



Zoning & Planning Committee Report

City of Newton In City Council

Monday, January 10, 2022

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Ryan, Wright, Krintzman and Baker

Also Present: Councilors Kelley, Downs, Lipof, Greenberg, Malakie, Kalis, Lucas, Oliver, Humphrey, Norton and Laredo

City Staff: Deputy Director of Planning and Development Jen Caira, Director of Planning and Development Barney Heath, Assistant City Solicitor Andrew Lee, Chief of Long Range Planning Zachery LeMel and Planning Associate Cat Kemmett

Planning and Development Board: Barney Heath and Kevin McCormick

Others Present: NewTV

#62-22 Appointment of Ali Erol to the Economic Development Commission

HER HONOR THE MAYOR appointing Ali Erol, 204 Dedham Street, Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on December 31, 2023. (60 days: 03/02/22)

Action: Zoning & Planning Approved 8-0

Note: The Chair invited Mr. Erol to join the Committee to discuss his interest in serving as a member of the EDC. Mr. Erol joined the committee and stated that he looks forward to becoming a member of the EDC because he lives and works in Newton since emigrating to the US, feels a deep connection to the city, and wants to contribute.

As a professor at Boston College, Mr. Erol conducts academic research on urbanization, urban spaces, social justice food scarcity in urban areas, and food equity in New England. By serving on the EDC, he can assist the city with research and understanding ongoing economic. He anticipates opening a center at Boston College where he can work with undergraduate students to help write grant applications, and in other ways serve as interns where Newton may benefit from additional staff to conduct research.

Committee members noted that Mr. Erol has a unique skill set, an interesting background and resume and look forward to him serving.

Committee members thanked Mr. Erol for his willingness to serve on the EDC. Councilor Ryan moved approval and the Committee voted in favor 8-0.

Chair's Note: Planning staff will provide a draft calendar for the term, and the Clerk's Office will provide a list of docket items filed to date for committee consideration/discussion.

Note: The Chair noted that three documents are provided in the Packet for this item: a draft calendar for the term, organized by subject area, a list of items either docketed or contemplated, as well as efforts coming up this term, also organized by subject area, and the complete ZAP Docket to date. Tonight's discussion is to lay out the scope of work imagined for the term and hear from the committee and Council on prioritizing the work.

Chief of Long Range Planning Zachery LeMel screen-shared the draft calendar for the term (attached). Chair Crossley provided a brief overview on each section of the calendar under several headings: Zoning Redesign-Village Centers, Housing Choice-MBTA Communities, Master Planning Projects (Newton Wellesley Hospital request for a hospital zone and mechanism for creating a master plan), Sustainability/Environmental Zoning Amendments, Economic Development Zoning Amendments, Historic Preservation Zoning Amendments, Housing Zoning Amendments (non-Village Centers) and Development Standards/ Other. See attached lists.

Committee members suggestions, comments, questions and answers:

It was widely acknowledged that the work outlined is ambitious for one term.

A suggestion was made to refer and center discussions on docket item #58-22, which is regarding enforcing the noise ordinance, to the Programs and Services committee. P&S Chair Councilor Krintzman agreed. Similarly, enforcement updates on other ordinances should not need to go before ZAP, unless such ordinances need amending.

Docket #57-22 requests a general discussion on ways to thwart tear downs (razing of one- and two family homes). This item is listed but not shown specifically on the one-page graphic calendar. Several councilors felt it important to address this issue despite how much other work is before the committee. Several committee members noted that the committee's work in 2020 focused on developing a different sets of metrics to limit house size in various ways in order to reduce the incentive to replace existing homes with larger ones, but no consensus was reached. The committee agreed to table residential zoning metrics and focus on village centers since January 2021. Others noted that an effort (to revisit these metrics) is larger than it may seem and would impede progress on the village center work.

Nonetheless, several councilors suggested bringing forward the tear down discussion in the first six months of 2022, perhaps as a brainstorming session.

Chair Crossley stated that the Committee can hold a general discussion on how to disincentivize tear downs, but a continued effort would require either a third meeting a month and/or a

working group to delve into the details and report back to committee. Staffing would be difficult. The Committee tabled residential metrics both because committee members were unable to reach consensus on policy, and sufficient analyses were not yet available.

One committee member suggested eliminating any further work on the accessory apartment ordinance (adopted 12/2017). The Chair responded saying that several councilors and others have expressed interest in some very specific amendments to that ordinance, not a complete review.

Q&A

Regarding zoning redesign in village centers, are the economic analyses included in the draft calendar? Mr. Heath answered yes, the first two items below the heading are: Existing zoning analysis (existing conditions, development potential, and economic analysis), and Alternative development scenarios for small and large village centers (graphic and economic analysis).

Where it says “refine and vote on zoning amendments to achieve preferred development scenarios (will be split up)” – what does that mean? Mr. LeMel answered that there are numerous elements making up village centers, including dimensional standards and building types. The Committee and the community have expressed concern that there cannot be a one size fits all approach.

What is the “California Street Manufacturing Zoning District (study)” on the calendar? Mr. LeMel answered that the City has received a state grant from the Housing Choice fund to study the area north of California Street and consider what a more vibrant 21st century manufacturing zone could look like.

It is important to maintain commercial buildings to help with the tax base. Why is the funding for the California Street Manufacturing Zoning District (study) coming from Housing Choice monies? Is this a proposal to change the district from manufacturing to housing? Mr. Heath answered no, California Street is seeing development pressure from both housing and commercial sectors. This is a zoning study to examine the area, have a community process to solicit input and lay out different potential alternatives. Many state grants have the imprint of Housing Choice grants but have to do with economics and zoning.

Will the California Street manufacturing zoning district study be handled by an outside consultant? Mr. Heath answered that Housing Choice Grant of \$75,000 will be used for an outside or an on-call consultant. He then stated that he is unsure if this decision (choosing the consultant) has been made.

A few Committee members suggested that perhaps working groups may assist the Committee with several of the more complex items on the calendar, particularly to lay the groundwork on some of the climate action items.

A councilor said that all pending docket items should be identified in the graphic calendar and asked to know when all items will be heard.

Chair Crossley reminded again that in addition to the one-page graphic calendar showing categories of items and how we may address them over the term, there is a two-page document that organizes all items (both docketed and contemplated to date) by substantive category that can be easily cross-referenced. She added that the two-year term draft graphic calendar can help guide and focus our work, but that Agendas cannot be specifically determined more than a month or so at a time.

It was noted that Ms. Caira has prepared a memorandum summarizing both current and future housing data, that will be provided to Council via the Clerk's office on January 11, 2022.

Committee members thanked the Planning staff for their diligence, specifically noting the well-organized documents as helpful to the discussion. The Chair urged councilors to advise her regarding any future docket items, they may be considering aiding in calendar planning.

#39-22 Requesting discussion on state guidance for implementing the Housing Choice Bill

COUNCILOR CROSSLEY on behalf of the Zoning & Planning Committee requesting discussion on state guidance for implementing the Housing Choice element of the MA Economic Development legislation. (formerly #131-21)

Action: Zoning & Planning Held 8-0

Note: Chair Crossley stated that Planning staff will broadly introduce the draft state regulations (Guidance), noting timelines, options for compliance, and analyses needed to understand impacts for continued discussion at a next meeting. This meeting is to understand the framework and elicit questions from Council for a future meeting.

Chief of Long Range Planning Zachery LeMel presented an overview (PowerPoint, attached) He defined the impetus and basic elements of the Housing Choice Legislation (adopted January 2021), outlined the draft guidance for MBTA communities, described how it applies according to transit options available in 175 MBTA communities, and specifically what compliance means for Newton. He explained the site plan review process allowed by the guidance, and how zoning controls by-right development.

Key points are to understand:

This is not a mandate to produce housing, rather,

It is an incentive program to provide multi-family housing (=3 or more units) where it makes the most sense, near public transportation

This is a requirement to facilitate multifamily housing (MF) near transit by establishing new zoning rules that allow an amount of MF units, proportional to our city, 'by-right'

In Newton, we are asked to use zoning to facilitate at least 8,330 units.

Our existing zoning already allows for many MF units, however, only by special permit.

Staff will perform additional analysis to calculate the **Current Zoning unit capacity**.

The Guidance requires a minimum gross density of 15 units per acre, but there may be districts defined that allow higher densities, which would reduce the total area. In addition, a city may adopt multiple districts at different densities, some higher and some lower, so long as the density across all new zoning districts averages 15 units per acre.

Mr. LeMel stated that Newton does not have a zoning district that meets these requirements. To comply, Newton would need to create a zoning district or districts of a 'reasonable size' and allow for a minimum 'unit capacity' overall. If the City Council decides not to comply with the MBTA Communities requirements within the legislation, then Newton would no longer be eligible for certain State funds. Staff expect to still require a special permit for certain multi-family projects above a certain unit threshold.

Key dates per State guidance in 2022:

March 31, 2022 - State public comment period ends

May 2, 2022 – City Council must be briefed, and the City must submit a MBTA Community Information form.

Summer 2022 - Finalized guidance from the State

December 31, 2022 - Action plan must be submitted to DHCD

Committee Discussion.

Can the 50 acres be distributed over several villages or does the 50 acres be associated with one transit stop? Mr. LeMel answered that the acreage can be distributed across multiple villages. If it is distributed, it is necessary to have one district with at least 25 acres and then districts be at a certain number, with a minimum size of 5 acres.

Why did the city receive \$7 million in Massworks for funding Route 9 improvements when Route 9 is a state highway? Chair Crossley answered that the State provided engineering design and gave the City the funding to complete rebuilding of all intersections with Rt 9 in Newton and reconfigure parts of Route 9. This was due to economic development along the corridor, specifically the permitting of the Chestnut Hill Square project. Mr. Heath answered that in 2012-2014, the City received 7 million which the City Engineer identifies as Massworks part A, B and C (Boylston Street at Chestnut Hill Shopping Center) design and construction.

A committee member noted that to meet the 8,330 unit capacity requirement would require more than 50 acres, or it would be too dense. Ms. Caira responded that there are a range of options. Having only one 50 acre area that allows full density perhaps is not the best solution for Newton. It does not need to be only one 50 acre area. The guidance requires at least one area of 50 acres; there may be multiple other smaller areas. Staff will present an analysis of base lines on what the current zoning allows, and what already exists for multi-families. Reviewing current

zoning in these areas already allows at least this density if not more but is by special permit. Staff will review what is allowed by-right and by special permits and how we can meet the threshold. Other zoning requirements must be met. By-right does not mean that there are no controls or no zoning. Staff will determine how many requirements the City can add (for example, in an overlay district) and how can we incorporate the requirements in the zoning ordinance. The Guidance ensures that we may not make the project infeasible.

How do we provide housing without more gentrification?

By allowing multi units to be built by-right, will we lose the commitment we get on special permits, to build according to climate action goals?

Ms. Caira answered that electrification is more complicated regarding the home rule petition. The City has sustainability requirements in the zoning code. Language would have to be created if we can require certain standards in these districts.

Can the City control the size of units a developer wants to build? Ms. Caira answered yes, the City does control the size of units. Each zoning district requires a minimum lot area per unit and a maximum density. Mr. LeMel added if the City allows a site to build for example 12 units by-right, those 12 units would be counted towards the unit capacity.

Perhaps this Housing Choice Guidance will get the Committee to make progress on meeting its housing and sustainability policy goals through zoning and sustainability issues.

Please provide data from nearby communities who are also working to meet the Housing Choice Bill MBTA communities' requirements.

The City should be creating smaller, affordable units with good design that blends into the fabric of the community.

The City should not turn down the funding; non-compliance is not a correct action. Funding is valuable to the City. 15 units per acre is not a number to be afraid of.

It would be beneficial to provide the committee with what is the range of added cost of a special permit. When does cost make a difference? Can only developers with deep pockets build in Newton? Mr. Heath answered that this request will be available at a later meeting.

One said that Newton could choose to do this (allow multifamily housing by-right) on our own without the State, adding that it is necessary to make an informed decision.

Councilors discussed simultaneous efforts that the city may need to align where such districts may be located, such as capital improvements for public infrastructure, etc., and in particular suggested we should plan to ensure we coordinate the necessary green space and other public amenities.

The State wants the City to continue building, but what have they done to help us with transit?

There is a housing shortage in the U.S.A., which is necessary to solve. We need to understand how this Housing Choice Guidance help generate more housing.

Can the City use the MMA to assist us by bringing similar communities together?

Please provide examples of what 15 units in an acre could resemble in each village center.

It is important to understand 1) What does existing zoning allow? 2) What could the village center zoning allow, and 3) What would the City be required to do under Housing Choice Bill. What opportunity does the City prefer?

Councilors comments, suggestions, questions and answers:

A councilor asked for clarification on state grants received by the city over time and projected from both MassWorks and the Housing Choice fund.

Mr. Heath said that in addition to what is shown in the presentation, he can cite additional funding opportunities at a later meeting.

Can a special permit still be required for larger projects than a district would allow by right?

Mr. LeMel answered that the City envisions a threshold where multi-family projects would require a special permit. The minimum unit densities required to meet the Guidance are no more than three stories. In theory, a district could be created that allows buildings that are 20 units or less that add up to more than 50 units per acre to reach the unit capacity requirement. Anything above that, would still require a special permit. **Would this be a much broader district?** Mr. LeMel answered yes, and this information was also in the Planning Department memo. Ms. Caira answered that the City can encourage smaller scale developments on smaller lots. On smaller parcels with certain densities, you can get that number but when you start combining a number of parcels and when you build larger developments a special permit is required. Staff believes several things can be accomplished but more analysis and information are necessary and will be shared at a next meeting.

How can we mandate Passive House in a new “by-right” district when we can’t do that under a building code?

Ms. Caira answered that the City does not yet know for sure exactly what the City can and cannot do. Additional information is necessary. There are some environmental standards and sustainability ordinances that are not tied to building codes that the City should be able to require. Ms. Caira is hopeful there will be time to further understand the draft Guidance. Most MBTA communities are struggling with the same questions.

Chair Crossley reiterated that tonight, Planning staff broadly introduced the draft regulations, to give councilors the opportunity to ask questions and request information/ analyses, which can be brought to a future meeting for further discussion.

Ms. Caira stated that we expect that staff can do the needed analysis. Zoning requirements must be met for by-right development, which include the affordable housing requirements in the inclusionary ordinance.

How will our work on village centers overlap with this work and will the work we do on village centers change because of these requirements? Mr. Heath answered that the village center work is front and center for the City. Part of the equation remains what does it mean for Housing Choice.

A councilor suggested we consider how to require or create front and back entrances, new public green spaces and improved ways for people to bike and walk to new neighborhoods in these districts.

Regarding sustainable construction, is there new or pending state legislation that would allow us to create an ordinance requiring net zero construction?

Mr. Heath answered that Planning will investigate. Chair Crossley added that Director of Sustainability Ann Berwick would likely know the status of all such state bills, but that she believes the net zero code remains under development.

Please ask the State to clarify how existing units that are counted within a proposed district, and whether existing units existing with a special permit would be counted? For example, can units in a development such as Northland be counted as part of the district capacity?

Ms. Caira answered possibly, questions remain, but the Northland Development itself cannot be counted because it is not within a ½ mile of a T stop. There will always be properties within a potential district where there are recently built multi-families where the City does not expect turnover. Ms. Caira added that compliant zoning must allow for certain amount by-right. It does not mean that a special permit would never be required in that district. If a petition comes in that requires a special permit in such a district, the City does not foresee losing grant eligibility.

Mr. Heath stated that the inclusionary zoning applies to every project of seven units or more, regardless of how it is permitted. For seven up to nine units the ordinance allows for a cash contribution in lieu of a unit.

It is necessary to be cordial, open-minded and partner with the State and other communities to determine how this tool can work for the City. This effort is about providing housing near transit, our stated policy goal. It is not just about keeping funding options.

We do know that larger units will be more expensive, perhaps smaller units could be built. Please consider equity. Is there flexibility on the size of the units? Ms. Caira said that restrictions cannot be put on unit sizes, age limitations or the number of bedrooms. Mr. LeMel said he will review if the City can require smaller units.

How would allowing housing by-right in an Historic District impacted such a district? Chair Crossley stated that if a property is landmarked or within a Historic District and falls within an area otherwise designated for by-right MF development, the protection these districts and landmarked properties have would remain intact. Ms. Caira added that changes were made to MA Chapter 40A, the Zoning Act, but there were no changes made to Ch. 40C, regarding Historic Districts. She added that there are no changes to the legislation or guidelines that would exempt Historic District review.

A number of the questions raised from tonight's discussion can be asked of the state to bring back to committee. Councilors also recommended that we prepare ourselves to comment on the proposed guidance. In particular, several suggested that we ask the state to require high performance building standards in such districts, which the state's own sustainability principles should support.

Although a number of councilors expressed disdain for the state requirements and suggested that Newton could survive the consequences of reduced funding opportunity, the general consensus was that the committee should pursue a deeper understanding of the Guidance, consider carefully how we can meet the requirements and the degree to which doing so can support our stated housing, environmental and economic policy goals and integrate this understanding with the work we have underway to improve zoning of village center districts.

Without further discussion, Councilor Krintzman made a motion to hold this item. Committee members agreed 8-0.

#42-22 Citizens petition to amend the village center district

ATTORNEY PETER HARRINGTON ET AL., submitting a 60-signature citizen to strike Chapter 30, Section 4.1 Business Districts, in its entirety and insert, in place thereof, the following 4.1. Village Center District; 4.1.1. District Intent and 4.1.2. Dimensional Standards.

Action: Zoning & Planning Held 8-0; Public Hearing set for February 28, 2022

Note: Chair Crossley stated that tonight, the Committee will not discuss this item. The sixty signatures have been certified on the petition obligating the City to hold a public hearing within 60 days of the item being docketed.

Without discussion, Councilor Krintzman made a motion to hold the item and set the public hearing for February 28, 2022. Committee members agreed 8-0.

#63-22 Reappointment of Elizabeth Sweet to the Zoning Board of Appeals

HER HONOR THE MAYOR reappointing Elizabeth Sweet, 281 Lexington Street, Auburndale, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on January 10, 2023. (60 days: 03/02/22)

Action: Zoning & Planning Approved 8-0

Note: Without discussion, Councilor Krintzman made a motion to approve Ms. Sweet appointment as an associate member of the ZBA. Committee members agreed 8-0.

#64-22 Reappointment of Lei Reilley to the Zoning Board of Appeals
HER HONOR THE MAYOR reappointing Lei Reilley, 130 Pine Street, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on January 10, 2023. (60 days: 03/02/22)

Action: Zoning & Planning Approved 8-0

Note: Without discussion, Councilor Krintzman made a motion to approve Ms. Reilley appointment as an associate member of the ZBA. Committee members agreed 8-0.

#65-22 Reappointment of Denise Chicoine to the Zoning Board of Appeals
HER HONOR THE MAYOR reappointing Denise Chicoine, 275 Islington Road, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on January 10, 2023. (60 days: 03/02/22)

Action: Zoning & Planning Approved 8-0

Note: Without discussion, Councilor Krintzman made a motion to approve Ms. Chicoine appointment as an associate member of the ZBA. Committee members agreed 8-0.

At approximately 10:15 p.m., Councilor Danberg made a motion to adjourn. Committee members agreed 8-0.

Respectfully Submitted,

Deborah J. Crossley, Chair