

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, SEPTEMBER 23, 2013

7:45 PM
Room 202

ITEMS SCHEDULED FOR DISCUSSION:

There will be a Public hearing for the following item:

- #406-12(2) ALD. JOHNSON requesting that the existing provisions of Sec. 30-20(h)(6) *Election signs*. be deleted and that the following provisions be inserted in place thereof: "Election signs may be erected no earlier than forty-five (45) days before an election and shall be removed within seven (7) days after the election."
- #406-12 ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]
- #309-13 DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton. [09/11/13 @ 4:12PM]
- #309-13(2) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to create a temporary moratorium on the placement of Medical Marijuana Treatment Centers in the City of Newton to allow the City adequate time to complete a planning process to consider in what districts and under what conditions Medical Marijuana Treatment Centers will be allowed. [09/11/13 @ 4:12PM]
- #263-13 ALD. JOHNSON & ALBRIGHT requesting that the Planning Department document a clear and transparent process for the establishment of housing that complies with Massachusetts Chapter 40B statute so that citizens are knowledgeable of the steps needed, decision making points and decision makers. [07/15/13 @ 2:09PM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, please contact the Newton ADA Coordinator, Joel Reider, at least two days in advance of the meeting: jreider@newtonma.gov . or 617-796-1145. For Telecommunications Relay Service dial 711.

- #81-13 DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]
- #80-13 THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #11-12 ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #296-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by reorganizing and clarifying the provisions regarding purchaser and renter income limits and sale and rental price limits. [08/26/13 @ 12:30PM]
- #295-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by deleting paragraph (11) *Hotels* in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing. [08/26/13 @ 12:30PM]
- #294-13 ALD. DANBERG proposing amendment to **Sec.30-24(f) Inclusionary Zoning** to clarify the limitation on use of public funds in constructing inclusionary units and to expand on where the use of public funds for inclusionary units will be allowed. [08/26/13 @ 12:30PM]
- #406-12(3) ZONING & PLANNING COMMITTEE requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding the size and number of campaign signs allowed on lots. [08/15/13 @ 4:37PM]
- #264-13 ALD. YATES requesting that the Zoning Reform Group or its successor consider amending City of Newton Zoning Ordinances Chapter 30 to develop additional residential districts reflecting the small lots in older sections of the City and map changes to bring the zones of more residential sections of the City into conformity with the existing land uses. [08/05/13 @ 12:28PM]
- #265-13 ALD. YATES requesting a report from the Law Department on the decision by the U.S. Supreme Court on the *Koontz vs. St. Johns River Water Management District* and its possible impact on the City's zoning ordinances. [08/05/13 @ 12:28PM]
- #266-13 ALD. YATES requesting that the Law Department provide the Zoning & Planning and Land Use Committees and other interested members of the Board with legal advice on what parties have standing to challenge zoning ordinances and the relevant court cases involving uniformity. [08/05/13 @ 12:28PM]
- #267-13 LAND USE COMMITTEE proposing to amend Section 30-21(c) to permit de minimis relief for alternations, enlargements, reconstruction of or extensions to lawfully nonconforming structures in which the nonconformity is due to Floor Area Ratio (FAR) requirements set out in section 30-15(u) Table A, subject to administrative review by the Planning Department.

- #222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances. [06/07/13 @ 1:31 PM]
- #129-13 ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for "attached dwellings" in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**. [05/25/13 @ 5:14 PM]
- #128-13 ALD. ALBRIGHT, FULLER, CROSSLEY, LAREDO requesting the creation a comprehensive, 10-year strategic plan for Newton's conservation lands which would include a multi-year prioritized list of short-term and long-term projects with appropriate estimated budget. This plan should be finished in time to include high priority item(s) in the FY15 Budget, with any project exceeding \$75,000 added to the Capital Improvement Plan. [03/15/13 @ 10:56 AM]
- #65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]
- #64-13 NEWTON HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation. [02/05/13 @ 11:35 AM]
- #423-12 ALD. JOHNSON AND SANGIOLO requesting that the Director of Planning & Development and the Commissioner of Inspectional Services review with the Zoning & Planning Committee their analysis of the FAR regulations and assessment of the possible impact on housing construction and renovation in the City. [12/03/12 @ 9:14 AM]
- #406-12 ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]
- #328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]
- #308-12 ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @ 3:59 PM]

- #282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*. [09-09-12]

REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES

- #273-12 ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer. [09/10/12 @ 1:17 PM]
- #260-12 ALD. YATES proposing amendments to Sec. 30-19 to increase the vitality of village centers without adverse impacts on the residential neighborhoods around them. [08-17-12 @ 1:01 PM]
- #215-12 ALD. YATES proposing a RESOLUTION requesting that the Planning Department and the Economic Development Commission develop a Main Streets Program following the model of the National Trust for Historic Preservation to revitalize the Newtonville and Newton Centre business districts. [07-17-12 @ 2:55PM]
- #214-12 ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.
- #64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities. [03-14-12 @ 8:54AM]
- #48-12 ALD. ALBRIGHT requesting a discussion with the Executive Office and the Planning Department on the creation of a housing trust. [02/10/2012 @ 9:13AM]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11 @ 3:16 PM]

- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05- 10-11 @3:19 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
- #164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

ITEMS FOR ZONING REFORM DISCUSSIONS WHEN SCHEDULED:

- #220-12 RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a) be clarified with respect to “lot width,” “lot area,” or “lot frontage.”
- #219-12 RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”
- #218-12 RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.
- #217-12 RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.
- #216-12 RECODIFICATION COMMITTEE recommending that the definition of “Space, usable open” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.
- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

Respectfully Submitted,

Marcia T. Johnson, Chairman



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#406-12
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

PUBLIC HEARING MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner, Long-Range Planning

RE: #406-12: ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements.

#406-12(2): ALD. JOHNSON requesting that the existing provisions of Sec. 30-20(h)(6) Election signs. be deleted and that the following provisions be inserted in place thereof: "Election signs may be erected no earlier than forty-five (45) days before an election and shall be removed within seven (7) days after the election."

MEETING DATE: September 23, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The Zoning Ordinance currently requires that election signs be removed within 48 hours after the election for which they pertain. This requirement provides a significantly shorter period of time than that allowed by surrounding communities and presents a challenge for a candidate's organization in ensuring that all signs are removed in such a short period of time, particularly for those elections working across multiple jurisdictions. The proposed amendment would bring Newton's requirement into line with many of those in the region and allow a more reasonable period of time in which to comply by allowing election signs to be removed within seven days after the election.

PROPOSED AMENDMENT

g) Election signs may be erected no earlier than forty-five (45) days before an election and shall be removed within ~~forty-eight (48) hours~~ seven (7) days after the election; and

NEXT STEPS

A working session will follow the public hearing and at that time the Zoning and Planning Committee will have an opportunity to discuss the proposed amendment to the Newton Zoning Ordinance. Staff will provide additional analysis as requested to respond to public comments or questions. Staff recommends adoption of the proposed amendment to the Newton Zoning Ordinance.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#309-13, #309-13(2)

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
Dori Zaleznik, Commissioner of Health & Human Services
Marie Lawlor, Assistant City Solicitor
James Freas, Chief Planner, Long-Range Planning

RE: #309-13: DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton.

#309-13(2): DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to create a temporary moratorium on the placement of Medical Marijuana Treatment Centers in the City of Newton to allow the City adequate time to complete a planning process to consider in what districts and under what conditions Medical Marijuana Treatment Centers will be allowed.

MEETING DATE: September 23, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

EXECUTIVE SUMMARY

The voters of Massachusetts overwhelmingly passed a law to permit the cultivation and sale of marijuana for medicinal use in November 2012 and since that time the Massachusetts Department of Public Health (DPH) has developed state regulations to permit the siting and operation of registered marijuana dispensaries (RMD) and begun the first phase of the permitting process. Staff recommends

that RMDs be treated as a new use within the zoning ordinance and that amendments be made to the ordinance to allow this use in certain manufacturing and business districts where identified location-related criteria can be met. With the state anticipating the completion of their permitting process by the end of the calendar year, Newton will need to provide direction, via the zoning ordinance, as to the appropriate locations within the City where this use might occur. In the event that suitable locations cannot be agreed upon, a moratorium option is available in order to allow more time for consideration. If no action is taken, the City would have limited capability to regulate the location of a registered marijuana dispensary.

BACKGROUND

With the passage of the Medical Marijuana referendum in the 2012 elections, Massachusetts became one of 18 states to legalize the use of marijuana for medicinal purposes. While the issue of medical marijuana is not without a degree of controversy, the drug has demonstrated effectiveness in a number of serious medical conditions. Marijuana has been shown to be effective for control of pain, particularly the chronic unremitting pain associated with cancer and neuropathy (nerve irritation). The drug is also useful for control of nausea especially in patients receiving chemotherapy for cancer. Marijuana additionally has the benefit of improving appetite in patients with debilitating illnesses such as cancer or AIDS when weight loss can be severe. It has been used with some success in some patients with seizure disorder, Parkinson's, and Lou Gehrig's disease. Compared to some of the medications used for chronic pain, in particular narcotics, marijuana has fewer side effects, less of a need to increase doses due to tolerance, and significantly less addiction potential.

The primary cause of controversy surrounding the issue of medical marijuana is the drug's continued illegal status under the Federal Controlled Substances Act and its potential for recreational use. In recognition of these issues, the DPH adopted a set of strict regulations governing the siting and operation of RMDs and the methods by which the drug can be prescribed to patients. This extensive set of regulations is summarized below.

Summary of the DPH regulations:

- There will be no more than 35 RMDs in the state and no more than 5 per county.
- Physicians who wish to prescribe medical marijuana to their patients must register with DPH; physicians must have an established relationship with their patient to prescribe marijuana.
- Patients and personal caregivers must also register with DPH.
- Organizations looking to run an RMD must be non-profit, have a minimum of \$500,000 under their control, and be applying to run no more than three RMDs (each application beyond the first RMD must be associated with \$400,000 more capital).
- RMDs must cultivate their own product although this can be done at an alternate site under their control with all transportation to the actual dispensary handled by the organization under strict transportation regulations.
- Independent laboratory testing must be performed on the marijuana (this requirement differs from regulations in other states).
- Security requirements are extensive including alarm systems, security cameras with retained secured videos for a minimum of 24 hours, locked storage area, marked limited access areas, no plantings outside the facility where someone could hide, outside lighting, and written emergency procedures.
- Waste disposal procedures are specified in the regulations.

- Logos and signs cannot include any reference to medical marijuana or any images of the product or symbols of associated paraphernalia and must conform to local sign ordinances.
- Siting of RMDs must conform to local requirements and cannot be within 500 ft of a school, daycare center or facility where children usually congregate.
- DPH can conduct unannounced inspections of the RMDs and any transport vehicles.
- A license is issued for the period of one year.
- DPH can grant a hardship waiver to a patient for cultivation of medical marijuana for personal use (only mechanism currently available to patients pending licensing and opening of RMDs).

The regulations serve two primary purposes, 1) to strictly control the distribution of the drug so that only those with a legitimate medical reason will have access, and 2) to avoid the promotion of the use of marijuana outside of medicinal purposes. Towards those ends, the regulations focus on security of the premises and operations, the prescription process, and the location and nature of the growing areas and dispensaries. The state regulations are both comprehensive and carefully considered and state regulators clearly drew lessons from the experiences of other states where medical marijuana is permitted.

Local Medical Marijuana Working Group

Even with the detail of the state regulations, the responsibility remains for each municipality to identify local regulations governing where RMDs may be located within the community through zoning (The Attorney General has determined that the use may not be banned entirely). An initial working group was formed to begin to discuss the issue; membership included Candace Havens, Director of Planning and Development, Dori Zaleznik, Commissioner of Health & Human Services, Marie Lawlor, Assistant City Solicitor, Howard Mintz, Chief of Police, and Aldermen Greg Schwartz and Brian Yates. The working group met twice and identified a range of options, identified below. The working group has not yet reached a final recommendation relative to an ordinance amendment but is far enough along in its understanding of the issues presented by medical marijuana dispensaries that, coupled with the state permitting timeline shown below, it is important to begin getting feedback now from the ZAP committee on several questions outlined in the Next Steps section below.

State Permitting Timeline

- The application process for an RMD is divided into two phases: Phase I applications were due on August 22. Forty-seven organizations applied for Middlesex County – the largest number of overall applications.
- DPH will review these applications for compliance with the resource requirements (available money) of the organization and absence of any convictions of any of the individuals involved for any illegal activities.
- Decisions on Phase 1 applications (per criteria above) expected in late September.
- After receipt of Phase 1 approval, applicants are required to notify the chief administrative officer and the chief of police of any community in which they are looking to site an RMD of their intent to submit an application for Phase 2. (Newton has currently received 9 or 10 inquiries from different organizations looking to come to Newton during the Phase 1 process).
- Phase 2 applications are due within 45 days of receiving Phase 1 approval. Phase 2 applications need to include a site (with a title, option to purchase, signed lease, or binding permission to use the premises).

- Phase 2 applications also include a detailed floor plan, a detailed business plan, an operating plan, summary of operating policies and procedures, detailed security plan, analysis of the projected patient population and projected need within a defined service area, training procedures, experience of the organization, patient education materials, procedures for giving marijuana to registered patients who qualify for financial hardship, etc.
- In considering Phase 2 applications, DPH may conduct site visits. The regulations state that they will take into consideration geographical distribution (convenience for patients and avoidance of clustering in one location) and local support for the application.
- The newspapers have reported that DPH will be making their Phase 2 decisions before the end of the calendar year with an expectation that RMDs will take at least an additional several months before they are ready to open.

If no action were taken...

The working group is presenting two possible courses of immediate action for ZAP, 1) to provide direction on locational parameters to govern RMDs in Newton or 2) to act on a moratorium to allow for more time. As an undefined use in the Newton zoning ordinance, there are limited controls available in the existing ordinance. In this context, an applicant with a proposed site for a registered marijuana dispensary would, like any other undefined use, be asked to provide a detailed description of the use which would be used as the basis for a determination by the Chief Zoning Code Official and the Commissioner of Inspectional Services with regards to what existing, defined use in the ordinance, the proposed use would be most similar to. The registered medical marijuana dispensary would then be regulated as that use. A registered marijuana dispensary is a use that would be hard to equate to an existing use in the ordinance given its highly specified and regulated product and necessary security attributes so staff cannot predict with great certainty what existing defined use it would be equated to, but staff would not be able to disallow the use based on it not being defined in the ordinance – it would have to be allowed somewhere.

PROPOSED AMENDMENT

In discussion of the appropriate regulations for the location of registered marijuana dispensaries, the working group considered the zoning districts in which the use might be allowed and the creation of buffer areas in which the use would be prohibited around a range of specific land uses. The attached map shows these potential districts and buffers. The districts the working group considered included all business and manufacturing districts as well as the mixed-use 1 and 2 districts on Needham Street. Buffers of 500-feet and 1000-feet were considered for residential zoning districts and houses of worship. The state regulations have already established a 500-foot buffer on day-care centers and schools; the working group considered increasing that buffer to 1000-feet.

As can be seen on the map, as a largely residential community, there are virtually no locations within the City that are not in proximity to a residential area. Those areas more than 1000-feet from a residential district are outside of the band of light, nearly transparent purple while those more than 500-feet from residential districts are outside of the tan area (a large map will be available at the meeting and we will walk through the color representations in greater detail at that time). For each of the other land uses, a 500 and 1000-foot buffer is shown in the tan and yellow bull's-eyes around each use. The historical development pattern of the City has ensured that virtually the entirety of every

village area is within 1000-feet of a house of worship eliminating many of the City's business districts if that option were to be chosen.

In addition to discussion of regulations for registered marijuana dispensaries, the working group also discussed and drafted a zoning ordinance amendment reflective of a moratorium on this land use (Attachment 2). Many other communities across the state have opted for a moratorium as they consider the implications of this land use, especially given the limited staff resources available in many of these communities.

NEXT STEPS

The working group will meet one more time to finalize a recommended ordinance amendment to regulate the location of RMDs in Newton. There are a number of outstanding questions to consider and the working group would welcome feedback from ZAP.

1. Given the timelines of State action and the process necessary to amend the zoning ordinance, it is likely that ZAP will need to advance the six-month moratorium proposal to a public hearing now and then replace this provision with a final zoning amendment as soon as that amendment can be prepared.
2. What comments or concerns are raised relative to the identified zoning districts and buffer areas?
3. Staff welcomes any other questions or concerns for which research and analysis can be provided to aid ZAP in its decision-making process.

ATTACHMENTS:

- | | |
|--------------|--|
| Attachment A | Location analysis map for Medical Marijuana Dispensaries |
| Attachment B | Ordinance Language for a Six-Month Moratorium on Registered Marijuana Dispensaries |

Potential Sites for a Medical Marijuana Dispensary

City of Newton, Massachusetts

Legend

-  Day Care Centers
-  Places of Worship
- Schools**
-  Elementary
-  Middle
-  High
-  Private
- Distances from Features**
-  500
-  1000
- Zoning**
-  Business 1
-  Business 2
-  Business 4
-  Business 5
-  Limited Manufacturing
-  Manufacturing
-  Mixed Use 1
-  Mixed Use 2

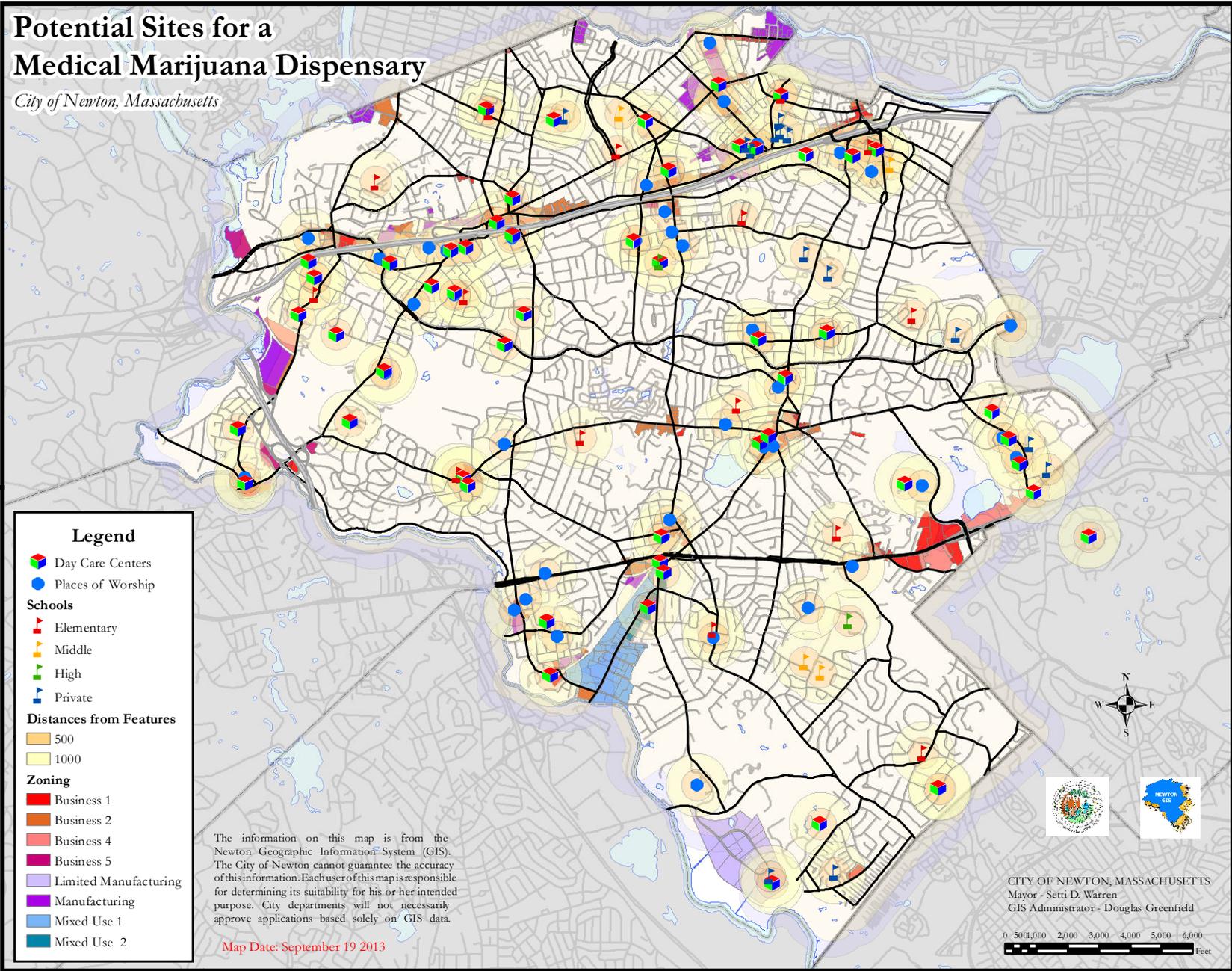
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

Map Date: September 19 2013



CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

0 500 1000 2,000 3,000 4,000 5,000 6,000
Feet



MEDICAL MARIJUANA TREATMENT CENTERS
DRAFT of PROPOSED TEMPORARY MORATORIUM

If the Board of Alderman wishes additional time to consider zoning amendments for placement of Medical Marijuana Treatment Centers, the Medical Marijuana Task Force recommends no more than a six month moratorium, and proposes the following language:

1. Add the following definition to *Section 30-1 Definitions*:

Medical marijuana treatment center (registered marijuana dispensary): A not-for-profit entity which is licensed and registered by the Massachusetts Department of Public Health under 105 CMR 725.100, also known under said regulations as a registered marijuana dispensary (“RMD”), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, tinctures, aerosols, oils, or ointments) transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to licensed patients or personal caregivers.

2. Add the following language to *Section 30-5 Allowed uses in all districts; special permits in all districts; prohibitions in all districts*:

(d) *Medical marijuana treatment center temporary moratorium.* In order to provide the City with adequate time to complete a planning process to address the potential impacts of medical marijuana treatment centers and their related uses on the city, and to study and consider adoption of zoning amendments to regulate what districts and under what conditions medical marijuana treatment centers will be allowed, no land, buildings or structures in any district shall be used for a medical marijuana treatment center. This moratorium shall expire on March 1, 2014, unless repealed earlier by the board of aldermen.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#263-13
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning and Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner, Long-Range Planning
Robert Muollo, Housing Planner

RE: #263-13 ALD. JOHNSON & ALBRIGHT requesting that the Planning Department document a clear and transparent process for the establishment of housing that complies with Massachusetts Chapter 40B statute so that citizens are knowledgeable of the steps needed, decision making points and decision makers.

MEETING DATE: September 23, 2013

CC: Board of Aldermen

INTRODUCTION

Chapter 40B is a state law that encourages the development of low- and moderate-income housing by providing a streamlined permitting process and relief from local zoning requirements. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 on the heels of the civil rights movement to help address the shortage of affordable housing statewide and deconcentrate poverty. Chapter 40B requires that at least 20-25% of the units in a development have long-term affordability restrictions. Under the law, the local Zoning Board of Appeals (ZBA) is the local permit granting authority. It must review and make decisions (approve, approve with conditions, or deny) comprehensive permits in a public hearing setting. The State Housing Appeals Committee (HAC) hears appeals from denials and conditional approvals for projects in communities that have less than 10% of their housing affordable to low-and moderate-income households. Currently 7.5% of Newton's housing stock is affordable.

PROCESS

A nonprofit, for-profit or governmental agency may apply to develop housing under Chapter 40B. Before an entity can apply for a comprehensive permit, the entity and the project must first qualify through a state or federal subsidizing agency (typically MassHousing, MA Department of Housing and Community Development or the Massachusetts Housing Partnership). This qualification takes the form of a project eligibility letter. This letter signifies that the proposed site is generally suitable for the type of housing proposed, eligible for a public subsidy, and appears to be financially feasible. Before requesting a project eligibility letter developers are encouraged, but not required under the law, to notify and engage with City departments (Planning, Inspectional Services, Engineering, Public Works and Fire), present at public meetings of the Newton Housing Partnership, and meet with Ward Aldermen and neighbors. This preliminary review is an opportunity to suggest how a proposal may be modified to better address Newton's affordable housing goals and also help the developer anticipate concerns that may be raised during formal review by the ZBA.

Once in receipt of the application, the subsidizing agency will provide written notice to the Mayor, initiating a 30-day review period. During the course of the review period, the subsidizing agency will conduct a site visit, which local boards may attend, and will accept written comments from local boards and other interested parties. The subsidizing agency will consider comments received prior to issuing a determination of project eligibility. This comment period is the one opportunity where the City's elected leaders play a formal role in the process. All subsequent decisions related to the application are within the sole purview of the ZBA.

Upon issuance of the project eligibility letter, the applicant submits an application to Newton's Zoning Board of Appeals. Within seven days of filing of the application, the ZBA notifies local officials of the requested exceptions to Newton's ordinances and invites that official's participation (see Attachment A). The Planning Department also includes notice in its Friday Report to the Mayor, Board of Aldermen and interested citizens.

The ZBA must open a public hearing within 30 days of the application date. The ZBA notifies property abutters by mail in advance of the public hearing. In accordance with Attachment A, the ZBA generally follows this order of proceeding at the public hearing:

- (a) applicant's presentation
- (b) local officials
- (c) those appearing in favor of the application
- (d) those appearing in opposition to the application

City departments submit technical analyses and recommendations to the ZBA. Along with oral testimony at the hearing, the public and local boards are also invited to comment in writing while the public hearing is open. These letters become a matter of public record, as do all site, traffic and environmental plans, correspondence, and any other document submitted to the ZBA.

The hearing is deemed terminated when all public testimony has been received and all information requested by the ZBA has been received (see Attachment A). Once the ZBA closes the public hearing a decision must be issued in 40 days, unless the time period is extended by written agreement by the ZBA and applicant. The ZBA may approve the project as submitted, approve the project with conditions, or deny a comprehensive permit as not consistent with local needs (only under certain

conditions). If the application is approved, a comprehensive permit is issued. The applicant must still obtain various permits required by state statute, including a local building permit. If the ZBA rejects the project, or imposes conditions that the applicant believes makes the project economically infeasible, the applicant may appeal the decision to the state Housing Appeals Committee within 20 days of the ZBA's filing. If the ZBA approves the comprehensive permit, any person aggrieved may appeal within 20 days of the ZBA's filing. The HAC may overrule the local decision unless it is determined that the project presents serious health or safety concerns that cannot be mitigated.

NEXT STEPS

The Planning Department will be creating a user-friendly brochure outlining the major steps in the Chapter 40B process, similar to that created for the special permit process. This information will be available in hard copy and on the department's webpage along with other Chapter 40B resources. As they arise, public meeting and public hearing notices for Chapter 40B – and other high interest projects – will also be posted on the Village Views section of the city's webpage.

Attachment A - Zoning Board of Appeals Comprehensive Permit Application Guidelines

CITY OF NEWTON
RULES OF THE ZONING BOARD OF APPEALS

Effective October 26, 2010

CITY OF NEWTON
RULES OF THE ZONING BOARD OF APPEALS
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CITY OF NEWTON
ZONING BOARD OF APPEALS
RULES

ARTICLE I. ORGANIZATION

SECTION 1. MEMBERSHIP

The Zoning Board of Appeals shall consist of no more than five voting members.

There shall be five regular members, and there shall be five Associate Members, who shall serve in the case of a temporarily unfilled vacancy, inability to act, absence or conflict of interest on the part of a regular member, at the discretion of the Chairman.

SECTION 2. OFFICERS

The Board shall elect from its regular members at its first meeting in January of each year, or at the earliest possible meeting thereafter, when a majority of the Board is present, a Chairman, and a Vice Chairman from its regular or Associate Members, to serve for one year, and until their successors are elected.

SECTION 3. CLERK

The Board shall elect from the employees of the Inspectional Services Department of the City of Newton, at its first meeting in January of each year, or at the earliest possible meeting thereafter, when a majority of the Board is present, a Clerk to serve for one year and until his or her successor is elected.

SECTION 4. CHAIRMAN - DUTIES AND POWERS

The Chairman or appointee shall preside at all meetings of the Board. He or she shall vote and be recorded on all matters coming before the Board. Subject to these rules, he or she shall decide all points of order, unless overruled by a majority of the members sitting. He or she shall appoint such committees as may be found necessary or desirable by the Board.

In addition to the powers granted by the General Laws and the Ordinances of the City of Newton, and subject to these rules and further instructions of the Board, the Chairman shall oversee the work of the Clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. He or she shall establish sitting schedules for the meetings of the Board, which shall designate regular and Associate Members to sit on a rotating basis. He or she shall report on official business of the Board to the Board as necessary.

SECTION 5. VICE CHAIRMAN - DUTIES

In the absence, inability to act or conflict of interest on the part of the Chairman, the Vice Chairman shall perform the duties of the Chairman.

SECTION 6. CLERK - DUTIES

Subject to the direction of the Board and its Chairman, the Clerk shall supervise all of the clerical work of the Board, including:

All correspondence of the Board;

Publishing and mailing all notices required by law;

Receiving all petitions, appeals and related plans submitted to the Board, and approving same for form and information content; and

Maintaining all necessary files and indexes.

SECTION 7. ASSOCIATE MEMBERS

The Chairman of the Board shall designate one or more Associate Members to serve in the place of a regular member in the case of a temporarily unfilled vacancy, inability to act, absence or conflict of interest on the part of a regular member, and otherwise at the discretion of the Chairman.

In the event of a temporarily unfilled vacancy on the Board, the Chairman shall designate an Associate Member to serve in such position until the appointment of a new member.

SECTION 8. QUORUM

A quorum of the Board shall consist of four sitting members.

SECTION 9. ORDER OF SUCCESSION

Either the Chairman, or in his or her absence, the Vice Chairman, shall chair each meeting of the Board. In the case of absence, inability to act or conflict of interest on the part of both the Chairman and the Vice Chairman, the Chairman shall designate a member or Associate Member as Acting Chairman. In the event the Chairman does not so designate, the members and Associate Members then present not exceeding five in number shall elect an Acting Chairman from their numbers who shall perform all the duties of the Chairman related to that meeting.

SECTION 10. MEETINGS

Regular meetings of the Board shall be held at 7:00 p.m., or at the Chairman's discretion, on the fourth Tuesday of each month at City Hall with the exception of the months of July, August and December. Such meetings shall be open to the public and subject to the Open Meeting Law.

Special meetings of the Board may be called by the Chairman, or at the written request of two members of the Board. The Chairman will set the time and place of the special meetings. Notice of special meetings shall be given each member of the Board at least four days before any such meeting, unless such notice is waived by all the members of the Board.

Notices shall be posted and advertised as required by law. All meetings shall be recorded electronically.

SECTION 11. CONFLICT OF INTEREST

Any member who disqualifies himself or herself for personal interest from participating and voting upon any matter shall notify the Chairman and Counsel to the Board of any potential conflict or appearance of conflict as soon as practicable before the hearing at which said matter is to be heard. If the member is so disqualified, the Chairman shall state the fact of disqualification for the record and shall designate another member to sit in the place of the disqualified member, who shall thereupon leave the meeting (hearing) and shall not participate in any manner in the proceedings in which the matter upon which the member has disqualified himself or herself is discussed.

No Member or Associate Member shall represent any party of interest in any matter pending before the Board.

Pursuant to provisions of Chapter 268A, Section 17 of the General Laws (the so-called "Conflict of Interest Law"), nothing, however, in these rules shall prevent any Member or Associate Member from appearing before the Board in favor of or in opposition to any matter in which he or she has a direct personal interest, or from acting before the Board, with or without compensation, as agent or attorney for or otherwise aiding or assisting in any such matter involving members of his or her immediate family or any person for whom he or she is serving as guardian, executor, administrator, trustee or other personal fiduciary; provided, however, that said Member has disqualified himself or herself in writing in advance of the hearing from participating and voting at said hearing.

ARTICLE II. PETITIONS AND APPEALS.

SECTION 1. FORM AND FEE

Copies of each petition or appeal shall be filed in such form and in such numbers as the Board may from time to time prescribe, together with such other information and plans as the Board may further prescribe. The Board shall approve, by majority vote, written sets of instructions.

Any communication purporting to be a petition or appeal shall be treated as a mere notice of intention to seek relief, until such time as a petition or appeal is filed in the manner prescribed, and is accompanied with such other information and plans as are also prescribed. No petition or appeal shall be considered complete until the petitioner has filed a draft decision with his supporting materials. A model form for use by petitioners will be provided.

No variance from the provisions of the Zoning Ordinances will be considered by the Board except those variances specifically requested.

Each petition or appeal shall be accompanied by a filing fee, according to the fee schedule set forth below:

| | |
|---------------------------------|----------------------------------|
| Variance petitions: | \$500.00 |
| Appeals: | \$400.00 |
| Comprehensive permit petitions: | \$2,000.00 plus \$50.00 per unit |
| Non-profit – 7 or more units: | \$1,000.00 plus \$50.00 per unit |
| Non-profit – 6 or less units: | \$350.00 |

In the case of an appeal, a copy of the building permit refusal or the building permit as granted (if such permit is necessary) and of any other decisions or orders of the Inspectional Services Office shall be included with the appeal.

An appeal of an order or decision of the Commissioner of Inspectional Services shall be filed in the office of the City Clerk within thirty (30) days of the date of issuance of the order or decision.

SECTION 2. FILING

Before a petition or comprehensive permit will be advertised and heard, complete copies of such petition, together with such other information and plans, as prescribed by the Board, shall have been filed in the office of the Board's Clerk. Before an appeal will be advertised and heard, a complete copy of the appeal, together with such information prescribed by the Board, shall have been filed in the Office of the City Clerk and the Board's Clerk. No petition or appeal will be advertised and heard until the petitioner or appellant has filed a draft decision with the Board's Clerk as part of the submission. Any amendment or additional materials pertaining to a petition or appeal shall be filed by the petitioner or applicant no later than twenty-one (21) days before the scheduled hearing date. In the event that additions to the petition or appeal are filed after this deadline, the Clerk of the Board and/or the Chairman may in his or her discretion, continue the hearing to a later scheduled hearing date. The Clerk's and/or the Chairman's discretion shall be exercised upon a determination of completeness of the petition or appeal and he or she shall notify the applicant of this decision.

SECTION 3. REQUIRED PLANS

There shall be filed with each petition or appeal legible copies of a plan of the land to be affected, in such form and in such numbers as the Board may from time to time prescribe, on written instruction sheets which shall be available at the Department of Inspectional Services.

This plan shall be stamped and signed by a land surveyor lawfully registered in the Commonwealth of Massachusetts.

The required plans shall have been approved as to form and informational content by the Department of Inspectional Services before filing.

SECTION 4. OUTSIDE CONSULTANTS

Pursuant to G.L. c. 44, §53G and Newton Revised Ordinances 22-4. Employment of Outside Consultants, the Board, sitting as a board of appeals under G.L. c. 40A, §12 and G.L. c. 40B, §21, may hire outside consultants whenever the Board determines that the City lacks sufficient staff resources or expertise to provide timely reports or reviews of pending petitions. The Board may confer with the Director of Planning and Development and any other City officials, departments, commissions or agencies it deems appropriate in determining the need to hire an outside consultant(s) to provide reports or reviews on issues raised in connection with a pending application, including but not limited to, issues of (1) traffic, parking, and circulation, (2) noise, (3) historic preservation, (4) blasting, (5) removal of toxic or hazardous waste, (6) drainage systems capacity, (7) environmental protection, including conservation, erosion control, and watershed and floodplain protection, (8) similar issues affecting the public health, safety or welfare.

The applicant filing the petition for which an outside consultant is hired pursuant to this Rule shall pay the consultant's fee to the City. The fee shall be set by the Director of Planning and Development, shall be reasonable and shall reflect the estimated cost for the type of review or report requested from the consultant. Any fee charged in excess of the actual cost of the review or report shall be repaid to the applicant in accordance with the provisions of Rev. Ord. §22-4.

Any consultant hired pursuant to this Rule shall have an educational degree in or related to the field at issue, or three (3) or more years of practice in the field at issue or a related field. The Director of Planning and Development shall select the consultant in accordance with all applicable ordinances and state statutes. An applicant required to pay a fee for an outside consultant pursuant to this Rule may appeal the choice of consultant by requesting that the Board of Aldermen reconsider the selection made by the Director of Planning and Development or by seeking direct judicial review, if otherwise permitted by law. The applicant's appeal shall be limited to claims that the selected outside consultant has a conflict of interest or does not possess the educational or professional qualifications required by this Rule.

The Director of Planning and Development, or his designee, shall review each petition pending before the Board and in consultation with the Chairman shall determine prior to hearing whether an outside consultant or consultants should be retained on behalf of the Board to evaluate such petition, in accordance with these Rules. If the Director of Planning and Development determines that a consultant is required, such consultant may be retained prior to hearing. Any decision by the Director of Planning and Development to waive the requirement of a consultant shall not be binding upon the Board. Any prospective applicant may, at his or her option, consult with the Director of Planning and Development prior to filing any petition before the Board in order to obtain the Director of Planning and Development's determination as to whether a consultant will be required.

ARTICLE III. HEARINGS

SECTION 1. QUORUM

A quorum for a hearing by the Board shall consist of four sitting members.

SECTION 2. NOTICE

Notice of hearing shall be given to the Planning Board, and shall be posted and advertised as required by law. In addition, notice shall be delivered by mail, postage prepaid to the petitioner or appellant, and the owners of land affected, including abutters and abutters to abutters within 300 feet of such land.

SECTION 3. HEARINGS TO BE PUBLIC

All hearings shall be open to the public and subject to the Open Meeting Law. No person shall be excluded unless he or she is considered by the Chairman to be a serious hindrance to the working of the Board. All hearings shall be recorded electronically.

SECTION 4. REPRESENTATION AND ABSENCE

A petitioner or appellant may appear in his or her own behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of a petitioner or appellant, the Board may postpone or decide on the matter, using the information it has otherwise received.

SECTION 5. ORDER OF BUSINESS

- (a) Call to Order
- (b) Petitioner's or appellant's presentation
- (c) Those appearing in favor of the petition or appeal
- (d) Those opposing the petition or appeal

Members of the Board hearing the case may direct appropriate questions during the hearing. Petitions and appeals will usually be heard in the order in which they are filed but may be heard in a different order upon decision by the Chairman.

The Chairman shall be responsible for the proper conduct of all meetings, and shall, subject to Section 4 of Article I, make determinations with respect to their orderly and proper conduct of the meeting.

No rebuttal on the part of any party will be allowed, without specific permission of the Chairman.

ARTICLE IV. DISPOSITION BY THE BOARD

SECTION 1. DELIBERATION

After the close of the public hearing on a particular matter or after all matters have been heard, at the option of the Chairman, the Board shall deliberate and vote upon each matter heard in a public meeting. Such public meeting may take place on the same evening as the hearing or may be continued to a later time subject to the discretion of the Board. At the time of the deliberations, there shall be no further testimony or comment by individuals other than Board members without specific permission of the Chairman.

SECTION 2. VOTING REQUIREMENTS

The concurring vote of at least four members of the Board shall be necessary to reverse an order or decision of the Inspectional Services Commissioner, or to effect any variance in the application of the zoning ordinance.

The concurring vote of at least three members of the Board shall be required to approve a Comprehensive Permit application.

SECTION 3. WITHDRAWAL

A petition or appeal may be withdrawn at any time before it is advertised. Once the petition or appeal is advertised, it may not be withdrawn unless the Board gives its consent by majority vote at a regularly scheduled meeting.

The petition or appeal may only be withdrawn in writing and by the petitioner or applicant himself or herself, or by his or her authorized representative.

SECTION 4. RECONSIDERATION

Once a petition or appeal has been voted upon and the meeting adjourned, there shall be no reconsideration without a rehearing. Upon an appropriate motion, there may be reconsideration of a Board decision before the meeting is adjourned.

No petition or appeal, which has been finally and unfavorably acted upon, may be reheard within two years after such final unfavorable action, unless:

(a) all but one of the members of the Planning Board consents thereto after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered, and there is a vote of four members of the Board upon finding specific and

material changes in the conditions upon which the previous unfavorable action was based and a description of such changes in the Board's record of the proceedings, or

(b) where the prior denial by the Board was made "without prejudice".

SECTION 5. TIME LIMITS ON GRANTS

Rights authorized by a variance shall lapse within a year of its grant if not exercised. Extensions may be authorized for six months pursuant to Chapter 40A, Section 10 of the General Laws.

SECTION 6. STATEMENTS TO THE BOARD

Anything that the petitioner or appellant agrees to do, at the hearing, in relation to his or her petition or appeal, will be made a part of the decision and will be binding on the petitioner or appellant and his or her successors in title.

SECTION 7. INFORMAL OPINIONS

Any advice, opinion, or information given by any Board member, clerk, or other official or employee of the City of Newton shall not be binding on the Board.

ARTICLE V. DECISIONS BY THE BOARD

SECTION 1. TIME LIMIT FOR DECISIONS

Decisions of the Board on variances and appeals shall be made within 100 days of the date of filing a complete appeal or petition with the Board or such extended time as the applicant has granted.

Decisions on Comprehensive Permit applications shall be made within 40 days after termination of the public hearings.

SECTION 2. SIGNING OF DECISIONS

The Chairman or Acting Chairman of the Board may, unless otherwise requested by a voting Board member, sign the decisions for each member. Such requests for personal review and signing shall be made at the time of each member's deliberation and vote.

SECTION 3. TIME LIMIT FOR FILING DECISIONS

A record of decisions of the Board shall be filed within 14 days of the proceedings, with the City Clerk, and shall not be made public until so filed.

SECTION 4. NOTICES OF DECISIONS

Notices of decisions shall be mailed forthwith to all parties in interest, to the Planning Board, and to every person present at the hearing who requests that notice be sent to him or her, and states an address to which such notice is to be sent.

SECTION 5. RECORDING OF VARIANCES

No zoning variance or any extension, modification or renewal thereof shall take effect until the notice provided therefore by Section 11 of Chapter 40A of the General Laws is recorded in the Middlesex County South Registry of Deeds by the petitioner.

The fee for recording such notice shall be paid by the owner, and the original notice shall be returned by the Registrar of Deeds to the Clerk of the Board with the Book and Page of recording noted thereon. No Building Permit shall be issued by the Inspectional Services Department without receipt of proof of recording in the Registry of Deeds.

The Clerk shall maintain files of all recorded variances and shall transmit copies to the City Clerk.

In the event that the variance affects other land, in addition to the land originally affected by the appeal or petition, such other land shall also be identified upon the notice, which is recorded.

ARTICLE VI. MISCELLANEOUS PROVISIONS

SECTION 1. CONFLICTS OF LAW

All matters upon which these Rules are silent shall be determined by the applicable provisions of Chapter 40A of the General Laws and of the Zoning Ordinances of the City of Newton.

In the event of any conflict between these rules and any provision of the Zoning Ordinance, the Zoning Ordinance shall control.

SECTION 2. ADOPTION OF RULES

These rules shall become effective upon adoption by a majority of the Board, and upon filing a copy thereof with the City Clerk.

Copies of these Rules as adopted, and as amended from time to time, shall be furnished to the Mayor, to the Board of Aldermen, and to the Planning Board. Copies of these rules shall be kept available by the Clerk of the Board, for inspection by any person at reasonable times.

SECTION 3. AMENDMENT OF RULES

These rules may be amended from time to time, as necessary and proper, by a majority vote of the Board.

SECTION 4. SEPARABILITY

If any provision of these rules is declared invalid, such invalidity shall have no effect on the validity of the remaining provisions of these rules not so in conflict.

AS APPROVED BY THE ZONING BOARD OF APPEALS – October 26, 2010.

ZONING BOARD OF APPEALS

By its Chairman,

Harvey A. Creem



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#81-13
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner, Long-Range Planning

RE: #81-13: DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones.

MEETING DATE: September 23, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

Can naturally affordable housing, housing that is affordable to families earning the regional median income of about \$100,000, be built in the City of Newton without public subsidy and offer sufficient profit to a developer that one might choose to do so as a practical business decision? As the City of Newton wrestles with the important issue of providing affordable housing, it must recognize that the need is great, the amount of subsidy available extremely limited and therefore the City must rely on the market itself to produce some of this housing. This memo and the attached report, represents the beginning of an exploration of this question analyzing the obstacles to creating naturally affordable housing in Newton and possible solutions.

The issue of affordable housing and housing supply generally is increasingly one of the greatest challenges facing the entire Boston region and is a central concern in Newton. The most recent issue of MassBenchmarks, a journal tracking the Massachusetts economy produced by the University of Massachusetts and the Federal Reserve Bank of Boston warns that "the sustainability of our recovery may be stymied by archaic state land use policies which make it difficult to develop new housing." The

statement echoes that of nearly every analysis of the Boston regional economy that, whether one is looking at the direct impacts on construction job growth or the indirect impacts of increasingly unaffordable housing challenging the economically competitive position of the region, the low rate of housing construction, particularly of multi-family housing, is a serious issue that must be addressed. Locally, the *Newton Comprehensive Plan* calls for the development of additional housing, recognizing that without a greater variety of housing types and without a greater supply of affordable housing, Newton risks becoming a less diverse place and a place where the children and grandchildren of current residents will be unable to afford to live in the future.

The housing issue is itself a challenging one though, particularly for a city like Newton where new growth will come in the form of redevelopment and infill in existing neighborhoods and villages. These types of changes are difficult to adjust to and the community must be engaged in the planning process so that the City can understand the full depth of the issue through dialogue and learning. An engaged community provides guidance to community leaders who ultimately must make the policy decisions so that these leaders can understand the concerns, hopes, and interests of the community with regard to these issues of change. In this process, the City must also reach an understanding of the implications of growth on the City's fiscal position.

Affordable housing itself is difficult to build in the current real estate environment of Newton. There are multiple factors that come into the final cost of a home – land costs, construction costs, quality of materials/construction, borrowing costs, land entitlement costs and others. In Newton, and much of the Boston region, many of these costs are very high, particularly the cost of land and construction. Newton helps to manage these costs for affordable housing developers through a limited supply of subsidy dollars. At the same time, as a result of the City's zoning regulations, there is a very high land entitlement cost, particularly where a special permit is required. In addition, by maintaining low development densities, the City maintains a high cost per housing unit for land.

Background

When the 2010 Zoning Reform Group was analyzing the existing ordinance and developing an understanding of the disconnect between the City's zoning ordinance and the City's *Comprehensive Plan*, the question was raised, could a for-profit builder in Newton develop housing that would be affordable to a family making around \$100,000 a year? Members of the Newton Housing Partnership took up this question, looking at available land, land and development costs, and being mindful of those locations and styles of development that might be compatible with existing community character. The attached "Naturally Affordable Compact Housing " report is the result of that analysis, concluding that so-called naturally affordable housing could be produced in Newton given the right set of circumstances. Critical to reaching that conclusion were a number of necessary changes to the existing zoning ordinance, identified in the report.

Next Steps

The Compact Housing report identifies a number of changes to the Newton Zoning Ordinance as necessary to achieving this goal of creating naturally affordable housing. The central idea is the creation of a defined “Compact Housing” use that would be allowed in the Multi-Residence 1 District (MR-1). One of the more critical changes identified is relief from the special permit requirement for this category of multi-family housing. Instead, the report recommends utilizing the site plan review process. ZAP should consider the benefits and concerns raised by these types of changes and direct staff as to what additional information might be useful.

Ultimately, the problem the proposed compact housing amendment is looking to address is the barriers to the creation of naturally affordable housing inherent to the existing zoning ordinance. There are likely multiple means towards addressing this issue. As has been outlined above, there are very good policy reasons for addressing this issue, but also very real challenges that must be considered and resolved. Fundamentally, the Newton Zoning Ordinance is a 1950s era document and the local and regional land use environment has changed considerably since that time suggesting, as has already been concluded, that it is time for the City to consider substantive zoning reform. The issue raised by this compact housing proposal is an essential one and also a very difficult one and, for those reasons, it is one of the most important issues that must be addressed in the substantive zoning reform process of phase 2.

With regard to the specifics of the compact housing proposal, the Zoning and Planning Committee has the option to continue discussion of this specific proposal, to request more information on the larger policy question of affordable housing and housing supply, and/or to leave the issue for discussion and analysis in the substantive zoning reform effort of Phase 2, with the opportunity for substantial community engagement to further inform the process.

ATTACHMENT A: “Naturally Affordable” Compact Housing

“NATURALLY AFFORDABLE” COMPACT HOUSING

Newton Housing Partnership Zoning Group¹

May 8, 2013

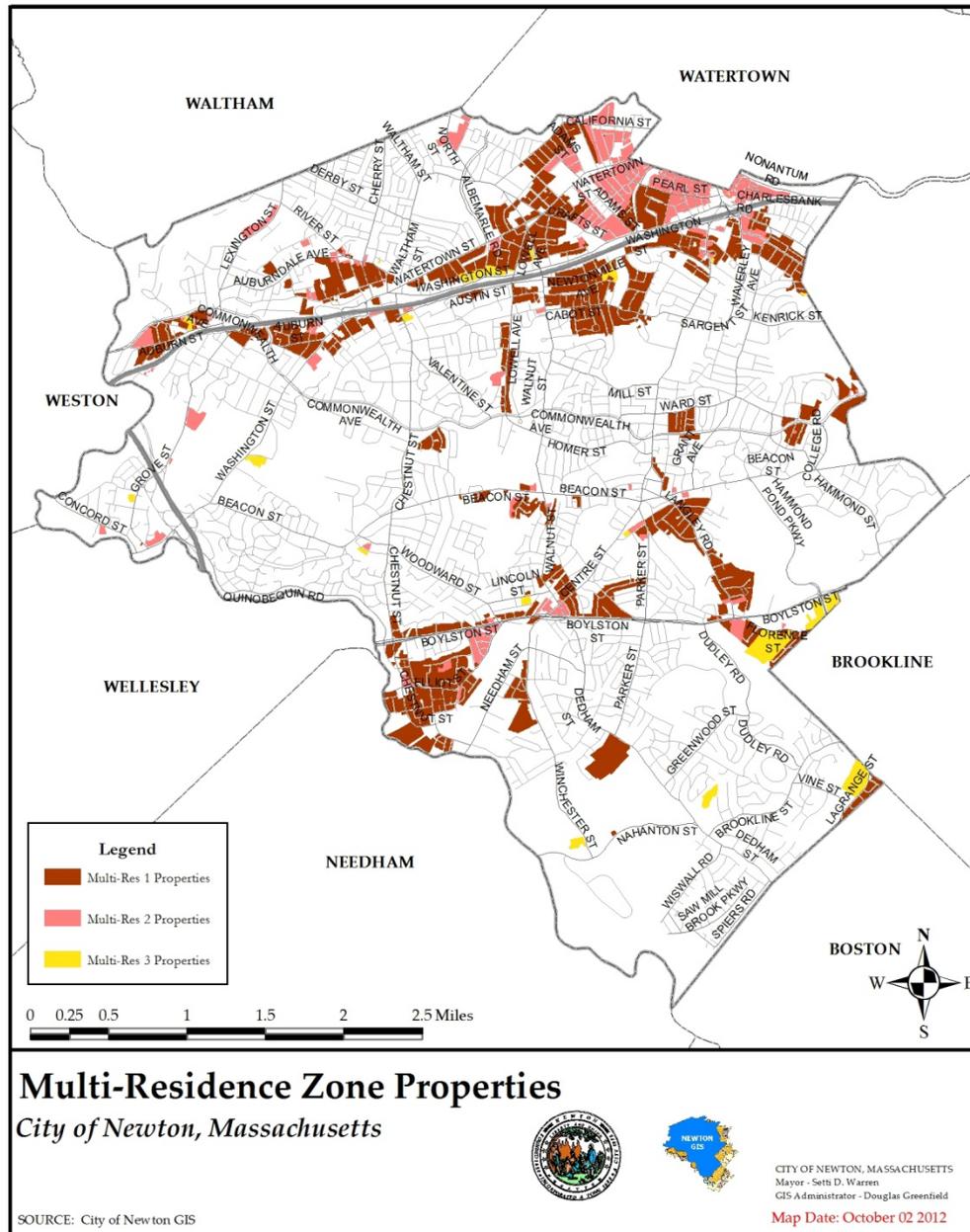


Cottages on Greene, East Greenwich, RI

Newton’s Zoning Review Group and others have urged efforts to enable “naturally affordable” housing in Newton, that is, housing that is relatively affordable without public subsidies or deed restrictions. In response, the Newton Housing Partnership’s Zoning Group is exploring zoning changes to enable scattered small housing developments compatible with their context and priced substantially lower than is common in Newton without subsidies. It appears that yes, naturally affordable housing could be feasible though the likely amount of such housing being built is modest.

Assisted greatly by the Information Technology Department and by the Assessor’s materials, we reviewed land prices, contextual compatibility, and zoning in relation to Compact Housing. Those studies made clear that by far the largest opportunity for such housing would be in the City’s Multi-family 1 district (MR-1: see map), which is relatively extensive, and has many areas where existing housing is at densities similar to that necessary to achieve “natural affordability.”

¹ Judy Jacobsen (Chair), Josephine McNeil, Sheila Ardery, John Wilson, Philip Herr



The areas zoned for still-higher densities, such as MR-2 and business-zoned areas, offer few if any locations not preempted by existing development or by land prices. Within lower-density areas zoned for single-family development the densities necessary to achieve “natural affordability” would rarely be compatible with the existing built context, so those areas were not studied, although it is possible that locational exceptions there might be found where higher density could be created without resulting in neighborhood incompatibility.

THE “COMPACT HOUSING” FINANCIAL WINDOW

None of the best of the sites we identified for “Compact Housing” housing were currently for sale, though a few of them had recently changed hands, indicating some degree of availability. We made a sketch design of Compact Housing on two abutting feasible sites to get an initial sense of the likely barriers presented by existing zoning, especially in the MR-1 district, but also in MR-2 and B-1, B-2 and B-3 districts.

Since the test site was surrounded with, by Newton norms, relatively small dwellings, our test design used a tight collection of similarly small structures, each having from one to three housing units, so that the development would have scale compatible with its neighbors. The configuration was not unlike some recent “cottage developments” that have gained positive attention nationally, one an affordable development in East Greenwich, RI and the other a market rate one in Concord, MA. With that configuration and relatively small floor areas per unit (averaging under 900 sq. ft. per unit), it appears that market-rate units would be profitable for developers and affordable to folks having annual incomes just above the Boston area median of about \$100,000, with sales prices averaging a bit under \$350,000. That financial analysis reflects that Newton’s inclusionary zoning would require 15% of the units to be priced still lower. Rental outcomes were similar: rental units, too, might be affordable to households with an income of 100 – 120% of the area median income, although that “cottage” style of units is better suited for ownership.

A price of around \$350,000 is well below that of new market-rate housing in Newton. However, to meet that cost level, the units are small, don’t have the expensive features common in the Newton market, and are not in the highest price locations in the City. That seems about right for the intended market: first-time homebuyers and empty nesters with incomes of about \$100,000. The units would likely attract purchasers or tenants, but not in huge numbers, so that deed restrictions should not be needed to assure that the units would remain relatively low-priced for Newton. They would be “naturally affordable:” just attractive enough to succeed in the market that they are intended to serve.

COMPACT HOUSING’S NEEDED ZONING ENHANCEMENTS

The design we used to estimate costs could not be developed under Newton’s current zoning. In some cases the needed departures from zoning are not individually crippling, but unless waived, collectively they would make achieving the goal of building compact naturally affordable housing very unlikely. Adding further requirements beyond those commonly required, such as rezoning of the site in order to build in this alternative way, would make it yet more unlikely to attract developers. However, a firm but reasonable

set of guidance rules that assure compatibility, administered through site plan review without need for a special permit, could make Compact Housing attractive to both developers and neighbors. The approval process would then be relatively simple, much like that of building one- and two-family dwellings.

“Compact Housing” could be defined as a category of use, initially allowed only within the MR-1 district, where the great majority of suitable sites appear to exist. It would be allowable by right for developments having no more than, perhaps, 20 dwelling units. Controls could assure that the development will be visually and functionally consistent with its context. Review procedures would be crafted to give neighbors opportunities to view and express views on the consistency of development that is being proposed with the design and other guidance materials that are applicable for it.

Given that basic approach, these are the departures from current MR-1 requirements that would be needed to enable Compact Housing to be developed.

Allowable category of use

In the MR-1 district the only form of multi-family dwelling allowed is “attached dwellings,” which typically are “townhouses,” a configuration not always appropriate for the housing being contemplated. A broader set of dwelling types for Compact Housing in the MR-1 district would be essential, perhaps as simple as allowing multi-family dwellings, as allowed in MR-2 and 3.

Minimum lot area per dwelling unit

The MR-1 district requires 4,000 square feet of lot area per dwelling unit. With smaller dwelling units a smaller lot area per unit would be comparable. Our test sketches averaged lot area of 3,200 square feet per dwelling unit: perhaps the rule for Compact Housing could be 3,000 square feet per unit, which is still in scale with densities commonly found in that district.

Minimum front, side and rear yard setbacks

The MR-1 district requires 25 feet for front, side and rear setbacks for attached dwellings, which in many parts of the MR-1 district are substantially larger yards than those existing: they require contextual inconsistency, commonly leading to costly appeals for relief. In contrast, Business district setback rules generally are contextual, typically being the smaller of the average of abutting lots or half of the proposed building height. Alternative rules similar to those in the Business districts would allow and assure contextual consistency for Compact Housing.

Maximum floor area ratio

The ratio of floor area to lot area is not regulated in the MR-1 district except for one- and two-family dwellings. To allay concerns about Compact Housing resulting in structures excessively large for the lot, and to avoid having to establish a maximum allowable floor area per dwelling unit, which might raise both legal and administrative concerns, an FAR limit of 0.38 might be adopted for Compact Housing in that district, which is the same as the most restrictive for single- and two-family dwellings in the same district.

Parking rules

A number of the City's parking rules are too space demanding for Compact Housing to easily meet. Those parking rules are likely to be reconsidered City-wide as part of its planned zoning reform efforts. Through special permits the Aldermen commonly allow departures from the current rules without compromising function or safety. Enabling the same relief for this use within site plan review rather than requiring a special permit would reduce process costs for both applicants and the City.

CONCLUSIONS

Adopting zoning for Compact Housing in Newton as a form of "naturally affordable" housing could serve a number of purposes.

- ❖ If well crafted, it could make some new housing available in Newton for those households which can't be served by the market-rate housing now being developed in this City, and which are not income-eligible for subsidized housing.
- ❖ It could do that while minimizing the demands upon City administrators both in initial approval and, since deed restrictions won't be needed (except for the inclusionary units), in follow-on monitoring requirements.
- ❖ It could demonstrate how modest amounts of growth within our City's neighborhoods can take place with a now-unusual degree of compatibility with both the physical and the social context.

In response to this proposal, on behalf of the Housing Partnership Candace Havens has docketed #81-13 to explore naturally affordable housing in the MR1 Zoning District.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#80-13
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning 

RE: #80-13: THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project

MEETING DATE: September 23, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

Phase 1 of the Zoning Reform project is approaching the point at which staff and our consultant, Code Studio, will be presenting a draft zoning ordinance for review. The original schedule for this phase anticipated a draft ordinance by September but the project has fallen behind schedule, as the complexity of the Phase 1 task has become more apparent. Staff still expects to have a draft ordinance that is ready for review within the next couple months and, in preparation for that, wishes to discuss with the Zoning and Planning Committee, the final review process necessary to complete the project and bring the reformatted Zoning Ordinance forward for adoption by the Board of Aldermen.

Background

Efforts to reform Newton's Zoning Ordinance began in response to "broad sentiment that Newton's Zoning Ordinance is difficult to understand and administer and sometimes does not result in the best outcomes for the community" as stated in the executive summary of the 2011 Zoning Reform Group report. The Zoning Reform Group identified a two-phase process, with the first phase focused on enhancing the usability of the existing ordinance through reorganization, clarification, illustration, and the use of tables. On April 8, 2013 ZAP approved the Zoning Ordinance Assessment prepared by Code

Studio, which described a proposal to accomplish the goals of Phase 1 and identified specific approaches to the layout, organization, and clarification of the existing ordinance. In June, the Committee had an opportunity to review the outline of the new ordinance showing where various sections of the existing ordinance would go in the reformatted version.

Final Review Process

The final portion of Phase 1 entails six interconnected tasks:

1. General Overview: The general overview of the new zoning ordinance is an essential first task in this final part of the Phase 1 zoning reform project. The Zoning Ordinance itself works as one system with different provisions in different sections relating to each other such that how they interconnect is an essential part of the usability of the ordinance. In his final visit to Newton, Lee Einsweiler from Code Studio will make a general overview presentation, focusing on the issues of format, illustration and demonstrating the overall usability of the ordinance without delving too deeply into the details of the changes proposed. As Phase 1 is primarily about the organization of the zoning ordinance rather than the substance, the initial focus of review should be on this macro scale question of whether the draft ordinance presented offers a more usable document.
2. Detailed Review: In the course of clarifying and addressing inconsistencies in the existing ordinance there will be proposed language changes, illustrations, and choices between competing standards or interpretations. These changes will be discussed in the detailed review, working with staff over what will likely be many meetings. Staff will organize and present the detailed review in chunks of related areas of the ordinance; in some cases simply presenting a given section or chapter, in other instances bringing together parts of different sections that logically interconnect so that the aspect of the ordinance being reviewed can be examined as a functional whole.
3. Advisory Group: The real work of the advisory group begins at the end of the process when we have a draft ordinance to review. As intensive users of the Newton Zoning Ordinance and others with valuable knowledge and experience, the Advisory Group's role will be to participate in both the general overview and the detailed review, taking a first crack at reviewing and commenting on the draft ordinance. The advisory group will not be asked to arrive at a consensus as to whether the ordinance should be adopted or on any particular provision. The task of the advisory group is to offer their comments on what works, doesn't work, or to suggest changes, all within the context of creating a more usable version of the existing ordinance. All Advisory Group meetings are open to the public and will allow time for public comment.
4. The Zoning and Planning Committee. The Committee will meet frequently to discuss the new zoning ordinance in this final part of the project, discussing the general overview with Lee Einsweiler and the detailed review with staff. ZAP's role is the critical one of making the final decision on the suitability of the presented draft ordinance. Does it meet the goal of a more

usable ordinance? Are the choices made for illustration or clarification consistent with the intent of the existing ordinance? Are there other changes to be made? The Committee will have the benefit of the Advisory Group's comments and staff recommendations in this deliberative process, but the final decision on the recommendation that will be made to the full Board of Aldermen regarding the product of Phase 1 of zoning reform rests with this Committee.

5. Public Presentation. Community engagement is a core value of the City and the Planning Department staff. While Phase 2 of the zoning reform project will necessarily involve more extensive community engagement activities as it involves substantive changes to the zoning ordinance, it is important as the Phase 1 work concludes to begin to lay the groundwork for Phase 2 and to draw attention to the accomplishment of Phase 1 through a public presentation. Ideally, this presentation would be given during the zoning consultant's last visit. This presentation will highlight the new format and usability of the ordinance, while offering a broader educational piece on the topic of zoning generally.
6. Public Hearing and Board Adoption

Timeline

As of the date of this memo staff has not concluded when the draft zoning ordinance will be available for review. Generally though, the timeline will follow the outline below.

- Draft Zoning Ordinance delivered
- Ordinance posted to the web, distributed to ZAP and the Advisory Group for 2 to 3 weeks of review time
- Final consultant visit (2 days)
 - Advisory Group meeting, early evening
 - ZAP meeting (7:45)
 - Evening public meeting