

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

WEDNESDAY, MARCH 27, 2013

7:45 PM - Room 202

**ITEMS SCHEDULED FOR DISCUSSION:**

- #25-12      TERRENCE P. MORRIS, G. MICHAEL PEIRCE, JASON ROSENBERG, JOHN LOJEK proposing a zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word “*subject*” before the word “*lot*”, the word “*and*” before the word “*such*” and the word “*adjoining*” after the word “*such*” so that the paragraph reads as follows:  
*(b) if the subject lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the subject lot and such adjoining lot had on it a single-family or two-family dwelling. [01/30/2012 @ 3:14PM]*
- #77-13      ALD. GENTILE & HARNEY requesting that the Board of Aldermen amend the **City of Newton Zoning Ordinances** so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case be considered valid non-conforming properties. [02/27/13 @ 3:06 PM]
- #11-12      ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]
- #162-12      THE ECONOMIC DEVELOPMENT COMMISSION requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen. [05-17-12 @ 4:18 PM]

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The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Trisha Guditz, 617-796-1156, via email at [TGuditz@newtonma.gov](mailto:TGuditz@newtonma.gov) or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

***ITEMS FOR ZONING REFORM DISCUSSIONS WHEN SCHEDULED:***

- #80-13      THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #220-12      RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a be clarified with respect to “lot width,” “lot area,” or “lot frontage.”
- #219-12      RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”
- #218-12      RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.
- #217-12      RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.
- #216-12      RECODIFICATION COMMITTEE recommending that the definition of “Space, usable open” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.
- #65-11(3)      ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #154-10(2)      ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10      ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

- #65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]
- #108-13 ECONOMIC DEVELOPMENT COMMISSION submitting its 2012 annual report as required by City of Newton Ordinances, **Chapter 22, Section 92**. [03/07/13 @ 1:17 PM]
- #48-12 ALD. ALBRIGHT requesting a discussion with the Executive Office and the Planning Department on the creation of a housing trust. [02/10/2012 @ 9:13AM]
- #81-13 DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]
- #64-13 NEWTON HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation. [02/05/13 @ 11:35 AM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
- #260-12 ALD. YATES proposing amendments to Sec. 30-19 to increase the vitality of village centers without adverse impacts on the residential neighborhoods around them. [08-17-12 @ 1:01 PM]
- #406-12 ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]
- #328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #322-12 HIS HONOR THE MAYOR submitting the FY14-FY18 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter.  
[10/09/12 @ 2:38 PM]
- #308-12 ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @3:59 PM]
- #282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*.  
[09-09-12]

**REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES**

- #273-12 ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer.  
[09/10/12 @ 1:17 PM]
- #215-12 ALD. YATES proposing a RESOLUTION requesting that the Planning Department and the Economic Development Commission develop a Main Streets Program following the model of the National Trust for Historic Preservation to revitalize the Newtonville and Newton Centre business districts.  
[07-17-12 @2:55PM]
- #214-12 ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.  
[07-09-12]
- #64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances Sec 30-24(f)(8)b) to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities.  
[03-14-12 @8:54AM]

- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05- 10-11 @3:19 PM]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]  
**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]  
**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @12:00 PM]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

Respectfully Submitted,

Marcia T. Johnson, Chairman



Setti D. Warren  
Mayor

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**#77-13 and #25-12**

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Candace Havens  
Director

## WORKING SESSION MEMORANDUM

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**DATE:** March 22, 2013

**TO:** Alderman Marcia T. Johnson, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Candace Havens, Director of Planning and Development   
James Freas, Chief Planner, Long-Range Planning

**RE:** #77-13: ALD. GENTILE & HARNEY requesting that the Board of Aldermen amend the City of Newton Zoning Ordinances so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case, be considered valid non-conforming properties.

#25-12: TERRENCE P. MORRIS, G. MICHAEL PEIRCE, JASON ROSENBERG, JOHN LOJEK proposing a zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word "subject" before the word "lot", the word "and" before the word "such" and the word "adjoining" after the word "such" so that the paragraph reads as follows: (b) if the subject lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the subject lot and such adjoining lot had on it a single-family or two-family dwelling.

**MEETING DATE:** March 27, 2013

**CC:** Board of Aldermen  
Planning and Development Board  
Donnalyn Kahn, City Solicitor

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### INTRODUCTION

In August 2009 the owners of an undeveloped 8,500 square foot lot on Bradford Road requested a permit to build a new house. The owners also own an 8,500 square foot vacant lot next door on which

there is an existing single-family residence. Both lots fail to meet today's minimum lot size requirement, but were built prior to the establishment of the 10,000 square foot lot minimum requirement. For the past decade, the Planning, Inspectional Services and Law Departments have allowed for development of such lots under an established interpretation of section 30-15(c)(3)(b) of the Zoning Ordinance and the requested building permit was issued. Neighbors to the vacant lot challenged the City's interpretation and the courts upheld their appeal. The most recent court judgment is now under appeal. Many others in the City own similarly configured lots, some of which now have homes on them built within the last decade. This report summarizes the background of the issue and the relevant aspects of City guidance described in the *Comprehensive Plan*.

## ANALYSIS

On February 22, 2012 the Massachusetts Appeals Court issued its opinion relative to the *Mauri v. Zoning Board of Appeals of Newton* case determining, in effect, that that the City's interpretation of section 30-15(c)(3)(b) of the Newton Zoning Ordinance was in error based on the plain-language meaning of the ordinance section. This finding raises two distinct issues; first, that vacant, undersized lots adjacent to existing single-and two-family homes may no longer be considered buildable under the ordinance (the infill lot issue) and, secondly, certain homes built on such lots under the previous interpretation of the ordinance will now be considered noncompliant with the ordinance, raising a range of potential problems for these homeowners (the noncompliant homes issue). Two separate docket items offer options to address these issues.

### Section 30-15(c)

(c) Exceptions Applicable in Residential Districts. Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall apply to any lot in a residential zoning district except to the extent that either the provisions of Massachusetts General Laws, Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

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(3) Either

a) The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question,

or

b) If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single-family or two-family dwelling.

The current Section 30-15(c) (see above) was enacted in 2001 and provides exceptions for lots in residential districts from changes in zoning requirements that occur after a lot is created. From its passage, the Inspectional Services Department has consistently interpreted the provisions of Section 30-15(c) to protect nonconforming vacant lots from merger with adjoining lots in common ownership where there is a single-or two-family home on the adjoining lot. Effectively, this interpretation allowed a property owner to sell a neighboring lot for the construction of a new home which, by virtue of its similar lot size to others on the street, would generally be in keeping with the scale of the



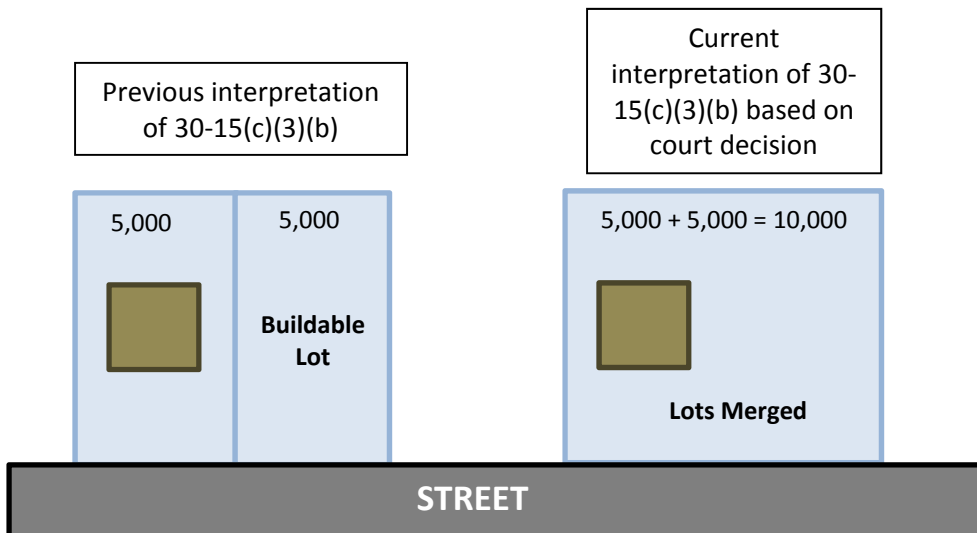
neighborhood. By the best estimate available, there have been approximately 12 building permits issued under this provision of the zoning ordinance since 2001.

On March 8, 2007, the Commissioner of ISD issued a determination that the vacant lot adjacent to 25 Bradford Road was a buildable lot under the provisions of Section 30-15(c). The resulting building permit was appealed, first to the ZBA, which upheld the Commissioner’s determination and then to the Land Court, where the judge overturned the decision and issued a new interpretation of the language of 30-15(c). The decision of the Land Court was upheld by the Massachusetts Appeals Court and that decision has been appealed to the Supreme Judicial Court.

**Analysis of the Infill Lot Issue (#25-12)**

Based on the opinions of the Land Court and the Appeals Court, undersized vacant lots in common ownership, with an adjacent single-or two-family home, are no longer exempt from the area and frontage requirements of the zoning ordinance. Therefore, these lots are effectively merged and the vacant lot can no longer be considered buildable for the purposes of constructing a separate home. Under the previous City interpretation of the Zoning Ordinance, a person owning two lots created under a previous set of zoning restrictions allowing smaller lots than are currently allowed in the zoning ordinance could build on a vacant lot as long as one of the lots was already developed and the lot to be built on was at least 5,000 square feet with 50 feet of frontage (Illustration 1). These small vacant lots were effectively protected from the larger area requirements of the current zoning ordinance<sup>1</sup>.

**Illustration 1**



<sup>1</sup> In cases where the vacant lot already meets the lot area and frontage requirements of the pre-1952 Newton Zoning Ordinance, the lot would still be considered buildable.

Petition #25-12 would clarify the language in section 30-15(c)(3)(b) consistent with the City's previous interpretation, restoring protection to these small vacant lots so as to allow them to be developed with new homes consistent with those already in the neighborhood. Based on an analysis of vacant lots conducted by the Planning Department last year, the number of vacant lots that could be developed under this provision is an estimated 217 lots<sup>2</sup>. Over the last decade there have only been around a dozen building permits issued under the 30-15(c)(3)(b) provision while there have been as many as twice that which have applied but been found to not qualify based on the lots having been merged by deed. Many other lots would also not qualify based on topographic, conservation, or other issues that already serve to restrict the ability to develop a given lot.

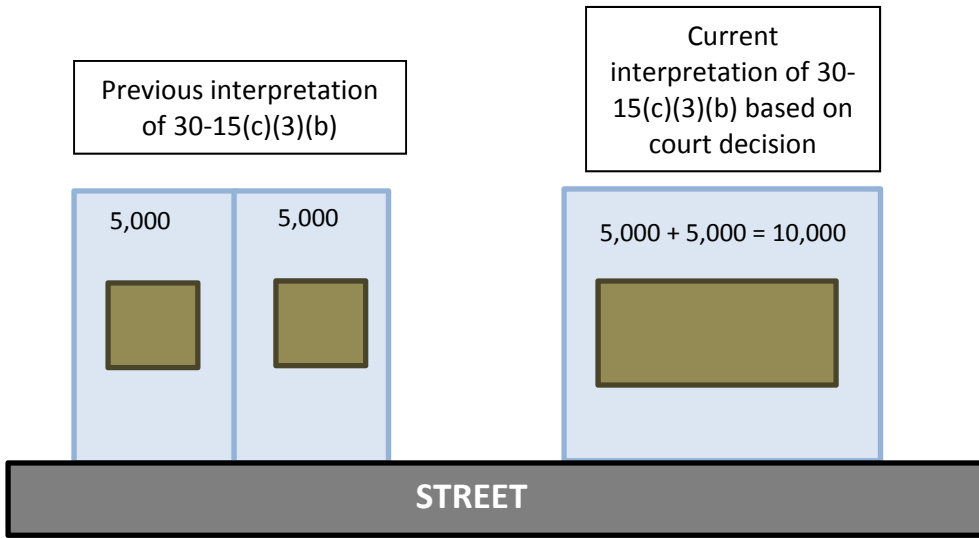
The fundamental issue for the Board to consider is whether to allow development on these vacant lots. There are four primary questions of policy to consider relative to this issue. The *Newton Comprehensive Plan* offers valuable guidance on each of these questions.

1. Accommodation of Additional Growth. The *Comprehensive Plan* anticipates the addition of approximately 3,000 new housing units in existing single- and two-family areas of the City and considers this to be a modest level of growth within the general capacity of the City. The *Plan* further directs that such new growth should be in places where the supporting infrastructure exists and is protective of sensitive environmental areas. The majority of the lots in question for this issue would clearly meet these requirements and, even at the greatest possible level of build-out, be well below the level of growth anticipated in the *Comprehensive Plan*.
2. Protection of Neighborhood Character. The context of new development, its relation to existing neighborhood character, is also an important question and one that is a key theme in the *Comprehensive Plan*. One of Newton's strengths is the quality of its neighborhoods, many of which exhibit historic character that lends value to and defines the overall character of the City. These historic neighborhoods frequently have smaller lots than are currently allowed under the Newton Zoning Ordinance and many of the vacant lots in question are in these types of neighborhoods. Defining what is neighborhood character can be challenging and the *Comprehensive Plan* generally takes the approach of deferring to the community to decide what attributes of the neighborhood should be preserved. However, relative to the question of whether these vacant lots should be allowed to be developed with homes or merged with the adjacent parcel, the question is not one of whether or not to allow development, but of what the character of that development should be when it occurs. Illustration 2 below shows this comparison.

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<sup>2</sup> This number was developed using the assessor's database and GIS data and represents a high estimate based on the City's experience with these types of vacant lot.

**Illustration 2**



If the changes proposed in petition #25-12 are adopted, returning the City to its previous interpretation of this section of the ordinance, a property owner with one of these lots would have the choice of either building a second home consistent in scale to those in the existing neighborhood or building a single new home that could be larger in size due to the merged overall lot area. Unless the zoning text is changed to clarify this intent, the options available to a property owner become more limited and any new development less likely to fit into the context of the existing neighborhood. More options create a greater opportunity to tailor development to the desires of the community, an objective identified in the *Comprehensive Plan*:

*“Development is to be guided to reflect the character held or sought by existing residential neighborhoods, protecting the qualities of that which exists. That often but not always means minimizing changes: well-designed change can strengthen existing qualities. Sometimes residents feel that the opportunity to make change is a valuable part of the character of their part of the City, while in other areas even small departures from what exists are viewed with dismay. In all of the places in the City, the well-considered views of that place should be given great respect in land management policies and decisions.”* Land Use, p. 3-6.

3. Diversity of Housing Options. Allowing for a diversity of housing choices, to accommodate people of varying incomes and life phases, is an important policy element of the *Comprehensive Plan*. In some areas of the City where these smaller vacant lots exist and zoning allows, the lots

could be developed with smaller, more affordable homes while still being consistent with the overall character of the community. Conversely, the larger, merged lot offers a greater opportunity for 40B developments of small multi-family or townhouse-style developments, which would also be consistent with this objective of the *Plan*, though potentially inconsistent with the overall vision.

4. Property Rights. The issue of private property rights is an important one and addressed particularly well in the *Comprehensive Plan*:

*“The protection of property rights is an often-expressed and legitimate concern. That includes the rights of home owners to protect the financial investments and quality of life commitments they have made, and also the rights of larger land owners to see the investments they have made treated predictably and fairly. The principle of private property is fundamental in our society and deserves full respect.”* Land Use, p. 3-17.

For many property owners in the City there is an expectation that these small vacant lots adjacent to their homes represent a developable asset. Correctly or not, that interpretation of the ordinance has been in effect for more than a decade. Development of these lots is consistent with the character and density of the existing neighborhood; in most areas where they exist, they clearly represent vacant or underutilized parcels when viewed in the context of the surrounding development patterns. Further, where lots like these are in separate ownership, where they are not in common ownership with an adjacent parcel, they are buildable under the Zoning Ordinance.

In summary, the language presented in petition #25-12 or different language to a similar effect would clarify section 30-15(c)(3)(b), restoring the previous interpretation of this section so that they would not be considered merged under the law and retain their status as separate developable lots.

#### **Analysis of the Non-Compliant Homes Issue (#77-13)**

As a result of the court decision invalidating the City’s interpretation of section 30-15(c)(3)(b) as many as ten homes in the City would now be considered non-compliant according the Newton Zoning Ordinance raising potentially severe issues for these homeowners. First, these homes would now be considered to have had building permits issued in error. As a result, they would be subject to enforcement by the City, which could result in tearing down the homes. Under MGL Chapter 40A section 7 there is a statute of limitations of six years, which would protect roughly half of the affected homes from such an enforcement action. Secondly, all of these homes would not be able to receive any form of building permit in the future. If one of these structures were to have any catastrophic damage due to fire or an act of God, they would have no right to rebuild. Further, a homeowner would

## #77-13 and #25-12

have no right to a building permit to maintain a dwelling from becoming uninhabitable due to disrepair. It would also preclude improvements of any kind, such as a kitchen or bath remodel. As the dwelling deteriorated, it would become a hazard and eyesore to the neighborhood. These homes would likely also be difficult, if not impossible to sell, as its status as a noncompliant lot would need to be disclosed to potential buyers.

Petition #77-13 proposes that an amendment to the Zoning Ordinance be considered that would protect these homeowners. The Planning and Law Departments have discussed this issue and have not yet been able to identify a satisfactory means of accomplishing this protection through a zoning amendment. The challenge is in defining this class of property owners, these approximately ten homes, in such a way that exempts them from noncompliance on this issue, but not on any other issue, and does not create an instance of spot zoning. Based on these factors, addressing this issue within the zoning ordinance would be difficult and, if legally possible, create another layer of complexity within the ordinance. Alternatively, the City could encourage these affected homeowners to apply for variances from the Zoning Board of Appeals, as there is potentially an identifiable hardship created by a change in interpretation of the ordinance that could qualify them for a variance.

### **NEXT STEPS**

The Planning Department recommends that the Committee discuss its preferences regarding preferred outcomes. Would it prefer to allow additional homes in Newton's older neighborhoods consistent with the existing development pattern or would it favor the merging of lots in common ownership where fewer, but larger, structures could be built? The final decision on that issue would be relevant to how the issue of noncompliance is addressed by #77-13, as approving #25-12 would make #77-13 unnecessary. On the issue raised by petition #25-12, staff would request that the members of the Committee also identify any other policy information or data analysis that might help the Committee in its deliberations going forward.



Setti D. Warren  
Mayor

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Candace Havens  
Director

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## WORKING SESSION MEMORANDUM

**DATE:** March 22, 2013

**TO:** Alderman Marcia Johnson, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Candace Havens, Director of Planning and Development  
James Freas, Chief Planner, Long-Range Planning 

**RE:** #162-12: THE ECONOMIC DEVELOPMENT COMMISSION requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen.

**MEETING DATE:** Working Session on March 27, 2013

**CC:** Board of Aldermen  
Planning and Development Board  
Donnalyn Kahn, City Solicitor

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## EXECUTIVE SUMMARY

Petition number 162-12, proposing a moratorium on ground level banks except by special permit, was introduced by the Economic Development Commission (EDC) in June of 2012 as a mechanism for advancing the issue of Village Vitality in Newton's village centers. Village Vitality is a key issue for the City and a predominance of banks in a village center can have a diminishing effect on the street life and engagement potential of a village area. At the same time, banks are also anchor tenants in a village and serve an important role in the business community, both formally in their capacity as banks, and informally as community leaders and organizers. Analysis of the location and rate of new bank establishment in Newton showed a very moderate rate of growth and that the impact was highly localized to only a couple village centers. The issue of Village Vitality is multi-dimensional, complex, and offers no readily-apparent right or wrong answers; the solutions must be tailored to the place and recognize the synergy or connectedness between all of the different aspects of an individual village. For those reasons, the Planning Department's recommendation, supported by various conversations on this topic at the Zoning and Planning Committee, is to address Village Vitality through a range of other programs that are designed to generate solutions responsive to the inter-connectedness of the issue and the individuality of the villages, and to not create a moratorium on banks as proposed.

## Findings

Banks provide vital services to the community and are a particularly important component of a village center, as they generate foot traffic, provide banking services to local businesses, and often provide generous support of village-based activities. The precise issue raised by the presence of numerous banks in a village area is less about there being banks as it is an issue of urban design and operation. Active, engaging storefronts and extended hours support active street-life and many banks are incorporating these elements. A hallmark of successful village vitality is a fine-grained mixture of uses and good urban design. Successful commercial villages demand an interesting, engaging environment that people visit just to see what is going on, to wander, and to shop. The village itself is the destination and banks are part of the mix.

The primary purpose of the proposed moratorium was to stem the development of new banks in village centers so as to allow time for a more comprehensive look at the issue of village vitality. Looking at data from the Federal Deposit Insurance Corporation (FDIC), between 2007 and 2011 there was an increase of two banks. While other bank locations were proposed in 2012, the overall growth rate remains modest. Banks are also quite concentrated in Newton Centre, Newtonville, and West Newton (see map). The overall dominance of banks in these settings though, is a factor of the percentage of commercial frontage they occupy such that, while there are a greater number of banks in Newton Centre, there is more commercial space overall. The impact of banks on the vitality of the village area is also a product of its location with many banks properly located to support overall activity without necessarily detracting from continuous retail frontages.

There are a number of projects and activities ongoing or planned relative to the Village Vitality efforts:

1. Main Streets Program – The Planning Department will invite one or more speakers to come to an upcoming ZAP meeting to share details of this program and how it might be applied in Newton’s villages.
2. Zoning Reform – Improving Newton’s zoning ordinance is one of the most important steps necessary for economic development, including Village Vitality. Phase 1 of this project is ongoing with the second visit of the City’s zoning consultant scheduled for April 8. Phase 2 is planned for the fall and Village Vitality will be an important component of this work as the City considers substantive policy changes in the zoning ordinance.
3. Community Engagement and Beautification – The Mayor’s Village Community Engagement and Beautification staff are actively working with village area residents and businesses to identify small, low-cost improvements that can have big impacts on the attractiveness and vitality of Newton’s villages. This effort is currently focused on Nonantum.
4. Parking Management Plan – Parking is a critical issue in the village centers. The parking management plan currently under development will include a range of parking solutions to support village vitality.

## Next Steps

Given that the evaluation of impacts of banks on the City’s village centers was shown to be relatively modest, and that a variety of efforts are underway to enhance village vitality for which the moratorium was directed, staff recommends that the Committee take no action on this item. Updates on the initiatives listed above can be provided to the Committee at any time. Should the Committee wish to hold the item, staff requests it provide staff with direction as to what additional information might be needed for the Committee to take further action.