



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, April 11, 2022

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

Also Present: Councilors Laredo, Greenberg, Lucas, Bowman, and Malakie

Planning & Development Board: Peter Doeringer (Chair), Kevin McCormick, and Kelley Brown

City Staff: Barney Heath, Director of Planning & Development; Zachery LeMel, Chief of Long-Range Planning; Andrew Lee, Assistant City Solicitor; Cat Kemmett, Planning Associate; Liora Silkes, City Energy Coach; Ann Berwick, Co-Director of Sustainability; Nathan Giacalone, Committee Clerk

#193-22 Appointment of Jennifer Pucci to the Zoning Board of Appeals

HER HONOR THE MAYOR appointing Jennifer Pucci, 22 Florence Court, Newtonville as an associate member of the Zoning Board of Appeals for a term of office to expire on April 19, 2023. (60 days: 05/20/22)

Action: **Zoning & Planning Approved 6-0 (Councilors Baker & Danberg not voting)**

Note: Attorney Pucci introduced herself and described her interest in joining the Zoning Board of Appeals (ZBA). Ms. Pucci noted that until recently she worked as a litigator for the City's Law Department before leaving for another position. Having enjoyed her work for the City and being a resident, she stated that she wants to remain involved and serve at the local level and that the ZBA seemed a natural fit for her.

Committee members noted Ms. Pucci's impressive and relevant experience and expressed appreciation for her willingness to serve.

Councilor Albright made a motion to approve which carried 6-0 (Councilors Baker & Danberg not voting).

#194-22 Appointment of John Sisson to the Newton Historical Commission

HER HONOR THE MAYOR appointing John Sisson, 45 Greenlawn Avenue, Newton as an Alternate member of the Newton Historical Commission for a term of office to expire on April 19, 2025. (60 days: 05/20/22)

Action: **Zoning & Planning Approved 4-0-2 (Councilors Ryan & Wright abstaining; Councilors Baker & Danberg not voting)**

Note: Mr. Sisson introduced himself to the Committee and described his interest in joining the Newton Historical Commission (NHC). He noted that as a 16-year resident he has enjoyed being involved locally to contribute to the community. He created “Newton Villages”, a group exploring ways to improve upon Newton’s village vitality and produced a magazine on the subject. He was a member of the NHC some years ago before stepping away to address a family matter. As the Economic Development Director for the Town of Dedham, he has a particular interest in village center vitality and understands the value of preserving historic resources.

Committee Discussion, Questions, and Comments:

Councilors thanked Mr. Sisson for his past civic contributions and willingness to serve.

When the Council revised the Landmark Ordinance, the role of the Planning Board was added to consider and recommend whether landmarking a property would be consistent with city plans and policies, but some NHC members were unaware. Is this something you are aware of?

Mr. Sisson answered that he was not aware prior to the NHC meeting he observed where the Senior Center was proposed for landmarking, and that examining the ordinances will be a first priority for him. He added that landmarking can be a good tool when used proactively rather than reactively.

As the Dedham Economic Development Director how do you manage historical buildings with respect to development?

Mr. Sisson responded that Dedham does not have a demolition delay bylaw but does have three historic districts, and that surveys have been conducted to identify historically significant housing beyond that. Areas to be protected have been identified. Those areas which can be developed are considered with an emphasis on creating a strong sense of place and improving the quality of life.

Councilor Leary made a motion to approve which carried 4-0-2 (Councilors Ryan and Wright abstaining; Councilors Baker and Danberg not voting).

#195-22 Appointment of Anne Marie Stein to the Newton Historical Commission

HER HONOR THE MAYOR appointing Anne Marie Stein, 31 Madoc Street, Newton as an Alternate member of the Newton Historical Commission for a term of office to expire on April 19, 2025. (60 days: 05/20/22)

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

Note: Ms. Stein introduced herself and described her interest in joining the NHC. She answered that she has lived in Newton for 30 years and went through the NHC historic review process when renovating her own home. Additionally, Ms. Stein stated that she brings professional experience from MassArt. Over the past few years, she began a project with one other resident documenting teardowns in Newton and has so far catalogued almost 200 houses. She added that this collection of photographs and stories will be hung in the Newton Library in September.

Committee Discussion, Questions, and Comments:

Councilors thanked Ms. Stein for her willingness to serve.

Having seen the fabric of Newton change do you feel comfortable acting in a preservation role?

Ms. Stein responded that she would be supportive of preserving neighborhood character and that she is prepared to support the demolition delay when appropriate.

It is important to maintain the historic nature of our community, so we do not forget the past, particularly in areas like Oak Hill Park which have seen many teardowns.

Ms. Stein responded in agreement, adding that sometimes homes are torn down before she can document them.

Councilor Leary made a motion to approve which carried 7-0 (Councilor Danberg 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 8-0

Note: The Committee was joined by Zachery LeMel, Chief of Long-Range Planning, who delivered a brief presentation (attached), reviewing the discussion with Utile and Landwise at the prior meeting on March 28th which used Newton Centre for analysis of development scenarios. Using the regulatory framework in our MU4, BU3, and BU2 zones, hypothetical projects were analyzed on existing parcels for financial feasibility and urban form. In each case, the by-right option did not allow for a financially feasible project, but using what is allowed by special permit, could produce financially feasible options. Mr. LeMel also reminded that certain key factors such as required parking minimums, and restrictive floor-to-floor heights, are barriers to certain development. In the latter case, it is now understood that higher floor to floor heights are needed for retail and restaurant uses on the ground floor, than for residential uses. Using the feedback received at the March 28th meeting, Utile will be returning to ZAP for the April 25th meeting to run more development scenarios along with some financial analysis considering condominiums versus rental units.

Committee Discussion Questions and Comments:

Why is there no lot area per unit requirement under the MU4 zone?

Mr. LeMel answered that this requirement should be omitted under all of these zones because it is a redundant requirement which artificially limits the number of units, and since the developer normally seeks to build the maximum square footage permitted, having a lot area per unit requirement promotes larger more expensive units.

What is the difference between setbacks and stepbacks?

Mr. LeMel responded that setbacks pertain to the required distance a building may be from a property line, while “stepbacks” pertain to a requirement that upper stories be stepped back further from the building line above a certain height.

In the Washington Street Vision Plan, village centers have a four-story maximum but under this proposal there are five, will each center have a different maximum?

Mr. LeMel stated that the different tiers will be presented, and the village center size will be used to determine the type of tiers used.

Follow up note: Although the Washington Street Vision Plan was adopted in 2019, which proposes allowing three stories by right, and four to six stories in different locations, the draft zoning for the area has not been adopted.

It would be interesting to see what is driving the one-to-one or higher parking ratio before moving forward on more assumptions.

Mr. LeMel responded that the analyses used a parking ratio that has been allowed routinely by special permit of 1.25. This ratio of 1 to 1.25 is what it says in the existing zoning to allow by special permit; see section 5.1.4. Additionally, Landwise used numbers from recent projects in Newton gathered from building permits and other sources.

Did construction costs take today's costs into account or use a forecast?

Mr. LeMel answered that they used actual costs from current and prior projects, which were obtained from property owners/ developers.

Councilors discussed the role minimum parking requirements play in this process. Some felt that it will be necessary to remove parking requirements altogether, believing that developers will ensure that they have enough parking to meet the need and that it will promote more affordable moderate density housing. Others urged caution, stating that removing these minimums could have a negative impact on the surrounding neighborhoods and that it cannot simply be left up to the market to decide. It was suggested that since the Land Use Committee routinely waives parking requirements through the special permit process, that parking requirements can at least be reduced.

It was also stated that removing the lot area per unit requirement would incentivize the construction of smaller units.

Mr. LeMel clarified that the input costs and data could be expanded at a later date as new information is gathered. Additionally, the consultant can provide more details about their methodology as desired. He also felt it made sense to deal with parking requirements separately for residential versus commercial uses and emphasized that there is no intention to eliminate the special permit process. Rather these proposals are meant to understand and improve the triggers which activate a special permit, while setting a by-right allowance that is viable, feasible, and desirable.

Recently a modest three-story building was proposed on California Street with retail on the ground floor and small apartments above. How was this smaller scale development economically feasible at this location?

Mr. LeMel responded that this project is replacing existing buildings with over 11,000 square feet of commercial space. This is pointed out given Newton's relatively low commercial tax base. On addition, many projects like this are feasible when the owner purchased the property many years ago or inherited the property. If so, the land cost is nearly '\$0' - which makes these types of projects feasible.

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

#192-22 Request for review and amendments to Section 6.7.1

COUNCILORS CROSSLEY, DANBERG, LIPOF, KELLEY, ALBRIGHT, NORTON, BOWMAN, GREENBERG, HUMPHREY, LEARY, RYAN, AND KRINTZMAN requesting a review of and possible amendments to, Section 6.7.1 Accessory Apartments, to remove barriers to creating accessory apartments, such as to consider conditions under which detached ADUs may be allowed by right, and under which ADUs may be permitted as part of new construction.

Action: Zoning & Planning Held 8-0

Note: Planning Associate Cat Kemmett delivered the attached presentation on possible amendments to remove additional barriers to accessory dwelling units (ADUs). She briefly described the existing ADU ordinance, its history in the city since 1987, benefits, and current rules and remaining barriers. Ms. Kemmett stated that the proposal is to effect relatively small changes the Council has been considering. An ADU is a self-contained residential apartment within an existing home or accessory building on a property. These can be flexible in form and are permitted city-wide, but only one is allowed per property and the property owner must live on the property. Most detached ADUs require a special permit for construction (except those created within historic carriage houses, not in historic districts) and the principal dwelling must be at least four years old. ADUs provide flexibility to the homeowner and can also assist those seeking to age in place. Different rules exist for internal and detached ADUs. The ordinance was amended in late 2017 to ease restrictions on ADUs, most notably that ADUs are now allowed by right internally in all single- and two-family homes, requiring only a building permit. Before these revisions, only up to three ADUs were approved each year. but after the 2017 revisions about 10 ADUs are permitted per-year. Ms. Kemmett then discussed the Housing Choice Law approved in Massachusetts in 2021 which attempts to make it easier to construct ADUs across the state.

Ms. Kemmett described the barriers to ADUs, highlighting that new construction may not achieve certification for an ADU for four-years, that most detached units require a special permit, and that setbacks for accessory buildings for any other use are five feet from a side or rear lot line, but currently, setbacks for detached accessory apartments must be the same as for the primary dwelling, which are routinely waived by special permit. The recommendation would be to address each of these barriers to promote the construction of ADUs in Newton. She closed the presentation, stating that based upon the conversation tonight, the Planning Department is looking forward to presenting its proposals to the Committee later this year.

Committee Discussion, Questions, and Comments:

Requiring the second means of egress can be another barrier, can this be addressed or is it within the building code?

The Chair answered that two means of egress from any dwelling unit is required by the MA building code so the City cannot do anything about this.

Must historic carriage house conversions go before the NHC?

Ms. Kemmett confirmed that they do.

Are there any comments on how the ADUs built since 2017 have fit into the community?

Ms. Kemmett answered that Councilors would likely know this better. She did add that ADUs are typically built for family members and many of those approved have either been within existing buildings or pre-existing units which were legalized.

How many of the illegal units in Newton have been brought up to code through this ordinance?

Ms. Kemmett responded that this would be a question for ISD, and that she would follow up.

If internal ADUs are allowed by-right, is a special permit needed if it requires an addition to the house?

Ms. Kemmett answered that a special permit is not needed if within the allowed Floor Area Ratio (FAR) and any other dimensional requirements.

The Planning Memo mentioned other communities that are changing their ADU rules, have they done so yet?

Ms. Kemmett responded that Planning would have to look into this more as there is a wide spectrum of ADU ordinances among these communities which are in many ways different than Newton's ordinance.

Councilors were generally supportive of revisions to the ADU ordinance, stating that ADUs could help achieve the smaller housing the City is looking for. Some felt that removing the four-year moratorium and reducing setback requirements would be acceptable, citing a minimal impact on the neighbors. Others urged caution at this, stating that these provisions were put in place to minimize neighborhood impact, specifically that the four-year moratorium was meant to deter teardowns. They emphasized that any changes should be made carefully and also take precautions against teardowns.

It was suggested that if reducing the required setbacks, then the ordinance should require some form of buffering (landscaping/ fencing to be approved by staff) between neighbors. Other Councilors emphasized the potential for these units to offer housing to elderly family members. There was also interest in separating the rules for detached ADUs and distinguishing between exiting buildings and new construction.

A Councilor stated that allowing ADUs in new construction is building a de facto two-family dwelling, creating a loophole for this housing and that the Council is trying to avoid a proliferation

of investment properties. In addition, she said that when units begin as built for family, they can be rented out to non-family later on. However, it was pointed out that significant differences with ADUs are: - that either the main house or ADU must be owner occupied, - the ADU may not be divided and sold separately as condos, - the ADU may not be used for short term rentals and may not exceed a certain size by-right. Some councilors requested more information from staff on the effectiveness of the size requirements, data on who owns the ADUs and how precisely buffering requirements could be written into an ordinance.

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

#227-22 Request for ordinance to regulate embodied carbon in new construction
COUNCILOR CROSSLEY, on behalf of the Climate & Sustainability Team, requesting a discussion with the Sustainability Team and Planning Department, and to amend the zoning ordinance (Section 5.13, notable 5.13.4.D Reserved) to regulate embodied carbon in large new construction, to further the objectives of the city's Climate Action Plan.

Action: Zoning & Planning Held 8-0

Note: The Chair introduced this item, stating that she docketed it on behalf of the Climate Sustainability team, who have been working with members of the Green Newton Building Standards Committee and Law department for about nine months to both understand the science and technologies that allow embodied carbon to be measured and reduced, and to learn what the ordinance language should cover versus what belongs in rules and regulations. This is to fill in a section of the ordinances that was reserved when Council passed a range of ordinances designed to inform Special Permit Criterion 5. Tonight, they will present to the Committee an overview of embodied carbon.

The Committee was joined by Energy Coach Liora Silkes, Co-Director of Sustainability Ann Berwick, and members of the Green Newton Building Standards Committee: Structural engineer Mark Webster, Beverly Craig of the Mass Clean Energy Center and architect Russel Feldman. Ms. Silkes and Mr. Webster delivered the attached presentation.

Ms. Silkes stated that embodied carbon comprises the total carbon emissions produced in the manufacturing, transportation, installation, maintenance, and disposal of (building) materials and emphasized that it is a fairly new field of study. Ms. Silkes next addressed the City's Climate Action Plan (CAP), stating that it does not directly address embodied carbon. However, amendments to Section 5.13, adopted in 2019, which were adopted to provide metrics for evaluating compliance with Special Permit Criterion 5, do provide a reserved Section 5.13.4.D. This working group is preparing to develop ordinance language and rules to measure and then regulate embodied carbon in the construction of large buildings.

Mr. Webster, a professional structural engineer, has focused on reducing embodied carbon in his structural designs for a number of years. He described embodied carbon, why it is important to address as part of our Climate Action Plan, and what can be done to reduce it. Mr. Webster noted that as buildings become more energy efficient, and the grid becomes cleaner, embodied

carbon represents more GHG emissions than the energy needed to operate (heat, cool, ventilate and light) a building. Many tools are available to measure embodied carbon in building materials. He then described how when building new or renovating existing buildings, material choices, and even design choices can all cut down on embodied carbon. Specifically, he discussed how concrete is often a large source of embodied carbon and how technologies like using materials such as fly ash, slag and recycled glass in the concrete mix can reduce embodied carbon levels. If specified for new construction, we can lower the embodied carbon in construction.

The next steps in the process are to solicit Councilor feedback, meet with both the Chamber and Economic Development Commission, and return to the Committee with draft ordinance language in the future.

Councilor Discussion, Questions, and Comments:

Councilors thanked Ms. Silkes, Mr. Webster and the team for their work on the presentation, in particular Mr. Webster for making a complex technical subject understandable.

What is the availability of the recycled materials and how do they impact the quality of concrete?

Mr. Webster answered that these materials often improve the quality. While fly ash can include heavy metals, these are neutralized through the process of adding it to the concrete. He noted that some materials like fly ash are less available in this region due to the decline of coal-fired power plants.

How do older structures compare to newer ones regarding embodied carbon?

Mr. Webster responded that preserving old buildings is a great strategy to reduce embodied carbon as there is relatively much less construction activity in renovations.

How much is embodied carbon an issue with residential buildings in Newton? How much does residential contribute compared to commercial?

Mr. Webster answered that nationally, residential and non-residential properties each represent about half of total building. However residential is a greater percentage in Newton.

Why is wood frame construction not the default (structural material) use if it is so much better with embodied carbon?

Mr. Webster stated that because of building fire code, wood frame buildings often cannot be as large and additionally, it usually cannot span as far as other materials. However, there are strategies to use wood in place of steel for a similar result.

What is the certified wood mentioned in the presentation?

Mr. Webster answered that this is wood from sustainably managed sources. Often certified wood also implies support for other social justice causes. This helps preserve forests and cut down on embodied carbon. About 20 percent of U.S. forests are certified under various systems through two main agencies, such as FSC labeled products, Forestry Service Certified.

In many neighborhoods stucco is a widely used material, do you have any opinion on this?

Mr. Webster answered that he does not know what the exact embodied carbon impact of stucco is, as his work is on larger buildings, but that it can be easily determined using the tools mentioned in the presentation.

For the next meeting on this item, Councilors requested more information on the recycled materials that would be used, as well as what potential costs would be of mandating these changes. It was also noted that recent special permits, such as Northland and Riverside, due to the Building Standards committee of Green Newton engaging with the developers, embodied carbon is being measured and specifications developed to reduce embodied carbon in structural materials.

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

#228-22 **Resolution to pursue a Building Energy/Reporting/Reduction Ordinance**
COUNCILOR CROSSLEY ON BEHALF OF THE ZONING & PLANNING COMMITTEE,
seeking a Resolution from the City Council confirming its support for pursuing an ordinance that would require large property owners to report annual energy use and greenhouse gas emissions, and then to reduce energy use and greenhouse gas emissions over time, to further the objectives of the Newton Climate Action Plan.

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

Note: The Chair introduced this item, noting that the Building Emissions Reduction and Disclosure Ordinance (BERDO) was discussed recently by a Committee of the Whole. At that meeting, there was widespread interest among the Council in pursuing development of such an ordinance for Newton. To make a clear statement to the community toward that end, the attached resolution was drafted.

No changes were made to the draft resolution.

Councilor Leary made a motion to approve the resolution which carried 7-0 (Councilor Baker not voting).

#52-22 **Discussion and possible ordinance amendments regarding the utilization of electric vehicle charging stations**
COUNCILORS GROSSMAN, LAREDO, BOWMAN, NORTON, ALBRIGHT AND CROSSLEY requesting a discussion and possible ordinance amendments with the Planning Department and the Sustainability Directors regarding allowing the utilization of electric vehicle charging stations on private commercial parking lots BY CITY ORDINANCES, including but not limited to the use of digital advertising to pay for the stations and provide free charging to customers. (formerly #340-21)

Action: **Zoning & Planning Held 7-0 (Councilor Baker Recused)**

Note: The Committee was joined for discussion on this item by Mike Dennehy, General Manager of Volta Charging Boston and attorneys Tom Phillips and Michael Dolan, also speaking for Volta.

Councilor Laredo introduced this item as the lead docketer, stating that the attorneys approached him and Councilor Grossman, as well as some members of the Council on behalf of their clients, who are interested in installing electric vehicle charging stations that have digital advertisement screens that are not currently permitted by the Newton sign ordinance. Councilor Laredo stated that while he is neither in support nor against this currently, the idea deserves a conversation. He said that while this could support the City's climate goals (by increasing EV charging station deployments), the Council also needs to be careful with the signage it allows in the City.

Mr. Dennehy thanked the Committee for the opportunity to speak. He stated that he joined Volta after a career in public works, most recently as the town administrator in Milton. He said these charging stations stand about seven feet tall with digital screens which are 48 by 27 inches in dimension, with one on each of two opposite sides of the charger. The screens display static advertisements, with no audio, which alternate eight times per minute. Working on locations across Massachusetts, he stated that Volta would like to propose this project at the Chestnut Hill Mall to the Council at a later date.

Mr. LeMel added that the Urban Design Commission will now be able to review the sign ordinance after being backed up due to the Northland and Riverside projects.

Land Use will also look at things like this. Chair said the conversation tonight is to introduce the item and discuss the process by which this can be considered as part of other necessary revisions to the ordinance.

Committee Discussion, Questions, and Comments:

Are these screens like those found at some gas pumps?

Mr. Dennehy answered that they have no sound and that theirs have larger dimensions at 48 by 27 inches.

Is this a for-profit company and does Volta pay for the operation?

Mr. Dennehy confirmed that Volta is for-profit and that it pays for the infrastructure of these stations, which it subsidizes with advertising. Volta has some of these stations installed at the Natick Mall which does not pay for the units.

Are these screens lighted at all times of the day or only when charging?

Mr. Dennehy answered that they are on continuously but can be dimmed and set to run within a predetermined time frame (for example, only during business hours at the mall). Atty. Dolan added that they are prepared to comply with Newton's sign ordinance and that these units are designed to target pedestrians, not moving vehicles.

Are these DC fast chargers?

Mr. Dennehy stated that they are L2 chargers.

Councilors asked if this request would also need to come before the Land Use Committee as the Chestnut Hill Mall operates under a special permit, and whether this use would require an amendment to the special permit site plan.

It was also stated that the Council will need to consider if these should be allowed at all and, if so, under what conditions. Some felt that this was an intriguing concept which could help the City meet its climate goals while others expressed caution at allowing more bright signage within the city. They also felt that the Council wants to hear from Sustainability on this and that it would be helpful to see examples presented to the Committee.

Assistant City Solicitor Andrew Lee added that Law and the Planning Department will work together to develop a process for review and updating the sign ordinance, including digital signage.

Councilors thanked Mr. Dennehy, and Attys. Phillips and Dolan for their time.

Councilor Krintzman made a motion to Hold which carried 7-0 (Councilor Baker recused).

The meeting adjourned at 10:16pm.

Respectfully Submitted,

Deborah J. Crossley, Chair