FORMATIVE ISSUES DIAGNOSTIC REPORT

Second Draft
March 31, 2015

City of Newburyport
60 Pleasant Street
Newburyport, MA
01950

Re: Formative Issues Diagnostic Report

To all Interested Parties:

The enclosed report is intended as a first step toward the comprehensive recodification of the City of Newburyport Zoning Ordinance. Within the report are formative issues that were identified during a public process consisting of interviews and focus groups. The issues identified are preliminary and were selected based on the frequency with which they were raised by the stakeholder group identified by the City of Newburyport. The purpose of the interview/focus group process was to ascertain the most critical policy and regulatory issues to be considered during the recodification process and this report is envisioned to serve as a starting point for a broader discussion.

The zoning recodification is being drafted in conjunction with the Master Plan process. The Master Plan will establish a common vision for the City in the upcoming years, while the Zoning recodification will enable and facilitate the types of development and conservation that will be necessary to achieve the goals and objectives identified within the Plan. A zoning recodification is generally a 12-18 month process that uses a combination of qualitative, quantitative, and legal analysis to provide the underpinnings for strong policy decisions and includes a significant public participation process and educational component prior to adoption. We look forward to this process moving forward and have identified several next steps within this report.

To all those who participated, we would like to extend our sincerest gratitude and thanks. We look forward to your continued participation as this process.

THANK YOU,

PETER SANBORN
PRESIDENT, COMMUNITY OPPORTUNITIES GROUP, INC.
INTRODUCTION:

The City of Newburyport has obtained consulting services from Community Opportunities Group, Inc. (COG) to assist with a comprehensive review and revision of the Zoning Ordinance of the City of Newburyport. The ordinance, originally adopted in 1940, was last comprehensively revised in 1987. The purpose of the current review and recodification is to incorporate the vision of the Newburyport Master Plan (currently in progress) and goals and strategies of similar planning documents, and adopt consistent land use practices, policies and techniques that will provide for appropriate future development. Goals of the recodification include:

- Simplification of the existing zoning provisions;
- Addressing current and potential future development trends;
- Accommodating 21st century business, housing, and waterfront needs.

The zoning recodification is being done in partnership between the City of Newburyport and COG. The consulting team is responsible for ensuring compliance with local, state, and federal regulations and policies, strengthening and clarification of existing zoning language, review of specific base and overlay zoning districts, and review of ordinances drafted by the City. Due to the complicated nature and importance of zoning to land use policy, it is anticipated the recodification will be an open and public process conducted over approximately 12 month period, beginning with stakeholder interviews and focus groups to identify the formative issues identified herein.

Formative issues were identified through a series of public meetings, focus groups, and interviews conducted by Courtney Starling, AICP and Roberta Cameron, AICP from Community Opportunities Group, Inc. The meetings and interviews were conducted throughout January and February 2015, either in person or over the phone. Stakeholders engaged included a broad range of local design professionals, builders and developers, the legal community within Newburyport that handles land use and zoning issues, real estate agents, former board members and engaged citizens, and others who engage with the existing ordinance on a professional level as identified by City Staff, as well as the Planning Board, Zoning Board of Appeals, Chamber of Commerce Economic Development Action Committee, and the Newburyport Preservation Trust.

ISSUE I: TABLE OF DIMENSIONAL REQUIREMENTS (SECTION V1-A.1-7)

DESCRIPTION:

The purpose of a Table of Dimensional Requirements in a zoning ordinance is to prescribe required building and lot characteristics with the intent to control density and building intensity to mitigate development impacts on neighboring properties. Newburyport relies on dimensional controls including minimum lot size, front, side, and rear yard setbacks, frontage, lot widths, open space, and maximum building heights to determine the eligibility of a lot to be considered buildable, as well as appropriate
building envelopes and height. The Table of Dimensional Requirements within the Newburyport zoning ordinance (NZO) also establishes minimum and maximum dimensional controls, both by zoning district and the intended single use of a lot.

**DISCUSSION:**

As written, Newburyport’s dimensional requirements are generally in line with dimensional controls that would be used to regulate “suburban” style development. While these dimensional controls tend to be appropriate for the Turkey Hill neighborhood and similar neighborhoods in Newburyport, they are less effective in many of the older and/or historic neighborhoods that predate the NZO and characterize much of Newburyport’s built environment. In many cases, the dimensional requirements are not appropriate for existing development patterns or anticipated future development needs. Minimum lot sizes, setbacks, and lot width requirements are out of scale in many zoning districts. This renders many existing lots and structures non-conforming and precludes alterations to existing structures, many of which may be necessary for modernization, building code compliance, or handicap accessibility. Due to this issue, the Zoning Board of Appeals frequently finds itself in the position of having to grant variances, which carry a very stringent legal standard, to facilitate reasonable development (see further discussion below regarding variances). In some districts, over-sized minimum lot size or undersized height requirements hinder multiple types of redevelopment opportunities (such as the creation of a hotel, for example or the development of small multifamily buildings) that would serve economic development or housing needs as identified in the Master Plan, but are precluded because there are simply no sites that can accommodate such uses. Further, the dimensional requirements frequently do not enable consistent and complementary infill development, such as “zero lot-line” front yard setbacks in certain districts where such building envelopes are the norm, potentially resulting in negative impacts on the existing streetscape. For example, while nearly all buildings are constructed to the front lot line in the downtown, arbitrary front yard setbacks would require a new building to set back away from the street resulting in gaps in the streetscape. Market Square and State Street do not currently require a front yard setback which allows the buildings and uses in those areas to have a direct and active relationship with the public realm, but this would not be allowed for new development in other areas.

These issues are exacerbated by the fact that dimensional controls are not only dictated by zoning district, but also by prescriptive use categories. The application of prescriptive use categories rather than general use categories hinders the adaptability of the code to address mixed use parcels or uses not contemplated at the time of the creation of the ordinance, resulting from modernization and changing economic conditions, housing, environmental, conservation, and recreation needs. While the intent is to provide sufficient buffers between potentially conflicting uses, the specificity of uses presumes that all uses that are not identical are conflicting, leading to inefficient land consumption. This is not necessarily the case as many different uses can coexist harmoniously. Conflicting uses are generally best addressed in the Table of Uses rather than the Table of Dimensional Requirements.
RECOMMENDATIONS:

1. List dimensional requirements by zoning district and then by use where necessary to increase clarity.
2. Generalize uses for dimensional controls as appropriate to principle & accessory uses allowed within a given zoning district to eliminate confusion regarding applicable regulations. Include mixed-use controls as appropriate as well as “other” use category.
3. “Right-size” Dimensional Controls to eliminate existing degree of non-conforming lots and structures and to facilitate appropriate infill and new development.
   Proposed Methodology: Identify representative streets within each zoning district and measure existing setbacks, lot coverage, building heights, and establish the mean dimension as the dimensional requirement.
4. Adjust dimensional requirements to reflect and incentivize goals and objectives established within the city’s Master Plan. Adjustments may include height or density bonuses, conservation and environmental protection buffers, etc.
5. Consider creating separate dimensional requirements for pre-existing nonconforming uses versus new development as a compromise if to pass more appropriate dimensional controls if necessary. Doing so will indirectly incentivize retention of existing buildings and create an additional disincentive for demolition.
6. Add dimensional requirements for Overlay Districts to the Table of Dimensional requirements for clarity.

POTENTIAL CHALLENGES:

A. While reducing minimum lot size and frontage in certain districts could be seen as a mechanism that would potentially increase subdivision activity and development potential, dimensional requirements that reflect existing conditions will not create any additional land in areas that are already built-out. For lots that do not contain “extra” square footage, that area is typically in the rear of the lot and frontage and lot width requirements will generally preclude most new development. These changes must be made in accordance with Master Plan goals & objectives.
B. Increasing height requirements for existing structures in Downtown Newburyport for specific uses to incentivize vertical infill development in lieu of horizontal infill will likely meet opposition. However, increased residential downtown density will increase the economic viability of the district while the requirement for the building to be pre-existing will decrease the incentive to demolish existing structures.
C. Controlling rear-lot development will need to be addressed in the R-3 district (High Street).

ISSUE II: MODERNIZATION OF THE TABLE OF USES (SECTION V-D)

DESCRIPTION:

A Table of Uses in a zoning ordinance identifies the types of allowed uses within each zoning district, and the review process required to obtain permits if the use is not allowed “by-right”. Newburyport’s Table
of Uses establishes Permitted Uses (P), Not Permitted Uses (NP), and Special Permit Uses (SP). Permitted Uses are allowed with no additional review required. For SP uses, a special permit is typically granted by the Planning Board, Board of Appeals, both, or the City Council. Uses that are not allowed by-right or special permit, “NP”, require a use variance from the zoning ordinance. The Table of Uses is broken down into seven broad use categories: Residential, Institutional/Government/Medical, Agricultural/Open Space, Business, Food Service, Industrial/Infrastructure, and Marine, and then divided by zoning district.

**DISCUSSION:**

The Table of Uses has issues with clarity and organization that can be somewhat easily addressed. For example, for most Special Permit uses, it’s not clear which board is the appropriate reviewing authority. In addition, there are some versions of the zoning ordinance circulating that have blank spaces in the Table of Uses. It can also be confusing to search first by use category and then by zoning district to see if a use is allowed, particularly where uses are not well defined or anticipated by the zoning ordinance. For this reason, it may be helpful to restructure the Table of Uses by zoning district. Also problematic for the purpose of flexibility, the uses listed in the table are very narrowly defined within Section V of the zoning ordinance, which may preclude classification or inclusion of modern or mixed land uses. The Table of Uses is silent on mixed use lots and/or lots containing several principal uses, accessory uses, and “other” uses. Also, similar to the Table of Dimensional Requirements, uses for all overlay districts are not explicitly included.

Another issue is the appropriateness of the review level required for certain uses. For example, the R-2 district, a two-family district in name and stated purpose, requires a special permit for the construction of a two-family dwelling; similarly, the R-3 and B-1 districts, which are multifamily districts in name and stated purpose, require a special permit for the construction of multifamily dwellings. By contrast, single family homes are permitted by-right in R-1, R-2 and R-3 districts, thereby discouraging housing diversity. In addition, restaurants located in the B1 and B3 business districts require special permits, which is more review than likely necessary; on the other hand, restaurants with drive-through lanes are allowed by special permit in the B2 Downtown Business District, which should probably not be allowed at all. Within each of the seven use categories, there are examples of uses that likely require too much or too little review and the level of review (board, staff, permitted, etc.) should be reconsidered.

In addition to issues of clarity, narrowly defined terms, and the appropriate level of review, is the provision for expanded uses in the industrial districts. There is particular concern about whether business uses and other uses the ordinance is currently silent on (e.g., storage and warehousing or co-shared workspace) would be appropriate for inclusion within the Industrial Park (zoned I-1 and I-1B).

**RECOMMENDATIONS:**

1. Reorganize Table of Uses by zoning districts and then by use; include overlay districts, and remove blank spaces.
2. Code SP uses by reviewing authority or authorities.
3. Expand defined terms for uses in Article V to allow more flexibility in the classification of uses.
4. Address and define accessory uses and mixed use lots.
5. Review permitting authority for SP uses; reconsider any NP uses that may be more appropriate as SP uses.

Proposed methodology: Have Planning Board, Board of Appeals, Planning Staff, and the Building Commissioner review Table of Uses individually and select appropriate review levels based upon experience with the process and results of various permitting procedures.
6. Expand uses as appropriate within specific zoning districts in support of Master Plan goals and objectives, while removing obsolete uses.

**Potential Challenges:**

A. Altering review levels may give rise to fears of uncontrolled development; however, an effective ordinance with clear development standards and logical use and dimensional controls should reduce the amount of public review actually needed.

B. There may be a lack of consensus on the actual definition of certain terms that are not currently defined or are currently defined in a manner that is inconsistent with how the term is interpreted in practice. In order to address uses, there must be agreement on how to characterize or differentiate them.

C. Expanding uses, particularly in the Industrial Park, may be seen as “poaching” from Downtown Newburyport or the Storey Avenue commercial district. However, expanding uses may allow downtown businesses to remain in Newburyport if they outgrow their space downtown. Market forces and available amenities will continue to control business location decisions.

D. Concerns about conflicting land uses may arise; however, many of those issues can be addressed with site plan review.

**Issue III: Special Permits and Variances (Section X)**

**Description:**

Special permits are granted by the Planning Board, Board of Appeals, and occasionally the City Council while variances are granted solely by the Board of Appeals. The City has broad discretion over the granting of special permits provided they meet the criteria established under Section X-7.A.1-9 within the local zoning ordinance. Variances, however, must be granted in accordance with Massachusetts General Law (MGL) Chapter 40A Section 10 in addition to local standards established under Section X-6.A-I of the local zoning ordinance. The variance standard established under MGL Ch. 40A (and reiterated under Section X-6.A in the zoning ordinance) requires that a variance may be granted only when a condition unique to a lot within a zoning district arising from soil conditions, shape, or topography of a lot where a literal enforcement of the zoning ordinance would create a hardship, provided that the granting of such relief from the zoning ordinance will not be to the detriment of the public good or derogate from the intent of the zoning ordinance.
DISCUSSION:

The City of Newburyport has clear and well written guidance within the zoning ordinance for the granting of special permits and variances. Section X-6.B states: “The power to vary the application of this zoning ordinance must be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature, and with due regard to the main purpose of this zoning ordinance to preserve the property rights of others.” However, in practice, variances are routinely granted based solely upon the hardship rights of others.

Granting variances solely based on local hardship criteria [the latter of which is notably contradictory to the requirement of a “unique” condition as established under MGL. Ch.40A as well as Section X-6.A of the local zoning ordinance] leaves the City susceptible to legal challenges where state and local regulations are not being adhered to in accordance with the legislative intent of such regulations. The Zoning Board Appeals is put in a position that requires them to grant variances on a fairly regular basis to facilitate reasonable development while the State’s Zoning Act intends that variances would be granted only in cases of great exception. The frequent granting of variances for uses or dimensional standards is typically indicative that the existing zoning code requirements do not reflect either the needs or desires of a community or the existing character of a given neighborhood, and should therefore be updated.

RECOMMENDATIONS:

1. Remove subsection D.2 from the zoning ordinance as it conflicts with statutory requirements that a hardship is a unique condition to the lot.
2. Proactively adjust dimensional, use, level of review (special permits versus variances), and other zoning requirements as needed to facilitate reasonable development rather than granting variances out of short-term convenience.

3. Adjust policy for the granting of variances so that they are rarely sought and even more rarely granted.

**Potential Challenges:**

A. The most significant challenges will be in gaining approval for zoning changes that reduce the number of variances needed to facilitate reasonable development. Variances, with their requirement for a unique hardship – a high legal threshold – is sometimes seen as a tool for regulation and controlling routine development, rather than a mechanism for dealing with rare exceptions.

B. There may be a perception that changing a particular requirement from a variance to a special permit will be seen as too low of a threshold for certain development activities; however, the variance requirement does not currently seem to be effective in precluding such activities and only opens the City to legal liability since many variances, particularly use variances, are difficult to defend on the basis of hardship created by a unique condition resulting from the soil, topography, or shape of a lot.

**Issue IV: Design Review**

**Description:**

Currently design review is not directly enabled within the zoning ordinance anywhere other than within the Federal Street Overlay District (FSOD), and perhaps indirectly in the Demolition Control Overlay District (DCOD), Waterfront West Overlay District (WWOD), and Downtown Overlay District (DOD). The purpose of design review is primarily for the review and approval of architectural design which can be inclusive of building materials, window fenestration, massing, scale, architectural details (i.e. corbels, lintels, parapets, cornerboards, dentils, and so on), performance standards, height, and other design related issues. Design review can also be used on smaller commercial applications including applications for sign and façade alterations.

**Discussion:**

While design review is not generally enabled in most cases that appear before boards and commissions for zoning relief, it is being performed anyway by multiple boards, sometimes resulting in applicants receiving conflicting guidance. Since standards and criteria are not clearly codified, the expectations for developers are unclear and the application of such standards to an application could be representative of a due process violation. There is a need to enable design review, particularly within major nodes and corridors and that serve as gateways to the city or are otherwise highly visible, to ensure that new development is compatible and complementary to its context or reflective of the desired future character of transitioning areas. In addition, the enablement of design review can assist with the
protection and retention of significant historical and cultural resources – which is critically important in protecting Newburyport’s assets while facilitating reasonable development in the long term.

RECOMMENDATIONS:

1. Separate design review standards from site plan review criteria in Section XV-G and establish specific design review criteria to be reviewed concurrently during site plan review (to eliminate additional permitting processes wherever feasible).
2. Establish thresholds for projects that will trigger design review (i.e., all moderate or major projects requiring site plan review, all projects located in the DOD, etc.)
3. Adopt clear design review standards under Section XV of the zoning ordinance.
4. Increase staff level design review for minor applications for commercial alterations within the Downtown Overlay District to streamline permitting processes for business owners with a provision for Planning Board review at staff discretion.

POTENTIAL CHALLENGES:

A. The requirement for design review can be contentious with private development interests because it gives additional discretion and authority to the Planning Board to evaluate design, which can be subjective as individual tastes vary. However, given that design review is already occurring, enabling it within code, establishing clear standards, and limiting purview over design to one board can increase overall surety in permitting and improve the current situation.

ISSUE V: PLAN REVIEW THRESHOLDS FOR SITE AND BUILDING DESIGN (SECTION X-C)

DESCRIPTION:

The Zoning Ordinance establishes project thresholds for Major and Minor Projects and requires Site Plan review for any project that consists of five residential units on one property and any new non-residential uses or buildings. The review thresholds are as follows:

a. **Major projects:** Within a two-year period after the date of the most recent application for a building permit for any portion of the property, any project which consists of changing the outside appearance of a building and/or includes one or more of the following is considered a major project subject to site plan approval from the planning board:

1. Construction of one thousand (1,000) or more square feet of gross floor area;
2. Exterior remodeling or renovation of an existing structure that exceeds twenty-five (25) percent of the existing gross floor area;
3. Construction of a drive-through facility;
4. Construction of ten (10) or more new or additional parking or loading spaces;
b. **Minor projects**: Any project not included within the definition of a major project which involves one or both of the following is considered a minor project subject to site plan review by the planning board.

1. Alterations, expansions, additions, or renovations that are less than five thousand (5,000) square feet gross floor area on any properties located within the "I-1" or "I-1B" industrial zoning districts that do not abut a residential zoning district.
2. Construction of less than ten (10) off-street parking or loading spaces.

**DISCUSSION:**

The project thresholds for what will trigger site plan review, whether as a Major or a Minor Project are rather low. The construction of any off-street parking triggers site plan review as a minor project; exterior alterations that change the appearance of a building triggers site plan review; and anything that involves the construction of more than 1,000 square feet of gross floor area is considered a Major Project. From a regulatory perspective, the treatment of a 1,000 square foot addition on a pizza place in the same way as the construction of a 100,000 square foot hotel is questionable. Further, *site plan review* is theoretically limited to the placement of buildings, circulation, provision of landscaping requirements and other physical concerns for the allocation of space, and is not inclusive of architectural design review. The inclusion of exterior alterations that change the appearance of a building, if there are no changes in the building’s footprint, are a questionable trigger for site plan review.

**RECOMMENDATIONS:**

1. Consider creating an additional project threshold for projects that are moderate in scope and scale – which should include everything that is currently listed as a Major Project. Major Projects should be adjusted to a more appropriate scope, i.e. a minimum of somewhere between 10,000-25,000 square foot alterations as the minimum standard for what would be considered “major.”
2. Adopt clear submission requirements appropriate to scale of the project. For example, a minor project may not require the submission of a landscape plan that is subject to board level review, whereas a moderate or major impact would necessitate such a plan. (Please see further discussion regarding submission requirements below).

**POTENTIAL CHALLENGES:**

A. In adopting standards that differentiate between projects that are fairly minor and those that will have larger impacts that may require mitigation, it may be seen as a welcoming of large scale developments or conversely, making light of minor developments that may seem “major” by public opinion.
DESCRIPTION:

Development projects requiring zoning relief, either in the form of necessitating one or more special permits or variances, are not subject to a linear process. A project may require approval from multiple boards or commissions including the Planning Board, Zoning Board of Appeals, Conservation Commission, Historical Commission, and/or the City Council. Each board is charged with a specific set of regulatory standards that is within their purview for review. The issues they may consider, the criteria used to review projects, and the types of conditions for approval is established and enabled under the zoning ordinance. Clarity lends itself to a user-friendly process, while clear guidelines for submission requirements offer surety as to what type of plans and documents will be expected for a zoning case to be considered.

DISCUSSION:

There are advantages and disadvantages to not having a clearly prescribed process for projects requiring relief and/or approvals from multiple boards. The lack of linear process allows the applicants to choose their starting point based on perceived advantages – the advantage most frequently cited was the ability to go to site plan review with the Planning Board if design issues were anticipated to be the “deal breaker”, or the ability to seek zoning relief from the Zoning Board of Appeals prior to incurring soft costs for design professionals to develop plans if the zoning relief would not be granted. However, the Zoning Board of Appeals is at a particular disadvantage when reviewing the reasonableness of requested zoning relief without the benefit of being able to see fully developed plans. This limits their ability to anticipate development impacts to appropriately condition approvals for impact mitigation if needed, or to discern if any public benefits offered are commensurate with the proposed relief sought. In addition, if relief has already been granted by the Zoning Board of Appeals prior to Planning Board review, the Planning Board may perceive pressure to also approve due to the prior approval. It is to the benefit of both the City and the applicants that projects are fully conceived prior to the submission of an application, provided that submission requirements are clear and are not suddenly required at the discretion of a board (see discussion below). While the above generally applies to larger projects, there are very few advantages to be gained by not having a clear linear process for the average single family homeowner. A simplified user-friendly process for homeowners seeking minor alterations is more desirable than the necessity to obtain legal counsel to discern which board is the place to start.

In addition, clear submission requirements and adherence to these requirements as a condition of being scheduled at either the Planning Board or Zoning Board of Appeals will help ensure a smoother process and more efficient meetings. Currently, the zoning ordinance requires the Planning Board to consider a submission complete by the closing of a public hearing. It may be advisable that the application be complete prior to the opening of the public hearing. As the boards are obligated to close public hearings within established timeframes unless the applicant waives their right to a decision within the prescribed timeframe, the board may incur liability by opening hearings prior to the completion of an application.
In addition, the policy of altering submission requirements on a project by project basis (such as an unforeseen requirement for a traffic study) adds time, cost, and frequently very limited gains to a permitting process. The clearer the standard at the onset of the hearing process is, the more likely the City is to receive fully conceived and thoughtful development proposals. At the same time, minimizing requirements for small projects, like a 500 square foot kitchen and mudroom expansion on a single family home, helps create a process that is better tailored to the average home owner rather than the seasoned development professional.

RECOMMENDATIONS:

1. Build consensus among Board and community leaders as to whether a predetermined linear process is desirable, and if so, whether it is appropriate for all types of applications requiring zoning relief or only certain types (i.e. major projects, minor single family additions, etc.).
2. Require submissions to be complete prior to the opening of a public hearing and review waiver requests under Section XV-G prior to the opening of a public hearing for a given application.
3. Review existing submission requirements under XV-E and modernize as needed.
4. Consider codifying submission requirements for projects seeking special permits or variances from the Zoning Board of Appeals and/or City Council.
5. Codify public benefits that will be considered as part of the application, such as the provision of affordable housing, open space, infrastructure improvements, etc. (particularly for Section VI-C reviews), rather than negotiating such benefits after an application has been submitted (see further discussion below).

POTENTIAL CHALLENGES:

A. Requiring complete applications prior to the opening of a public hearing can add more upfront costs for applicants seeking zoning relief prior to developing drawings. However, modernizing the Table of Uses and Table of Dimensional Requirements and aligning them with the goals and objectives of the Master Plan will reduce the need for variance relief by clarifying the kinds of projects the City will generally support while codified design standards assist with the preparation of approvable plans. The combination of these efforts will substantially decrease the amount of risk incurred during the permitting process on the part of the applicant and the expectation for complete drawings as part of their applications is neither unreasonable nor inconsistent with the standards of many other municipalities in the region.

B. A linear process could decrease flexibility for some applicants; however, for less professionalized applicants, this could be seen as beneficial.
**ISSUE VII: MASTER PLANNED SITES**

**DESCRIPTION:**

Related to the discussion above regarding process, is the concept of allowing applicants to create site level Master Plans to be approved by City Council rather than through a zoning process, which would then render the development as a by-right permit. The basic premise of a Master Planned site is for a development program to be created for a specific site. The development program would include details regarding: the mix of uses and proposed composition and density (i.e., 40,000 square of residential at 20 units per acre with 15,000 square feet of ground floor commercial space); parking count and a plan for vehicular and pedestrian circulation; provision of open space and landscape plan; design guidelines, concept, or elevations; and other salient details regarding the type of development that would be proposed. Typically in these scenarios, there is a minimum lot size for eligible project sites and/or it can be tied to specific geographic areas such as base or overlay zoning districts. A master planned site would not be restricted to zoning requirements, and instead would be a standalone concept for a project site that would require a review by elected rather than appointed officials. Significant changes to the Master Plan and development program would require council approval.

**DISCUSSION:**

The idea of a master planned site is currently being proposed by a developer for a specific site in Newburyport; however, if the City deems this as an acceptable permitting mechanism, this concept could have potential for broader applicability for a select number of key sites throughout the city, rather than for the benefit of a single applicant. If this idea were to go forward, it would likely be advisable to think more broadly about use and applicability to other potential sites that have been identified prior to drafting of any enabling regulations that would allow this type of process so that the application of this concept in very limited circumstances is proactively considered rather than reactively. The potential benefits to free land from zoning constrictions are that it would allow for more creative and innovative development practices unforeseen at the time of the recodification and would give the City a very clear idea of what is being proposed at a very early point in the process. It would also partially eliminate the need to keep developing site-specific zoning overlay districts. However, allowing for full creative license without the constraints of zoning could certainly also yield undesirable development proposals. Further, because the approval threshold would be subject to the discretion of elected officials, it may create an unduly political approval process which could impact the viability of a project. However, the potential for political intervention may also ensure more community input is solicited prior to application on the part of the developer. There is potential for a master planned site process to be a good tool for development under the right circumstances.

**RECOMMENDATIONS:**

1. Consider broader impacts of allowing master planned sites as a permitting avenue, and determine whether or not this would be a desirable strategy to enable within the zoning ordinance.
2. If this is considered, significant consensus will need to be developed regarding project eligibility criteria and thresholds – i.e. minimum lot sizes, required public benefits, min/max densities, etc.

**Potential Challenges:**

A. This approach requires the public to trust the City Council will represent their best interests with respect to development proposals; however, there frequently is not consensus with regard to whose best interest should be considered. In addition, the City Council may not want to be tasked with making decisions regarding development as taking a leadership position on such issues can be a liability due to citizen opposition that may exist irrespective of the codified regulatory environment or the stated goals and objectives of the Master Plan process.

B. The provision for master planned sites approved at the city council level could create a highly politicized process for the approval of large projects.

**Issue VIII: Defined Public Benefits and Section VI-C**

**Description:**

Although the original legislative intent for Section VI-C was to provide access to structures for life safety purposes, this section has been amended fairly significantly to facilitate the construction of more than one residential structure per lot. Section VI-C in its current iteration reads as follows:

**VI-C One residential structure per lot.**

*Not more than one (1) building or structure intended for use as a residential dwelling unit shall be erected, placed or converted to use as such on any lot in a subdivision or elsewhere in the city without a special permit issued by the planning board pursuant to X-H.7 and X-H.8. Additionally, the following five criteria must be satisfied:*

1. **The application shall include conceptual by-right development plans, such as a conventional subdivision, to demonstrate to the planning board that more than one residential structure per lot is a reasonable alternative to other allowed developments of the parcel involved.**

2. **A clear public benefit is derived from the proposed development, including but not limited to a long-term restriction involving one or more of the following:**
   a. Creation of affordable housing;
   b. Preservation of historical structures; and/or
   c. Conservation of significant natural resources.

3. **Unless the residential structures are located side-by-side and have the same front yard setback, then one (1) residential structure shall be subordinate to the other dwelling in appearance by meeting either of the following:**
a. **Covering at least ten (10) percent less building footprint and built no higher than the existing dwelling; or**

b. **Located entirely within the envelope of an accessory building in existence on the effective date of this ordinance.**

(4) **The plan provides adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.**

(5) **The proposed residential structures shall comply with all other applicable zoning regulations.**

*(Ord. of 12-13-04(2), § 2; Ord. of 7-14-08)*

**DISCUSSION:**

It is not particularly clear what the ongoing legislative intent is of Section VI-C, but it appears that the current iteration is trying to accomplish objectives that are perhaps better suited for being directly regulated rather than indirectly regulated when subjective and discretionary public benefits are offered. For example, if the City seeks the rehabilitation and preservation of historic carriage houses, as residential units, then a carriage house ordinance might be appropriate. If the City seeks to facilitate the development of accessory dwelling units for the purpose of expanding housing diversity, then directly regulating the creation of such units by specifically defining them and enabling them within the Table of Uses is a clearer path to their creation. If the City seeks to allow for the construction of more than one single family home on a lot for the purpose of infill development, then establishing dimensional controls for such types of development may be more palatable. Regulations tend to be more successful and predictable in their application when uses or objectives are clearly spelled out and regulated individually within their own “silos”, public benefits to be offered are clearly defined and less subjective, and the public process is clearly articulated.

**RECOMMENDATIONS:**

1. Gain consensus on what types of development the city is trying to facilitate through how Section VI-C is used in policy, and specifically enable those forms of development, setting appropriate dimensional requirements and defining associated public benefit requirements.
2. Address regulations pertaining to more than one principal use or structure on one lot.
3. Standardize public benefit requirements by development threshold, and consider including additional amenities to those already identified as public benefits (such as the inclusion of additional open space, use of low impact development techniques, inclusion of sustainable materials or design elements, etc.).
4. Consider tying public benefits to other types of special permits sought.
5. Retain Section VI-C for purposes of providing access.
POTENTIAL CHALLENGES:

A. Section VI-C currently gives the boards a fair amount of flexibility and latitude to approve development proposals that do not otherwise fit within the zoning ordinance. Removing the flexibility would be inadvisable if the specific forms of development that the ordinance is currently facilitating are desired and not otherwise enabled.

B. The standardization of public benefit requirements could be seen as unpopular to the development community.

ISSUE IX: INCLUSIONARY ZONING

DESCRIPTION:

Under Massachusetts General Law Ch. 40B, every community is required to set aside 10 percent of their housing units as affordable housing (representing a requirement of 801 affordable units for Newburyport, which currently has 607 units of affordable housing). To qualify as affordable housing under Chapter 40B, housing must be “affordable” to a household that earns a maximum of 80 percent of the Area Median Income (AMI). The AMI for a family of four is currently $94,400 in Newburyport.

Inclusionary zoning is a mandate for the provision of affordable housing under the definition of Chapter 40B, or to meet other community housing needs. Inclusionary zoning typically requires that projects reaching a specific threshold size set aside a portion of units for affordable housing and establish basic requirements for unit size and level of finish. Many inclusionary zoning ordinances include a density bonus to make the provision of affordable units more financially feasible for the development community. Inclusionary zoning requirements that are too high can hinder development from occurring, while a lack of inclusionary zoning causes communities to fall behind the goal established under Chapter 40B.

The zoning ordinance currently either mandates, incentivizes, or both, the provision of affordable housing within Open Space Residential Developments (Section XIV), multifamily developments (Section XVI), the Federal Street Overlay District (Section XXII), the Waterfront West Overlay District (Section XXIV), and the Towle Complex Redevelopment Overlay District (Section XXV), Section VI.C, and will be required in the 40(R) Overlay District. The provision of affordable housing, if mandated, is generally at 10 percent, and generally requires the provision of 25 percent affordability for a density bonus. In some cases, such as Section VI.C, the requirement is subjective; and in all cases, additional affordable housing can be requested as a condition of approval at the discretion of the permit granting authority.

1 Department of Housing and Community Development, Subsidized Housing Inventory. Last updated December 5, 2014.

2 Households earning 50-80 percent of the AMI are considered “moderate” income. “Low” income households are those that earn 30-50 percent of the AMI, and “extremely low” income households are those that earn less than 30 percent of the AMI.
**DISCUSSION:**

While the purpose of the diagnostic is not to assess housing needs in Newburyport, it should be noted that the state mandate for affordable housing is a flat rate regardless of actual housing needs present within a community. Currently, 23.6 percent of homeowner households and 29.5 percent of renter households in Newburyport pay in excess of 35 percent of their monthly income in housing costs and are considered severely cost-burdened. While some households may be cost-burdened by choice and have adequate incomes to support their remaining needs, for other residents, this represents housing hardship. Inclusionary zoning can help provide housing for residents who would like to remain in Newburyport, but cannot afford to do so due to market rate housing costs; this is a particularly acute issue for elderly and other fixed income households.

From the developer perspective, many accept that the provision of affordable housing is part of the cost of doing business, however, it should be noted that virtually every unit of affordable housing is constructed at a fairly significant loss to the developer and appropriate provisions need to be made to ensure a project remains financially viable. There was additional feedback given with regard to the provision of housing that is not “affordable” per regulatory standards; i.e. not encumbered by regulations pertaining to inclusion on the Department of Housing and Community Development’s (DHCD) Subsidized Housing Inventory (SHI), but rather market rate housing targeted to “average” income households (i.e. workforce housing) that is affordable simply because the units are smaller and more densely constructed. Though it should be noted that while smaller units at a higher density are less expensive to construct than other types of housing, their affordability may still be limited after the initial sale as the size of the unit is not always a direct corollary to cost – newly constructed units that are small in size but well-designed tend not to remain affordable due to extremely high demand for that product type. With this in mind, some restrictions would likely need to remain to ensure the units remain affordable to workforce housing households after the initial sale.

**RECOMMENDATIONS:**

1. Adopt inclusionary zoning ordinance. Consider appropriate thresholds and incentives, whether or not the regulation will be uniform across districts and if it will apply to base zoning as well as remaining overlays, and if provisions for workforce housing will also be provided.
2. Ensure that the number of units required is clear from the initiation of an application so the building community can respond and design their projects accordingly.

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**POTENTIAL CHALLENGES:**

A. The provision of affordable housing faces a number of challenges ranging from philosophical objections to fear that the provision of affordable housing will decrease property values, increase crime rates, change the character of a neighborhood, be poorly constructed or unattractive, and will contribute to overcrowding in public schools, and increase taxes. These arguments are commonly used in the opposition of affordable housing. However, with an aging population, fairly stagnant wages, and a growing number of disabled residents, it behooves a municipality to consider how to provide a diverse range of housing opportunities for both economic and social purposes.

B. Affordable housing can be unpopular with the development community because it is represents a loss of profit and additional regulatory burden.

**ISSUE X: FORM BASED CODE**

**DESCRIPTION:**

Form based code is a type of zoning that is prescriptive in terms of design rather than by use. Form based code typically regulates elements of site and building design to ensure the appearance of new construction will be complementary or will advance design goals for an area. The regulations tend to contain a number of pictures of diagrams to illustrate design objectives, establish clear and uniform standards, and establish desired forms for streetscape, buildings, and public space. Form based codes typically consist of at least five elements: a regulating plan clearly illustrating where different standards apply, building form and design standards, standards for the public realm (sidewalks, street furniture, street tress, etc.), administration procedures, and definitions. They can also include sign standard and architectural design standards.

**DISCUSSION:**

Form based code could be useful for an area like Storey Avenue where the City has specific goals regarding the types of design they would like used on new construction as the buildings in the commercial area are replaced or infilled. Because Storey Avenue serves as a gateway into Newburyport, the City has a desire to see the area redevelop as a commercial village district with a more active streetscape. To achieve this, the City has been seeking development proposals with buildings brought closer to the street, vehicular circulation brought behind buildings, and buildings with more architectural detailing. Form based code could make it easier for the City to achieve these objectives as current regulations do not spell out these objectives and the only way for these design elements to be addressed through site plan review which frequently requires several redesigns on the part of the applicants since the design goals are not clear from the outset of the application process.
RECOMMENDATIONS:

1. Develop and adopt form based code regulations for Storey Avenue. Also consider whether not form based code would have potential for application in the Route 1 Traffic Circle area.

POTENTIAL CHALLENGES:

A. Form based code is somewhat new in Massachusetts. Because it is unfamiliar, there may be some resistance on the part of developers, government officials, residents, lenders, and others to undertake such a drastic regulatory change.
B. Developing an effective form based code can be difficult if the provision for adequate design standards become politicized.
C. It can take a significant amount of time and public process to develop a cohesive vision for architectural and site design standards.

ISSUE XI: PERFORMANCE STANDARDS AND SUSTAINABLE DEVELOPMENT (SECTION XI)

DESCRIPTION:

Performance standards typically relate to specific impacts of a proposed development and seek to limit objectionable impacts such as noise, dust, vibration, pollution, odors, glare and so on. Performance standards can, for example, limit the intensity of development, control the impacts of development on nearby land uses, limit the effects of development on public infrastructure, and protect the natural environment. Newburyport utilizes performance standards that focus on limiting or entirely eliminating objectionable impacts on neighboring properties. However, performance standards can also be used to encourage positive impacts, whether they are economic, environmental, or otherwise advance the public good.

DISCUSSION:

Newburyport could consider adopting performance standards that encourage and incentivize sustainable and environmentally friendly development. This could include the adoption of low impact design standards (low impact storm water management techniques, installation of green roofs, bioretention, permeable paving materials, stormwater storage and retention, grey water recycling, tree boxes, etc.), incentivizing the inclusion of additional open space and/or utilization of sustainable development practices (sustainable building materials, renewable energy, provision of multimodal transportation options, provision of agricultural lands, etc.), and things of that nature. Because performance standards are focused on addressing certain goals, there is ample potential to revise the performance standards to include positive impacts in addition to mitigating negative impacts.

RECOMMENDATIONS:

1. Identify environmental goals and objectives the City wishes to promote with future development. Appropriately zone areas needing additional protection to limit development.
2. Consider broadening performance standards to include requirements for environmentally sustainable development as appropriate.

3. Consider the adoption of a specific section of the ordinance related to environmentally sustainable and/or low impact development. In the alternative, sustainability measures could be added to the existing site plan review criteria as well as design review criteria. The advantage to adopting a standalone section is that it will the City to incentivize certain sustainability measures that may not otherwise be financially feasible via density bonuses, a streamlined permitting process, parking waivers, etc.

**POTENTIAL CHALLENGES:**

A. Because the use of low impact development techniques or sustainable building practices is particular to one site at a time, there is a perception that it is not worthwhile to adopt such standards.

B. There is a perception that performance standards relating to sustainability add significant costs to a project and are too difficult to maintain.

C. Some people find sustainability measures, such as the inclusion of rooftop solar panels or the presence of rain barrels, to be physically unattractive.

**OTHER ISSUES RAISED**

1. Section II – Definitions needs to be updated to include terms not currently defined and review other terms that have been defined in such a way as to be pertain to specific projects rather than in more general terms.

2. Section IX-3.C requires a special permit for additions to non-conforming single and two-family structures in excess of 500 square feet. The intent of the regulation was to preclude disharmonious additions; however, the difference between a 500 square foot addition on a 1,200 square foot structure on a 3,500 square foot lot has significantly different implications than a 500 square foot addition on a 3,500 square foot structure on a 25,000 square foot lot. A ratio might be a more appropriate control for review of residential additions rather than a flat rate.

3. The DCOC and DOD are untested and there is some concern that what the overlays are a “band aid” solution to a demolition problem and will not withstand legal challenge.

4. Improving the clarity and organization of the zoning ordinance was a high priority to many interview participants.