



Zoning & Planning Committee Report

City of Newton In City Council

Wednesday, March 29, 2023

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

Absent: Councilor Danberg

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

City Staff: Barney Heath, Director of Planning; Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Joseph Iadonisi, Planning Associate; Olivia James, Community Engagement Specialist; Jack Lovett, Executive Administrator; Andrew Lee, Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; and Jaclyn Norton, Committee Clerk

Planning Board Members: Amy Dain, Kevin McCormick and Peter Doeringer

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee March 29, 2023 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-March-29-2023)

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

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

Action: **Zoning & Planning Held 6-0 (Councilor Albright Not Voting)**

Note: This item was discussed concurrently with #38-22.

Chair's Note: *Utile and staff will join the committee to present the MBTA communities compliance tool and discuss the degree to which the VCOD proposal to date satisfies the requirements, as well as how certain changes to the metrics or mapping of the VCOD impacts compliance.*

#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 6-0 (Councilor Albright Not Voting)**

Note: The chair explained that we are taking up two items in one conversation, to understand how well the version 1 VCOD proposal meets the MBTA compliance requirements. She introduced Director Barney Heath, Deputy Director Jennifer Caira, Deputy Director of Planning, Chief of Long-Range Planning Zachary LeMel, Attorney Andrew Lee, and consultants from Utile Architecture and Planning Will Cohen and Tim Love; and Nathan Carlucci, MBTA Communities Compliance Coordinator at the Department of Housing and Community Development (DHCD).

Ms. Caira and Will Cohen led the presentation (see attached presentation). Ms. Caira stated that for the purpose of this exercise, progress towards compliance was calculated assuming Version 1.0 of the VCOD (Village Center Overlay District) text and maps, using the DHCD Compliance tool. Recent conversations in committee that suggest changes to the version 1 metrics and maps were not input, with **one important exception:** revised VC1 metrics for VCOD zones were used, which would allow only 1500 sf footprints at 2.5 stories, and a maximum of four units per parcel.

The Law.

The MBTA Communities law, Section 3A of MGL Ch. 40A, requires communities with MBTA access to have at least one zoning district "of reasonable size" that permits multi-family development by-right, at a minimum overall density of 15 units per acre. "By-Right" means that a property owner must meet the requirements and specific controls set within the district and which apply across the community, but which compliance can be approved without further discretionary review. It is however noted that site plan review, including design review can be required as long as it complies with the [Section 3A Guidelines](#) from DHCD.

Attorney General Campbell has issued an Advisory stating that compliance is mandatory, that noncompliance can bring action from the AGs office, and that there are financial penalties for non-compliance include denying access to several sources of state funding, as noted (see attached). Multiple Councilors tried to distinguish between the statute and the specific rules in the DHCD Guidelines. It was noted that the Guidelines are the regulatory framework necessary

to define what is meant in the statute by a “district of reasonable size”. Attorney Lee stated that all requirements in the Compliance Guidelines should be treated as law.

Achieving Compliance.

The MBTA compliant District may comprise multiple sub districts, such as VC1, VC2, VC3, and any other district we may define, as long as in the aggregate, the following requirements are met:

In the Law:

- The aggregate gross density of the district overall achieves 15 units per acre minimum, as clearly stated in the Law;
- the zoning standards for the district have no restrictions on age or number of bedrooms, and
- ground floor commercial uses are not required (although these may be allowed and incentivized).

In the Guidelines (that must define “a district of reasonable size”):

- 90% of the land area is located within a ½ mile of a Commuter Rail or Green Line Station;
- Total unit capacity must enable at least 8,330 units;
- 50% of the total land area is contiguous;

Multiple Councilors expressed concerns about the prohibition on requiring ground floor commercial, noting how this could seriously reduce the unit count toward compliance, or worse, that eliminating a requirement for commercial use in central business districts could compromise the vitality of our business centers, as we most want the housing that is within walking distance of goods and services. In response, Mr. Carlucci noted that this prohibition is made explicit in the statute, not in the regulations, and would therefore require a legislative amendment to change. A few councilors and the mayor’s office have been reaching out to the new Lt. Governor and our state delegation to see what can be done. Jonathan Yeo, Chief Operating Officer, indicated that the administration would be willing to work with Councilors in advocating for a change that would allow required ground floor commercial development to count. Meanwhile, several councilors urged that we go forward and solve the puzzle as though this will not change, as staff and Utile have been doing.

Total Land Area and Percent Contiguous

The minimum size of the district for every MBTA community must be greater than or equal to 50 acres. However, Mr. Cohen and Ms Caira made clear that in Newton the District must be must larger in order to accommodate reasonable scale. Mr. Cohen stated that the total land area for the districts entered into the compliance model in this test case for village centers, which so far enables only 3500 units, is already 170 acres. Multiple Councilors agreed with Mr. Cohen on the need to connect some village centers to help solve the contiguity requirement.

Percent Located Within Station Area

For Newton to comply with this regulation at least 90% of the district land area must be within ½ mile of a Commuter Rail or Green Line stations. The remaining 10% of the district can be outside of these station areas. When asked by a Councilor how the ½ mile was measured Mr. Cohen stated that the center point was the point where the transit stop is identified in a GIS map from MassDOT, and that this and other underlying data is provided to municipalities by DHCD. A map of Newton with all Commuter Rail and Green Line stops was presented that displayed a ¼ and ½ mile radius for each stop.

A Councilor asked if the Department and Utile were working on including T stops with no VCOD zoning in future map iterations. Ms. Caira said yes, and reminded that this test case tonight is only to see how far the VCOD districts in version 1, when applied to village centers that have public transit, would go toward meeting compliance. She stated that the team is looking at all options to reach compliance. Multiple Councilors advocated that this new zoning be equitably spread across the various MBTA stops to ensure this increased by-right development isn't focused in a certain part of the city. Ms. Caira also noted that publicly owned land and land owned by an educational institution may not count toward compliance. Publicly owned surface parking lots can count if there is a clear intent to dispose of that land. DHCD will be issuing guidance on that soon, and Mr. Carlucci welcomed the city to discuss this further before such guidance is issued.

Aggregate Gross Density

The District used for compliance must achieve a minimum density of 15 units per acre. Ms. Caira clarified that subdistricts can have less density as long as the district as a whole meets this density requirement. Version 1 of the VCOD with the revised VC1 metrics currently achieves a total estimated aggregate gross density of 22 units/acre. When broken down VC1 achieves only 12 units/acre, VC2 achieves 23 units/acre, and VC3 achieves 32 units/acre. The current metrics for VC1 makes it very difficult to expand VC1 to reach compliance as it would decrease the total aggregate gross density.

Unit Capacity

For Newton to comply, we must create an "overlay" (optional) district that allows for a unit capacity of 8,330 units. That is, the zoning must enable that many units to be built over time according to a clear set of rules that can be reviewed for compliance without requiring a special permit. The city is not required to build the units.

Director Heath clarified that nothing built counts; existing buildings may contain more or fewer units than what the zoning allows, but only what the zoning allows on paper is counted toward compliance. Mr. Cohen clarified that the size of a unit in the model is 1,000 sf which is a standard size in urban planning. During the presentation, it was noted by Ms. Caira that for VC1 only the new construction option can count towards this total unit capacity.

When the VCOD version 1 is put into the compliance model the total unit capacity is 3,500 units. Mr. Love noted that parking minimums have a significant impact on this unit capacity. A

Councilor asked if it would be possible to create new zones, for existing large parcels, including some that have already been granted special permits, to help increase the unit. Ms. Caira noted that this is possible, but reiterated that this development would need to be by-right to count towards compliance. Regarding a Councilors question on the height and footprint bonus for increased affordability, it was described that the additional units caused by the bonus could not be counted.

Conclusion

To aid compliance within the village center districts, multiple strategies are being considered. These strategies include a reduction or elimination of on-site parking minimums, increasing the lot size that triggers the special permit threshold, expanding the VC1 district, removing all city-owned and unwieldy sites, and removing or adjusting rules on priority streets for active first floor commercial uses. The Planning Department and Utile will work together to see how each of these strategies affects progress toward compliance and provide the Committee with an update once they have more information.

Committee members voted 6-0 (Councilor Albright Not Voting) on a motion to hold from Councilor Baker.

The meeting adjourned at 9:51 pm.

Respectfully Submitted,

Deborah J. Crossley, Chair