



## Zoning & Planning Committee Report

### City of Newton In City Council

**Monday, March 28, 2022**

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

**Also Present:** Councilors Downs, Greenberg, Laredo, Lipof, Bowman, Kelley, Malakie, and Lucas

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

**City Staff:** Cat Kemmett, Planning Associate; Zachery LeMel, Chief of Long-Range Planning; Devra Bailin, Economic Development Director; Andrew Lee, Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; Lara Kritzer, CPA Program Administrator; Nathan Giacalone, Committee Clerk

**#126-22: Requesting amendments to Chapter 30**

DIRECTOR OF PLANNING requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, Section 1.5.5.B. Floor Area, Gross to clarify measurement of gross floor areas for buildings with exterior insulation, Section 4.2.2. Dimensional Standards to correct scrivener's errors concerning the maximum stories permitted in the Mixed Use 2 and Mixed Use 4 districts, and Section 4.2.3. All Building Types in Mixed Use to correct a scrivener's error concerning the maximum height permitted in the Mixed Use 4 District.

**Action:** Zoning and Planning Approved 7-0 (Councilor Baker not voting); Public Hearing Closed 03/28/22

**Note:** The Committee was joined for discussion on this item by Planning Associate Cat Kemmett. Ms. Kemmett delivered the attached presentation, reviewing her previous presentation to ZAP on this item at the February 14<sup>th</sup> meeting. She stated that the Planning Department regularly makes updates to the Zoning Ordinance to improve clarity and fix mistakes such as scrivener's errors.

This item will also address an issue relating to sustainability. Ms. Kemmett explained that FAR (Floor Area Ratio) is measured from the exterior wall only when exterior insulation is added, from a sustainability package passed in 2019. This extension is meant to promote the use of exterior insulation. Currently this exemption is only available to residential zones but should be available in all districts.

Ms. Kemmett stated that after reviewing the 2019 amendment with the Law Department and Inspectional Services, Planning believes that this was always the intent but was omitted in error rather than by a policy choice. The proposed edits will extend this exemption to all districts.

Ms. Kemmett discussed another scrivener's error with the dimensional standards table made from decoupling building height. She stated that the listed maximum stories by special permit in MU2 and MU4 are incorrect; currently they are listed as 8 stories in MU4 when it should be 5. The proposed change will correct this error. This change will have no impact on any existing or proposed project.

Another error incorrectly lists the by-right maximum height in MU4. The proposed change will align the by-right height with the maximum number of floors, which will also have no impact on any current or existing project.

The Committee opened the public hearing. No member of the public chose to speak on the item.

Councilor Krintzman made a motion to close the public hearing which carried 7-0 (Councilor Baker not voting).

Committee members thanked Ms. Kemmett for the presentation and her work on this matter and supported the proposed changes.

Councilor Danberg made a motion of approval which carried 7-0 (Councilor Baker not voting).

Mr. Steele made a motion to close the public hearing for the Planning & Development Board which carried 7-0.

Mr. Steele made a motion to approve the item for the Planning & Development Board which carried 7-0.

**#179-22**      **Appointment of Jim Griglun to the Economic Development Commission**  
HER HONOR THE MAYOR appointing Jim Griglun, 94 Bemis Street, Newton 02460 to the Economic Development Commission as a member for a term of office to expire on December 31, 2023. (60 days: 05/06/22)

**Action:**      **Zoning & Planning Approved 7-0 (Councilor Baker not voting)**

**Note:**      Mr. Griglun was invited to join the Committee and discuss his desire to join the Economic Development Commission (EDC).

Mr. Griglun stated that he and his wife moved to Newton eight years ago and they want to help ensure that Newton remains a vibrant community. He felt there was a similarity between his work as a financial planner and the role of the EDC.

Councilors thanked Mr. Griglun for his willingness to volunteer and looked forward to his ideas on expanding the tax base.

Discussion:

**The current balance between the residential and commercial tax base in Newton skews towards residential. Should more commercial be encouraged and how should it bear the tax burden?**

Mr. Griglun responded that he has no clear answer to this at the moment and that as a new member of the EDC he understands that he has much to learn and does not want to come in with certain assumptions.

**As a member of the EDC how can we foster both economic growth and environmental sustainability?**

Mr. Griglun answered that this would come through discussion with business owners and other partners in the city. They will make decisions such as office space rental and any changes in the best interest of the business.

Councilor Albright moved to approve, which carried 7-0 (Councilor Baker not voting).

**#127-22 Request for amendment to the Zoning Code to regulate “last mile” delivery services**

COUNCILORS LAREDO, DOWNS, CROSSLEY, RYAN, KALIS, DANBERG, KRINTZMAN ALBRIGHT, MARKIEWICZ AND WRIGHT requesting an amendment to the Zoning Code to regulate “last mile” delivery services in the City of Newton.

**Action: Zoning & Planning Held 8-0; Public Hearing set for 04/25/22 on 03/14/22**

**Note:** The Committee was joined for discussion of this item by Chief of Long-Range Planning Zachery LeMel.

Mr. LeMel delivered the attached presentation on microfulfillment centers, reviewing the previous proposals for the ordinance as well as alternate ones the Planning Department would present to the Committee at the public hearing on April 25<sup>th</sup>. At the previous meeting, the Committee consensus was to regulate these businesses and to permit them in MU, LM, and M zones.

Issues outside of zoning and not just specific to this use, such as curbside management also remain to be discussed. The Committee has not yet reached consensus on allowing these businesses within village centers. Mr. LeMel stated that the goal of Committee discussion was to adjust the original proposal and create Alternatives 1 and 2.

Overall, updates from the original proposal include adding the BU4 zone, changing the parking requirement to reflect the lack of in-store business, and removing the requirement to have an in-store retail component in favor of a blanket ban on allowing these uses at the street. While both of the new Alternatives restrict microfulfillment centers away from the street at non first-floor spaces (though Alternative 1 allows them to be pushed back from the street), only Alternative 2 prohibits them entirely from village centers. In order to be permissible in a BU1 BU2 village center district under Alternative 1, they must be at least 16 feet back from the street (allowing

for another retail space at the street) or in a building where no portion may be within 30 feet of a street.

Mr. LeMel emphasized that microfulfillment centers are an evolving business and that as work continues on village centers, they can be revisited later in the process.

Chuck Tanowitz of the EDC spoke, stating that microfulfillment centers are an evolving business model with an uncertain future. Many of these are venture-backed and will be revisited in the future.

Committee Discussion and Questions:

**Are there significant areas outside of village centers for microfulfillment centers?**

Mr. LeMel answered that these are recommended to be located outside of village centers in the MU1, MU2, M, LM, and BU4 zones which does represent a variety of parcels for these businesses. The rationale for allowing these businesses in village centers is that they be centrally located for deliveries and to accommodate the bicycles used as the primary method of delivery as seen in other cities.

**If microfulfillment centers are required to have a retail operation in their business, could a special permit require them to be run as if they were a stand-alone retail business?**

Atty. Lee answered that this would be problematic as the City cannot tell businesses how much product they have to sell.

Some Councilors opposed the parking minimums, arguing that this decision is best left up to the businesses as they rely on bicycles and scooters to make deliveries and that this will help them fill empty storefronts and revitalize village centers. Others urged caution at this, stating that empty storefronts should instead be filled with pedestrian-friendly businesses. They added that microfulfillment centers need on-site parking for deliveries to the business in order to maintain street parking for other users.

It was also said that while parking minimums should be eliminated for some businesses like restaurants, they are needed to regulate microfulfillment centers. Mr. Tanowitz added that parking requirements should not be changed in a way that would incentivize microfulfillment centers over other businesses such as restaurants and that the EDC will hopefully provide a recommendation on this by the April 25<sup>th</sup> public hearing.

Councilor Krintzman proposed a straw vote to see whether the committee was in favor of eliminating parking minimums for microfulfillment centers and it failed to carry.

Councilors supported requiring a special permit in some cases as it would help ensure that the use is appropriate for the site. It is easier to remove the special permit requirement in the future to enact it. Councilors also felt that as these centers have caused traffic problems elsewhere, it would be better to finish more of the village center zoning work first. Councilors also supported allowing such centers on non-first floor spaces such as basements or upper-floors. First-floor use would need to be set back far enough from the street.

Mr. Doeringer stated that the Advisory Committee has discussed the different kinds of delivery that traffic microfulfillment centers would create. They would need to have dedicated loading space to accommodate their deliveries and there would need to be adequate enforcement of their scooters and bicycles regarding their parking and operation.

The Committee did not reach consensus on a proposal to discuss at the April 25<sup>th</sup> public hearing. Councilors supported presenting all three alternatives at the public hearing as it was suggested that a discussion with the public would help the Committee make a choice.

After tabling the item to discuss #38-22, the Committee voted to take it off the table and resume discussion. Regarding noticing the public hearing with multiple proposals, Atty. Lee confirmed that the public hearing notice could accommodate the different proposals under consideration.

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

**#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 8-0

**Note:**      The Committee was joined for discussion on this item by Utile consultant Tim Love and John Tremontozzi from Landwise.

Mr. Love began discussion on the item, reviewing Utile's prior discussion with the Committee at its meeting on February 28<sup>th</sup>. At this meeting, three sites in village centers were examined through the existing zoning (MU4, BU3, and BU2) both by-right and through special permit and given financial analysis by Landwise to estimate what projects would be financially feasible or not. Utile presented an overview of these observations and an application of the existing zoning regulations to determine what is feasible in village centers.

Mr. Love stated that the previous meeting demonstrated that parking requirements are the biggest limitations on what can be built in village centers, even when parking is below-grade. Additionally, developers are not able to build the maximum number of floors due to the building height limits in place. The setback requirements on many village center parcels, which tend to be skinny and deep, means that the resulting floor plan in terms of building width impacts viability.

Examples were presented to demonstrate a tiered framework for the village centers which would use a center, periphery, and edge model. Each level of the tier could have different requirements such as building size and parking. This uses the MU4, BU3, and BU2 zones to help rethink the scale of village center zoning. Mr. Love clarified that his examples are a framework and that

additional modification would be needed before a final plan could be presented. This tiered framework was applied to the examples presented on February 28<sup>th</sup> with the overall goal of identifying the features to ensure viable development and desirable urban form in village centers.

Other suggestions for discussion were controlling building size through the footprint rather than maximum area and removing the special permit requirement for projects on lots smaller than one acre.

The chosen sites were tested with different zoning to show the options available through by-right or special permit to demonstrate what could be built. Each was tested with a different zone to see what could be built either by-right or by special permit. In nearly every scenario, parking and maximum building area were the limiting factors preventing a financially feasible project. Reducing parking requirements and increasing floor-to-floor heights would likely create more feasible projects.

In conclusion, Mr. Love reiterated that lowering parking requirements, increasing building heights to allow for a minimum standard of floor-to-floor height, removing the maximum by-right building area and using lot size and footprint instead, removing the lot area per unit, and removing the minimum lot size could promote a more desirable urban form. This would be done through introducing a maximum building footprint size, establishing a minimum threshold for site plan review, and introducing design standards. Mr. Love added that the one-to-one setback required above 40 feet in the MU4 district remains an issue for desirable urban form and supported Mr. Love's assessment regarding viable development. With higher density, other requirements such as affordable housing, public open space, and sustainability can be achieved in future developments.

Councilors thanked Mr. Love and Mr. Trementozzi for the presentation.

Committee Discussion and Questions:

**Since most developers opt for special permit conditions, could Utile use these more in its test fits?**

Mr. Love answered that these test fits show how items can change and are more intended for discussion than as recommendations. The tests fits looked at both by-right and special permit scenarios. Mr. Trementozzi added that they used data and metrics from real projects but have not yet compared any one individual project against another. Rental uses instead of condominiums were used for easier modeling purposes.

**It is concerning to suggest removing the special permit for sites under an acre as these are the exact types of projects which need oversight.**

Mr. Love responded that the question of site plan and design review and what the metric should be is a question for the Council, though he suggested the tiered system for the threshold.

**Some examples were 100 percent residential and it is concerning to possibly lose commercial space in village centers.**

Mr. Love answered that this is not a conscious endorsement of decreasing commercial space and that the question remaining is where to allow residential both in the individual building and throughout the village center. In the center and periphery, the Council may wish to require mixed-use, but on the edge, it may want to consider allowing fully residential buildings.

**With the building energy performance standards under consideration, could energy mitigation requirement costs be factored in the models?**

Mr. Tremontozzi answered that some additional cost would need to be added for energy mitigation and Mr. Love added that sustainability measures could be reverse engineered for certain projects as higher-density could support these requirements.

**Some communities have design guidelines. Are these a possibility in Newton?**

Mr. Love answered that there have been initial conversations with Planning about this and that factors such as setbacks and roof form would be used by the Planning Board during site plan review.

Some Councilors expressed concern over eliminating minimum parking requirements, stating that other questions of village center parking were not yet answered and that it is unlikely that eliminating parking requirements would disincentivize car use. Others felt that developers would be better suited to determine the amount of parking a development would need and lowering or eliminating the parking requirements either fully or in targeted instances at best. They also would like to see more open space requirements and further research into the proposed elimination of the lot area per-unit requirement. Once Councilor suggested that Utile and Landwise run the financial models as for-sale projects instead of rental, since many of the smaller projects recently built or in-construction are for-sale. Mr. Tremontozzi explained that additional assumptions need to be made for the for-sale model, like when the units sell, but that they have built those models and can run the numbers. Skepticism at Utile's assumptions in its models was also expressed as they used rental instead of for-sale prices.

Councilors spoke to the importance of restoring the "missing middle" of housing and felt that promoting higher density would accomplish this through housing available to a wider pool of prospective buyers. Eliminating lot size requirements was suggested as a means to accomplish this since it artificially restricts the number of units typically, typically leading to a smaller number of larger sized units. It was also stated that there needs to be a holistic approach to village zoning and that buildings cannot be looked at individually. Modest changes such as changing floor height were contrasted with trickier ones such as parking requirements.

There was broad consensus in support of the tiered framework shown by Utile.

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

**Referred to Zoning & Planning and Finance Committees**

**#216-22 CPC Recommendation to appropriate \$88,554 in CPA funding**

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of eighty-eight thousand five hundred and fifty-four dollars (\$88,554) in Community Preservation Act fund from the FY22 Unrestricted funds to the control of the Planning & Development Department for a grant to the Newton Community Farm for the rehabilitation and restoration of the ca. 1855 farmhouse including excessive water and moisture remediation and the installation of a new electrical system, water heater and kitchen ceiling.

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

**Note:** The Committee was joined for discussion on this item by CPA Program Administrator Lara Kritzer and CPC Chair Dan Brody.

Ms. Kritzer stated that the Farm Commission is requesting the funds to complete four projects on the farm house, which the farm manager is required to live in. the required work needs to fix water issues in the basement, update electrical systems, fix the kitchen ceiling, and repair the water heater. She added that the funding is coming from historic resource funds as the farmhouse was recognized as a historic structure when purchased by the City in 2005.

**Committee Discussion and Questions:**

Why is the hot water heater replacement so expensive?

Ms. Kritzer answered that there may be some changes since the initial quote, and she would double check.

Does the ceiling work include the lighting update?

Ms. Kritzer responded that some of the request is to better diagnose the problem.

It was stated that a consequence of the bidding process the City is required to follow inflates costs beyond what they would be for private projects. Councilors also spoke in support of the Farm and commended its contributions to the City.

Councilor Ryan made a motion of approval which carried 8-0.

Before adjourning, the Chair asked the Committee if it could start its April 11<sup>th</sup> meeting early at 6:30 to accommodate some appointments into its busy schedule and Committee members agreed.

The meeting adjourned at 10:16pm.

**Respectfully Submitted,**

**Victoria Danberg, Vice Chair**