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MEMORANDUM

DATE: January 21, 2022

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

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

RE: **#39-22 Requesting discussion on state guidance for implementing the Housing Choice Bill**
COUNCILOR CROSSLEY on behalf of the Zoning & Planning Committee requesting discussion on state guidance for implementing the Housing Choice element of the MA Economic Development legislation. (formerly #131-21)

MEETING: January 28, 2022

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

Introduction

At the previous ZAP meeting on January 10, 2022, staff provided the Committee with information about the multi-family requirement for MBTA communities, which is part of the larger Housing Choice zoning reforms. Councilors asked many questions, some of which staff answered and others that require additional research. Since the meeting, the state has released an [online FAQ](#) and Planning has created a running list of Councilor questions that are not answered in the state FAQ (Attachment A). Staff will continue to update the committee with additional information and any unanswered questions will be submitted to the state during the comment period.

At the upcoming ZAP meeting staff would like to present on the following items to keep the conversation moving forward on what the MBTA communities requirement means for Newton:

- Additional and clarifying information from the previous meeting
- Initial data analysis and list of potential future analyses
- Next steps and looking ahead

Additional and Clarifying Information

Is the multi-family requirement for MBTA communities a requirement or an opt-in program?

The state has yet to formally address this issue. It is one of the questions we have sent to DHCD and are awaiting further guidance. The focus from the state with respect to communities who are deemed non-compliant has been on the loss of eligibility for certain state grant programs as well as possible DHCD discretionary grant awards.

Existing multi-family units do not count towards the unit capacity requirement in the draft guidelines

To determine the unit capacity of a new or existing multi-family zoning district, you do not “count” existing units—you instead determine how many multi-family units the zoning district would allow by right on that parcel if it were undeveloped. The important thing to understand is that you are counting what the zoning allows by right, not the number of units that currently exist. It is important to remember that this law is all about **zoning**—the rules that establish what can be built, and where—and not the permitting of individual projects or the production of actual housing units.

Up to 50% of a compliant zoning district(s) may be located more than 0.5 miles from a public transit stop

The draft guidelines say, “at least [one half] of the land area of the multi-family district should be located within 0.5 mile of the transit station. The multi-family district may include land areas that are further than 0.5 mile from the transit station, provided that such areas are easily accessible to the transit station based on existing street patterns and pedestrian connections.” This clarification allows Newton greater flexibility in both sizing and locating a compliant zoning district or districts. For example, other village centers being explored through Zoning Redesign not immediately adjacent to public transit could be included.

Mixed-use buildings with multi-family units can count towards compliance

It was unclear to staff, based on the draft guidelines, if only fully multi-family housing would be considered to meet the guidelines. The State has clarified that, “a mixed-use district will be deemed to comply with Section 3A as long as it meets the unit capacity, density and other requirements in the guidelines.”

A compliant zoning district cannot directly regulate the size of the multi-family units

At the previous meeting, staff were unclear if compliant zoning could regulate unit size. Looking closer at the draft guidelines reveals that we cannot, “DHCD will deem a multi-family district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions and does not place any limits or restrictions on the size of the units, the number of bedrooms, the size of bedrooms, or the number of occupants.”

A compliant zoning district could still require a special permit for buildings above a certain # of units

To comply with Section 3A a zoning district or districts must meet the unit capacity (8,330 multi-family units), the gross density (15 units per acre), and the minimum district size (50 acres). In addition, multi-family housing is defined as “a building with 3 or more residential dwelling units...” This means that a compliant zoning district could still require a special permit for multi-family projects above a certain unit threshold, as long as the minimum unit capacity could still be met with by-right developments. What that threshold is needs to be researched. It could vary given the flexibility provided for MBTA communities to comply. The important thing is that a compliant zoning district must meet all the requirements within Section 3A.

Other questions and comments

Other questions and comments not answered above may be found in Attachment A or the State FAQ. There are still questions without answers. Staff will continue to add questions and answers as we receive them.

Data Analysis

The legislation and the draft guidelines make it clear that MBTA communities can achieve compliance with Section 3A in numerous ways. This flexibility means that staff, and our consultant, can develop multiple compliant scenarios for the City Council to review. The following analyses, some to be presented at the upcoming ZAP meeting, would be helpful to determine how to best comply with Section 3A:

Land Area Analysis - size and location (January 24)

The legislation requires a compliant zoning district to be of a “reasonable size” and “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” Newton is lucky to have numerous village centers and transit stops that could serve as locations for meeting these requirements. To better understand the size and location requirements, along with actual land areas in Newton, staff will present a series of maps and aerial imagery breaking down the acreage within Newton’s village centers (Pattern Book boundaries) and within 0.25 and 0.50 miles from Newton’s commuter rail and green line transit stops.

Lot Density - existing in Newton and visuals of other communities (January 24 and future meetings)

Again, thinking about actual buildings or developments in units per acre can be abstract and confusing. Though existing multi-family units are not counted towards the required unit capacity, better understanding the current number and density of multi-family units in Newton will help ground the conversation through images, maps, and diagrams. In addition, we will be exploring other communities and neighborhoods to use as case studies. Additionally, we will further build out the Newton Development Lookbook (Attachment B) to highlight buildings and neighborhoods that could be used as models for developing compliant zoning.

Density Allowed Under Current Zoning (future meetings)

To begin, Utile and staff will use the 2020 U.S. Census block level housing unit data to better understand existing densities in Newton. Next, the current Zoning Ordinance will be analyzed to determine the number of multi-family units that can be built either by-right or by special permit. This build out analysis will show what the existing zoning unit capacity is. There are multiple ways to perform such an analysis and we are developing a methodology at this time.

Compliant Zoning Scenarios (future meetings)

Once we have additional input from the state and City Council, staff and Utile can develop 3-4 zoning scenarios that comply with the MBTA communities requirements. These scenarios will be accompanied by high level maps that test the location, distribution, and unit density of new areas that allow for multi-family zoning by-right. The more detailed zoning regulations for these scenarios can be further investigated once the state release the finalized guidelines.

Looking Ahead

Staff hope to regularly update ZAP as new information is provided by the state and additional analysis is completed. In addition, staff recommend scheduling a Committee of the Whole meeting by the beginning of March 2022 to remain in compliance with the DHCD guidelines and ensure enough time for submitting public comment.

Attachments

Attachment A Councilor Questions and Comments (working document)

<https://docs.google.com/document/d/1LYKOOferLCcGk-f05wngClwUK5f8lvrKsD4V7Z3DF7Q/edit?usp=sharing>

Attachment B Newton Development Lookbook (working document)

<https://docs.google.com/presentation/d/1aELOcevpSyRoIHNYkCILDMGj5nzXE6TnfHzCwkeFOJs/edit?usp=sharing>