

#518-18 Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Action: Zoning & Planning Committee Held 8-0

Note: The Chair stated that the Planning staff has worked extremely hard to get this draft zoning ordinance to this point, and so well done. She commended James Freas, Rachel Nadkarni all the rest of the Planning staff that worked on this document over the past couple of years. She was very pleased to start review and discussion of the draft.

Barney Heath, Director of Planning added his thanks to the staff saying that the draft is the culmination of years of work, and thousands of hours of work researching best practices, gathering input, and base decisions on real, on-the-ground data in Newton. While this has truly been a team effort on the part of the Planning staff and other staff in the City Hall, he wanted to especially recognize the efforts of James Freas, Rachel Nadkarni and Lily Canan Reynolds for their dedication to this phase of the project. He also wanted to acknowledge Ouida Young, Marie Lawlor and Jonah Temple of the Law Department for their close review and oversight, as well as John Lojek, Commissioner of Inspectional Services, for his timely review and valuable suggestions. He also thanked Michael Wang, a local architect from Form and Place, who assisted staff with the Architects Workshop which proved quite valuable. The ordinance consultant, Joel Russell, has been invaluable in proofing the document. This is the beginning of a large effort to come.

The Planning Memo provides detailed information and may be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/92480>

The draft zoning ordinance may be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/92269>

The draft zoning map may be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/92281>

City Councilors were provided copies of the memo, draft zoning ordinance and map.

Draft Zoning Ordinance Overview

James Freas, Deputy Director of Planning, explained that the objective of tonight's presentation is to provide an overview and orientation to the draft ordinance, and to start a discussion that will likely stretch over many months. There will be meetings in each Ward as well as some meetings with various community groups in the spring.

He will cover some background, principles, the draft map and districts and some key features of the draft zoning ordinance. A PowerPoint presentation detailing these areas, is attached to this report. Please refer to it for details.

Pattern Book

The Pattern Book, which was developed from 2016-2017, resulted in a master database of the current physical characteristics of the City. It provides a sense of the scale, characteristics and

other elements of buildings, structures and lots in the City and how they relate to each other. This information formed the foundation for many of the standards that are in the draft ordinance. Also, the analytic maps and tables that were developed with this information tell everything about the history of development in Newton and is a fantastic resource for people in the community to track how the City evolved.

Staff conducted a series of events with the public between September 2017 and May 2018 which focused on various topics in the zoning ordinance such as economic development and housing, the arts, sustainability, transportation etc. This community engagement effort provided a great deal of feedback which was invaluable to the completion of the Pattern Book. The Pattern Book will be available in the Library shortly, and can also be found on the Planning Department's website at <http://www.newtonma.gov/civicax/filebank/documents/92259>

Objective

The overall objective of the new zoning ordinance was to establish a new baseline ordinance reflecting the built environment of the City, recognizing that there will be amendments over time. Mr. Freas said that he hopes the draft ordinance will become a strong foundation for the future. The Zoning Reform Group's report in 2011 provided objectives which were an important guide for the draft ordinance. That report may be found online at: <http://www.newtonma.gov/civicax/filebank/documents/45333>

Mr. Freas said staff needed an overarching guideline of how to structure this work and they landed on the concept of a context-based zoning ordinance. This concept provides for the rules and regulations of the ordinance to be derived from the existing context or the desired context, where that has been defined. Significantly highlighted in the Comprehensive Plan is the existing quality of place within the City; the pattern of development is beloved by the community and represents the foundation for future growth. Also noted in the Comprehensive plan is a pattern of development that provides a step-down from higher intensity in the village centers to lower intensity in the neighborhoods. This will represent a sustainable development form both environmentally and in terms of social equitability. The draft ordinance reinforces that form to help achieve many of these objectives by recognizing the existing context of the City. And finally, staff recognized that while this was a very big effort, it was not big enough to encompass the community engagement discourse and dialogue necessary to address big-picture changes to the community. Individual master planning efforts would be needed in strategic areas of the City, for example, the Washington Street Plan and the Needham Street Vision project. These are examples of the kind of work that can lead to more significant changes than what is being proposed in a context-based ordinance.

Reading the Ordinance

Mr. Freas explained that while reading the draft ordinance, it is important to mentally separate mechanisms from standards. Setbacks, for instance, are a mechanism; they are an approach to separating buildings. The standards would include the measurement of those setbacks; 10 feet for instance. If there is a concern, it is important to understand whether it involves a mechanism or a standard. It is also important to understand that the whole of the zoning ordinance applies to every project comprehensively, because that is what accomplishes the broader goals. Staff aimed for

simplicity in the ordinance by having one objective for each rule; having no math more complicated than addition or subtraction to avoid confusion; and by using simple measurements that can be easily observable by the public. If the public can easily see or measure independently that something is being done wrong or right, they can either complain, or offer kudos to the Inspectional Services Department.

Please refer to the attached presentation for further details on reading the ordinance and what can be found in each Article including General, District, Development and Use Standards.

Zoning Map

Mr. Freas further explained that starting point, in many respects, was to look at the level of non-conformity in the City and make an attempt to reduce it. The City is currently 87% non-conforming, and when looking at just residential districts, that rises to 95%. The map making principles included minimizing that non-conformity while balancing that with maximizing consistency with the existing patterns of development. The standards were derived from the Pattern Book findings and that is what is reflected in the rules and regulations. Based on most of the feedback received relative to teardowns, staff tended to favor standards that existed before 2000 in terms of scale and size of buildings.

General considerations include that district lines are at the back of properties so that, as much as possible, both sides of a street would have the same zoning. Boundaries between districts occur when there is a significant pattern shift, in terms of lot width, scale of the buildings, or use or number of units. Mr. Freas noted that the exception would not make the rule; for instance, one two-family structure on a street would not shift the district.

Please refer to the attached presentation and maps for examples of the stepping down from higher intensity to lower intensity as mentioned earlier as well as master planning for certain areas in the City.

Key Features of the Draft Ordinance

Mr. Freas explained that the following features are key decision points for the City Council:

- The draft ordinance proposes moving away from the system where lot size determines the size of buildings, which is the current model. Instead, the building size would be driven by the zoning district. This is inherent in that separation between the standards that come under the districts and the standards that come under the building types. Newton's neighborhoods can vary widely in the size of lots within them. Some strange-shaped lots (see examples in attached presentation) could allow a much larger house to appear on a street of much smaller houses because of the square footage of the lot.
- The draft ordinance also introduces Courtyard Clusters as a new model. These are small footprint houses around a shared central green. Limiting attached townhouses and the use rear lots are being proposed as well.

- Use Categories are attempting to be more transparent. For instance, instead of listing a bowling alley and a skating rink separately, they can be in a use category for entertainment uses.
- There are a number of proposals relative to parking and transportation, which include increasing bike parking standards and reducing automobile parking minimums and introducing parking maximums.
- There are also proposals to allow sharing of underutilized parking and introduce Transportation Demand Management (TDM) as a base requirement. The City has been requiring TDM in special permits with some mixed success. Having some standards around TDM could improve the outcomes.
- Sustainable buildings and environmental site design provisions are proposed in the draft ordinance which would include guidance from the upcoming Climate Action Plan.
- The ordinance proposes that the level of development review assigned to a project should reflect the scale and significance of that project. This range of review would include by-right, site plan approval, section 6 findings, Planning Board special permits and City council special permits.

Mr. Freas noted the current ordinance treats all special permits the same and require the same level of review. The proposal is that most special permits which require only small changes would be handled by the Planning Board. The projects that are of significant scale and potential impact on the City would be addressed by the City Council. The cut-off between the Planning Board process and the City Council process in the proposed ordinance varies between districts. In a residential neighborhood, a smaller scale project might meet the City Council criteria, while a smaller scale project in a village center would be handled by the Planning Board and a larger project would be leveled up to the City Council.

Please refer to the attached presentation for more detail on all of the above key features.

Arts and cultural institutions in Newton are part of the City's fabric. The draft ordinance introduced new uses that encompass these uses which allows them to be recognized and promoted in an easier fashion. Staff anticipates including an arts related requirement for development projects over a certain size - it would require projects to provide public art in some capacity.

Follow up

Mr. Freas explained a build-out analysis of the City will be created, and has never been done before. This analysis will show how projects would be developed under the current ordinance and under the proposed ordinance so that the City Council, residents and staff can see the results of the proposals. Ward-by-ward meetings will be taking place from November through February, along with community group meetings and the re-opening of office hours in the spring of 2019. The second draft of the zoning ordinance is scheduled for delivery in May of 2019. Quarterly

Committee of the Whole meetings are scheduled as well, with the first one taking place on December 6th.

Facilitation of Review Process

Lily Canan Reynolds, Community Engagement Manager, explained that staff have been considering ways to facilitate the discussions and review of the draft zoning ordinance. A matrix was created, which has been provided to the Committee in the past, which assists in placing various topics into categories which include: Points of Agreement; Proposed Modifications; Points for Discussion Next Time; Points that Need Staff Research; and Points to Come Back To. They also suggested using a signaling system: a speaker would raise 2 fingers if they have a comment on the current topic; and 1 finger if it related to a different topic. This will allow a single topic to be discussed as fully as possible before going to another area.

The Chair commented that the draft is quite an accomplishment and an impressive document and recognized the enormous amount of work that went into producing it. President Laredo commented to her that it read very well, which is a high compliment. She and the Committee offered their thanks for all the hard work of the staff.

Committee Comments/Questions

A Councilor said that residents and City Councilors will want to know exactly how things will change with this new type of zoning ordinance, for instance, the impact of eliminating FAR and using context-based standards instead. Mr. Freas noted that the build-out analysis, mentioned earlier, will go a long way to bringing that information and understanding to everyone by providing those comparisons. Staff has begun work on that.

A Committee member also noted that while the recommendations of the Zoning Reform Group were used as the basis for much of the draft ordinance, he and others did not necessarily agree with those recommendations. He is also concerned about taking the City Council out of the special permit process to such a large degree. This is a wholesale change and he admires the systemic work that went into the draft, but the problem may be that making changes along the way could prove difficult to that system. Mr. Freas noted that staff will provide annotations within the draft to show the range of options, comparisons with the existing ordinance, and where the concepts came from. There are multiple ways of doing things and even though this is a comprehensive document, the ability to make changes along the way is exactly what they are expecting to happen. This is an ongoing process that will include City Councilors, residents and staff.

It was asked how or who would determine the standards of development review. Mr. Freas explained that a simple measurement would be used: by unit size or square footage of space. Ms. Nadkarni said 20 units is the line between smaller residential projects, so 21 and over would send the review to the City Council for special permit review. On commercial, that line would be over 20,000 square feet but it varies a bit depending on the district. Articles 3-6 provide tables at the beginning that show measurements and how they apply to review.

It was asked what the non-conformity percentage would go to if the proposed ordinance were approved as is. Ms. Nadkarni said they are trying to isolate each non-conformity as there are many

ways to be non-conforming. The criteria they have been aiming for is 80% conformity on lot characteristics; however, on setbacks (particularly side setbacks) they are aiming for 50% conformity. Keep in mind that if they got to 80% conformity on setbacks, houses would be very close together. The current non-conformity percentage of 87% was based on 6 different factors. They will look at a similar range of factors to get a comparative number under the proposed ordinance.

The Zoning Board of Appeals (ZBA) deals with variances and it was asked how they would deal with the proposed development reviews and what they might include. It was also asked if the ZBA could add criteria and conditions similar to the Land Use Committee's process. Mr. Russell, the consultant on the team, explained that currently, whenever someone wants to extend a nonconforming structure, they go to the City Council for a special permit. Many of these projects are very small and require a 2/3 vote of the Council to be approved. These are the types of projects that could be reviewed and approved by a simple majority of the ZBA and they would use the criteria provided in Chapter 40A that the Land Use Committee uses. Mr. Russell said additional criteria could be added if the City Council wanted to.

A Councilor said, institutionally, the variance process which the ZBA deals with, requires relief from a hardship. The standard for "not substantially more detrimental" is very different. Will the work of the ZBA on variances change and will this extra review work bring an undue burden to the ZBA. Mr. Freas said the ZBA will continue the work they currently do. Mr. Russell said the proposed ordinance is in large part designed to decrease non-conformity, therefore, there will not be as many Section 6 findings. There will probably not be as many variances as well so that part of the work may decline. The Councilor said if the impact of reducing non-conformity is that someone can build, by-right, 3 feet closer to your house than they could before, it could decrease the workload of the ZBA, but increase friction between neighbors. The Chair noted that, again, the case studies that are being developed will be helpful in these areas.

A Committee member wondered if the historic districts criteria would change?

It was asked why staff picked 2000 as the cut off year for determining "existing" conditions. Mr. Freas explained that they considered the big run-up of teardowns before the economic crash in 2008 as well as the more recent surge of teardowns. Based on that, the year 2000 seemed like a reasonable, clean line to choose. Every standard that has been chosen for the draft was derived from the data in the Pattern Book. They cut post-2000 buildings out of that data and this made building sizes smaller, which should not be a surprise, which addressed the major concern about teardowns being replaced with much larger structures.

A Councilor asked how the dividing lines between districts was determined. Mr. Freas explained that the context had to be elevated above the neighborhood level to the district level in order to build the zoning ordinance. Drawing the district lines was a very close, citywide, block-by-block analysis to examine lot widths, uses, etc. for a break in the pattern. That line would then be tested by running the non-conformity analysis using the database. It was extensive work and required quite a bit of adjusting of the lines to try to keep the non-conformity levels low. Non-conformity will still exist, but this helps to nudge the numbers down.

It was explained that a maximum size of a particular building type may allow for something that is larger than something that could actually fit on a smaller lot. Thresholds have been built into each of the building types for both by-right and special permit construction. This recognizes the fact that while the average home may be 1,600 square feet in a neighborhood, it does not mean that it might not be out of context to see a 2,000 square foot footprint there. There will be areas in which there are different standards. An Oak Hill case study has been used which can be brought to Committee to illustrate this kind of analysis a bit better.

A question was asked about massing and height. Mr. Freas said the draft ordinance provides standards that apply differently, so that when a building goes higher, it would be narrower. If a building were low, it could go wider. The “monster” house is the house that is built both wide AND tall which makes a much larger impact. There are many beautiful, contextual homes in Oak Hill that are 2½ stories that tend to be narrower; and other beautiful, contextual single-story homes that are very deep and sit of deep footprints. The context gets distorted when the wide house also goes tall. The lot coverage and setback rules tied the district and are not tied to the building type.

There was a question about the number of units allowed in a multi-unit building. Mr. Freas explained that the current ordinance uses the lot area per unit rule, which is used in many communities, but if Newton is trying to get new development to fit into the current context of neighborhoods, that contextual building would first be determined, and then that envelope size would drive the number of units.

A Committee member wondered why attached townhouses and rear lot developments were being discouraged. Mr. Freas said rear lots and attached dwellings tend to be disruptive of the established neighborhood character and context. Cluster Courtyards fit in much better and offer a good alternative. The Councilor felt there could be some good examples of townhouses. The Chair asked Committee members to take note of addresses that they think work well in various settings so that Planning staff can look at them for good examples.

The City was originally built in an environmentally sustainable and incremental way. It was asked if the new ordinance will allow that type of development. Mr. Freas said they are trying not to move beyond the existing context. For example, the ordinance is proposing zoning which effectively matches what is on the ground in Newton Centre right now. More dialogue and policy and decision making needs to take place in order to dig deeper into certain areas of the City, therefore, the zoning ordinance is based around the existing environment. To get into those deeper areas and take into consideration sustainability and those types of issues requires a separate planning process.

It was asked if there was any minimum amount of fenestration (windows and doors) required. Mr. Freas said minimum fenestrations are being required across the board and information on that can be found in Article 2.

Article 2.5 explains setback encroachments. It was asked that if terraces and patios can encroach into a setback, could that be problematic if they then become enclosed. Mr. Freas explained that

an enclosed patio space would then become a structure and would not be allowed in the setback. Also, lot coverage rules would apply to that (uncovered) patio space.

Up to 400 square feet is considered a de minimis non-conforming extension and does not need to go to the City Council for a special permit. A Councilor said that if someone is extending into a setback that is already being encroached upon, it does have an impact on the neighbors and it something to be considered carefully.

The Chair asked that the schedule be made available in as many ways as possible so the public can check in and join the Committee for topics that are of interest. It was asked if the meetings could be videotaped and broadcast somehow. The Chair said she would look into that possibility.

A Councilor asked if public comment will continue. The Chair said there will be public meetings scheduled as well as office hours, as discussed earlier. Residents can email or call the City Councilors and there will be ward-by-ward meetings scheduled soon as well. There may be a need for more public meetings and that will be taken into consideration as the process continues. The Committee will ultimately have a public hearing next year, which is required for zoning amendments. Public meetings and Public hearings are very different – a Public Hearing is a legal requirement under Chapter 40A and the timing of that will be closer to a final draft.

The Committee voted to hold this item, 8-0.

Meeting adjourned.

Respectfully Submitted,

Susan S. Albright, Chair