



Dear Colleagues,

Here is a brief summary of the proposed amendments to Section **6.7.1 Accessory Apartments**, as recommended by the Zoning & Planning committee.

This item is on second call as we postponed to a date certain, pending the opinion of the Planning & Development Board, who sent us their letter last week recommending all changes as proposed.

In this week's packet, you have the redline version of the ordinance, as well as the most recent committee report.

Note that the Accessory Apartment (ADU) Ordinance was first passed in 1987; revisions were minor until December of 2017, when Council passed a substantially revised ordinance to allow all homeowners to create an ADU as of right within the principle dwelling, up to a certain maximum floor area, requiring owner occupancy of one of the units, annual recertification, and allowing some additional floor area by special permit.

In 30 years from 1987 through 2017, about 54 ADUs were permitted.

In three years from December 2017 through 2021, another 72 units have been permitted.

But two things were not changed in 2017:

1. Detached accessory apartments currently require a special permit in every case, except where the structure is historically significant, such as a turn of the century carriage house. These are allowed by right currently intending to encourage restoration.
2. A person may not build a home in Newton including an accessory apartment until the principle dwelling is at least four years old.

Proposed substantive amendments intend to remove these barriers to creating accessory units. There are three proposed substantive amendments:

1. To allow ADUs to be planned for with new construction, eliminating the four year waiting period, so that families who need this for family, caregivers and/or income can incorporate code requirements into their initial planning.
2. To allow Detached ADUs by-right up to 900 sf, (which as well must conform to other rules for accessory buildings in 6.7, such as a maximum footprint of 700sf, maximum of 1.5 stories and maximum height to ridge of 18')
3. To impose stricter setback requirements for an accessory building than for other accessory uses (which is 5' side and rear), to be no less than 7.5', or 50% of the side or rear setback required for the principle dwelling, whichever is greater. Originally the committee considered making side and rear setbacks for by-right ADUs uniformly 7.5', but the compromise language we voted is as noted above.

Clarifying language proposed:

6.7.1.C.3. is amended to further clarify ownership rules, by making explicit how occupancy must work in the case of a Trust.

6.7.1.E.6 is language added to reinforce that the existing rule requiring that all structures (more than 120sf) on a property must be included in the floor area calculation to show compliance with the FAR limit. Of course, this includes detached accessory apartments. The language is redundant, but harmless.

About screening...

The current ordinance does not require additional screening (fencing or planting) for ADUs in any case, and we understand that Land Use typically does not require screening in granting special permits. Language had been suggested to require screening if the detached ADU is between 7.5' setback (the minimum proposed for side or rear) and 50% whatever the setback is that is required for the principle dwelling.

Example: So, if a setback requirement is normally 20', 50% would require 10'. In this case, if the ADU is located 10' or 15' from the rear that setback is would be compliant, but less than the principle dwelling. Most did not feel it was reasonable to require fencing or planting in such a case. And of course, ADUs proposed within existing accessory structures like a garage, if less than the proposed setback, still would require a special permit.

I hope this provides some clarifying information.

Looking forward to our discussion on Monday,

Deborah Crossley

6.7. Accessory Uses

6.7.1. Accessory Apartments

- A. **Intent.** Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section.

Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the residential character and scale of existing neighborhoods;
2. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
3. Create more housing units with minimal adverse effects on Newton's neighborhoods;
4. Provide flexibility for families as their needs change over time and, in particular, provide options for seniors to be able to stay in their homes and for households with disabled persons; and
5. Preserve historic buildings, particularly historic carriage houses and barns.

- B. **Accessory Apartment Defined.** A separate dwelling unit located in a Single-Family, Detached or a Two-Family, Detached building or in a detached building located on the same lot as a Single-Family, Detached or a Two-Family, Detached building, as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.1.

1. **Internal.** An accessory apartment located within a single- or two-family dwelling.
2. **Detached.** An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building.

C. **Rules for All Accessory Apartments**

1. No accessory apartment shall be held in separate ownership from the principal structure/ dwelling unit; To permit redevelopment of existing office buildings into new office buildings.
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner or an indirect property owner must occupy either the principal dwelling unit or the accessory apartment.; Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
5. ~~The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of~~

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~~the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;~~

- ~~6.5.~~ Where the accessory apartment or the principal dwelling is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
- ~~7.6.~~ No additional parking is required for the accessory apartment. If parking for the accessory apartment is added, however, screening is required sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination;
- ~~8.7.~~ Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;
- ~~9.8.~~ When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Section 6.7.1 and with 780 CMR; and
- ~~10.9.~~ The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this Section 6.7.1 and all applicable public safety codes. Such certification shall be filed annually on the first business day of January or upon transfer to a new owner as provided above, and the property may be subject to inspection.

D. Rules for Internal Accessory Apartments

1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building. Lab Building (See Sec.6.2.10)
2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling, as defined in Sec. 8.3, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40% of the total Habitable Space, whichever is less.
 - a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.
3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure, and the look, character and scale of the surrounding neighborhood as viewed from the street, including, but not limited to, the following considerations:
 - a. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
 - b. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
 - c. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
 - d. Windows should be consistent with those of the remainder of the building in proportion and orientation;

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- e. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
 - f. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above criteria. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.
4. Only one entrance may be located on the facade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created, except by special permit.

E. Rules for Detached Accessory Apartments.

1. ~~Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single-Family, Detached building or a Two-Family, Detached building. Design and management strategies achieve compatibility with the neighborhood and adjacent residential properties. A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building.~~
2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of ~~9001,200~~ square feet or ~~50%40%~~ of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.
 - a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.
3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the principal dwelling on the lot and the residential character of the neighborhood. The exterior finish material should be the same or visually compatible in type, size, and placement, as the exterior finish material of the principal dwelling unit on the site. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C) (4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.
4. The Detached Accessory Apartment must meet the separation requirements from the principal dwelling unit on the subject lot in compliance with Sec. 3.4.3.A.2.b.
5. ~~A The~~ Detached Accessory Apartment shall be no nearer to any side or rear lot line than 7.5 feet or half of the distance prescribed for the principal building, whichever

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~~is greater, and no nearer to any front lot line than the distance prescribed for the principal building. Notwithstanding the forgoing sentence, the setbacks for a Detached Accessory Apartment may be reduced by special permit.~~

~~5.6. A Detached Accessory Apartment shall be included in the floor area ratio calculation for the lot, must meet the setback requirements of the principal dwelling unit, as well as floor area and other Article 6. Use Regulations | Sec. 6.7. Accessory Uses Chapter 30: Zoning Ordinance | Newton, Massachusetts 6-21 applicable dimensional controls, except by special permit.~~

~~6.7.~~ Except as required above, a Detached Accessory Apartment is subject to the dimensional requirements of Section 3.4.3, Accessory Buildings. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

~~7.8.~~ Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in an historic accessory building located outside of an historic district, may be allowed by right without requiring a special permit, and only subject to the rules in this subsection E.7.

- a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must qualify and be deemed as “historically significant” under Section 22-50 of the City of Newton Ordinances, The Demolition Review Ordinance, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission;
- b. The proposed Detached Accessory Apartment will be greater than 15 feet from an existing residential dwelling on an abutting property, except by special permit; and
- c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission.

F. **Invalidity Clause.** If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

October _____, 2022

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 30 ZONING** as follows:

1. **INSERT** after “The property owner” where it appears in **Sec. 6.7.1.C.3** the words “or an indirect property owner”.
2. **DELETE** the semicolon “;” where it appears at the end of **Sec. 6.7.1.C.3** and insert in place thereof as follows:

“ Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property;”.
3. **DELETE Sec. 6.7.1.C.5** in its entirety and **RENUMBER** the remaining paragraphs accordingly.
4. **DELETE Sec. 6.7.1.E.1** in its entirety and **INSERT** in place thereof a new **Sec. 6.7.1.E.1** as follows:

“A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building.”
5. **DELETE** the number “1,200” where it appears in **Sec. 6.7.1.E.2** and **INSERT** in place thereof the number “900”.
6. **DELETE** the percentage “40%” where it appears in **Sec. 6.7.1.E.2** and **INSERT** in place thereof the percentage “50%”.
7. **DELETE Sec. 6.7.1.E.5** in its entirety and **INSERT** in place thereof a new **Sec. 6.7.1.E.5** as follows:

“A Detached Accessory Apartment shall be no nearer to any side or rear lot line than 7.5 feet or half of the distance prescribed for the principal building, whichever is greater, and no nearer to any front lot line than the distance prescribed for the principal building. Notwithstanding the forgoing sentence, the setbacks for a Detached Accessory Apartment may be reduced by special permit.”
8. **INSERT** a new **Sec. 6.7.1.E.6** as follows:

“A Detached Accessory Apartment shall be included in the floor area ratio calculation for the lot.”

and **RENUMBER** the remaining paragraphs accordingly.

Approved as to legal form and character:

Alissa O. Giuliani

City Solicitor

Under Suspension of Rules
Readings Waived and Approved

(SGD) Carol Moore

City Clerk

(SGD) RUTHANNE FULLER

Mayor

Date: _____

DRAFT



Zoning & Planning Committee Report Revised

City of Newton In City Council

Monday, September 12, 2022

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

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

City Staff: Zachary LeMel, Chief of Long Rand Planning; Jen Caira, Chief Planner; Jennifer Wilson, Assistant City Solicitor; Lara Kritzer, CPA Program Manager; Eamon Bencivengo, Housing Development Planner; Jonah Temple, Deputy City Solicitor; Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee September 12, 2022 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-September-12-2022)

#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.
Zoning & Planning Held 7-0-1 (Councilor Baker abstaining) on 08/09/22
Recommendation from Planning & Development Board Pending
Action: Zoning & Planning Approved 5-2-1 (Councilors Baker and Wright opposed)
(Councilor Ryan abstaining)

Note: The Chair read the item into the record and introduced Zachary LeMel, Chief of Long Range Planning to present the draft ordinance amendments. The purpose of these amendments is to make accessory dwelling units (ADUs) easier to create in Newton. Mr. LeMel outlined the benefits that ADUs can bring such as enabling diverse housing options, providing flexibility for homeowners, supporting aging in place, and allowing for new housing without major new construction. The first proposed amendment is to remove the 4-year “lookback” period that is currently required in 6.7.1.C.5., to allow for planning and building of ADUs in new construction. The second proposed amendment is to allow more detached ADUs by-right, if limited to 250sf – 900 sf, or 50% of total habitable space, whichever is less. He noted that historic

carriage houses, depending on their location on a site, are currently allowed to be converted to ADUs by-right in non-historic districts. This is to encourage restoration. The third proposed amendment is to modify the setbacks for detached ADUs to equal either half of the setback required for the principal building in that zone, or 7.5 feet, whichever is greater. Currently, accessory buildings of all other uses require only a 5 foot rear and side yard setback, with the front setback equal to that of the principle building. And, if the setbacks are less than that of the principal dwelling, but otherwise meet this standard, screening would also be required either via dense planting or fencing.

The final proposed amendment is to clarify the language defining the owner occupancy requirement.

The Public Hearing was opened.

Sean Roche, 42 Daniel St, commended Mr. LeMel on making this content easily understandable and substantially agrees with the proposed amendments. Mr. Roche did note that he thinks these amendments should have gone further and the owner occupancy requirement should be dropped.

Rena Getz Escudero, 192 Pine Ridge Rd, cited multiple communities that recently amended their zoning ordinance relating to ADUs and expressed opposition to the removal of the lookback (4 year waiting) period. by Ms. Getz Escudero explained her opposition is based on wanting to prevent teardowns within the City. She did express support of allowing small ADUs by-right along with a suggestion to amend the 50% of the principle setback provision to 75% of the principle setback. She also noted that ADUs are eligible to be counted in the SHI calculation for the City. Ms. Caira later in the meeting noted that she knows of no ADUs included in the SHI calculation and that it would be rare if any were included. The Chair noted that a review of similar ordinances in other municipalities was conducted, and that in order to count ADUs in the SHI, certain deed-restricted affordability requirements would have to be imposed.

Robert Fizek, 47 Forest St, stated that he is an Architect who has worked on ADUs with many clients and expressed opposition to all amendments presented by Mr. LeMel. Mr. Fizek stated that the Special Permit process is not a significant obstacle to the construction of ADUs and that he believes the process helps bring the community together.

Lisa Monahan, 1105 Walnut St, also a local architect, expressed support for the proposed amendments. Ms. Monahan noted that she sees these amendments as a way to increase the housing stock while preserving the neighborhood's physical character. She also noted her disagreed with Mr. Fizek's comment regarding the Special Permit process not being a significant obstacle.

Jay Walter, 83 Pembroke St, also a local architect serving many clients needing ADUs, supports the amendments and sees the setbacks proposed as a good compromise. He described a couple

who found that creating an ADU was the only affordable option they had to be able to continue to live in Newton. Mr. Walter also recommended that the section regarding the floor area ratio (FAR) be clarified as it is ambiguous. It was also noted that the "Building Professional Working Group" he is part of supports removing the lookback, finding that developers are generally not interested in building ADUs in their speculative buildings, because it adds expense and limits buyers.

MaryLee Belleville, 136 Warren St, expressed overall support for the proposed amendments but did express some concern regarding the 1500 sf upper limit on detached ADUs via Special Permit. Staff later stated that this upper limit exists in the current ordinance. Ms. Belleville also posed several questions relating to the ability to see where in the City ADUs are located, how many have sold in the last 8 years, and finding information on changes of ownership. City Staff noted that this information would be on file with the City's Inspectional Services Department (ISD).

Ruth Kantar, 672 Chestnut St, expressed her interest in facilitating ADUs as related to being the parent of an adult with developmental disabilities. By making ADUs easier to create, there could be more housing options that better meet the needs of diverse families. Ms. Kantar did seek clarification on whether a detached garage would make a property ineligible to have an ADU. The Chair noted that, while there is nothing in the code that prohibits multiple accessory buildings on a site, that FAR limits the total square footage that may be built on a site.

Lynn Weissberg, 5 Alden St, and Kathy Pillsbury 34 Carver Rd. also expressed support.

The Committee voted 8-0 on a motion to close the public hearing by Councilor Leary. The item was then tabled via an 8-0 vote on a motion from Councilor Danberg.

Later in the meeting, the Committee voted 8-0 on a motion to take the item off the table from Councilor Leary.

One Councilor noted that the Planning & Development Board's Public Hearing for this item is scheduled after the next City Council Meeting, so what will be the procedure tonight. The Chair stated that the Committee may vote this item tonight but, if so, at the next City Council Meeting this item will be postponed to a date certain, in order to wait for the Planning Board's recommendation, which we should have prior to the first full Council meeting in October..

One Councilor noted that the first ordinance allowing ADUs in Newton passed on August 3, 1987 intended to make sure that ADUs could exist but also fit into the context of the neighborhood. He sought clarification regarding the owner occupancy requirement if the owner is a Trust. Ms. Cairra responded stating that the proposed amendment to the owner occupancy requirement is strictly to ensure the ordinance is clear to the public.

This Councilor then shared several slides with the Committee, noting that the graphics were created by another (attached). A map of the city highlighted the location of single- and two-

family properties throughout Newton, noting that setbacks are an important factor in the construction of these units and stating that the special permit process helps to provide a reasonable safeguard. The Councilor proceeded to show the Committee hypothetical examples of detached ADUs by-right if built on every property located in the same block. He proposed that allowing by-right construction of detached ADUs would result in a significant number of these units. In advocating for the lookback provision this Councilor noted that the four year wait was to prevent an ADU in new construction serving as an incentive for people to move to Newton who otherwise could not, and that this would raise property costs.

During the discussion, multiple Councilors noted their disagreement with the substance of the presentation as depicting highly unlikely scenarios; one Councilor suggesting it was intended as a scare tactic. It was also noted that the illustration incorrectly showed 900sf ADU footprints, but accessory buildings are limited to 700sf footprints by-right; the 900sf ADU can only be achieved by a 1.5 story unit.

Several Councilors also raised concerns with the screening requirements for detached ADUs having setbacks less than the principal dwelling. But other members of the Committee expressed support for the screening provision. The Committee voted 4-3-1 with Councilors Wright, Baker, and Ryan opposed and Councilor Krintzman abstaining on a motion to remove the screening requirements from the ordinance amendment as proposed.

Three motions were then brought before the Committee by Councilor Baker. First, a motion to amend the proposal to preserve the lookback provision failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Second, a motion to amend the proposal to require that the setbacks for detached ADUs equal that of the principal dwelling failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Third, a motion to amend the proposal by deleting the portion allowing small detached ADUs by-right failed 1-6-1, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed and Councilor Wright abstaining.

Finally, a motion by Councilor Wright to allow a 1-year lookback provision failed 3-5, Councilors Leary, Albright, Krintzman, Crossley, and Danberg opposed.

The Committee once more reviewed the draft text of the ordinance noting deletion of the screening requirements and agreeing that the language describing the FAR limit on a site would be clarified in the final draft presented to Council. Councilor Danberg moved approval as amended, which carried 5-2-1, Councilors Wright and Baker opposed and Councilor Ryan abstaining.

#401-22 Request for review and amendment to Section 5.11.5.E

HER HONOR THE MAYOR requesting possible amendment to Section 5.11.5.E to specify that the Affordable Housing Trust will be the entity to receive and distribute one half of new Inclusionary Zoning funds, rather than having these funds go to a separate City account.

Zoning & Planning Held 8-0 on 08/09/22

Recommendation from Planning & Development Board Pending

Action: Zoning & Planning Approved 8-0

Note: The Chair read the item into the record, noted members of the CPC and Housing Trust joining us for this meeting, and introduced Eamon Bencivengo, Housing Development Planner to present on the proposed ordinance amendments. In this presentation Mr. Bencivengo outlined that the purpose of dedicating 50% of the IZ funding to the Affordable Housing Trust (Trust) is to allow the Trust to operate as efficiently as possible. The current ordinance has cash payments to the IZ fund shared equally between the City's Inclusionary Zoning Fund and the Newton Housing Authority (NHA). The proposed amendment would provide that the Trust receive 50% of the funds directly. This amendment does not alter the share that NHA will receive of these cash payments. Mr. Bencivengo then shared with the Committee a copy of the proposed text revision to Section 5.11.5.E.

The Public Hearing was opened.

Community Preservation Committee member Eliza Datta of 40 Homer St noted that approving this ordinance amendment along with the upcoming item #436-22 will be a powerful way for the Trust to get a start on achieving their goals. These sentiments were echoed by Sean Roche of 42 Daniel St and Jay Walter of 83 Pembroke St.

Chair of the Municipal Affordable Housing Trust Ann Houston, of 45 Wedgewood St., was recognized next. (She also recognized the presence of Trust member Peter Sargent). She noted that these amendments will allow the Trust to be responsive to opportunities to increase the City's supply of affordable housing. Ms. Houston also noted that at the next meeting of the Trust on September 28th the Trust will be approving the first version of their strategic vision plan and guidelines along with a formal application form. It was also noted that the Trust is looking to be responsive to any projects that wish to seek support.

Robert Fizek of 47 Forest Street admitted he was just learning about this, and inquired about the efficacy of having a Trust that receives these funds versus the affordable units being built by the developer. Mr. Bencivengo stated that fractional payments can be made by developers should the development have a partial amount of the required affordable units. The Chair noted numerous reports that are available from meetings over the past term as the Trust was being established. The Committee voted 8-0 on a motion to close the public hearing from Councilor Danberg. The Committee then voted 8-0 on a motion to approve also from Councilor Danberg.

#399-22 **Appointment of Elizabeth Sweet to the Zoning Board of Appeals**
HER HONOR THE MAYOR appointing Elizabeth Sweet, 281 Lexington Street, Auburndale as a full member of the Zoning Board of Appeals for a term of office to expire on September 19, 2025. (60 Days: 10/07/2022)

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

Note: The Chair introduced Elizabeth Sweet, inviting her to describe her interest in becoming a full member of the Zoning Board of Appeals (ZBA). In her statement Ms. Sweet described her experience as an alternate member of the Zoning Board of Appeals as one that has helped her gain knowledge and better link the material, she teaches with real world examples. She noted that her experience as an urban planner helps add to the diverse set of experiences on the Board and looks forward to further contributing to the work of the Board. Multiple Councilors expressed support for Ms. Sweet's appointment. The Committee then voted 8-0 on a motion to approve from Councilor Krintzman.

Referred to Zoning & Planning and Finance Committees

#436-22 **CPC Recommendation to appropriate \$1,948,056 in CPA funding**
COMMUNITY PRESERVATION COMMITTEE recommending appropriation of one million nine hundred forty eight thousand fifty six dollars (\$1,948,056) in Community Preservation Act funding, with \$556,588 to come from the FY23 Community Housing Reserve Account and \$1,391,468 to come from FY23 Unrestricted Funding Account, to the control of the Planning & Development Department to provide funding to the Newton Affordable Housing Trust for future projects that meet one or more of the CPA's eligible funding categories for Community Housing projects.

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

Note: The Chair introduced Eliza Datta, Vice Chair of the Community Preservation Committee, who noted the Trust being created in December 2021 and the CPC subsequently agreeing to allocate its annual target for Community Housing Funds to the Trust. This request is set to recur on an annual basis. This request would allocate the CPC's target amount for Community Housing, currently 35% of the CPC FY23 annual funds to the Trust as seed money for future projects. It was noted that the Trust so far has been very efficient at getting to work meeting the goals of the Trust. The Trust is currently in the process of developing program guidelines and review processes with applications being accepted on a rolling basis starting this Fall.

During discussion one Councilor sought clarification about the relative appropriation of resources in this request. Ms. Datta responded that the allocation in this proposal is not a change in the relative allocation of funding but rather consistent with CPC targets for previous years. It was also reaffirmed that this request is only for this year. Multiple Councilors also expressed support for this funding request as a mechanism for the Trust to have a successful start, and again expressed gratitude to the members of the Trust for their service. The Committee voted 8-0 on a motion to approve from Councilor Danberg.

Chair's Note: *The final regulations that will guide compliance with the MBTA Communities Law were released in August, and are attached for your review. Planning staff are in the process of getting clarification on several points. I encourage you to submit any specific questions you may have to our Committee Clerk for the Planning Department to address more fully at the Wednesday, September 28 ZAP meeting.*

#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)

Zoning & Planning Held 8-0 on 01/24/22

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

Note: The Chair that the state has finalized regulations for MBTA Communities, which we received in August, and are in the Packet. She noted that the Compliance Guidelines now allows until January 31, 2023 for communities to submit an Action Plan to DHCD. She reminded that tonight's meeting was only to raise questions for deeper discussion at our September 28 meeting. The Planning Department along with other individuals are currently seeking clarification regarding some aspects of these regulations. Individuals with questions for the Planning Department should submit them to the Committee Clerk, Jaclyn Norton (jinorton@newtonma.gov). Jen Caira stated that questions should be submitted by Monday morning, September 19, 2022. The Committee then voted 8-0 on a motion to hold from Councilor Krintzman.

#47-22 Requesting annual updates on Newton's Subsidized Housing Inventory (SHI)
THE ZONING & PLANNING COMMITTEE, COUNCILORS LUCAS AND OLIVER, requesting a conversation with the Director of Planning and Development about Newton's Subsidized Housing Inventory (SHI) and progress towards meeting the affordable housing safe harbor and a request to post the SHI on the City's website. (formerly #307-21)

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

Note: The Chair introduced Jonah Temple, Deputy City Solicitor and Ms. Caira to provide a brief overview of the recalculation of Newton's Subsidized Housing Inventory (SHI) (SHI Memo attached). Ms. Caira described to the Committee that this is part of MGL Chapter 40B (1969) and the City can claim "Safe Harbor" status once 10% of the housing stock or 1.5% of relevant land area is developed as affordable housing according to the state requirements. This calculation is performed for each comprehensive permit application so that the Zoning Board of Appeals (ZBA), can decide if they may claim Safe Harbor, which changes the rules. This calculation has also been performed more recently on a semi-annual basis to ensure this calculation is up-to-date. The current calculation shows that Newton has 9.8% compliant

affordable housing stock and that 1.35% of available land area supports affordable housing. This concluded Ms. Caira's presentation

One Councilor presented several questions which were expressed in a memo sent to Attorney Temple, Deputy Director Caira and the full Council (attached). The first was a request for a chart to show the last 10 years of SHI data. Ms. Caira responded and said that the last 6-8 years of can be readily supplied but would need time to put that information into a chart. Second was to ask how many affordable units are not included in the SHI calculation. Ms. Caira responded stating that these units are very few and the City continues to submit them for inclusion in the SHI. Another question from this Councilor was regarding the time frame for qualifying for safe harbor relative to Newton's continued eligibility to participate as one of the ten communities seeking the authority to require electrification in new construction. Attorney Temple noted that the City is currently seeking guidance on this topic. Later in the discussion this Councilor requested a written response to the questions posed in this memo.

Other Councilors also presented questions with one Councilor seeking clarification on how the numerator and denominator change in this calculation. Ms. Caira stated that the denominator is calculated each decennial Census with the numerator updating each time the calculation is performed. Other Councilors sought clarification on when a development can be included in this calculation and the process after the City has reached safe harbor status. Ms. Caira noted that once safe harbor status is reached the ZBA is given more discretionary leeway with projects, but developers may still request a Comprehensive permit under Ch40B, versus seeking a special permit. Regarding when a development can be included in the calculation, Attorney Temple stated that a building permit for vertical construction is required. The Committee then voted 8-0 on a motion to hold from Councilor Baker.

#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)

Zoning & Planning Held 7-0 (Councilor Baker not voting) on 08/09/22

Action: Zoning & Planning Held 8-0

Note: The Chair stated that the exhibit located on the second floor of the library is open to the public and is available in a digital version on the Planning Department's website ([Village Centers \(newtonma.gov\)](https://www.newtonma.gov/village-centers)). Regarding the community testimonials received it was noted that the Committee Clerk has compiled those testimonials received in 2022 on the Zoning & Planning Committee website ([Village Center Zoning Redesign \(newtonma.gov\)](https://www.newtonma.gov/village-center-zoning-redesign)). One Councilor did request an updated calendar to gather an idea of what the Chair is looking to bring before the Committee for the rest of the year. The Chair agreed, noting that the majority of our work will

be focused on zoning for village centers through the end of the year. Seeing no further discussion, the Committee voted 8-0 on a motion to hold from Councilor Leary.

The meeting adjourned at 10:35pm

Respectfully Submitted,

Deborah J. Crossley, Chair