



Ruthanne Fuller
Mayor

Barney Heath
Director of
Planning & Development

Malcolm Lucas
Housing Planner

Members

Esther Schlorholtz, Chair
Donna Rigg, Vice-Chair
Kathy Laufer
Josephine McNeil
Tatjana Meschede
Judy Korzenowski
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By City Clerk at 12:35 pm, Sep 30, 2022



CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING AGENDA

Date: October 4, 2022

Time: 8:00 a.m.

Place: Virtual (Zoom)

Zoom Online Meeting: <https://us02web.zoom.us/j/81986424271>

The Fair Housing Committee will hold this meeting as a virtual meeting on Tuesday, October 4, 2022, at 8:00 am. No in-person meeting will take place at City Hall. To view and participate in this virtual meeting on your smartphone, download the "ZOOM Cloud Meetings" app in any app store or visit www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following: **Meeting ID: 819 8642 4271.**

You may also join the meeting from your smartphone by dialing 1(646) 558-8656 and entering 81986424271# For audio only, call 1(646) 558-8656 and enter **Meeting ID: 819 8642 4271.**

To view and participate in this virtual meeting on your computer, at the above date and time, either copy the attached link into your browser or visit www.zoom.us, click "Join a Meeting" and enter the following **Meeting ID: 819 8642 4271.**

1. Approval of August and September 2022 minutes

2. Armory Presentation

3. Training Program Planning for Winter

4. ARPA Follow up

5. Village Center Zoning Review

6. Subcommittee Updates

- **Lottery Results & Lease-ups Sub-Committee**
- **Membership & Nominating Sub-Committee**
- **Fair Housing Award Sub-Committee**

- **Fair Housing Literature Sub-Committee**

7. Fair Housing Committee Priorities Discussion

- **Promote housing choice for diverse populations to advance Affirmatively Furthering Fair Housing (AFFH), with focus on race/ethnicity, public subsidy and disability**
- **Identify and work to overcome barriers to successful tenancies and to improve processes/practices for tenant selection in lottery and market rate multi-family rental housing**
- **Promote improved practices for real estate professionals to achieve more housing choice for diverse populations**
- **Promote effective processes/practices for new affordable homeownership and resales**
- **Promote data collection on multi-family rental and new homeownership occupancy**
- **Promote FH training for real estate professionals, public and committee members**
- **Enhance Project Review of Housing Developments to advance AFFH**
- **Support AI/Consortium Fair Housing Testing and FH testing in Newton**
- **Collaborate with Related Newton Commissions and Committees to increase affordable housing for households of various sizes and lower incomes and to encourage increased funding for affordable housing**
- **Promote affordable housing production in coordination with other City commissions and committees**
- **Support federal, state and city initiatives that promote AFFH**
- **Collaborate with Human Rights Committee on Fair Housing Complaint Process**
- **Contribute to Newton's FH-related plans**
- **Enhance FH literature and website information and access for the public**
- **Address committee membership appointments with representation from Human Rights Commission and legal counsel with FH specialty**
- **Promote Diversity, Equity, Inclusion and Belonging in Newton**

8. Next meeting Tuesday, November 1, 2022

*Supplementary materials are available for public review in the Planning Department of City Hall (basement) the Friday before the meeting. For more information contact **Malcolm Lucas at 617.796.1149**. The location of this meeting/event is wheelchair 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/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: 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



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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING MINUTES

Date: August 3, 2022

Time: 8:00 a.m.

Place: Virtual (Zoom)

Members Present: Esther Schlorholtz, Chair

Donna Rigg, Vice Chair

Kathy Laufer

Josephine McNeil

Tatjana Meschede

Ellen Tanowitz

Members Absent: Alexandra Weiffenbach

Judy Korzenowski

Staff Present: Malcolm Lucas, Housing Planner

Jini Fairley, ADA/Sec. 504 Coordinator

Public Present: Councilor Julia Malakie

Malcolm Lucas, Housing Planner served as recorder, Esther Schlorholtz, Chair, called the meeting to order at 8:00 a.m.

1. Approval of June 2022 minutes

- Upon a motion by DR, the minutes for June 2022 were approved 6-0-0.

2. Next meetings at 8:00 am on 9/6, 10/4, 11/1, 12/6

- All agreed to move the meetings to the first Tuesday of the month for the remainder of 2022. ES asked ML to follow up with changing the dates on the website and other places notification is given.

3. Committee Priorities Discussion



- The committee discussed the following priorities and agreed to have further discussion at the September meeting.
- **Promote Fair Housing training** for real estate professionals and the public. Offer regular FH training for committee members and inform them of training opportunities. The training discussion will be continued in September's meeting on the specifics.
- **Promote more successful tenancies (with focus on race/ethnicity, public subsidy, and disability) and improve processes/practices for tenant selection**
 - Identify and work to overcome barriers to successful tenancies in lottery and market-rate multi-family rental housing. Work to promote Diversity, Equity, Inclusion and Belonging.
 - Promote improved practices for real estate professionals (owners/developers/management/leasing agents) to achieve better tenant success for diverse populations.
 - Promote collection of data to help guide the City's policies on successful tenancies. Encourage regular multi-family SHI reporting by developers/owners to the City.
- **Review and improve selection process for affordable homeownership** opportunities for first time home buyers for: resales and newly built deed restricted/Subsidized Housing Inventory (SHI) homes. Promote collection of data to help guide the City's policies and practices. Promote Diversity, Equity, Inclusion and Belonging.
- **Promote welcoming and economically connected communities.** Support and encourage Newton's efforts to be a more welcoming community for people of all backgrounds. Promote concept of "economic connectedness" for all residents and support Diversity, Equity, Inclusion and Belonging initiatives.
- **Promote affordable housing production in coordination with other City commissions and committees.** Support Newton Housing Partnership, Newton Affordable Housing Trust Fund, Newton Housing Authority and Community Preservation Committee initiatives to increase affordable housing production, including for very low-income households of various sizes, and encourage increased funding for both rental and ownership housing. Promote Diversity, Equity, Inclusion and Belonging.
- **Improve Fair Housing real estate project reviews** and ensure appropriate projects are reviewed by FHC. Promote Diversity, Equity, Inclusion and Belonging.
- **Promote Affirmatively Furthering Fair Housing (AFFH) by supporting federal, state and City initiatives.** Support zoning reform to promote creation of housing opportunities for people of diverse backgrounds; support MBTA Communities, ARPA & other initiatives promoting FH.
- **Improve Fair Housing Complaint process** by working with the City and the Newton Human Rights Commission. Promote improved FH complaint process by the Massachusetts Commission Against Discrimination (MCAD).
- **Support Fair Housing Testing** in Newton with focus on race/ethnicity, public subsidy, and disability.
- **Nominate FHC members** to address key representation from Human Rights Commission and attorney with specialty in Fair Housing. Promote Diversity, Equity, Inclusion and Belonging.

- **Contribute to Newton's Fair Housing-related plans:** Analysis of Impediments, Consolidated Plan, Community Needs Assessment, and other policy and planning initiatives. Promote Diversity, Equity, Inclusion and Belonging.
- **Enhance Fair Housing literature and website** information and access for the public. Promote Diversity, Equity, Inclusion and Belonging.
- **Promote Diversity, Equity, Inclusion and Belonging** in Newton and in all FHC initiatives.
- ES thanked the committee for the discussion. She said that the committee will continue to update its priorities on an on-going basis and the list of priorities should not be considered static.

4. **ARPA Recommendations Discussion**

- DR is working on the draft letter that will be addressed to the mayor and will be circulated throughout the Committee through ML. The letter will be complete and sent to the Mayor before September's meeting date.

5. **Training Program Planning for Fall/Winter**

- The training discussion will be continued in September's meeting on the specifics. See Committee Priorities Discussion

6. **Subcommittee Updates**

- **Lottery Results & Lease-ups Sub-Committee (approval of tenant data collection request)**
 - ET motion to approve the letter and excel spread sheet to Austin Street and Trio property management. DR seconded. The data collection letter will be placed on the Committee's stationary and sent to the appropriate property management.
- **Membership & Nominating Sub-Committee**
 - No updates
- **Fair Housing Award Sub-Committee**
 - No updates
- **Fair Housing Literature Sub-Committee**
 - No updates

7. **Fair Housing Committee Priorities**

- **Project Review of Housing Developments**
 - JF and ES are meeting Mark Development to review ADA 504 issues. And ES will be preparing letters to be shared with committee.
 - ES and DR would like to receive notifications about DRT meeting. JF stated that she will reach out to Planning to get information about the email distribution.
- **Diversity, Equity, and Inclusion**
- **FHC Training for Committee and Public**
- **AI/Consortium Fair Housing Testing**
- **Annual Reporting Requirements for Multi-family Minority Rentals**

- **Use of ARPA Funds**

- DR will follow up with the Committee with a draft letter before the September meeting for feedback.

- **Collaboration with Related Newton Commissions and Committees**

- **Collaboration with Human Rights Committee on Fair Housing Complaint Process and Form**

- ES asked ML to arrange a meeting with HHS and a member from the HRC to discuss the process.

8. Next meeting Tuesday, September 6, 2022

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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING MINUTES

Date: September 6, 2022

Time: 8:00 a.m.

Place: Virtual (Zoom)

Members Present: Esther Schlorholtz, Chair

Donna Rigg, Vice Chair

Kathy Laufer

Josephine McNeil

Members Absent: Alexandra Weiffenbach

Judy Korzenowski

Tatjana Meschede

Ellen Tanowitz

Staff Present: Malcolm Lucas, Housing Planner

Jini Fairley, ADA/Sec. 504 Coordinator

Public Present: Rena Getz

Malcolm Lucas, Housing Planner served as recorder, Esther Schlorholtz, Chair, called the meeting to order at 8:00 a.m.

1. Approval of August 2022 minutes

- Approval of minutes are postponed until October's meeting because there is not a quorum and voting is not allowed.

2. Training Program Planning for Fall/Winter

- ES had a discussion with CHAPA and there is progress being made. CHAPA was pleased to hear that the FHC were proactive in providing training for real estate professionals. The meeting will most likely take place on Zoom and be about an hour with a question-and-answer session.



- JM stated that she will follow up with HUD to have a staff come and train the FHC on FHEO

3. AFFH initiatives on ARPA and Village Center Zoning

- ES stated that she was grateful to the City of Newton for their efforts working on zoning reform and spoke about an online session that the city is providing on September 8th from 6-7pm for commenting on Village Center zoning redesign plans. She encouraged the FHC to attend and to give input and make comments online. She said that at our next meeting, we will further discuss the changes proposed by the City and expects that the committee will offer comments related to Fair Housing aspects. She noted that the Fair Housing Act specifically refers to zoning policies and prohibits local governments from making zoning or land use decisions or implementing policies that exclude or discriminate against those protected by Fair Housing law.

4. Project Review Update on Crafts & 1314 Washington

- ES and JF met with Mark Development to discuss follow-up to their June presentation. The meeting was held to enable JF to ask ADA questions and it went well. The developers are currently working with JF on the projects and ES stated that a letter could be drafted and could be discussed in the next meeting or November. JM noted that the FHC needs to find out the dates for the land use public meeting because it may be too late. ES agreed. ES stated that they would have to wait for the updated materials to decide.

5. Subcommittee Updates

• Lottery Results & Lease-ups Sub-Committee

- JM suggested that they should wait for the data that was sent out to Austin St. and TRIO before any discussion should happen. ES agreed and there was no further discussion.

• Membership & Nominating Sub-Committee

- There are not any updates at this time. The Committee is still searching for a fair housing attorney to join the committee and spoke to HKD about recruiting a member from the Human Rights Commission. DR encouraged committee members to search their networks because the recruiting will be up to them.
- KL stated that she is resigning from the Fair Housing Committee. Committee members and Planning staff recognized her and thanked her for her commitment and services. They said that she will be missed for all of the great work she has done for Newton and the Fair Housing Committee. KL asked if ML could take over collecting the data for the subcommittee. ML agreed.

• Fair Housing Award Sub-Committee

- ES asked if the committee members could start thinking about a nominee for 2023.

• Fair Housing Literature Sub-Committee

6. Fair Housing Committee Priorities Discussion

- **Promote housing choice for diverse populations to advance Affirmatively Furthering Fair Housing (AFFH), with focus on race/ethnicity, public subsidy and disability**

- **Identify and work to overcome barriers to successful tenancies and to improve processes/practices for tenant selection in lottery and market rate multi-family rental housing**
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- **Promote affordable housing production in coordination with other City commissions and committees**
- **Support federal, state and city initiatives that promote AFFH**
- **Collaborate with Human Rights Committee on Fair Housing Complaint Process**
 - ES stated that JF and ML are coordinating a meeting with the Human Rights Commission at this time. ES stated that on the City's website the complaint process is clear although there will be follow up for clarity.
- **Contribute to Newton's FH-related plans**
- **Enhance FH literature and website information and access for the public**
 - ES stated that there were not any updates on this matter. ES did encourage the committee members to search the City Website and stated that the Fair Housing Website is very thorough and has all types of materials and resources.
- **Address committee membership appointments with representation from Human Rights Commission and legal counsel with FH specialty**
- **Promote Diversity, Equity, Inclusion and Belonging in Newton**

7. Next meeting Tuesday, October 4, 2022

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Proposed Village Center Zoning Framework Details from May 27, 2022 City Memo and June, 2022 ZAP Workshops

Created by Department of Planning & Development, 8.02.22

What is this document?

This document lays out the (1) twelve proposed changes to village center zoning described in a city memo as well as the (2) takeaways from the Zoning and Planning Committee workshopping each of these proposals, shared in Zoning Redesign Monthly Newsletters. The document merges the memo and the overview of the ZAP workshops for a more convenient reading experience.

What are the next steps with these proposals?

As you will read in this document, the ZAP councilors reached consensus on the overarching ‘framework’ of the twelve proposed changes to zoning. They provided comments, feedback, thoughts, and questions about the proposals outlined in this document – and there were disagreements.

As a result of these workshops, city staff have guidance from the councilors on what to focus on and can bring something concrete to the community to get their feedback on it.

The next step is to now present these proposals, including the councilors’ arguments for and against them, to the community in accessible and engaging ways. The Community Engagement Network is a group of 80+ community members who are bolstering this engagement effort and giving city staff feedback on engagement material. Community input will be collected from September 1 through October 16th.

Based on the community’s feedback, city staff will then present a more developed iteration to ZAP in late October to consider, and ultimately, to vote on.

How to Read This

Each proposal has the following sections:

- *Part I: May 27 Memo (earmarked as ‘#38-22’)*
 - Table comparing existing VS proposed zoning regulation
 - What?
 - Why?
 - How does this align with engagement take ways and City plans and policies?
 - Some include additional sections or graphics
- *Part II: Synthesis of ZAP Workshop (earmarked as ‘Synthesis of ZAP Workshops’)*
 - Table comparing existing VS proposed zoning regulation
 - Committee takeaways
 - Straw vote results

Sources

[May 27, 2022 Planning Memo](#) – Written by City of Newton planning staff and consultant Utile, outlining the key elements comprising a proposed framework for updating village centers’ zoning.

[Zoning Redesign Monthly Newsletters](#) – Written by City of Newton planning staff in effort to highlight engagement opportunities and to synthesize what happens in ZAP meetings:

- [April Recap](#): Highlights consultant’s initial recommended zoning framework for village centers. (City staff and ZAP conversations built upon this initial set of recommendations.)
- [May Recap](#): Highlights planning staff’s May 27 memo and the beginning of the ZAP workshops.
- [June Recap](#): Synthesizes councilors’ arguments and straw votes for every proposal, made during all three of the ZAP workshops.

Zoning and Planning Committee (ZAP) Meetings – ZAP Chair Deborah Crossley facilitated three workshops with ZAP in June, focusing discussion on the recommended zoning framework and policy changes. During these workshops, planning staff and consultant Utile were on hand to answer any questions. [The ZAP website has all information pertaining these meetings](#). See below for direct links to the meetings’ audio recordings and reports:

- Wednesday, June 1, 2022 at 7pm: [Audio](#), [Report Part 1](#), [Report Part 2](#)
- Monday, June 13, 2022 at 7pm: [Audio](#), [Report Part 1](#), [Report Part 2](#)
- Monday, June 27th, 2022 at 7pm: [Audio](#), [Report](#)



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Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 27, 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
Nevena Pilipovic-Wengler, Community Engagement Planner
Cat Kemmett, Planning Associate

RE: **#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)

MEETING: June 1, 2022

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

Village Center Zoning Proposals

Over the past few months, Planning staff, Utile, and Landwise have analyzed potential zoning frameworks for village centers (focusing primarily on the commercial cores). The attached zoning framework represents a series of 12 main zoning proposals. These proposals are based upon the existing zoning, with adjustments to address desired building form, economic feasibility, and housing and climate goals. The attached packet identifies each proposal and includes a brief description, comparison to existing zoning, explanation of why it is being proposed and/or what undesirable outcomes it is intended to address, special permit threshold if applicable, and how the proposal aligns with the engagement takeaways from 2021 and City plans and policies.

Planning staff believe this proposal represents an improvement upon existing zoning without deviating radically from the existing zoning. These proposals align with what we heard during 2021's engagement effort and are well supported by over a decade of City plans and policies. Additionally, the provision of some level of by-right zoning in our village center districts is aligned with the thrust of the MBTA Communities law.

Planning staff look forward to discussing these proposals with the Committee and identifying any remaining questions or areas of concerns. Following the June ZAP meetings Planning staff will work with Utile and the Law department to develop detailed design standards, draft an ordinance, and start working on mapping the districts, while simultaneously engaging the community around these proposals.

Attachment A: Village Center Zoning Proposal Packet

1. Village Center Zoning Proposal: Reduce parking requirements in Village Centers

Comparison to existing zoning:

	Residential	Office	Ground floor commercial	Other Commercial
Existing	2 per unit	1 per 250 sf	Retail: 1 per 300 sf + 1 per 3 employees Restaurant: 1 per 3 seats + 1 per 3 employees	Retail: 1 per 300 sf + 1 per 3 employees Restaurant: 1 per 3 seats + 1 per 3 employees
Proposed	1 per unit	1 per 700 sf	Exempt	

What?

- Reduced parking requirements for residential and commercial uses in all village center zoning districts

Why?

- Utile/Landwise analysis found that parking minimums had significant negative impact on site design and overall financial feasibility
- City Council regularly waives existing zoning parking requirements for ground floor uses and residential units in Special Permits
- Lower parking minimums encourage less vehicle use
- Many existing buildings in village centers do not have parking and the need for a Special Permit to waive parking is a deterrent to small businesses with limited resources
- Limits restaurants’ ability to add seats or additional employees
- Village centers tend to be walkable, near transit, and have public parking
- Providing parking for each individual business in a village center contributes to congestion and detracts from vitality. Better to have visitors park once and visit multiple establishments on foot
- Aligns with MBTA multifamily zoning guidelines

Special Permit Thresholds

- Continue to allow parking waivers by Special Permit

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:

- Overwhelmingly people want walkable, vibrant village centers
- Promote pollution and waste reduction through allowing residents to live low carbon lifestyles
- Encourage a mix of commercial uses in village centers
- Encourage development projects in villages and commercial corridors, especially those with transit
- Find ways to decrease, de-emphasize, combine, or repurpose parking
- Climate Action Plan (2019):
 - Work with the City Council to explore reducing or eliminating the minimum parking requirement in the Zoning Ordinance and instead setting a maximum on parking allotments
 - Work with the City Council to adopt Zoning Ordinances that encourage additional, appropriate low-carbon housing near public transportation
- Housing Strategy (2016):
 - Green design includes both technological solutions for reducing energy and water usage and reducing the environmental impacts of a project as well as placing new development in locations that promote alternative forms of transportation and reduce the need to create housing on greenfield locations on the periphery of the region.
- Washington Street Vision Plan (2019):
 - Newton should consider reducing or eliminating the parking minimum, while also considering a parking maximum
 - New housing should be focused physically around transit stations, and programs should be put in place to ensure that new residents near transit service have every incentive not to drive.
- Economic Development Strategy (2019):
 - Reduce or eliminate parking requirements for ground floor uses in village centers
 - Encourage housing in villages and commercial corridors with mass transit to create “built in” customers for businesses who need less access to private automobiles.
- Newton Centre Task Force Report (2008):
 - Clarify permit process and provide flexible options for property owners to meet building heights and tenant parking requirements
- Comprehensive Plan (2007):
 - Clarify and ease by-right parking requirements to reflect special residential uses and access circumstances, for example location in transit-served village centers
 - Move towards parking as a shared resource in village centers, allowing fees in lieu of on-site parking

#1

Reduced parking requirements in village centers

Proposal

	Residential	Office	Ground floor commercial	Other commercial
Existing	2 per unit	1 per 250 sf	Retail: 1 per 300 sf + 1 per 3 employees Restaurant: 1 per 3 seats + 1 per 3 employees	Retail: 1 per 300 sf + 1 per 3 employees Restaurant: 1 per 3 seats + 1 per 3 employees
Proposed	1 per unit	1 per 700 sf	Exempt	TBD

Committee Takeaways

- There was overwhelming support for lowering parking minimums in village centers, with unanimous support for looking at the most current usage data to consider lowering requirements further for residential buildings.
- Members who voted against or abstained on 1:1 residential parking voiced support for eliminating all parking minimums in favor of letting the market decide how much parking is needed.
- Some members were not in favor of entirely exempting ground floor retail uses from parking minimums.

Straw Vote

ZAP members voted by a nonbinding straw vote, breaking the proposal into two parts:

- 1:1 for residential uses / Upper floor commercial requirements
 - 5 - Yes
 - 1 - No
 - 2 - Abstain
- Elimination of parking requirements for ground floor commercial
 - 6 - Yes
 - 2 - No
 - 0 - Abstain

2. Village Center Zoning Proposal: Increase floor-to-floor heights

Comparison to existing zoning:

	Residential	Office	Ground floor retail
Existing	12'	12'	12'
Proposed	11'	13'	18'

What?

- Set maximum by-right and special permit heights based on industry standards for residential and commercial uses
- Continue to regulate height by either maximum number of stories or overall height

Why?

- Current standards are too rigid
- Looking to appeal to commercial interests
- Aligns with industry standards
- Makes commercial development more viable

Special Permit Thresholds

- N/A

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement...
 - Encourage a mix of commercial uses (retail, office, etc.) in village centers
 - Encourage and support small, local, and independent business that contribute to the vibrancy of village centers
- Comprehensive Plan (2007):
 - We should revise zoning to actively support a mix of uses within a building
- Newton Centre Task Force Report (2008):
 - Clarify permit process and provide flexible options for property owners to meet building heights and tenant parking requirements
- Economic Development Strategy (2019):
 - Add office space by allowing appropriately scaled additional stories in the zoning redesign in targeted areas with demand for office space such as Riverside, Wells Avenue, Nonantum, and village centers
 - Redo zoning to make sure that market driven mixed-use developments are allowed in village centers and along commercial corridors.
- Washington Street Vision Plan (2019):
 - Tailor building design regulations to the expected range of uses in the building

#2

Increase floor-to-floor heights for office and ground floor retail uses, and reduce for residential uses to match industry standards

Proposal

Floor heights (max)	Residential	Office	Ground floor retail
Existing	12'	12'	12'
Proposed	11'	13'	18'

Committee Takeaways

- There was general support among committee members for the recommendation to allow story heights to be increased to accommodate the physical requirements of desirable commercial uses. Several Councilors proposed an amendment to keep the allowed residential floor-to-floor height at 12' maximum.
- Utile explained that these recommendations are maximums, and that the additional cost for building higher floors is significant, making it in the developer's best interest to only build as high as necessary to accommodate the use.

Straw Vote

ZAP members voted by a nonbinding straw vote on the modified proposal:

- 4 - Yes
- 2 - No
- 1 - Abstain

3. Village Center Zoning Proposal: Set design requirements for half stories

Comparison to existing zoning:

	Residential	Commercial	Mixed Use
Existing	none	none	MU4: 1:1 stepback plane above 40'
Proposed	10' setback along perimeter of building or pitched roof with 14:12 max slope		

What?

- Require half stories to either be set back a minimum of 10 feet along the entire perimeter of the building or have a pitched roof with a maximum slope.

Why?

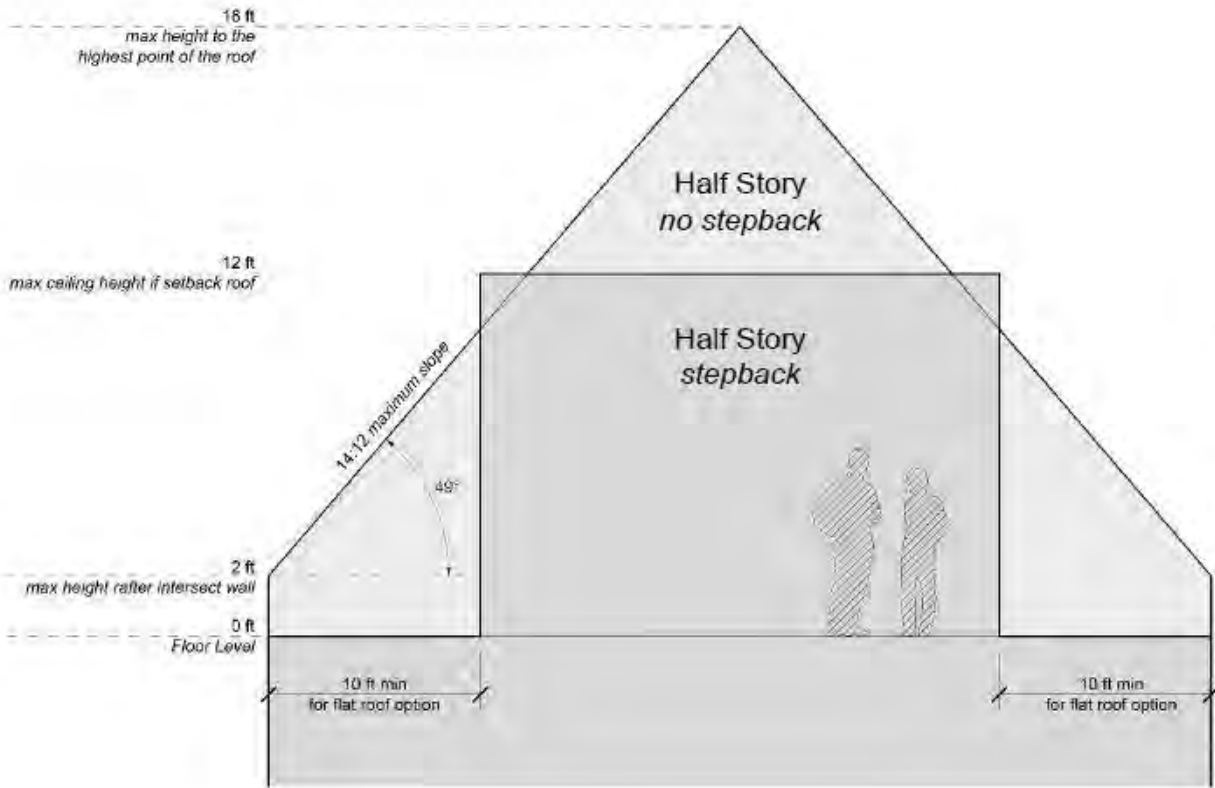
- Facilitates more varied, interesting rooflines
- Allows for useable space in the half story
- Reduces the bulk of the building and the appearance of height

Special Permit Threshold

- Allow Special Permit to deviate from half story requirements if design intent to mitigate bulk and vary roofline is met

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Seek high quality design that is responsive to context
- Washington Street Vision Plan (2019):
 - Ensure that building types are contextually appropriate
 - Encourage traditional New England roof diversity: allow the area under a roof to be habitable above and beyond the allowed number of stories
- Newton Centre Task Force Report (2008):
 - Encourage building designs that are compatible with each other and their surrounding environment



Above: Diagram to define half-story condition for a flat roof or pitched roof



Left: Example of a pitched roof half-story



Right: Example of a stepped back flat roof

#3

Create design requirements for half stories

Proposal

	Residential	Commercial	Mixed Use
Existing	none	none	MU4: 1:1 stepback plane above 40'

Proposed (for all 3 - residential, commercial, & mixed use)	10' setback along perimeter of building or pitched roof with 14:12 max slope
--	--

Committee Takeaways

- The Committee supported the design standards for half stories, which would apply to projects looking to build to the maximum number of stories allowed.
- Some members felt that the step back on the top floor could be reduced from the proposed 10' setback, with Utile recommending 6' or 7' as a good dimension for a usable balcony.
- With the Committee's support, Utile will further refine the proposed standards so as to facilitate and incentivize a variety of rooflines.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6- Yes
- 0- No
- 1 - Abstain

4. Village Center Zoning Proposal: Eliminate lot area per unit minimums

Comparison to existing zoning:

	MU4*	BU Zones
Existing*	1,000 sf lot area/unit	1,200 sf lot area/unit
Proposed	none	none

*Existing MU4 lot area per unit may be waived by Special Permit.

What?

- Existing zoning sets a cap on the number of residential units that can be built on a site based on the total lot area. This proposal would remove that cap, allowing for more flexibility in unit size.

Why?

- Existing lot area per unit minimums lead to larger units and often acts as a cap long before other zoning rules come into effect
- Controlling building size through FAR, setbacks, building footprint, and height allows for flexibility when it comes to unit size and allows for smaller, less expensive units
- Allowing for more units to be built also increases the number of units in buildings accessible by elevators and the number of fully accessible units
- Allowing more units also increases the number of deed restricted affordable units

Special Permit Thresholds

- N/A

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Promote pollution and waste reduction through allowing residents to live low carbon lifestyles
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Create more affordable housing options overall, as well as specific projects for people with disabilities, seniors, and other vulnerable populations
 - Increasing accessibility across a broad spectrum is a key value, and we should work towards inclusivity through updates to current infrastructure and requirements in future development
- Washington Street Vision Plan:
 - Allow for smaller unit residences
- Climate Action Plan (2019):

- o Work with the City Council to adopt Zoning Ordinances that encourage additional, appropriate low-carbon housing near public transportation
- Housing Strategy (2016):
 - o Green design includes both technological solutions for reducing energy and water usage and reducing the environmental impacts of a project as well as placing new development in locations that promote alternative forms of transportation and reduce the need to create housing on greenfield locations on the periphery of the region.
- Economic Development Strategy (2019):
 - o Encourage housing in villages and commercial corridors with mass transit to create “built in” customers for businesses who need less access to private automobiles.
- Comprehensive Plan (2007):
 - o We should allow higher density for specific locations, such as village centers and commercial districts, and should explore allowing multifamily at some locations where otherwise not allowed.

#4

Eliminate minimum lot area per unit

Proposal

	MU4*	BU Zones
Existing*	1,000 sf lot area/unit	1,200 sf lot area/unit
Proposed	none	none

**Existing MU4 lot area per unit may be waived by Special Permit.*

Committee Takeaways

- The Committee supported eliminating this regulation to facilitate the creation of more, smaller units.
- Case studies previously shared with ZAP highlighted how the current regulation often leads to larger and more expensive units, because developers build to the maximum building size, while reducing the number of units to comply with the minimum lot area per unit.
- Utile explained how the proposed standards (overall height/stories and building footprint) act as better tools to regulate building size, but not to restrict the number of units within that envelope so as to allow for a variety of unit sizes to accommodate a diverse population (e.g. downsizing seniors and growing families).

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 5 - Yes
- 0 - No
- 2- Abstain

5. Village Center Zoning Proposal: Remove minimum lot size

Comparison to existing zoning:

	MU4	BU1/BU2/BU3
Existing	10,000 sf	10,000 sf
Proposed	none	none

What?

- Existing zoning requires lots to be a minimum size in order to be developed. This proposal would remove that requirement for village centers, where lots tend to be smaller. The total size of buildings will still be tied to lot size through other dimensional controls.

Why?

- Current rules disincentivize smaller, infill development
- Minimum lot size requirements often lead to the consolidation of lots, resulting in larger buildings
- Many village center lots are less than 10,000 sf

Special Permit Thresholds

- N/A

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Encourage development projects in villages and commercial corridors, especially those with transit
- Newton Centre Task Force Report (2008):
 - Encourage building designs that are compatible with each other and their surrounding environment
- Comprehensive Plan (2007):
 - We should allow higher density for specific locations, such as village centers and commercial districts, and should explore allowing multifamily at some locations where otherwise not allowed.

#5

Remove minimum lot size

Proposal

	MU4	BU1/BU2/BU3
Existing	10,000 sf	10,000 sf
Proposed	none	none

Committee Takeaways

- The Committee was generally supportive of the elimination of minimum lot sizes, noting that the requirement is somewhat arbitrary and precludes development on typically smaller sized village center parcels.
- One Councilor was supportive of a lower minimum lot size over an overall elimination.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 8 - Yes
- 0 - No
- 0 – Abstain

6. Village Center Zoning Proposal: Set a maximum building footprint

Comparison to existing zoning:

	MU4	BU3	BU2
Existing	none	none	none
Proposed	15,000 sf	10,000 sf	5,000 sf

What?

- Limiting the by-right footprint of buildings. If the other dimensional controls allow for a building with a larger footprint, it could be broken into multiple buildings on the lot.

Why?

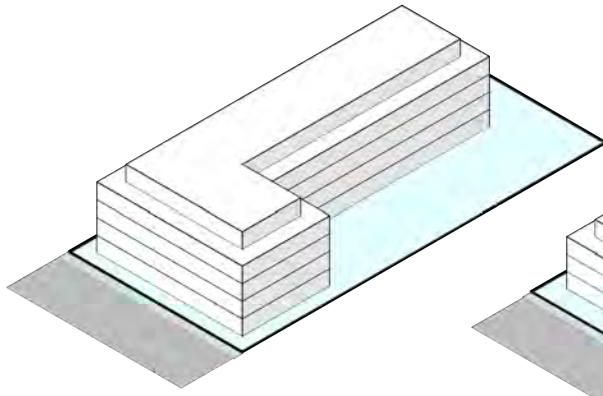
- Prohibits by-right larger buildings in village centers, a concern for many
- Promotes smaller, more contextual buildings

Special Permit Thresholds

- Allow for larger building footprints by Special Permit with a finding that the building has been designed to reduce the bulk of the building and to appear as multiple buildings

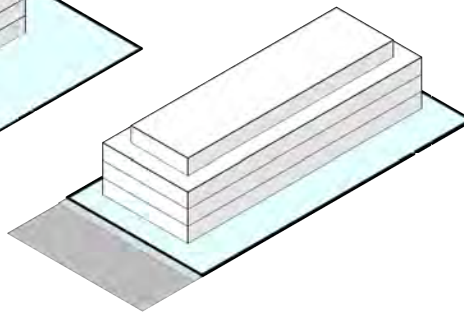
How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Seek high-quality design that is responsive to context
 - Balance housing needs with the need for open/public space
- Washington Street Vision Plan (2019):
 - Ensure that building types are contextually appropriate
 - The Zoning Ordinance can play a role in ensuring developments that span a large area create opportunities for pedestrian and vehicular interconnections
- Newton Centre Task Force Report (2008):
 - Encourage building designs that are compatible with each other and their surrounding environment



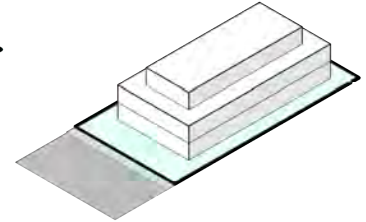
MU4 (Left):

Max footprint = 15,000 sf



BU3 (Center):

Max footprint = 10,000 sf



BU2 (Right):

Max footprint = 5,000 sf



1149 - 1151 Walnut Street

Building footprint = 11,000 sf



28 Austin Street

Building footprint = 26,380 sf (would require Special Permit)



432 Cherry Street

Building footprints = 1,700 sf and 1,932 sf

#6, 10, 11, 12

Revise MU4, BU3, BU2 dimensional standards

Proposal

The following table outlines the proposed changes ZAP considered for these three districts, which would be applied to different village centers according to its scale:

	Revised MU4	Revised BU3	Revised BU2
By-Right (max)	Existing / Proposed	Existing / Proposed	Existing / Proposed
# of Stories	3.0 / 4.5	3.0 / 3.5	2.0 / 2.5
Building Footprint	-- / 15,000 sf	-- / 10,000 sf	-- / 5,000 sf
FAR	1.5 / 2.5	1.5 / 2.0	1.5 / 1.75

Committee Takeaways

- Councilors were overall supportive of the tiered framework, with the understanding the revised MU4 would only be applied to Newton’s larger village centers and the two other proposed districts could be used to step down in scale toward the surrounding neighborhoods.
- Many Committee members expressed support for this tiered framework given that it will help Newton come into compliance with the MBTA Communities multi-family housing requirements.
- Some Councilors expressed support in that allowing more projects by-right would allow a larger variety of, particularly smaller, developers to create smaller in-fill projects.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6 - Yes
- 0 - No
- 2- Abstain

7. Village Center Zoning Proposal: Replace 20,000 sf of floor area Special Permit with Special Permit for development on parcels greater than 3/4 acre

Comparison to existing zoning:

	Special Permit Threshold
Existing	New construction or substantial renovation resulting in at least 20,000 sf of gross floor area
Proposed	New development on parcels greater than 3/4 of an acre (32,670 sq ft)

What?

- Existing zoning requires a special permit for any project creating more than 20,000 square feet of gross floor area. This proposal would remove that threshold and instead require a special permit for new development on parcels greater than ¾ of an acre.

Why?

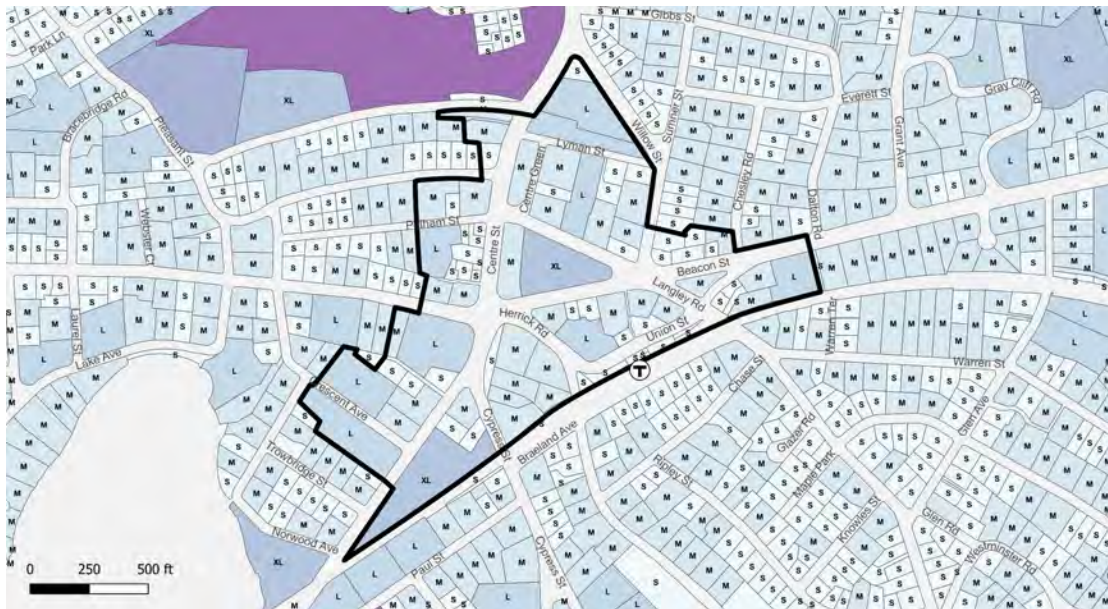
- Land area threshold is a better standard for encouraging more compact development
- Encourages contextual infill development
- Increases the number of potential by-right developments
- Aligns with MBTA Communities guidelines

Special Permit Thresholds

- 3/4 of an acre

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Tier the Special Permit process based on the project size
 - Multifamily buildings should be easy to build near transit
 - We need multi-unit housing in and near the village centers. Preferably by-right.
- Comprehensive Plan (2007):
 - Increase the proportion of residential development applications that can be approved by right rather than through special permit, variance, or comprehensive permit, utilizing clear objective standards and administrative review processes that can obviate the necessity of case-by-case review by the Aldermen (City Council).
- Economic Development Strategy (2019):
 - Zoning redesign focus on reducing the need for special use permits to make development more predictable and easier in places where it is appropriate
- Transportation Strategy (2017):
 - Improve development review process



Map of parcels coded by size in Newton Centre



Map of parcels coded by size in Newton Highlands

Parcel Size Key (in square feet):

- S 0 - 10000
- M 10000 - 30000
- L 30000 - 70000
- XL 70000 - 130000
- 130000 - 220000
- 560000 - 870000

#7

Replace 20,000 sf of floor area Special Permit with Special Permit for development on parcels greater than 3/4 acre

Proposal

	Special Permit Threshold
Existing	New construction or substantial renovation resulting in at least 20,000 sf of gross floor area
Proposed	New development on parcels greater than 3/4 of an acre (32,670 sq ft)

Committee Takeaways

- There was general agreement on the Committee that not all projects that currently require a Special Permit should continue to require one.
- Most Councilors agreed that switching from an overall building square footage (i.e. size) Special Permit trigger to one based on lot size could allow for a simplified permitting process as long as it was paired with objective design standards and Site Plan Review under certain conditions.
- Two committee members expressed concern that the ¾ acre threshold is too large. They recommended exploring a tiered threshold for lot size similar to the building footprint size proposal (#6).

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6 - Yes
- 0 - No
- 2- Abstain

8. Village Center Zoning Proposal: Require Site Plan Review with Design Review for certain by-right projects

Comparison to existing zoning:

	Site Plan Review
Existing	Site Plan Approval is required by the City Council for projects between 10,000 sf and 19,999 sf. Design review is encouraged but not required
Proposed	Require projects above a certain threshold undergo Site Plan Review by the Planning Board with Design Review by the Urban Design Commission

What?

- This proposal would create a new Site Plan Review process that would go to the Planning Board for review and would incorporate design review by the Urban Design Commission for certain projects. The proposed design standards would be incorporated into the review. Site Plan Review can be used to review design and to impose conditions related to site layout, pedestrian safety, internal circulation, and other public safety considerations.

Why?

- Provides more predictability for smaller projects
- Larger projects would still require a Special Permit from the City Council
- Allows City Council to focus on the larger, more complex projects
- Aligns with MBTA Communities requirements

Special Permit Thresholds

- N/A

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Tier the Special Permit process based on the project size
 - People want more communal spaces, both indoors and outdoors
 - Keep and expand outdoor dining
 - Use zoning to encourage or require public art and creative uses in public and private new development
 - Balance housing needs with the need for open space

- o Seek high-quality design that is responsive to context
 - o Develop village center design guidelines
- Washington Street Vision Plan:
 - o Expand advisory design review and what comes under Urban Design Commission
- Comprehensive Plan (2007):
 - o Increase the proportion of residential development applications that can be approved by right rather than through special permit, variance, or comprehensive permit, utilizing clear objective standards and administrative review processes that can obviate the necessity of case-by-case review by the Aldermen (City Council).
- Transportation Strategy (2017):
 - o Improve development review process
- Housing Strategy (2016):
 - o Maintain a process that is predictable and efficient: position the City to be more predictable in reviewing projects that meet local need and vision
- Economic Development Strategy (2019):
 - o Zoning redesign focus on reducing the need for special use permits to make development more predictable and easier in places where it is appropriate

#8, 9

Require Site Plan Review with Design Review for certain by-right projects (8) and Incorporate design standards (9)

Proposal

	Site Plan Review
Existing	Site Plan Approval is required by the City Council for projects between 10,000 sf and 19,999 sf. Design review is encouraged but not required
Proposed	Require projects above a certain threshold undergo Site Plan Review by the Planning Board with Design Review by the Urban Design Commission

	Design Standards
Existing	Limited examples of design standards in existing zoning. MU4 has zoning requirements for transparency and entrances for commercial uses and for open space on parcels greater than one acre
Proposed	Create design standards that would apply at various development thresholds

Committee Takeaways

- These two items were taken up together in Committee.
- Overall, Committee members were supportive of a robust Site Plan review and Design Review for certain sized by-right projects accompanied by required objective design standards for all projects.
- The Committee requested additional visuals and details regarding objective design standards to be incorporated directly into the Zoning Ordinance.
- Many Committee members expressed support because these two items assist Newton in complying with the MBTA Communities multi-family housing requirements.
- Some Councilors asked if additional incentives (ex. more height) could be incorporated into the design standards if certain conditions were met (ex. deeper affordability).

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 8 - Yes
- 0 - No
- 0 - Abstain

9. Zoning Proposal: Incorporate design standards

Comparison to existing zoning:

	Design Standards
Existing	Limited examples of design standards in existing zoning. MU4 has zoning requirements for transparency and entrances for commercial uses and for open space on parcels greater than one acre
Proposed	Create design standards that would apply at various development thresholds

What?

- Staff and Utile will create a set of design standards to complement the village center zoning. Design standards must be quantifiable and are enforced through zoning. For example, design standards could include the following:
 - Require minimum frontage buildout
 - Locate parking behind or below buildings
 - Require minimum transparency for ground floor commercial uses
 - Provide options for ‘frontage zone’ within front setback, such as patios, landscaping, seating areas, outdoor dining
 - Require public open space
 - Require front entries along primary street for residential and commercial uses
 - Require public art on projects over a certain threshold
 - Require a minimum sustainability standard that considers a property’s entire environmental impact
 - Require Universal Design in new construction

Why?

- Ensures quality design for by-right projects and a better baseline design for Special Permit projects

Special Permit Thresholds

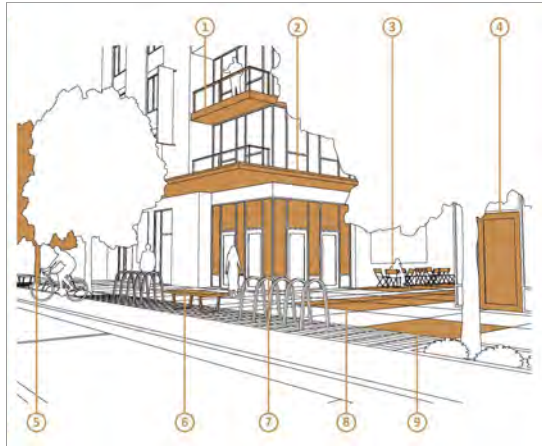
- Consider ability to seek alternative compliance by Special Permit

How does this align with engagement takeaways and City plans and policies?

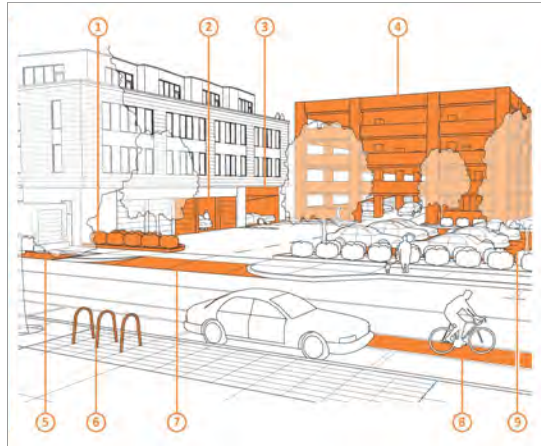
- Takeaways from 2021 engagement:
 - People want more communal spaces, both indoors and outdoors

- Keep and expand outdoor dining
- Use zoning to encourage or require public art and creative uses in public and private new development
- Balance housing needs with the need for open space
- Seek high-quality design that is responsive to context
- Develop village center design guidelines
- Incorporate Universal Design into spaces and amenities through updates to current infrastructure and requirements of new development
- Washington Street Vision Plan (2019):
 - Ensure that building types are contextually appropriate
 - Zoning rules can be used to mandate that new development in these village centers extend the traditional pattern of narrow storefronts with large windows while providing flexibility for larger tenants to use space toward the back of a property or to use multiple storefronts.
 - The zoning ordinance should require mid-large-scale projects to include new neighborhood plazas and seating
- Comprehensive Plan (2007):
 - Increase the proportion of residential development applications that can be approved by right rather than through special permit, variance, or comprehensive permit, utilizing clear objective standards and administrative review processes that can obviate the necessity of case-by-case review by the Aldermen (City Council).
- Washington Street Vision Plan (2019):
 - Parking should be behind buildings, screened from the sidewalk, or ideally below ground
- Arts and Culture Plan (2019):
 - Incorporate art into new projects such as space for artists to live or work, commissioning of pieces, and more community art experiences
- Newton Centre Task Force Report (2008):
 - Encourage building designs that are compatible with each other and their surrounding environment

Examples from Watertown Design Guidelines by Gamble Associates, 2015:



Left: *Public Realm Interface*



Right: *Parking and Access*



Left: *Sustainable Design*



Right: *Building Massing*



Left: *Building Setbacks*



Right: *Facade Treatment*

#8, 9

Require Site Plan Review with Design Review for certain by-right projects (8) and Incorporate design standards (9)

Proposal

	Site Plan Review
Existing	Site Plan Approval is required by the City Council for projects between 10,000 sf and 19,999 sf. Design review is encouraged but not required
Proposed	Require projects above a certain threshold undergo Site Plan Review by the Planning Board with Design Review by the Urban Design Commission

	Design Standards
Existing	Limited examples of design standards in existing zoning. MU4 has zoning requirements for transparency and entrances for commercial uses and for open space on parcels greater than one acre
Proposed	Create design standards that would apply at various development thresholds

Committee Takeaways

- These two items were taken up together in Committee.
- Overall, Committee members were supportive of a robust Site Plan review and Design Review for certain sized by-right projects accompanied by required objective design standards for all projects.
- The Committee requested additional visuals and details regarding objective design standards to be incorporated directly into the Zoning Ordinance.
- Many Committee members expressed support because these two items assist Newton in complying with the MBTA Communities multi-family housing requirements.
- Some Councilors asked if additional incentives (ex. more height) could be incorporated into the design standards if certain conditions were met (ex. deeper affordability).

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 8 - Yes
- 0 - No
- 0 - Abstain

10. Zoning Proposal: Revise MU4 dimensional standards

Comparison to existing zoning:

	FAR	Height	Building Footprint
Existing (by-right)	1.5	3 stories	N/A
Proposed (by-right)	2.5	4.5 stories	15,000 sf

What?

- This proposal creates a modified version of the existing MU4 zoning district. This district would be the most intense of the village center districts and would be used predominantly in the larger village centers and in conjunction with the other proposed village center districts. Draft mapping of districts will occur over the next several months.

Why?

- Provides a viable by-right path to achieve village center housing and economic development goals, consistent with multiple City adopted plans and MBTA Communities requirements.
- Built in site plan review and design standards ensure quality outcomes
- Allowing for more units to be built also increases the number of units in buildings accessible by elevators and the number of fully accessible units
- Allowing more units also increases the number of deed-restricted affordable units

Special Permit Thresholds

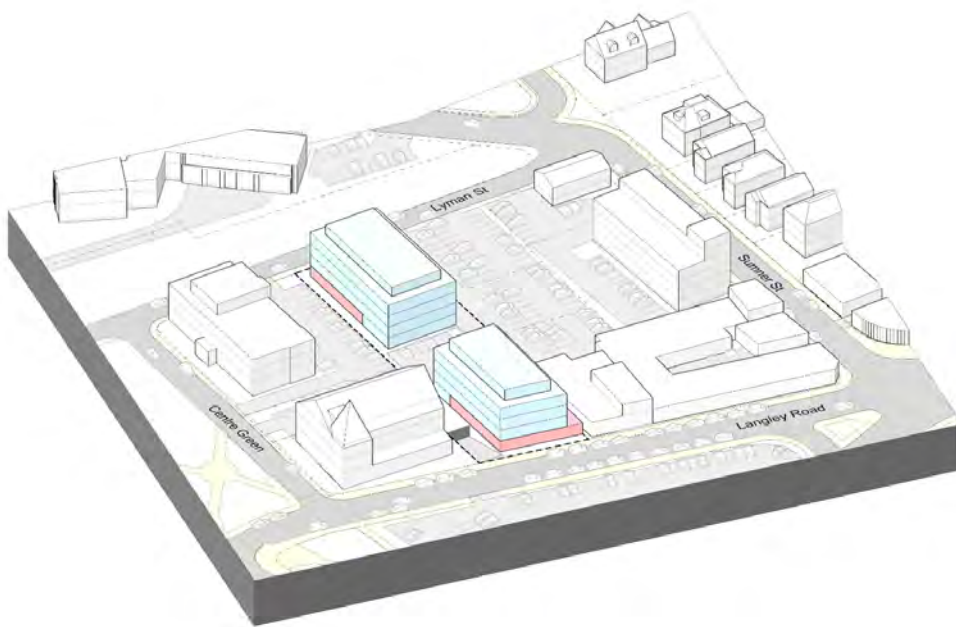
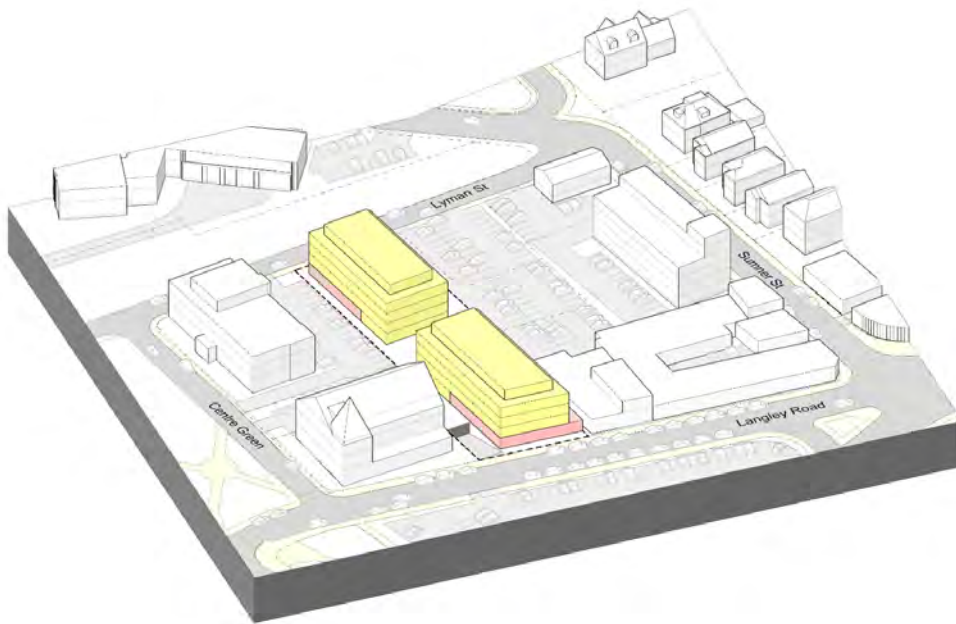
- Allow up to 5.5 stories by Special Permit. Additional analysis needed to determine an upper limit of FAR.

How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Encourage development projects in villages and commercial corridors, especially those with transit
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Encourage a mix of commercial uses (retail, office, etc.) in village centers
- Climate Action Plan (2019):
 - Work with the City Council to adopt Zoning Ordinances that encourage additional, appropriate low-carbon housing near public transportation

- Housing Strategy (2016):
 - Green design includes both technological solutions for reducing energy and water usage and reducing the environmental impacts of a project as well as placing new development in locations that promote alternative forms of transportation and reduce the need to create housing on greenfield locations on the periphery of the region.
- Economic Development Strategy (2019):
 - Encourage housing in villages and commercial corridors with mass transit to create “built in” customers for businesses who need less access to private automobiles.
 - Redo zoning to make sure that market driven mixed-use developments are allowed in village centers and along commercial corridors.
- Newton Centre Task Force Report (2008):
 - Establish zoning overlay for village center: provide a plan tailored specifically to the needs of the village center, allowing for mixed-use development and the use of district improvement financing, and removes some of the barriers posed by special permits
- Comprehensive Plan (2007):
 - Assure that lot area per unit, FAR, yards, maximum height, and building coverage rules work together reasonably, which again is clearly not the case in the Mixed Use districts
 - Encourage mixed use in the village centers by promoting housing above retail. Increasing density allowing mixed-use development in the village centers would increase the population within walking distance and as a result would likely expand the available range of goods and services offered there. It would also increase the stock of affordable housing located close to employment centers and public transportation.

Examples of potential massing under the revised MU4 zoning:



Top: Residential building with ground floor retail and subgrade parking

Bottom: Commercial building with ground floor retail and subgrade parking

#6, 10, 11, 12

Revise MU4, BU3, BU2 dimensional standards

Proposal

The following table outlines the proposed changes ZAP considered for these three districts, which would be applied to different village centers according to its scale:

	Revised MU4	Revised BU3	Revised BU2
By-Right (max)	Existing / Proposed	Existing / Proposed	Existing / Proposed
# of Stories	3.0 / 4.5	3.0 / 3.5	2.0 / 2.5
Building Footprint	-- / 15,000 sf	-- / 10,000 sf	-- / 5,000 sf
FAR	1.5 / 2.5	1.5 / 2.0	1.5 / 1.75

Committee Takeaways

- Councilors were overall supportive of the tiered framework, with the understanding the revised MU4 would only be applied to Newton’s larger village centers and the two other proposed districts could be used to step down in scale toward the surrounding neighborhoods.
- Many Committee members expressed support for this tiered framework given that it will help Newton come into compliance with the MBTA Communities multi-family housing requirements.
- Some Councilors expressed support in that allowing more projects by-right would allow a larger variety of, particularly smaller, developers to create smaller in-fill projects.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6 - Yes
- 0 - No
- 2- Abstain

11. Village Center Zoning Proposal: Revise BU3 dimensional standards

Comparison to existing zoning:

	FAR	Height	Building Footprint
Existing (by-right)	1.5	3 stories	N/A
Proposed (by-right)	2.0	3.5 stories	10,000 sf

What?

- This proposal creates a modified version of the existing BU3 zoning district. This district would be in the middle in terms of the intensity of the three proposed village center zones. Draft mapping of districts will occur over the next several months.

Why?

- Minor changes to BU3 to encourage increased by-right housing and economic development opportunity, consistent with City plans and MBTA communities requirements.
- Allowing for more units to be built also increases the number of units in buildings accessible by elevators and the number of fully accessible units
- Allowing more units also increases the number of deed-restricted affordable units

Special Permit Thresholds

- Allow up to 4.5 stories Special Permit. Additional analysis needed to determine an upper limit of FAR.

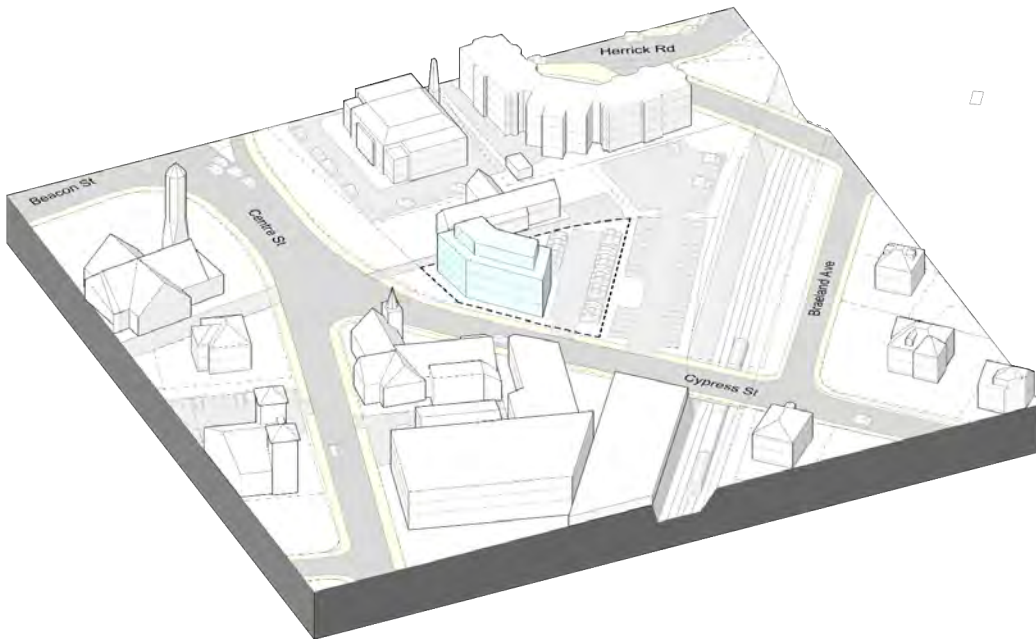
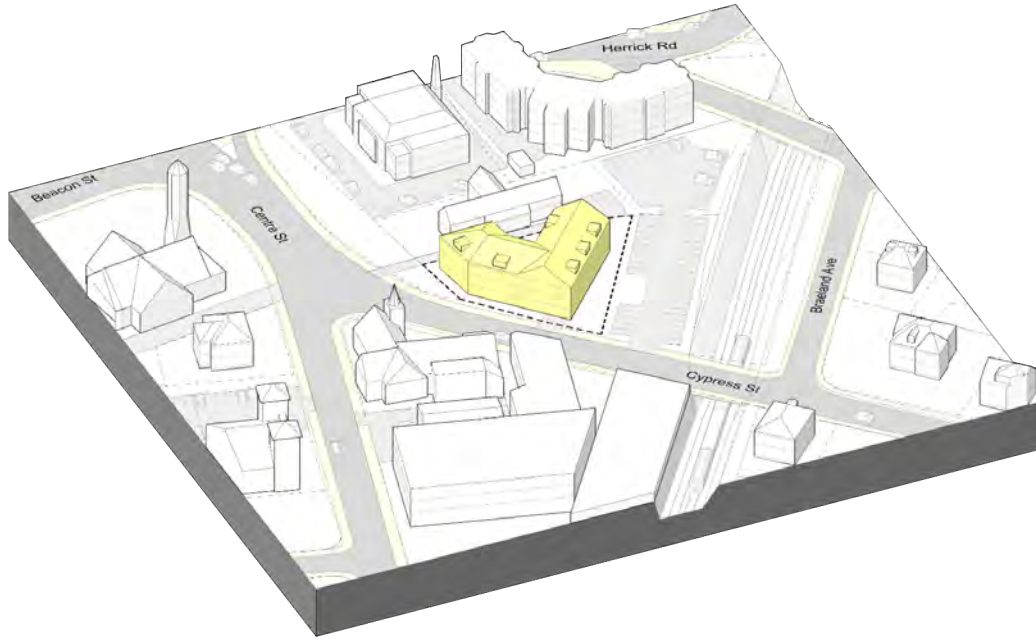
How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Encourage development projects in villages and commercial corridors, especially those with transit
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Encourage a mix of commercial uses (retail, office, etc.) in village centers
- Climate Action Plan (2019):
 - Work with the City Council to adopt Zoning Ordinances that encourage additional, appropriate low-carbon housing near public transportation
- Housing Strategy (2016):
 - Green design includes both technological solutions for reducing energy and water usage and reducing the environmental impacts of a project as well as placing new development in locations that promote alternative forms of

transportation and reduce the need to create housing on greenfield locations on the periphery of the region.

- Economic Development Strategy (2019):
 - Encourage housing in villages and commercial corridors with mass transit to create “built in” customers for businesses who need less access to private automobiles.
 - Redo zoning to make sure that market driven mixed-use developments are allowed in village centers and along commercial corridors.
- Newton Centre Task Force Report (2008):
 - Establish zoning overlay for village center: provide a plan tailored specifically to the needs of the village center, allowing for mixed-use development and the use of district improvement financing, and removes some of the barriers posed by special permits
- Comprehensive Plan (2007):
 - Assure that lot area per unit, FAR, yards, maximum height, and building coverage rules work together reasonably, which again is clearly not the case in the Mixed Use districts

Examples of potential massing under the revised BU3 zoning:



Top: Residential building with subgrade parking
Bottom: Commercial building with surface parking

#6, 10, 11, 12

Revise MU4, BU3, BU2 dimensional standards

Proposal

The following table outlines the proposed changes ZAP considered for these three districts, which would be applied to different village centers according to its scale:

	Revised MU4	Revised BU3	Revised BU2
By-Right (max)	Existing / Proposed	Existing / Proposed	Existing / Proposed
# of Stories	3.0 / 4.5	3.0 / 3.5	2.0 / 2.5
Building Footprint	-- / 15,000 sf	-- / 10,000 sf	-- / 5,000 sf
FAR	1.5 / 2.5	1.5 / 2.0	1.5 / 1.75

Committee Takeaways

- Councilors were overall supportive of the tiered framework, with the understanding the revised MU4 would only be applied to Newton’s larger village centers and the two other proposed districts could be used to step down in scale toward the surrounding neighborhoods.
- Many Committee members expressed support for this tiered framework given that it will help Newton come into compliance with the MBTA Communities multi-family housing requirements.
- Some Councilors expressed support in that allowing more projects by-right would allow a larger variety of, particularly smaller, developers to create smaller in-fill projects.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6 - Yes
- 0 - No
- 2- Abstain

12. Village Center Zoning Proposal: Revise BU2 dimensional standards

Comparison to existing zoning:

	FAR	Height	Building Footprint
Existing (by-right)	1.0	2 stories	N/A
Proposed (by-right)	1.75	2.5 stories	5,000 sf

What?

- This proposal creates a modified version of the existing BU2 zoning district. This district would be the least intense of the village center districts and would be used predominantly in the smaller village centers and where a gentle transition to adjacent neighborhoods is desired in conjunction with the other proposed village center districts. Draft mapping of districts will occur over the next several months.

Why?

- Minor changes to BU2 to encourage housing and economic development, consistent with City plans and MBTA communities requirements
- Allowing for more units to be built also increases the number of units in buildings accessible by elevators and the number of fully accessible units
- Allowing more units also increases the number of deed restricted affordable units

Special Permit Thresholds

- Allow up to 3.5 stories by Special Permit. Additional analysis needed to determine an upper limit of FAR.

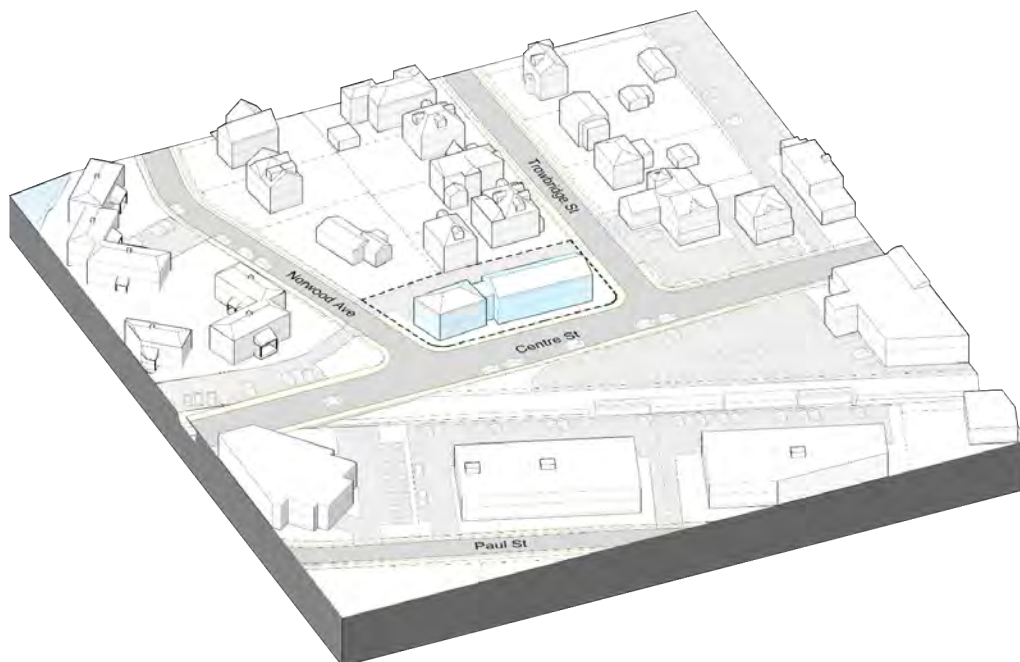
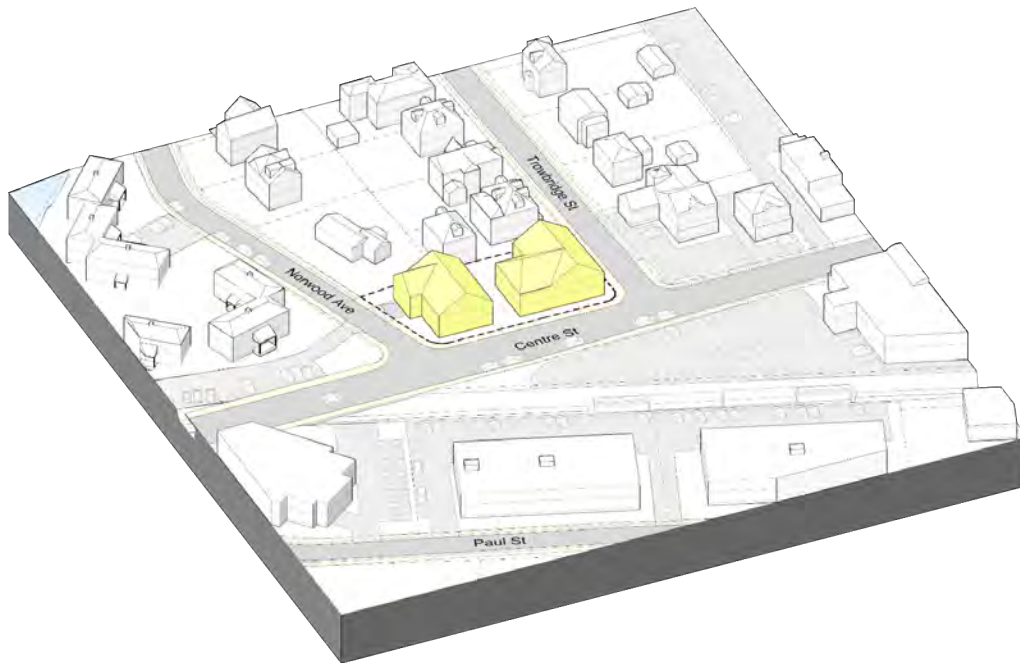
How does this align with engagement takeaways and City plans and policies?

- Takeaways from 2021 engagement:
 - Encourage development projects in villages and commercial corridors, especially those with transit
 - Pursue diverse housing choices to meet changing housing needs of a diverse population
 - Encourage a mix of commercial uses (retail, office, etc.) in village centers
- Climate Action Plan (2019):
 - Work with the City Council to adopt Zoning Ordinances that encourage additional, appropriate low-carbon housing near public transportation
- Housing Strategy (2016):
 - Green design includes both technological solutions for reducing energy and water usage and reducing the environmental impacts of a project as well as

placing new development in locations that promote alternative forms of transportation and reduce the need to create housing on greenfield locations on the periphery of the region.

- Economic Development Strategy (2019):
 - Encourage housing in villages and commercial corridors with mass transit to create “built in” customers for businesses who need less access to private automobiles.
 - Redo zoning to make sure that market driven mixed-use developments are allowed in village centers and along commercial corridors.
- Newton Centre Task Force Report (2008):
 - Establish zoning overlay for village center: provide a plan tailored specifically to the needs of the village center, allowing for mixed-use development and the use of district improvement financing, and removes some of the barriers posed by special permits
- Comprehensive Plan (2007):
 - Assure that lot area per unit, FAR, yards, maximum height, and building coverage rules work together reasonably, which again is clearly not the case in the Mixed Use districts

Examples of potential massing under the revised BU2 zoning:



Top: Residential building with subgrade parking
Bottom: Commercial building with surface parking

#6, 10, 11, 12

Revise MU4, BU3, BU2 dimensional standards

Proposal

The following table outlines the proposed changes ZAP considered for these three districts, which would be applied to different village centers according to its scale:

	Revised MU4	Revised BU3	Revised BU2
By-Right (max)	Existing / Proposed	Existing / Proposed	Existing / Proposed
# of Stories	3.0 / 4.5	3.0 / 3.5	2.0 / 2.5
Building Footprint	-- / 15,000 sf	-- / 10,000 sf	-- / 5,000 sf
FAR	1.5 / 2.5	1.5 / 2.0	1.5 / 1.75

Committee Takeaways

- Councilors were overall supportive of the tiered framework, with the understanding the revised MU4 would only be applied to Newton’s larger village centers and the two other proposed districts could be used to step down in scale toward the surrounding neighborhoods.
- Many Committee members expressed support for this tiered framework given that it will help Newton come into compliance with the MBTA Communities multi-family housing requirements.
- Some Councilors expressed support in that allowing more projects by-right would allow a larger variety of, particularly smaller, developers to create smaller in-fill projects.

Straw Vote

ZAP members voted by a nonbinding straw vote:

- 6 - Yes
- 0 - No
- 2- Abstain



Esther Schlorholtz <esther@hunterschlorholtz.com>

RE: Fair Housing Committee ARPA Recommendation

1 message

Mayor Ruthanne Fuller <rfuller@newtonma.gov>
To: Esther Schlorholtz <esther@hunterschlorholtz.com>

Thu, Sep 15, 2022 at 7:23 PM

Esther and Donna,

Thank you for your good suggestions for our ARPA investments and for your deep commitment to our City.

Today we are moving forward with another \$23 million in investment decisions. You can read the full announcement [here](#).

I'm so grateful for your advocacy for Newton residents facing hardship and discrimination, and those who have been impacted by the pandemic, disproportionately people of color. So far, we've deployed millions of dollars in CARES funds, CPA funds, Community Development funds, Emergency Solutions grants, and ARPA funds directly to residents struggling with basic living expenses like housing and utility costs. We are using the results of our Community Needs Assessment to further invest \$2 million in ARPA funds to support our low-income residents and residents impacted by the pandemic. We've also prioritized affordable housing for ARPA funds, investing \$2.5 million in the purchase of the Walker Center. I am allocating an additional \$3,500,000 to (1) to advance the creation of affordable housing and (2) to assist our already deed-restricted affordable housing properties in the City undertake important energy and electrification retrofits in a timely manner. I'll continue to look for ways to support this work.

These have been difficult investment decisions as I have received many suggestions for worthy projects; yet, the dollar value of the suggestions far outstrips the funding that we have. Unfortunately, we have not been able to meet every funding request, including yours. Please know that I share so many of the values and goals embodied in your request. Hearing from you has and will continue to inform our strategic deployment of our capital and operating investments.

Warmly,

Ruthanne

From: Esther Schlorholtz <esther@hunterschlorholtz.com>
Sent: Tuesday, August 23, 2022 2:20 PM
To: Samuel Nighman <snighman@newtonma.gov>; arpainput <arpainput@newtonma.gov>
Cc: Donna Rigg <donnarigg2008@gmail.com>; Barney Heath <bheath@newtonma.gov>; Amanda Berman <aberman@newtonma.gov>; Malcolm Lucas <mlucas@newtonma.gov>
Subject: Fair Housing Committee ARPA Recommendation

[DO NOT OPEN links/attachments unless you are sure the content is safe.]

Hello Sam,

On behalf of the Fair Housing Committee, we are submitting the attached letter to Mayor Fuller regarding the Committee's recommendation on the use of ARPA funding. Thank you for sharing it with her.

We appreciate the Mayor's consideration and her strong commitment to affirmatively furthering fair housing in Newton.

Please let us know if you need anything further from us.

Many thanks,

Esther

Esther Schlorholtz

Chair of the Newton Fair Housing Committee

Donna

Donna Rigg

Vice Chair of the Newton Fair Housing Committee

When responding, please be aware that the Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.

**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION
OF THE FAIR HOUSING ACT**

INTRODUCTION

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.² The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),³ Section 504 of the Rehabilitation Act of 1973 (“Section 504”),⁴ and Title VI of the Civil Rights Act of 1964.⁵ In addition, the Joint Statement

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. §12132.

⁴ 29 U.S.C. § 794.

⁵ 42 U.S.C. § 2000d.

does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.

- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the "historical background" of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the "specific sequence of events," such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the "normal procedural sequence," such as whether a municipality deviated from normal application or zoning requirements; (5) "substantive departures," such as whether the factors usually considered

important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.⁶

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*⁷ The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”⁸

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD’s Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

⁶ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

⁷ ___ U.S. ___, 135 S. Ct. 2507 (2015).

⁸ *Id.* at 2521–22.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the "housing for older persons" exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

Questions and Answers on the Fair Housing Act and Local Land Use and Zoning Regulation of Group Homes

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act’s prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term “group home” does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities

choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term “group home” refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term “group home” includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a “sober home,” the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a

reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make “reasonable accommodations” to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly

reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual's recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual's tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments

make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.⁹

⁹ Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

14. How does the Supreme Court’s ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,¹⁰ the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the

¹⁰ 527 U.S. 581 (1999).

spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction's intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction's stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate.

State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it

would fundamentally alter the local government’s zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents’ disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home’s request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home’s request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home’s request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government’s zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home’s residents without imposing an undue financial and administrative burden. This discussion is called an “interactive process.” If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government’s zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words “reasonable accommodation” when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may, nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a

reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

Number, Size, Affordability, and Accessibility of Affordable Units

	Studio	1 BR	2BR	3BR	Total
Number of Units	0	15	21	7	43
Percentage of Total	0%	35%	49%	16%	100%
Average Size (SF)	-	629	847	1034	801
Total Affordable Units	-	15	21	7	43
Number of <50% AMI Affordable	-	4	8	3	15
Number of 50-80% AMI Affordable	-	11	13	4	28
Number of 80-110% AMI Affordable	-	0	0	0	0
Accessible (12% of total units)	-	4	1	0	5
Adaptable (88% of total units)	-	11	20	7	38



CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

January 8, 2020

Brooke Lipsitt, Peter Doeringer and Mark Armstrong, Chairmen
Zoning Board of Appeals, Planning and Development Board and Community
Preservation Committee
1000 Commonwealth Avenue
Newton, MA 02459

Ruthanne Fuller
Mayor

Barney Heath
Director of
Planning & Development

Malcolm Lucas
Housing Planner

Members

Kathy Laufer, Chair
Ted Hess-Mahan, Vice-Chair
Esther Schlorholtz
Josephine McNeil
Donna Rigg
Tatjana Meschede
Rosemary Larking
Judy Korenowski
Alexandra Weiffenbach

Re: Reviewing Project Consideration of Fair Housing Goals

To all ZBA, Planning & Development Board, CPC members:

Newton's Fair Housing Committee's mission is to promote and support the City of Newton's efforts to be a diverse and welcoming community with housing choices and opportunities free from housing discrimination. Acting in an advisory capacity to the Mayor, the City Council, and all applicable City departments, boards, and committees, the Committee aims to assure that policies and practices relating to fair housing are interwoven into the operations and activities of the City as well as the fabric of the community. As part of its mission, the Committee assists the City in meeting its duties to affirmatively further fair housing within Newton.

On behalf of the Newton Fair Housing Committee, I would like to provide you with some important information as you continue or begin your role on the ZBA, Planning Board or CPC. The committee has guidelines entitled [Reviewing Project Consideration of Fair Housing Goals](#). These goals assure that the review of housing development proposals looks beyond the specifics of regulations and promotes the City's intentions to further fair housing, as expressed in our Consolidated Plan.

The committee is always available to provide information and expertise when you discuss housing in Newton. We would invite all board and commission members to attend our meetings which are usually held on the first Wednesday of the month at 8 a.m. You can find our agenda in the Planning Department's Friday Report.

We encourage you to visit our website:

<http://www.newtonma.gov/gov/planning/hcd/cac/nfhc/default.asp>

Thank you for your attention to this matter. We look forward to our continued work together in 2020.

Sincerely,

Kathy Laufer, Chair


Ted Hess-Mahan, Vice Chair

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Newton, MA 02459
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NEWTON FAIR HOUSING COMMITTEE

Newton Department of Planning and Development
Newton City Hall, 1000 Commonwealth Avenue, Massachusetts 02459
Phone 617-796-1149

REVIEWING PROJECT CONSIDERATION OF CITY FAIR HOUSING GOALS

September 21, 2016; revised 5/13/2019

The City of Newton agreed with HUD in 2015 to “...review all applicable projects for their inclusion of fair housing goals and note in writing in all applicable project reviews a statement that ‘the objectives of the City’s *Consolidated Plan*, including fair housing, have been considered in this review” as a part of the Engine 6 Conciliation Agreement¹. That charge complements the usual review by City staff in that it is asking for review that focuses on goals and policies that are documented in a plan and asks about the consideration of those goals and policies, not necessarily consistency with them.

The City has a well-structured process for reviewing project proposals at the various stages in moving from conceptual early sketches to highly detailed construction documents, with a good record in timely reviews and inspections. However, there is less structure and documentation at early stages regarding objective consistency with considerations that are documented not in regulations but rather in less-familiar documents which bear on fair housing, including the *Newton Consolidated Plan* and other documents that are cited in it, so are within the scope of the agreed reviewing, these in particular:

- *Newton FY11-15 Analysis of Impediments to Fair Housing Choice*, in its sixth year;
- *Newton’s Fair Housing Action Plan*, drafted in 2008, and the
- *Newton Comprehensive Plan*, now nearing 10 years old.

No developer could be expected to study those many hundreds of pages of relevant guidance in deciding project location, design, and operation by seeking beyond rules for consistency with those documents. However, after careful review seven ways stand out through which developers might go beyond regulation to serve the City’s currently documented fair housing goals:

- Going beyond the required minimum share of project housing units that are committed to being affordable;
- Going beyond the regulated minimum share of project housing units that meet housing accessibility standards;
- Providing “visitability” for housing units not required to be fully accessible;
- Developing at a site that is well located in relation to commercial services and job accessibility;
- Developing at a location close to good public transportation; and
- Going beyond legal obligation to avoid any possible discriminatory impacts on “protected classes.”

¹ Page 6 of “Conciliation Agreement...between Supporters of Engine 6...and...City of Newton ...,” 5/12/2015.

None of those actions are obliged by current law or regulation, but each of them would be supportive of fair housing through goals cited in the *Consolidated Plan* and/or documents that that *Plan* cites, and all but one of them (“visitability”) has been provided in one or more recently approved developments in Newton.

AFFORDABILITY

Is the project planned for more units priced below-market than is required by law?

0. No, the number of below-market units will equal that required
1. Yes, but fewer than twice the required number of units will be below market
2. Yes, at least twice as many units as required but not all will be priced below market
3. Yes, all of the units will be below market.

ACCESSIBILITY

Is the development planned for more units meeting accessibility rules than are required by State or federal regulation?

0. No, the number will be that which is required, if any.
1. Yes, but fewer than twice the required percentage will be accessible;
2. Yes, and at least twice the required percentage will be accessible;
3. Yes, 100% of the units will be accessible.

VISITABILITY

A “visitable home” as noted in the Newton *FY11-15 Analysis of Impediments to Fair Housing Choice* must have “(1) at least one entrance is at grade (no step), approached by an accessible route, such as a sidewalk; (2) that entrance door and all interior doors on the first floor are at least 34 inches wide, offering 32 inches of clear passage space; and (3) at least one half-bath is on the main floor.”

To what extent do the dwelling units in the proposed development meet that description of what is called “visitability?”

0. No dwelling units meet all three criteria
1. A few housing units meet all three criteria
2. Most housing units meet all three criteria, or all meet most of them
3. All housing units meet all three criteria.

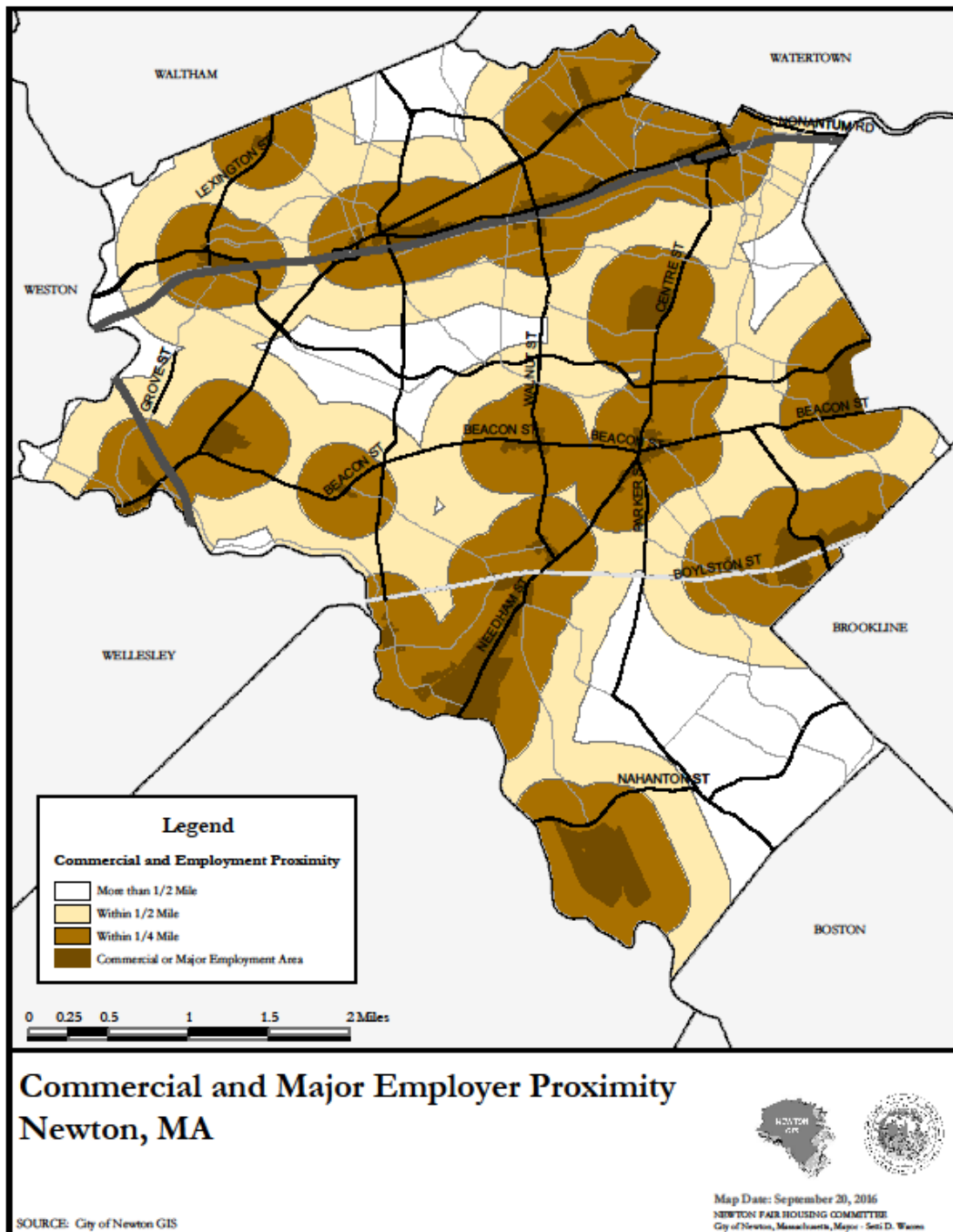
HOUSING/EMPLOYMENT/TRANSPORTATION PROXIMITIES

Newton’s *FY 11–15 Analysis of Impediments to Fair Housing Choice* speaks highly of how many locations in Newton benefit from their proximity to employment opportunities, commercial services, community services, and proximity to public transportation for access to such assets that may be beyond walking distance. Some locations within the City are far richer than others regarding those opportunities and services, and locations within the City differ in proximity to and frequency of service of public transportation than are others. It is important for affirmatively furthering fair housing that sites of affordable housing be served no less well than other sites in those two regards. The following two maps enable evaluating how well a proposed housing development serves that consideration as expressed in the *Analysis of Impediments*.

Proximity to commercial or major employment

How close is the housing site's proximity to commercial activity and employment as shown by City data on the map below?

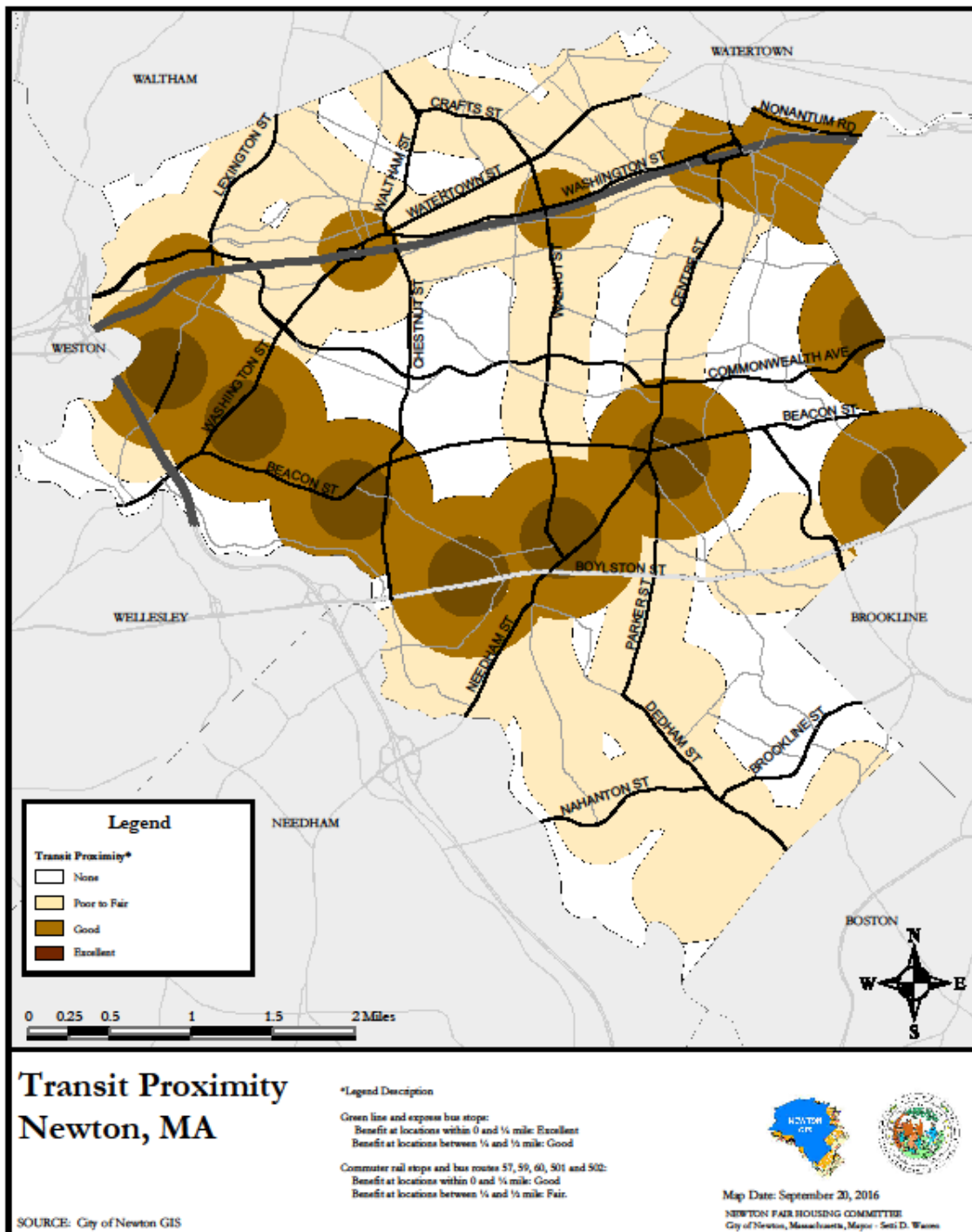
0. More than 1/2 mile from such a site
1. Within 1/2 mile of such a site
2. Within 1/4 mile of such a site
3. Within or adjacent to a commercial or major employment site



Proximity to good public transportation

How good is the site's transit proximity as City-defined?

- 0 - None
- 1 - Poor, Fair
- 2 - Good, Very good
- 3 - Excellent, Superior



Discretionary Impacts

(A) Would the proposed development be free of disparate negative impacts for “protected classes” based on race, national origin, color, religion, sex, familial status, or disability, even though no regulation might be violated? For example,

- A sizable development that contains only one-bedroom and studio apartments could be seen as having disparate impact on families with children under 18, or
- A proposed townhouse development having no units that have first-floor bedrooms and bathrooms could be seen as having a disparate impact on persons having a disability; or
- A housing proposal might be proposed at a site at which accessibility would be disparately poor for some.

(B) Might the City’s approval of the development be seen as creating, increasing, reinforcing, or perpetuating segregated housing patterns based on protected class status?

(C) In either such case, what is the justification provided for that proposal? Is the justification supported by the facts? Is the proposal necessary to achieve a “substantial, legitimate, nondiscriminatory interest”? If so, can that interest be served by modification of or an alternative for the proposal which has less discriminatory effect?

These are the potential findings:

0. Whether or not in compliance with all regulations, the proposed development would have disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, and there is no feasible means of lessening impact through modification or an alternative.

1. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through major modification or an alternative.

2. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through small revisions or minor alteration.

3. The proposed development appears to have no disparate impact on any protected class, nor does it perpetuate segregated housing patterns.

SOURCES FOR RELEVANT CONSOLIDATED PLAN OBJECTIVES

Affordability

FY 16-20 Consolidated Plan

Page 112: "...this Consolidated Plan puts the need for affordable housing at the top of the priority list..."

Page 113: SP-25 Priority needs table, row 2, "Provide affordable housing in mixed income developments."

Page 113: SP-25 Priority needs table, row 4, "Increase production of new affordable housing units."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new affordable ... units."

FY11-15 Analysis of Impediments to Fair Housing Choice,

Page 16: "providing incentives to developers to exceed the mandated amount of inclusionary zoning."

Accessibility

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional accessible rental units ..."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new ... accessible ... units."

Visitability

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional ... visitable housing"

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 26 - 27: "Visitability in Housing" discussion at length.

Proximity to commercial or major employment

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21-25: "Employment- Housing – Transportation" discussion at length.

Proximity to good public transportation

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21 – 25 as above, especially page 23: Proximity to Transit Legend Description.

Discriminatory impacts

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 12 – 13, "B. 2002 Analysis of Impediments to Fair Housing Choice Update.