



Zoning & Planning Committee **Agenda**

City of Newton **In City Council**

Monday, February 24, 2020

7:00 PM
Chamber/Room 205

Items Scheduled for Discussion:

Public Hearing-on part a) only

#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.

Zoning and Planning Held 7-0 on 01/27/20

#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.

Zoning and Planning Held 7-0 on 01/27/20

Note: The Chair intends to seek a vote of No Action Necessary on this item:

#99-20 **Referred to Zoning & Planning and Programs & Services Committees**
HER HONOR THE MAYOR requesting amendments to the City of Newton Ordinances, Chapters 3, 7, 10, 13, 17, 18, 20, 21, 22 and 30 to rename the Department of Parks & Recreation to the Department of Parks, Recreation and Culture.

Respectfully Submitted,

Deborah J. Crossley, Chair

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 or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



Ruthanne Fuller
Mayor

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Department of Planning and Development
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Barney S. Heath
Director

MEMORANDUM

DATE: February 21, 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: February 24, 2020

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

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 5th 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 new language originally proposed which was discussed by the Zoning and Planning Committee on January 27th, 2020 states: "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.”

While the Law Department recommends that the Special Permit criteria be worded broadly to retain discretion in reviewing projects, to the extent the City Council would like to revise this criterion to include more specificity the following language is recommended in place of that which was discussed on January 27th: “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 and buildings as developed and operated** will contribute significantly to the efficient use and conservation of natural resources and energy **through some or all of the following: (a) minimizing building operating energy; (b) reducing the use of fossil fuels; (c) implementing a transportation plan that will minimize carbon footprint.**

The newly proposed language clarifies the intent of the previous proposal while providing direction to both the City Council and Special Permit applicants regarding the City’s goals. This language also aligns with the language of the recently adopted 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.

It is not recommended that this criterion be made any more specific, as specific standards belong in the zoning regulations themselves, rather than in the criteria for granting Special Permits, which is intentionally somewhat broad. The City Council adopted Section 5.12 Sustainable Development Design Standards in December 2019 (**Attachment A**), which contains specific sustainability standards. These standards apply to projects with at least 20,000 square feet of floor area and require electric vehicle charging stations and compliance with a green building rating system (LEED, Passive House, or Enterprise Green Communities). As part of the Special Permit submittal requirements for the rating system, an applicant must also submit an energy narrative discussing the efforts made towards net zero energy status. Section 5.12 was an important step towards implementing the recently adopted Climate Action Plan, however additional regulations are needed to further the Climate Action Plan’s long-term goal of a carbon-neutral Newton by 2050. Additional sections were identified as reserved in Section 5.12: Solar Panels, Embodied Carbon, and Electrification of heating/cooling and residential cooking, domestic water heating, and laundry. While these sections are being developed, this new language for the 5th Criterion will provide direction and will supplement the required energy narrative.

Attachment A: Section 5.12 Sustainable Development Design

5.12. Sustainable Development Design

5.12.1. Intent and Purpose

The intent of this section is to reduce the use of energy, water, and other natural resources in Newton's building stock and minimize adverse environmental impacts from buildings and development in both construction and long-term operation by:

- A. Increasing the use of renewable energy sources for electricity, transportation, heat/cooling, and hot water
- B. Increasing the use of efficient electricity technology for transportation and buildings
- C. Increasing the number of buildings built to Passive House, net zero, or similar standards.
- D. Minimizing the environmental impacts of construction materials and methods, including waste reduction.

5.12.2. Definitions

- A. **Green Commissioning.** The process of verifying and documenting that a building and all of its systems and assemblies are installed, tested, operated, and maintained to meet specified levels of environmentally sustainable performance in accordance with the provisions of Section 5.12 of this Zoning Ordinance.
- B. **Green Commissioning Agent.** An entity or person with documented experience on at least 2 building projects with a scope of work similar to the proposed project extending from early design phase through at least 10 months of occupancy.
- C. **Green Building Professional.** A professional who holds a credential from a Green Building Rating Program indicating advanced knowledge and experience in environmentally sustainable development in general as well as specific Green Building Rating Systems or otherwise possesses comparable experience in environmentally sustainable development. In instances where a Green Building Rating Program that does not offer such a credential is being applied to meet the provisions of Section 5.12, the designated Green Building Professional must have demonstrated experience as a project architect or engineer, or as a consultant providing third-party review, on at least 3 projects that have been certified using the applicable Green Building Rating Program.
- D. **Green Building Project.** Any development project that meets the provisions of Section 5.12.3.
- E. **Green Building Rating Program.** A collection of activities and services directed by an organization to promote environmentally sustainable development and to recognize projects that achieve defined environmentally sustainable development objectives, including the establishment and oversight of one or more Green Building Rating Systems.
- F. **Green Building Rating System.** A specific set of design standards for environmentally sustainable performance established under the auspices of a Green Building Rating Program against which a project or building design may be evaluated.

5.12.3. Application of the Sustainable Development Requirements

- A. These sustainable development requirements apply to any proposed development in any zoning district that includes the construction or substantial reconstruction of one or more buildings totaling 20,000 sf or more of gross floor area that also requires issuance of a special permit under any provision of this Zoning Ordinance.
- B. **No Segmentation.** The zoning provisions of this Section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.12. Where the City Council determines that this provision has been violated, a special permit will be denied. However, nothing in Section 5.12 prohibits the phased development of a property.

5.12.4. Sustainable Development Requirements

- A. A green building project must be designed to meet the standards of one of the authorized green building rating systems identified in Section 5.12.5 according to the requirements listed below.
 - 1. **LEED Green Building Rating Program.** A green building project being designed according to the LEED Green Building Rating Program must be designed to achieve a minimum 'Silver' level standard. Projects of greater than 50,000 sf of gross floor area must be designed to meet a minimum 'Gold' level standard. Certification by the LEED Green Building Rating Program is not required.
 - 2. **Passive House Green Building Rating Program.** A green building project being designed according to the Passive House Green Building Rating program must be designed to achieve certification. Certification by the Passive House Green Building Rating Program is required.
 - 3. **Enterprise Green Communities Green Building Rating System.** A green building project being designed according to the Enterprise Green Communities Green Building Rating program must be designed to achieve the minimum criteria for certification. Certification by the Enterprise Green Communities Green Building Rating Program is not required.
- B. **Electric Vehicle Charging Stations.** A green building project must provide that a minimum of 10% of parking spaces have access to electric vehicle charging stations up to a maximum of 40 spaces. An additional 10% of parking spaces must be electric vehicle charging station ready, meaning that electrical systems and conduit are prepared to expand the number of charging stations as demand increases. This Section 5.12.4.B only applies to new or rebuilt parking facilities; those projects using existing parking lots are exempt.
- C. **Solar Panels.** [reserved]
- D. **Embodied Carbon** [reserved]
- E. **Electrification of heating/cooling and residential cooking, domestic water heating, and laundry** [reserved]

5.12.5. Authorized Green Building Rating Programs

- A. Any of the following green building rating programs may be used to meet the requirements of this Section 5.12.
 - 1. The Leadership in Energy and Environmental Design (“LEED”) Green Building Rating Program developed and overseen by the United States Green Building Council;
 - 2. The Passive House Green Building Rating Program developed and overseen by either Passive House Institute US, Inc. or the Passive House Institute; or
 - 3. The Enterprise Green Communities Green Building Rating Program developed and overseen by Enterprise Community Partners, Inc.

- B. **Applicability of Rating Systems.**
 - 1. If a green building rating program offers different green building rating systems, a green building project must use the system that is most directly applicable to the project or building type, as determined by the Planning Director.
 - 2. The green building rating system must address the design and construction of buildings, not building operations or neighborhood development.
 - 3. A green building project must use the most current version of the applicable green building rating system at the time of the special permit application.
 - 4. The green building rating system, including the applicable version, must be specified at the time of special permit application.

5.12.6. Sustainable Development Review Procedures

- A. **Special Permit Submittal Requirements.** The following must be submitted with the special permit application:
 - 1. **Rating System Checklist.** A document enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the green building project.
 - 2. **Rating System Narrative.** A written description of the technical and design elements of the green building project that will be utilized to achieve compliance with the applicable green building rating system.
 - 3. **Energy Narrative.** A written description of the energy efficiency, renewable energy, and other technical and design elements of the green building project that serve to minimize energy use, make use of renewable energy sources, and otherwise demonstrate how close the project is to achieving net zero energy use status. This narrative should include descriptions of building envelope performance, anticipated energy loads, site planning, mechanical systems and on-site and off-site renewable energy systems. The narrative must also describe how the building could be made to achieve net zero status in the future.
 - 4. **Credentials.** A document demonstrating the credentials of the green building project’s designated green building professional, which must include a credential from the green building rating program indicating advanced knowledge in the specific green building rating system being applied to the green building project.
 - 5. **Affidavit.** An affidavit signed by the green building professional stating that he/she has reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the green building project is being designed to achieve the requirements of this Section 5.12.

- B. **Building Permit Submittal Requirements.** When applying for a building permit for a Green Building Project, the documentation listed in Section 5.12.6.A above, updated from any previous version to reflect the current Green Building Project design, and the additional documentation listed below must be submitted to the Department of Planning and Development.
 - 1. Credentials of the Green Building Project's Green Commissioning Agent.
 - 2. For a Green Building Project using the Passive House Green Building Rating Program, the following set of documents is required:
 - a. Credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating he/she has been hired to complete the on-site verification process;
 - b. Credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services;

- C. **Certificate of Occupancy Submittal Requirements.** When applying for a temporary certificate of occupancy for a Green Building Project, the documentation listed in Sections 5.12.6.A and 5.12.6.B above, updated from any previous version to reflect the current Green Building Project design, must be submitted to the Department of Planning and Development. The additional documentation listed below must be submitted prior to issuance of a final certificate of occupancy.
 - 1. An affidavit signed by the Green Commissioning Agent, certifying that the pre-construction commissioning process requirements of the applicable Green Building Rating Program have been met and that the post-construction commissioning process requirements of this Section were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
 - 2. For Green Building Projects using the Passive House Green Building Rating Program, the final testing and verification report completed by the Passive House rater/verifier.
 - 3. Credentials of the Green Building Project's accredited Green Building Professional and an affidavit signed by that professional stating that he/she has reviewed all relevant documents and that to the best of his/her knowledge, the documents provided indicate that the Green Building Project was built to achieve the requirements of Section 5.12.

5.12.7. Exceptions

A special permit may be granted to allow for exceptions to this Section 5.12 if an applicant can demonstrate that the same or better environmental outcomes can be achieved through a different approach or project design. An exception may also be granted where literal compliance is impracticable due to the nature of the use or that such exceptions would be in the public interest.



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Barney S. Heath
Director

MEMORANDUM

DATE: February 14, 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
Gabriel Holbrow, Community Planner – Engagement Specialist

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.
Where we left off in Zoning Redesign

MEETING: For ZAP meeting discussion on February 24, 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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 CITY CLERK
 NEWTON, MA. 02459

To set the stage for a productive Article-by-Article review of Zoning Redesign, this memo provides a link to the first draft of the Ordinance published in October 2018 as well as summaries of the work done by the Zoning and Planning Committee (ZAP) and the Planning Department in the months since the first draft. A second draft was never issued, but numerous changes to the October draft were proposed and discussed. The Planning Department intends this overview to enable the Committee to efficiently pick up where Zoning Redesign left off in Spring 2019.

The sections below are organized roughly by date, with links to relevant memos and presentations. For your convenience, a short summary of each meeting’s outcomes is provided directly in this memo.

First Draft Zoning Ordinance (October 2018)

In consultation with ZAP and through listening to the community and reviewing the Comprehensive Plan and best practices in the field, the Planning Department arrived at the overarching concept of a *Context-Based Zoning Ordinance*. This phrase was understood to mean that the rules and regulations of the new Zoning Ordinance would largely derive from the existing Newton context – the existing patterns of

development evidenced throughout the City and would place a larger emphasis on form and design than the current Zoning Ordinance.

This first full draft was published on October 19, 2018 and presented to ZAP on October 22, 2018. There was a Committee of the Whole meeting on December 6, 2018 where the Planning Department presented the same material. Although the ZAP Committee, members of the public, and the Planning Department have recommended numerous changes to the draft since 2018—summarized in the sections below—the October 2018 draft remains a good representation of the outline and general approach recommended for the Zoning Ordinance going forward.

The Planning Department strongly encourages Councilors to review the October 22, 2018 ZAP memo and presentation before February 24, 2020. Those who want a deeper dive into the material may review the complete first draft Zoning Ordinance and draft Zoning Map.

First Draft Zoning Ordinance presented at ZAP (October 22, 2018)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/94692>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/94706>

First Draft Zoning Ordinance (October 19, 2018):

<http://www.newtonma.gov/civicax/filebank/documents/92269>

Map – First Draft Zoning Ordinance (October 19, 2018):

<http://www.newtonma.gov/civicax/filebank/documents/92281>

Zoning and Planning Committee Working Group Meetings (November 2018 – March 2019)

All meeting summaries can be found online at:

http://www.newtonma.gov/gov/planning/lrplan/zoning_redesign_@_zap.asp

With the release of the first draft Zoning Ordinance, the Planning Department met with ZAP to discuss and provide guidance to the development of a second draft. In some cases, the Planning Department analyzed feedback received from ZAP and made recommendations for updating the draft in line with those comments.

I. Residence Districts (November 26, 2018)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/94693>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/94666>
- Meeting Summary: <http://www.newtonma.gov/civicax/filebank/documents/94700>

Issues highlighted for further research and consideration:

- What are the appropriate setbacks for alternate lot/building configurations (e.g. Rear Lots, Courtyard Cluster)?

- What is the effective minimum lot size in each district based on setbacks and lot coverage? This was later addressed in the Build Out Analysis presented on February 25, 2019.
- Proximity rules, particularly for multi-family housing in the R3 district, merit further thinking. This was addressed in the Build Out Analysis presented on February 25, 2019, when staff recommended eliminating proximity rules.

II. Village Districts (January 14, 2019)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/94705>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/94668>
- Meeting Summary: <http://www.newtonma.gov/civicax/filebank/documents/94987>

Issues highlighted for further research and consideration:

- A maximum building width of 200 feet, applicable to some of the larger building types in village districts, may be too wide.
- A default front setback of 0 feet may not be adequate to ensure that sidewalks can be widened. Staff expressed an intent to continue exploring interplay of the front setback, frontage buildout, and building fenestration tools in the village districts to build on the goal of creating vibrant sidewalks in the village centers.
- What tools are available to address banks in village centers? What are the appropriate standards for bank uses?
- How do the standards for the residential unit factor and outdoor amenity space in the first draft relate to recent multi-family developments?
- What are the appropriate window transparency requirements for appointment-based personal services?

III. Single Purpose Districts (January 28, 2019)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/94988>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/95021>
- Meeting Summary: <http://www.newtonma.gov/civicax/filebank/documents/96034>

Issues highlighted for further research and consideration:

- The campus/institutional district should only include properties that are used for education or institutional purposes. The district should not include any neighboring residential properties that happen to be owned by the adjacent institution.
- In the regional retail district, some potentially well-fitting uses like breweries and museums are not allowed in the first draft. Staff expressed an intent to continue reviewing the list of allowed uses in this district.

- In the non-contextual multi-residence district, there is confusing language about when a Special Permit is required. Staff expressed an intent to review this language.
- What are the appropriate district designations for the Newton Wellesley Hospital and the West Suburban YMCA? In the first draft zoning map, the hospital is in the campus/institutional district, while the YMCA is in the neighborhood general district.
- Do housing/services for older adults need to be added to the allowed uses within the campus/institutional district, particularly considering Lasell Village? Staff expressed an intent to review how assisted living facilities might or might not fit within the standards and purpose of this district.

IV. Build Out Analysis (February 25, 2019)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/95483>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/95508>
- Deep-Dive Tables on the Percentage of Conforming Properties: <http://www.newtonma.gov/civicax/filebank/documents/95513>

In February 2019 Planning staff presented the results of a build out analysis for residential areas that tested the current zoning against the October 2018 First Draft Zoning Ordinance. Based on that analysis and the feedback from the ward meetings, staff also presented a number of proposed revisions to the residential districts. The build out analysis tested the maximum possible by-right residential development that could occur and made assumptions about what conditions were likely to result in a tear down. The results were a comparison of the maximum number of buildable lots, number of units, total potential square feet of development, and teardown vulnerability for both the current and proposed Zoning Ordinance. A property was considered vulnerable to a tear down if a speculative builder could build at least 3,800 square feet (inclusive of an attached 2-3 car garage) and the resulting new construction could be sold for 2.4-2.5 times the purchase price of the property. It was estimated that the value of new construction is approximately \$600/square foot.

While the October draft greatly reduced existing nonconformities, there was an increase in the number of lots vulnerable to a teardown. Staff recalibrated setbacks and building sizes to greatly reduce teardown vulnerability, (though nonconformities were increased somewhat from the October draft) and presented these recommendations in the February memo and the Deep-Dive Tables.

The following adjustments were recommended by Planning staff:

- Increase setbacks in all residence districts (R1, R2, R3, and N)
- Reduce building footprints for House A, House B, and House C
- Adjust lot coverage in all residence districts
- Replace the Apartment House and the Small Apartment Building with substantially smaller new building types in the R3 and N districts: the 3-Unit Building and the 4-8 Unit Building

- Consider splitting the R3 district into two districts: R3 and R4
 - In R3, allow House B, House C, and Two-Unit building types by-right
 - In R4, allow House B, House C, Two-Unit, and 3-Unit building types by-right and allow the 4-8 Unit building by Special Permit
- Eliminate the proximity rule

V. Development Review Process (March 11, 2019)

- Memo: <http://www.newtonma.gov/civicax/filebank/documents/96040>
- Presentation: <http://www.newtonma.gov/civicax/filebank/documents/95752>
- Meeting Summary: <http://www.newtonma.gov/civicax/filebank/documents/96035>

During discussion of the development review process, the Committee made several specific recommendations and requests for further research. Much of the discussion focused on the appropriate thresholds for different types of review, particularly the threshold between by-right projects and those needing a Special Permit and the threshold between Special Permits granted by the Planning Board and those granted by City Council.

Public Comment from Ward-by-Ward Meetings (November 2018 – March 2019)

While ZAP was engaged in working group discussions of the first draft Zoning Ordinance, the Planning Department held community meetings ward-by-ward to provide an overview of the draft and begin a discussion of recommended changes to the Zoning Ordinance.

Summary of Notes from Ward-by-Ward Meetings presented at ZAP (March 25, 2019):
<http://www.newtonma.gov/civicax/filebank/documents/101739>

List of Ward-by-Ward Meetings by date:

- Ward 5 (November 29, 2018)
- Ward 7 (December 12, 2018)
- Ward 6 (January 10, 2019)
- Ward 3 (January 24, 2019)
- Ward 1 (February 7, 2019)
- Ward 8 (February 13, 2019)
- Ward 2 (February 28, 2019)
- Ward 4 (March 7, 2019)

Generally, attendees liked the idea of limiting building size in the neighborhoods, with many pointing out that perhaps more needed to be done to limit the size of new houses in the neighborhoods and prevent the risk of teardowns.

There was a great deal of concern about the residence 3 district as proposed in the first draft. In response to this feedback and to feedback from the Build Out Analysis, staff recommended eliminating the proximity rule for small-unit multi-family housing and recommended splitting the R3 district into district into two districts – R3 and R4.

A common thread in the questions and comments at the ward-by-ward meetings had to do with the balance between the competing desire for small, more affordable housing for neighborhoods and the desire that Zoning Redesign have no effect on property values.

Regarding open space, there were some who felt strongly about having a strict limit on buildable area to ensure green yard space on private properties. On a bigger scale, there was generally a positive reaction to the idea of moving the golf courses and other private recreational land out of the residence districts and into the recreation district.

There were a number of comments stating concern about staff or the Planning Board being involved in granting Special Permits and other decision-making. Participants expressed a strong interest in ensuring that the people making decisions about development remain accountable to the people affected by those decisions.

Finally, staff frequently heard the need to simplify and use clear plain language, both in the Zoning Ordinance itself and in materials that the City provides about the Ordinance and the Zoning Redesign effort.

Next Steps

At the February 24 ZAP meeting, the Committee will discuss an overview of the draft Zoning Ordinance and the work done post-draft.

Attachment

Attachment A: Planning department memo for ZAP meeting on October 22, 2018



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

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Barney S. Heath
Director

MEMORANDUM

DATE: October 19, 2018

TO: Councilor Susan Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Rachel Nadkarni, Long Range Planner/Zoning Specialist
Lily Canan Reynolds, Community Engagement Manager

RE: #518-18 - DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the Zoning Redesign Project on a draft policy content outline of the new Zoning Ordinance.

MEETING DATE: October 22, 2018

CC: City Council
Planning Board
John Lojek, Commissioner of ISD
Ouida Young, Acting City Solicitor
Marie Lawlor, Assistant City Solicitor
Jonah Temple, Assistant City Solicitor
Jonathan Yeo, Chief Operating Officer

The Planning Department is pleased to present the 1st draft Zoning Ordinance for your review. We anticipate a detailed review of this document over the next many months. The following presents an overview of the Zoning Redesign project and the 1st Draft Ordinance.

Background

Nearly 10 years ago the Newton City Council recognized that the time had come for a substantial update to Newton’s Zoning Ordinance and created the Zoning Reform Group to investigate the potential of writing a new ordinance. The last major review of the Ordinance had occurred in 1987 and fundamentally, much of it still reflected the Ordinance established in

1941 and 1953. Much had changed over this time, most significantly, the emergence of the Boston region as a major global center of innovation, resulting in strong economic growth, job creation, and a corresponding rapid increase in housing costs as demand outpaced supply. At the same time, changing market preferences have led to increasing demand for walkable, mixed-use environments. Finally, the reality of climate change has further reinforced the desirability of locations that offer this kind of setting.

With Newton's valuable location in the Boston region, these trends were readily apparent as market demand to live in Newton increased dramatically, especially in proximity to the village centers, which offered that desirable, environmentally-friendly, and walkable mixed-use environment. The resulting dramatic increase in housing prices has made Newton one of the more exclusive communities in the region and a community with diminishing opportunities for lower and middle-income people. The challenge identified by the Zoning Reform Group became how could the Zoning Ordinance be a tool to advance the City's goals and retain its fundamental character in the face of the considerable development pressure created by this environment. The existing zoning ordinance, originating in the 1940s and 1950s was designed to address very different issues than those Newton faces today.

The Zoning Reform Group recommended a comprehensive revision of Newton's Zoning Ordinance, incorporating many of the latest zoning tools and best practices and addressing a list of 11 themes. The first phase of this process, intended only to reorganize and clarify the existing rules was completed and adopted in November 2015. The second phase, the substantive rewrite of the ordinance, began in September 2016.

In consultation with the Zoning and Planning Committee and through listening to the community and reviewing the Comprehensive Plan and best practices in the field, the Planning Department arrived at the overarching concept of a "Context Based" Zoning Ordinance to guide the work of this second phase. This phrase was understood to mean that the rules and regulations of the new zoning ordinance would derive from the existing Newton context – the existing patterns of development evidenced throughout the City. This guiding concept emerged from three ideas:

1. As is highly apparent and strongly emphasized in Newton's Comprehensive Plan, Newton is a community that greatly appreciates and loves the form and physical character of its existing neighborhoods and villages. As the Comprehensive Plan says, "Newton ... has a powerful commitment to its existing pattern, and our vision and goals for future land use reflect that. Our intention is to guide change so that it reinforces what we have, building on our assets."
2. The existing City, and the patterns of development it represents, are far more environmentally sustainable and accommodating of incremental growth than the City would be if it had been developed under the existing Zoning Ordinance. The built environment of the City is 85% to 95% non-conforming with the Zoning Ordinance and nearly $\frac{3}{4}$ of the City was built before the 1953 Zoning Ordinance. The pattern of

walkable village centers, with taller buildings and more activity at their centers gradually transitioning to neighborhoods, is widely recognized today as the best way to develop in order to address issues of environmental sustainability and climate change, as well as housing choice and equity. Many of the City's goals identified in the Comprehensive Plan could therefore be addressed simply by going back to allowing the historic patterns of development that produced the City that citizens love today.

3. Finally, staff recognized the inherent constraints of this project. Many Zoning Ordinance rewrite projects begin with a detailed master plan of the community that carefully considers the balances of land use mix, residential densities, economic development, the environment, transportation, and other public infrastructure and then uses the results of such study and policy decisions to craft a new zoning ordinance.

This zoning reform project could not accommodate such an effort. Instead, the Zoning Ordinance would reflect the existing City, for the benefits described above, while also laying the groundwork for future zoning ordinance amendments that build on detailed studies of strategic areas of the City through future master plans, such as the current Washington Street Visioning and Zoning project. The proposed ordinance is set up to be more easily amended in the future based on such study and thoughtful policy considerations.

Writing the Ordinance

The first step to creating a context-based zoning ordinance for Newton was the Pattern Book. In order to create rules based on the existing built environment, we needed a detailed study of all of those existing buildings. This database was used both to define the new zoning districts of the Ordinance as well as the rules for the massing and placement of buildings. Beyond its role in creating the new zoning ordinance, the Pattern Book is the first truly comprehensive analysis of the City's built form and will therefore be a resource for Newton citizens and others interested in the built environment and the historic development of the City.

In September 2017 the Planning Department began a monthly public meeting series with meetings devoted to issues that relate to the zoning ordinance and potential tools that could be incorporated in zoning to address them. Topics ranged from housing and economic development to environmental sustainability and promoting the arts. Feedback from these meetings, and from the Zoning and Planning Committee was invaluable as staff prepared to draft the ordinance.

Writing of the 1st draft of the Zoning Ordinance began in the summer of 2018. Staff relied on Newton's existing zoning ordinance and a wide range of sample ordinances to craft a draft zoning ordinance tailored to the City. In addition, the Planning Department hired an experienced zoning consultant, Joel Russell, JD, to assist with drafting and to review the entire document. The Planning Department staff, Inspectional Services Department, and the Law Department have extensively reviewed the draft ordinance. In addition, a two-part architects' event was used to test the ordinance against real world building projects and site conditions.

Sections that are currently under discussion by the Council, namely inclusionary zoning and marijuana uses, are listed as [reserved] in the draft ordinance.

The 1st draft ordinance is still very much a draft and we anticipate there will likely be many revisions between now and adoption. Annotations elaborating on the meaning of different sections, explaining alternative options, and relating sections to similar ones from the existing ordinance will be provided in advance of each topical session with the Zoning and Planning Committee over the upcoming months.

A Guide to the Proposed Zoning Ordinance

The intent of this section is to walk through a general overview of the entire 1st Draft Zoning Ordinance.

1. Articles 1 and 2 offer the introductory provisions of the Ordinance; essentially serving as an overview of the “rules of the game.” Article 1 includes the purposes of the ordinance and establishes the zoning districts and map. Article 2 gets into the details of how basic rules like lot coverage, setbacks, and building types work.
2. Articles 3 through 7 offer the rules specific to zoning districts and the building types within those districts.

Residence Districts (Article 3)

Residence 1

Residence 2

Residence 3

Neighborhood General

Village Districts (Article 4)

Village 1

Village 2

Village 3

Public Use and Recreation Districts (Article 5)

Public Use District

Recreation District

Single Purpose Districts (Article 6)

Office District

Fabrication District

Regional Retail District

Non-Contextual Multi-Unit Residential District

Campus/Institutional District

Overlay and Master Plan Districts (Article 7) – [Reserved]

Each of these articles contains four parts:

- the district standards (lot and setback standards)
- the building type standards (height and massing) and other building design rules
- allowed uses
- parking requirements

3. Article 8 provides the development standards covering requirements for parking, signs, stormwater, sustainable building design, environmental site design, the arts, and inclusionary zoning.
4. Article 9 provides the use standards. These are the specific requirements and special permit criteria as they apply to every land use allowed under this zoning ordinance.
5. Article 10 provides the rules governing non-conformity. Any existing building, structure, or use of land that is inconsistent with this zoning ordinance would be regulated by these rules.
6. Article 11 describes the administrative processes associated with development review under this ordinance including site plan approval, special permits, variances, etc.
7. Article 12 is the definitions section.

A property owner using this ordinance to determine what they could do on their property would do the following:

1. First determine what zoning district their property is in according to the Zoning Map.
2. Then refer to the appropriate Article containing the rules for that district and what building types are allowed in the district and Article 2 for details on how to interpret the requirements. Depending on whether they were modifying an existing building or building new, they would consult the descriptions of the building types to determine which most closely matched their existing or desired building. The Use and Parking tables at the end of the Article would direct them to the uses available to them and how much parking they would need to provide.
3. The property owner would then look to Article 8 to understand the various rules applying to all development in the City. Depending on the use they were considering, they would also consult Article 9 to see what specific requirements might apply to their proposed use.
4. Finally, by this stage they would know what form of development review was necessary and would then consult Article 11 to find out the details of that process. If at some point they determined that their existing building was nonconforming they would look to Article 10 for the rules addressing that issue.

1st Draft Features

The following section highlights a number of the key features of the new ordinance, which will likely represent important decision points for the City Council. In the course of the 2017 -2018 Zoning Redesign event series and subsequent discussions with City Councilors, we have heard a diversity of perspectives and believe that the topics listed below are worthy of in-depth discussion by the City Council.

1. The Relationship Between Lot Size and Building Size

The existing Zoning Ordinance ties the maximum size of a building to the size of the lot, most directly by using the Floor Area Ratio (FAR) tool. The proposed ordinance separately

regulates lot size and building size, and the standards for both are derived from the existing built characteristics of the City and its neighborhoods. Lots are regulated by the zoning district and governed by minimum and maximum lot frontage requirements, maximum lot coverage requirements, setback requirements, and the range of allowed building types. Together, these standards ensure that lots within a given zoning district are consistent in terms of some of the key factors that define the character of a neighborhood.

The building type rules establish the height and massing allowed. From the list of allowed building types, an applicant would select the one most closely matching the scale of their existing or desired building. Each district has a limited range of building types appropriate to the district, effectively tying the scale of buildings to what is desired in the district rather than to the size of the lot.

It is important to note that building types are not related to any particular architectural style but simply represent combinations of allowed height and massing. Thus, the City is able, through the use of building types, to require that taller single unit residences be narrower while allowing single story residences to be wider, and to establish such rules in a way that is clear, consistent, and predictable. For small lots, setback and lot coverage requirements will still further limit building size.

Separating lot size and building size rules is particularly important in a community like Newton where irregular lots are common. There are many lots within established neighborhoods that are larger than those around them. Such lots become targeted for the tear-down of the existing building and its replacement with a much larger building. Sometimes, the extra lot area that allows for a much bigger and out of scale building is in the form of a long tail of unbuildable land (e.g. with wetlands) on a lot that is otherwise in scale with the neighborhood, exacerbating the degree to which the larger house disrupts the context of the neighborhood.

The lot area per unit tool in the existing ordinance is problematic for similar reasons. The 1st draft ordinance proposes instead that the number of units allowed in a multi-unit building be tied to the size of the building. As the ordinance is already designed to ensure that buildings are sized appropriately to their context, this approach simply ties a residential unit density calculation to that appropriately scaled building.

2. Courtyard Cluster Developments

The 1st draft ordinance introduces the concept of courtyard clusters as a development option in all residential zoning districts. This type of development allows multiple small footprint homes organized around a shared greenspace on a single lot. Conversely, attached units/townhouses and the creation of rear lots are more restricted in the proposed draft.

3. Use Categories

The 1st draft zoning ordinance includes “use categories” rather than simply individual land uses as in the existing ordinance. Functionally, the two approaches are the same, but the use categories approach is more accurate as to how the definition of uses works in a zoning

ordinance. In any ordinance that regulates by listing individual allowed uses there is a provision that allows a zoning administrator to regulate a proposed use that is not specifically listed but is similar to a listed use in the same way as the listed use. The use categories approach simply acknowledges this similarity rule by identifying and defining categories of similar uses and requiring that proposed uses fit within an allowed use category.

4. Parking & Transportation

The 1st Draft Ordinance includes requirements designed to more proactively address the transportation impacts of development. First, the minimum parking requirements are reduced and maximum parking requirements are introduced. This approach derives from the recognition that minimum parking requirements generally have been demonstrated to produce a range of unintended consequences ranging from environmental impacts and increased traffic to diminished tax revenue. These impacts were partly the result of minimum parking requirements creating an environment that favors automobile use over any other mode. The 1st draft ordinance counters this trend in a number of ways, but most directly by making bike parking requirements of equal significance to automobile parking requirements.

In order to make more efficient use of the parking resources the city already has, the 1st draft ordinance allows uses and properties to share parking in various ways.

Lastly, in order to ensure that, as development occurs, the transportation system actually improves, the 1st Draft Ordinance includes a Transportation Demand Management (TDM) section. This section applies to development projects of a certain size and requires that these buildings accomplish reductions in peak hour single-occupant vehicle use over time.

5. Sustainable Buildings & Environmental Site Design

Environmental sustainability is layered throughout the 1st Draft Ordinance. Article 8 in particular includes a number of sections that address the environmental impact of development. Two of these sections are specifically designed to encourage more environmentally sustainable development in Newton. The first of these is a sustainable buildings requirement that is intended to set some minimum standards while also incentivizing green building development. The second section, the environmental site design section similarly is intended to set landscaping and similar requirements that will help to promote environmental sustainability. With the upcoming development of the Climate Action Plan, staff hopes to see these sections expanded upon based on that work.

6. Development Review

Development review processes are the point where the rules of the zoning ordinance get applied to development projects and the 1st Draft Ordinance includes a number of features.

First, there is a section on Site Plan Approval, which directs a very limited number of decisions to a review process administered by the Director of Planning and Development. These generally include only decisions where there is little discretion, but certain standards

must be met. The process essentially allows a limited amount of conditions to be placed on approval of what would otherwise be by-right development.

For non-conforming buildings, the 1st Draft Ordinance uses the Section 6 Finding rules of the State Zoning Law, Chapter 40A, which empowers the Zoning Board of Appeals to make decisions about alterations to nonconforming buildings or uses. As the new ordinance significantly reduces the instances of nonconformity, staff expects that there will be fewer of these requests and that the Zoning Board of Appeals is the right venue to address these alterations because they are similar to variances.

Following the recommendation of the Zoning Reform Group, the 1st Draft Ordinance places primary Special Permit granting authority with the Planning Board, elevating these permits to the City Council only for projects of citywide significance. The draft ordinance proposes that projects over a certain size or number of residential units, varying depending on the district, receive a Special Permit from the City Council. Certain uses, like marijuana related uses, would also go to the City Council regardless of the project size.

Finally, the 1st Draft Zoning Ordinance incorporates specific review criteria for everything that requires a Special Permit so that both review boards and property owners have clear direction as to what the purpose and objectives are for that particular special permit requirement.

7. Arts and Cultural Institutions

The arts have long been an important part of the fabric of the Newton community. Various provisions of this ordinance are intended to reinforce and support the arts in Newton. These include a section that clarifies how arts related uses are regulated under zoning, separating them from commercial, industrial, and other types of uses where they might more typically get lumped.

The second section promoting the arts, still under development, would establish an arts related requirement on developments over a certain size. These developments would be required to include some form of public art contribution in the form of either a physical art piece, an ongoing arts related event, or space devoted to the arts. This section will be completed and submitted to Council before the end of this calendar year.

Conclusion and Meeting on October 22nd

Over the coming months the Zoning and Planning Committee will be carefully reviewing the 1st Draft Zoning Ordinance in detail. This memo and the presentation on October 22nd are only intended to provide an overview of the proposed ordinance and an explanation of its structure. We have attached the current schedule for the 1st Draft Ordinance review, recognizing that this schedule will likely change over time.