

## Meeting Minutes Committee on Planning and Development

March 19, 2024

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### Meeting Recording:

[https://us02web.zoom.us/rec/share/ISzSPbQ6qT3IK7HK5IzhX5X--wggmmVR9K1yqVg\\_Cn7433zYynSZaPA68DvGXCsL.tV7TsNWhGLP4\\_IG](https://us02web.zoom.us/rec/share/ISzSPbQ6qT3IK7HK5IzhX5X--wggmmVR9K1yqVg_Cn7433zYynSZaPA68DvGXCsL.tV7TsNWhGLP4_IG)

### Members

Cllr. Heather Shand, Chair - Present  
Cllr. Connie Preston (At-Large) – present  
Cllr. Mark Wright (At-Large) - present

### Other Participants

Cllr. Afroz Khan (At-Large)

### Agenda:

- Public Hearing, APPT00480 - Joe Carper, Fruit Street Local Historic District
- COMM00545\_03\_11\_2024 Memo RE: Zoning Advisory Group (ZAG) & MBTA Communities (COTW)
- ODNC00166\_03\_11\_2024 Amend Ch 5-65 Specialized Energy Code (COTW)

Meeting called to order at 6:00

### **Public Hearing, APPT00480 - Joe Carper, Fruit Street Local Historic District**

Mr. Carper spoke to his continued desire to be one of the members of the Fruit Street Local Historic District that lives on Fruit Street. He came to Newburyport via Lexington upon retirement. He loved the fact Newburyport wanted to preserve its architectural history and especially in his neighborhood.

No Public Comment.

(CP) moved and (MW) seconded to approve appointment. Committee voted 3-0 to approve Mr. Carper's reappointment to the Fruit Street Historic Commission.

### **COMM00545\_03\_11\_2024 Memo RE: Zoning Advisory Group (ZAG) & MBTA Communities (COTW)**

Director Port spoke to the creation of the Zoning Advisory Group that will support the MBTA communities effort in addition to the Low Street/Storey Ave efforts. Spoke to the current 40R map, the 1292 unit requirement from the state, and the possible expansions of the current 40R zoning. Spoke to the schedule for ZAG which intends to be every Thursday and the P&D committee will keep the communication on MBTA communities on the agenda so Dir. Port can provide updates from the ZAG committee and public comment can be made at that time.

Public Comment:

Jane Snow, 9 Coffin Street – Doesn't approve of the ZAG make up with 5 councillors and thinks it violates public meeting rules.

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CP motioned to receive and file, MW 2<sup>nd</sup>. Committee voted 3-0 to receive and file the communication.

ODNC00166\_03\_11\_2024 Amend Ch 5-65 Specialized Energy Code (COTW)

Dir. Ettenborough and Mike Strauss of the Energy Advisory Committee went through the presentation on the Specialized Energy Code. Building Inspector Morel spoke to the implementation impact on the building department. 261 communities in the commonwealth approved the Stretch Code that is taking affect July 1.2024. 31 Communities have already approved the Specialized Code being discussed. Next step in being a green community is becoming a Climate Leader.

Discussion focused around heat pumps, their expense, the energy rebates from the federal government and Mass Saves. How long will they be around? Discussed Level 3 renovation where if more than 50% increase in home size were to occur, compliance is required. There are historical exemptions. New construction would have to comply.

For the next meeting, Dir. Ettenborough agreed having someone from the state in addition to local developers come speak to the ordinance would be helpful. Committee agreed to keep the ODNC in committee.

Meeting adjourned.

Below is written public comment from Jared Eigerman regarding COMM00545

**From:** Jared Eigerman <[jeigerman@reubenlaw.com](mailto:jeigerman@reubenlaw.com)>

**Sent:** Monday, March 18, 2024 10:02 PM

**To:** Heather Shand [Council] <[HShand@CityofNewburyport.com](mailto:HShand@CityofNewburyport.com)>

**Cc:** Connie Preston [Council] <[CPreston@CityofNewburyport.com](mailto:CPreston@CityofNewburyport.com)>; Mark Wright [Council]

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**Subject:** Cmte on P&D - March 19 meeting -- Written Public Comment -- COMM00545\_03\_11\_2024

Dear Chair Shand:

Please accept into the record this comment on your committee's second agenda item, tomorrow night, March 19, regarding COMM00545\_03\_11\_2024 (ZAG and MBTA Communities). The item is posted as "Committee of the Whole," so I have copied not just your committee colleagues, but all your colleagues on the Council.

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1. For towns with MBTA service, the new state mandate is to have at least one zoning district that allows some multifamily housing to be built “by right,” with design controls.
  - a. MGL c. 40A, s. 3A does not mandate “affordable” housing, but, in this way, requires towns to promote “choice” in housing type.
  - b. Not everyone wants to or can live in a single-family house, either because they cannot afford it, or for other reasons, including household size or health.
  - c. It’s not good for those towns that can accommodate greater density to have people shut out, or have to move away, and with rezoning some other choices become possible.
2. The City Council must adopt a zoning ordinance by December 31.
  - a. There is little leeway on what the zoning must say, but the question remains *where* – specifically – the City should place these one or more zoning districts.
  - b. I urge the Council to focus its efforts on expanding Newburyport’s existing Smart Growth District, and fit in Storey Avenue rezoning only as you can by the deadline.
  - c. That would be in the community’s best interest.
3. When our commuter rail station was rebuilt in 1998, instead of its original location downtown, it was left at the edge of town surrounded by parking lots and little else.
  - a. In 2015, the city created a Smart Growth District under MGL c. 40R to encourage multifamily housing whose residents could easily take the train into Boston.
  - b. The state had dangled carrots in front of the City, including a MassWorks grant for a new sewage lift-station, and per-unit incentive payments, but that was not why it passed.
  - c. A supermajority of Councillors simply found that the ordinance in front of them, including extensive design guidelines drafted by Director Port, was *good policy*.
  - d. A few years later, MINCO built the first multi-family building in the district, after design review by the Planning Board. Then, they built another, and now a third is coming.
  - e. That’s what “Smart Growth” is: transit-oriented development.
4. The new MBTA Communities law itself is very short. It requires:
  - a. Districts of “reasonable size”
  - b. With minimum “gross density” of 15 units per acre
  - c. Located “not more than” a ½ mile from a transit station
5. Our existing Smart Growth District hits all three points:
  - a. State guidelines set “reasonable size” for Newburyport at 35 acres, with at least half comprising contiguous lots, and our 40R district is, already, over 40 acres.
  - b. The by-right residential density in our 40R district is 30 to 40 units per acre, more than double the MBTA statute’s minimum “gross density” of 15 units per acre.
  - c. As for the ½ mile distance, the walking distance from our commuter rail station up the Route 1 Bypass to Low Street is about ½ mile.
6. For Newburyport the single most important mandate is a *capacity* of 1,292 units that could be approved “by right” in the district. That’s also set by agency guidelines, not the statute itself.

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- a. Planning Director Port estimates that our Smart Growth District satisfies more than half that, and, when he finishes his calculations, probably even more.
  - b. Moreover, while the guidelines allow districts to be *more* than ½ miles from a transit station, again, the statute provides “not more than” a ½ mile from a transit station.
  - c. As this Council recognized in 2015, Newburyport has one MBTA transit station, and created its 40R district around it. *Now, the Council can and should adjust that district, including by enlarging it as necessary.*
7. The Smart Growth District was controversial in 2015. It took time and amendments to pass.
- a. The first drafts went to stakeholders in summer 2014, and final passage came more than a year later in fall 2015.
  - b. Today, not everyone likes the 40R district or the MINCO buildings specifically. However, it seems safe to say that there is still consensus in support of it.
  - c. While you may also consider rezoning Storey Avenue to allow multifamily housing there by right, that is a more complex and controversial policy change than expanding the 40R.
8. I am *not* saying that rezoning Storey Avenue for multifamily housing is bad policy.
- a. What I am saying is that to meet the Dec. 31 deadline for compliance with the MBTA Communities law it is wisest to focus on our Smart Growth District.
  - b. State law allows this Council to create MBTA community zoning districts by a bare majority.
  - c. I submit to you that good city planning aims for consensus stronger than you get by passing something 6 to 5 or even 7 to 4, not least to minimize reversals later.
9. Also, depending on what you think city planning is for, our Smart Growth District deserves credit for actually *resulting* in new multifamily units, not just zoning for it.
- a. Even better, although zoning cannot require it, the recipe in our existing 40R district has cooked up rental buildings.
    - i. The US Census Bureau’s ACS five-year surveys report that between 2010 and 2022, Newburyport had a net *loss* of approximately 400 rental units.
    - ii. Take away the two MINCO buildings, and the net loss would have been well over 500 rental units, in a city that only has about 8,300 units in total.
  - b. Moreover, the way we have made progress in reaching our 10% affordable housing target under MGL Chapter 40B is because regulations allow us to count all units in rental buildings with 25% inclusionary affordable housing, which is what MINCO built.
10. In 2015, we estimated the Smart Growth District’s capacity at 540 multifamily units but that was under a different, more restrictive formula than the MBTA law uses.
- a. Under Chapter 40R, the state is obligated to pay a per-unit bounty to encourage cities and towns to adopt Smart Growth Zoning. The MBTA law has different goals, offers no carrots, just sticks, and so counts the unit potential of by-right districts more liberally..

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- b. Newburyport should be able to hit its 1,292-unit target by expanding its existing Chapter 40R district. It's not just mathematics under the gun, but good policy, too.
- c. If you cannot hit the 1,292 number within ½ mile of our train station, then you should look farther afield, but you should start there. That is where “*smart*” growth has worked.



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