



# CITY OF NEWTON

## Planning and Development Board

### AGENDA

DATE: **Tuesday January 16, 2018**  
TIME: **7:30 p.m.**  
PLACE: **Newton City Hall, Room 211**

**1. Minutes:** Approve minutes from December 4, 2017

**2. Updates:**

- a. Needham Street Vision Plan Meeting
- b. Food trucks
- c. Inclusionary Zoning
- d. Lodging Houses
- e. Recreational Marijuana
- f. Zoning Redesign
- g. Affirmatively Furthering Fair Housing
- h. 83-85 West St
- i. 236 Auburn St
- j. Upcoming CDBG RFP Process

**3. Next Meetings:**

- February 5, 2018 at 7:30 p.m., Planning & Development Board
- February 12, 2018 p.m., Joint ZAP/P & D (Tentative: Public Hearings on Lodging House Ordinance, Recreational Marijuana and Annual Clean-up of Zoning Ordinance)
- March 26, 2018 p.m., Joint ZAP/ P & D(Tentative: Public Hearings on Inclusionary Zoning and Shared Parking Ordinances)

Ruthanne Fuller  
Mayor

Barney Heath  
Director  
Planning & Development

Rachel Powers  
CD Programs Manager  
Planning & Development

Members

Scott Wolf, Chair  
Peter Doeringer, Vice Chair  
Megan Meirav  
Sonia Parisca  
Barney Heath, *ex officio*

1000 Commonwealth Ave.  
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# PLANNING & DEVELOPMENT BOARD MEETING MINUTES

December 4, 2017



## Full Members Present:

Scott Wolf, Chair  
Peter Doeringer, Vice Chair  
Jonathan Yeo  
Megan Meirav  
Sonia Parisca  
Barney Heath, Director of Planning & Development, *ex officio*

## Staff Present:

Rachel Powers, Community Development Programs Manager  
Jennifer Caira, Chief Planner

Ruthanne Fuller  
Mayor

Barney Heath  
Director  
Planning & Development

Rachel Powers  
CD Programs Manager  
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1. **Minutes from the Planning and Development Board Meeting held on November 6, 2017**
2. **Public Hearing/Vote: Ordinance Amendment to Allow Food Trucks #276-17**
3. **Board of Survey/Vote: Definitive Plan of Land Carlson Avenue Extension**
4. **Discussion: Northland Rezoning**
5. **Discussion of Needham Street Area Vision Plan**
6. **Discussion: Proposed Amendment to Newton's Inclusionary Zoning Ordinance**

## 1. Action Item: Approval of Minutes of November 6, 2017 meeting

Chair Wolf opened the meeting at 7:02p.m. The motion was made by Mr. Yeo and Seconded by Vice Chair Doeringer, and approved 6-0-0, to approve the minutes of November 6, 2017.

## 2. Public Hearing/Vote: Ordinance Amendment to Allow Food Trucks-#276-17

The Economic Development Commission, Councilors Fuller, Hess-Mahan, Kalis, Lennon, Lipof, Norton, And Sangiolo requesting amendments to Sections 17-46 through 17-50 in order to allow food trucks to locate and Operate on public streets in Newton subject to licensing by the Health Department and to location permitting requirements, initially restricted to Wells Avenue; and introducing new rules applicable to all food trucks operating in the City; and requesting amendments to Chapter 30 to allow food trucks in the Public Use District to the same restrictions and requirements.

The topic was introduced at the 11/13/17 ZAP Meeting. Dir. Heath presented the main points about the ordinance amendment. Food trucks would be restricted to Wells Avenue under the ordinance. This was originally considered a pilot program. Health department licensing remains the same under the amendment. A truck would need a location permit in order to locate. Coordination amongst the Planning and Development Department and business owners are required for scheduling. Only two food trucks are currently in their first year in permitting. First steps will include attracting food trucks and then finding appropriate mixes and locations. There has been strong support from Wells Ave property owners. The ordinance is clear in that it will not apply to food trucks serving in special event or catering capacity.

Vice Chair Doeringer noted a concern posed by an area deli owner that the trucks would cannibalize business from existing owners and urged protections. Dir. Heath explained that this effort is primarily to provide options. He further noted positive feedback gained relative to restaurant taxation. Ms. Parisca asked why this ordinance would only take place on Wells Ave. Dir. Heath raised the fear that food trucks would take away from brick and mortar restaurants. Once this fear is alleviated, the program may be expanded. Experience has shown, however, that food truck options do not hurt businesses, but serve to provide larger variety and produce more revenue.

Chair Wolf inquired if further changes or expansion would require the issue go back before the Planning and Development Board for consideration. Dir. Heath confirmed that zoning changes would in fact have to go back to the Board. Mr. Yeo hopes that the issue will not pose continuing zoning changes if this program goes well. Ms. Parisa also inquired about performance reviews. Dir. Heath responded that re-evaluation would occur after one year. Location permits are established for that one year.

#### Public Hearing (7:14pm)

##### *No Comments*

The motion was made by Vice Chair Doeringer and seconded by Ms. Meirav, and approved 6-0-0, to close the Public Hearing (7:14pm)

#### Discussion

Chair Wolf is generally in favor of approving the ordinance, and feels it up to City officials to exercise good judgment in the implementation. The Planning and Development Board reached a consensus in favor of the ordinance.

The motion was subsequently moved by Chair Wolf and seconded by Vice Chair Doeringer and approved 5-0-1 with Dir. Heath abstaining, to approve #276-17 the Ordinance Amendment to Allow Food Trucks.

### **3. Discussion: Proposed Amendment to Newton's Inclusionary Zoning Ordinance**

Dir. Heath spoke to several Inclusionary Zoning (IZ) updates, noting the upcoming public hearing at ZAP to discuss and receive feedback on this complex ordinance. The memo distributed to the board outlines the various pieces of the ordinance. The Planning and Development Department have reviewed a variety of ordinances locally and nationwide. The basic thrust is increasing the amount of affordability from the existing level of 15% to 20%/25% based on the size of a given development. Middle income units are also included in the ordinance. Dir. Heath provided a brief overview of the various affordability levels, tiers and goals of the proposed changes. Fractional payments are being introduced to acquire additional dollars for the IZ fund. IZ funds could potentially be leveraged with Federal funds to subsidize deeper affordability levels outlined in Tier 1. The revised ordinance will help to strike a balance between developing affordable housing and risk halting development.

The Planning and Development Department is beginning to have conversations with developers about the ordinance change. The public hearing will be instructive and provide critical feedback. Some internal testing has been done, but this being the ordinance's first time in the market place makes it difficult to anticipate all impacts. Mr. Yeo requested updated materials be distributed. Vice Chair Doeringer inquired further into the plan to use IZ funds for Tier 1 subsidies and utilizing an affordable housing trust. Dir. Heath clarified that an IZ fund is currently being used, but noted that the language may need to be strengthened in the proposed ordinance relative to the use and targeting of funds.

**4. Discussion of Needham Street Area Vision Plan: Discussion of Community Engagement Plan to assist in the Planning Department's creation of a vision plan document for the Needham Street Area**

Dir. Heath provided an update on the visioning efforts, particularly with putting together the engagement group. The first meeting of a nine series set is scheduled for December 11, 2017. The engagement group will provide feedback to the Planning and Development and Planning and Development Board with the intention of adopting the final vision as part of the Comprehensive Plan relative to Needham Street.

**5. Board of Survey/Public Hearing at 7:30PM: Definitive Plan of Land Carlson Avenue Extension**

**Roll Call (ALL MEMBERS):** Upon a motion by Chair Wolf and Vice Chair Doeringer, and passed 6-0-0, the Board of Survey was opened (7:30 pm).

City Engineer and Clerk of the Planning Board acting as the Board of Survey, Louis Taverna, introduced himself and the project proponent to discuss the Carlson Avenue Extension subdivision project for what is currently the driveway for the Mount Ida entrance. A small portion was approved by the Board of Survey May 2017. The land was subdivided and is now a private way designed to serve a new church. The current plan proposes to subdivide the remainder of Carlson Ave from a driveway into private way. A new subdivision would be created covering a total of 8 lots.

Engineering, Planning, and Fire Departments and Conservation agent have reviewed the project extensively and are not ready to make any recommendations as of yet. There are several issues to remedy through the developers and civil engineers. Country drainage one such issue. The Engineer Department needs to better understand the drainage design and anticipated impact to proposed residences and abutters of Wiswall Avenue. Mr. Taverna described 4 lots on the North West and another 4 lots on the South East side of the lot. An existing structure will be relocated to Mount Ida College. He indicated that Conservation agent, Jennifer Steele is ok with country drainage for time being, but requires more detail. Further, he does not recommend a vote this evening and reiterated that he remains neutral on Board of Survey matters.

Legal representative, Frank Sterns, introduced Brendon Giblin of Brendon Properties, the project proponents and development team. He noted that the college has undergone an extensive planning process. Their Board of Trustees decided to consider best use(s) of the land and sell in order to direct proceeds to scholarships and financial aid. The land is currently in a single residence district. They explored whether it would be best for college or residential uses. Mount Ida decided to move forward with the Carlson Ave lots, maintaining Carlson Ave in its current state as much as possible. The roadway serves the college and has had ongoing improvements. Neighborhood discussions are ongoing; a meeting was hosted last week.

Mike Dryer of Bolher Engineering walked the BOS through the project plans and existing conditions. In April a portion of Carlson Ave was extended, creating lot frontage in front of the church parcel. The proposal before the BOS is similar to that previous proposal, seeking to expand the right of way in order to create legal frontage in front of four lots on the North side and South side of the driveway. Each lot would comply with current zoning in terms of FAR and setbacks. Also, the plans recommend removing 59 parking spaces to be relocated on college proper. The physical improvements would be limited to installing utilities, sidewalks, sewage and power. There would be an overall reduction in non-pervious area. The designs will provide the ability for emergency vehicles to access and provide an enhanced entrance to the college. Schematics displayed the design of the future 8 house lots/ parcels. The proponents seek to maintain a strong vegetative buffer.

Chair Wolf spoke to the BOS process in anticipation of opening up for public hearing. Mr. Taverna also reiterated that any waivers granted would be added to the BOS conditions; Engineering is still working out additional details, such as sidewalks.

#### Staff

Chief Planner, Jennifer Caira shared two comments. Planning and Development would like to see sidewalks on both sides of the road and conditions regarding future street lighting. There were concerns regarding the lots' proximity to wetlands and the avoidance of blue LED lights to avoid impacts to wild life.

Vice chair doeringer asked for clarification on the addition of sidewalks. Dir. Heath also noted that the Conservation Commission continued their hearing until 12/21.

#### **Open Hearing: 7:48pm**

#### Public Comment

*Wendy Vaulton, 177 Wiswall Road:* Ms. Vaulton explained that her amazing backyard was a selling point when she bought her home. She is concerned about this change and whether the buffer zone is enforceable. She enjoys the current wildlife and would like to hear additional details around proposed greenspace, the drainage during construction and anticipated impacts to her property.

*Mr. Dryer, Project Manager, responded that the proposed buffer zone would be a strong benefit. All trees will be relocated and a detailed landscape plan will be prepared. Infill plantings will supplement existing landscaping, providing strong visual barriers between properties.*

*Chair Wolf inquired about a deed restriction to this end.*

*Jodie Steiner, 54 McCarthy Rd:* Though not an abutter, Ms. Steiner has been resident for 20 years and noted concerns about the decimation of Oak Hill Park due to development. She is seeing no regard for run off and impacts to wetlands. Losing foliage and increased drainage are also huge concerns. She has asked for clarification on what a vegetative buffer encompasses. What prevents a new owner from cutting down trees? Can it be required that homeowners maintain this foliage?

*Mr. Dryer reiterated the project's commitment to a comprehensive landscaping plan to address concerns around loss of foliage and drainage.*

*Chair Wolf asked how a final subdivision would appear in a subdivision approval? He concurred with resident concerns and inquired about a mechanism to maintain this land? He is worried about enforcement and potential violations.*

*Mr. Taverna noted that restrictions are filed with the Southern Middlesex Registry of Deeds. All new owners will need to abide by the approved subdivision plan; the buffer zones must be maintained as part of future permit conditions. The permit is the mechanism by which buffer zone remains. Further analysis, particularly regarding drainage and storm water management would be brought back to the P & D Board for further review.*

*Mr. Dryer also explained the flow of drainage and wetlands delineation. Stormwater will be mitigated.*

*Arthur Elzon, 103 Wiswall Rd:* Mr. Elzon purchased a home that abuts the church today. He would like to understand the transparency of what's going to happen. Aside from deed restriction, what is going to maintain and enforce buffer zones? He also spoke to traffic being crowded and plans to work on the Carlson Ave./Brookline St./Dedham St. intersection.

*Chair wolf inquired about the advertising of the BOS meeting. Frank sterns described the newspaper notice and notice distributed to abutters via certified mail. Over 200 households received this notice. Proponents also distributed a notice at the neighborhood meeting held at the college. He indicated this same process was utilized during the subdivision of the church parcel.*

*Neighborhood attendees in a consensus noted they never knew about the neighborhood meeting or church subdivision.*

*Jhonatan Rotberg, 143 Wiswall Rd: Mr. Rotberg stressed several neighborhood issues, including flooding of basements, (he lives south of the D4 lot); he also believes that the proposed buffer zone is misleading and not representative of what will actually be built. He is concerned for public lighting being reflected in homes. He mentioned an agreement between the college and City that this land would never be developed and wants to confirm if it exists.*

*Mr. Dryer explained that 3 low pedestrian level lights be installed. Lamps are there now.*

*Frank Sterns indicated that he is not aware of any such agreement. He encourages continued discussions and spoke to the college's financial needs, noting that it's critical to keep in context what the land could be developed for alternatively.*

*Morris Bartfield, 49 Carlson Ave: Mr. Bartfield thanked the BOS for holding this meeting. He believes that the area will never be the same again. The college is making money at the cost of the neighborhood and residents and he believes the college should be reprimanded. The traffic is abominable and will get worse. He spoke to all existing wildlife that will be disturbed. A profit will be made at the neighborhood's expense. This development will destroy fabric of neighborhood.*

*Ellen Crasnick; 163 Wiswall Road: Ms. Crasnick's family has owned their house since 1968. She spoke to an agreement between the City and college regarding a 60 foot buffer zone. The college cannot build on this land, and subsequently is selling this land. She is concerned because of the wildlife, loss of their habitats and removal of trees.*

*Mr. Dryer further explained efforts to reduce earthwork. Mr. Taverna explained that a record search would need to be performed by the Clerk's Department or Law Department if there was such a legal document. Chair wolf explained that the public hearing's purpose was to get these comments and hear out the neighborhood issues. Mr. Dryer is aware of the tree ordinance and issue of mitigating the loss of applicable trees. Detailed grading is currently being worked on. Compliance with the tree ordinance is a requirement of city.*

*Laurie Jackson, 41 Carlson Ave: Ms. Jackson has been a resident for 25 years. She is concerned about traffic and believes there should be other accessible roads to the college. She noted difficulty in getting out of the driveway and flooding. It was also noted that 4,000-5,000 square foot homes were out of line with the neighborhood.*

*Mr. Taverna commented that the traffic engineer is currently reviewing traffic concerns. He also mentioned current traffic improvements taking place along Carlson Ave./Brookline St./Dedham St.*

*Ranjan Mishra, 45 Dorothy Rd: Mr. Mishra agrees with other concerns that have been presented, particularly with regards to the traffic. He noted that his kids have stopped playing outside and requests engineering investigate this issue further. He also asked if the plan would change configuration of the cul-de-sac, now owned by church.*

*Freddy Gerard, 41 Carlson Ave:* Mr. Gerard shares the neighborhood's concerns and asked why notice wasn't given on the previous subdivision with the church. He also highlighted increased traffic stressors.

*John Guaragna, 183 Wiswall Rd:* In addressing topography of southwestern side of proposed parcels, Mr. Guaragna noted a substantial hill that would be destroyed by development. He shared concerns on drainage and would like to confirm that the new residences would be tied to the City sewer system.

*Mr. Dryer noted the necessary earthwork and topographic changes.*

*Pamela Burton, 149 Wiswall Rd:* In reviewing neighborhood concerns, Ms. Burton feels they're at an intersection between what is legally allowed versus what could be developed (i.e. dorms, etc). From conversations with staff, it seems that the laws aren't giving residents the best advantage. What can the planning department do on what is being proposed? Where can they meet halfway? She hopes the buffer will happen, but this is not currently law. How can the Planning and Development Department represent residents/the neighborhood and facilitate accommodation.

*Chair wolf spoke to the Subdivision Control Law and formal processes. Mr. Taverna also provided clarification on conditions that could be validly implemented/required.*

*A resident asked for clarification on definition of the private way, as it is the only road in and out of the area. Mr. Taverna explained that private way is defined as being maintained by abutters versus the city.*

*Julia Malakie, Newton:* Ms. Malakie is interested in the tree issue and concerned about the mammoth tree loss and changes in the ecosystem. She believes every effort should be made to minimize impacts on wildlife, the loss of canopy, while preserving the buffer. She would urge conditions go beyond the tree ordinance.

*Chair Wolf requests the Public hearing remain open.*

#### Discussion

Chair wolf expressed disappointment in the college for not giving a heads up regarding future development and subdivisions.

Ms. Meirav asked if college had the right to cut back the trees along the southern side. Mr. Stearns mentioned that there was no restriction, but the college needed to abide by the ordinance.

Vice Chair Doeringer asked if the Engineering Division memo is now part of the public record. Mr. Taverna indicated that he will work with Planning to include it on website. Vice Chair Doeringer urged all documents be available to the public and that Engineering conducts a field visit. Mr. Taverna agreed to assist in doing this in order to review further. Chair Wolf encouraged residents to sign up to receive the Planning and Development Department's Friday Report which highlights ongoing Planning Department projects and highlights.

Upon a motion by Mr. Yeo, seconded by Ms. Meirav, and passed 5-0-1, with Dir. Heath Abstaining, the item is on hold until further notice.

Upon a motion by Mr. Yeo and seconded by Ms. Meirav, the motion to adjourn the Board of Survey passed, 5-0-1, with Dir. Heath Abstaining (9:07p.m.)

## **6. Discussion: Northland Rezoning**

Stephen Buchbinder presented additional information to the P & D Board relative to Northland rezoning efforts. His office has prepared materials that outline the required dimensional requirements in the various zoning districts. He explained that density really comes in under the BU 4 district. The lot area per unit is also addressed in the chart. He noted a lack of flexibility in the business zones. Mr. Buchbinder is hoping the council addresses the lot area per unit issues moving forward. The documents also outlined various uses by newton zoning districts, highlighting what is allowed by right, allowed, special permit, and not allowed.

Northland has withdrawn their current request for zoning, due in part to the ongoing re-visioning process. Their hope is to refile next summer, which provides proponents an 18 month time frame to refile. He spoke to two Needham zoning districts (the Highland Commercial 128 and Mixed-Use 128 Areas) and what is allowed in comparison. An overlay district was created in 2016, which in turn allows additional density.

In terms of zoning, the developer cannot use MU4 because the Northland area is not a village center. Alternatives would be to try to create a new mixed use district, which is time consuming, and could take years, or move into a BU-4 area.

Mr. Buchbinder and his team commented on the removal of density bonuses and other challenges presented in the proposed Inclusionary Zoning Ordinance (IZ). Generally they come across communities providing a base zoning allowance and through IZ, additional units, on top of that. The proposed ordinance takes away from this, a divergence from other robust housing markets and has significant impacts. It has not been clear how any units have been created in the current ordinance, and it has become easier to develop through 40B. The proposed ordinance is more onerous. The Northland team supports IZ housing, but the proposal to require 25% is a serious barrier to creating more housing and the density bonus has been effectively taken away.

Mr. Buchbinder complemented several elements of the proposed ordinance, including sliding scale and fractional payments; but he would like to work further to address some of the ordinance's other issues. Northland has always planned on setting aside more than 15% affordable housing. They would like to see City staff access additional resources to further investigate. Extensive analyses were performed prior to new IZ Ordinances in Cambridge and Somerville.

The proponent further explained that 40B hinders creativity and limits what can be developed. They opted to forgo that process and work collaboratively with the community. They have held over 70 meetings with the public and seek to continue engagement. Both the current and proposed IZ Ordinances act as barriers to creation. Northland seeks fair and reasonable density and is happy to see such positive reactions with the public throughout visioning process.

## **7. Next Meetings**

Staff member Rachel Powers discussed the timeline for upcoming meetings and confirmed availability of board members.

## **8. Action Item: Adjournment**

Upon a motion by Chair Wolf and Vice Chair Doeringer, and unanimously passed 6-0-0, the meeting was adjourned at 9:40 p.m.



CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

December 6, 2017

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

- I. **That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Article III of Chapter 17 as follows:**
  - A. INSERT in the caption line of Article III after the word “Peddlers,” and before the words “and Canvassers”, the following language:  
“, Food Trucks”
  - B. INSERT a new Division 3 as follows:

DIVISION 3. FOOD TRUCKS

Sec. 17-46. Food Trucks Defined

A readily movable trailer or motorized wheeled vehicle, currently registered with the Massachusetts Division of Motor Vehicles, designed and equipped to cook, prepare, and/or serve food for human consumption as a mobile food establishment.

Sec. 17-47. License Required

No food truck may operate without a license issued by the Commissioner of Health and Human Services.

Sec. 17-48. Food Truck Locations

On-street food truck locations shall only be permitted on Wells Avenue. The Department of Planning and Development shall determine the specific location(s) and time periods during which permitted Food Trucks will be allowed to operate on Wells Avenue, taking into account public safety for vehicles and pedestrians. This restriction,

and the following permit requirement, does not apply to Food Trucks catering a special event or similar occurrence.

#### Sec. 17-49. Location Permit to Operate on Public Property

In addition to the license required in Sec. 17-47, a food truck operator wishing to operate on-street must obtain a location permit from the Department of Planning and Development and shall submit a permit application on a form provided by said Department, which at a minimum shall include:

1. A description of the business;
2. The location and time period, as determined by sec 17-48, for which a location permit is sought and during which, the vendor will be stationary and serving food;
3. Description of the Food Truck's presence on the street including any signs or objects that will be proposed to be placed on the sidewalk.
4. Proof that the vehicle has passed all necessary inspections required by the Newton Fire Department
5. Proof of a general liability policy in effect during all days and times for which a location permit is sought that names the City as an additional insured and is in a form and for an amount approved by the City;

Such a location permit exempts the permitted food truck from other City requirements for Hawkers and Peddlers in sections 17-27 through 17-29. The location permit shall have a duration of up to one year and is revocable based on non-compliance with the requirements of this ordinance. Should the number\_of location permit applicants exceed available locations, the Director of Planning and Development shall create an equitable distribution of available locations among qualified applicants. The Director has the authority to not issue a location permit based on legitimate public objectives to diversify food truck offerings in an area or due to issues related to past operations of the Food Truck vendor. No permitted Food Truck shall cease operations during the period covered by the location permit without notifying the Department of Planning and Development.

#### Sec. 17-50. Food Truck Rules

The following requirements shall apply to all food trucks operating in the City.

1. All food truck operators must comply with all applicable federal, state, and local laws, regulations, and ordinances, any conditions on a City license or permit, and any applicable City policies, procedures, standards and guidelines. All licenses

are issued subject to the licensee's compliance with this Section and these regulations. Licensees shall supply such information as the City or its agent may require for purposes of the proper enforcement of these regulations. The City or its agent, including the Police and other inspectional departments, may at any time inspect the premises to which the license applies to determine whether the licensee is in compliance with this Section.

2. No food truck shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters.
3. All food truck operators shall offer a waste container(s) for public use that operators shall empty at their own expense. The food truck operator shall inspect all adjacent streets and sidewalks within 100 feet regularly for purposes of removing any litter found.
4. Food trucks are encouraged to provide consumers with compostable or recyclable single service articles, such as compostable forks and paper plates, and a waste, recycling container, and composting container for their disposal. No Styrofoam products or plastic bags are permitted.
5. No food truck shall make or cause to be made any unreasonable or excessive noise in violation of section 20-13 et seq.
6. Grease and grey water must be contained and disposed of in accordance with State Sanitary Code.
7. Food trucks shall be limited to no more than 25 feet in length.
8. For food trucks on public property, the City reserves the right to require a food truck operator to temporarily move a food truck to a nearby location if the approved location needs to be used for emergency purposes, snow removal, construction, or other public benefit.
9. Food trucks must conspicuously display their license and any required permit on the windshield of the truck.
10. No mobile food vendor licensee may transfer a mobile food vendor license except upon application to and approval by the Health and Human Services Commissioner of the transfer.

C. RENUMBER Division 3. SOLICITORS AND CANVASSERS to Division 4.

- II. **That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 30 ZONING as follows:**

A. INSERT after Sec. 2.3.2.A the following new language:

B. Public Use District

1. Food Trucks on Wells Avenue only subject to Sec. 6.7.6.

B. INSERT after Sec. 6.7.5 a new Sec. 6.7.6 as follows:

6.7.6 Food Trucks

A. Intent. Food Trucks are intended to advance the following:

1. Bring variety to the availability of local food establishments;
2. Add vibrancy and interest to the street life of a district;
3. Encourage the advancement of new restaurants and food service businesses by serving as a form of business incubator for new restaurant ideas in a start-up phase; and
4. Create food options and amenities for underserved locations in the City.

B. Food Trucks Defined. Defined in City Ordinances Sec 17-46.

C. Rules for Food Trucks.

1. In the Public Use District, Food Trucks shall only locate on the public street 'Wells Avenue' according to City Ordinances Sec 17-48 and 17-49. Food Trucks are allowed on public land as part of a special event with a license from the Health Department.
2. A food truck shall not remain parked overnight.
3. A Food Truck is not required to provide parking.
4. A Food Truck must meet all of the requirements of City Ordinances sections 17-47 through 17-50.
5. A Food Truck operating as part of a special event or in a catering capacity for a private function is allowed in all districts.

Approved as to legal form and character:

DONNALYN LYNCH KAHN  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted

EXECUTIVE DEPARTMENT  
Approved:

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
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**Barney S. Heath**  
Director

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## MEMORANDUM

**DATE:** January 5, 2018

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

**FROM:** Barney Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development

**RE:#** Zoning Redesign: Zoning for Homeowners & Housing Presentations

**MEETING DATE:** January 8, 2018

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Since the last time the Zoning and Planning Committee has discussed the Zoning Redesign project there have been two events in the monthly event series; **Cracking the Code: Understanding Zoning for Homeowners** on November 29<sup>th</sup> and **Housing for Whom? Zoning, Affordability, and Fair Housing** on December 14<sup>th</sup>. Both events were well attended and generated interesting and varied comments and discussions among the participants. Summaries of the community conversations and feedback about zoning proposals are attached. Below is a brief summary of the primary policy ideas presented. Our intention with these Zoning Redesign event series discussions with the Committee is to elicit feedback from the Committee to inform the Policy Content Outline document to be presented in May/June.

The presentation slides and videos of the events can be found at:  
<https://courbanize.com/projects/newtonzoning/updates>

### Zoning for Homeowners – Discussion Held November 29, 2017

The intent of this presentation was to raise issues and potential ordinance changes that would be most relevant to homeowners considering making modifications to their homes. To that end, much of the policy ideas relate to the dimensional standards that govern the single and two-family uses. There were some overarching concepts discussed, then some specific ideas. Foremost, the following objectives for the new ordinance were presented:

1. Easy to use and administer.
2. Clear guidance on what a homeowner can do.
3. Reasonable ability to modify a property to meet a homeowner's changing needs.
4. Ensure changes to property respect the context of the neighborhood.

Context is an important component of this subject area and appears to be one of the most significant concerns that residents have with regard to changes homeowners may make to their properties. Most prominently in this category is the concern over complete teardowns and the frequently very large replacement homes. As was discussed at the event, this issue of contextually appropriate development in Newton's neighborhoods is one of the central issues to be addressed in this project (hence the approach of the new ordinance is a context-based ordinance). Addressing this issue will require the designation of new zoning districts that more closely align to the reality of the actual existing homes in the city, with the Pattern Book providing the data necessary to develop such districts, and the use of lot or building types to better organize and present the dimensional requirements of the ordinance and tailor them to the types of homes existing in the city.

As a context-based ordinance with new zoning districts, staff will be proposing a number of changes to how dimensional requirements are addressed, with some variation based on the district. Front setbacks in many districts would have both a minimum and a maximum setback, instead of just a minimum as the ordinance currently states. Staff is also considering changes to how height is measured, looking at approaches taken by other communities that may better incorporate issues of sloping topography. This would reduce the likelihood of ambiguous height measurements and drainage problems when homeowners build artificial slopes to gain more height. Most significantly, staff is proposing removing Floor Area Ratio (FAR) as a regulating tool because using FAR has contributed to the ability of homeowners to construct new homes that are out of proportion relative to the surrounding context. Staff is proposing replacing FAR with lot coverage, building width and depth requirements, and more detailed height restrictions. By using massing regulations based on the existing lot context, the zoning for buildings would reflect site specific dimensions.

Staff also presented the idea of revisiting requirements limiting front facing garages. In some districts, particularly those with smaller lots and homes generally closer to the street, garages would be restricted in width and location. Requiring garages to be located behind the front façade of the home would reduce the likelihood of a street that feels like an alley.

Finally, staff is proposing to bring the fence ordinance into the Zoning Ordinance to ensure greater consistency and allow zoning to more comprehensively regulate together the impact of building *and* fence structures on the lot. Vegetation used as de facto fences would be regulated as well. Furthermore, staff is recommending more stringent regulation of retaining walls, including requiring those exceeding four feet in height to get a Special Permit wherever they are located on the property.

## Zoning and Housing – Discussion Held December 14, 2017

Zoning regulations are one of the most significant determinants of housing production in Newton. Newton's Housing Strategy published in 2016 identified a significant need for more affordable housing and more diverse housing choices. Better meeting the housing needs of Newton would ensure that the city both retains a degree of economic diversity and provides housing options to meet the needs of a younger workforce and older adults. People at early stages of their working life and people at retirement age are two demographic groups that have demonstrated market preferences for non-single family housing options in walkable locations. The data for Newton shows significant declines in economic diversity as low, moderate, and middle income households in the city are being replaced with wealthy households. Other findings include a strong need among all employer types in the city for housing choices for their employees, and the need to provide options for the increasing older adult portion of the city's population. These findings are similar in nature to those of most communities in the great Boston region, illustrating the nature of the housing crisis the Governor and other cities in the region are taking action to address.

In the event, staff placed an emphasis on the City's obligations under Fair Housing law. Fair Housing requirements extend across all aspects of housing access and housing development. Zoning is central to fulfilling the requirement for Newton to take meaningful action to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. Fair Housing law identifies protected classes and Newton is required to be free from barriers that restrict access to housing opportunity for these protected classes. Specifically, staff is proposing that Fair Housing be explicitly included within the purpose statement of the Zoning Ordinance, be acknowledged in the development review processes section of the Ordinance, and that potential barriers in the form of setback requirements and the regulation of group homes be updated and revised to reflect the current Fair Housing Law.

As described in Newton's Comprehensive Plan, and nationally recognized as a best practice for a wide range of environmental, economic, transportation, and public health reasons, the best place for multi-family and mixed use development is in walkable, transit oriented locations. For Newton, this practice is reflective of how the city developed historically, before the 1940s. With the creation of Newton's current Zoning Ordinance in the 40s and 50's, largely reflective of zoning ordinances nationally at that time, the City introduced the concept of lot area per unit among other requirements. In total, these requirements resulted in multi-family style developments like Towers at Chestnut Hill, Nahanton Woods, and other projects largely found across the southern portion of the Newton that feature large lots with large areas of parking and greenspace. This approach to development does not work in the walkable, mixed use environments that characterize Newton's villages, requiring that the City consider new approaches to multi-family zoning that fit within the context and promote walkability. The Mixed Use 4 district presents a good starting point.

The Housing and Zoning event presentation also featured a discussion of so-called "Missing Middle" housing types. These are mid-scale residential housing types that were once prevalent



throughout the country, but are largely no longer produced. As the market for walkable communities has surged, there has been renewed interest in these housing types, but most zoning ordinances make them difficult if not impossible to produce. The presentation highlighted several examples from triple deckers to courtyard apartments. At the meeting, staff asked participants to consider what types of places these building types might fit and to consider the types of review processes that would make sense.

Finally, staff presented on the proposed Inclusionary Zoning Ordinance. As the Zoning and Planning Committee will be taking this item up in an upcoming meeting, we won't spend additional time on it here.

### Discussion

As was noted above, the purpose for bringing these presentations and the community feedback received to the Committee is to elicit discussion of the ideas presented. This discussion will inform the policy content outline document that will be presented to the Committee in May. This document will provide a complete outline of the proposed Zoning Ordinance, with the policies and regulatory approaches for each topic described. After feedback from the Committee, this document will be turned into draft Zoning Ordinance text, which will come back to the Committee in the fall.



## **Summary Report**

### **Cracking the Code: Understanding Zoning for Homeowners**

The third event in the Zoning Redesign series took place on November 29<sup>th</sup>, 2017 and focused on Newton's Zoning Ordinance for single- and two-family homes. With over 90 people in attendance, this event had the highest turnout yet in the series, perhaps because the majority of Newton is single- and two-family residential. The event followed the standard format used in the series where City staff presented on Zoning 101 and then spoke to the content relevant to zoning for homeowners. Staff then facilitated a few clarifying questions before breaking into smaller discussion groups where attendees delved into more detail on the presentation materials and provided feedback. At the end of the event each table shared one important or new idea that was generated by their discussion. Ahead of the event, the project team released an informational sheet which provided the basic structure of the presentation. This is appended to the end of this summary report.

#### **Zoning proposals on four ways to make zoning for homeowners**

The presentation on Zoning for Homeowners began with a summary of the objectives that are aimed for in Zoning Redesign with regard to single- and two-family zoning. Through this re-write process, the future zoning ordinance should be easy to use and administer by homeowners, elected officials, staff, and other real estate stakeholders. By providing clear guidance on what a homeowner can do through zoning will help people understand how zoning affects them and their property. An objective is to provide homeowners with reasonable ability to modify a property to meet their changing needs. Finally, zoning should ensure that changes to individual properties respect the context of the neighborhood.

The reality of meeting all of these objectives requires that Newton's stakeholders grapple with the need for zoning to strike the right balance between flexibility and predictability. How to strike this balance was one of the main areas of feedback that attendees at the event provided. Not surprisingly, people liked having both: flexibility for homeowners to make changes to their property and predictability for neighbors to understand what their neighborhood may look like in the future. When considering their own property, people want to make reasonable changes without unnecessarily struggling with a complicated and costly process. They also want to preserve the financial investment they have made in their home, often the largest investment a person or family will make in their lifetime.

Table discussions discussed how to determine what type of changes should be deemed appropriate. Both the presentation and group discussions focused on how tools in zoning that can help homeowners determine if changes fit in with the context of the neighborhood or street.

## Community Feedback: Lot Types and Context Based Zoning



Staff presented the idea of using neighborhood-specific contexts that are more individualized to the varying areas of Newton. This concept resonated with many of the attendees who like the idea of a zoning code that reflects this variation more precisely. The biggest question that arose from table discussions is where and how the context of an area is measured; in other words, what is the baseline for defining the context?

Attendees were largely surprised at the high proportion of lots in Newton – 87% - 95% - that are currently non-conforming to the Zoning Ordinance. With regard to context, one table wondered, if 87% doesn't conform with current zoning, how will the context be determined? Attendees recognized they most likely live in a non-conforming home or lot and therefore want to know, how will the new zoning take into account these properties. Several tables supported having minimum lot sizes be more flexible.

Not surprisingly, many people are concerned about teardowns of older homes in neighborhoods and how new, larger homes change the look and feel of a street. If a house is torn down, at least one table suggested, new zoning rules should apply to the new building. A similar idea was that lot sizes should become conforming if a house is torn down. Concern about tear downs also led to the question of whether newer building stock would be used as part of the context for an area or if older building stock would be used. Several tables recommended that contextual measurements could be made as an average of the homes' dimensions found a particular street. The ability to use the Pattern Book as part of this exercise is one that will prove useful as the project moves forward.

In general, people want to find ways for the new zoning ordinance to protect modest homes and protect older homes. In some cases, as one table pointed out, doing a rehab to an old home is too expensive, so tear downs shouldn't be banned altogether. Accessory apartments were brought up, again, as a way to encourage existing housing stock to remain while allowing for marginally more units.

## Community Feedback: Proposed Dimensional Controls Policy

### Proposed Dimensional Controls Policy

Goal: Support more easily interpreted and enforced rules that result in contextually appropriate development.

1. Have min and max setbacks.
2. New rules for measuring height – better account for slopes.
3. Replace FAR with some combination of:
  1. Building width & depth rules
  2. Building lot coverage rules
  3. Stepback plane rules



While FAR is probably a new and somewhat complicated zoning tool for most people at the event, table discussions provided thoughtful feedback on proposed dimensional controls. Overall, people thought dimensional regulations for the volume of the home should dictate that any allowed growth be proportionate to the lot, neighborhood, and account for topography. Because of Newton's topography, people understood the need for more precise way to measure height especially on hilly lots. Many expressed concern about lots that are regraded and the effects this may have on run-off issues and erosion. For setbacks, people liked the idea of ensuring that setbacks relate to the size of the lot. Residents want to see their access to sunlight protected and are interested in height and dimensional controls that take shadowing effects on abutting properties into consideration.

## Community Feedback: Proposed Garage Policy

### Proposed Garage Policy

Goal: Support strong connection between homes and street and promote welcoming streetscape.

1. Set a minimum front setback for garages behind the front building facade.
2. Set max garage width based on percentage of building width.
3. Vary these rules based on context district.



Attendees largely understood the need to limit garage dimensions and their orientation in order to support strong connection between homes and the street. Several tables supported the proposal to have garages set back from the front of a home. Some people wondered about locating garages on the sides of properties instead of facing the street. The need to respect and meet the homeowners need for flexibility does need to be taken into consideration, however. One table pointed out the garage ordinance may want to consider predictions about future personal car ownership and changing transportation options such as ride share and autonomous vehicles.

### **Community Feedback: Proposed Fence Policy**



**Proposed Fence Policy**

**Goal: Ensure consistency of fence ordinance with zoning. Make fence and retaining walls better and improve enforceability of the rules**

- 1. Move fence ordinance into Zoning.**
- 2. Apply fence rules to vegetation/bushes that effectively serve as fences.**
- 3. Apply retaining wall rules to all retaining walls, not just those in the setbacks.**

The graphic includes a photograph of a residential yard featuring a wooden fence with a lattice top section, a stone retaining wall, and a lawn.

No objections were raised in the table discussions to moving the fence ordinance into the Zoning Ordinance. People generally understand the need to regulate fences because of visibility and safety of vehicular movement on the street, especially for corner lots. Furthermore, some people expressed that, in general, large fences on a front yard are not desirable.

Groups agreed that there need to be more restrictive rules for retaining walls. Because of how retaining walls change the topography of a lot, people expressed concern for both the need to upkeep retaining walls, manage stormwater flow, and meanwhile find a way to deal with sloped lots.

### **Community Feedback: General**

Some more general comments emerged during the discussion portion of the event. Enforcement was a topic of discussion for single- and two-family homeowners. It was pointed out how challenging it is for neighbors to report zoning violations and people want inspection and enforcement activities to be carried out by the City. The Special Permit process was also brought up and people expressed concern that it seems arbitrary, costly, and complicated for the average single- and two-family homes. At least two tables suggested that a zoning board or planning board be more involved in this process instead of City Council.

As in previous events, people expressed affinity for Newton's villages. People appreciate that Newton has many villages instead of one downtown and that each village has its own context and character. One table discussed how to preserve village centers and add new uses like promoting co-working spaces, while preserving existing office uses. One group pointed out the goal of sustainability and how to use zoning to encourage density, limit house size, and increase the walkability of Newton's neighborhoods. The need for housing that meets the needs of an aging population was also brought up. It will be important for zoning and building code to allow Newton homeowners to easily retrofit single- and two-family homes with ramps, elevators, attached garages, and overall flexibility for aging-in-place. Zoning that encourages smaller homes, cluster housing and ways to protect moderately-priced, existing homes are priorities that emerged from this event. At the next event in the series, Housing for Whom: Zoning, Affordability, and Fair Housing on December 14<sup>th</sup>, 2017 these particular aspects of the Zoning Redesign conversation will continue. The informational sheet for the upcoming event is also appended to this document. As a final note, staff received many positive comments about the Zoning Redesign process, the event series, the website, and materials published for each event.

# Cracking the Code: Understanding Zoning for Homeowners

November 29th, 2017 6:30 - 8:00 p.m.  
Newton Free Library, 330 Homer Street



[www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)

## Have you ever done an addition to your home? Added a deck, shed, or a garage?

If you're a homeowner in Newton, the City of Newton's Zoning Ordinance regulates your house and any associated structures on your lot. Join us on November 29th to explore zoning for single and two-family properties throughout the city and how those regulations could change in a new ordinance.

Zoning regulates where structures are allowed to be located on your lot, the structure's maximum height, and how much of your lot must be devoted to open space. These same rules apply to your neighbors as well.

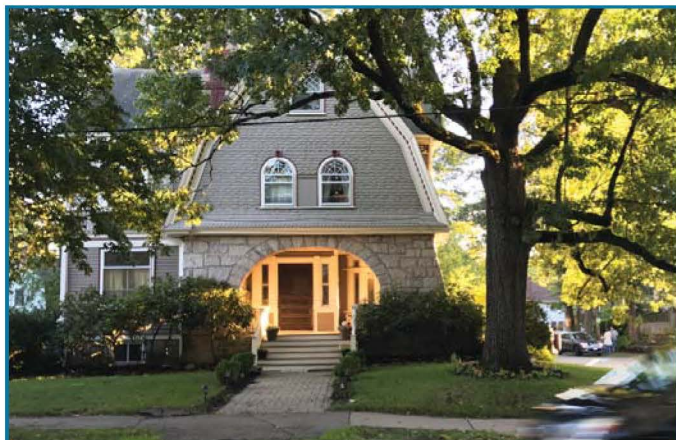
**FLEXIBILITY VS. PREDICTABILITY:** The degree to which zoning rules grant property owners **flexibility** in using or changing their property generally contradicts with the degree to which the ordinance offers **predictability for neighbors** (what may be done with a property) and **predictability for the property owner** (how the rules will apply to their property). In practice, zoning requirements fall on a spectrum between absolute flexibility and absolute predictability. Discussion will include how Zoning rules could vary depending on the regulatory issue or neighborhood context.

**MASSING:** City staff will present how the zoning ordinance currently treats setback, height, and massing, using the floor area ratio (FAR) calculation. We will explore alternative ways to address these issues by utilizing prescriptive dimensional controls or design review related processes. We expect discussions to include issues of neighborhood context and fairness.



**GARAGES:** In some neighborhood contexts, garages can transform the sense of a neighborhood street into a street that feels like an alley. Many communities have begun to regulate the connection between the dimensions of the garage, house, lot, and street. We will discuss what neighborhood contexts, if any, in Newton should require garages to be set back from the front façade of the building and be limited in how much of the home they can cover. Newton residents have raised concerns in recent years about garages that stick out in front of a house or dominate the appearance of a home when viewed from the street.

**FENCES:** Fences are not currently regulated by the Zoning Ordinance. Instead, the City Ordinance regulates fences. Bringing the fence ordinance into the Zoning Ordinance could more coherently regulate the relationship of fences to other structures on residential lots. Shrubs, hedges and similar types of vertical plantings may need to be included within the fence ordinance where they serve a similar function and can have similar impacts on corner visibility and related issues. Regulation of retaining walls will also be discussed.



Wheelchair accessible location. For ADA accommodations, contact Jini Fairley at least two business days in advance: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or 617-796-1253. For City's TTY/TDD: 617-796-1089. For TRS, dial 711.

# Housing for Whom? Zoning, Affordability, and Fair Housing

December 14th, 2017 6:30 - 8:00 p.m.  
Newton Free Library, 330 Homer Street

[www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)



Newton's Zoning Ordinance is the major determinant of the locations, types and amount of housing that is permitted in the city. The 2016 Newton Leads 2040 Housing Strategy clearly shows the increasing exclusivity of the city as the wealthiest residents of the Boston region are drawn to the desirability of Newton and low and moderate income households have few, if any, options.

## MULTI-FAMILY ZONING CLOSE TO TRANSIT AND JOBS

Environmentally sustainable development strategies have identified that the more cities can locate housing options close to public transit and jobs, the more we can reduce the negative impacts of car-oriented transportation and long commute times. Newton's Comprehensive Plan recommends new housing development in certain village centers with transit options and in major employment centers like Needham Street.

Over the last several years businesses of all sizes in Newton have faced challenges in accessing sufficient workforce in part due to lack of housing options near jobs. Meanwhile, the millennial and baby boomer generations continue to demand more multi-family residential in mixed-use, village center type locations. Newton must decide how it will respond to these needs and reflect that decision in its zoning. Encouraging this type of housing development in appropriate locations could include lower unit to



lot area ratios and clear guidance on the City's expectations for this type of development.

## THE "MISSING MIDDLE" HOUSING CHOICES

Historically, neighborhoods across greater Boston featured a range of building types such as triple deckers, fourplexes, courtyard apartments, townhouses, cluster housing, and live/work buildings. With the advent of zoning, these types of buildings required special permits, which generally discourages smaller multi-unit projects because they don't allow a developer to absorb processing costs (time, attorneys, redesigns, etc.). What if Newton were to allow some "missing middle" buildings in multi-family zoning districts with a more expedited review process?

## AFFORDABLE HOUSING THROUGH INCLUSIONARY ZONING

An inclusionary zoning ordinance requires that every residential development over a certain

size contributes deed-restricted affordable units. Newton was one of the early adopters of inclusionary zoning and has had such an ordinance since 1977. There is currently a proposal to update that ordinance and increase the percentage of affordable units a development must provide, depending on size, from 15 to 20%, perhaps even 25% in certain circumstances, as well as proposing to include middle-income units.

## FAIR HOUSING

Newton's Fair Housing Policy states that each person shall have equal access to and equal opportunity in housing throughout the City, regardless of race, color, religion, national origin, disability, age, sexual orientation, gender identity or expression, marital status, familial status (families with children under 18), public assistance (including rental vouchers), genetic information, or military status. To what extent can the City's Zoning Ordinance promote this important goal and support fair housing throughout all of Newton?





## Summary Report

### Housing for Whom: Zoning, Affordability, and Fair Housing

The Zoning Redesign project ended the year with an event on December 14<sup>th</sup>, 2017 about how zoning could regulate multifamily housing, contribute towards the development of affordable housing and comply with Fair Housing laws. The event was well attended by over 50 Newton residents; several members of City of Newton staff presented and facilitated group discussions where attendees provided feedback on the zoning proposals. The presentation slides and video of the presentation is available online ([www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)).

### Affirming Fair Housing and meeting other housing goals through multifamily zoning

While the November event focused on zoning for single- and two-family housing, the December event focused on multifamily housing. Four categories of zoning proposals were presented and community feedback to the proposals is described below. The full presentation is available via slides and video recording posted online ([www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)). An informational sheet was published ahead of the event and is appended to this report.

### Community Feedback: Fair Housing

An informational sheet with a blue background on the left and two photographs of houses on the right. The text on the blue background includes the title "Proposed Fair Housing Policy", a goal statement, and a numbered list of four items. The top photograph shows a modern brick house, and the bottom photograph shows a traditional yellow house with a porch.

**Proposed Fair Housing Policy**

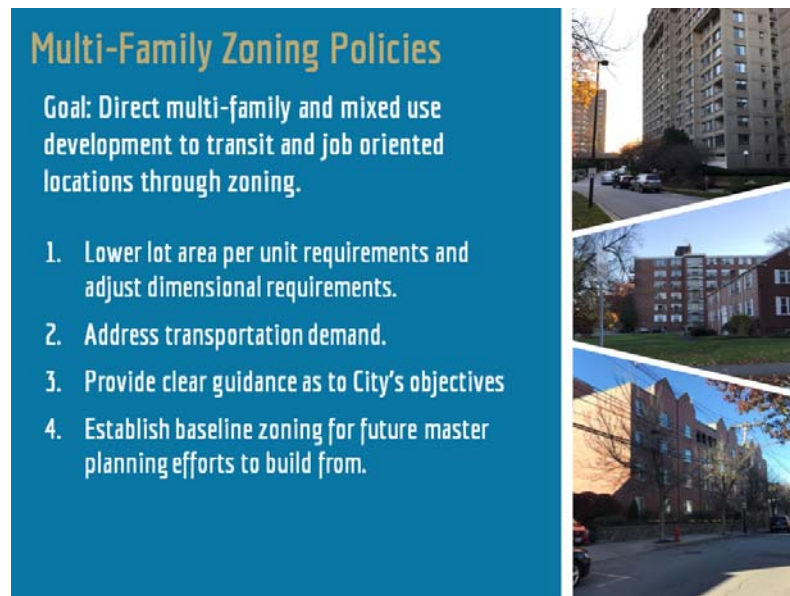
Goal: Incorporate Fair Housing requirements, definitions, and standards into Newton's Zoning.

1. Zoning Ordinance Purpose Statement
2. Development review process purpose statements.
3. Waivers for ramps or other accessibility features
4. Update regulations for group homes

Fair Housing is a federal requirement that Newton must adhere to and the Fair Housing Act of 1968 provides guidance on how Newton can meet its obligation to affirmatively further fair housing. As part of Zoning Redesign, staff proposed **incorporating Fair Housing into the purpose statement** of the zoning ordinance. In addition, for development review procedures, the zoning ordinance could recognize Fair Housing considerations relative to both how development review is conducted and with regard to development review outcomes. Staff proposed the ordinance should **explicitly recognize the duty to further Fair Housing** in its development review process purpose statements. Because disability is one of the Fair Housing protected classes, zoning should **allow waivers for accessibility features** to homes (e.g. ramps). Newton’s zoning ordinance also needs to be updated to appropriately regulate **group homes**, which are residences for people with disabilities or those in need of group residential supports. Currently Newton’s zoning ordinance does not sufficiently define group homes, which is out of step with Fair Housing regulations.

In breakout table discussions attendees provided feedback on the proposed Fair Housing zoning elements and overall were very supportive of the proposals. Particularly, attendees appreciated the need to clearly define “fair housing” in the ordinance purpose statement and suggested using examples to make the definition explicit. A table supported the idea of allowing by right accessibility features necessary for adapting homes for people with disabilities. Participants asked about the **number of bedrooms** and ways to make sure families are given equal housing opportunities in Newton regardless of their size. Because zoning generally doesn’t regulate the interior spaces of buildings, the zoning ordinance is not the best regulatory tool for number of bedrooms. For group homes, one table asked if residents would require a waiver for the number of occupants. As the zoning ordinance is updated to include more specifications about the **group home** use category, the ordinance should fully comply with Fair Housing law and not create any barriers to introducing this residential use in Newton.

### Community Feedback: Multifamily Zoning



**Multi-Family Zoning Policies**

Goal: Direct multi-family and mixed use development to transit and job oriented locations through zoning.

1. Lower lot area per unit requirements and adjust dimensional requirements.
2. Address transportation demand.
3. Provide clear guidance as to City’s objectives
4. Establish baseline zoning for future master planning efforts to build from.

As attendees entered in the room for the event they were prompted to reflect on their ‘**housing history**’ – all of the different types of housing units that people have lived in over their lifetime and predict living in as they age. Every person who reported on their housing history shared a diversity of housing unit types. Many people had lived in both multifamily and single family residences.

Community feedback on the multifamily zoning proposals was mixed. Some want to see **more areas** zoned as multifamily, while others have concern about where housing density should be **located** if at all. While one participant was interested in the total **number of units** that may be proposed, the zoning ordinance does not identify a specific number of units.

#### *Housing Options for Different Stages in Life*

Reflecting on the housing history exercise, one person pointed out that some people prefer single family detached homes to multifamily buildings. Other tables emphasized the need for multifamily housing types as people **age in place** since single family residences are not ideal for older adults. Several tables gave strong feedback that currently Newton does not have sufficient options for residents who want to downsize from a single family to a unit in a multifamily building and supported zoning for more multifamily units. Housing for seniors should be transit oriented, near grocery and convenience stores, walkable, easily accessible to medical care, and have elevators in multistory buildings. People suggested both rental apartments and owner occupied units are needed.

#### *Housing within the Neighborhood Context*

Groups discussed how zoning could allow a range of multifamily building types and locate them in the appropriate contexts. There was general agreement that zoning should allow building types sized according to the **scale of the neighborhood**. How zoning can help “transition” between residential and commercial centers was a key point of discussion that will need further attention as the zoning map and ordinance are drafted and refined. People asked questions about the current areas of the city that are zoned single family and if new multifamily zoning would affect these zones. One person suggested changing the zoning for areas that have a high proportion of two-family buildings in a single family zone, to be zoned as two-families. As in past events, groups complained about how **tear downs**, which replace smaller, older single-family homes with much larger, new single-family homes, are currently presenting proportional issues to the neighborhood feel, all without any changes to zoning.

#### *Locations for Multifamily Housing*

Some groups discussed **specific locations** for multifamily zones in Newton and among those discussions there was consensus that the best locations are **close to commercial areas and transportation hubs**. Even more specific locations included Washington Street, Needham Street, Riverside, Newton Corner, north of West Newton Square, near border with Lexington and Waltham, Parker Street, and Auburndale. Groups discussed **mixed use multifamily buildings** and in general were interested in finding the right locations for these building types. Attendees noted how housing options near shops and services provide great benefits including increased sustainability and health as well as reduced congestion.

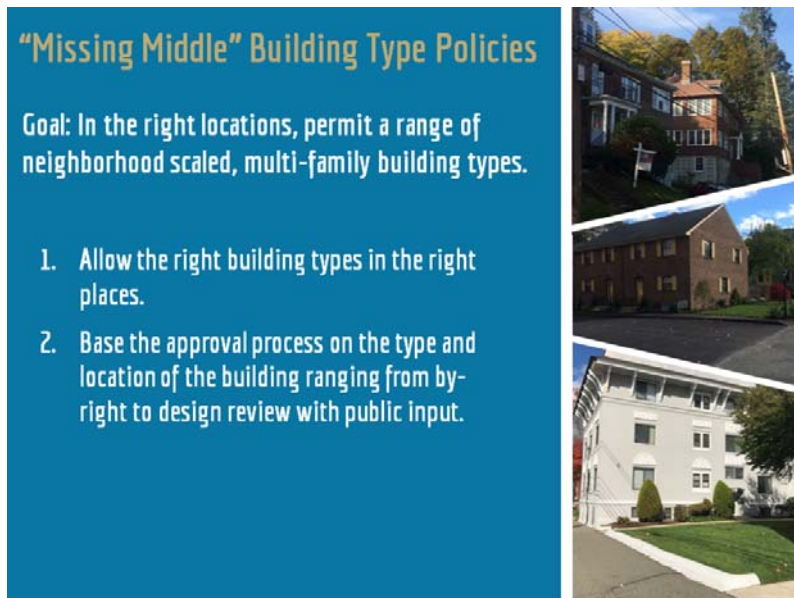
### *Housing Connected to Transportation Options and Community Assets*

Locating housing options near transportation options was a theme among many of the table discussions. People expressed a need to locate multifamily zones close to where Newton currently has the highest **transportation capacity and options**. Several groups said they want to see housing in locations that are walkable, pedestrian friendly, bike-able. One table discussed how **housing near community assets** and activities means safer environments for kids. Another group talked about zoning for more density around temples and churches so people can more easily walk, especially seniors. Many asked about how the new zoning ordinance could anticipate new paradigms in transportation like autonomous vehicles. Several other people expressed concern about the number of cars, on street **parking**, and how to regulate car ownership. One group asked if there was a way to encourage shuttle service from village to village or stops along multifamily housing routes that would connect to public transportation. All of these topics will be discussed in **January 18, 2018 at the next Zoning Redesign event, “A Parking Lot for Goldilocks: Zoning for Just the Right Size”**.

### *Dimensional Proposals*

Finally, groups provided feedback on dimensional proposals in multifamily zoning included support for eliminating the lot area per unit requirement and allowing smaller setbacks with relaxed standards for multifamily buildings with or without garages. One table was interested zoning that didn’t encumber multifamily buildings by reducing the requirement to face the street or allowing driveways in the back.

### **Community Feedback: “Missing Middle” Building Type**



**“Missing Middle” Building Type Policies**

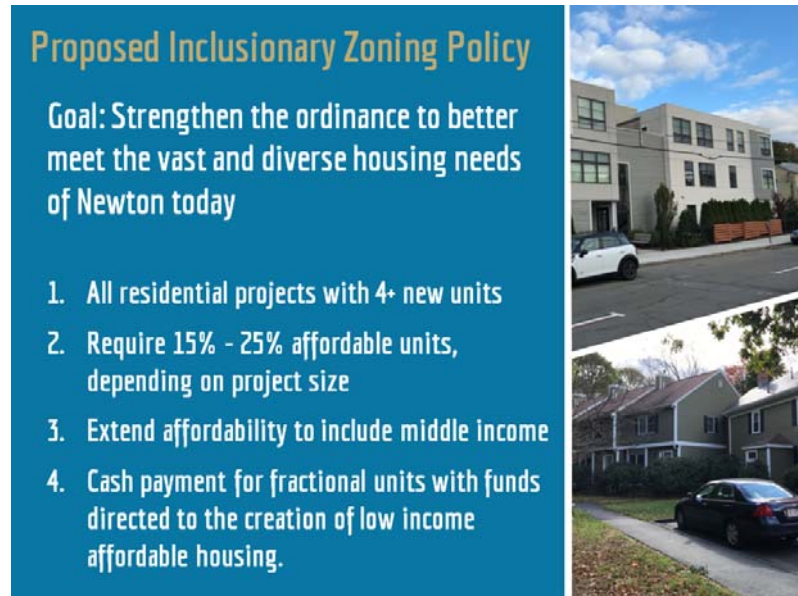
Goal: In the right locations, permit a range of neighborhood scaled, multi-family building types.

1. Allow the right building types in the right places.
2. Base the approval process on the type and location of the building ranging from by-right to design review with public input.

In general, there was a great deal of positive feedback about zoning proposals for “missing middle” building types – buildings with 3, 4, or more units by right. People understood this type of zoning as an opportunity to add **slightly more density in residential areas**. Table discussions saw this zoning proposal as a good option for transitional density zones in neighborhoods. One group mentioned

accessory apartments and wondered if there were further ways zoning could allow multiple units in existing buildings like large Victorians. Clustered cottages could be useful for older adults who want to transition out of single-family to single floor living, but don't want an apartment. Adapting existing homes with more units or with additions such as elevators or stairs were also mentioned. Community members asked if tiny houses could be included as a housing typology. Some commented that "missing middle" building types could achieve some density while preserving green space access.


### Community Feedback: Inclusionary Zoning



**Proposed Inclusionary Zoning Policy**

**Goal: Strengthen the ordinance to better meet the vast and diverse housing needs of Newton today**

1. All residential projects with 4+ new units
2. Require 15% - 25% affordable units, depending on project size
3. Extend affordability to include middle income
4. Cash payment for fractional units with funds directed to the creation of low income affordable housing.



Overall the feedback about the inclusionary housing proposals was positive, although there was less discussion about this topic than the other three topics. In general people were interested in finding ways to provide housing options for **middle income earners** - people who fall outside of qualifying for affordable units designated for low or very low income, but don't earn enough to be able to afford a market rate unit in Newton. Attendees were interested in ways to **bridge this very large gap** and incentivize developers to build these units at no cost to the public. Some attendees had remaining questions about how **non-profit housing developers** would be affected by this change if at all, and what the role of the Newton Housing Authority could look like with a new ordinance and creating more mixed income multifamily housing. One person suggested looking at policies like linkage units, which are used in some communities to increase the benefit capture of housing and mixed use space production. Staff will likely need to continue to explain why the proposed inclusionary zoning ordinance has been composed this way as there may be some remaining questions about the logic behind the proposed thresholds and income calculations, for example.

### Community Feedback: General Comments

As mentioned at nearly all prior events in the series, attendees asked if the new zoning ordinance will be able to lessen the amount of **tear downs** or 'mcmansions' currently affecting Newton's residential neighborhoods. Several attendees asked about **design review** and whether this will become a greater

part of the zoning ordinance. One person suggested reviewing the design review processes in Brookline and Boston. People want to see how the zoning ordinance will encourage more commercial spaces and commercial tax base. The zoning ordinance should comply with all State law. People expressed concern about Newton's infrastructure especially roads and schools and how these will interplay with zoning for multifamily housing.

**What's Next?**

Join us on January 18, 2018 at the next Zoning Redesign event, "A Parking Lot for Goldilocks: Zoning for Just the Right Size"!



## Summary Report

### Newton's Advantage: Zoning and Economic Development

The second event in the Zoning Redesign series on October 19, 2017 was attended by thirty people who engaged in discussion about the ways zoning can regulate and encourage economic development in Newton. The purpose of the event was to present preliminary proposals about this topic and to provide a forum for community discussion and feedback as the City looks to write a new zoning ordinance. The full presentation is available to the public via slides and a video recording posted online ([www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)). An informational sheet was published ahead of the event is also available online and is appended to this report.

#### Four proposals for economic development and zoning

City staff first gave a presentation about "Zoning 101" in order to provide attendees a common understanding of zoning basics and terminology. Next, staff presented on four categories of zoning that influence economic development: 1) commercial uses, 2) manufacturing districts, 3) home businesses, and 4) signs. Following the presentation attendees were asked to join small table discussions led by a facilitator and react to the presentation, as well as share new ideas on zoning and economic development. At the end of the event each table reported on one novel idea or suggestion that was generated by their group discussion.

#### Community Feedback: Commercial Uses

A slide titled "Proposed Commercial Uses Policy" with a blue background. The text is white and yellow. To the right of the text are three small images: a street scene with a sign, a residential house, and a modern building at night.

**Proposed Commercial Uses Policy**

Goal: Support businesses to locate and thrive in Newton's commercial areas.

1. Combine & categorize uses to ease understanding & enforcement.
2. Introduce new uses like co-working space.
3. Remove or modify specific rules applying to some uses.
4. Reduce parking requirements.


Modernizing the commercial uses allowed in zoning and encouraging new uses such as **co-working spaces** was largely favored by participants in the table discussions. Attendees pointed out how entrepreneurs who are starting businesses need more flexible commercial regulations and benefit from sharing resources, equipment, and space with other businesses. One group identified it would make sense to locate co-working spaces in village centers, which are generally more walkable and have more transit connectivity.

All groups discussed Newton’s **village centers** as commercial hubs and many people identified them as locations for future commercial growth. Currently, village centers areas tend to be where most **mixed uses** (commercial and residential) and most connected to **transit and multi-modal transportation** options, and some discussion groups suggested looking at them for mixed use in the future as well as places to try out new transportation technologies for employees, shoppers, and residents.

For both commercial uses and manufacturing uses, attendees generally like the idea of **eliminating unnecessary rules and regulations** that discourage economic growth. Attendees supported the idea of combining and updating new commercial uses for that would reflect the times without making old uses obsolete.

People asked questions about Newton’s tax classification and how it may discourage new businesses from coming in to Newton or push existing businesses out. One group pointed out the limitations of zoning in regulating all aspects of economic development. For example, while finding a good business mix in village centers is desirable zoning is limited in regulating this and **market forces** play a strong role in determining the demand and supply of business type.

### Community Feedback: Manufacturing Districts



**Proposed Manufacturing Districts Policy**

**Goal: Support economic development and a growing innovation economy in Newton.**

1. Study potential future of different districts - Economic Development Strategy.
2. Transition some to other types of districts.
3. Identify some for redevelopment and growth.
4. Identify others for retention as lower-cost business start-up and fabrication space.

Attendees indicated support for reimagining Newton’s manufacturing districts and making manufacturing uses more flexible to include more of contemporary activities. Table discussions focused on how zoning would need to indicate **clear guidelines** so that neighbors are not affected adversely by



nearby manufacturing uses. Groups asked that **potential adverse effects** like waste management, supply/demand/distribution/delivery, clean up and containment, and noise continue to be addressed by zoning. One table suggested different grades or scales of manufacturing uses could be determined depending on the degree of potential disturbance to abutting uses. People noted how most new manufacturing uses, typically **light industry**, have less negative impact on abutting uses than more traditional heavy industry.

Groups discussed how existing manufacturing zones, such as areas on California Street near Watertown Square, have potential for **mixed-use manufacturing** that incorporate industrial and residential options to help increase viability, decrease carbon consumption, and create more transportation options. Greentown Labs in Somerville was mentioned as an example. One table discussed how uses like shared-use kitchens and shared-use light manufacturing spaces are healthy for innovation districts and startup business environments.

People expressed the need for an **easier to use, streamlined ordinance**. One table asked that the new ordinance eliminate or fix old rules that don't work, instead of adding new rules or more categories. For manufacturing, there was significant support for **allowing retail and wholesale** of manufactured goods within the same property, for example a brewery or bakery use. When looking to manufacturing districts for redevelopment and growth, several attendees voiced support of the City's plan to conduct an **economic development study** and to develop citywide strategies.

### Community Feedback: Home Businesses



**Proposed Home Business Policy**

Goal: Support residents with a flexible home business policy to encourage economic development.

1. Allow more than one per dwelling unit.
2. Recognize the difference between businesses with onsite customers and not.
3. Relax regulations around type and number of employees, location and square footage of business.
4. Remove parking requirement.

The graphic includes two photographs: the top one shows a man in a grey sweater working at a desk with a laptop and papers; the bottom one shows a woman sitting at a white table in a home office, with a dog lying on a rug in the foreground.

Feedback was mixed on how zoning should regulate home businesses. Attendees generally thought a service business like consulting should be allowed by zoning because it is likely 'invisible' to neighbors. Some wanted **more clarification** on what the current rules are for home businesses and how Newton could reasonably regulate these businesses in the future without having a significant impact on the neighborhood. Other table discussions recognized how the current rules are outdated, for example, only allowing "one secretary" for some uses and only allowing one home business across the board.

More than one table suggested that zoning seek to regulate differently those home businesses which have customers come to the business, and those that are single person working mainly online.

People identified the need to regulate things like **deliveries, parking and employees** for home businesses and consider the scale of nuisance as a guide for zoning regulation. One table noted how the size of the delivery vehicle is important and needs to be considered in the context of increased online commerce, where many residents receive numerous packages for non-commercial uses from delivery trucks.

### Community Feedback: Signs



**Proposed Sign Policy**

Goal: Make sign ordinance more business-friendly, easier to enforce, and encourage good design.

1. Clarify and illustrate sign rules. Create a sign design guide.
2. Expand Urban Design Commission to decide minor adjustments to sign rules.
3. Encourage comprehensive sign packages for multiple storefronts in the same building.
4. Create new rules for temporary signs and sandwich boards.

The graphic also includes a photograph of a storefront at night with outdoor seating and signage.

Attendees supported the **streamlining** sign regulations and permitting in order to make it possible to **expedite the approval** of some signs. The proposed comprehensive sign package idea for buildings was generally supported, while groups wanted to ensure higher degree of scrutiny for some signs like neon signs and signs that increase the visibility of corporate tenants. One table suggested that **context based sign districts** could be created within zoning for Newton’s villages in order to ensure neighborhood conformity. Attendees discussed different ways to regulate temporary signs such as sandwich boards and electronic kiosks that could display information in higher pedestrian areas. A table discussed how businesses depend on temporary signs for advertisements, but they are challenging in terms of regulating public space on sidewalks.

### Community Feedback: General

Parking stood out as the number one topic of discussion that attendees identified as significant for economic development. For example, **parking** was mentioned in discussions about co-working, village centers, and generally looking for ways to preserve historic walkable villages with economic development while looking ahead to a future with less car dependence. People pointed to high parking requirements in the current zoning as one of the greatest barriers for many types of commercial uses, especially in Newton’s village centers, which were mainly built before parking requirements were

introduced. Several tables discussed the **burden placed on business owners** to find commercial spaces in Newton that meet the parking requirements in the current zoning, and the alternative pathway of seeking a special permit exemption, which can also be challenging and expensive for business owners. Attendees were interested in looking at zoning that encourages alternative modes of transportation, including bike parking, and having more detailed discussions about parking at the January 18, 2018 Zoning Redesign Event.

The next event is **November 29, 2017, Cracking the Code: Understanding Zoning for Homeowners** and topics will include lot types, dimensional requirements, massing, accessory structures, garages, fences, retaining walls, dormers, and additions.

# Newton's Advantage: Zoning and Economic Development

October 19th, 2017 6:30 - 8:00 p.m.  
Newton Free Library, 330 Homer Street



## Zoning has a significant influence on the success of businesses in Newton.

Through Newton's Zoning, the City regulates what businesses are allowed where, regulates their size, and presents a range of regulations from parking requirements to sign rules that have ongoing effects on business operations and expenses. All of these issues will be addressed over the course of the Zoning Redesign event series. We will start this discussion focusing on four issues for the new zoning ordinance:

**COMMERCIAL USES:** A core aspect of zoning is the identification and regulation of uses, for example: banks, restaurants, offices, and retail stores. These uses are defined by zoning and are allowed or not in different areas of the City. The uses listed for Newton's commercial districts need to be **updated, simplified, and made more flexible**. We need to include new uses like **co-working spaces**, identify categories of similar uses to simplify application of the ordinance, and enable stores and businesses to respond to increasing pressure from online competition.

**MANUFACTURING DISTRICT:** Newton's Manufacturing Zoning District is an example of commercial uses that need to be updated. The district reflects a 1950s era of manufacturing

with rules governing big industry uses like boatbuilding, textiles, and medical equipment. The result is that manufacturing districts in many parts of Newton have become parking lots, storage facilities, or auto repair shops - these spaces are underutilized manufacturing potential. These districts need to be re-imagined for the current innovation economy, promoting small-scale **"makerspace"** for emerging tech companies and a flexible array of uses that will support these companies.

**HOME BUSINESSES:** Newton is home-base for an incredible amount of talent. For example, Newton residents produce patents at one of the highest rates in the country. This talent means there is a great potential for successful home-based businesses in a range of innovation industry fields. Currently, Newton's zoning can unreasonably limit the success of home-based businesses, hence Zoning needs to be updated to support the ability of Newton residents to easily start a business from home while still protecting the residential character of the City's neighborhoods.

**SIGNS** are an essential part of Newton's businesses yet Newton's rules can be confusing and hard to understand or enforce. New zoning rules should strike a balance between good signage and clutter.



Wheelchair accessible location. For ADA accommodations, contact Jini Fairley at least two business days in advance: jfairley@newtonma.gov or 617-796-1253. For City's TTY/TDD: 617-796-1089. For TRS, dial 711.



## Summary Report

### Think Globally, Act Locally: Zoning for a Sustainable Newton

On September 27, 2017 the City of Newton kicked off a series of events for Zoning Redesign, the City's project to rewrite the Zoning Ordinance. Over 65 people attended "Think Globally, Act Locally: Zoning for a Sustainable Newton" at the Newton Free Library. In order to receive feedback and generate discussion about the proposals, the event format was a presentation from staff followed by facilitated group discussions involving everyone in attendance. Attendees were asked to give feedback on the zoning proposals and bring forward any new ideas that were not presented.

### Zoning proposals on three aspects of environmental sustainability

Staff presented on three aspects of environmental sustainability that zoning could assist with achieving a healthier, more resilient environment: 1) stormwater management, 2) green design incentives, and 3) alternative energy. The full presentation is available to the public via slides and a video recording posted online ([www.courbanize.com/newtonzoning](http://www.courbanize.com/newtonzoning)). An informational sheet was published ahead of the event is also available online and is appended to this report.

### Community Feedback: Stormwater

The image shows a blue informational sheet titled "Proposed Stormwater Policy". The goal is to direct applicants to appropriate stormwater management options to address the potential for flooding and water quality. The sheet lists four points: 1. Triggered by an increase in impervious area. 2. Small projects directed to list of home-scaled best practices. 3. Large projects required to demonstrate no net increase in stormwater run-off and a percentage reduction in nutrients. 4. Maintenance of stormwater structures for future property owners. To the right of the text are three photographs: the top one shows a modern residential development with a large, landscaped stormwater management structure; the middle one shows a traditional house with a large tree in the front yard; the bottom one shows a close-up of a stormwater structure with a tree growing through it.

Increasing the amount of **permeable surfaces** was one of the leading topics of discussion in the table sessions. Attendees were supportive of zoning that continued to regulate the amount of impervious surfaces allowable on lots. People were interested in finding ways through zoning to reduce the amount of paving and increase the permeability of sites. Community members suggested creative solutions such as requiring permeable materials to be used for new driveways or incentives for 'de-paving'.

Table discussions also discussed zoning that could **incentivize stormwater tools** such as underground cisterns for reusing stormwater onsite. Rainwater harvesting, recycling gray water, ground water recharge, and daylighting streams were among the more cutting edge stormwater tools proposed.

Ideas for **regulation** included rules to limit construction in wetland areas, zoning or building permit processes that trigger stormwater compliance and upgrade, regulation of retaining walls and **topographic** changes, sediment and erosion controls, and the ability for the City to impose stronger enforcement. Understanding how to best regulate stormwater runoff impacts between abutting properties was a concern. Staff received positive feedback about the fourth proposal - requiring future property owners to maintain existing stormwater management systems and enforcing this via a check at the time of sale.

Finally, although zoning does not typically address public land uses, table discussions generated several new proposals for **stormwater management on public land**. Attendees asked that the City set an example by creating standards for City property, implementing stormwater management when rebuilding streets, using permeable paving, and creating pervious surface parking lots and visible rain gardens at schools. City roles could include education programs about appropriate lawn watering and fertilizing, and improving coordination within City departments and permitting.

### Community Feedback: Green Building



**Proposed Green Bldg. Policy**

Goal is to clarify environmental design goals and incentivize larger projects to do better.

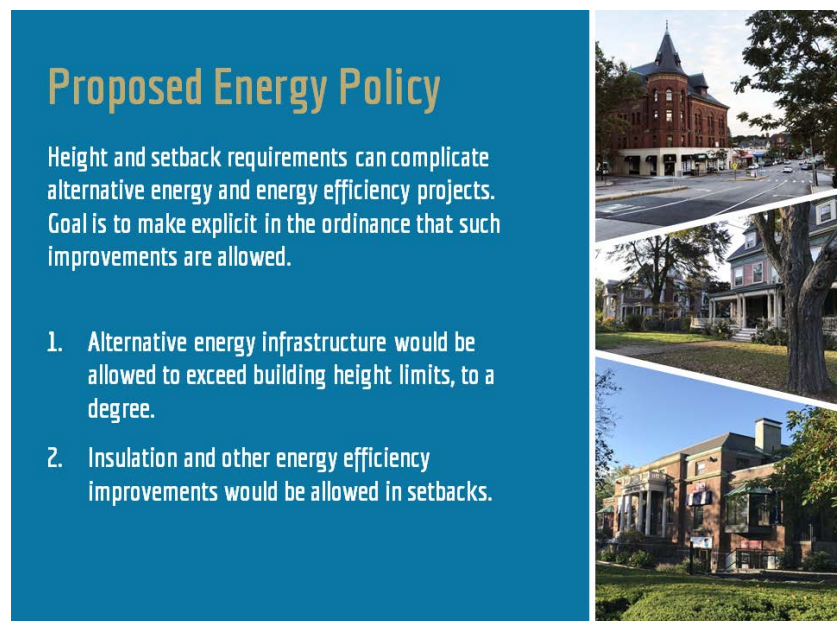
1. Large projects would be required to meet a standard of LEED certifiable or similar.
2. Specific point totals would be required for energy, ensuring a focus on this issue.
3. A density bonus would be provided to projects achieving a higher rating.

The proposals to incentivize ‘green’ building generated many supportive comments, especially requiring large projects to meet a standard of LEED certifiable or similar. One table proposed the minimum threshold for **LEED requirement be 20,000 square feet** with higher standards required for larger projects seeking zoning variances. Another table suggested extending LEED requirements to major renovations, change of use, and criteria for siting new construction. Participants noted how landscaping can provide sustainability benefits and suggested tree planting have canopy coverage requirements.

There was general support for the second policy proposal to require an energy focus within green building incentives. Attendees expressed interest in zoning incentives to **encourage net zero** or net positive buildings. There was support for mandating demolished buildings meet certain recycling requirements and incentives for salvaging building materials. One group came up with an idea for a Newton green building resource center.

There were differing opinions about the third proposal for **density bonus incentives**. Some pointed out that the greenest building is an existing building. People had remaining questions about the environmental tradeoffs for density bonuses including decreasing congestion with transit oriented development, infill development instead of green field development, and whether or not to incentivize environmentally-friendly buildings with density at all.

### **Community Feedback: Alternative Energy and Energy Efficiency**



**Proposed Energy Policy**

Height and setback requirements can complicate alternative energy and energy efficiency projects. Goal is to make explicit in the ordinance that such improvements are allowed.

1. Alternative energy infrastructure would be allowed to exceed building height limits, to a degree.
2. Insulation and other energy efficiency improvements would be allowed in setbacks.

Attendees generally supported the proposals for alternative energy such as allowing **solar panels** and **exterior insulation within the setback** up to certain dimensional limits. Other ideas from the community included community solar, solar panels on carports and storage facilities, orientation of the building to maximize solar exposure, geothermal energy, energy retrofits of older homes, and questions about how to regulate solar rights and ensuring solar panels do not limit abutting properties ability to also do solar. A participant suggested Sterling, MA as an innovative example where the town has

invested in energy storage batteries to control rising power costs during peak demand hours<sup>1</sup>. Finally, the community asked questions about regulation of parking requirements which will be discussed a full conversation about parking and zoning at the event on January 18.

### **Community Feedback: General**

At the event, table discussions generated some general comments about open space, increasing and maintaining bike paths and rail trails, encouraging smaller houses and multifamily “cluster housing” with internal courtyards, the opportunity for environmental sustainability with proposed new developments at Northland on Needham St., and discussions around whether FAR is the best method for regulating density and massing.

The next event is **October 19, 2017, Newton’s Advantage: Zoning and Economic Development** and topics will include commercial uses, innovation manufacturing, makerspaces, and home businesses, co-working, and sign regulations.

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<sup>1</sup> <https://www.cleangroup.org/sterling-massachusetts-changes-business-electricity-new-england-forever/>



DEPARTMENT OF PLANNING AND DEVELOPMENT  
MEMORANDUM

DATE: October 27, 2017

TO: Members of the City Council

FROM: Barney Heath, Director, Department of Planning and Development  
Marie M. Lawlor, Assistant City Solicitor

RE: Interim report on the Massachusetts “Recreational Marijuana Law”

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Newton voters approved the recreational marijuana referendum in November 2016 with a vote of 55.7% in favor to 44.3% against. This compares to a statewide vote of 53.7% yes and 46.3% no.

In January of 2017 Mayor Warren appointed an interdepartmental working group to gain a local understanding of the State’s new recreational marijuana law (Acts 2016, c. 334, adding a new MGL c. 94G, as amended by Acts 2017, c. 55). In addition to Planning and Law, the discussion group has consisted of a representative from the Executive Office, the Health and Human Services Department, the City Clerk, the Police Department, and the City Council (Councilor Greg Schwartz). This group has met four times over the course of this year to discuss the local aspects of the regulations provided for in the legislation. As you know, the State most recently revised the legislation at the end of July. And further changes will be forthcoming as the newly created Cannabis Control Commission issues its own set of regulations by March of 2018. Given that there are certain timeframes now associated with the implementation of the legislation as presently constructed, we wanted to offer a general overview of the State implementation schedule and the Newton specific considerations.

The Recreational Marijuana law places statewide governance for all aspects of recreational marijuana in a newly formed commission, the Cannabis Control Commission (“CCC”). The CCC is charged with a timeline for promulgating regulations and licensing recreational marijuana establishments. Currently the timeline is:

March 15, 2018	CCC adoption of Regulations, guidelines and protocols for issuance of licenses for recreational marijuana establishments;
April 1, 2018	CCC accepts Applications for Marijuana Establishments;
June 1, 2018	CCC may begin issuing licenses

The CCC is currently working on draft regulations, but there is as yet no indication as to what those regulations will include. This is causing uncertainty with municipalities trying to determine the extent of local regulation to undertake.

## Local Regulation Considerations

Local regulation of recreational marijuana establishments is governed by MGL c. 94G, §3. That section allows municipalities to regulate the time, place and manner of operations and to adopt ordinances that impose reasonable restrictions. Such ordinances are subject only to the local ordinance process. However, for communities like Newton that passed the referendum, a local ordinance to ban or limit the number or types of establishments would first need to be approved by a vote of the eligible Newton voters at the next general or special election. If so authorized by the voters, a ban or limitation would then need to be approved by the City Council.

Newton's options to regulate recreational marijuana establishments under the law fall broadly into three categories:

1. Zoning regulation (time/place/manner);
2. Local Tax Option;
3. Non-zoning ordinance to limit smoking and/or consumption of recreational marijuana in public places and public buildings or to prevent nuisance.

### 1. ZONING

The law allows municipalities certain limited options for banning, limiting, and otherwise restricting and regulating recreational marijuana establishments as an allowed use.

It is important to note that the CCC will be governed by the zoning ordinance in effect at the time of license application. Since the CCC will accept license applications on April 1, 2018, any amendments to the Newton Zoning Ordinance to prohibit, limit or otherwise regulate marijuana establishments must be adopted before that date unless the City Council should decide to adopt a moratorium (discussed in more detail below).

A zoning ordinance that restricts recreational marijuana establishments to certain districts within the City and otherwise imposes reasonable time/place/ manner standards and/or allows the use by special permit only (as Newton currently regulates Medical Marijuana establishments<sup>1</sup>) may be adopted by local zoning ordinance procedures.

As a community that voted in favor of the ballot measure in November of 2016, voters would need to approve of any ban or limitation to recreational marijuana establishments in Newton. As noted above, a ban or limitation if approved by voters would then still need to be approved by the City Council. Three local restrictions are provided for in the legislation:

- Ban the operation of one or more types of recreational marijuana establishments as an allowed use in the City; or

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<sup>1</sup> Medical Marijuana dispensaries are an allowed use by special permit only in BU2, BU5 and MU 1 districts.

- Limit the number of marijuana establishments to fewer than 20% of the number of “alcoholic beverages not consumed on premises”<sup>2</sup> licenses issued in the City; or
- Limit the number of any type of marijuana establishment to fewer than the number of medical marijuana establishments in the City.

### Zoning Moratoria

A zoning moratorium imposes a temporary time period during which a specified use will not be allowed in a municipality in order to provide the municipality with sufficient time to consider planning and policy issues presented by the use. A number of Massachusetts municipalities have enacted moratoria to determine how they will restrict recreational marijuana establishments. In light of the fact that the CCC will not promulgate regulations until March 15, 2018 and will then begin accepting license applications only two weeks later, the Attorney General has approved by-laws establishing moratoria up to December 31, 2018 as a reasonable time frame for municipalities to consider options and put in place any desired restrictions. The attorney general has stated that moratoria beyond that date will not be approved.<sup>3</sup>

In terms of time frame for Newton, it would be possible to enact zoning restrictions prior to April 1, 2018 if a zoning item is docketed in early January 2018. On the other hand, if the City wishes to consider one of the three actions subject to referendum at the next election (November 2018) as an option, or if the City Council will require more time to consider or come to a decision on zoning restrictions not subject to referendum, a moratorium is an option. Please note that the zoning moratorium is itself a zoning ordinance amendment that must be docketed and is subject to procedures established in MGL c. 40A. Any moratorium would have to be in place prior to April 1, 2018, since zoning in effect at the time of license application will apply.

## 2. LOCAL TAX OPTION

The most recent amendment (Acts 2017, c. 55) increased the amount of local tax that a municipality may impose on the sale of recreational marijuana and marijuana products by a retail marijuana establishment operating within its borders from 2% to 3% of total sales price. In order to adopt the local sales tax in the event retail recreational marijuana establishments open in Newton, Newton must accept MGL c. 64N, §3 by vote of the City Council with approval of the Mayor. A local tax option was not included in the medical marijuana state law.

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<sup>2</sup> Newton currently has 31 such issued licenses.

<sup>3</sup> Although City ordinances, unlike town by-laws, are not subject to Attorney General approval, the Courts have only upheld moratoria for reasonable time frames. December 18, 2018 provides ample time for a community to determine and adopt restrictions. A moratorium beyond that date would likely be invalidated as unreasonable.

### 3. OTHER ORDINANCE OPTIONS

After the medical marijuana law was passed, a number of municipalities enacted prohibitions on smoking and/or consuming marijuana in public areas and public buildings and setting up civil enforcement (ticketing) for violations. Newton has existing ordinances governing tobacco and smoking products. The City Council may wish to include marijuana within those existing regulations.

#### City of Newton Policy on Use of Marijuana for Employees

In December of 2016, the City put in place policy regarding marijuana for employees modeled on existing smoking and alcohol policies (see attached). This policy remains in effect and is not affected by any changes in the Recreational Marijuana law.

The Working Group will continue to monitor any changes issued by the CCC in the coming months and share that information with the City Council.