



Zoning & Planning Committee Agenda

City of Newton In City Council

Monday, March 11, 2019

7:00PM
Room 205

Items Scheduled for Discussion:

- #89-19** **Appointment of David Kayserman to Auburndale Historic District Commission**
HER HONOR THE MAYOR appointing DAVID KAYSERMAN, 33 Hancock Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION to complete Patricia Bottomley's term which expires on May 31, 2019.
(60 days: 05/03/19)
- #90-19** **Reappointment of David Kayserman to Auburndale Historic District Comm**
HER HONOR THE MAYOR reappointing DAVID KAYSERMAN, 33 Hancock Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2022. (60 days: 05/03/19)
- #632-18** **Zoning Amendment to allow RMDs and marijuana retailers in MU districts**
COUNCILOR SCHWARTZ, KELLEY, NORTON, AND COTE proposing to amend Chapter 30, **Section 4.4.1. Business, Mixed Use & Manufacturing Districts.** to allow Registered Marijuana Dispensaries and marijuana retailers by special permit in Limited Manufacturing and Manufacturing Districts.
- #187-18** **Zoning Amendment for Inclusionary Zoning**
DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

#518-18

Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Note: The Planning Department will provide an overview of the Development Review Process

Respectfully Submitted,

Susan S. Albright, Chair



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

#89-19, #90-19

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Honorable City Council
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Newton, MA 02459

RECEIVED
Newton City Clerk
2019 FEB 20 AM 10:06
February 15, 2019
David A. Olson, CMS
Newton, MA 02459

To the Honorable City Councilors:

I am pleased to appoint David Kayserman of 33 Hancock Street, Auburndale as a full member of the Auburndale Historic District Commission. His term of office shall expire May 31, 2022 and his appointment is subject to your confirmation. Mr. Kayserman will complete Ms. Patricia Bottomley's term which ends on May 31, 2019. Mr. Kayserman will then begin to serve a new term ending May 31, 2022.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller
Mayor

DAVID KAYSERMAN

33 Hancock Street, Newton, MA 02466

SUMMARY

I have spent the last thirteen years guiding clients in the energy and utilities industries through business and digital transformations. I'm passionate about helping executives shift or rebuild their organizations around changing market dynamics and opportunities presented by the rapidly evolving technology landscape. I specialize in digital and technology strategy with a focus on AI, intelligent automation, and agile organizational design. I've tackled challenges all over the industry in the past decade, in areas such as power asset and speculative trading, gas supply and trading, marketing and origination, competitive retail gas and power, electricity market design, LNG supply chain, environmental products optimization, crude supply and trading, and midstream and downstream supply and marketing.

EXPERIENCE

- 04/15 – Present** **Managing Director, Resources, Accenture, Boston, MA**
- (Structure acquired by Accenture)
- Lead Accenture's Trading & Commercial Consulting practice in the North America Resources operating unit, consisting of 120+ FTEs and \$100M+ annual revenue. Achieved 20% year-over-year growth since the acquisition of The Structure Group. Responsible for go-to-market strategy, offering creation, and talent strategy and development.
 - Talent and performance lead for 120+ practice, planning and executing on recruitment and hiring, performance programs, and people development programs. Actively mentor 20+ people ranging from Analyst to Senior Manager.
 - Architect Accenture's advanced analytics, value chain optimization, and intelligent automation offerings across energy and utility clients, with over ten active clients/pilots and sales in excess of \$10M after one year.
 - Frequent conference and panel speaker on topics including "Digital Disruption in Commodities", "Fantasy and Reality in the Journey to Citizen AI", "Pivoting from Commodities Systems of Record to Systems of Insight"
- 04/17 – Present** **Client Account Lead, PE-owned LNG Supplier/Marketer**
- (Client)
- Cultivated relationship with rapidly-growing private equity owned LNG startup with multi-billion valuation. Grew account from prospect to \$1.5M+ in sales in one year.
 - Delivered technology, digital, security, and talent strategy for organization across plant, logistics, commercial, customer, and enterprise verticals including launching a new advanced analytics capability. Trusted advisor for C-suite, currently interviewing CTO candidates for organization.
 - Defined vision and led engagement to build advanced AR visualization and insights platform prototype built in Unity, hosted on Azure, designed to connect global insights with logistics and assets IoT with customer data. Planned multi-year product development roadmap to co-develop with client.
- 07/16 – Present** **Client Account Lead, Constellation Energy, Baltimore, MD**
- (Client)
- Steward for Accenture's relationship with Constellation, driving \$10M+ annual revenue and 30+ person team. Trusted advisor to Constellation senior leadership team. Leading four-year \$75M+ business transformation program for Power, Gas, and Environmental Products portfolios involving 35+ system retirements, 40+ FTE reduction, automation of 30+ processes, and faster time-to-market for new trading strategies.
 - Partner with executive leadership committee to drive adoption of agile and high-performing teams across the organization, representing a fundamental shift in

accountability, leadership structures, talent strategy, and reducing the divide between IT and business organizations.

- 02/17 – Present
(Client) Engagement and Go-To-Market Lead, Commodity Analytics *Various Fortune 200 Energy and Utility Clients*
- Led sale, strategy, and development of “Optimal Procurement Target” advanced analytics and visualization platform for \$3B+ in annual gas purchases resulting in 5-year \$10M+ NPV business case focused on optimizing firm transport capacity on FGT pipeline in addition to significant operational efficiency improvements.
 - Drove vision for and sale of custom-built supply chain optimization platform for global utility’s coal and LNG supply between 5 continents, resulting in 5-year \$15M+ NPV business case. Enabled client to centralize global fuels supply and run simulations and what-if scenario analysis intra-day to maximize P&L while balancing global supply and demand.
 - Directed sale of custom advanced analytics platform for connecting oil sands refining operations with commercial data to optimize Fortune 200 organization’s refining operations using cloud-hosted linear programming models, with custom-built visualization and dashboards.
- 04/14 – 12/17
(Client) Executive Advisor/Client Account Lead, *Global Partners LP, Waltham, MA*
- Executive advisor to company’s senior leadership team on a \$30M+ business transformation program for crude and refined products business involving organization redesign, business process re-engineering, and multiple system implementations. Helped establish risk organization, trading operations and analysis function, marketing and sales support function, and enabled reduction in back office headcount by 30%.
- 02/12 – 04/15 **Director, *The Structure Group, Houston, TX***
- Executive of 200+ person energy consulting firm responsible for driving \$5M-\$10M in annual sales, directly managing \$10M+ in annual revenue, leading 20+ person teams, and directing strategy and technology initiatives for clients with capital budgets in excess of \$50M.
 - Achieved 18% revenue growth, 8% attrition reduction, and increase in gross margin by 5% over two years driving go-to-market strategy, corporate development, and recruiting for the commercial trading practice (60% of the business).
- 03/14 – 10/15
(Client) Strategy Consultant, *Constellation Energy, Baltimore, MD*
- Identified and drove creation of 10-year \$33M+ NPV business case comprised of 35+ system retirements, 40+ FTE reduction, and operational and regulatory risk reduction. Led market entry strategy for international coal and LNG businesses, followed by a post-M&A technology strategy, capability assessment, and business case initiative across wholesale and retail gas, environmental products, coal, freight, heating oil, and LNG lines of business.
 - Led go-to-market strategy for client’s expansion into international coal and freight business, resulting in 3-year business case and opening of a new office in London
- 11/13 – 03/14
(Client) Executive Advisor, *Southwest Power Pool, Little Rock, AR*
- Senior advisor for the program management office, helping the organization initiate and launch FERC-mandated \$30M+ second phase of its Market Redesign initiative. Provided executive oversight, coaching, and guidance for the new system integration team taking over program management operations and delivery responsibility from the previous vendor.
- 04/12 – 11/13 Program Manager, *Pacific Gas & Electric Company, San Francisco, CA*

- (Client) · Led team of 30+ on the planning, design, and delivery of \$40M+ Commodity Trading and Risk Management program supporting all Energy Procurement lines of business (Electric Fuels, Core Gas Supply, Short-Term Electric Supply).
- 08/05 – 04/08** **Management Consultant, *Sapient, Cambridge, MA***
- Consultant in the Global Markets practice of a 5,000+ international consultancy, delivered solutions that included enterprise application development in the energy sector, optimization of back office operations, and training and change management for an international chain of casino properties.
- 07/06 – 04/08** **Business Analyst, *New York Independent System Operator, Albany, NY***
- (Client) · Led the design and delivery of a \$7M+ custom Price Validation application for the ISO, enabling the organization to reduce its time window for identifying, analyzing, and correcting erroneous Location Marginal Prices from five days to less than eight hours in all Day Ahead and Real Time markets.
- 08/05 – 07/06** **Project Manager, *Sapient, Cambridge, MA***
- (Client) · Delivered operations re-engineering and scalability initiative across all G&A functions for 5,000+ professional services firm across 17 locations while organization grew over 30%. Impacted overall profitability by reducing G&A costs from 28% to 22% in 1 year and reduced finance function costs from 6% to 2% of revenue in 24 months through process re-design, systems implementation, and establishing a new corporate Finance and accounting function in India.

SKILLS

Functional & Technical Skills

- Strategy/Management Consulting
- Technology Strategy
- Talent Strategy
- Digital Strategy
- Organization & Operating Model Design
- Applied Intelligence and Analytics Strategy
- Design Thinking & Workshop Facilitation
- Change Management
- Large-Scale Program Management
- Agile/DevOps
- Coaching and Mentorship

Industry Experience

- Power, Gas, Environmental Products, Crude, LNG, Refined Products (Rack and Delivered), Financial Derivatives
- Small-scale LNG Supply Chain
- Midstream and Downstream Supply and Marketing
- Utilities and Digital Customer
- Electricity Markets and ISO/RTOs
- Commercial & Operational Business Activities – Trading, Marketing, Logistics, Risk Management & Control, Credit, Settlements, Accounting, and Financial Reporting, Regulatory Reporting

EDUCATION AND CERTIFICATIONS

- 01/12** **Master of Business Administration, *Babson College, F.W. Olin School of Business, Wellesley, MA***
- 05/05** **Bachelor of Arts, *University of Massachusetts, Amherst, MA***



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

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Barney S. Heath
Director

MEMORANDUM

DATE: March 8, 2019

TO: Councilor Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Marie Lawlor, Assistant City Solicitor
Jennifer Caira, Chief Planner

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

MEETING DATE: March 11, 2019

CC: Jonathan Yeo, Chief Operating Officer
John Lojek, Commissioner of ISD
Alissa Giuliani, City Solicitor

On January 28, 2019 the Zoning and Planning Committee met to discuss an amendment to the zoning for Registered Marijuana Dispensaries (RMDs) and marijuana retailers (adopted in December 2018) to also allow the uses in the Manufacturing (M) and Limited Manufacturing (LM) zones in addition to the Business 2 (BU2), Business 4 (BU4), Business 5 (BU5), and Mixed Use 1 (MU1) zones. The Manufacturing zones present a unique challenge as the nature of these zones vary widely across the

city, ranging from isolated manufacturing areas where security and safety might be a concern to manufacturing districts located within abutting residential neighborhoods where any retail activity and traffic would be new. In between the two ends of the spectrum there are likely areas zoned manufacturing that perhaps would be an appropriate location for an RMD or marijuana retailer. The City cannot allow the use only in certain parcels within the manufacturing district, however, unless an overlay district is created. An overlay district does not need to follow existing zoning boundaries. The City does not currently have any overlay districts and while an overlay was considered by Planning staff, it would require detailed analysis at the parcel level to determine which parcels would be appropriate. Planning staff would seek to engage the City Councilors in those Wards where manufacturing zones are located to better understand the particular properties and surrounding neighborhoods before moving ahead with a proposal that includes some areas and excludes others.

The Planning Department continues to recommend not amending the zoning for RMDs and marijuana retailers at this time for the reasons stated in previous memos. However, if the Committee would like to expand the zoning districts available for RMDs and marijuana retailers the Planning Department recommends adopting an amendment to include the entire district with the understanding that particular attention will need to be paid to issues of compatibility with the surrounding context and safety and security during the Special Permit process. Attached is a redlined version of the use table in Section 4.4.1 of the Zoning Ordinance as well as a zoning map showing the addition of the Manufacturing and Limited Manufacturing zones.

NEXT STEPS

Following discussion of this item, if the Committee chooses to move forward with the amendment a public hearing should be set for the amendment to Section 4.4.1.

ATTACHMENT A: Section 4.4.1 – Business, Mixed Use & Manufacturing Districts

ATTACHMENT B: RMD and Retail Marijuana Zoning Map with M and LM zones

Item # 632-18

Amend the following sections as follows:

Sec. 4.4. Allowed Uses

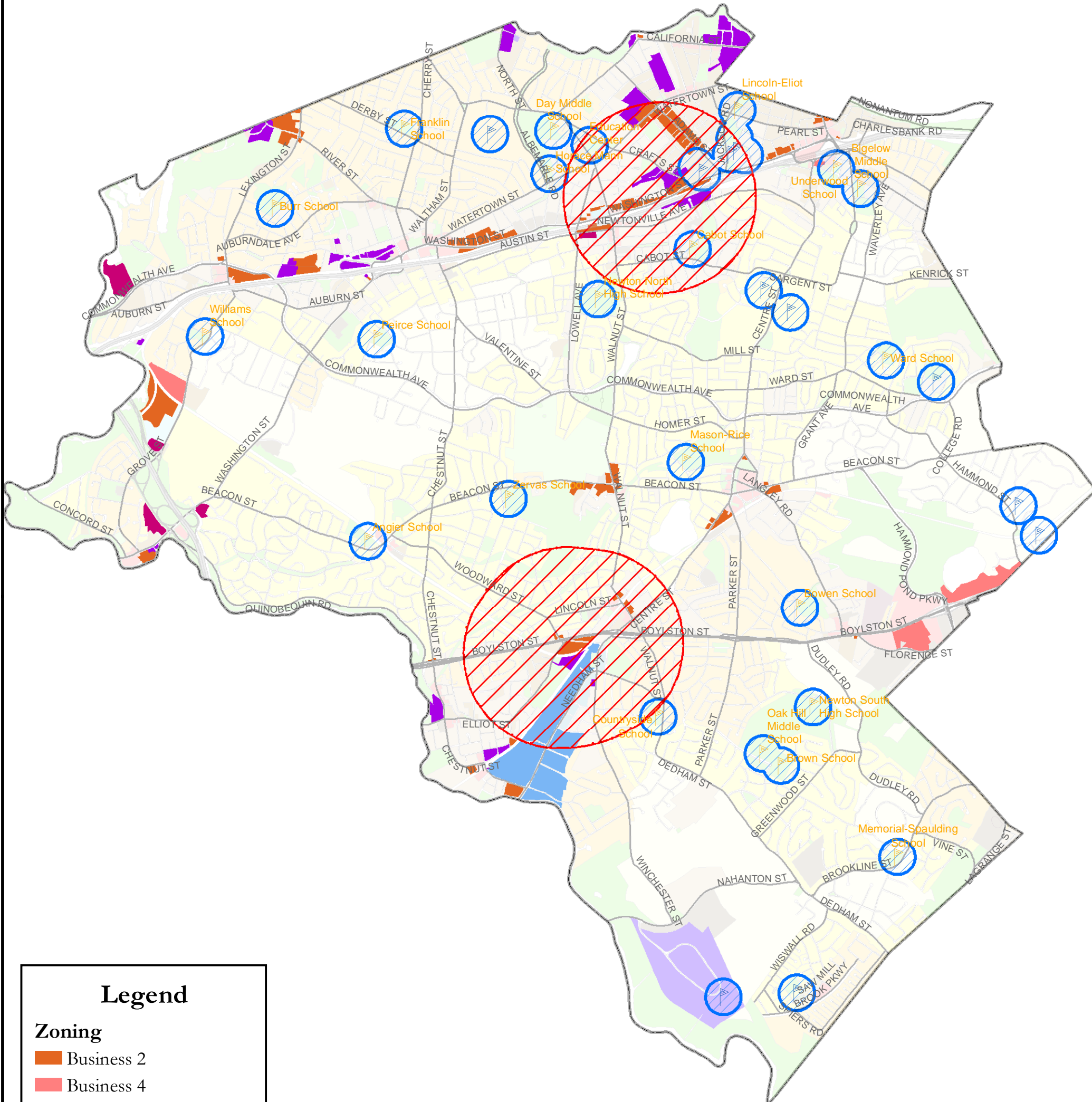
4.4.1. Business, Mixed Use & Manufacturing Districts

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Registered Marijuana Dispensary	--	SP	--	SP	SP	SP	--	--	--	SP	SP	Sec. 6.10.3
Craft Marijuana Cooperative	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Independent Testing Laboratory	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Cultivator	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Product Manufacturing	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Research Facility	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Retailer	--	SP	--	SP	SP	SP	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Transporter	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Microbusiness	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3

Draft Retail Marijuana and RMD Zoning

#632-18

City of Newton, MA



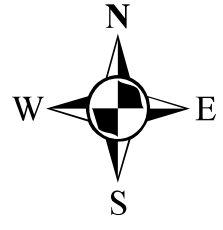
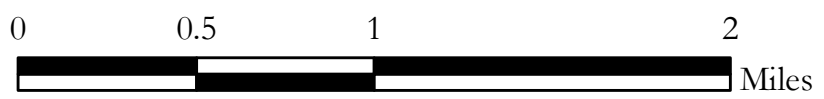
Legend

Zoning

- Business 2
- Business 4
- Business 5
- Mixed Use 1
- Limited Manufacturing
- Manufacturing

Schools

- Public
- Private
- Half Mile Buffer
- 500 Foot School Buffers



CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller

Map Date: January 25, 2019



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: March 8, 2019

TO: Councilor Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney S. Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Amanda Berman, Director of Housing & Community Development
Jennifer Caira, Chief Planner

RE: **#187-18** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

MEETING DATE: March 11, 2019

CC: Jonathan Yeo, Chief Operating Officer
Jonah Temple, Assistant City Solicitor
Planning & Development Board
City Council

Over the last year and a half, staff has been working closely with your committee to update the City's Inclusionary Zoning ordinance to better respond to today's housing market. The Financial Feasibility Analysis Report and excel model that RKG Associates created for the City in early 2018 have been critical pieces of this update process. Staff's current proposal is closely tied to the model and the assumptions presented throughout the RKG report.

Throughout the fall and winter of 2018, however, a number of housing advocates and committee members raised questions and concerns around the current proposal and some of these

assumptions. In an effort to address these questions in a meaningful way, staff felt that a productive next step would be to re-engage RKG and bring the advocates around the table to talk through these individual issues in greater detail.

On February 19th, staff from the Planning and Law Departments joined Kyle Talente and Jahangir Akbar of RKG Associates and twelve affordable housing advocates for a two-hour roundtable discussion about the proposed Inclusionary Zoning ordinance. As defined upfront, the purpose of the meeting was to explore the advocates’ questions and concerns relative to the current IZ proposal, specifically as they related to RKG’s Financial Feasibility Analysis and Model, and to identify points of agreement and disagreement.

While detailed notes from this meeting are attached as an appendix to this memo along with a response memo from RKG, the main takeaways from this roundtable discussion, as agreed upon by the housing advocates, include the following:

➤ **Don’t reduce the existing IZ requirement at the Tier 1 and Tier 2 levels**

There was a strong desire on the part of the advocates to keep the current inclusionary zoning requirement at 15%, and to add on to that existing requirement a middle income requirement of up to 110% AMI so as not to decrease the IZ requirements of lower income levels at 50% and 80% AMI respectively. This current inclusionary zoning requirement mandates that rental projects with two or more IZ units requires an eligibility average of no more than 65% AMI, with half of the units provided at 50% AMI and the remaining half at 80% AMI. Where only one IZ rental unit is required in a project, it shall be made eligible at 80% AMI. The current requirement for ownership projects requires that projects with 3 or fewer IZ units be eligible to households at 80% AMI.

Below is a table that represents the Staff’s 2018 proposed IZ requirement.

Number of Inclusionary Units Required (2018 Staff Proposal)												
Tier Level	7-9 units		10-20 units		21-34 units		35-64 units		65-100 units		101+ units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
Tier 1, up to 50% AMI	0.0%	0.0%	0.0%	0.0%	5.0%	0.0%	0.0%	0.0%	2.5%	0.0%	2.5%	0.0%
Tier 2, 51%-80% AMI	15.0%	15.0%	17.5%	5.0%	7.5%	10.0%	2.5%	7.5%	10.0%	10.0%	12.5%	12.5%
Tier 3, 81%-110% AMI	0.0%	0.0%	0.0%	10.0%	5.0%	7.5%	15.0%	10.0%	5.0%	7.5%	2.5%	5.0%
Total	15.0%	15.0%	17.5%	15.0%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%

➤ **Let's push the market in an effort to increase the number of affordable units required per project**

A large portion of the discussion focused on inclusionary zoning's connection to land values, and why this is important. Kyle Talente from RKG stressed that a significant increase in the IZ requirement would likely decrease the value of land in Newton, at least for an unforeseeable amount of time, thereby potentially chilling residential development throughout the city. There was consensus amongst the housing advocate group, however, that pushing the market in this way would not be a bad thing, if it results in a greater number of affordable units for each project.

A more detailed discussion on the topic of land values and increased affordability requirements can be found in the attached memo from RKG Associates, which is in response to the questions and requests for clarification generated from the roundtable discussion.

➤ **DHCD's QAP Index of \$389,000 should not be used as the basis for the cash payment and fractional cash payment calculations**

The advocates felt strongly that this number was too low for Newton and did not result in a fair trade in terms of providing a cash payment in lieu of building an inclusionary unit on-site. There was agreement amongst the advocates that the cash payment should more closely resemble the cost of building an actual unit of housing in Newton, and that \$389,000 is not that number.

Staff agreed that it would continue to explore alternative options for calculating the payment-in-lieu and fractional cash payments to better address the concerns of the group.

Next Steps:

Over the next few weeks, staff will continue to consider and respond to the ideas and recommendations that came out of the roundtable discussion with the housing advocates, as well as the additional comments and questions that were raised throughout the fall and winter. We are currently putting together a comparison table that details the differences between our proposed ordinance and the IZ policies of neighboring communities such as Cambridge and Somerville. At the same time, we are further exploring the Elder Housing with Services provision based on detailed comments provided during the Public Hearing process, as well as an alternative compliance option for projects that include units and supportive services for households at or below 30% of AMI.

Key to our work over the next month will be individual meetings and discussions with for-profit developers in Newton to better understand any questions and concerns they may have about our current proposal and the new ideas that came from the roundtable discussion with the housing

advocates. We look forward to providing you with a summary of these discussions at a meeting in early April.

Also in April, we hope to present some initial changes to our current proposal, which will be reflective of the feedback received from the housing advocates and for-profit developers.

Our goal is to present the committee with a new proposed ordinance in May. We are confident that we will deliver a stronger and more effective policy because of these months of continued conversation and thought.

Printed Attachments:

- RKG Memo Re: IZ Roundtable, 3.4.19
- Feb. 19th IZ Roundtable Discussion: Meeting Agenda and Notes

Additional Digital Documents:

- Proposed Inclusionary Zoning Ordinance text (clean version), November 9, 2018:
<http://www.newtonma.gov/civicax/filebank/documents/92905>
- Proposed Inclusionary Zoning Ordinance Guidebook (November 9, 2018):
<http://www.newtonma.gov/civicax/filebank/documents/93001>
- City of Newton Inclusionary Zoning: Financial Feasibility Analysis, prepared by RKG Associates, Inc., March 2018 (not attached, but can be found on the City's IZ website:
<http://www.newtonma.gov/civicax/filebank/documents/91410>)
- Further detail and additional memos and supporting documents can be found on the City's Inclusionary Zoning website:
http://www.newtonma.gov/gov/planning/lrplan/inclusionary_zoning.asp



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

Inclusionary Zoning Roundtable – February 19, 2019
Discussion with Planning Staff, Housing Advocates
and RKG Associates

Meeting Summary: Agenda and Notes

Meeting Purpose:

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

Meeting Objectives / Expected Outcomes:

1. Shared understanding of the guiding objectives staff employed in developing the current IZ proposal so that we can identify the degree to which there are shared objectives within this group.
2. Shared understanding of the Financial Feasibility Model so that we can assess its components and assumptions, as well as understand how this model relates to the standards set within the ordinance.

Meeting Agenda:

1. **Introductions and Review of Meeting Purpose and Objectives** (4:30 – 4:40 pm)
2. **Guiding Objectives for Updated Ordinance** (4:40 – 5:10 pm)
 - a. Planning staff presentation (see next page for list of objectives)
 - b. Discussion
 - c. Areas of agreement and/or disagreement
3. **Financial Feasibility Analysis and Model** (5:10 – 6:15 pm)
 - a. Presentation by Kyle Talente, Vice President and Principal of RKG Associates
 - b. Discussion
4. **Conclusion & Next Steps** (6:15 – 6:30 pm)

Guiding Objectives for Updated Ordinance

Keeping in mind that inclusionary zoning is only one of the resources in the City's suite of affordable housing tools, staff developed a set of guiding objectives to help us focus the development of this important ordinance. Also critical to defining the objectives of the new ordinance were the key findings identified in the Housing Strategy's Needs Assessment, including Newton's shrinking middle-class, its declining population of younger adults and increasing population of seniors, and its lack of affordable housing options for smaller households and residents seeking to downsize.

As such, the guiding objectives that staff utilized to develop the updated Inclusionary Zoning ordinance include the following:

- To more effectively leverage private development for the creation of affordable housing throughout Newton.
- To increase the required percentage of inclusionary units from 15% up to 20%.¹
- To put forth an ordinance that considers the financial feasibility of residential development in Newton and strikes a careful balance between the City's need for affordable housing and the nuanced economics of housing development.
- To clarify confusion and multiple interpretations around the current ordinance language.
- To introduce a tiered system of affordability requirements, including units designated for middle-income households earning between 81% - 110% AMI, to more specifically target and balance the need for affordable housing across the City's diverse spectrum of income levels (units for low, moderate, and middle-income households).

¹ Defined as a Priority Action in the City of Newton's 2016 Housing Strategy.

Meeting Notes➤ **Discussion of the Guiding Objectives for the Updated Ordinance – Areas of Agreement and/or Disagreement**

- What is the role of the financial feasibility analysis?
- What are the obstacles to the creation of IZ units?
- I would be interested in understanding the history of the ordinance – NHA’s management units through the IZ ordinance? Why this change?
- Feasibility of the ordinance on specific projects?
- 3 units at Auburndale Yards came from IZ funds from NHA
- Don’t lose site of the Special Permit process vs. financial feasibility – the number of City Councilors
- Why 110% AMI vs. 120% AMI?
- In terms of goals of the ordinance - What’s possible? Up to 20% requirement? Don’t set a cap until we know what’s possible
- Very difficult to incorporate very low-income households - we do have this population in Newton – are there alternative ways to serve this population? Can we bolster the use of vouchers in Newton, so we capture more than just a third of Newton voucher holders?
- If we can’t incorporate these units through IZ, where can we create these units?
- Can’t create a subsidy great enough to cover units set at or below 30% AMI
- NHA can project-base units, but their ability to do this is constrained, currently in shortfall, hard to negotiate these contracts
- Strategy – more work to look into how to better use vouchers with this ordinance
 - It is the tool to get us units at or below 50% AMI
 - Time period when developers are required to use this
 - Don’t want to disregard federal / state connection – perpetuity
- Financial feasibility or structuring scenario to attract development – number of market-rate units that are a win-win vs. a few affordable units which are a lose-lose; need to look at who we are serving
- Cross-subsidy from market-rate units – affordable units are part of a package
- Do we have a side-by-side comparison to the other communities – Cambridge, Somerville?
- At the end of the day, it’s a math problem – fewer units at a deeper subsidy vs. more units at a higher income levels / diversity; where to find the balance point?
- 2016 Housing Study – unmet need all the way up to 250% AMI – create a continuum – to grow income vs. dichotomy
- Where are the balance points to minimize disruption to the marketplace – while considering the 5 objectives?
- Risk Return Equation – for developers, doesn’t matter where they develop, as long as they meet their return
- Feasibility is a function of land values – people at some point think about 40B, and we don’t tend to get as many 50% AMI units with 40B
 - 20% at 50% AMI
 - 25% at 80% AMI

- Get as much affordability as we can afford
- 40B is still an option here in Newton
- Taking less money for the land?
- The more value you take away from the land, the more you are willing to chill development
 - But how long does it take to rebound? We can't answer that now
 - Eventually, they will normalize – we have normalized the market through our existing IZ ordinance
- IZ policies affect land values
- Get an analysis from the neighboring communities' IZ policies
- What statement does the City want to make in terms of affecting the market – so far, this ordinance update process has assumed we didn't want to push the market
- What's the tipping point?
- Assumptions vs. real-world
 - Most recent example – Hancock Estates, 2-bedrooms renting for upwards of \$4,000
- The model tries to look at average projects
- The model is geared to measure existing policy vs. proposed policy – the delta between the two
- On goals / objectives of the updated ordinance – idea to push the market a bit – and what percentage of a push?
- We are designing the ordinance for the regular projects, and none of the current big projects are normal, what's going to happen after that?
- Part of what we are trying to accomplish is predictability
- Would it apply to Northland? Only if the proposal passes before they receive their Special Permit
- Other moving parts – the other things the City asks for in terms of mitigation – there are a number of factors
- Revenue – neutral policy
- Every project will come with different nuances
- Predictability at the front-end, but they won't agree to something they can't afford

➤ **Presentation and Discussion: Financial Feasibility Analysis and Model**

- Why was Washington Place able to move forward? Doesn't jive with the model – disconnect between on-the-ground and the model?
- The model takes square footage into account for rental rates
- Developer will not accept less than their required threshold – IRR and NPV
- Is the economy a factor? What will happen two years from now?
- \$4 / sq. ft. – how has it affected Avalon rents?
- Ordinance is static – hard to change
- Distribution of need – delta between current and new in terms of bedroom mix – substantial when you change the bedroom mix
- Have to look at a prototypical approach in your community – there will always be outliers
- How much impact are we willing to have on our current policy?

- Is there a way to assess the impact on land values? Other cities have paced the change over time to mitigate the disruption in the marketplace
- How do we want to buy the affordability as a City?
- Take the risk of chilling the marketplace? This is a legitimate conversation to have as a City
- Relationship of model levels out at 180 units – starts to normalize – where RKG capped when building the model
- The larger the project, easier to absorb changes
- 7.5% at 50% AMI, 7.5% at 80% AMI – if you want more units, and not change anything else, you will negatively impact land values in the City
- Can look for revenue neutral
- Would like to see the model built around Washington Place project
- Create the model to factor in fee-in-lieu?
- Cash component relates to actual cost of building something in town – not a real trade
- QAP – too low for Newton
- Use number to buy down the value in IZ projects
 - Buy some 3-bedrooms
 - Cash equivalent to the “harm” we are doing to you
- Cambridge changes the number of over time – effective at time of application – look at this
- Differential between cost of a unit in a large project versus a smaller project
- Calculation – administratively created?
 - Reasonableness process and how often?
 - Goal is to get the number right
- QAP is a no-go
- Dynamic – how to trade off 50% AMI vs. 80% AMI units
- 7.5% and 7.5% is a good hit – my target is at 50% AMI
- Cambridge buys their affordability – they have a lot more money
- 7.5% and 7.5% is working in Newton’s marketplace – and then layer the middle-income units on top of that
- Use recent projects as an example for building the ordinance, but be careful not to push too hard
- Next steps: March 11th ZAP – re-docket item
- Other pieces: when will these questions / issues be dealt with?

03.4.2019

Memo Regarding the IZ Policy Roundtable

To:

Barney Heath,
City of Newton
Planning & Development
Director; James Freas,
Deputy Director; Amanda
Berman, Director of
Housing & Community
Development

From:

Kyle Talente,
RKG Associates, Inc.
Vice President & Principal

Re:

Response Summary: IZ
Roundtable with Housing
Advocates, Feb. 19, 2019

On Tuesday, February 19, 2019, RKG Associates (RKG) joined staff from the City of Newton's Planning & Development Department and a number of housing advocates from the city to discuss the proposed Inclusionary Zoning ordinance and the financial feasibility analysis and model that RKG developed for the City in 2018. The purpose of this roundtable was to dive further into the questions and concerns raised by the advocates about the current proposal, specifically as they relate to RKG's financial feasibility analysis and model, and to discuss possible solutions for overcoming these concerns.

At the request of the City of Newton's Planning & Development Department, RKG is providing a response to questions/requests for clarification generated from this meeting. Please let me know if RKG can be of further assistance to the City as it considers changes to the Inclusionary Zoning policy.

Q: What is the IZ policy's connection to land values in Newton, and why does that matter?

While often a point of public debate, real estate development is a for-profit business. Developer/investors acquire land with the intent to build (or redevelop) the property into a land use that will generate a market-acceptable rate of return (defined by the marketplace). Several factors within the real estate development process are established by the local supply and demand equilibrium. These include the price of materials to build (i.e. the price of a brick), the cost to prepare the land for development (i.e. grading), and the income potential (whether potential rent levels or sale prices) of the new development. In other words, these revenue and expenditure factors are pegged to basic economics. The main 'variable' in the cost/revenue paradigm that a developer has some greater degree of control over is the price they are willing to pay for the land.

Changes in regulation can benefit or adversely impact the value of land (reflected in the price a developer is willing to pay for the land), depending on whether those regulations increase revenue potential (i.e. more density) or create greater cost burdens (i.e. requiring higher-cost building materials). Because most factors are fixed to the larger marketplace, developers/investors will adjust their price offers for the land accordingly.

Newton's Inclusionary Zoning policy reduces the income potential of residential development by placing price restrictions on some of the units being constructed (the required affordable units). Current market value levels for land in the City have normalized to the existing policy, as it was implemented over fifteen years ago. Any considerations to change the IZ policy could cause land to increase in value (i.e. if the City were to reduce unit/subsidy requirements) or decrease in value (i.e. if the City were to increase unit/subsidy requirements).

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RKG
ASSOCIATES INC

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Making a change to the policy that will substantially reduce revenue potential most likely will reduce land values in the City. If the reduction reaches levels considered too burdensome for developers/land owners, development could be disrupted for a period of time. The greater the impact, the more likely that disruption will last longer.

Given the paradigm described above, a change in the IZ policy that reduces potential revenue, thereby lowering the price a developer would potentially offer for land, means that the cost of the policy is carried more by the existing landowners than by developers. For developers, the cost is essentially just an additional item to be calculated into the project pro forma prior to purchasing the land. However, for the landowner, the cost represents a lower land value, effectively acting as a tax on land.

The potential chilling effect on development comes when landowners become unwilling to accept a lower price for their land and refuse to sell, holding out for some potential future increase in value. This same paradigm is in effect related to all requirements placed on development, not just IZ ordinances, and they act cumulatively.

Again, the greater the negative impact on land values, the more likely that disruption in residential development will last longer. In terms of inclusionary zoning, a slowdown in market-rate development also equals a slowdown in the creation of affordable units throughout the city.

Q: What is a “reasonable” amount to push to add in the middle-income units on top of the existing policy? Is it 2.5%? Is it 5%?

This is a hard question to answer. Our research shows that adding a 2.5% increase in inclusionary units at 110% **on top** of the City’s existing policy (7.5% requirement at 50% AMI + 7.5% requirement at 80% AMI for rental) could impact land values by as much as 10% for smaller projects (20 or fewer units) to 2% for larger projects (150-250 units). These outcomes are consistent with RKG’s similar efforts in other communities in Massachusetts and throughout the U.S.

LAND VALUE IMPACT FROM EXPANDING CURRENT IZ POLICY

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

NB - Assumes no payment for partial units

Is a 10% impact ‘reasonable’? Some property owners may be willing to absorb that cost while others may not. To make this impact more relatable to our clients, we ask, “Would you be willing to sell your house tomorrow if it was worth 10% less than it was today without any changes to the structure itself?”

Ultimately, it is a policy decision for the City in terms of how far it wants to push the market.

Q: RKG has said, “The more value you take away from the land, the more you are likely to chill development.” But how long does it take to rebound?

It is not possible to determine this answer. It depends on the investment motivation of developers, the unique situation for each parcel of land, and other policy/regulation impacts imposed by the City. Most developers in high-demand communities like Newton know that they will be asked to provide public benefits as part of the entitlement process. Many of these costs are generally known (i.e. the IZ policy) or somewhat predictable (the I&I process). The price a developer is willing to pay for land takes these potential costs into consideration. If the local jurisdiction substantially increases the cumulative cost of these benefits, the market reaction oftentimes is development slowdown (or even stoppage). However, sometimes efficiencies can be found through negotiating other benefits or finding additional sources of funding (i.e. 28 Austin Street’s Workforce Housing loan through MassHousing). All that said, it is RKG’s understanding that the City’s last change to the IZ policy in 2003 likely was a significant contributing factor in decreasing the delivery of units through the IZ policy for close to fifteen years.

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Q: Why does the IZ policy model built by RKG appear to present a different scenario than what we are seeing on the ground, a la Washington Place and Austin Street?

It is not possible to create a ‘one-size fits all’ policy in a jurisdiction with such a diverse housing market as Newton. Every location, ownership situation, and project are different; and the developer/land owner will react differently to policy changes like the one that was discussed with the housing advocates at the roundtable (7.5% at 50% of AMI, 7.5% at 80% of AMI, plus 2.5%+ at 110% or 120% of AMI). Our research shows that larger projects can better absorb more affordability requirements because there are more market rate units to spread the impact across. That said, there will always be exceptions to the rules.

RKG Associates is not familiar with the Washington place project per se, so we cannot definitively explain that situation. However, RKG was involved in the market and financial feasibility analysis on behalf of the City when it was considering 28 Austin Street. Our analysis showed the project worked at 25% of affordability at 80% of AMI for two primary reasons. First, the City was selling the land at a cost level below market average, reducing the out-of-pocket costs for the developer. Second, removing the 50% of AMI requirement increased the profitability of those units, which offset some of the cost for the additional units at 80% of AMI.

That said, the final agreement at 33% created a financial hardship for the project that would have made the development financially infeasible, and our analysis proved this. Given this increased requirement, the developer sought public funding through MassHousing’s Workforce Housing Program to ‘fill the gap’ created by that agreement, returning the project to financial feasibility. Ultimately, this was a unique project that does not ‘fit the mold’ of the typical project in Newton.

Q: Why shouldn’t Newton build a policy around these large anomaly projects – what would that mean for smaller, more “typical” projects?

Shouldn’t really is not the correct terminology. We would phrase it as, “What are the risks that Newton may incur by using these anomalous projects to set our overall policy?” **From our perspective, using the top-producing projects that have unusual circumstances to set the City’s policy may have the unintended consequence of making those outliers the only projects able to be built.** We understand how it can be frustrating to set policies to the ‘middle’ projects and not stretch to the edges of the marketplace. However, the City needs to be realistic about where most of its projects will fall within the

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development prism. Any community as diverse as Newton that sets a 'one size fits all' policy runs the risk of disrupting all but the prototype project. When this prototype is atypical to the market, it can stifle investment, and in turn, development altogether.

RKG has helped communities create 'sliding scale' policies that set different thresholds for different projects based on the idiosyncrasies of the community. Our work in Somerville helped influence the City to consider different affordability requirements based on the size of the project.

Q: Is the data built into the model outdated at this point? Should we even refer to the model a year after it was originally built?

This was a topic of discussion during the advocate meeting on February 19. A datapoint was thrown out that the model's rent assumptions were not accurate because there was a project developed that had rents at and above \$6,000 a month in Newton. The City inquired to Washington Place following this meeting to understand their expected price points. They reported a target rent rate of \$3.75 per square foot for the project, which is consistent with RKG's estimates used in the IZ model built last year. I bring this example up to highlight that one year likely is not a long enough period to make real estate assumptions invalid. That said, there may be assumptions that are inconsistent with market realities (rent thresholds included) two or three years from now.

Regardless. The model is not intended to test market conditions. It was built to understand the impact of changing the City's IZ policy on the profitability of a project. All variables such as rent thresholds, land cost, development cost, and other community benefit requirements need to be held constant to understand the impact of an IZ change. In other words, the market inputs to the model (i.e. land price, rent level) do not need to be recalibrated often for the model to serve its intended purpose of understanding financial impact of changing the City's IZ policy.

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Q: As we re-assess the ordinance every 3-5 years, what indicators should we be looking for to understand what effects there are on the market and what adjustments we should consider?

Simply put, changes in production levels. This means overall production of housing as well as production of units under the IZ policy. Secondary analyses should track land sale activity and sales prices of land (on a per residential unit) basis to see how the policy has (or has not) impacted the marketplace.

It is our understanding that the City's intent of having an IZ policy is to ensure the City retains opportunities for households at different income levels to find quality housing in Newton. If this policy causes development to slow/stop, then it is reasonable to say it has not met its intended purpose.



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

DATE: March 8, 2019

TO: Councilor Susan Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Rachel Nadkarni, Long Range Planner/Zoning Specialist

RE: #518-18 - DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.
Development Review Process – Articles 10 & 11.

MEETING DATE: March 11, 2019

CC: City Council
Planning and Development Board
Jonathan Yeo, Chief Operating Officer
John Lojek, Commissioner of ISD
Alissa O. Giuliani, City Solicitor
Marie Lawlor, Assistant City Solicitor
Jonah Temple, Assistant City Solicitor

The decision-making processes that constitute how the City reviews development projects is a central and important part of the Zoning Ordinance. Conducted well, these processes establish trust with the community and applicants, promote building investment by property owners, and lead to positive development projects for the City. These processes must be fair, they must be transparent in how decisions are reached, and they must be efficient with both City and applicant time and resources. Newton generally has a good track record on these measures, but there is room for improvement. The 1st Draft Zoning Ordinance recommends a number of changes to improve the development review process across these measures.

An overarching objective of the Zoning Redesign project is to better match the level of review to the scale and significance of the development project. Given the range and importance of issues that the City Council is attempting to address in any given year, befitting a community as large and complex as

Newton, it seems incongruous that the City Council is also the decision-making body on small additions to single family homes, restaurant parking waivers, and small mixed-use or residential development projects, to provide a few examples. That is not to say that these are not important issues, because they are, but that the role of the City Council should perhaps be in deciding the parameters of how these decisions are made through legislating the rules in the Zoning Ordinance while leaving the individual decisions to an appointed body of experts. This approach is the one taken by most communities across the country and here in Massachusetts.

For the purposes of this memo, the term 'development activity' or 'development' is meant to encompass everything from small residential additions to large multi-family or commercial development projects, and also includes such actions as adding a sign or changing out a business use in an existing structure.

Reading List: In preparation for this meeting, Committee members should read this memo and all of Articles 10 and 11. It may also be helpful to review the first section of Articles 3, 4, and 6 (titled Development Review) and the Use Tables found in each of those articles.

Key Questions to Consider:

1. Should some portion, or all, of the Special Permits currently considered by the City Council be shifted to the Zoning Board of Appeals or the Planning Board?
2. If the City Council retains only those special permits deemed to be of Citywide significance, what size project constitutes Citywide significance?
3. Should all non-conformities have the right to alteration and expansion? If only some non-conformities are entitled to alteration or expansion, which ones?

Special Permits

A special permit is required where the nature of a proposed development activity, due to its size, location, or some external effect, requires additional review and may require conditioned approval in order to mitigate its impacts. Special permits are approved by the special permit granting authority, which under the current ordinance in Newton is always the City Council and under the 1st draft ordinance is split between the Planning and Development Board (also referred to as the Planning Board) and the City Council based on the scale of the proposed development activity.

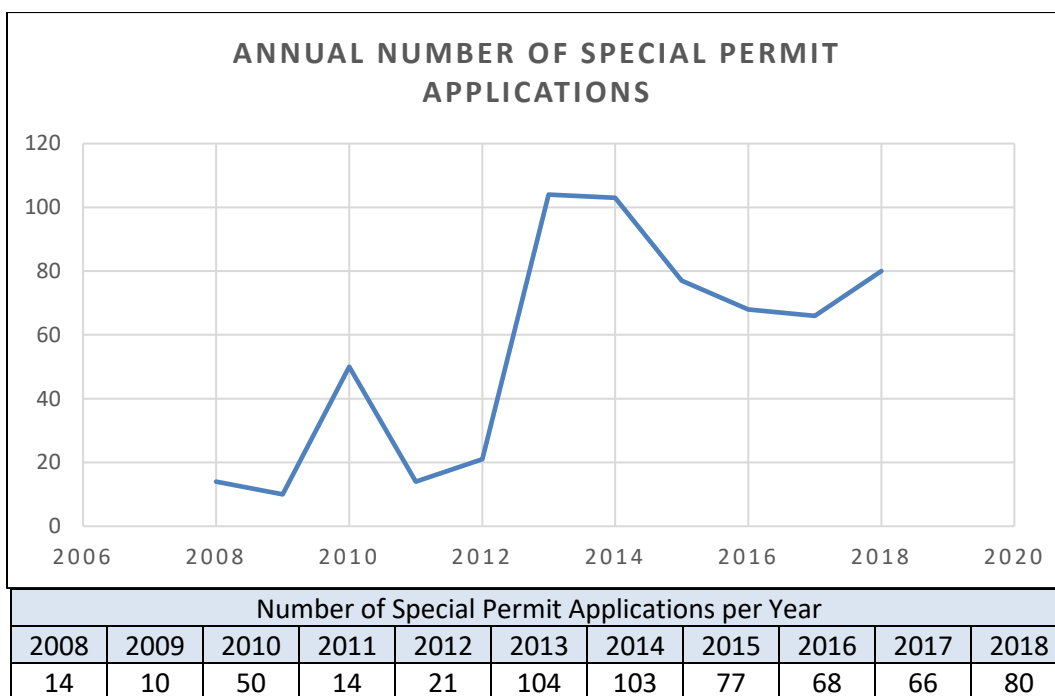
A special permit is a quasi-judicial decision, rather than a legislative decision. In making a decision on a special permit, the granting authority is limited to the record of materials submitted by the applicant as well as commentary received in the public hearings, be they in person or in writing. The granting authority also must make a decision in consideration of the criteria provided in the ordinance. The granting authority may not refuse to issue a permit for reasons unrelated to those criteria; for instance, a special permit cannot be denied based on community opposition to a project. In contrast, a legislative action such as writing the zoning ordinance and the criteria contained within it, can benefit greatly from broad public discourse.

Newton requires special permits for a wide range of development activities which, among many other specific examples, includes:

- expansions of non-conformity and exceeding the maximum floor area ratio (FAR), which together draw a number of single and two-family projects into the special permit process
- waivers of parking related requirements,
- many specific commercial uses,
- any project with three or more residential units
- and all developments over 20,000 square feet

For most businesses or individuals contemplating development activity in the City, a special permit requirement constitutes an additional cost that is avoided to the extent possible. Special permits are permanently in place, and the conditions of a special permit rarely expire. This creates an environment in which simple changes years after a project is constructed result in special permit amendments, even when the proposed development activity itself would not otherwise require a special permit.

The number of special permits issued per year by the City has varied widely over the last ten years but has generally increased over this time period. While there may be other factors involved, this trend tracks closely with the strengthening of the regional economy, which makes sense as a stronger economy results in larger amounts of money available to spend on development activity. Another possible factor in the increase could be the adoption of the new FAR rules in 2011 as the data show a significant increase in special permits beginning in 2013, especially those for projects involving single or two-family buildings. The tables below provide data on special permits.



Number of Special Permit Applications per Year										
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
14	10	50	14	21	104	103	77	68	66	80

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

Recommendations

The 1st draft Zoning Ordinance proposes that the Planning Board become the special permit granting authority for most development activity, reserving large projects with Citywide significance for the City Council. As a preliminary recommendation, the scale for citywide significance was set at 20 residential units or 20,000 square feet of commercial space. There are two primary reasons for this recommended change, first the issue of prioritizing the City Council's time and second, the challenge of the conflicting legislative and judicial roles individual Council members must navigate. Each of these is discussed below. To be clear, there is nothing inherently wrong with the City Council serving as the special permit granting authority, but it is valuable for the City Council to periodically assess the challenges and benefits of serving in this role, particularly given that most other communities have made a different decision.

As the number of special permit applications reviewed has grown, as shown above, the amount of City Council time directed to this activity has also increased and the number of special permit applications related to single family homes has also increased substantially. The Land Use Committee is now meeting three times a month and likely could still use more time. Reducing this workload can be accomplished by either changing the rules so that fewer projects require a special permit or switching some category of special permits to a different permitting authority or a combination of both.

The second issue is the potential for conflict in the judicial review of the special permit process and the broader legislative role of the City Council. Special permit decisions are reached in a quasi-judicial

process where all information about a project is meant to be received by the members of the special permit granting authority in public – that is in the public hearing and through publicly accessible documents submitted to the entire body. When serving as the special permit granting authority, there should not be private meetings with either the applicant or with members of the public on the proposed development activity. This rule applies to the entire City Council, not just the members of the Land Use Committee. Preventing such communication would require a high level of vigilance by all members of the City Council, preventing constituents from inadvertently violating this rule during open office hours, in emails, or in other conversations. As it is inherently the role of a legislator to be in communication with his or her constituents on the issues that concern them, it can be difficult to segregate out those issues that relate to projects in front of the special permit granting authority for adjudication as opposed to those that relate to their legislative role in defining the zoning ordinance.

The advantage of making the Planning Board the special permit granting authority for all but the most significant projects is that the City Council, through its role in approving the membership of this body, could ensure that the appointed members reflect the incredible depth of knowledge available in Newton in real estate development, land use planning, law, design, and other topics of relevance to the special permit decision making process. Once special permits are being handled by this body of experts the City Council can focus on ensuring the rules and criteria of the Zoning Ordinance itself are set to achieve their desired outcomes.

Clear special permit criteria are an important part of the 1st draft zoning ordinance proposal and an essential part of transitioning the special permit granting role. The draft ordinance includes specific criteria for every single development activity requiring a special permit, above and beyond the general special permit granting criteria. This specificity ensures that the attention of the permitting authority is clearly directed to the potential issues of concern for a given project.

Lastly, a number of the special permits required within the 1st draft ordinance also have mandatory design review. This process is described separately below, but in short, the intent of that design review process is to further highlight how design can be used in a project to mitigate perceived negative external impacts.

Site Plan Review

Site plan review is intended to offer a level of development review that is less intensive than a special permit but more than a by-right development. Under the current ordinance there are two types of site plan review; the site plan approval procedures of the City Council and the administrative site plan review procedures employed by Planning Department staff for educational and religious institutions.

The purpose and intention of the site plan approval process in the existing zoning ordinance is unclear. This review is required for every project that requires a special permit, the review criteria overlap with, and seem essentially the same as, the special permit criteria, and the only key difference seems to be that the necessary vote for site plan approval is a simple majority and yet no separate vote is ever taken.

The administrative site plan review procedures in the existing ordinance are exclusively for religious and educational uses subject to the “Dover” rule which exempts such uses from certain zoning

requirements. These procedures allow only for a non-binding advisory review by the Planning Department staff.

Recommendations

The 1st draft zoning ordinance includes a staff-based site plan approval process. The intention of this site plan approval is to provide review and limited conditioning as necessary for projects that would otherwise be allowed by-right, but require some additional, highly prescribed review. The 1st draft only identifies a few instances where this approval process would be used. Examples include determining the correct application of the “proximity rule” for certain building types (see building type House D). Individual sign reviews are also proposed to change from review by the Urban Design Commission to this site plan approval process. There may be other uses or development activities that could use this site plan approval process rather than a special permit such as cottage cluster developments, rear lot subdivisions, museums, or formula businesses.

The Dover protected educational and religious uses are also proposed to be reviewed through a site plan approval process using the same criteria as are currently in Newton’s Zoning Ordinance. The key difference is the Planning Department review would change from an advisory review provided to the Commissioner of ISD to an approval with with reasonable restrictions granted by the Planning Department.

Section 6 Findings

Section 6 Findings is the term used to describe the review process through which a nonconforming aspect of a property can be altered or expanded. All such determinations are reviewed against the following standard – whether the proposal is “substantially more detrimental than the existing nonconforming use to the neighborhood.” The current zoning ordinance requires a special permit for expansions or alterations of nonconformities. The term Section 6 Finding comes from the section number of Chapter 40A, the State Zoning Enabling Act where this type of permit is authorized.

A nonconformity exists anytime a building, use, or other aspect of a property is legally created but, due to a zoning amendment, becomes inconsistent with the current rules of the zoning ordinance. For example, a house that was built before Newton adopted a zoning ordinance would be legally created. If that house was set closer to the street than the current zoning ordinance allows, the house would be considered nonconforming with regard to its front setback. If the house otherwise met the requirements of the zoning ordinance, it would be conforming in all other aspects. That house would be able to get a section 6 finding to further encroach into the front setback. Notably, the house would not have the ability to seek a section 6 finding encroach into any other setback.

Recommendations

The 1st draft zoning ordinance explores the idea of removing the special permit requirement for expansion of a nonconformity and transferring this review to the Zoning Board of Appeals using a section 6 finding approach. As with other special permits above, shifting this review to the Zoning Board of Appeals redirects what is typically a small-scale project to a body of experts appointed by the Mayor and confirmed by the City Council, thereby reducing the burden on the Council itself.

Overall, the new zoning ordinance is intended to significantly reduce the degree of nonconformity such that this review would be less likely to occur than it is today. In the sampling of special permits collected, extensions of nonconformities are included in as many as a third of the special permits reviewed in a given year, usually as part of a project that includes a number of special permit requests.

Another approach to managing nonconformities is to limit the extent to which a nonconformity can be altered or expanded. Under the current ordinance, a house that is nonconforming in the front yard setback could seek a Special Permit to not only expand in line with the current front wall, but also to expand further forward into the front setback. The City Council could set tighter limits on the degree to which an alteration or extension of a nonconformity would be allowed and Planning staff is working with our legal advisors to understand the limits of that ability, if any.

Design Review

Design review is a non-binding advisory review by the Urban Design Committee on the design characteristics of a proposed development and can encompass issues ranging from site layout, building massing, architectural features, and materials among other aspects of a project. Under the current zoning ordinance the review by the Urban Design Committee is generally optional and only required for the review of signs.

Recommendations

The 1st draft zoning ordinance incorporates design review by the Urban Design Committee as a formal part of the development review process for a number of different development activities that require a special permit. Design review may be sought by an applicant voluntarily before submitting a special permit application and, if the subsequent application incorporates the recommendations of the Committee, the required formal review may be waived.

Design review is required for many special permit projects that include residential or commercial development. In particular, design review is required for any special permit to allow a larger house, effectively serving as an approach to a “large house review” process. The focus of the design review is on design recommendations that can mitigate potential impacts of a project.

The recommendations of the Urban Design Committee are advisory to both the applicant and the permit granting authority and therefore, to the extent permissible, may be incorporated into the conditions attached to a special permit.

Design Review as an advisory review could also be incorporated into the Site Plan Approval process for certain development activities. For instance, in the draft sign section, the staff administering a site plan approval for a particular sign, can request design review if the staff requires further advice from the Urban Design Commission for a complex sign issue.