



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Monday, September 12, 2022

Present: Councilors Crossley (Chair), Albright, Danberg, Krintzman, Wright, Leary, Baker, and Ryan

Also Present: Councilors Markiewicz, Lipof, Lucas, Greenberg, Kelley, Bowman, Laredo, and Downs

City Staff: Zachary LeMel, Chief of Long Rand Planning; Jen Caira, Chief Planner; Jennifer Wilson, Assistant City Solicitor; Lara Kritzer, CPA Program Manager; Eamon Bencivengo, Housing Development Planner; Jonah Temple, Deputy City Solicitor; Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee September 12, 2022 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-September-12-2022)

#192-22 Request for review and amendments to Section 6.7.1
COUNCILORS CROSSLEY, DANBERG, LIPOF, KELLEY, ALBRIGHT, NORTON,
BOWMAN, GREENBERG, HUMPHREY, LEARY, RYAN, AND KRINTZMAN requesting
a review of and possible amendments to, Section 6.7.1 Accessory Apartments, to
remove barriers to creating accessory apartments, such as to consider conditions
under which detached ADUs may be allowed by right, and under which ADUs may
be permitted as part of new construction.
Zoning & Planning Held 7-0-1 (Councilor Baker abstaining) on 08/09/22
Recommendation from Planning & Development Board Pending
Action: Zoning & Planning Approved 5-2-1 (Councilors Baker and Wright opposed)
(Councilor Ryan abstaining)

Note: The Chair read the item into the record and introduced Zachary LeMel, Chief of Long Range Planning to present the draft ordinance amendments. The purpose of these amendments is to make accessory dwelling units (ADUs) easier to create in Newton. Mr. LeMel outlined the benefits that ADUs can bring such as enabling diverse housing options, providing flexibility for homeowners, supporting aging in place, and allowing for new housing without major new construction. The first proposed amendment is to remove the 4-year “lookback” period that is currently required in 6.7.1.C.5., to allow for planning and building of ADUs in new construction. The second proposed amendment is to allow more detached ADUs by-right, if limited to 250sf – 900 sf, or 50% of total habitable space, whichever is less. He noted that historic carriage houses, depending on their location on a site, are currently allowed to be converted to ADUs by-right in non-historic districts. This is to encourage restoration. The third proposed

amendment is to modify the setbacks for detached ADUs to equal either half of the setback required for the principal building in that zone, or 7.5 feet, whichever is greater. Currently, accessory buildings of all other uses require only a 5 foot rear and side yard setback, with the front setback equal to that of the principle building. And, if the setbacks are less than that of the principal dwelling, but otherwise meet this standard, screening would also be required either via dense planting or fencing.

The final proposed amendment is to clarify the language defining the owner occupancy requirement.

The Public Hearing was opened.

Sean Roche, 42 Daniel St, commended Mr. LeMel on making this content easily understandable and substantially agrees with the proposed amendments. Mr. Roche did note that he thinks these amendments should have gone further and the owner occupancy requirement should be dropped.

Rena Getz Escudero, 192 Pine Ridge Rd, cited multiple communities that recently amended their zoning ordinance relating to ADUs and expressed opposition to the removal of the lookback (4 year waiting) period. by Ms. Getz Escudero explained her opposition is based on wanting to prevent teardowns within the City. She did express support of allowing small ADUs by-right along with a suggestion to amend the 50% of the principle setback provision to 75% of the principle setback. She also noted that ADUs are eligible to be counted in the SHI calculation for the City. Ms. Caira later in the meeting noted that she knows of no ADUs included in the SHI calculation and that it would be rare if any were included. The Chair noted that a review of similar ordinances in other municipalities was conducted, and that in order to count ADUs in the SHI, certain deed-restricted affordability requirements would have to be imposed.

Robert Fizek, 47 Forest St, stated that he is an Architect who has worked on ADUs with many clients and expressed opposition to all amendments presented by Mr. LeMel. Mr. Fizek stated that the Special Permit process is not a significant obstacle to the construction of ADUs and that he believes the process helps bring the community together.

Lisa Monahan, 1105 Walnut St, also a local architect, expressed support for the proposed amendments. Ms. Monahan noted that she sees these amendments as a way to increase the housing stock while preserving the neighborhood's physical character. She also noted her disagreed with Mr. Fizek's comment regarding the Special Permit process not being a significant obstacle.

Jay Walter, 83 Pembroke St, also a local architect serving many clients needing ADUs, supports the amendments and sees the setbacks proposed as a good compromise. He described a couple who found that creating an ADU was the only affordable option they had to be able to continue to live in Newton. Mr. Walter also recommended that the section regarding the floor area ratio

(FAR) be clarified as it is ambiguous. It was also noted that the “Building Professional Working Group” he is part of supports removing the lookback, finding that developers are generally not interested in building ADUs in their speculative buildings, because it adds expense and limits buyers.

MaryLee Belleville, 136 Warren St, expressed overall support for the proposed amendments but did express some concern regarding the 1500 sf upper limit on detached ADUs via Special Permit. Staff later stated that this upper limit exists in the current ordinance. Ms. Belleville also posed several questions relating to the ability to see where in the City ADUs are located, how many have sold in the last 8 years, and finding information on changes of ownership. City Staff noted that this information would be on file with the City’s Inspectional Services Department (ISD).

Ruth Kantar, 672 Chestnut St, expressed her interest in facilitating ADUs as related to being the parent of an adult with developmental disabilities. By making ADUs easier to create, there could be more housing options that better meet the needs of diverse families. Ms. Kantar did seek clarification on whether a detached garage would make a property ineligible to have an ADU. The Chair noted that, while there is nothing in the code that prohibits multiple accessory buildings on a site, that FAR limits the total square footage that may be built on a site.

Lynn Weissberg, 5 Alden St, and Kathy Pillsbury 34 Carver Rd. also expressed support.

The Committee voted 8-0 on a motion to close the public hearing by Councilor Leary. The item was then tabled via an 8-0 vote on a motion from Councilor Danberg.

Later in the meeting, the Committee voted 8-0 on a motion to take the item off the table from Councilor Leary.

One Councilor noted that the Planning & Development Board’s Public Hearing for this item is scheduled after the next City Council Meeting, so what will be the procedure tonight. The Chair stated that the Committee may vote this item tonight but, if so, at the next City Council Meeting this item will be postponed to a date certain, in order to wait for the Planning Board’s recommendation, which we should have prior to the first full Council meeting in October..

One Councilor noted that the first ordinance allowing ADUs in Newton passed on August 3, 1987 intended to make sure that ADUs could exist but also fit into the context of the neighborhood. He sought clarification regarding the owner occupancy requirement if the owner is a Trust. Ms. Cairn responded stating that the proposed amendment to the owner occupancy requirement is strictly to ensure the ordinance is clear to the public.

This Councilor then shared several slides with the Committee, noting that the graphics were created by another (attached). A map of the city highlighted the location of single- and two-family properties throughout Newton, noting that setbacks are an important factor in the construction of these units and stating that the special permit process helps to provide a

reasonable safeguard. The Councilor proceeded to show the Committee hypothetical examples of detached ADUs by-right if built on every property located in the same block. He proposed that allowing by-right construction of detached ADUs would result in a significant number of these units. In advocating for the lookback provision this Councilor noted that the four year wait was to prevent an ADU in new construction serving as an incentive for people to move to Newton who otherwise could not, and that this would raise property costs.

During the discussion, it was noted by multiple Councilors that the presentation made by the Councilor was a scare tactic and the scenario depicted is highly unlikely. It was also noted that the illustration incorrectly showed 900sf ADU footprints, but accessory buildings are limited to 700sf footprints by-right; the 900sf ADU can only be achieved by a 1.5 story unit.

Several Councilors also raised concerns with the screening requirements for detached ADUs having setbacks less than the principal dwelling. But other members of the Committee expressed support for the screening provision. The Committee voted 4-3-1 with Councilors Wright, Baker, and Ryan opposed and Councilor Krintzman abstaining on a motion to remove the screening requirements from the ordinance amendment as proposed.

Three motions were then brought before the Committee by Councilor Baker. First, a motion to amend the proposal to preserve the lookback provision failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Second, a motion to amend the proposal to require that the setbacks for detached ADUs equal that of the principal dwelling failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Third, a motion to amend the proposal by deleting the portion allowing small detached ADUs by-right failed 1-6-1, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed and Councilor Wright abstaining.

Finally, a motion by Councilor Wright to allow a 1-year lookback provision failed 3-5, Councilors Leary, Albright, Krintzman, Crossley, and Danberg opposed.

The Committee once more reviewed the draft text of the ordinance noting deletion of the screening requirements and agreeing that the language describing the FAR limit on a site would be clarified in the final draft presented to Council. Councilor Danberg moved approval as amended, which carried 5-2-1, Councilors Wright and Baker opposed and Councilor Ryan abstaining.

#401-22 Request for review and amendment to Section 5.11.5.E

HER HONOR THE MAYOR requesting possible amendment to Section 5.11.5.E to specify that the Affordable Housing Trust will be the entity to receive and distribute one half of new Inclusionary Zoning funds, rather than having these funds go to a separate City account.

Zoning & Planning Held 8-0 on 08/09/22

Recommendation from Planning & Development Board Pending

Action: Zoning & Planning Approved 8-0

Note: The Chair read the item into the record, noted members of the CPC and Housing Trust joining us for this meeting, and introduced Eamon Bencivengo, Housing Development Planner to present on the proposed ordinance amendments. In this presentation Mr. Bencivengo outlined that the purpose of dedicating 50% of the IZ funding to the Affordable Housing Trust (Trust) is to allow the Trust to operate as efficiently as possible. The current ordinance has cash payments to the IZ fund shared equally between the City's Inclusionary Zoning Fund and the Newton Housing Authority (NHA). The proposed amendment would provide that the Trust receive 50% of the funds directly. This amendment does not alter the share that NHA will receive of these cash payments. Mr. Bencivengo then shared with the Committee a copy of the proposed text revision to Section 5.11.5.E.

The Public Hearing was opened.

Community Preservation Committee member Eliza Datta of 40 Homer St noted that approving this ordinance amendment along with the upcoming item #436-22 will be a powerful way for the Trust to get a start on achieving their goals. These sentiments were echoed by Sean Roche of 42 Daniel St and Jay Walter of 83 Pembroke St.

Chair of the Municipal Affordable Housing Trust Ann Houston, of 45 Wedgewood St., was recognized next. (She also recognized the presence of Trust member Peter Sargent). She noted that these amendments will allow the Trust to be responsive to opportunities to increase the City's supply of affordable housing. Ms. Houston also noted that at the next meeting of the Trust on September 28th the Trust will be approving the first version of their strategic vision plan and guidelines along with a formal application form. It was also noted that the Trust is looking to be responsive to any projects that wish to seek support.

Robert Fizek of 47 Forest Street admitted he was just learning about this, and inquired about the efficacy of having a Trust that receives these funds versus the affordable units being built by the developer. Mr. Bencivengo stated that fractional payments can be made by developers should the development have a partial amount of the required affordable units. The Chair noted numerous reports that are available from meetings over the past term as the Trust was being established. The Committee voted 8-0 on a motion to close the public hearing from Councilor Danberg. The Committee then voted 8-0 on a motion to approve also from Councilor Danberg.

#399-22 **Appointment of Elizabeth Sweet to the Zoning Board of Appeals**
HER HONOR THE MAYOR appointing Elizabeth Sweet, 281 Lexington Street, Auburndale as a full member of the Zoning Board of Appeals for a term of office to expire on September 19, 2025. (60 Days: 10/07/2022)

Action: **Zoning & Planning Approved 8-0**

Note: The Chair introduced Elizabeth Sweet, inviting her to describe her interest in becoming a full member of the Zoning Board of Appeals (ZBA). In her statement Ms. Sweet described her experience as an alternate member of the Zoning Board of Appeals as one that has helped her gain knowledge and better link the material, she teaches with real world examples. She noted that her experience as an urban planner helps add to the diverse set of experiences on the Board and looks forward to further contributing to the work of the Board. Multiple Councilors expressed support for Ms. Sweet's appointment. The Committee then voted 8-0 on a motion to approve from Councilor Krintzman.

Referred to Zoning & Planning and Finance Committees

#436-22

CPC Recommendation to appropriate \$1,948,056 in CPA funding

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of one million nine hundred forty eight thousand fifty six dollars (\$1,948,056) in Community Preservation Act funding, with \$556,588 to come from the FY23 Community Housing Reserve Account and \$1,391,468 to come from FY23 Unrestricted Funding Account, to the control of the Planning & Development Department to provide funding to the Newton Affordable Housing Trust for future projects that meet one or more of the CPA's eligible funding categories for Community Housing projects.

Action: **Zoning & Planning Approved 8-0**

Note: The Chair introduced Eliza Datta, Vice Chair of the Community Preservation Committee, who noted the Trust being created in December 2021 and the CPC subsequently agreeing to allocate its annual target for Community Housing Funds to the Trust. This request is set to recur on an annual basis. This request would allocate the CPC's target amount for Community Housing, currently 35% of the CPC FY23 annual funds to the Trust as seed money for future projects. It was noted that the Trust so far has been very efficient at getting to work meeting the goals of the Trust. The Trust is currently in the process of developing program guidelines and review processes with applications being accepted on a rolling basis starting this Fall.

During discussion one Councilor sought clarification about the relative appropriation of resources in this request. Ms. Datta responded that the allocation in this proposal is not a change in the relative allocation of funding but rather consistent with CPC targets for previous years. It was also reaffirmed that this request is only for this year. Multiple Councilors also expressed support for this funding request as a mechanism for the Trust to have a successful start, and again expressed gratitude to the members of the Trust for their service. The Committee voted 8-0 on a motion to approve from Councilor Danberg.

Chair's Note: *The final regulations that will guide compliance with the MBTA Communities Law were released in August, and are attached for your review. Planning staff are in the process of getting clarification on several points. I encourage you to submit any specific questions you may have to our Committee Clerk for the Planning Department to address more fully at the Wednesday, September 28 ZAP meeting.*

#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)

Zoning & Planning Held 8-0 on 01/24/22

Action: Zoning & Planning Held 8-0

Note: The Chair that the state has finalized regulations for MBTA Communities, which we received in August, and are in the Packet. She noted that the Compliance Guidelines now allows until January 31, 2023 for communities to submit an Action Plan to DHCD. She reminded that tonight's meeting was only to raise questions for deeper discussion at our September 28 meeting. The Planning Department along with other individuals are currently seeking clarification regarding some aspects of these regulations. Individuals with questions for the Planning Department should submit them to the Committee Clerk, Jaclyn Norton (jnorton@newtonma.gov). Jen Caira stated that questions should be submitted by Monday morning, September 19, 2022. The Committee then voted 8-0 on a motion to hold from Councilor Krintzman.

#47-22 Requesting annual updates on Newton's Subsidized Housing Inventory (SHI)

THE ZONING & PLANNING COMMITTEE, COUNCILORS LUCAS AND OLIVER, requesting a conversation with the Director of Planning and Development about Newton's Subsidized Housing Inventory (SHI) and progress towards meeting the affordable housing safe harbor and a request to post the SHI on the City's website. (formerly #307-21)

Action: Zoning & Planning Held 8-0

Note: The Chair introduced Jonah Temple, Deputy City Solicitor and Ms. Caira to provide a brief overview of the recalculation of Newton's Subsidized Housing Inventory (SHI) (SHI Memo attached). Ms. Caira described to the Committee that this is part of MGL Chapter 40B (1969) and the City can claim "Safe Harbor" status once 10% of the housing stock or 1.5% of relevant land area is developed as affordable housing according to the state requirements. This calculation is performed for each comprehensive permit application so that the Zoning Board of Appeals (ZBA), can decide if they may claim Safe Harbor, which changes the rules. This calculation has also been performed more recently on a semi-annual basis to ensure this calculation is up-to-date. The current calculation shows that Newton has 9.8% compliant affordable housing stock and that 1.35% of available land area supports affordable housing. This concluded Ms. Caira's presentation

One Councilor presented several questions which were expressed in a memo sent to Attorney Temple, Deputy Director Caira and the full Council (attached). The first was a request for a chart to show the last 10 years of SHI data. Ms. Caira responded and said that the last 6-8 years of can be readily supplied but would need time to put that information into a chart. Second was to ask

how many affordable units are not included in the SHI calculation. Ms. Caira responded stating that these units are very few and the City continues to submit them for inclusion in the SHI. Another question from this Councilor was regarding the time frame for qualifying for safe harbor relative to Newton's continued eligibility to participate as one of the ten communities seeking the authority to require electrification in new construction. Attorney Temple noted that the City is currently seeking guidance on this topic. Later in the discussion this Councilor requested a written response to the questions posed in this memo.

Other Councilors also presented questions with one Councilor seeking clarification on how the numerator and denominator change in this calculation. Ms. Caira stated that the denominator is calculated each decennial Census with the numerator updating each time the calculation is performed. Other Councilors sought clarification on when a development can be included in this calculation and the process after the City has reached safe harbor status. Ms. Caira noted that once safe harbor status is reached the ZBA is given more discretionary leeway with projects, but developers may still request a Comprehensive permit under Ch40B, versus seeking a special permit. Regarding when a development can be included in the calculation, Attorney Temple stated that a building permit for vertical construction is required. The Committee then voted 8-0 on a motion to hold from Councilor Baker.

#38-22 Discussion and review relative to the draft Zoning Ordinance regarding village centers

ZONING & PLANNING COMMITTEE requesting review, discussion and possible ordinance amendments relative to Chapter 30 zoning ordinances pertaining to Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

Zoning & Planning Held 7-0 (Councilor Baker not voting) on 08/09/22

Action: Zoning & Planning Held 8-0

Note: The Chair stated that the exhibit located on the second floor of the library is open to the public and is available in a digital version on the Planning Department's website ([Village Centers \(newtonma.gov\)](https://www.newtonma.gov/village-centers)). Regarding the community testimonials received it was noted that the Committee Clerk has compiled those testimonials received in 2022 on the Zoning & Planning Committee website ([Village Center Zoning Redesign \(newtonma.gov\)](https://www.newtonma.gov/village-center-zoning-redesign)). One Councilor did request an updated calendar to gather an idea of what the Chair is looking to bring before the Committee for the rest of the year. The Chair agreed, noting that the majority of our work will be focused on zoning for village centers through the end of the year. Seeing no further discussion, the Committee voted 8-0 on a motion to hold from Councilor Leary.

The meeting adjourned at 10:35pm

Respectfully Submitted,

Deborah J. Crossley, Chair