



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, February 28, 2022

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

Also Present: Councilors Bowman, Downs, Oliver, Lipof, and Kelley

City Staff: Devra Bailin, Economic Development Director; Jen Caira, Deputy Director of Planning & Development; Andrew Lee, Assistant City Solicitor; Zachery LeMel, Chief of Long-Range Planning; Barney Heath, Director of Planning & Development; Jonathan Yeo, Chief Operating Officer

Planning & Development Board: Peter Doeringer (Chair), Chris Steele, Lee Breckenridge Kelley Brown, Kevin McCormick, and Jennifer Molinsky

#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 & Planning Approved 8-0; Public Hearing closed 02/28/22**

Note: Economic Development Director Devra Bailin and Director of Planning & Development Barney Heath joined the Committee for discussion on this item. Ms. Bailin stated that outside dining has been operating through the Governor's state of emergency declaration, however this is set to expire on April 1 and there is no move to renew the order. The Planning Department has been working to expand outdoor dining, especially as many people remain concerned about COVID and apprehensive about dining indoors. Ms. Bailin stated that this is a temporary ordinance to allow those with outdoor dining on private property to continue with it. It does not relieve them of going through the licensing process.

The Committee opened the Public Hearing.

Public Hearing:

Seana Gaherin, owner of Dunn Gaherins, 344 Elliot Street, stated that the pandemic has devastated restaurants and that many local establishments have unique designs which would

benefit from allowing outdoor dining. She felt that it would help make up for the lost revenue due to labor shortages and emphasized that this would be done with a positive relationship with the neighborhood.

With no one else coming forward to speak, Councilor Danberg made a motion to close the public hearing which carried 8-0.

The Planning & Development Board voted 5-0 (Mr. McCormick and Ms. Molinsky not voting) to close the public hearing.

Committee discussion and questions:

Councilors spoke in favor of the proposal, saying that outdoor dining has been a success for the public and is necessary to help restaurants survive and remain competitive. Councilors also expressed interest in allowing more and year-round outdoor dining opportunities. There were some concerns about impacting parking requirements set in special permits.

When a local restaurant applies for a license for outdoor dining, are ward councilors supposed to be notified?

Ms. Bailin answered yes, but that she has no knowledge of additional restaurants looking to use this provision apart from those which already do. Director Heath emphasized that this is a stopgap measure.

Councilor Danberg made a motion to approve which carried 8-0.

Mr. Steele made a motion to approve for the Planning & Development Board, which carried 4-0-1 (Director Heath abstaining; Mr. McCormick and Ms. Molinsky not voting).

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

ATTORNEY PETER HARRINGTON ET AL., submitting a 60-signature citizen petition 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 7-1 (Councilor Danberg opposed); Public Hearing Continued

Note: The Chair opened discussion, stating that Section 10-2 of the City Charter affords citizens the opportunity to formally speak to the Council. The Council must hold a public hearing and act with respect to a petition addressed to the Council and signed by at least 50 voters. In cases where the petition seeks passage of a measure, action must be taken within three months of filing. This means that, as with any docket item, there must be a vote to approve, deny, or vote "No Action Necessary".

The petitioner, Attorney Harrington, joined the committee. He also introduced Randall Block and Marc Hershman as contributing to the presentation. He prefaced his remarks by thanking Planning staff and the Chair for their time assisting him on this item, in particular, for developing and including the Q&A in the packet relative to the substance of proposed village center zoning district. He also noted that neither he nor the first 50 signers of the petition were notified of the public hearing as required by the Charter Section 10.2.

Atty. Harrington stated that he has also been working with land use attorneys Alan Schlesinger and Terry Morris to create an alternative presentation zone that is not significantly different in the issues, using the MU4 zone as a format.

Mr. Harrington summarized his proposal regarding village centers, stating that it was informed by the Newtonville Area Council survey relating to the Washington Street Vision Plan, which demonstrates a concern from the public over massing and building height. His proposal limits buildings in village centers to two stories by right (as is the case in most village districts today) but allows for a third story through site plan approval, if the upper stories contain housing, which must include 10% units affordable to up to 65% median income. It would also allow an additional half story if under a sloped roof. Harrington stated he tried taking different views into account to preserve the old New England village feel for Newton's village centers. He expressed confidence that there would be many builders willing to build the smaller buildings for a smaller profit.

Mr. Block then read a prepared statement (attached), describing the role and importance of centrally located gathering places in village centers. He showed two slides, contrasting city consultant Utile's diagram illustrating metrics of success as applied to Newton's village centers, with his own, which added open space as a fourth metric.

Mr. Hershman had some technical difficulties with his presentation, so Chief of Long-Range Planning Zachery LeMel then summarized the new zone proposed in the petition, noting that the proposal would allow more density by right in order to accommodate housing. He expressed appreciation for this aspect and referred everyone to the setoff questions that staff sent to the petitioner, and Mr. Harrington's responses. (attached) He stated that the Planning Department and Utile will be speaking tonight about next steps in analyzing and considering zoning for our village centers, and the ongoing work that is planned prior to community engagement. This work is important to our understanding of how we should zone to facilitate the kind of development we want in our village centers, but as well that which is feasible. In order to continue this work, Mr. LeMel noted that the recommendation from the Planning Department is for Council to vote No Action Necessary.

Mr. Hershman then delivered the attached presentation showing photographs of town centers from the Greater Boston area and beyond., consisting of primarily one- and two-story buildings. He stated his preferences for avoiding high density in village centers and to preserve human scale. He said that keeping buildings compartmentalized creates a more inviting feel in the village centers, with retail on the ground floors. He showed a diagram of preferred ratios of building heights relative to street width.

Public Comment:

Atty. Schlesinger, law offices at 1200 Walnut Street, summarized a letter he, with Attorneys Harrington and Morris, submitted to the Committee, after the petition was filed. The letter proposes a modified MU4 district be applied to village centers. Reviewing the history and goals of Zoning Redesign and the village centers, he felt that these were already addressed properly through the MU4 District. The consensus among the writers for the village centers is to require retail (active uses) on the ground floor with housing above and a maximum of four stories by right. Three MU4 districts have been approved in the city to date, and he felt that the MU4 district has worked well and achieved its goals.

Dan Powdermaker, 119 Lincoln Street, stated that he is part of the Newton citizens' *Building Professionals Group* and that Atty. Harrington's proposal was commendable on several points. He felt that it is a good idea to allow multi-family and mixed-use by-right in village centers and that this petition uses a form-based approach to keep the villages in scale. He also raised concerns that the financial feasibility of the redevelopment of small lots and differences in scale between villages need to be studied more.

Sean Roche, 42 Daniel Street, stated that this petition covers ground already addressed in the zoning redesign conversation and that it is unfortunate a group of 60 residents is able to tie up the resources of ZAP and the Planning Department with this. He felt that the proposal would limit the production of new housing and that it is almost purely aesthetic in nature.

Kathleen Hobson, 128 Dorsett Road, supports a "No Action Necessary" vote on this item, feeling the petition is premature as ZAP still needs to process community feedback and determine how to comply with the state's new multifamily zoning law. Additionally, she felt that it was a bad idea to box out key areas of the city near transit stops from denser by-right development.

Jay Walter, 83 Pembroke Street, stated that he is also a member of the Newton citizens' *Building Professionals Group* and feels that the attorneys' memo is an evolution of Atty. Harrington's proposal as it offers excellent suggestions for the modification and revision of MU4 districts by allowing mixed-use by-right. It requires further study and economic analysis to determine what scale of building should be allowed by-right and he encouraged ZAP and the Planning Department to study this approach more carefully. He recommended a No Action Necessary vote on the proposal.

Tom Gagen, 32 Fern Street, felt that the petition was good thinking about how to increase housing but stressed that City efforts are underway on this matter along with the new state law involving MBTA communities. He supported a No Action Necessary vote. Mr. Gagen expressed disappointment at Mr. Hershman's presentation, stating that its praise of one- and two-story buildings and criticism of developments like Trio was anti-housing.

Lynn Weissberg, 5 Alden Street, stated that there is already much work ongoing regarding village center zoning and considering the petition is a diversion at this point.

Nancy Zollers, 54 Oliver Road, stated that most are aware that zoning reform has been discussed for the past two years through multiple forums with an active community-based process. She felt this petition was premature and that it does not provide enough flexibility to develop transit centers. She cited her village of Waban, which Mr. Hershman praised for its scale, as an example since it is full of empty storefronts.

Doris Ann Sweet, 281 Lexington Street, supports a No Action Necessary vote, echoing that there has already been an extensive community engagement process. The recently passed MBTA communities law will allow for more housing variety.

Peter Bruce, 11 Claflin Place, stated that this proposal is a good alternative to the market rate housing going up in Newtonville and it will promote housing available to those of lower income brackets. He stated that transit-oriented development is needed, but there should be more focus on the Green Line as it offers more ridership than the Commuter Rail. Mr. Bruce also supported the points read by Mr. Block.

Rena Getz Escudero, 192 Pine Ridge Road, agreed with Mr. Hershman that the historic gathering places need to be honored and preserved and that more thought needs to be put into the placement of density. She added that COVID has been a major contributor to the empty storefronts in Waban.

Jessica Aker Archer, 621 Watertown Street #18, stated that gentrification challenges the younger generation but failed to deliver affordable housing as many cannot afford to buy homes. She added that she is more concerned with affordability than building size.

Councilor comments and questions:

Councilors thanked all who spoke as well as the petitioners for the work put into considering village zoning reform.

Some Councilors felt that the item should be held since the petitioners were not sent direct notification from the Clerk's Office. Assistant City Solicitor Andrew Lee answered that since the item was advertised properly the Committee may proceed with a final vote, or the Committee may hold the item, notify the first 50 petitioners as required by Charter, and continue the public hearing without needing to re-advertise.

A councilor noted that Newton lacks enough open space because urban sprawl has been permitted; our expansive suburban areas have taken up much land. Open spaces are incredibly important to have, and all tools must be used to preserve what we do have as the dialogue continues. Green spaces are often one of the most important aspects of a successful village center.

People cannot afford to move back to Newton and Massachusetts is exporting its young people because they cannot afford to live here.

One councilor suggested that Planning staff should do more analysis on the type of density this proposal would create. Supplying more market rate housing alone will not reduce housing costs. In response it was stated that market-rate housing is often needed to support affordable housing.

This discussion has been very helpful as it has allowed Councilors to learn more about what some residents prefer and gives us a preview of what some changes to the code may look like.

The Chair invited Atty. Harrington to make a closing statement. He stated that he felt his objective was to bring these ideas and information to ZAP for discussion, which was met. He offered to help with this process going forward however possible.

Given that notifying the 50 signers by mail, as required by the Charter, was not followed, Councilor Baker made a motion to Hold the item and continue the Public Hearing which carried 7-1 (Councilor Danberg opposed)

Mr. Steele made a motion for the Planning & Development Board to continue the public hearing and hold the item which carried 5-0-1 (Mr. Heath abstaining, Mr. Brown not voting)

#38-22 Discussion and review relative to the draft Zoning Ordinance regarding village centers

ZONING & PLANNING COMMITTEE requesting review, discussion and possible ordinance amendments relative to Chapter 30 zoning ordinances pertaining to Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

Action: Zoning & Planning Held 7-0 (Councilor Leary not voting)

Note: Mr. LeMel opened discussion on the item, stating that discussions on the next phase of village center design are beginning. Concurrent with community conversations, the goal of this project is to find what is needed to make village centers thrive and have more attainable housing. Tonight, the committee is joined by Utile consultants Tim Love and Lisa Hollywood and John Tremontozzi from Landwise to discuss the development possibilities under current zoning in large village centers. (see attached presentation)

Mr. Love stated that through discussions with Planning staff, it was decided to look at existing sites within village centers for analysis of the financial feasibility of different building concepts under existing zoning by-right and by special permit. These examples sought to attain as much density as possible and follow all existing regulations.

Compared to other communities in the Greater Boston area, Mr. Tremontozzi stated that Newton is overall high price and low density. For the test cases, sites of two acres or less in village centers were used and guided by questions of form and market data to help demonstrate what is needed to make projects financially feasible. Rental projects can be more challenging to build in village centers as the more units they contain require more parking than a condo project of similar size.

Mr. Love added that most of the projects at this scale use underground parking, which was the assumption made in the development test fits. Developers typically seek a return on cost of 5.25 to 6 percent to make a project feasible, though sometimes they will accept 5 percent.

The chosen sites are medium to small sites in Newton Centre that are similar to other village centers. BU1 and BU2 represent more than 50% of village center parcels. Two zoning districts within village centers that do not allow for multifamily housing were not considered for this analysis. MR2 and MU4 represent relatively small percentages and were also not included.

Ms. Hollywood presented the massing tests and dimensional constraints followed by Mr. Trementozzi describing the financial feasibility of each. Each of these options was analyzed based on what could be built under the existing zoning either by-right or by Special Permit. In nearly every scenario, the limiting factor was the parking requirements which prevented the ability to use the allowable FAR. On the smaller sites, setbacks became another limiting factor. These scenarios can all be found in the attached presentation slides.

To conclude, Mr. Love reiterated the importance of parking and stated that setbacks have more of an impact on smaller parcels. Projects with an FAR less than 1 are typically not feasible and between 1.3 and 1.5 is only borderline feasible. For-sale units are often more attractive to build than rental and the floor plates too small for anything other than professional office space as they require more parking.

Committee Discussion and Questions:

Councilors thanked the consultants for the presentation as informative and well done.

Transit oriented-development will need to consider frequency in its placement as the Green Line operates more throughout the day than the Commuter Rail does.

If 30 units is the threshold between for-sale and rental projects, these models should be studied as condos as many developers in Newton pursue projects with smaller size.

Regarding concerns expressed about properties that transition from retail/commercial space to residential, these projects can benefit the City, as a less productive commercial site is sometimes better used as more residential space.

Councilors also discussed parking requirements in village centers, stating that they are restrictive and suggesting that parking should be more central rather than tied to specific parcels as much. They also asked what the economic impact would be if parking requirements were substantially changed.

With the setbacks discussed in Option 1, would new buildings need to be constructed with 10-foot setbacks?

Ms. Hollywood answered that the regulations are an average of the context. On one adjacent lot there is zero setback and a more substantial setback on the other, so 12 feet was used as the in-between for these two parcels. The test fit shows how a new building would have to be constructed on the site if the existing one was torn down. Mr. Love added that adjustments to the setbacks in different areas of the village centers would need to pay more careful attention to existing building patterns.

Can you explain how the 5.2% and 5.5% return on costs may be close yet still far apart?

Mr. Tremontozzi explained that even a small percentage difference can translate into millions of dollars.

Could units be built over the drive aisle in the Centre Street options?

Ms. Hollywood answered that while not on this particular site it is included for others.

Why has it been said that developers are often pushed to make larger projects rentals?

Mr. Tremontozzi replied that those projects are often long-term and income producing. While the market remains strong on for-sale units, the threshold is about 30 units to determine the direction of a project.

What is the fiscal impact of replacing the higher taxed commercial uses with residential?

Mr. Love responded that the land values used in the performance assessment were meant to overcome the embedded value from a land use perspective, not a tax standpoint. He continued that it was assumed that the replacement of commercials would be 1:1 as the ground floor spaces would remain commercial. Mr. Love also stated that it would be beneficial to make parking requirements for commercial space similar to residential.

Mr. Doeringer asked if it made sense to have the same feasibility threshold for rental and for-sale properties, stating that profitability will need to be discussed as the future of interest rates remains uncertain. Mr. Tremontozzi responded that these models were all for-rent for simplicity, while also stating that it is difficult to predict what future thresholds will be. He stated that these questions will be considered more going forward.

When Utile returns to ZAP, it should consider the appropriate height for a three-story building and how different heights of the first floor would be used to benefit commercial spaces.

Councilor Wright made a motion to Hold which carried 7-0 (Councilor Leary not voting).

The meeting adjourned at 10:18pm.

**Respectfully Submitted,
Deborah J. Crossley, Chair**