold for compliance to apply the requirement to buildings 10,000 sq. ft. and larger.  
**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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David A. Olson, CMC  
Newton, MA 02459

Section 7.3.3 of the Zoning Ordinance provides the criteria that must always be met to grant a Special Permit. Section 7.3.3.C.5, also known as the 5<sup>th</sup> Criterion, currently only applies to projects containing 20,000 square feet or more of floor area and requires that the City Council find that: "In cases involving construction of building or structures or additions to existing buildings or structures, if those proposed buildings or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy."

The Committee will only be discussing part A of the proposed docket item at this time, which seeks to "further inform the objectives of reducing energy consumption and limiting use of natural resources". The proposed new language would require the City Council find that: "In cases involving construction of building or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and

**energy, including in particular: minimizing building operating energy, embodied carbon, the use of fossil fuels and the carbon footprint for transportation to and from the site.”**

The proposed language clarifies the existing criterion and aligns it with the goals of the Climate Action Plan. The Climate Action Plan identifies six areas of action, each aimed towards the long-term goal of a carbon-neutral Newton by 2050. The Climate Action Plan identifies six areas of action, several of which are supported by the proposed language, including:

C. Greening Newton’s Transportation and Streetscapes: *The second largest source of GHG emissions in Newton comes from on-road transportation. The City will support Newton’s residents, workforce, and visitors in switching to better electric and plug-in hybrid vehicles; reducing single-occupancy vehicle trips; and increasing biking, walking, telecommuting, public transportation, and shared trips.*

D. Improving New Construction and Major Renovations: *Energy use reduction and electrification are the backbones of any GHG emissions reduction plan. As new developments are built and renovations are undertaken, the choices made by developers and architects will have a significant impact on the City’s GHG emissions profile. To the extent legally permissible, the City will take steps to ensure that construction meets standards necessary to achieve carbon neutrality by 2050.*

E. Improving Existing Buildings: *Existing residential and commercial buildings in Newton are responsible for a majority of the City’s GHG emissions. The City will work with owners to increase energy efficiency, reduce reliance on natural gas and heating oil, and increase the use of efficient electric technologies in the City’s existing building stock. Moving the needle for existing buildings will require the City to put in place “carrots and sticks” to incentivize significant action by the private sector.*

Construction and renovation of buildings are a major opportunity for the City to further goals for carbon neutrality. The proposed language for Criterion 5 is a step towards this goal as it clarifies the specific areas where the City should prioritize conservation measures, particularly the reduction of fossil fuel use and reducing the GHG emissions from transportation.

**Next steps:** The Committee should set a public hearing for this item.



Ruthanne Fuller  
Mayor

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**RE:** **#88-20 Discussion and review relative to the draft Zoning Ordinance**  
**DIRECTOR OF PLANNING** requesting review, discussion, and direction relative to the  
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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



The Planning Department released the first draft of the new *context-based* Zoning Ordinance on October 19, 2018. Exploration into a new ordinance began with the Zoning Reform Group in 2011, while 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. Below represents a compilation of where, when, and how this occurred between 2015 and the present.

### *Zoning and Planning Committee*

#### 1) ZAP Meeting [Memo](#) and [Report](#) (Docket #6-15)

*Date:* April 13, 2015

*Who:*

- Committee Councilors – Johnson (Chairman), Yates, Baker, Sangiolo, Hess-Mahan, Leary, Danberg and Kalis
- Other Councilors Also Present – Laredo, Crossley and Albright
- Planning & Development Board – 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)

*What:* With the completion of Phase I the Zoning and Planning Committee undertook how to proceed with Phase II. This meeting is one of the first introductions and discussions on utilizing a *context-based* approach. The memo states what *context-based* zoning is, how a pattern book can be used as the foundation for such zoning, and provides examples of a *context-based* zoning ordinance and pattern books. The memo is a high-level document. The conversation that followed illuminated a divide within the Committee on whether the City can address the issues, laid out in the Zoning Reform Group Report and that arose from the completion of Phase I, by solely amending the current Zoning Ordinance or must the City develop a new framework entirely. The Planning Department recommended that the issues identified by the Committee and beyond required a new framework.

#### 2) City of Somerville Zoning [Presentation/Transcript](#) and ZAP [Report](#)

*Date:* June 8, 2015

*Who:*

- Committee Councilors – Johnson (Chairman), Danberg, Hess-Mahan, Leary, Yates Kalis, Sangiolo, Baker
- Other Councilors Also Present – Gentile, Ciccone, Norton, Brousal-Glaser, Rice, Blazar, Fuller, Lappin, Albright, Crossley
- Planning & Development Board – Scott Wolf (Chairman), Roger Wyner, John Gelcich and Jonathan Yeo
- City Staff Present – James Freas (Acting Director, Planning Dept.), Marie Lawlor (Assistant City Solicitor), Maura O’Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk), Maureen Lemieux (Chief of Staff/Chief Financial Officer), Dori Zaleznik (Chief Administrative Officer), Alex Valcarce (Deputy Commissioner of Public Buildings), Rafik Ayoub (Project Manager (Public Buildings Department), Alice Ingerson (Community Preservation Planner), Lisa Dady (Director of the History Museum), Elaine Gentile (Director of Environmental Affairs), Eve Tapper (Acting Associate Director of Planning), Liz Valenta (Housing Planner), Leo Brehm (Director of Information Technology; School Department), and David Wilkinson (Comptroller)

*What:* At the request of the Committee George Proakis, Planning Director for the City of Somerville, joined the meeting to discuss the experience that Somerville has had with their zoning reform process. At the time Somerville had released a draft *context-based* Zoning Ordinance and was going through the revision process to create an adoptable version, expected in 2016. The committee asked Mr. Proakis numerous questions that are all stated and answered within the transcript. The Planning Department suggested that Newton learn from Somerville’s experiences moving forward, which the committee found valuable as well.

3) ZAP Meeting [Report and Presentation](#) (Docket #6-15)

*Date:* June 16, 2015

*Who:*

- Committee Councilors – Johnson (Chairman), Danberg, Baker, Hess-Mahan, Yates, Kalis, Sangiolo and Leary

- City Staff Present – James Freas (Acting Director, Planning & Development), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Maura O’Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

*What:* At this meeting the Planning Department used its presentation, and subsequent discussion, to dive deeper into what George Proakis presented at the previous meeting. Through the discussion Councilors gained an understanding of the various tools used within a *context-based* approach, how they work conceptually, and how they can be applied in Newton through discussing real issues like tear-downs and snout houses. Following the discussion of tools the Planning Department, City Staff, and the Committee discussed a dual path forward (begin the data gathering process for the Pattern Book/*context-based* Zoning Ordinance while also amending the existing code for the most pressing issues). Commissioner Lojek and the Committee Chair strongly cautioned about this dual path because the current zoning is “broken” and that it would detract from the overall goal of comprehensive reform. **It should be noted the City did proceed with this dual approach and we have successes (accessory apartments) and failures (garage ordinance).**

4) ZAP Meeting [Report](#) (Docket #6-15)

*Date:* July 20, 2015

*Who:*

- Committee Councilors – Johnson (Chairman), Danberg, Hess-Mahan, Leary, Yates, Kalis, Baker
- Other Councilors Also Present – Albright, Crossley
- City Staff Present – James Freas (Acting Director, Planning Dept.), Marie Lawlor (Assistant City Solicitor), Maura O’Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

*What:* Most of the conversation focused on the draft RFP that the City eventually awarded to Sasaki for the Zoning Redesign Phase II work. Councilors explained how critical the RFP was because it establishes the road map forward, if the City does not ask for the right things then what is eventually produced will not help. **It was made clear that the RFP is directed towards producing a new zoning ordinance.** The Committee was divided on whether the RFP should move forward with requesting master plans or a pattern book, but the Committee did agree a choice needed to be made. The Planning Department stated they firmly agree with the pattern book approach. **The pattern book**

**path was chosen, while simultaneously the Planning Department did undertake master planning projects in the form of Vision Plans and Comprehensive Plan updates.**

5) ZAP Meeting [Report](#) (Docket #115-16)

*Date:* April 11, 2016

*Who:*

- Committee Councilors – Hess-Mahan (Chairman), Sangiolo, Danberg, Leary, Yates, Kalis, Baker, Albright
- Other Councilors Also Present – Fuller, Ciccone, Norton, Brousal-Glaser, Blazar, Lappin
- City Staff Present – James Freas (Acting Director, Planning Dept.), Maura O’Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk), Shawna Sullivan (Committee Clerk)

*What:* Following a joint meeting with the Finance Committee on March 28, 2016 the Zoning and Planning Committee voted to approve the funding for Zoning Redesign Phase II as laid out in the RFP (approved in fall 2015), which Sasaki successfully won.

6) ZAP Meeting [Memo](#) and [Report](#) (Docket #80-13)

*Date:* August 22, 2016

*Who:*

- Committee Councilors – Hess-Mahan (Chairman), Sangiolo, Leary, Yates, Kalis, Baker
- City Staff Present – Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Alice Ingerson (Community Preservation Manager), Marie Lawlor (Assistant City Solicitor), Lily Canan Reynolds (Community Engagement Manager), Karyn Dean (Committee Clerk)

*What:* This meeting formally introduced the consultants (Sasaki) to the Zoning and Planning Committee. Sasaki presented the work plan for Zoning Redesign Phase II and a discussion followed. It was clear that Phase II would consist of the comprehensive approach (pattern book and new *context-based* Zoning Ordinance) and interim solutions adopted into the existing Zoning Ordinance (accessory dwellings, inclusionary housing, signs, etc.). Building from the Committee approved RFP Sasaki defined Phase II 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...”

*FAR Working Group*

1) FAR Working Group Final Report (Docket #142-09)

*Date:* May 2010

*Who:*

- Working Group Members – K. Edward Alexander (AIA) , Chris Chu (architect), Henry Finch (architect), Thomas Greytak (homeowner), Treff LaFleche (architect), Peter Sachs (architect), Alan Schlesinger (attorney)
- Working Group Staff – Mike Kruse (Director, Planning Dept.), Candace Havens (Interim Director, Planning Dept.), Jen Molinsky (Principle Planner, Planning Dept.), John Lojek (Commissioner, Inspectional Services)

*What:* The FAR Working Group was appointed in June 2009 to 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.