



Zoning & Planning Committee Report

City of Newton **In City Council**

Thursday, June 27, 2024

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, and Kalis

Absent: Councilor Danberg

Also Present: Councilors Farrell, Block, and Kelley

Planning & Development Board Present: Kevin McCormick (Chair), Peter Doeringer, Lee Breckenridge, and Edward Dailey

Planning & Development Board Absent: Amy Dain, Jennifer Molinsky, Barney Heath, and Kelley Brown

City Staff: Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Nora Masler, Planning Associate; Jonah Temple, Deputy City Solicitor; Jennifer Wilson, Assistant City Solicitor; Anthony Ciccariello, Commissioner of Inspectional Services; Deb Finamore, Administrative Assistant; John Sisson, Economic Development Director; and Jaclyn Norton, Committee Clerk

All agendas and reports, both past and present can be found at the following link: [Zoning & Planning Committee | City of Newton, MA \(newtonma.gov\)](https://www.newtonma.gov/zoning-planning-committee)

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - June 27, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

Public Hearing

#24-24(2) Requesting discussion and possible ordinance amendments relative to aiding small businesses impacted by development

ZONING & PLANNING COMMITTEE requesting amendments to Chapter 30, Zoning, to delete the "Fast Food Establishment" use contained in Section 6.4.14, require a special permit for any Restaurant use with a drive-thru component, add a new definition of "Business Incubator" and standards for such use, and define a "Place of Amusement" contained in Section 6.4.27, and allow such use either by right subject to listed standards or upon the granting of a special permit.

Action: **Zoning & Planning Approved 3-1-3 (Councilor Baker Opposed) (Councilors Oliver, Wright, and Getz Abstained)**

Note: Nora Masler, Planning Associate, presented the attached presentation which provides an overview of the proposed amendments that can be broken down into three sections. The first section explicitly allows for shared “makerspaces”, start-ups, and/or co-working spaces. In this amendment, Ms. Masler noted that in response to previous discussions, a distinction was added between culinary incubators and ghost kitchens along with a parking requirement of 1 parking space per 1,000 sf. The second section is to add a definition to allow for small to medium-scale places of amusement. Under this new use businesses over 12,500 sf and outdoor places of amusement would be required to obtain a special permit. A parking requirement was also added to this use of 1 parking space per 600 sf. The attached presentation contains a table of existing places of amusement and whether they would have required a special permit under the proposed ordinance. The final section is to remove the fast food establishment use and incorporate it into the restaurant use. It would also state in the restaurant use that any restaurant looking to build a drive-thru would require a special permit.

The Chair noted that before the public hearing letters of support were received from a golf simulator company along with the Charles River Regional Chamber. John Sisson, Economic Development Director, added that the Economic Development Commission also submitted a letter of support.

The public hearing was opened.

No members of the public testified during the public hearing.

The public hearing was closed 7-0 on a motion from Councilor Oliver and the Planning & Development Board voted 4-0 on a motion to close the public hearing from Lee Breckenridge.

Councilors asked what other communities the Planning Department looked at when crafting the parking requirements described in the presentation. Ms. Masler stated that the City looked at Brookline which had no parking requirements and Somerville which had similar requirements to the draft ordinance. Multiple Councilors expressed support for removing parking requirements citing that the inclusion of these requirements could impede businesses from opening. Other Councilors expressed opposition to removing parking requirements from the draft ordinance citing that this could lead to a lack of parking for businesses and reduced business.

The Committee then took two straw votes with the first being on having parking requirements for business incubators and the second having a parking requirement for the place of amusement use. Both straw votes were 2-3-2 (Councilor Albright, Krintzman, and Kalis Opposed) (Councilors Oliver and Wright Abstained).

Committee members voted 3-1-3 (Councilor Baker Opposed) (Councilors Oliver, Wright, and Getz Abstained) on a motion to approve the item with no parking requirements. The Planning & Development Board voted 4-0 on a motion to approve the item with no parking requirements from Peter Doeringer.

#232-24 Requesting discussion regarding NewGov

ZONING & PLANNING COMMITTEE requesting a discussion with the Inspectional Services and Planning Departments regarding how the public and staff access NewGov. This discussion would include a live demonstration of the system.

Action: **Zoning & Planning Held 7-0**

Note: The Chair stated that this item was docketed to provide the Councilors and members of the public with a demonstration of how to access and navigate the NewGov System. Deb Finamore, Administrative Assistant, outlined that on the NewGov homepage, every department is separated by the services they offer. For searching a particular property users will select the search button located at the top right of the screen. Users are then able to search for a particular property. If the property has a range for the street number, then the user must search with the lowest number first. If the user searches by a number within the range the property will not show up in the search results. Councilors asked if this system could communicate with the Assessor's Database and how the 20 properties in the search result are determined. Ms. Finamore stated that the search is based on the closest match and that Newton cannot make this system communicate with the Assessor's Database. Anthony Ciccariello also provided a walk-through of how to file a request for leaf blower enforcement.

When looking at a particular property in the NewGov system the records for the property are organized by the active permits at the top of the list. Ms. Finamore noted that the City has no control over putting a brief description of the record on each record entry. Councilors asked if the website could be updated with a clear link to the NewGov system. Staff stated that they can talk with the IT Department regarding updates to the website and the Chair noted that he will talk with Council leadership on how Councilors can help regarding improvements to the website.

Committee members voted 7-0 on a motion to hold from Councilor Oliver.

#231-24 Requesting discussion regarding community engagement process for large projects

ZONING & PLANNING COMMITTEE AND COUNCILOR KELLEY requesting a discussion with the Planning Department, Law Department, Chair of the Land Use Committee, and Chair of the Zoning Board of Appeals regarding the process for community engagement for large developments.

Action: **Zoning & Planning Held 6-0 (Councilor Albright Not Voting)**

Note: The Chair stated that included in the packet was a memo from the Planning Department that outlined the process conducted by the Zoning Board of Appeals (ZBA) for hearings. (attached) A Councilor not on the Committee stated that this item is to find ways that the access the public participation in the process can expand. Jonah Temple, Deputy City Solicitor, noted that the ZBA and Land Use Committee operate under very strict statutes and operate as quasi-judicial bodies. Jennifer Caira, Deputy Director of Planning, added that the comment during a public hearing is decided in the deliberations on a project and that peer reviewers for the ZBA have requested additional analysis in response to the public hearing.

Multiple Councilors noted instances where they have helped to set up meetings between the applicant and constituents to encourage more robust dialogue between parties regarding a project. Attorney Temple responded that this is best practice for Councilors to do that and that these discussions are unable to happen during a public hearing. A Councilor asked a question regarding the order of business in the ZBA rules and if it is reevaluated routinely. Michael Rossi, Chair of the Zoning Board of Appeals, stated that the ZBA in the order of business follows the statewide standard set out by the Massachusetts Housing Partnership. A couple of Councilors asked if, during these public hearings, the public could go before the applicant occasionally. Another Councilor responded that the Land Use Committee has the petitioner present before the public hearing to describe the project. During the discussion, it was noted that residents are always welcome to submit written comments regarding a project.

Some councilors felt that while the public hearing process and informal neighborhood discussions were both useful, some exploration should be made of structured conversations between major project applicants and organized residents, including perhaps any experts retained on both sides. There was a sense that additional reflection on how to respond to the issues raised by the docket item might be useful.

Councilors voted 6-0 (Councilor Albright Not Voting) on a motion to hold from Councilor Getz.

The meeting adjourned at 8:57 pm.

Respectfully Submitted,

R. Lisle Baker, Chair

Small Business Zoning Amendments

Docket #24-24



Overarching Goal

Amending Newton's Zoning Ordinance to allow for desired 21-century uses to promote new and small businesses.

- More amenities and services for Newton residents
- More employment opportunities throughout the City

Zoning Language Changes

- **Explicitly allow for shared “makerspaces”, start-ups and/or co-working spaces**
Defining Business Incubator
- **Allowing for desired “Place of Amusement”**
Adding use definition to allow for small to medium scale places of amusement.
- **Remove “Fast Food Establishment” Use - Incorporating into Restaurant Use**
Requiring a Special Permit for Drive-Through.

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**Allow for shared “makerspaces”,
start-ups and/or co-working spaces**

Defining Business Incubator

Allow for shared “makerspaces”, start-up and/or co-working spaces

Defining Business Incubator



Allow for shared “makerspaces”, start-up and/or co-working spaces

Parking Requirement

**Require 1 space per 1,000 square feet.*

Allowing “Place of Amusement” Use

Adding use definition to allow for small to medium scale places of amusement.

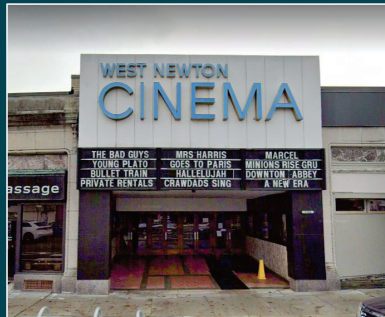
**Businesses over 12,500 square feet require special permit*

**All outdoor places of amusement require special permit*

Allowing “Place of Amusement”

Adding use definition to allow for small to medium scale places of amusement.

**Businesses over 12,500 square feet require special permit*



Sizes of Existing Places of Amusement

Business Type	Business	Size (Square Feet)	Location
Driving Range	Top Golf	465,306	Canton
Chain Movie Theater	Showcase Super Lux Chestnut Hill	78,000	Newton
Local Movie Theater	West Newton Cinema	11,259	Newton
Golf Simulator	X Golf	10,800	Acton
Bowling Alley	American Flatbread	10,720	Somerville
Escape Room	Puzzle Break	4,066	Newton
Art Studio	Paint Bar Newtonville	1,300	Newton

*Pink = Above 12,500 sq. ft. Threshold, Green = Sizes allowed under proposed change

Allowing “Place of Amusement”

Parking Requirement

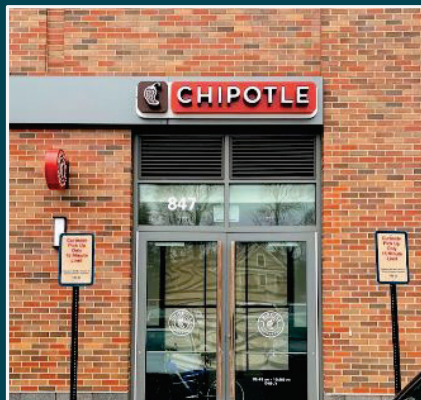
**Require 1 space per 600 square feet.*

Remove “Fast Food Establishment” Use Incorporating into Restaurant

**Requiring a Special Permit for Drive-Through.*

Remove “Fast Food Establishment” Use Incorporating into Restaurant

**Requiring a Special Permit for a Drive-Through*



Next Step

ZAP discussion and potential vote

Planning Board discussion and potential vote

1. **Delete the “Fast Food Establishment” use and incorporate into “Restaurant” use (Sec. 6.4.15. and Sec. 6.4.31)**

Issue:

As defined, many businesses serving food can be categorized as both a fast-food establishment and restaurant. Examples of this include Starbucks, Chipotle, and McDonalds. The difference is that the Zoning Ordinance does not allow fast-food establishments in most commercial districts, where restaurants are either allowed by-right or special permit in all commercial districts. Because of this, a new food business coming in is almost never categorized as a fast-food establishment, even if it meets the existing definition. Planning staff believe the definition of fast-food establishment was a reaction in the 1970s to the rise of drive-thru businesses. Given this, the recommendation is to delete the fast-food establishment use and create a special permit requirement within the restaurant use if any drive-thru component is provided.

Proposed Change:

Existing Language	Proposed Language
<p>6.4.15. Fast Food Establishment</p> <p>A. Defined.</p> <p>1. Fast Food Establishment. An establishment whose primary business is the sale of food for consumption on or off the premises which is:</p> <p>a. Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;</p> <p>b. Available upon a short waiting time; and</p> <p>c. Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.</p>	<p>6.4.15. Fast Food Establishment</p> <p>A. Defined.</p> <p>1. Fast Food Establishment. An establishment whose primary business is the sale of food for consumption on or off the premises which is:</p> <p>a. Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;</p> <p>b. Available upon a short waiting time; and</p> <p>c. Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.</p>
Existing Language	Proposed Language
<p>6.4.31.C. Standards for Special Permit Uses</p>	<p>6.4.31.C. Standards for Special Permit Uses</p> <p><u>8. In all districts, any restaurant with a drive-thru component.</u></p>

2. **Explicitly allow for shared “makerspaces”, start-up spaces and co-working spaces (Sec. 4.4., Sec. 6.4.20 and 6.4.27)**

Issue:

Currently, shared working spaces (co-working, communal kitchens, shared artist studios etc.) are not explicitly allowed within the Zoning Ordinance. A strictly co-working space, like the very successful Writer’s Block in Nonantum, can be categorized as an “office” use and is therefore allowed, however this is not explicit in the current office definition. Furthermore, spaces that can support culinary incubators/test kitchens, and creative design spaces are not allowed. The recommendation below looks to update and define the current “business incubator” use to allow for and promote desired small businesses.

Updates as of 5/13 Meeting:

Counselors requested additional information about the distinction between the proposed use language for 2. *Culinary Incubator* and the allowance of a *ghost kitchen*. A culinary incubator is focused on business development while a ghost kitchen is intended to provide space and equipment for the food preparation of established businesses offering delivery. By including the word “start-up” and specifying the likely provision of “business or administrative support services” the definition allows for the former rather than the latter, however, to ensure this distinction is clear, the language “provided however, that the space is not used as kitchen facilities for the delivery of goods directly to consumers” was added.

Given the potential for larger equipment in the use “Design & Fabrication Center” it was separated from “Business Incubator” and removed from this proposal. This use will be further explored in the study of manufacturing districts.

Proposed Change:

Existing Language	Proposed Language
6.4.6. Business Incubator	6.4.6. Business Incubator
A. Defined. [reserved]	<u>A. Defined. [reserved] Uses that provide multi-purpose facilities with dedicated space for multiple creative business enterprises. Business incubators include, but are not limited to:</u> <u>1. Co-working. A commercial or non-profit organization providing multiple individuals and small firms access to workplace facilities, including but not limited to, artist studios, office suites, for-rent ‘hot-desks’, dedicated workstations, conference rooms, meeting rooms, event space, resource libraries, and business or administrative support services.</u> <u>2. Culinary Incubator. An organization or business providing start-up catering, retail, and wholesale food businesses with shared kitchen facilities and often providing business planning, access to finance, mentoring, and other business or administrative support services and accessory retail and office</u>

space, provided however, that the space is not used as kitchen facilities solely for the delivery of goods directly to consumers.

3. Creative Incubator. An organization or business providing startup and early-stage arts and creative enterprises with shared facilities and often providing business planning, access to finance, mentoring, and other business or administrative support services.

Updates as of 5/13 Meeting: Counselors requested additional information about the business incubator parking requirement. This requirement of 1 space per 1,000 sf for the business incubator use is comparable to requirements for similar uses in the contextually and geographically similar municipality of Somerville, while Brookline has eased their parking requirements for similar uses further having no parking minimums and a maximum of 1 space per 600 sf. Requiring an appropriate amount of parking, rather than over-requiring parking, avoids the costly construction of un-used spaces while furthering the goal of Newton's Climate Action Plan to reduce parking requirements and increase biking, walking, telecommuting, public transportation, and shared trips.

Proposed Change:

Sec. 5.1.4. Number of Parking Stalls

Use	Parking Stalls Required	Allowed by Special Permit
Commercial		
<u>Business Incubator</u>	<u>None</u>	

Off-Street Loading Requirements (Sec. 5.1.12) -

Table of Off-street Loading Requirements

Number of bays required for new or expanded uses by gross floor area of structure of land use (in sf)

Uses	Under 5,000 sf	5,000 – 50,999 sf	51,000 – 100,999 sf	101,000 – 150,999 sf	151,000 – 300,000 sf	Over 300,000 sf
Retail Trade, Wholesale and Storage, Transportation Terminal, Manufacturing, and Public Utility	0	1	2	3	4	1 for each additional 150,000 sf
Business Services, Office Building, Hotel, Motel & Dormitory, Microfulfillment Center, and Research Laboratory	0	1	1	2	3	1 for each additional 150,000 sf
Recreation, and Institution, <u>Business Incubator</u>	0	0	1	1	2	1 for each additional 150,000 sf

Sec.4.4.1. Business, Mixed Use & Manufacturing Districts

Existing Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Business Incubator	P	P	P	P	--	P	P	P	--	P	P	Sec. 6.4.6

Proposed Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Business Incubator	P	P	P	P	P	P	P	P	P	P	P	Sec. 6.4.6

3. **Place of Amusement Define and allow by-right where appropriate** (Sec. 4.4., Sec. 6.3.15, and Sec. 6.4.28)

Issue:

Currently, Place of Amusement is not defined and is not permitted by-right in any zoning district. These are uses, particularly indoor ones, that enliven Newton’s village centers and commercial areas. A recent proposal for an indoor golf simulator had to be turned away because it is not allowed in the zone where they were looking to locate. It should be noted that the City Council allowed this use as part of the Village Center Zoning amendments (VC2 and VC3). By further defining this use, the current use “Theater”, which is not defined, can be incorporated.

Updates as of 5/13 Meeting: Councilors requested additional information about the size requirements for Place of Amusement with the concern that large chain businesses, like AMC movie theaters would be allowed by-right under this use. Planning Department research found that the size of an average movie theater with 10 screens typically ranges from 30,000 to 60,000 square feet and therefore would not be permitted under this use in Newton due to the 12,500 square foot maximum. On the other hand, a small independent movie theater, like the West Newton Cinema, is just over 11,000 square feet. This maximum is set however, to permit both small businesses and desired uses to establish in the commercial locations where *Place of Amusement, Indoor and Outdoor* is allowed. *Outdoor Places of Amusement* require a special permit. For an illustrative list of the sizes of existing places of amusement in and near Newton, please see the memo for this item.

Proposed Change:

Existing Language	Proposed Language
6.4.28. Place of Amusement, Indoor or Outdoor	6.4.28. Place of Amusement, Indoor or Outdoor
A. Defined. [reserved]	<u>A. Defined. [reserved] Uses that provide gathering places for participant and spectator recreation, entertainment, or other assembly activities including, but not limited to, cinema, theater, bowling alley, dance hall, and/or venue of a professional or semi-professional sports team.</u>
	<u>B. Standards for Allowed Uses.</u>
	<u>1. Places of amusement may provide accessory food or beverage service for on-site consumption.</u>
	<u>C. Standards for Special Permit Uses.</u>
	<u>1. In the Business Use 1-2 and Mixed Use 3-4 districts, indoor places of amusement uses occupying space in excess of 12,500 square feet require a special permit.</u>
	<u>2. All outdoor places of amusement require a special permit.</u>

Existing Language	Proposed Language
6.3.15. Theatre, Hall	6.3.15. Theatre, Hall
A. Defined. [reserved]	A. Defined. [reserved]

Sec.4.4.1. Business, Mixed Use & Manufacturing Districts

Existing Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Place of amusement, indoor or outdoor	--	SP	--	--	--	--	--	SP	SP	--	SP	Sec. 6.4.28

Proposed Language

Commercial Uses	BU 1	BU2	BU3	BU4	BU5	MU 1	MU 2	MU3	MU4	M	LM	Definition / Listed Standard
Place of amusement , indoor	P/S P--	P/SP SP	P/S P--	P/S P--	P/S P--	P/S P--	P/S P--	P/SPS P	P/SPS P	P/S P--	P/SPS P	Sec. 6.4.28
Place of amusement , outdoor	-- SP	SP	--SP	--SP	--SP	--SP	--SP	SP	SP	--SP	SP	Sec. 6.4.28

Sec. 5.1.4. Number of Parking Stalls

Use	Parking Stalls Required	Allowed by Special Permit
Commercial		
Theaters, halls, clubs, auditoriums and other places of amusement or assembly in a hotel, motel <u>Place of amusement</u>	None 1 per 12 seats plus 1 per every 3 employees plus .25 per 45 sf used for meeting functions	



Ruthanne Fuller
Mayor

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Barney Heath
Director

MEMORANDUM

DATE: June 21, 2024

TO: R. Lisle Baker, 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
Katie Whewell, Chief Planner for Current Planning
Alyssa Sandoval, Deputy Chief Planner for Current Planning

RE: **#231-24 Requesting discussion regarding community engagement process for large developments**
ZONING & PLANNING COMMITTEE AND COUNCILOR KELLEY requesting a discussion with the Planning Department, Law Department, Chair of the Land Use Committee, and Chair of the Zoning Board of Appeals regarding the process for community engagement for large developments.

MEETING: June 27, 2024

CC: City Council
Zoning Board of Appeals
Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani, City Solicitor
Jonah Temple, Deputy City Solicitor

Overview

In response to the above docket item, the Zoning and Planning Committee is holding a discussion regarding the engagement with community members during the review process for large developments. The following memo provides some background information on the process and the role of Planning staff as well as a case study of a recent large 40B project.

Types of Engagement

The Planning Department is involved in a wide range of community engagement and outreach activities. The role the department plays in outreach varies depending upon the type of project. For city-initiated projects the department is more directly involved in outreach to help inform the community and shape the project (i.e. Village Center Overlay District (VCOD), Washington Street Pilot, Walk/Ride/Roll Master Plan, Climate Action Plan). For private development projects, the department must play a more technical role in assuring notification of the public, making public and accessible all project related materials, reviewing and analyzing the project and providing information and recommendations to the decision makers.

For proposed development projects going through the special permit or comprehensive permit process, the department's role is to provide professional analysis to decision makers and information to the community. Staff consider all comments received and share those with peer reviewers (independent experts typically hired by the city, and paid for by the applicant, to review large projects). Planning staff can and do recommend project changes, however it is ultimately up to the applicant as to whether to agree to incorporate changes and to the decision maker whether to require changes. Planning staff frequently answer questions regarding the project or process, but staff do not hold community meetings. Staff will always strongly recommend that applicants meet with neighbors early on, but it is appropriately the role of the applicant to hold these meetings for private development projects.

The Planning Department does play an important role in providing updated information to the community so that they remain informed of the project and any changes, including:

- Postcards sent to abutters in advance of public hearing
- NewGov records contain all files, including comments from community, peer reviews, staff memos
- Transmitting information to City Councilors and members of the public throughout the process
- Dedicated project websites for high-interest projects, such as 40Bs

Development Review Process

As a city we can provide direction and expectations for new development through zoning and policy documents and guidelines. However, we cannot control what private property owners may propose within current regulations. It is ultimately the role of the decision makers to determine what is appropriate, weighing all of the feedback from the public and city staff as well as the specific criteria set forth for approval or denial. Large developments, such as new apartment or mixed-use buildings with hundreds of units, can be approved through a special permit (and potentially a rezoning) granted by the City Council or through a comprehensive permit granted by the Zoning Board of Appeals (ZBA) through the 40B process.

Large developments often require additional approvals from other City boards and commissions as well, such as the Newton Historical Commission, local historic district commissions, or Conservation Commission. Large developments also typically will voluntarily present to additional commissions to get feedback, such as the Urban Design Commission, Housing Partnership, or Fair Housing Commission. These commissions provide additional opportunities for public comment and for the project to be shaped and refined.

40B Comprehensive Permit

Under the state's Chapter 40B Affordable Housing law, projects providing a minimum number of affordable housing units (20% of units at 50% of area median income or 25% of units at 80% of area median income) may choose to apply for a comprehensive permit through the Zoning Board of Appeals (ZBA) in lieu of a special permit and/or rezoning. As part of the comprehensive permit an applicant may also request waivers from zoning and other city ordinances. The process for a comprehensive permit includes project eligibility review and the public hearing process for the comprehensive permit.

Project Eligibility

The first interaction that city staff and community members typically have with a proposed 40B project is during the project eligibility determination process. This process is run entirely by the subsidizing agency (MassHousing or the Executive Office of Housing and Livable Communities) and is a state-imposed pre-qualification process required prior to filing a 40B Comprehensive Permit application with the ZBA. The subsidizing agency must determine that the developer is an eligible organization and that the project is "fundable".

As part of this process the subsidizing agency schedules a site visit, notifies the mayor that an application has been received and provides 30 days for the city to provide comments on the proposal. The City is required to post the notice and project eligibility application on the City website and to seek comments from municipal boards and departments. The policy in Newton is to go beyond just posting the information and seeking comments from boards and commissions but to actually send a notice soliciting comments to all property owners within a 300-foot radius. The date and time of the subsidizing agency's site visit is also typically provided as part of this notice (assuming it has been scheduled). The 30-day comment period is a tight turnaround to solicit public comments, however this ensures neighbors are aware of the potential project at a very early stage and the local knowledge of the site is often helpful and incorporated into the City's official comment letter. All board, commission, and public comments received are also compiled and attached to the City's comment letter.

Comprehensive Permit Hearing Process

It typically takes several months for the subsidizing agency to make a determination on project eligibility. Once a determination has been issued the developer may apply to the City's Zoning Board of Appeals for a comprehensive permit. Prior to filing for the permit, in Newton the developer would first meet with city staff for a development review team (DRT) meeting and apply for zoning review. Once the Comprehensive Permit application is filed with the ZBA, the ZBA clerk schedules a public hearing (required within 30 days of application filing) and sends notice of the public hearing to

property owners within 300 feet (state law requires only abutting property owners within 300 feet be noticed, however practice has been to send notice to all property owners within a 300-foot radius), posts the notice on the city website and in the Boston Herald, and sends a notification to the City Council.

Early in the process the ZBA normally schedules a site visit with the applicant, which is open to the public. Community members are welcome to speak at the public hearing or send written comments. Once the public hearing is open, the Chair of the ZBA is tasked with managing public comment and ensuring the same rules apply to everyone (adherence to time limits, how many times one person may speak, whether the public may share their screen with additional materials). Typically, the ZBA has allowed for public comment at all meetings throughout the six months to year long process. Written comments are sent to board members and compiled and posted to NewGov as part of the official record. All application materials, including those produced by City staff or peer reviewers are also posted on NewGov and available to the public.

Under the State law, in considering an application, the ZBA must balance the regional need for housing against Newton's health, safety, open space, site and building design concerns. Up until recently Newton had not met the 40B safe harbor threshold (i.e., 10% of year-round housing being eligible for the state's subsidized housing inventory), which limits the discretion of the ZBA in reviewing and conditioning comprehensive permit projects.

Special Permit

The special permit process for large projects looks similar to the comprehensive permit process, except the project eligibility phase does not apply, and the City Council is the decision maker. The noticing process is the same as comprehensive permits, except the noticing is done by the City Clerk. All application materials are available on NewGov and public comment is typically permitted at each meeting. Planning staff perform a similar technical role, analyzing the project and making recommendations. Peer reviewers are also utilized on large projects. In considering approval the City Council must make findings per the review criteria set forth in the zoning ordinance.

Case Study: 528 Boylston Street Comprehensive Permit

Project Eligibility

The most recent comprehensive permit approved by the ZBA was Toll Brothers's application for 244 apartments (which was ultimately reduced and approved at 184 units) at 528 Boylston Street. The City was first notified of the application to MassHousing for project eligibility in September of 2022. Staff sent notice of the application to the City Council, city staff, boards and commissions, and abutters within 300 feet of the project site. Toll Brothers' project eligibility application and the comment request letter from MassHousing, including details for their site visit, were posted on the city website on a page dedicated to the project. Eleven letters were received from neighbors, which were attached to the city comment letter sent to MassHousing in October 2022.

Comments received included concerns about the size of the development, removal of trees, impacts to conservation areas, and traffic and safety issues along Route 9. The city comment letter recognized the great need for housing and particularly affordable housing, but recommended units be set aside

at lower income levels. Staff also raised concerns about the size of the building and its proximity to abutters along Hagen Road and recommended the massing be broken up and the height stepped down near abutters and that the building be pulled back from the closest homes along Hagen Road. Staff also noted that the proposed plan lacked usable open space and did not do much to improve the inhospitable pedestrian conditions along Route 9 and noted that more analysis would need to be done regarding traffic, parking, and circulation.

In February 2023, MassHousing issued a letter stating that project eligibility was granted, subject to final approval. MassHousing also reiterated many of the city and abutter comments and recommendations in their letter.

Comprehensive Permit

Toll Brothers submitted their comprehensive permit application in April 2023 and the ZBA opened a public hearing in May 2023. At the first hearing the ZBA authorized staff to hire peer reviewers to provide an independent review of stormwater, open space, site design, architectural design, traffic, parking, and circulation. The ZBA held eight additional meetings, seven of which were public hearings, and granted approval one year later, on May 8, 2024. The chair permitted comment at each of the eight hearings and did not cut off public comment until everyone interested in doing so had a chance to speak. The ZBA also conducted a site visit, which was attended by the applicant team, city councilors, and neighbors.

Over the course of the hearings the ZBA heard hours of testimony and received almost 800 pages of written testimony, containing over 200 written comments as well as photos, videos, presentations, and analysis from outside experts. All written correspondence was compiled by the ZBA clerk and posted to NewGov (see all materials [here](#)). Additionally, Planning staff exchanged dozens of emails and phone calls with community members, had several in person discussions at the public counter, multiple zoom meetings with neighbors, as well as phone calls and zoom meetings with city councilors. Given the sheer volume of correspondence, staff are unable to directly respond to every email, however city staff, peer reviewers, and ZBA members reviewed all materials submitted. The ZBA and peer reviewers spent significant time discussing many of the issues raised by neighbors, such as stormwater runoff, groundwater, building size and massing, and safety of all users along Route 9.

In response to ZBA, staff, peer reviewer, and community comments, Toll Brothers made significant changes to the project:

- The project was reduced from 244 apartments to 184 apartments, the building size was reduced by approximately 130,000 square feet, the height was reduced at the rear of the building closest to Hagen Road and the buffer between the building and the neighbors was significantly increased.
- The project is required to provide 46 units affordable to households earning up to 80% of the area median income (AMI) and Toll Brothers agreed to further restrict nine of those units to households earning up to 50% AMI.
- The open space on the site was increased, the building was pulled back from Route 9 and a new sidewalk along with a landscape buffer will be installed along the Route 9 frontage.

- Toll Brothers will extend the current Route 9 island on the Parker Street ramp to eliminate the dangerous maneuver of vehicles turning from Route 9 onto Sheldon Road and they will stripe a new acceleration/deceleration lane from the Parker Street ramp to all for more gradual entry on to and exiting from Route 9. Two speed feedback signs will also be installed on Dudley Road.
- Toll Brothers will also be required to extend a future Safe Routes to School multi-use path along Route 9 from Olde Field Road to the apartment building, and the site design includes a north-south footpath through the site with landscape screening to provide a pedestrian connection from Route 9 to Hagen Road.
- In addition to the physical improvements, the project will provide \$582,183 to the City for sewer and stormwater improvements to decrease inflow and infiltration plus an additional \$500,000 in mitigation funding to be used by the City for off-site transportation, open space, or recreation improvements.
- The project will also meet or exceed all state and city stormwater requirements.

The ZBA may grant waivers from city ordinances, however the 40B process does not permit the ZBA to waive any state requirements. This project will still require approval from MassDOT for the work along Route 9 and approval from the Newton Conservation Commission, the latter which will include additional opportunities for public comment.

This project benefited from extensive community involvement and the end result is a design that is more responsive to the surrounding context and will provide numerous improvements and protections for neighbors. While neighbors may still be unsatisfied with the outcome, the ZBA is charged with carefully weighing neighbor's concerns against the regional need for housing, as required by 40B. The Planning Department is sensitive to the level of change and proposed construction that larger development projects bring to neighborhoods and strive to provide a high level of service that relays information while acknowledging residents' viewpoints, potential impacts of a project, and unique experience and knowledge of the neighborhood. For large projects staff try to balance providing information to neighbors and soliciting input while ensuring the process plays out in a public setting. Staff can also only make recommendations, so it is important for both the applicant and decision makers to hear directly from community members. It has often been helpful when the ward councilors have been involved and can help disseminate information to neighbors, collect feedback and information to share with staff/board members, and help facilitate community meetings with the applicant.