



Newton City Council

Committee of the Whole Agenda

Monday, March 7, 2022

The City Council will meet in a Committee of the Whole on Monday, March 7, 2022, at 6:45 PM

The City Council will hold this meeting as a virtual Zoom meeting on Monday, March 7, 2022, at 6:45 PM. To view this meeting use this link at the above date and time:

<https://us02web.zoom.us/j/84937554806>

US: +13126266799,,84937554806#

Or Telephone:

US: +1 312 626 6799

Webinar ID: 849 3755 4806

Referred to Committee of the Whole

- #174-22** **Discussion with the Planning Department regarding the MBTA Communities Act**
THE PLANNING DEPARTMENT requesting a discussion with the City Council to inform it about the MBTA Communities Act, section 3A c. 40A

Respectfully submitted,

Susan Albright, President

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



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: March 4, 2022

TO: Councilor Susan Albright, President, City Council
Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the City Council

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: **#174-22 Discussion with the Planning Department regarding the MBTA Communities Act**
THE PLANNING DEPARTMENT requesting a discussion with the City Council to inform it about
the MBTA Communities Act, section 3A c. 40A

MEETING: March 7, 2022

CC: Planning Board
Jonathan Yeo, Chief Operating Officer

Introduction

In January 2021, Governor Baker signed an omnibus economic development package, *An Act Enabling Partnerships for Growth* (the "Act"), which notably included the [Housing Choice zoning reforms](#). The Act included a new multi-family zoning requirement for MBTA communities (Section 3A), which Newton is one of, where at least one zoning district of reasonable size permits multi-family housing by-right meeting the following criteria:

- Minimum gross density of 15 units per acre
- Not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station
- No age restrictions
- Suitable for families with children

The Department of Housing & Community Development (DHCD) released [draft compliance guidelines](#) in December 2021 to Section 3A and has subsequently provided an additional [online FAQ](#). The intent of the upcoming Committee of the Whole meeting is to both fulfill the State requirement that each MBTA community brief their legislative body before May 2, 2022 and to gather City Council comments or questions for submission to DHCD in advance of the March 31, 2022 deadline.

The Planning Department has created a [website](#) that includes links to key documents, previous memos and presentations, and a [working document of Councilor questions and answers](#). Outstanding questions which require additional guidance from DHCD can be found in Attachment A.

Relevant Elements of the Guidance for Newton

- Newton is considered a *rapid transit community* (an MBTA community with a subway station within its borders, or within 0.5 miles of its border).
- The new multi-family zoning district in *rapid transit communities* must allow, by-right, for a minimum of 25% multi-family units as a percentage of total housing stock to comply with the “reasonable size” requirement (i.e. unit capacity). For Newton, the minimum unit capacity means that a multi-family district must allow for 8,330 units; it does not require that 8,330 units must be built. DHCD Secretary Kenneally emphasized, “it is important to understand that a multi-family district’s unit capacity is not a mandate to construct a specific number of housing units, nor is it a housing target.” Currently, Newton has 33,320 housing units according to the 2020 Census.
- The zoning can either be for one multi-family district that allows for 8,330 units or for any number of districts proximate to transit that add up to 8,330 units. Newton has eight Green Line stops and three MBTA Commuter Rail stops.
- Site plan review and approval is defined very specifically. “Site plan review and approval may be required for multi-family uses allowed by-right... Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review may not be used to deny a project that is allowed as of right, nor may it impose conditions that make it infeasible or impractical to proceed with a multi-family use that is allowed as of right.”
- There are also size requirements. “To comply with Section 3A’S ‘reasonable size’ requirement, multi-family districts must comprise at least 50 acres of land – or approximately one-tenth of the land area within 0.5 miles of a transit station.” The requirement is that there is a multi-family district that is at least 50 contiguous acres, or an overlay district could be utilized with at least one area of 25 contiguous acres and additional areas would need to each be at least 5 contiguous acres. An overlay district may have subdistricts with different densities as long as the overall gross density is at least 15 units per acre. Newton is 11,622 acres.
- Newton does not currently have a multi-family district of a size that complies with all of the requirements.

Guidelines on the Criteria

Below is a brief overview of each of criteria that need to be met for a compliant zoning district. Much is taken directly from the DHCD draft guidelines.

Minimum gross density of 15 units per acre

The Zoning Act defines “gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses. To meet the district-wide gross density the municipality must demonstrate that the zoning for the district permits a gross density of 15 units per acre of land within the district, “include[ing] land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential

uses.” By way of example, to meet that requirement for a 50-acre multi-family district, the municipality must show at least 15 existing or potential new multi-family units per acre, or a total of at least 750 existing or potential new multi-family units.

This means that at the lot level (note the gross density is calculated at the zoning district level) the density will need to be higher because land that cannot be developed as housing must be included in the calculation. Exactly how much higher will depend on the specific size of the zoning district and the specific amount of land that cannot be developed. We understand that 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, a better understanding of the current number and density of multi-family units in Newton will help ground the conversation through images, maps, and diagrams. Planning staff have begun building a [multi-family lookbook](#) to assist with visualizing different densities. Currently, the lookbook visualizes density at the lot level. Going forward, staff plan to zoom out to the block or neighborhood level to visualize density that takes into account public rights of way and other areas that are not developable.

Not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station

Newton is lucky to have a significant amount of land within 0.5 miles of its subway and commuter rail stations. However, the draft guidelines allow for additional flexibility by allowing at least one half of the multi-family district to 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 could allow for example, the City to map a portion of a compliant zoning district in village centers, like Nonantum or Lower Falls for example, that are further from transit. This is beneficial to Newton since from the outset of the Zoning Redesign effort, village centers were identified for ideal locations to allow for additional housing. More information is needed to determine if a zoning district located more than 0.5 miles from a transit station needs to be contiguous to portions of a district that is within 0.5 miles of transit.

No age restrictions and Suitable for families with children

Section 3A states that a compliant multi-family district must be without age restrictions and must be suitable for families with children. 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. At previous meetings of the Zoning and Planning Committee Councilors have asked if we could require some multi-bedroom units, keeping in the spirit of providing housing for families, as well as whether we could incentivize smaller units which would likely be more affordable and more energy efficient.

Additional and Clarifying Information

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 a requirement to suddenly produce the 8,330 housing unit capacity.

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.”

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 (Presented to ZAP on 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 (Presented to ZAP on January 24 and will be updated at 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 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.

Timeline for Compliance

According to the draft guidelines, Rapid Transit communities like Newton, must adopt a zoning amendment or amendments by December 31, 2023 to comply with the Section 3A requirements. The draft guidelines also lay out interim steps that must be taken leading up to the adoption of zoning:

- March 31, 2022 – State public comment period ends
- May 2, 2022 –
 - Have submitted the MBTA Community Information Form
 - Have held a briefing with the City Council on the Draft Compliance Guidance
- December 31, 2022 –
 - Notify DHCD that there is no existing multi-family district that fully complies with these guidelines
 - Submit a proposed action plan as described in section 9.b of the draft guidelines
- March 31, 2023 – Receive approval of the action plan by DHCD
- December 31, 2023 – Adoption of zoning amendments for MBTA communities

This Committee of the Whole is intended to meet the stated requirement to brief the City Council, however Planning Staff intends to continue to present additional analysis and updates to the Zoning and Planning Committee throughout the upcoming year.

City Questions and Comments for Submission

Planning staff previously briefed ZAP at their January meetings, which were attended by many City Councilors. Those meetings have resulted in several comments and questions which we plan to formally submit to DHCD prior to the comment period ending on March 31st. The questions already received, plus others the staff have, are attached to this memo. Topics range from impacts on environmental requirements imposed through the Special Permit process, allowable design guidelines that can be applied to site plan review, what happens to the Special Permit requirements imposed on projects that would now be allowed by-right under the new zoning district, etc. In addition to the general overview, staff look forward to collecting additional questions and comments at the upcoming briefing, all of which will be submitted to DHCD as part of the Planning Department's comments on the draft guidelines.

Looking Ahead

Planning staff will provide the current zoning build out analysis to the Zoning and Planning Committee and will continue to update the Council if new information arises prior to DHCD issuing final guidelines this summer.

Attachments

Attachment A Newton Questions and Comments to DHCD (working document)

Below is a list of outstanding questions which seek additional guidance from DHCD and will be submitted as part of the formal comment period open until March 31.

Sustainability

- What ability do we have to incorporate sustainability requirements into by-right multifamily zoning? Currently we rely on our special permits to incorporate many sustainability commitments.

Special Permits

- Can we still require a special permit at a certain unit/land size/building type threshold as long as we can show that we can meet the unit capacity by-right?
- How will existing special permits be affected? If a property containing development that was particularly approved by special permit is located within the multifamily district and the development as constituted would now be allowed by-right, would it no longer need to comply with the conditions of their special permit?

Size of Units / Suitability for Families

- The guidelines prohibit placing restrictions on the size or number of bedrooms of units but could we require a certain number of larger units (similar to 40B requirements that 10% of units be 3 bedrooms) in order to ensure we are getting family-sized housing?
- There has also been a desire to have smaller units that are likely to be more affordable and result in fewer vehicles. Could the zoning include incentives for smaller units?

Allowing Multi-Family Housing By-Right

- Can you provide more guidance on how Site Plan Review and Site Plan Approval might be incorporated?
- If the multifamily district overlaps with a local historic district or includes landmarked properties, would it still be considered as of right if there is a historic review process?

Determination of Compliance

- How will DHCD analyze the proposed districts for compliance? How will economic feasibility be determined? In order to test whether other dimensional controls (such as FAR, height, parking, setbacks, etc.) make it infeasible to build the allowable density we will need to make some assumptions about unit sizes. Will DHCD be providing guidance around these assumptions?

Location of District

- If we have sufficient land within 0.5 miles of transit stations could we still include land more than 0.5 miles from transit stations in the district for up to half of the district? We think our village centers, some of which are more than 0.5 miles from a defined transit station (but often still served by bus and express bus service), may be good locations for multifamily housing. If we can include land more than 0.5 miles from a transit station does it need to be contiguous with portions of the district that are within 0.5 miles of a transit station?