



## Zoning & Planning Committee Report

### City of Newton In City Council

**Monday, January 24, 2022**

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

Also Present: Councilors Bowman, Lipof, Downs, Malakie, Oliver, Kalis, Markiewicz, Kelley, Lucas, Laredo and Greenberg

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

Planning and Development Board: Chair Peter Doeringer, Barney Heath and Chris Steele

Others Present: NewTV

**#58-22      Request for a discussion with ISD regarding noise ordinance Compliance**  
COUNCILORS BAKER AND RYAN requesting discussion with Inspectional Services about possible ways of enhancing compliance with the provisions of Newton's noise ordinance which limits construction activity to certain times of day and on Sundays and legal holidays, including possible additional measures to advise contractors and subcontractors of applicable rules to minimize the need for complaint driven enforcement by city staff or police. (formerly #98-20)

**Action:**      Zoning and Planning No Action Necessary 8-0; Referred to Programs & Services Committee

**Note:**      Chair Crossley stated that at the January 10, 2022, meeting it was suggested that this item be referred to the Programs & Services Committee.

Without discussion, Councilor Danberg made a motion for no action necessary and refer the item to the Programs & Services Committee. Committee members agreed 8-0.

**#113-22      Request for Amendment to Zoning Ordinance to allow restaurants for nine months to add outdoor seating**  
HER HONOR THE MAYOR requesting to amend the Zoning Ordinance to insert a new Section 5.1.14 to allow restaurants for nine months to add outdoor seating

on their private property regardless of the impact on any applicable parking and seating requirements from April 1, 2022 until January 1, 2023.

**Action:** **Zoning and Planning Held 8-0; Public Hearing set for 02/28/22**

**Note:** Chair Crossley stated that tonight our objective is to set a public hearing for February 28, 2022, as this item is time sensitive.

Ms. Caira stated that this ordinance is temporary; it is to allow restaurants to use their own private property (parking lots) for seating for a limited period of time. The situation is urgent, because governor's emergency order overriding local zoning is to expire, but the pandemic continues to prevent indoor eating. There are several restaurants that wish to continue outdoor dining in their parking lots who would be in violation of their special permit parking requirements and the number of seats zoning allows, without this temporary reprieve. This ordinance would exempt restaurants from their special permit conditions relating to parking and the maximum number of seats from April 1, 2022 through January 1, 2023.

Understanding that there is an urgency to this item, there was limited discussion. Councilor Krintzman made a motion to hold the item and set a public hearing for February 28, 2022. Committee members agreed 8-0.

**#41-22** **Requesting a discussion on how "last mile" delivery services should be regulated**  
**COUNCILORS LAREDO, ALBRIGHT, HUMPHREY, DOWNS, CROSSLEY, LIPOF, KALIS,**  
**WRIGHT, KELLEY, BOWMAN, NORTON AND GROSSMAN** requesting a discussion with the Planning Department regarding whether and how "last mile" delivery services with physical locations in village centers should be regulated and what amendments to the zoning code might be needed to address these issues.

**Note:** Councilor Danberg requested her name be added as co-docketer.

**Action:** **Zoning & Planning No Action Necessary 8-0**

**Chair's Note:** *This is to allow for a new item requesting a zoning ordinance.*

**Note:** Deputy Planning Director Jen Caira and Chief of Long Range Planning Zachery LeMel joined the Committee for discussion on this item.

Mr. LeMel presented an overview (PowerPoint attached). He described last mile delivery businesses as "dark" storefronts or warehouses, not open to the public, not contributing to village activity, stocked with groceries or home goods that are marked for delivery within 15 to 30 minutes. The rise of last mile delivery business models has been going on for some time, but the pandemic has significantly increased these types of uses throughout the country.

#### Current Zoning

Based on existing use regulations, the Inspectional Services Department has determined that last mile delivery services are considered a retail sales use, which allows up to 5,000 square feet by-

right in business and mixed use zones. Larger such facilities are allowed by special permit. Village centers are primarily zoned Business 1 and Business 2.

#### Impact on Village Centers

These types of businesses could bring convenience at the expense of community, however, the many vacant store fronts in the City today do not contribute to vibrancy. During the community engagement process, we heard a strong desire to facilitate uses that bring people to village centers. To accomplish this, Planning staff agree that regulations are necessary.

#### Potential Actions

Council can do nothing, ban the use outright, or explore options to allow these uses in limited areas by-right and/or by special permit under specific conditions.

#### Other Communities

Staff explored other cities and towns who have regulated last mile delivery services, such as Fairfax County and Prince William County, VA, who allow this use by-right under a certain size in their commercial districts. They also regulate loading and delivery vehicles, and require minimum in-person retail components. Cambridge and Boston, however, do not require in-person retail.

#### Zoning Barriers to Small Business

Planning suggests that as we consider regulation to restrict last mile delivery businesses in Newton, it is important to simultaneously explore ways to remove certain barriers to desirable businesses locating and thriving in our village centers, such as removing minimum parking requirements for small storefronts. Prohibiting this use by itself does not assist or assure these storefronts can be leased. Zoning amendments, such as elimination of certain parking requirements, could move forward immediately and in parallel with this request.

Consider Pros and Cons - Although we want active storefronts in village centers, our residents use and want this service, vacancies need to be filled. This use, properly regulated, could fill vacant storefronts and may reduce traffic congestion. Regulating this use should take care not to create negative unintended consequences and not make locating anywhere in Newton infeasible.

#### **Questions for Consideration:**

- 1) Should these uses be regulated separately?
- 2) Should these uses be allowed within village centers?
- 3) Can parallel targeted zoning amendments be explored together?

Chair Crossley asked Committee members to consider the urgency of this item, when addressing the questions outlined, and how it fits in with our village center work.

#### Discussion:

Overall, there was a strong consensus among Councilors that regulating this uses should be prioritized, especially to prevent negative impacts in village centers, and that the matter is time sensitive. However, councilors expressed mixed views on where and under what conditions to allow delivery services by-right, versus by special permit, and whether there could be some kind of model that would work well in village centers.

Although there was strong consensus that non-retail businesses should not be located on the first level of a building in a village center, several councilors expressed that no delivery only service businesses should be allowed in village centers, several others cited conditions that could make a hybrid business appealing.

Although one councilor suggested remote locations such as Wells Avenue Office Park may be ideal, it was pointed out that a service area benefits from more central locations, and that these delivery services benefit people without transportation and who are not close to stores.

Several councilors expressed concern over vacant storefronts and a desire to simultaneously consider removing zoning barriers, such as eliminating parking requirements, to help support desirable small business in village centers.

Although staff maintained that certain items could be taken up simultaneously with efficiency, one councilor felt strongly that there is not time for that now.

A councilor suggested running a trial to determine how eliminating certain parking requirements would encourage businesses to open in Newton. Another asked for analyses to understand delivery vehicle impacts on traffic (depending on location)

It was noted that while staff have heard increasingly from interested applicants, the only existing last mile delivery service in the city today is thought to be *GoPuff* delivery service on Needham Street.

Several questions were directed to what other communities are doing. Mr. LeMel answered that he did not have this information and would follow up with more specifics on how other communities are regulating by-right locations and types of vehicles used. He noted that that Fairfax County, VA only allow businesses to use a certain size vehicle to stock the store and delivery vehicles are also a certain size, but was unsure if we can regulate the type of power used in delivery vehicles.

A Planning Board member noted that a “shop and ship” model (requiring a storefront) could be appropriate in a village center. This may accommodate walking/biking to a village center versus driving, if one can shop, choose and have items shipped. Having this type of option could result in both less vehicular traffic and more street activity.

**Does the Planning Department have a date to return with questions and zoning responses?**

Mr. LeMel answered that he would return with specific timelines. Staff will continue to meet with the EDC who are interested in assisting with the best way to regulate this use.

Without further discussion, Councilor Krintzman made a motion for no action necessary on this item with the understanding Councilor Laredo would docket a new item requesting a zoning change. Committee members agreed 8-0.

**#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)

**Zoning & Planning Held 8-0 on 01/10/22**

**Action:Zoning & Planning Held 8-0**

**Note:**      Assistant City Solicitor Andrew Lee, Deputy Director of Planning and Development Jen Caira and Chief of Long Range Planning Zachery LeMel joined the Committee for discussion on this item.

Chair Crossley stated that this item was last discussed and held on January 10, 2022, pending additional information. The State published draft guidelines on December 15, 2021, and additional information has been received, including an MBTA Communities website with an FAQ that is linked to the Planning Department memorandum. Newton and other communities have remaining questions. The Planning Department memo was clear in what they can address this evening, and what information remains necessary for future analysis.

Councilors received many emails and calls from constituents concerning our tone and tenor in our last meeting. Planning Department staff work very hard responding to our questions and many requests. Staff are not responsible for what information the State has provided and they are not responsible for the State rule. For some, this rule does not sit well. But our job is to understand the new law, and with due diligence reach a common understanding of the facts and how it may impact Newton before we judge. Our Constituents expect this of us. This is a new law and there is a penalty in the law in the event we would not be able to or would not, meet its requirements. Tonight, we will focus on information that is available and what additional information is necessary.

Finally, I hope we all understand by now that this is not a housing production mandate, It is a requirement to change our zoning ordinance so that it would be possible at full buildout to achieve a certain number of housing units. We are not required to construct housing units; we are not under a requirement to develop a production plan. It is a requirement to zone the City so that we can allow certain development to happen by-right, but with a range of controls in place as zoning allows.

At the January 10, 2022, ZAP meeting, staff provided the Committee with information about the multi-family by-right zoning requirements for MBTA communities. Councilors asked many questions, some of which staff answered and others that require additional research. Since the meeting, the state has released an online FAQ that is linked in the report. Staff are keeping a running list of questions that are not yet answered in the state FAQ, as well as those specific to implementation in Newton. Staff will continue to update the committee with new information and any unanswered questions will be submitted to the state during the comment period.

Ms. Caira and Mr. LeMel provided an overview (PowerPoint attached).

Ms. Caira stated that tonight, staff will address the following items to keep the conversation moving forward on what the MBTA communities means for Newton:

- Additional and clarifying information from the previous meeting
- Initial data analysis and list of potential future analyses
- Next steps and looking ahead

Key points to understand are:

The new law is not a mandate to produce housing, rather, it is a requirement that MBTA communities create zoning that can incentivize development of multi-family (MF) housing (3 or more units), by allowing such housing ‘by-right’, where it makes the most sense, near public transportation.

**The Draft Guidance establishes the requirements** for MF unit capacity, (the number of MF units that zoning must allow) according to a the transit infrastructure in a municipality and proportional to its size. In Newton, we must create zoning that would allow at least 8,330 units.

**Newton’s existing zoning** already allows for many MF units that are not built, however, only by special permit. This is called the build out capacity. Staff will perform additional analysis to calculate the Current Zoning unit capacity for a future meeting.

The state 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 land area needed to comply. 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.

Ms. Caira stated the draft guidelines key component is to clearly define what is meant in the law by “reasonable size” . The minimum physical requirement is at least 50 acres (for any community). Unit capacity varies by community based on how many and what type/s of transit exist and the number of housing units. In Newton, we must create zoning to facilitate a capacity of 8,330 units by-right.

We are awaiting further guidance from DHCD on the penalties associated with noncompliance. At a minimum, if the City does not comply, the City would not be eligible for certain state funds

including those available via the Housing Choice Initiative, MassWorks and other infrastructure program funds. The DHCD may also use their discretion to take non-compliance into consideration when determining other discretionary grant awards.

Ms. Caira explained how the required unit capacity must be calculated. She emphasized that, although we may define a district that includes existing housing, we do not 'count' existing units, rather, unit capacity is calculated according to the land area identified and how many by-right units will be allowed, regardless of what is already built. In Newton we are likely to want to describe multiple districts across the city, to reach the total unit capacity. Densities may vary as long as the average density is not less than 15 units per acre. A mixed use zone with retail on the ground floor is allowed. We may require a special permit to allow more density. She again clarified that if a landmark or historic district fall within one of these multifamily districts, that the historic protections remain in place. Finally, she stressed that our ordinances must be met in order for a project to be by right, so, for example, our inclusionary ordinance requiring deed restricted affordable units will apply.

Mr. LeMel stated that Newton does not need to rezone all land within 0.5 miles of transit to comply. Newton's many transit stops and many village centers allow for greater flexibility to comply. Hypothetically, allowing multi-family within the village centers only could bring Newton into compliance.

Mr. LeMel showed several existing developments to begin to illustrate relative scale and existing unit-per-acre densities in Newton, on individual parcels. He described analyses to be presented at future meetings, including:

1. **Unit density at the lot scale versus neighborhood scale.** Looking only at individual lots is not an apples to apples comparison since the unit density must be calculated at the district level, including rights-of-way, streets, etc. Additional analysis will look at Newton and other regional neighborhoods at the block level as case studies visualizing potential compliance.
2. **Unit capacity allowed under current zoning.** Planning and Utile are developing an analytic process to understand the current potential unit capacity under current zoning in multifamily zones. We are identifying calculable zoning constraints and applying them to individual parcels:
  - Lot area per unit, minimum lot size
  - Height maximums, FAR (floor-area ratio) maximums
  - Mixed-use constraints, lot coverage maximums, usable open space mins.
3. **Compliant zoning scenarios.** With additional input from the state and City Council, Planning and Utile can develop 3-4 zoning scenarios that comply with the MBTA communities requirements. We will show locations and distribution of districts, multi-family building types and unit densities

**Key dates, deadlines per State Guidance:**

March 31, 2022 - State public comment period ends

May 15, 2022 – City Council must be briefed

Summer 2022 - Final State Guidance issued

December 31, 2022 - Submit Action plan to DHCD

Mr. LeMel stated that the Planning Department staff recommends a Committee of the Whole meeting in March 2022 to collect additional comments and unanswered questions are submitted for the public hearing.

**Committee members questions, answers and comments:**

**If we rezone the Riverside project by-right per acreage, would it count towards the total?** Ms. Caira answered that any area that would be rezoned by-right must meet the minimum size requirements.

**If we were to rezone an area under a special permit, to allow MF by-right what would happen to the special permit granted? Does this change if the development has not yet been constructed? What happens to the other conditions in the special permit?**

Attorney Lee answered the department would have to review this question.

**The Northland project is on 22 acres which would require a minimum of 330 units under the MBTA Law. The City allowed 800 units. Do the 800 units count as part of the requirement?** Ms. Caira answered that it does not matter what is constructed or approved on the special permit, compliance with this law is only about what the zoning district allows. If we include the Northland project in new multi-family zoning districts that allow a certain number of units by-right, only that number would count.

**Can Newton determine the number of units allowed per acre?** Ms. Caira answered yes, a range of possibilities and solutions will be reviewed. Different areas may be more appropriate for different levels of density. Mr. LeMel added that the types of buildings at different densities will be reviewed to meet the requirements.

**If we put the density in village centers, can we satisfy our requirements?** Mr. LeMel answered hypothetically yes, the areas the Pattern Book identifies is approximately 240 acres. According to the Guidance we need a total district size of at least 50 acres. Within 240 acres the density required to achieve the required unit capacity, you could in theory achieve compliance.

**If the City zones to allow 62 units per acre (Washington Street example) would this be a redevelopment? Are the surrounding streets in the density calculation?** Mr. LeMel answered that in this example the lot is 0.26 acres, 16 units, therefore existing units on that parcel equals 62 units per acre. Ms. Caira added that we are showing built examples to give a concrete sense



of scale, not that the land will be redeveloped. When we do a district analysis, public ways and adjacent streets must be included in the district.

**Please explain if there is one acre of land, 25% being streets, public ways and park what is buildable?** Ms. Caira answered that to meet the 15 units per acre minimum and if 25% of the area is streets and public ways, you must meet the 15 units per acre on 75% of the land.

**Can there be there a requirement for a developer when building new multi-families to include a certain percentage of three bedroom units and not just studios or one-bedroom units? Could we require a minimum amount of three bed-rooms to be part of the project?**

Ms. Caira answered no, the Guidance says we may not limit or restrict the size of units, number of bedrooms or size of bedrooms.

**Can we require Passive House, all electrical and charging stations in the zoning ordinance so that people who build by-right will be required to do that?** Attorney Lee answered that we are still awaiting further State Guidance. We would have to examine each specific proposal to determine the extent of City authority. Chair Crossley added that Attorney Lee has advised on the limits of our authority regarding development standards, and generally speaking, if our ordinances do not challenge the State building code, then I believe we can do it. But, if we describe an overlay district, are we allowed to have some other layer of conditions? State building code does not require Passive House, but only the stretch code. But, because State building code does not address charging stations, we can require them.

**Where to put the large minimum 50 acre district at 15 units per acre may be the most difficult challenge.** Ms. Caira clarified that the minimum total district (for any MBTA community) is 50 acres, but we may break up that district with one area that is 25 acres minimum, others may be as small as 5 acres to achieve the whole. For Newton, it may make sense to draw overlay districts in multiple areas. Otherwise, to get to our required 8,300 unit capacity within 50 acres you end up with a very high density.

**When discussing how many units per acre, it is important to include streets, sidewalks and parking lots in the examples.** Ms. Caira repeated that when they do district analyses, this will necessarily be included, and that it will be necessary to review parking requirements because that is a factor in how much density can be allowed on a lot.

Once we better understand the rules, Newton should show leadership on the zoning mandate. The City is obligated to comply. This item allows an opportunity to create more housing accessible by transit. Having housing close to transit with fewer vehicles allows people options.

When reviewing the Guidance draft, there is nothing in it that prevents the City from requiring electric, solar, sustainable materials, landscaping or Passive House. The draft only requires that we cannot make it infeasible financially or otherwise to build the project. It is imperative to use

the opportunity when projects go to Design Review that we require these things be done, determine what we want and where.

The financial crisis of approximately fifteen years ago stopped development. According to the Planning memo two years ago, we produced 2336 units that were approved and pending. In the last several weeks, 700 more units have been discussed. We are making progress.

Councilor's questions, answers, comments:

**If a person owned an acre of land and built 25 units by-right, would the City have special permit authority?** Ms. Caira answered that currently that is not how the City sets special permits. Thresholds are by the number of units per acre/ lot area. Most business zones allow less housing density than MU4 districts, which allow 35 units per acre. She then added that we can consider what a special permit threshold might be, but in any case must meet the by-right requirement. Analysis and State guidance are necessary. Mr. LeMel added that the overall requirement is 15 units per acre. There could be areas that allow multi-families by-right at a lower unit per acre if it averages out with areas that allow more.

**Is the design review process a requirement? Could the City require a project more than 3 units to go through a design review process?** Ms. Caira answered the guidelines specifically call out design review as being allowed in an as of right process. Design review is not a requirement. The guidelines are clear that you cannot condition a project to make it infeasible and you cannot deny a project allowed by-right. It is necessary to understand the limits of design review.

**In the future, please include calculations of the land mass including streets, sidewalks and parks. Is conservation land included in the land mass?** Mr. LeMel answered that recreation areas are also included in the land mass, but Ms. Caira noted that conservation land, public areas and land that has conservation restrictions would not allow for residential use. In future meetings we will discuss this and determine what is and what is not included.

**Can we consider the shuttle bus on Needham Street (to the T) as transit?** Ms. Caira answered no, the Northland Shuttle does not count as a transit station as defined in the Guidance, but could be an area we consider because we know additional transit will be there. In areas outside 0.5 miles from transit stations, we may utilize areas where there exists a clear pathway to a transit station.

**Please explain what would happen if the location were 0.6 mile, not 0.5 mile distance from transit?** Ms. Caira answered that additional clarity is necessary. The State did inform us that half of the district could be outside of the half mile radius but easily accessible to transit station based on existing street patterns and pedestrian connections. We need clarity on the particulars of defining a portion of the district outside the half mile radius. Must it to be contiguous to the portion that is within the half mile radius? We have areas within the City near transit that may be appropriate areas to locate these districts.

**Can we use form-based zoning to better define what we want built by-right?**

**Will the City limit the size of units?** Ms. Caira repeated that, per the Guidance, we may not restrict or limit the number or size of units, numbers or sizes of bedrooms.

Comments:

Under this statute, we have no control on the design and what will be built. **Ms. Caira countered that the state guidelines specifically call out design review which the City can do and still be considered as of right as well as the site plan approval and review.**

It is necessary to determine what can the City regulate by special permit. Ms. Caira said that additional State guidance is necessary. Analysis, baselines, tools, understanding and other examples while still in the State guidance draft form. We will wait until we have more information or have final guidelines.

When we discuss zoning options, it is hopeful that we will discuss options for maximizing inclusionary opportunities (number of units that will trigger the ordinance).

It is necessary to understand the importance of our goals are, including housing affordability, climate action and senior friendly housing.

This law was passed because it is so important that all the MBTA communities allow more housing, because the need is so great, and our economy is likely to stop growing if we can't house the people who can accept jobs in Newton.

Committee members and Councilors thanked the Planning staff for their good work.

In closing, Chair Crossley reminded that answers to many of these questions can be found in the Q, & A the State has provided.

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

The Committee adjourned at 10:31 p.m.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**