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MEMORANDUM

DATE: October 6, 2023

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Joe Iadonisi, Planning Associate

RE: **#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)
#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)

MEETING: October 10, 2023

CC: City Council
Planning Board
Jonathan Yeo, Chief Operating Officer
Alissa Giuliani, City Solicitor

The City Council's Zoning and Planning Committee (ZAP) closed the public hearing at their last meeting, September 26, 2023 on the village center overlay district (VCOD) zoning proposal. ZAP originally opened the public hearing on June 26, 2023. Between the opening and closing of the public hearing ZAP held three meetings where they heard direct public comment and received letters from community [groups](#) and [individuals](#). Lastly, the public hearing itself followed over two years of community outreach and engagement, all documented here: <https://www.newtonma.gov/government/planning/zoning-redesign/community-engagement-2>

As ZAP continues to deliberate on the VCOD proposal, leading towards a vote to the full City Council, staff would like to provide additional information and clarifications based on the public testimony received.

Impacts on Small Businesses

Village centers are incredible locations for small businesses to open, succeed, and grow. Running a small business has many challenges (competition from online retail, high cost of materials, difficulty finding

employees, etc.). Zoning should not be one of these challenges and the VCOD proposal seeks to set up a framework that makes it easier for new businesses to open and existing businesses to grow and expand.

Existing businesses

Currently, a successful business looking to expand runs into zoning red tape, specifically parking requirements. More space or more employees comes with greater parking requirements. In already built out spaces, like those found in all of Newton's village centers, this parking does not exist and never has. The City Council regularly approves these requests, yet waivers are still necessary, and the process can take 3-6 months. The proposed VCOD zoning does not require private parking – an enormous obstacle for small business.

In addition, there is a real fear that the VCOD will displace existing businesses through immediate redevelopment. Regardless of zoning, development can and will occur over time. The VCOD proposal is carefully crafted to allow for development, 3.5-4.5 floors maximum in village center cores. Given that existing development in these areas is 1-3 floors, the zoning allowance will often not be enough (i.e. financially feasible) to redevelop when successful businesses already exist.

New Businesses

Like existing businesses, new businesses also face the same parking requirements and the current rules. Again, this would be gone within the VCOD. Another challenge is that new construction is expensive, which often results in higher rents for the retail on the ground floor. The VCOD mitigates this in a few ways. The VCOD caps the maximum footprint of a building and incentivizes smaller parcels of land to develop. On the other hand, the current rules incentivize a developer to purchase many small lots, combine them into one large lot, tear all the existing buildings down, and build one or two very large buildings with very large spaces for much larger retail tenants. This is contrary to the village center pattern we have today, where most parcels of land are under 10,000 square feet. If and when these small lots redevelop, then the resulting development will have small ground floor spaces that can be configured to better fit and serve small businesses.

Mitigating Disruption During Construction

Development will happen (and has happened) regardless of the zoning and when it occurs it is important to do everything possible to protect nearby businesses and residences from the impacts of construction. The city has learned a lot from recent developments and has continued the tools used to make the construction process as smooth as possible for nearby neighbors, most of which falls outside of zoning. In village centers it will be important that communication is robust, that access and parking is maintained for existing businesses, and that temporary signage be available as needed. Some examples of mitigation include:

- Limits on construction hours and noise levels in the noise ordinance.
- A vibration control ordinance has been docketed by the Mayor and will be taken up by the Council this month.
- Planning staff have been working closely with Inspectional Services to develop a standardized construction management plan (CMP), which would apply to all development, whether by-right or special permit.

- This would include, but is not limited to: dust control, rodent control, parking management plans for construction vehicles and workers, material storage locations, dumpster locations, etc.
- Maintaining detailed communication plans between property owners/tenants, development team members, and City staff.
- Ensuring sidewalks, streets, and business entrances are always kept clear and safe.

Other General Benefits

The completion of new projects will bring additional people, residents and employees, who will frequent existing and new businesses alike. More people mean more wallets on any given day, which is better for the economic bottom line. Finally, new buildings will offer new spaces and opportunities to successful businesses looking to expand and remain in the village center. This means limited disruption for the business itself because the established customer base remains. In turn, the spaces those businesses previously occupied will now be available to a new small business looking to call Newton home.

Affordable Housing

Rising housing costs are a persistent and real concern in Newton and across the region. While Newton has granted special permits or comprehensive permits to a number of large developments in the past five years, the current economic climate has left the status of many of them unclear. It also does not begin to make up for the decades when little to no multifamily housing was built. Given land costs, construction costs, and the amenities typically found in new development, market rate rents tend to be high. However, a minimum of 17.5% to 20% of the units in each of new development in the VCOD (containing more than six units) will be permanently affordable to families earning between 50% to 80% of Area Median Income. The VCOD also includes a bonus when the affordable housing is increased to 25%.

New construction also helps relieve some of the pressure on the existing housing stock. Recent analysis of four US cities that revised zoning to allow more housing found that while the number of households increased by more than the national average in these communities, rent increases were kept at a minimum compared to the rest of the country. Minneapolis, New Rochelle, New York, Portland, Oregon, and Tyson's Virginia saw just a 1% to 7% increase in rent from 2017 to 2023 when the national average was 31% (<https://www.pewtrusts.org/en/research-and-analysis/articles/2023/04/17/more-flexible-zoning-helps-contain-rising-rents>).

Zoning is just one tool and Newton will need to continue to leverage other available tools such as city owned property and using federal and local funds to subsidize greater percentages of affordable housing.

Historic Preservation

Between [Version 2.0](#) and [Version 3.0](#) Planning and Law updated the Adaptive Reuse section, Sec. 9.2.6.B.8. As written, the adaptive reuse regulations only apply to the Multi-Residence Transit (MRT) zone. Version 2.0 had proposed language for the Village Center 2 (VC2) and Village Center 3 (VC3) zones. The removal of this language is a refinement in the ordinance, not a removal of incentives for the historical preservation of buildings, like churches, within the VC2 and VC3 zones.

After close review and consultation with the Law Department, it was determined that specific adaptive reuse regulations for buildings within the VC2 and VC3 zones did not accomplish the policy objective

clearly and effectively. Instead, there are two regulations in the Zoning Ordinance, existing and proposed, that accomplish this.

First, parking requirements tend to be the greatest barrier to adaptive reuse through a review of past redevelopment proposals. Specifically, churches looking to rent out space to other uses, whose rent will go towards the maintenance of the building, often don't happen because of onerous parking requirements. Second, an existing building that is non-conforming may opt-in to the VCOD zone and then take advantage of the protections granted to non-conforming structures under state law. These protections allow for the expansion of these non-conformities, like greater building size or height, which are regularly needed to make a reuse project work financially and to meet building, health, and safety codes. The existing zoning, Section 7.8, lays out a process for this already that VCOD buildings may utilize.

Unit Capacity

While it is important to ensure that village center zoning fulfills our requirements under state law, the future of Newton's village centers cannot be reduced to a spreadsheet. The Zoning and Planning Committee began this effort of rezoning village centers in early 2021 building upon over a decade of city goals related to housing, the environment, and the economy. The MBTA Communities law requirements came about during this process and the Planning Department's recommendation has been to first prioritize what is best for the future of Newton's village centers and then determine how that compares to the MBTA Communities requirements.

The model created by the state is a tool to determine compliance across 177 communities. It measures maximum zoning capacity; it is not a reasonable build out analysis. It assumes every single lot is a blank slate and is developed with the maximum number of housing units, all without any on-site parking. It is necessary for Planning staff to use this model to ensure the zoning will comply, however it is not recommended that this model or any other measurement of maximum capacity be used for any other planning purposes. According to the US Census, Newton added just 672 housing units between 2010 and 2020, which included very favorable economic conditions. Utilizing the maximum zoning capacity to plan for future city services would lead the city to spend unnecessary resources preparing for development that may never come to fruition. The city is well served by existing infrastructure (water demand and wastewater flow are at historic lows and school enrollment continues to decline) and the timeframe from conceptual plan to occupancy of a new building is long, providing city staff sufficient time to coordinate and plan for potential new residents.

Interdepartmental Coordination (monitoring and reporting)

As with any new zoning ordinance, it is critical to review and monitor the outcomes once implemented. This is the case for Inclusionary Zoning (IZ), which has a five-year look back, coming up in 2024. In addition, the recently updated Accessory Dwelling Unit (ADU) ordinance, revised in fall 2022, grew out of a review of the successes and failures of the previous ADU ordinance.

Likewise, this will be the case for the VCOD proposal. Even before adoption, Planning staff have consistently reviewed specific VCOD language with other teams within Planning (Current, Historic, Conservation, Housing, etc.) and other City departments (ISD, Law, DPW, Fire, Schools, Parks, etc.). This will continue once adopted and the projects reviewed will inform future improvements to the ordinance itself and help guide other City resources as necessary, like infrastructure improvements.

Zoning cannot be a static endeavor. Rather, it is a dynamic document that through careful monitoring and reporting can be regularly improved upon by the City Council.

Next Steps

With the public hearings closed at ZAP and at the Planning Board, the VCOD proposal returns to ZAP for additional discussion and eventual vote to the City Council. This allows the City Council the opportunity to vote before the end of 2023, which is the deadline for Newton to comply with the MBTA Communities requirements.