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1000 Commonwealth Ave.
Newton, MA 02459
T 617-796-1120
F 617-796-1142
www.newtonma.gov

CITY OF NEWTON

Planning and Development Board

October 6, 2023

To: The Honorable City Council President, Susan Albright
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

CC: Honorable Newton City Councilors
Planning & Development Board
Alissa Giuliani, City Solicitor
Carol Moore, City Clerk

SUBJ: Voting Threshold Determination for Proposed Village Center Overlay District (VCOD) Zoning Amendment

Dear Honorable Council President Albright:

In accordance with recent amendments to the State's Zoning Act, Chapter 40A, Section 5, certain zoning amendments that provide increased opportunity for housing are able to be adopted by a simple majority vote rather than the required two-thirds super majority passage that standard zoning amendments require. In addition, state guidance issued pursuant to Section 100 of Chapter 358 of the Acts of 2020 recommends that, in cases where a particular zoning amendment facilitates increased housing opportunity, the Planning Board provide a determination regarding the appropriate voting threshold.

On October 2, the Planning Board met to discuss the proposed Village Center Overlay District (VCOD) amendment and develop a formal recommendation on it to the City Council. While the Planning Board is still formulating its full recommendation on the proposed VCOD, it did deliberate and vote with respect to providing the City Council with its guidance regarding the appropriate voting threshold to employ in the City Council's consideration of the proposed VCOD zoning amendment.

Consistent with the attached opinion of Senior Assistant City Solicitor Lee, the Planning Board voted 6-0-1 (Director Heath abstaining) that the proposed VCOD zoning amendment meets all of the prescribed criteria for qualifications as a simple majority vote threshold of the City Council.

Sincerely,

Kelley Brown

Kelley Brown, Chair

**CITY OF NEWTON
LAW DEPARTMENT
LEGAL MEMORANDUM**

TO: All Members, Planning and Development Board

FROM: Andrew S. Lee, Senior Assistant City Solicitor

SUBJECT: Voting Requirement for Amendment Creating the Village Overlay District
City Council Dkt. No. 38-22

DATE: September 29, 2023

City Council Dkt. No. 38-22 proposes amendments to Chapter 30 zoning ordinances and the Zoning Map to add a new Village Center Overlay District (“VCOD”). M.G.L. c. 40A, as amended by Chapter 358 of the Acts of 2020 (the “Zoning Act”), requires that certain zoning amendments that promote housing production be adopted through a simple majority vote as opposed to a two-thirds majority vote. Guidance from the Office of Housing and Livable Communities (“EOHLC”) recommends that the Planning Board, after consultation with the Law Department, include in its report a determination of which voting threshold applies to the proposed zoning amendments.¹ As more fully set forth below, based on review of the Zoning Act, State guidance, and the proposed amendments, it is the Law Department’s opinion that the addition of the VCOD meets the criteria for approval by a simple majority vote.

DISCUSSION AND ANALYSIS

The Zoning Act, provides, in relevant part:

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a ... two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a ... simple majority of town meeting: (1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multi-family housing or mixed-use development in an eligible location. (2) an amendment to a zoning ordinance or by law to allow by special permit: (a) multifamily housing or mixed-use development in an eligible location.

¹ Section 100 of Chapter 358 of the Acts of 2020 directs EOHLC to "issue guidance to assist local officials in determining the voting thresholds for various zoning amendments.

If the proposed VCOD satisfies the following two requirements, it must be passed by a simple majority vote: First, the VCOD must allow multi-family housing or mixed use as of right or by special permit; and second, the VCOD must be in an eligible location.

1. Multi-family housing or mixed-use development

The proposed amendment adding the VCOD meets the first requirement because the only uses allowed are multi-family housing or mixed-use developments, and such uses are allowed by right or by special permit. The Zoning Act defines “multi-family housing” as “a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.” The City of Newton’s Zoning Ordinance’s definition of “multi-family” comports with the definition contained in the Zoning Act.² The table contained in Section 2.8 of the proposed VCOD explicitly permits multi-family uses as of right.

The Zoning Act defines “mixed-use development” as a “development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.” Guidance issued by the EOHLC provides that “there is no requirement that the mix of uses be in any particular ratio or configuration.” Section 2.8.A.3 of the proposed VCOD requires non-residential uses to be combined with a permitted residential use to be permitted. Such mixed-uses are allowed either by right or special permit.

2. Eligible location

The EOHLC guidance provides that a land area qualifies as an eligible location if: 1. It is “near” a transit station, meaning “[a]ny parcel that is at least partially within 0.5 miles” of a transit station”; 2. it is “within an area of concentrated development, including a town or city center, or other existing commercial districts, or existing rural village district”; or 3. “in the judgment of the planning board, the land area is a highly suitable location for residential or mixed-use development based on its infrastructure, transportation access, or existing underutilized facilities.”

Based on the language of the Zoning Act and the State Guidance, and after consultation with the Planning and Development Department, the Law Department believes the proposed VCOD zones are in eligible locations. The proposed VCOD zones in the village centers of Auburndale, West Newton, Newtonville, Waban, Eliot, Newton Highlands, and Newton Centre are near transit stations, as defined by the Zoning Act and EOHLC guidance. The Planning and Development Department has also provided materials to the Zoning and Planning Committee highlighting that the remaining village centers in the proposed VCOD zones in Nonantum, Newton Corner, Lower Falls, Upper Falls, Four Corners, and Thompsonville, are existing centers of concentrated development.³ Apart from these reasons, the Planning Board may also deem the

² City of Newton Ordinances Chapter 30, Zoning, Sec. 1.5.1.D: Multi-Family. A building containing 3 or more dwelling units primarily accessed through a common building entrance.

³ See Planning and Development’s September 13, 2021 Zoning and Planning Committee Presentation (<https://www.newtonma.gov/home/showpublisheddocument/77583/637726624712900000>) ; see City of Newton Pattern Book (<https://www.newtonma.gov/home/showpublisheddocument/50442/637435546279500000>).

development parcel to be in an eligible location if it finds that the area is a highly suitable location for a mixed-use development.

CONCLUSION

As the proposed addition of the VCOD allows only multi-family housing or mixed use development uses, by right or by special permit, and the amendments to the map place the VCOD in eligible locations, the Law Department advises the Planning Board to recommend that the voting threshold to approve the proposed amendment is a simple majority of the City Council.