



Zoning & Planning Committee Report

City of Newton In City Council

Monday, March 11, 2019

Present: Councilors Albright (Chair), Leary, Brousal-Glaser, Krintzman, Downs, Danberg, Baker, and Kalis

Also present: Councilors, Auchincloss, Crossley, Greenberg, Laredo, Lipof, and Schwartz

Planning Board Members: Kelley Brown, Peter Doeringer, Sudha Maheshwari, and Sonia Parisca

City staff present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Rachel Nadkarni (Long Range Planner), Amanda Berman (Director, Housing and Community Development), Rachel Powers (Community Development Program Manager), Eamon Bencivengo (Housing Development Planner), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#89-19 **Appointment of David Kayserman to Auburndale Historic District Commission**
HER HONOR THE MAYOR appointing DAVID KAYSERMAN, 33 Hancock Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION to complete Patricia Bottomley's term which expires on May 31, 2019.
(60 days: 05/03/19)

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

Note: Mr. Kayserman was not in attendance and will be invited to the March 25th meeting. The Committee held this appointment.

#90-19 **Reappointment of David Kayserman to Auburndale Historic District Comm**
HER HONOR THE MAYOR reappointing DAVID KAYSERMAN, 33 Hancock Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2022. (60 days: 05/03/19)

Action **Zoning & Planning Held 7-0 (Councilor Kalis not voting)**

Note: Mr. Kayserman was not in attendance and will be invited to the March 25th meeting. The Committee held this appointment.

#632-18 **Zoning Amendment to allow RMDs and marijuana retailers in MU districts**
COUNCILOR SCHWARTZ, KELLEY, NORTON, AND COTE proposing to amend Chapter 30, **Section 4.4.1. Business, Mixed Use & Manufacturing Districts.** to allow Registered Marijuana Dispensaries and marijuana retailers by special permit in Limited Manufacturing and Manufacturing Districts.

Action: **Zoning & Planning voted No Action Necessary 6-1-1 (Councilor Baker Opposed; Councilor Brousal-Glaser abstaining)**

Note: Councilor Schwartz explained that the docketers of this item were interested in finding more opportunities for siting marijuana retailers in the City. They felt the current zones would barely be sufficient to cover siting for the 8 facilities required by law and wanted to find other suitable locations by adding Manufacturing and Limited Manufacturing districts. Some of these additional sites are along the periphery of the City and could be advantageous to controlling traffic from neighboring communities coming to these facilities. The Manufacturing districts are also less expensive than the business districts and could be a good option for operators without deep pockets. The safety concerns of these more remote areas can be addressed by adding conditions to the special permit relative to operating into the evening. A zoning map was provided in the materials for this meeting, showing the proposed districts.

As was expressed at the last discussion, there was a concern that adding these districts would bring far more facilities to the north side of the City. It was also pointed out that some of the sites within these districts are probably more appropriate than others but parsing those out in an overlay districts would be complicated at this time according to Planning staff. Councilor Schwartz concluded that without an overlay, it is probably not reasonable to add these districts at this time.

Committee Comments/Questions

A Committee member asked Mr. Heath to describe the difficulties in creating an overlay district for the parcels in the Manufacturing districts. Mr. Heath said a decision would have to be made about whether just selected parcels within the district would be included or if only certain Manufacturing districts would be included in their entirety, but not others. Staff would need some clarity on how to determine what the overlay would include, and he would like some feedback on that.

A Committee member said the parcels near Waltham where Fiorella's is seem appropriate because there is already some retail there and the area has vitality beyond 5pm.

A Councilor said Echo Bridge Park is a good possible site. It was noted that the Committee ruled out Welles Avenue as an appropriate location at the last discussion.

It was pointed out that there is a fair amount of residential mixed in the Manufacturing district along California Street. There is also a proposal for a 20-unit building within the Manufacturing district there and 200 units going in on Riverdale which is also zoned Manufacturing. These zones are close to Stearns Parks where children congregate. These would not be good areas to consider and there is time to expand opportunities in the future, but no real reason to rush into adding anything at this point.

A Councilor was concerned about access to the river at a couple of different points. She was walking along the river and the odor of marijuana was pervasive. She would not like to site facilities near those access routes because it would make smoking along the river attractive. She did not want to promote that and make it uncomfortable for others to enjoy the paths. There have been some drug deals there and other criminal activity in the past. She was also concerned about

the extra traffic in ward one because development in Watertown and Waltham is already causing congestion. Councilor Schwartz noted that he has heard from a possible petitioner that they intend to have serious security protocol to keep people from smoking on site, or right near the site and that should be the case for all petitioners. He also said the facilities along the edge would hopefully keep people from driving further into the city and thereby control traffic a bit more.

A Councilor would like to have criteria as opposed to overlay districts. The Planning memo notes that staff is not in favor of adding these districts wholesale, but if the Council wanted to move forward, could consider developing more elaborate criteria to determine siting on some parcels within the districts.

A Committee member said he would feel more comfortable looking at rezoning these parcels instead of amending the zoning to allow marijuana facilities on them. If the Council thinks retail is a good option for these areas, perhaps all retail uses need to be considered and not just marijuana. Mr. Heath felt that was a fairer approach and was in favor of looking into that further, if so desired by the Committee. There is also the issue of losing manufacturing zones/parcels and while they are not thriving now, there could be a need for them in the future. The artisan uses could be appropriate for these districts and that trend can be seen in other communities. The draft zoning calls them "Fabrication" districts which would include artisan uses.

Most Committee members felt this amendment, as proposed, is not something to consider at this point and should be voted no action necessary. The Chair noted that this topic will be discussed again in the zoning redesign conversations.

Councilor Baker would like to see Planning staff look into developing criteria instead of looking into allowing all commercial uses in the manufacturing zones. It may be appropriate for some commercial uses but not for all and he will vote again no action necessary.

Councilor Danberg moved No Action Necessary and the Committee voted in favor 6-1-1 with Councilor Baker opposed and Councilor Brousal-Glaser abstaining.

#187-18 Zoning Amendment for Inclusionary Zoning

DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

Action **Zoning & Planning Held 8-0; Public Hearing Closed**

Note: Barney Heath, Director of Planning explained that this proposal has incorporated the discussion and input provided over the last several conversations in Committee and with other stakeholders such as affordable housing advocates and developers.

Amanda Berman, Director of Housing and Community Development joined the Committee. She provided a PowerPoint presentation which is attached. Ms. Berman explained she was last with the Committee at the public hearing in December 2018 discussing the proposal that staff prepared at that time. That 2018 proposal is closely tied to the recommendations of RKG's feasibility analysis and model that the City asked them to develop in order to test the feasibility of the 2017 inclusionary zoning proposal, which was much more aggressive in terms of increasing the overall percentage from 15% to 20% and in some cases to 25%.

Staff brought RKG consultants and the 2018 proposal to a roundtable discussion with affordable housing advocates in February 2019. The roundtable focused on concerns related to the feasibility analysis and model to identify points of agreement/disagreement and other complicated aspects of the model. A summary of this meeting was provided in the Planning Memo prepared for this discussion and may be found at: <http://www.newtonma.gov/civicax/filebank/documents/95738>

One of the biggest connections during this discussion was between inclusionary zoning requirements and its impact on land values in the City. By increasing the requirement, land values are potentially being negatively impacted. This is a consideration for developers and landowners as well. The amount a developer is willing to pay for land will come down based on the level of subsidy they have to provide in order to make their project financially feasible. The possible chilling effect on development is unknown as is how long it might take the market to rebound. RKG provided a table which illustrates the land value impact from expanding the IZ policy. Please see attached presentation. The impact becomes greater for the smaller projects. The numbers can be pushed to get as many affordable units out of a project as possible, but that might mean fewer projects are being built. It is a balance.

Points of Consensus

The advocates did not want to reduce the existing IZ requirement at Tiers 1 and 2 levels. Currently the 15% requirement that breaks down to 7.5% at 50% AMI and 7.5% at 80% AMI. This could also be averaged out at 65% AMI; they were willing to see what would happen in the market with an increasing number of affordable units per project in the middle areas; and they also agreed that using the CHCD's QAP Index of \$389K should not be used as the basis for the cash and fractional cash payments calculations.

Next Steps

Ms. Berman explained in March staff will be meeting with for-profit developers as well as do further research and take into consideration stakeholder ideas and questions. Staff also update the comparison of IZ policies in other communities and also continuing working on the complicated elder housing with services section to make it stronger. Staff is also looking at a stronger alternative compliance option so that more units can be brought online for those at or below 30% AMI. An update will be provided in April and the Newton Housing Partnership will be engaged on IZ as well. A new proposal will be presented in May with a new public hearing in June.

Committee Comments/Questions

It was asked if the impact on land values would be citywide, or just on the land that was being considered for development. Ms. Berman said that it would be across the board, but those parcels

actively being negotiated, and with the potential for multi-unit development, would demonstrate that first and be most impacted. Somerville and Cambridge have most recently implemented new IZ ordinances, but it may still too soon to know the impact but staff will make inquiries as to land values, and how many units have been built.

A Councilor said he would like to know how the new criteria would affect the number of affordable units that would be counted towards the requirement of having affordable housing on at least 1.5% of developable land in order to have a choice relative to 40B projects in the City.

A Committee member noted that Newton has the most generous parking minimums in the inner suburbs and that costs developers twice to provide parking. She would like staff to ask developers if decreasing the parking requirements might increase the level of affordability they might be able to provide, thereby housing more people rather than more cars. Another Councilor pointed out that the market rate units are subsidizing the affordable units, therefore, he felt certain amenities such as sufficient parking would be necessary to garner the higher prices.

It was asked what parking is required for market and subsidized units. Ms. Freas said the parking standard is 2 for market and 1.25 for the subsidized units. If parking is being provided for market rates, it must also be provided for subsidized units and the cost of that parking has to be rolled into the affordable price. The parking can be decoupled from the market rate units.

It was asked if tax credits or other subsidies have any impact on this policy. Ms. Berman stated that projects that come through the special permit process are subject to the IZ policy and cannot receive public subsidies as they completely privately funded projects. Projects that seek low income tax credits through the state do not come through the special permit process and therefore are not subject to the IZ ordinance as they are already providing a much higher level of affordability. The other option is the 40B projects which already seek a waiver from the IZ ordinance. The Austin Street project was a bit of an anomaly. It received a special permit but when the project was then asked to go from 25% to 33% affordability, it no longer was financially feasibility, so the developer sought a subsidy from Mass Housing and was awarded \$1.3M from their workforce housing program.

A Councilor noted that developers have said that the most important factor is predictability. If the numbers are known ahead of time in terms of affordability requirements, that can be planned for and projects can be successful. However, asking for more after all the research has been done and money has been spent on land and other services is unreasonable and that is when projects become untenable. Developers do not have an infinite amount of money and pushing for too much will certainly chill development.

A Committee member noted that the ongoing discussion will include review of the DHCH's QAP Index of \$389K as the basis of cash and fractional cash payment calculations. It must be determined if that is the actual cost of producing a unit of affordable housing.

The Committee thanked Ms. Berman for the information. The Committee voted to close the public

hearing which was opened on November 11, 2018. A new item will be docketed and a public hearing will be held in May. The Committee voted to hold this item.

#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 Held 8-0

Note: James Freas, Deputy Director of Planning joined the Committee to provide an overview of the development review process proposed in the draft zoning ordinance, and to receive feedback on the proposals. He provided a PowerPoint which is attached. Please refer to it for more details of his presentation. Mr. Freas re-introduced Joel Russell, the legal advisor on the zoning ordinance.

The types of development review include special permits, administrative site plan approval, section 6 findings and design review. The goal is to better match the appropriate level of review to the scale and significance of the development project.

Special Permits

A special permit granting authority is authorized through MGL Chapter 40A and can be a legislative body, Planning Board or Zoning Board of Appeals. This body acts in a quasi-judicial role. The amount of City Council time devoted to special permit applications has increased with the Land Use Committee meeting three times a month and sometimes more. Reducing this workload could be accomplished by either making more projects by-right, allowing some category of special permits to go to a different permitting authority, or both. There is also an issue of potential conflict since special permit decisions are reached in a quasi-judicial process where all information about a project is meant to be public. The role of City Councilor can make that difficult because of the inherent role to be in communication with constituents.

The draft proposes that the Planning Board be the special permit granting authority for all but the most significant projects in the City. Most other communities use this model and very few place the permitting authority in the hands of the legislative body. Planning Board members are experts in real estate and land use planning, law, design etc. The draft also provides specific criteria for every development activity requiring a special permit, above and beyond the general special permit granting criteria. This will ensure clear direction to the permitting authority.

Projects being defined as most significant are those that are 20 units of residential and more; 20K square feet of commercial; and certain uses such as marijuana. These criteria are suggested in the first draft and can be adjusted. Both the Planning Board and the City Council will use the same procedures for special permits.

Staff looked at the number of special permit applications since 2002 and focused on the past 10 years. Research showed a significant rise in numbers from 2012 (12) to 2013 and 2013 (104 and 103) and has varied between 66-80 since then. Some Councilors questioned these numbers stating that there were far more than 10-31 special permits in 2002-2012. The President asked that staff check with the Clerk's office to confirm the number of special permits.

Site Plan Review

Currently, site plan review includes site plan approval procedures of the City Council that accompany every special permit; and administrative site plan review by Planning staff for educational and religious institutions. Site plan approval criteria overlap with the special permit criteria so the purpose is unclear.

Site Plan Review proposed would be staff-based. It would provide limited conditions for what would otherwise be by-right projects but require some additional highly prescribed review. This review would also apply to Dover protected educational and religious uses but the review would change from advisory (in the current ordinance) to an approval with reasonable restrictions granted by the Planning Department. The types of projects that would be appropriate for this review are to be determined.

Section 6 Findings

A Section 6 Finding is permission to extend or alter an existing legal created nonconformity. The standard would remain as it is currently that the project must be found to be not substantially more detrimental to the neighborhood than the existing nonconformity. It was reiterated that the alteration or extension can only be requested where it currently exists. This review could be taken to the Zoning Board of Appeals.

Design Review

Design Review would involve an advisory review by the Urban Design Commission alongside any special permit to significantly modify the dimensions of a building type. Currently, this review is voluntary and advisory. This proposal would formalize the role for certain uses so that the UDC would make a recommendation to the special permit granting authority and the applicant. Large scale projects and large house review would benefit from this. A signage plan for a larger property would also go through this process. Optionally, one could go to the UDC before the special permit process for advice. The UDC could then waive the process if they see their recommendations incorporated into the special permit application.

Committee Questions/Comments

Special Permit

A Committee member noted that there had been a docket item in the past that said the City Council as a special permit granting authority would not be allowed to engage in ex-parte communication and that item was trying to make the process more judicial. Ouida Young, former Acting City Solicitor and former Alderman George Mansfield, then-Chair of the Land Use Committee, and the City Council went through this very carefully. The City Council decided against that. Elected officials have particular knowledge about various sites in the City because of where they live and they bring that neighborhood knowledge to the process. That neighborhood knowledge was always available to inform the judgement of a special permit because it requires a finding of a public benefit and such broad criteria as the use is appropriate to the site and others. Historically, Newton's special permit process has operated in this way. On the City's website there is Guidance for Councilors for Land Use Decisions and it says to take people through the process, have conversations and make that information available. Part of the challenge of reducing discretionary review and increasing specific criteria is in getting the desirable quality of cityscape.

Joel Russell said the special permit granting authority is adjudicating property rights. If that decision is made because someone is whispering in the ear of one of the decision makers and that sways the decision, that is a due process violation and unfair. That is what makes ex-parte contact inappropriate in the context of quasi-judicial decision making. There is a standard of fundamental fairness – an applicant needs to know what is being said about their project that is affecting the decision of the decision makers. If there is no way to find out what is being said, that is very problematic. The legislator's fundamental role as a communicator with constituents is antithetical to the role of keeping comments from influencing decisions. That is what has motivated so many communities to take the authority away from City Councils, not because they were not doing a good job, but it was creating too many opportunities for conflict. Also, when clearer, simpler criteria are applied, it can be much more appropriate for an administrative body to apply clear cut rules instead of something with much more discretion.

A Councilor added that there is a significant difference between a judicial process which does not allow for ex-parte communication or anything but a clear look at the record. This is a quasi-judicial process which does not require those standards.

It was noted that the ordinance says that extension of a nonconforming use is not allowed except with a special permit, but there is no requirement that a special permit be granted.

Several Councilors felt that putting the cut-off line for City Council/Planning Board special permit review at 20 units is not wise and is a very large project. Sometimes it's the smaller projects that can have a huge impact and cause the most controversy in a neighborhood. Number of units is not a good measurement. The healthy pressure that the Committee process provides on a single-family project tends to make people better neighbors. The geographic diversity of the City Council provides the range of information that leads to better decisions. One- and two-family units occur all over the City so the impact is everywhere. Based on this cut-off number, the City Council would not have had authority over many, many projects and that implication needs to be considered.

A Committee member wondered if size of project in terms of square feet might be a better metric to use rather than unit size.

While deliberations and struggle have brought about good results, that struggle is not always good. There is value in finding a way to determine which projects rise to the level of the lengthy deliberation that has taken place in the past. Neighborhood confrontation can sometimes be very unhealthy, uncomfortable and end up pitting neighbors against each other in destructive ways. Special permit granting criteria are very general and providing more clarity can be extremely helpful.

Newton is one of only 15 in 351 communities in Massachusetts who designate the legislative body as the special permit granting authority. With a Planning Board or ZBA there is the opportunity to appoint people with expertise in related areas. The Committee asked for some data on other communities as to appointed or elected Planning Boards and what kind of criteria are used.

A Councilor asked if the City Council could appoint a Committee of City Councilors or appoint other people to review a subset of special permits. Something like Traffic Council came to mind. Ms. Lawlor, Assistant City Councilor, noted that MGL allows only a legislative body, a Planning Board or a ZBA to be a special permit granting authority. Creating a different body who are not Councilors would not be allowed. Another standing Committee could be appointed.

A Councilor asked if splitting the special permit authority is intended to improve constituents experience or to reduce the workload of the City Council. Last term a constituent experience review was done of special permit applicants. That review showed that most of the time spent in the special permit process was in administrative review and not in Land Use Committee so taking some projects out of Land Use would not improve constituent experience. Mr. Freas said that the process side has been optimized to its greatest extent at this point. Zoning reviews are fast tracked and getting to City Council pretty quickly. There is a problem of getting projects onto the Land Use calendar because many large projects are currently taking up most of Committee time. It is important to understand what the intention is and what problems are trying to be solved.

Joel Russell said another body could be appointed for site plan review, but the City Council would then not be making a final decision.

A Councilor said she would like to see how Planning Boards do with these decisions in other communities. It is being assumed that the City Council is doing a better job than they could do. It was noted that appointed Planning Boards are not accountable to constituents and there is benefit to having that accountability.

A Councilor felt that because the new zoning code could affect the amount of special permit work coming before the City Council, it might make more sense to settle these issues after some experience with the new ordinance. It may prove to be unnecessary or there may be better solutions.

Section 6 Findings

On proposed Section 6 Findings, they are currently in the special permit process. A Councilor would like to think about situations where it was important to be in the special permit process and under what circumstances that might remain beneficial. It was noted a public hearing would still be required.

There was a concern that nonconformities could be extended all the way to a lot line, or adding a story and these situations could impact neighbors substantially. A set of metrics need to be provided because "not substantially more detrimental" is very vague. The tricky part is providing useful metrics while allowing for the discretion that is valuable. Newton is not made up of a grid of square lots.

Creating more conformity and providing flexibility is also an important discussion to continue.

Design Review

A Councilor pointed out that if one of the goals is to be the special permit process simpler, adding a layer such as UDC review may thwart that. It is a balance that needs to be struck. For instance, this would not be appropriate for smaller projects and would be appropriate in a large house review process.

It was asked how this might affect Historic Reviews and other processes already in place. Mr. Freas said certain types of projects that are already required to do design review could be exempt from this particular design review process.

A Councilor asked what might happen if the advice is not useful or usable because then it becomes ineffective. Mr. Freas said there might be an opportunity to incorporate the advice into the conditions, for example. This is something to consider further.

Washington Place for example started out with a very bland design and went to the Urban Design Commission which helped substantially to make the project more attractive and suitable for Newton. Architects have found that these kinds of discussions are very fruitful even if they do not end up in conditions.

The Committee thanked staff and Mr. Russell for their work and voted to hold the item.

Meeting adjourned.

Respectfully Submitted,

Susan S. Albright, Chair

Zoning and Planning Committee March 11, 2019

1

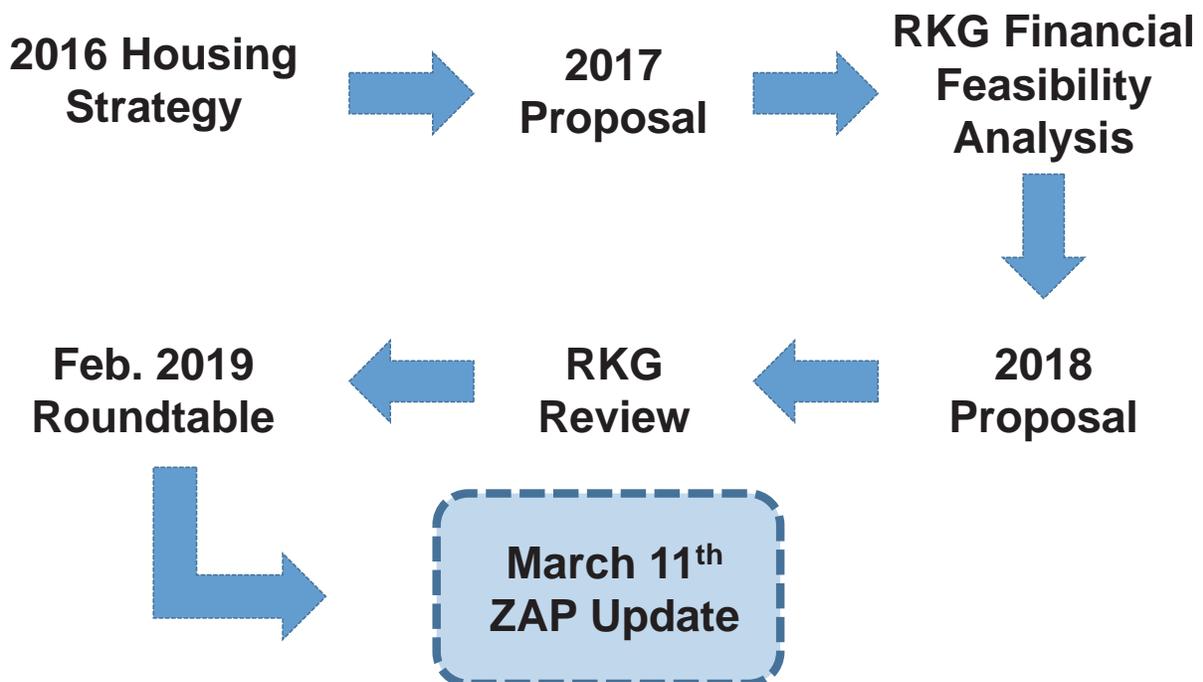
SECTION 5.11 INCLUSIONARY ZONING ORDINANCE

MAKING IT WORK FOR TODAY'S NEWTON

3/11/19

The Inclusionary Zoning Update Process

2



IZ Roundtable with Housing Advocates

3

Meeting Purpose:

To explore questions and concerns relative to the current IZ proposal, specifically as they relate to the Financial Feasibility Analysis and Model, and to identify points of agreement or disagreement.

IZ Roundtable with Housing Advocates

4

Change in IZ Requirements



Impact on Land Values in Newton

“The more value you take away from the land, the more you are likely to chill development.”

But how long does it take to rebound?

IZ Roundtable with Housing Advocates

LAND VALUE IMPACT FROM EXPANDING CURRENT IZ POLICY

Unit Count	Adding 2.5% at 110% AMI	Adding 5.0% at 110% AMI
20 Units	10.7% Impact	10.7% Impact (no new units)
35 Units	6.1% Impact	6.7% Impact
50 Units	3.4% Impact	5.4% Impact
75 Units	5.6% Impact	7.7% Impact
105 Units	3.5% Impact	4.1% Impact
150 Units	1.9% Impact	4.0% Impact
205 Units	1.9% Impact	3.8% Impact
250 Units	2.6% Impact	4.7% Impact
400 Units	2.7% Impact	4.7% Impact

NB - Assumes no payment for partial units

IZ Roundtable with Housing Advocates

Other Questions for RKG...

- Difference between the model and “on-the-ground” reality of bigger projects?
- Why shouldn’t Newton build a policy around these larger anomaly projects?
- Is the data built into the model outdated at this point?
- As we re-assess the ordinance every 3-5 years, what indicators should we be looking for to understand its impact?

IZ Roundtable with Housing Advocates

7

- Don't reduce the existing IZ requirement at the Tier 1 and Tier 2 levels
- Let's push the market in an effort to increase the number of affordable units per project
- DHCD's QAP Index of \$389,000 should not be used as the basis for the cash payment and fractional cash payment calculations



Consensus amongst advocates:

Next Steps

8

March:

- Identify areas that ZAP feels need further explanation
- Discussions with for-profit developers
- Further research / consideration of stakeholder ideas and questions
- Elder Housing with Services section
- Alternative Compliance Option

April:

- Update to ZAP
- Newton Housing Partnership engagement

May:

- Presentation to ZAP: new proposed ordinance
- Assign public hearing



**June 2019:
Public Hearing**



Zoning and Planning Committee

March 11, 2019

9

DISCUSSION

Newton Zoning 1st Draft Overview

Development Review Process
03.11.19

Agenda

Overview

Discussion: Special Permits

Discussion: Administrative Site Plan Approval

Discussion: Section 6 Findings

Discussion: Design Review

Overview

Zoning is...

Zoning is a Legislative Action

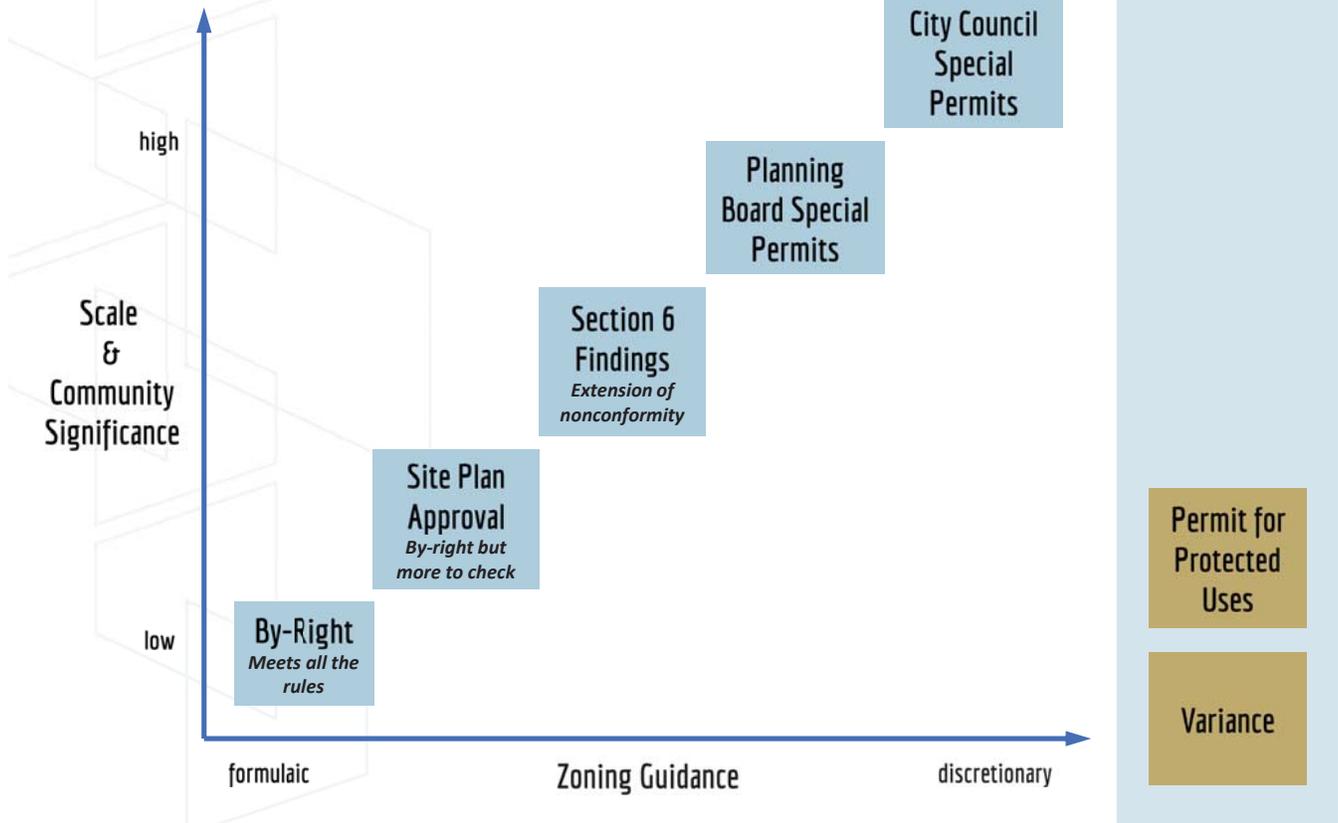
- Legislative Role of the City Council
 - Establish what is allowed, not allowed
 - Establish procedures, decision making criteria, etc.
- Adoption and Amendments

Zoning is the rule book for development

- A range of permitting processes

Development Review

#518-18



Development Review

#518-18

Review Type	Allowed	Not Allowed
By-Right <i>Meets all the rules</i>	Allowed	Not Allowed
Site Plan Approval <i>By-right with more to check</i>	Allowed	Not Allowed
Section 6 Findings <i>Extension of nonconformity</i>	Allowed, but first...	Not Allowed, but please make an exception...
Special Permits <i>Planning Board or City Council</i>	Allowed	Not Allowed
Variance	Not Allowed	Not Allowed
Permit for Protected Use	Not Allowed	Not Allowed

Development Review

By-Right
Meets all the rules

Allowed

Not Allowed

Site Plan Approval
By-right with more to check

Section 6 Findings
Extension of nonconformity

Allowed, but first...

Not Allowed, but please make an exception...

Special Permits
Planning Board or City Council

Variance

Permit for Protected Use

Development Review

Site Plan Approval
By-right with more to check

Allowed

Not Allowed

By-Right
Meets all the rules

Section 6 Findings
Extension of nonconformity

Allowed, but first...

Not Allowed, but please make an exception...

Special Permits
Planning Board or City Council

Variance

Permit for Protected Use

Development Review

Allowed

By-Right
Meets all the rules

Not Allowed

Section 6 Findings
Extension of nonconformity

Allowed, but first...

Site Plan Approval
By-right with more to check

Not Allowed, but please make an exception...

Special Permits
Planning Board or City Council

Variance

Permit for Protected Use

Development Review

Allowed

By-Right
Meets all the rules

Not Allowed

Special Permits
Planning Board or City Council

Allowed, but first...

Site Plan Approval
By-right with more to check

Not Allowed, but please make an exception...

Variance

Section 6 Findings
Extension of nonconformity

Permit for Protected Use

Development Review

Allowed

By-Right
Meets all the rules

Allowed, but first...

Site Plan Approval
By-right with more to check

Special Permits
Planning Board or City Council

Not Allowed

Not Allowed, but please make an exception...

Section 6 Findings
Extension of nonconformity

Variance

Permit for Protected Use

Development Review

Allowed

By-Right
Meets all the rules

Allowed, but first...

Site Plan Approval
By-right with more to check

Special Permits
Planning Board or City Council

Not Allowed

Not Allowed, but please make an exception...

Section 6 Findings
Extension of nonconformity

Variance

Permit for Protected Use

Development Review

Allowed

By-Right
Meets all the rules

Allowed, but first...

Site Plan Approval
By-right with more to check

Special Permits
Planning Board or City Council

Permit for Protected Use

Not Allowed

Not Allowed, but please make an exception...

Section 6 Findings
Extension of nonconformity

Variance

Development Review

Allowed

By-Right
Meets all the rules

Allowed, but first...

Site Plan Approval
By-right with more to check

Special Permits
Planning Board or City Council

Permit for Protected Use

Not Allowed

Anything either stated as "prohibited" or simply not listed is not allowed

Not Allowed, but please make an exception...

Section 6 Findings
Extension of nonconformity

Variance

Discussion: Special Permits

What is a Special Permit?

What is it: a discretionary conditional permit

When required: size, location, or some external effect that requires additional review and potential conditions to mitigate effects

What does it mean: A Special Permit “runs with the land,” no matter who owns the property, or how much time has passed, as long as the conditions continue to be met, the permit stays in place

What is a Special Permit?

Special Permit Granting Authorities

Special Permit Granting Authority: The public administrative body authorized to issue a special permit by MGL Chapter 40A

A Quasi-Judicial Role. When an administrative body is tasked with acting in a judicial manner.

- Action based on record of a case and the law
 - Nothing from outside the public hearing or written records can be considered
- Administrative body enters the decision from a starting point of impartiality

What is proposed?

Special Permit Granting Authorities

Planning Board

City Council

Reviews all projects deemed not of citywide significance

Reviews all projects deemed of citywide significance

Same procedure in each case:
Conduct public hearing (including notice to neighbors),
review written records, add conditions, vote

Same appeals process in each case:
Appeals to court system

What is proposed?

Stricter Criteria

Special Permits are issued when the S.P.G.A. makes findings that all of the criteria for granting a special permit have been met.

Current Criteria are general.

Specific criteria only appear in a handful of locations, e.g. MU3 District

1. The specific site is an appropriate location for such use, structure;
2. The use as developed and operated will not adversely affect the neighborhood;
3. There will be no nuisance or serious hazard to vehicles or pedestrians;
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved; and
5. In cases involving construction of building or structures or additions to existing buildings or structures, if those proposed buildings or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

What is proposed?

Stricter Criteria

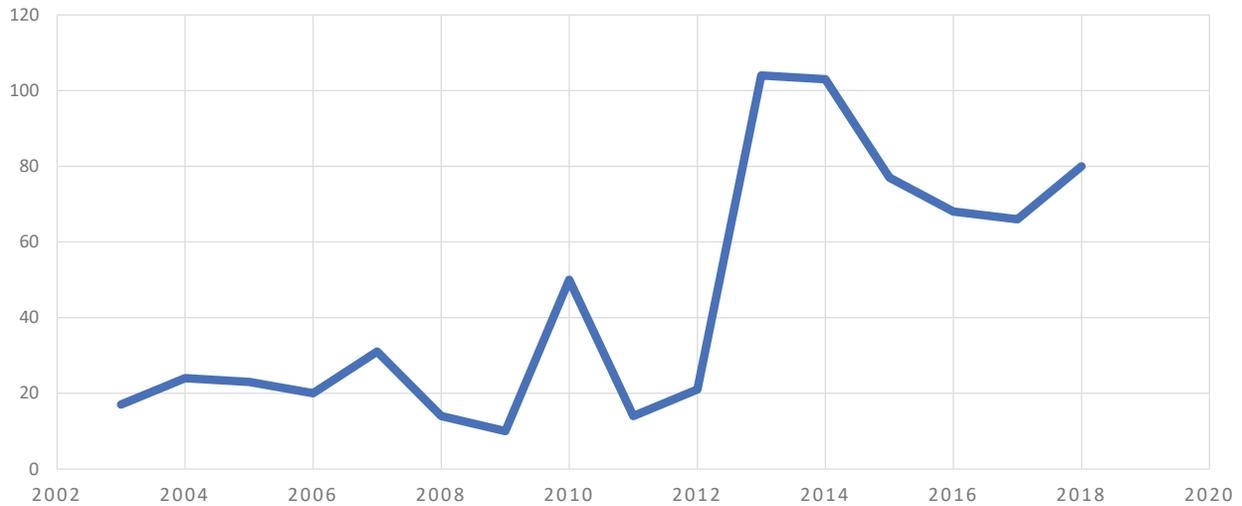
Special Permits are issued when the S.P.G.A. makes findings that all of the criteria for granting a special permit have been met.

The first draft includes generally applicable criteria + specific criteria for each special permit

In its discretion to approve or deny a special permit required by this Ordinance, the Special Permit Granting Authority shall find that the application meets the following criteria:

- A. Conformance with the adopted Comprehensive Plan and other existing policy plans of the City of Newton
- B. Consistency with the purposes of this Ordinance.
- C. Consistency with the purpose of the district where the subject property is located
- D. Conformance with all applicable provisions of this Ordinance
- E. Considerations indicated elsewhere in this Ordinance specifically for the required special permit

ANNUAL NUMBER OF SPECIAL PERMITS



Number of Special Permit Applications per Year															
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
17	24	23	20	31	14	10	50	14	21	104	103	77	68	66	80

Special Permit Details		2008	2013	2018
Number of Residential Units in the Project	0 Units <i>(Commercial Only)</i>	11 <i>79% of total</i>	51 <i>49% of total</i>	29 <i>36% of total</i>
	1-2 Units	2 <i>14% of total</i>	40 <i>39% of total</i>	35 <i>44% of total</i>
	3-8 Units	1	12	7
	9-20 Units	-	1	5
	20+ Units	-	-	4
Commercial Project Details	Includes a Parking Waiver	1 <i>7% of total</i>	13 <i>(only parking waiver: 1) 13% of total</i>	11 <i>(only parking waiver: 1) 14% of total</i>
	Includes a Sign Special Permit	1	9	6
	Change of Use Only	-	7	8
	Tenant change only <i>(change of use/sign)</i>	-	9 <i>9% of total</i>	9 <i>11% of total</i>
Projects with Nonconformity	Includes an Extension of a Nonconformity	1	17 <i>(only nonconformity: 5)</i>	23 <i>(only nonconformity: 5)</i>

Discussion Questions

- 1) What is an appropriate split between Planning Board and City Council Special Permits (if any)?**

Discussion: Site Plan Approval

What is Site Plan Approval?

What is it: an administrative permit

When required: some aspect of the site plan or project details requires review beyond the scope of a building permit

What does it mean: The permit is, like a building permit, specific to the project submitted, it is by all accounts an “allowed” by-right project, but details need further discussion before a permit is granted

- Site design
 - Pick-up/drop-off at a school
- Analysis
 - Proximity Rule
 - Individual sign in context of a sign plan

Discussion Questions

2) What kinds of projects would be appropriate for this level of review?

Discussion: Section 6 Finding

What is a Section 6 Finding?

What is it: permission to extend/alter a nonconformity

When required: some aspect of the site plan or project builds upon a legally existing nonconformity

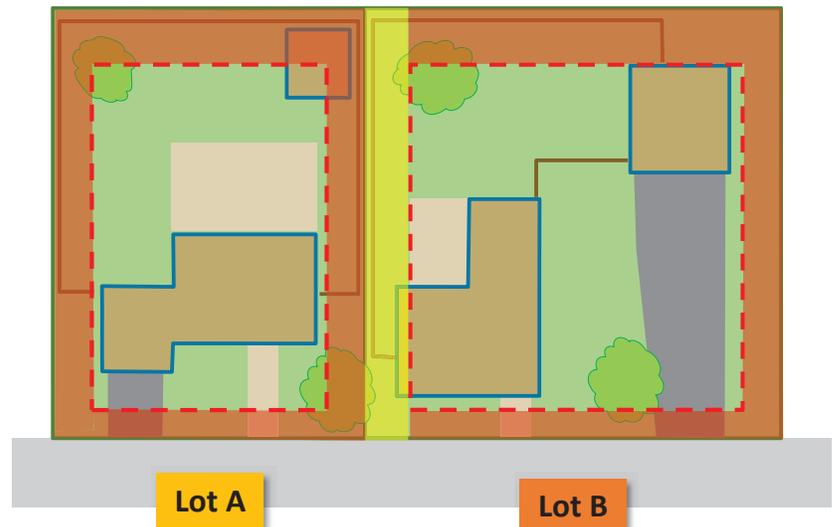
What does it mean: The project was found to be “not substantially more detrimental to the neighborhood” than the existing nonconformity

Example of Nonconformity

Example: Side Yard Setbacks

What does conforming mean for a home addition?

- **Lot A** is conforming
 - Any expansion into the setbacks is off-limits
- **Lot B** is nonconforming
 - Section 6 Finding can grant further expansion into setback



Discussion Questions

3) Should the new ordinance provide for the Section 6 Finding process?

Discussion: Design Review

What is Design Review?

What is it: advisory review by the Urban Design Commission

When required: alongside any special permit to modify the dimensions of a building type, e.g. large house review, large scale projects, and sign plans

What does it mean: These are advisory to the Special Permit Granting Authority and the applicant – a formalization of the process in place today

Discussion Questions

4) What kinds of situations should advisory design review meetings be required?