

MEMORANDUM



DATE: October 5, 2020

TO: Deborah Crossley, Chair, Zoning & Planning Committee

FROM: Councilors Marc Laredo, Lisle Baker and Pamela Wright

RE: Comments on the process regarding the review of the Planning Department's revised provisions of the residential component of the Department's proposed new zoning ordinance regarding #88-20 DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft zoning ordinance; as well as companion docket items related to zoning redesign, including #30-20, #38-20, and #148-20

CC: City Council
 Ruthanne Fuller, Mayor
 David Olson, Clerk of the Council
 Nathan Giacalone, Clerk of the Zoning and Planning Committee
 Barney Heath, Director, Department of Planning and Development
 Zachery LeMel, Chief of Long Range Planning
 Cat Kemmett, Planning Associate;
 Neil Cronin, Chief of Current Planning
 Planning Board
 John Lojek, Commissioner of Inspectional Services
 Alissa O. Giuliani, City Solicitor
 Jonathan Yeo, Chief Operating Officer

Introduction

We very much appreciate the work that has gone into zoning redesign. This memorandum is designed to amplify some questions and requests about the process of the work and the public deliberations initially raised at the Zoning and Planning Committee meeting on October 1, which we ask be responded to at the next meeting on October 15. We are sending them well in advance so that those responsible for responding will have ample time to do so. In summary, we respectfully request the following:

1. The Zoning and Planning Committee should hear dissenting views directly from a group of local architects who recently wrote that they have been excluded from the group advising the Planning Department about its zoning proposals;
2. The Zoning and Planning Committee should be advised by the Law Department how homes which might become nonconforming under the proposed new zoning can be protected or find relief if changes need to be made;

3. The Zoning and Planning Committee should have an opportunity to discuss the current Planning Department proposals, including whether alternatives involving our current zoning code should be considered.

Discussion

1. The Zoning and Planning Committee should hear dissenting views directly from a group of local architects who recently wrote that they have been excluded from the group advising the Planning Department about its zoning proposals.

It is our understanding that, for a number of months, a group of local architects had been meeting on a regular basis to provide advice and guidance to the Planning Department regarding the draft zoning code. That advice was separate and independent from the services of the Planning Department's paid consultant, Utile Architecture and Planning (which apparently has little, if any, direct experience with residential projects in Newton). Sometime this summer, the group split apart, with a new group being formed that has excluded certain members of the original group. Now, apparently only this new group continues to advise the Planning Department. On October 1, members of the Council heard from Steve Garfinkle and others, including some of the original group of architects who were no longer included. They wrote a detailed memorandum dated September 30, 2020 that raised significant concerns, both general and specific, with the latest draft of the residential portion of the proposed new zoning code, and asking for an opportunity to address the Zoning and Planning Committee.

If zoning redesign is to succeed, the Council, and the Zoning and Planning Committee on its behalf, as well as the Planning Department and the public, needs to be informed of problems as well as opportunities posed by the Planning Department's proposals. It is easy to legislate if guided by proponents, but helpful learning and ultimate success with the Council will require bringing these dissenters into the Committee discussion itself, so that we can not only hear from them but also ask them questions.

Therefore, we respectfully ask that time be set aside at October 15 meeting of the Zoning and Planning Committee so that the authors of the September 30 memorandum be provided an opportunity to be heard. We also respectfully request that the Zoning and Planning Committee continue to hear from this group going forward. Finally, we also respectfully request that the Planning Department be directed to consult with, and seek guidance from, this group and others who might have concerns about its proposals so that those are considered early enough in the process to make a difference.

2. The Zoning and Planning Committee should be advised by the Law Department how homes which might become nonconforming under the proposed new zoning can be protected or find relief if changes need to be made;

One of the main goals of the zoning redesign effort has been to reduce the number of non-conforming properties in the city and therefore reduce the need for special permits. Recently, the Planning Department advised the Zoning and Planning Committee that the Department no longer considers reducing non-conformity to be a primary goal if keeping the same amount of non-conformity, or even increasing it, is needed in order to meet other goals of zoning redesign. But if homes are rendered nonconforming in new ways, the need for special permits and variances may grow, rather than be reduced. In addition, it is important to know if the changes proposed might be subject to legal challenge as a result.

We respectfully request that we hear from the Law Department at the October 15 meeting, rather than at some later time in the future, because this understanding can affect our decisions about basic elements such as dimensional standards, new setbacks or required open space, or even driveway buffer strips, which arose at our October 1 Zoning and Planning meeting. This is why we need to be advised of what protections will be provided to existing homes as we go through the ordinance drafting process. We suggest that an efficient way to proceed would be for the Law Department to provide a general memorandum on how the law allows protection for non-conforming properties and how they can obtain relief from new requirements by a special permit or zoning variance. The Department can then update that advice from time to time as we consider specific aspects of the proposed new code. Otherwise we are proposing rules without an understanding of whether and how they can be modified as may be wise to do.

3. The Zoning and Planning Committee should have an opportunity to discuss the current Planning Department proposals, including whether alternatives involving our current zoning code should be considered.

As an institutional matter, we remain troubled by the manner in which this entire process is proceeding. While we appreciate the expertise that the Planning Department brings to this effort, it is the *City Council*, and not the Planning Department, that needs to debate the merits of any proposal and decide how to proceed. Instead, we have had repeated presentations by staff with questions that they want answered in order for them to work on their proposals.

The decision whether to continue to use Floor Area Ratio (FAR) as a check on oversized residential construction is a good example. While the Department offered a brief written response about FAR in the attachment A to its last memorandum dated September 25, the Committee itself has not had a chance to discuss whether to discard this tool that originated from a prior Planning Department's advice. If FAR it does not work well presently, are there ways to modify it so it can be improved? What are the experiences of other communities that use FAR? Have any other communities adopted FAR and then abandoned it? If so, why? The same types of questions need to be asked of other elements discussed in the September 30 architects' memorandum. These are key policy decisions that need to be made by the Council initially through the Committee, not by staff, with thoughtful deliberation after considering all points of view. Instead, what we appear to be doing is assuming the new framework is sound, and responding to questions about the details. This strikes us as backwards, especially since the original idea of fixing some specific issues such as oversized construction and front-facing garages has been superseded by this grand redesign for Newton zoning that the Department, but not yet the Council itself, has endorsed.

In summary, policy about zoning ends and means should be explicitly decided by the Council, not implicitly by the Planning Department. A way to begin frame that decision is to provide the members of the Zoning and Planning Committee, on behalf of the Council, some time to discuss the current Planning Department proposals, including whether alternatives involving our current zoning code should be considered.

Conclusion

Given the public interest in this work, we believe it important that these issues be raised in advance of the Committee meeting on October 15, so that they can be responded to at that time.