

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY JANUARY 9, 2012

Present: Ald. Johnson (Chairman), Yates, Sangiolo, Kalis, Swiston, Danberg, Lennon

Absent: Ald. Baker

Also present: Ald. Albright, Crossley, Hess-Mahan, Harney, Gentile, Fuller

Planning and Development Board: Joyce Moss (Chairman), Doug Sweet, David Banash, Scott Wolf, Leslie Burg

Economic Development Commission: Christopher Steele

City Personnel: Ouida Young (Associate City Solicitor), Eve Tapper (Chief Planner for Current Planning), Seth Zeren (Chief Zoning Code Official), Candace Havens (Director of Planning and Development), Rebecca Smith (Committee Clerk)

Appointment by His Honor the Mayor

#392-11 TREFF LAFLECHE, 86 Prince Street, West Newton, appointed as an *associate* member of the Zoning Board of Appeals for a term to expire December 31, 2012 (60 days 1/20/12). [11/14/11 @ 4:53 PM]

ACTION: **APPROVED 6-0**

NOTE: Treff LaFleche joined the committee to discuss his appointment. Mr. LaFleche has been an architect for thirty years, with twenty years experience with Newton zoning. Mr. LaFleche stated that he has a keen passion for interpreting the zoning laws accurately and consistently. Ald. Yates inquired about Mr. LaFleche's thoughts on the standards of hardship as they pertain to the granting of variances. He stated that he is aware of the threshold associated with variances and that hardship is an interpretation. Additionally he noted that hardship is an issue associated with the property not with the user. Ald. Yates moved approval of the item which carried unanimously in committee.

Appointment by His Honor the Mayor:

#390-11 WILLIAM MCLAUGHLIN, 117 Hammond Street, Chestnut Hill, appointed as a member of the Zoning Board of Appeals for a term to expire on September 30, 2012 (60 days 1/20/12). [11/12/11 @ 11:46 AM]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Mr. McLaughlin was unable to attend the meeting. Due to the deadlines associated

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, contact the Newton ADA Coordinator Trisha Guditz at 617-796-1156 or tguditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

with appointments this item will need to be re-docketed in order to be discussed again. The motion was made for a vote of No Action Necessary, which carried unanimously.

Re-appointment by His Honor the Mayor:

#399-11 JAMES MITCHELL, 83 Countryside Road, Newton Centre, re-appointed as a member of the Zoning Board of Appeals for a term of office to expire December 31, 2012 (60 days 1/20/12). [11/12/11 @ 11:45 AM]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Ald. Sangiolo informed the committee that Mr. Mitchell is also serving on the licensing commission, which is a rather consuming three person commission. She inquired about whether Candace Havens, Director of Planning and Development, has discussed the concept of opening up others' ability to serve by not doubly appointing people. Ms. Havens explained that the Mayor would like to encourage this.

Ald. Sangiolo moved a vote of No Action Necessary with the hopes that the item will be re-docketed after the dual appointment is brought to the attention of the Executive. The motion to NAN carried unanimously.

#400-11 ALD. GENTILE, HARNEY, SANGIOLO requesting establishment of a Business 5/Riverside Zone: a mixed-use transit-oriented district at the site of the current Riverside MBTA rail station. The proposed new zone shall allow by special permit a single commercial office building not to exceed 225,000 square feet with a maximum height of 9 stories, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center. [11/17/11 @3:36 PM]

ACTION: **HELD 7-0**

NOTE: Candace Havens, Director of Planning and Development, introduced the item to the committee by beginning the Planning Department's presentation on the proposed changes (the presentation is attached to the end of this report).

Ms. Havens addressed the general idea of mixed use sites, stating that they are areas of "smart growth" where people can live, work, and play. The city's comprehensive plan identifies this Riverside site as a prime site for mixed-use development. As right now there is no zone that allows for this mixed use project, one must be created; the Planning Department is proposing the "riverside transportation (or "transit", as suggested by Ald. Yates) oriented zone" and has crafted some draft language to be discussed in future working sessions (See attached).

It is a challenge to address all aspects that could be considered because there is no project proposal yet. Ms. Havens explained that today this is a 22 acre public-use zoned parcel of land. The land Use committee will be addressing the special permit issues and the map change while other agencies including state agencies will review changes as well.

For the committee's information, Ms. Havens explained that the developers of this land also control the Hotel Indigo site. Hotel Indigo, however, is not on the same lot. It is a different parcel of land and in classified as a Bu5 zone.

Ald Sangiolo requested that some examples of what they are envisioning are sent to the Board so that they get a clear idea of what the Planning Department sees as the final outcome.

Seth Zeren, Chief Zoning Code Official, continued the presentation by diving into some of the technical elements of zoning options. He explained that there are some basic decisions to be made such as whether this should be a “base zone” or an “overlay zone” and whether or not this should be a “general change” or a “site specific change”. He explained that base zones are a fundamental unit of zoning and are the traditional type of zoning which include density and dimensional standards. Everything is contained in the one zone. Overlay zones are a more modern concept and are used to alter the underlying zone; they are put on top of the base zone to amend certain aspects.

In regard to general versus site specific, implementing a general change would mean that it could apply city-wide to similar areas if written loosely enough; site specific would mean that it could only apply to the site in question. The advantages to site specific are that they are crafted for a particular area of the city and because focusing on one site would allow the city to hone in on regulations. Mr. Zeren explained that one of the key ways to regulate are through performance standards relating to noise, traffic, and school impacts. If such elements can't be limited then mitigation can be required. Contextual standards are also something to be considered; regulations should reflect the area in which the site is located. In discussing the context, Mr. Zeren explained that the impact of a structure on the surrounding area depends greatly on the use associated with that structure.

Mr. Zeren handed the presentation over to Eve Tapper, Chief Planner for Current Planning, who presented the three drafts/examples of different kinds of zones; base zone, overlay zone, and hybrid zone. The base/traditional zone and Hybrid Zone were drafted for these purposes. The example if an overlay zone is a copy of the Planned Multi-use Business District (PMBD). In drafting the traditional and hybrid zones the Planning Department tried to translate the docket language into dimensional standards and really tried to adhere to what the docket language outlined. In regards to the PMBD overlay example, one of the advantages is that there is a lot of performance based and contextual standards. One of the problems that were found in the PMBD was that it didn't create enough incentives for the developer to use it. One good element of the PMBD was the performance based impact measuring. In general, the PMBD overlaid a lot of the Bu4 district and didn't require that there be enough of a mix of uses.

Ms. Tapper explained that a hybrid zone would permit allowed uses and would also require at least 3 compatible uses. She explained to the committee that the hybrid zone would be best in terms of monitoring the impact and making sure certain thresholds are being met, therefore the planning department believes this is the best zoning option. The hybrid would be a base zone with additional elements associated with it. Many of the findings for the Hybrid zone are being taken from the example of the PMBD.

Ms. Tapper stated that while the planning department favors the hybrid plan, any of these possibilities could be written to fit the city's needs. She stated that regarding the

impact, first do no harm; imposing thresholds would provide flexibility for the developer while allowing for the project to remain the same in the eyes of the neighborhood.

Ald. Yates suggested that to provide clarity this zone should be termed the Mixed Use 3 Transit Oriented Development, which would also keep the proposal from sounding like spot zoning. He additionally requested that in the text there be an explanation of what the Planning Department is shooting for and why this zone would be applied to a particular site; furthermore, it should reference the features of the particular site.

Ms. Tapper responded by stating that this zone, regardless of what it is eventually termed, the zoning change will be placed in the mixed use section of the ordinance.

Ald. Gentile spoke to a couple points. First he stated that the docket item was meant to represent the maximum amount of use on the site and was determined in consultation with the developer so that the number is of no surprise. He stated that he feels strongly that these maximums remain the maximums. There are specific numbers proposed for a reason and they are directly related to the area and the traffic, which at this point has no direct access to route 128. Ald. Gentile also stated that the city has been told that this is not a case of spot zoning, and that this project will be much easier to complete should the zoning be site specific. He also requested that the committee doesn't get bogged down with discussions of topics reserved for the Land Use committee, such as special permits. The charge of this committee is just to determine what the size of structure on the lots should be and what kind of uses should be represented in those structures.

Ald. Danberg stated that she supports the idea of the change being sight specific. To determine whether the numbers are correct she recommends that we do some studies so that we can understand what the impact would likely be; it would be helpful to see a grade of impact levels so we have a feeling of what size generates what impact. Ms. Tapper stated that there are a lot of different elements that will need to be considered and that uses will be a significant determinate of impact, more so than size.

Ms. Tapper distributed the drafts of the base/traditional zone and the hybrid zone. The committee was struck by how simple the wording for the base zone is; Mr. Zeren explained that this text is brief because it fits into the mixed use section of the ordinances. Ald. Yates requested that the current uses allowed by-right and allowed by special permit are explicitly listed.

Regarding the hybrid zone draft, Ms. Tapper explained that much of the backbone is based off the PMBD, though they are structurally quite different. Ms. Tapper walked the committee through the document, which is attached to the end of this report along with the Base Zone draft and the PMBD.

The Committee will review these materials and meet for a working session on January 23rd. The committee moved hold on the item which carried unanimously.

Respectfully Submitted,

Marcia Johnson, Chairman

TREFFLE E. LAFLECHE, AIA, LEED AP

Principal



Treff's professional experience has focused on providing client focused and context sensitive design and project management services. Treff has achieved local and national recognition for his expertise in the merging of historic and contemporary aspects of New England residential and institutional architecture. He is a creative leader in a collaborative search for appropriate design solutions. His dedication to excellence is evident from the smallest detail to the broadest planning gesture.

COMMUNITY EXPERIENCE

City of Newton FAR Zoning Working Group

This 7-person team of Newton professionals and citizens has been working closely with the Newton Planning and Inspectional Services departments as well as Newton ZAP to examine, evaluate and make recommendations regarding current FAR regulations in response to the elimination of Footnote 7 in the Newton Zoning Ordinances.

Chair, Historic Newton Capital Campaign Steering Committee

This sub-committee of the Joint Board of Historic Newton is responsible for raising the \$5.5M Historic Newton Capital Campaign goal.

Member, Historic Newton Board of Directors

Durant-Kenrick Homestead & Grounds Transition Committee

This sub-committee of the Joint Board of Historic Newton is responsible for the design, public approval, acquisition and construction of the restoration and renovation of the historic 1732 Durant-Kenrick Homestead & Grounds in the City of Newton.

PROJECT EXPERIENCE

Jesuit Community of the Weston School of Theology, Boston, MA

Residences for 65 members of the Jesuit Community on Boston College's Brighton Campus

Appalachian Mountain Club, Crawford Notch, NH

Highland Center Lodge and Education Center, in collaboration with Carlone & Associates

First Unitarian Society in Newton, Newton, MA

Master plan, exterior and interior renovations

First Parish Unitarian Universalist, Beverly, MA

Master plan and feasibility study

Marist Brothers Retirement Community, Framingham, MA

Housing, dining and chapel

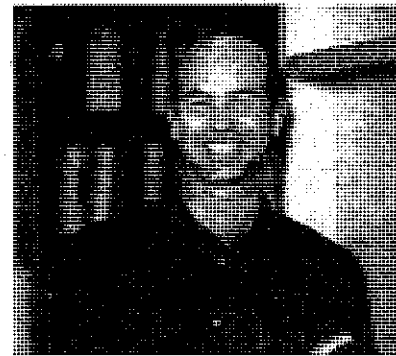
Commonwealth School, Boston, MA

Multiple Renovations including; dining room, kitchen, library, and science labs

Lesley University, Cambridge, MA

Office of Student Affairs, renovation and addition

Private Residences throughout New England



Professional Experience

LDA Architects, LLP, Cambridge, MA, 1992-Present

Education

University of Virginia
Master of Architecture, 1987

Dartmouth College

Bachelor of Arts, 1977

Certification

Registered Architect
Massachusetts, New Hampshire, Maine, Connecticut, New York, South Carolina

NCARB Certified, 2000

Teaching

Boston Architectural Center
Design Instructor/Thesis Advisor

University of Virginia School of
Architecture Studio Instructor

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CITY CLERK
NEWTON, MA. 02159

William M. McLaughlin

- Newton Resident for 16 years
- Massachusetts Native (grew up in Arlington and Belmont)
- BA in Economics from Harvard College (1986)
- Real Estate Development and Investment Professional for 23 years
 - Extensive Land Use/Zoning Experience
 - Overseen Approx. \$3 Billion in Ground Up Development, Rehabilitation, and Investment
 - Managed Local and State Level Entitlement Processes in over 20 MA communities and elsewhere
 - Frequent Guest Lecturer at Area Graduate School Programs on Topics of Real Estate Development, Investment, and Finance; Affordable Housing; Planning and Zoning Issues.
 - Leading Expert on Mixed Income Housing Development
 - On Board of Managers of Large Somerville MA based Industrial Real Estate Investment LLC.
- Charitable and Other Community Activities Include:
 - Can-Do Advisory Board
 - Newton Wellesley Hospital Board of Overseers
 - Board of Directors, Caritas Communities, Inc.
 - Current or Former Coach, NCLL, NGS, NAA
 - Past Chair, Greater Boston Real Estate Board, Past President, Rental Housing Association
- Married (Linda), with 6 children ages 7-17.

CITY CLERK
 NEWTON, MA 02159
 11 NOV 12 A 11:46

Application for Committee Appointment City of Newton, MA



Name: James H. Mitchell

Date: November 30, 2006

Wife: Nancy Brunell Mitchell, Esq. – Assistant General Counsel, Commonwealth of Massachusetts
Department of Conservation & Recreation (1979-Present)

Children: Jenna NSHS '02, Cornell '06, Columbia '07
Emily NSHS '04, Cornell '08

Occupation, if applicable: Lawyer & Partner in Real Estate Management & Development firm

Committee(s) you might wish to serve on:
License, Board, Zoning Board of Appeals

What activities or issues interest you?
As a lifelong resident, I am interested in serving the City of Newton to give back, and to help maintain and improve its unique character and quality of life for its residents

Relevant expertise, experience, and education"

Lifelong resident of Newton. Graduate of Bowen School, Meadowbrook Jr. High & Newton South High School '68; Graduated University of Massachusetts Amherst B.B.A. '72 with an area of concentration in Urban & Regional Studies; Graduated Suffolk University Law School (evening division) '76. Member in good standing of the Massachusetts Bar since 1977. Practiced law in Boston from 1977 to 1981 concentrating in real estate and municipal taxation. Since 1972, I have been a principal in Bobson Realty, a family-owned real estate investment, management and development firm. I have had experience practicing and appearing before various zoning and planning board in eastern Massachusetts.

List you community activities with offices held, if any:

Member, Newton Board of License Commissioners (2005 to present) Past President of Temple Beth Avodah ('95-'97); Member, Mayor's Needham Street Advisory Committee (1998); Active volunteer pilot with AngelFlight Northeast with over 25 missions (1996-present)

11 NOV 12 A 11:45
CITY CLERK
NEWTON, MA 02159

#400-11

RECEIVED
Newton City Clerk
DRAFT BASE ZONE RELIANT ON DIMENSIONAL CONTROLS:

2012 JAN -9 PM 9:39
"TRADITIONAL ZONE" 1-9-12

David A. Olson, CMC
Newton, MA 02459

Petition #__-12

_____, 2012 - Hearing Draft

Insert a new Section 30-13(f)

(f) *Allowed Uses in Riverside TOD District.* The Riverside TOD District is intended to encourage the development of appropriately scaled mixed-use transit-oriented development near the Riverside MBTA Station. In the Riverside TOD District, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings, and structures may be used or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office, not to exceed 25% of total gross floor area;
- (2) Multifamily residential, not to exceed 38% of total gross floor area;
- (3) Retail, not to exceed 2% of total gross floor area;
- (4) Community centers or other public uses as allowed in Section 30-6;
- (5) Other uses similar or accessory to those authorized by section 30-13(c) which are not injurious to the neighborhood.

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Insert a new row at the bottom of Section 30-15, Table 1, Density and Dimensional Controls in Residence Districts and for Residential Use:

Zoning District	Minimum Required Lot Area	Lot Area Per Unit	Frontage						
Residence TOD	10 acres	1,200	80	See Table 3 and 30-15(h)					

Insert the following into Section 30-15, Table 3, Dimensional requirements for Commercial Districts:

Zoning District	Maximum number of stories	Building Height	Total FAR	Gross Floor Area/Site Plan Approval	Threshold by Special Permit	Minimum Lot Area	Lot Coverage	Setbacks		
								Front	Side	Rear
Residence TOD										
Of Right	3	36	1.5	10,000 - 19,999	20,000	10 acres		15	7.5	0
Special Permit	9	108	1.75	10,000 - 19,999	20,000	10 acres		1/2 bldg. height	1/2 bldg. height	0

#400-11

DRAFT BASE ZONE WITH PERFORMANCE STANDARDS:

"HYBRID ZONE" 1-9-12

RECEIVED
Newton City Clerk
2012 JAN -9 PM 9:39
David A. Olson, CMC
Newton, MA 02459

Petition # -12

 , 2012 - Hearing Draft

WHEREAS, the 22- acre area including the Massachusetts Bay Transportation Authority ("MBTA") Station and lands adjacent to existing highway infrastructure in the Riverside area of the City of Newton represents an opportunity to encourage mixed use development in that area based upon smart growth principles that is unique within the City of Newton.

WHEREAS, the purpose of a mixed use development within the Riverside area is to allow development appropriate to the area and its surroundings, provide enhancements to infrastructure, integrate with and protect nearby neighborhoods, provide a mix of compatible and complementary commercial and residential uses appropriate for transportation-oriented sites, and advance the City's long-term goal of strengthening alternatives to single occupancy automobile use while remaining consistent with the City's Comprehensive Plan.

WHEREAS, this proposal does not rezone any land but merely creates a written framework for a mixed use transportation-oriented district in the Riverside area. No land will be placed in this zone until the Board of Aldermen approves a map change.

WHEREAS, the Zoning Ordinances of the City of Newton do not presently provide the appropriate development controls and incentives to encourage and control appropriate development of the Riverside area; and

WHEREAS, such controls and incentives are in the public interest.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Zoning Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

1. *By redesignating the current Section 30-13(f) as Section 30-13(h); redesignating the current Section 30-13(g) as Section 30-13(i); and inserting a new Section 30-13(f) and a new Section 30-13(g) as follows:*

(f) *Purpose and Allowed Uses in the Riverside TOD District.* The purpose of the Riverside TOD District is to allow development appropriate to the area and its surroundings, provide enhancements to infrastructure , integrate with and protect nearby neighborhoods, provide a mix of compatible and complementary commercial and residential uses appropriate for transportation-oriented sites, and advance the City's long-term goal of strengthening

alternatives to single-occupancy automobile use while remaining consistent with the City's Comprehensive Plan. In the Riverside TOD District, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed, for one or more of the following purposes:

- (1) Office;
 - (2) Bank, trust company or other banking institution, excluding drive-in facilities;
 - (3) Bakery, the products of which are sold at retail and on the premises;
 - (4) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
 - (5) Restaurants with fifty (50) or fewer seats;
 - (6) Retail store, salesroom or showroom for the conduct of retail business, but not for the sale of motor vehicles, having less than 10,000 square feet of gross floor area;
 - (7) Community uses;
 - (8) Day care center or adult day care facility;
 - (9) Artist studio;
 - (10) Place of amusement or assembly, whether indoor or outdoor;;
 - (11) Library, museum, or other cultural institution;
 - (12) Theatre, hall, or club; and
 - (13) Dwelling units above the first floor provided that the first floor is used for a use allowed in Section 30-13(f)(1)-(12)
 - (14) Accessory parking facilities provided that such facilities are limited to a single level;
 - (15) Other uses similar or accessory to those authorized by Section 30-13(f).
- (g) *Special Permits in Riverside TOD District.* In the Riverside TOD District, the board of aldermen may grant a special permit in accordance with the procedures provided in section 30-24 for the construction, alteration, enlargement, extension or reconstruction

with respect to whom a violation of the Zoning Ordinance has been alleged. Such organization shall be the primary contact for the city in connection with any dispute regarding violations of the Zoning Ordinance and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the Development Parcel with the terms of the Mixed Use Development special permit, site plan approval, and other applicable provisions of the Zoning Ordinance. In addition, any special permit granted under this section shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and this organization to assure continued compatibility of the uses within the Development Parcel and its neighbors during and after construction.

(b) *Development Parcel Shall Constitute a "Lot" for Zoning Purposes.*

Notwithstanding any other provision of this Zoning Ordinance, a Mixed Use Development within the Mixed Use 3 District may be located on an aggregation of multiple lots in separate ownership (a Development Parcel as defined in section 30-1). The provisions of this Zoning Ordinance, including the dimensional regulations of section 30-15, shall apply to the Development Parcel as it exists on the date that the Mixed Use Development special permit is granted as if the Development Parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships; provided, however, that violation of this section by an owner or occupant of a single lot or ownership unit or leased premises within the Development Parcel governed by a Mixed Use Development special permit shall not be deemed to be a violation by any other owner or occupant within the Development Parcel as long as there exists an organization of owners as described in subsection (a) above. After the grant of a Mixed Use Development special permit, (1) the owners are free to create additional individual ownership parcels within the Development Parcel, and any new interior lot lines created thereby shall be disregarded for zoning purposes, and (2) the Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the Development Parcel, as modified, shall satisfy the minimum lot area requirements of section 30-15.

(c) *Density and Intensity of Development.* Any portion of the proposed Mixed Use Development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, such as but not limited to a rail yard, maintenance facility, or railroad right of way and any portion of a building or structure dedicated for public use by a state instrumentality, such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority, shall not be included in the calculation of:

i. The quantity of beneficial open space required of the Mixed Use Development;

ii. Minimum lot area; and

iii. Floor Area Ratio

- (d) *Stepped Setbacks for Taller Buildings.* Any portion of a building exceeding 96 feet in height shall be set back a minimum of 50 feet from any "scenic road" designated in accordance with G.L. c. 40, §15C. Building heights and setbacks shall be measured separately for any portion of a building (i) less than 50 feet from the "scenic road," and (ii) greater than 50 feet from the "scenic road." Each such portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks. In particular instances, the board of aldermen may, in accordance with the procedures provided in Section 30-24, grant a special permit to permit a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.
- (f) *Impacts of Takings by or Conveyances to a Public Entity:* The provisions of section 30-26(a) shall apply to any taking by or conveyance of land within the Development Parcel to a public entity or to any land otherwise dedicated and accepted as a public way.
- (2) *Additional Special Permit Criteria for a Mixed Use Development in the Riverside TOD District.* In addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a special permit for a Mixed Use Development unless it also finds, in its judgment, that the application meets all of the following criteria:
- (a) *Adequacy of public facilities.* Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the Mixed Use Development appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by section 30-19(d)(18) as well as a fiscal impact analysis.
- (b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the Mixed Use Development on nearby neighborhoods during construction and, after construction, on traffic parking, noise, lighting, blocked views, and other impacts associated with the Mixed Use Development. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes.

- (c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The Mixed Use Development mitigates its impacts on the city and nearby areas such as:
- (1) Improved access and enhancements to public transportation;
 - (2) Enhancements to parking, traffic, and roadways;
 - (3) Improvements to pedestrian and bicycle facilities, particularly as they facilitate access to and through the site by foot or bicycle to encourage the use of alternative to single occupancy automobile transportation;
 - (4) Public safety improvements;
 - (5) On-site affordable housing opportunities; and
 - (6) Water and sewer infrastructure enhancements.
- (d) *Consistent with the Comprehensive Plan. (Formerly called "Not inconsistent with applicable local plans or general laws)* The Mixed Use Development is consistent with the city's Comprehensive Plan in effect at the time of filing an application for a Mixed Use Development, and applicable general laws relating to zoning and land use;
- (e) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Mixed Use Development and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed Use Development as well as to improve traffic and access in nearby neighborhoods.
- (f) *Enhanced open space.* Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the Mixed Use Development; and the extent of the conservation of natural features on-site, if any.
- (g) *Excellence in place-making.* The Mixed Use Development provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the Mixed Use Development and its surroundings.
- (h) *Comprehensive signage program.* All signage for the Mixed Use Development shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of

aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall not be inconsistent with the architectural quality of the Mixed Use Development or character of the streetscape.

- (i) *Pedestrian scale.* The Mixed Use Development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel.
- (j) *Public space.* The Mixed Use Development creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the Mixed Use Development, to other commercial activity, and to each other.
- (k) *Sustainable design.* The Mixed Use Development will exceed the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).
- (l) *Pedestrian and Neighborhood Considerations.* If the Mixed Use Development project proposes any measures such as measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:
 - (1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
 - (2) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
 - (3) Traffic signal additions or alterations; and
 - (4) Relocation or alterations to public transport access points.

4. By replacing Section 30-19(d)(18) with a new Section 30-19(d)(18) as follows:

- (18) In the case of a combination, in a single integrated development, of three (3) or more uses enumerated herein, the board of aldermen may grant a special permit, in accordance with the procedure provided in section 30-24, to reduce the sum total of stalls required for each of the uses involved. Applicants for such a special permit shall submit an analysis that shall be subject to review by the city's Planning Director (and may be subject to peer review at the applicant's

expense if requested by the Planning Director) which demonstrates that the number of parking stalls proposed is sufficient for the combination of uses proposed in light of the proximity of public transportation or other factors. Following the grant of a special permit under this section 30-19(d)(18), no material change in the combination of uses will be authorized until the permittee submits a revised analysis demonstrating to the satisfaction of the Planning Director that sufficient parking exists to accommodate the new combination of uses or requests and receives a modification of the special permit to authorize a change in the number of stalls provided.

5. *By adding new Sections 30-24(c)(7), 30-24(c)(8), and 30-24(c)(9) as follows:*

- (7) *Post-Construction Traffic Study.* A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actually experienced number of weekday peak hour, Saturday peak hour and weekday daily vehicle trips to and from the site and their distribution among points of access to the Mixed Use Development. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development to secure performance as specified below:
- (i) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue at four month intervals over a twenty-four month period. Measurements shall be made at all driveways or intersections studied by the pre-construction Roadway and Transportation Plan that the City Engineer designates for post-construction study. Notwithstanding the first sentence in this subsection (i), the City Engineer may, in his or her reasonable discretion, require traffic monitoring to commence following the issuance of the first certificate of occupancy for the Mixed Use Development if degradation from the LOS projected by the pre-construction Roadway and Transportation Plan are apparent.
 - (ii) The experienced actual number of weekday peak hour, Saturday peak hour and weekday daily vehicle trips to and from the Mixed Use Development at all driveways or intersections studied by the pre-construction Roadway and Transportation Plan that the City Engineer designates for post-construction study shall be measured by a traffic engineering firm retained by the city and paid for by the applicant or successor in interest.
 - (iii) If the actually experienced total number of vehicle trips to and from the Mixed Use Development measured per subsection (ii) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per section 30-24(i)(5) by more than ten percent (10%) as a

result of traffic generated by the Mixed Use Development, formal intersection capacity analyses will be conducted at the site access driveways, during peak hour conditions, to determine if the increase in traffic results in degradation from the LOS projected by the pre-construction Roadway and Transportation Plan. If the LOS has degraded from that projected by the pre-construction Roadway and Transportation Plan, then the Board of Aldermen may require additional mitigation to adjust the existing infrastructure and controls as described in the pre-construction Roadway and Transportation Plan. Within six months of notification to do so, the then owner of the Mixed Use Development site shall begin mitigation measures (reflecting then-applicable roadway design standards and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the applicant and listed in the Mixed Use Development special permit, in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved to the extent practicable within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to complete any required mitigation within one year after notification, subject to reasonable extensions under the circumstances, the bond or other security cited above may, at the city's election, be forfeited and proceeds used by the city for traffic mitigation.

- (8) *Phasing.* Any development subject to a Mixed Use Development special permit under section 30-13(g) may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the Mixed Use Development shall be as set forth in the Mixed Use Development special permit.

6. *By adding a new Section 30-24(i) as follows:*

- (i) *Additional Filing Requirements for Mixed Use Development Special Permit in the Riverside Business 5/Mixed Use District.* In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of a special permit under section 30-13(g) shall submit:
- (1) Scaled massing model or 3D computer model consistent with section 30-24(b);

- (2) Narrative analysis describing design features intended to integrate the proposed Mixed Use Development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed Mixed Use Development satisfies each criterion in this section;
- (3) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (4) Site plans showing any "by-right" or zoning-exempt alternatives;
- (5) A Roadway and Transportation Plan reflecting the "EOEEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
 - i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;
 - ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;
 - iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed Use Development, documenting:
 - a) the projected Base Volume of trips to and from the Mixed Use Development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
 - b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public

transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the Mixed Use Development guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;

- c) the means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;
 - d) the projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.
- iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Mixed Use Development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;
 - v. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and
 - vi. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;
- (6) Proposed phasing schedule, including infrastructure improvements; and
 - (7) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon.

Applicants must submit in electronic form all documents required by sections 30-23 and 30-24 (including this section 30-24(i)) and any supplemental reports, memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for

Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt.

7. *By deleting the definition of "Development Parcel" as it appears in Section 30-1, Definitions, and substituting the following definition:*

Development Parcel: The real property on which is located a Mixed Use Development approved by the board of aldermen in connection with a special permit under section 30-13(g).

- By deleting the definition of "Open Space, beneficial as it appears in Section 30-1, Definitions, and substituting the following definition:*

Open Space, Beneficial: Areas open to the public for active or passive recreation, which shall specifically include, but are not limited to: landscaped areas, including space located on top of a portion of a structure; playgrounds; walkways; plazas; patios; terraces and other hardscaped areas; and recreations areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e. that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

and adding the following Definition in Section 30-1 as follows:

"Community Uses: Indoor recreational building including ball courts; gymnasias; play areas; community meeting rooms; social services; outdoor play areas including ball courts, playgrounds and related seating areas that are open to the public."

8. *By inserting a new Section 30-23(d) as follows:*

- (d) *Mixed-Use Developments in the Riverside TOD District.* In the case of Mixed Use Developments in the Riverside TOD District, it may not be practicable or appropriate at the outset of the planning process to require detailed engineering drawings in connection with future phases of development. Therefore, notwithstanding any other provision of this section 30-23, site plan approvals for Mixed Use Developments in the Riverside TOD District shall be conducted in two stages, and shall be governed by the following rules:

- (1) **Conceptual Application.** An initial application for site plan approval shall be submitted at a conceptual level of detail for any Mixed Use Development

authorized by a special permit under section 30-13(g). The conceptual application shall reserve, as appropriate, certain site plan elements that require engineering detail for final site plan review as described below. The board of aldermen shall consider the conceptual application in light of only those criteria in section 30-23(c)(2) that are addressed by the conceptual application. An approval of a conceptual application for site plan approval related to a special permit for a Mixed Use Development under section 30-13(g) shall have the same duration as the special permit for a Mixed Use Development.

- (2) Design/Engineering Application for Each Development Phase. In addition to the conceptual site plan approval described above, each phase of construction authorized by a special permit for a Mixed Use Development under section 30-13(g) shall also require subsequent submission of an application for site plan approval reflecting a more advanced stage of design and engineering detail. The design/engineering application shall address any criteria in section 30-23(c)(2) not addressed in the conceptual site plan approval, and any aspects of the site plan which constitute a material modification of the conceptual site plan.

9. *By inserting a new Section 30-5(a)(1)(3) as follows:*

- (3) Public uses described in Section 30-6(a) through (k); provided that such uses shall be subject only to site plan review as required under Section 30-6 and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement.

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Newton City Clerk

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David A. Olson, CMC
Newton, MA 02459

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. Z-16

December 17, 2007

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Zoning Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

1. By adding to the provisions of Section 30-15, Density/dimensional requirements, the following new section:

Section 30-15(s) *Planned Multi-Use Business Development ("PMBD")*

In any Business 4 District, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23, and may grant a special permit in accordance with the procedures provided in section 30-24, for the applicable density and dimensional controls set out in Table A of this section subject to the criteria for a Planned Multi-Use Business Development and further subject to the criteria and conditions set out below.

(1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.

(2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this section, a PMBD must meet the following threshold criteria:

- (a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial, as classified by the City of Newton;
- (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this section, rather than to those of section 30-15 Table 3;

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(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in subsection 30-24(f);

(d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and

(e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings.

(3) *Additional Special Permit Criteria for a Planned Multi-Use Business Development.* In order to make the findings set forth in subsection 30-24(d), and in addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:

(a) *Adequacy of public facilities.* Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by subsection (10)(f) of this section.

(b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes;

(c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The PMBD offers long-term public benefits to the city and nearby areas such as:

- 1) Improved access and enhancements to public transportation;
- 2) Enhancements to parking, traffic, and roadways;
- 3) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
- 4) Public safety improvements;
- 5) On-site affordable housing opportunities except where allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and

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- 6) Water and sewer infrastructure enhancements.
- (d) *Compatibility and integration with its surroundings.* The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering and/or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;
- (e) *Not inconsistent with applicable local plans or general laws.* The PMBD is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development; and applicable general laws relating to zoning and land use;
- (f) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths, which shall be determined by the board of aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;
- (g) *Enhanced open space.* Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement in Table A;
- (h) *Excellence in place-making.* The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;
- (i) *Comprehensive signage program.* All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of aldermen, which shall control for

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all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape;

(j) *Pedestrian scale.* The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel;

(k) *Public Space.* The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;

(l) *Sustainable Design.* The PMBD will at least meet the energy and sustainability provisions of zoning subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h);

(m) *Pedestrian and Neighborhood Considerations.* If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:

- 1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
- 2) Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;
- 3) Traffic signal additions or alterations; and
- 4) Relocation or alterations to public transport access points;

(4) *Lots.* In the application of the requirements of this section to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this section by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection (5) below.

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- (5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's ordinance and shall be the primary contact for the city in connection with any dispute regarding violations of this section and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this section. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- (6) *Phasing.* Any development within a Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.
- (7) *Post-Construction Traffic Study.* A PMBD special permit granted shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development, in an amount approved by the board of aldermen in acting on the special permit, to secure performance as specified below:
- (a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.
 - (b) The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the city and paid for the applicant or successor in interest.

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- (c) If the actually experienced total number of vehicle trips to and from the PMBD measured per subsection (7)(b) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per subsection (10)(f)iii by more than ten percent (10%), mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to achieve the required reduction within one year after notification, the bond or other security cited above may be forfeited and proceeds used by the city for traffic mitigation.

- (8) *Modifications.* Any material modification to a PMBD shall require an amendment to the site plan or special permit as approved by the board of aldermen in accordance with sections 30-23 or 30-24. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:

- (a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;
- (b) A change of use that results in a net increase in required parking for the PMBD (pursuant to section 30-19);
- (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;
- (d) Except as provided above, any reduction in beneficial open space; and
- (e) Modification governed by any condition identified by the board of aldermen in the special permit as not subject to modification without additional approval.

- (9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section. Where provisions of this

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section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern.

(10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of special permit for a PMBD shall submit:

- (a) Scaled massing model or 3D computer model consistent with section 30-24(b);
- (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;
- (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (d) Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this section;
- (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus;
- (f) A Roadway and Transportation Plan reflecting the "EOEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
 - i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;
 - ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;

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iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:

- a) the projected Base Volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
- b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the PMBD guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;
- c) the means of making mitigations if it is found pursuant to the monitoring under subsection (7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;
- d) the projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.

iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;

vi. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

vii. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;

(g) Proposed phasing schedule, including infrastructure improvements; and

(h) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.

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(11) *Electronic Submission and Posting of Application Materials.* Applicants must submit in electronic form all documents required under subsection (10) of this section and sections 30-23 and 30-24 and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt.

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Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED-BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in section 30-15 shall apply to development under a PMBD special permit.

As noted at subsection 30-15(4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

Area, frontage; and bulk	All development
Minimum lot area	10 acres
Minimum lot frontage	100 ft.
Max. total floor area ratio	3.0
Min. lot area per dwelling unit	1,200 sq. ft.
Maximum lot coverage	n/a
Min. beneficial open space	20%

Height and setbacks (8)	Streetside façade	Interior development	High rise development
Height (feet)	36 ft.	96 ft.	96 ft. (2), (3)
Height (stories)	4	8	8 (1)
Front setback (7)	Lesser of 15 ft. or 1/2 building height (4)	Greater of 50 ft. or 1/2 building height	100 ft.
Side setback (7)	Greater of 15 ft. or 1/2 building height (5)		50 ft. (6)
Rear setback (7)			100 ft. (6)

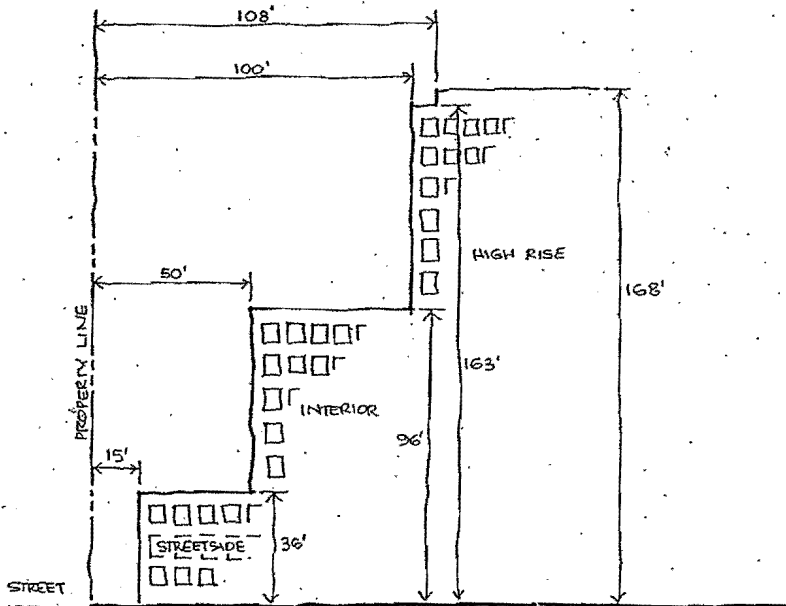
NOTES

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the board of aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The board of aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 ft. of the Development Parcel as of December 17, 2007.
- (4) The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.
- (5) Side and/or rear setbacks shall be a minimum of 20 feet or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residence District or Multi-Residence or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and (c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the board of aldermen.

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2. **By adding to Section 30-1 Definitions, the following three definitions:**

Open Space, Beneficial: Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten percent (10%) of the otherwise applicable square footage requirements shall be made for the provision of well-maintained publicly available green planted areas.

Development Parcel: The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the board of aldermen in connection with a special permit under section 30-15(s).

Height, Contextual: The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering

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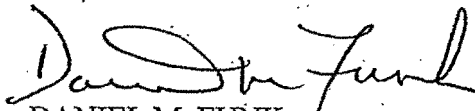
DR'S OFFICE

division of the department of public works and (b) the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.

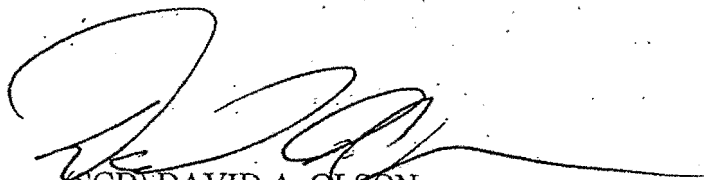
3. *By renumbering, in Section 30-11(d), subparagraph (12) as (13) and adding the following as new subparagraph (12):*

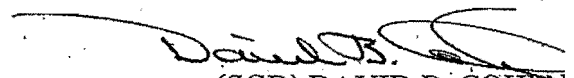
(12) In Business District 4, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s);

Approved as to legal form and character:


DANIEL M. FUNK
City Solicitor

Under Suspension of Rules
Readings Waived and Approved
19 yeas 5 nays (Ald. Harney, Johnson, Mansfield, Parker, Sangiolo)


(SGD) DAVID A. OLSON
City Clerk


(SGD) DAVID B. COHEN
Mayor
1/30/08

RECEIVED

JAN 23 2008

MAYOR'S OFFICE



Setti D. Warren
Mayor

RECEIVED
By Clerk's Office at 2:40 pm, Jan 06, 2012

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: January 6, 2012

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

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning
Seth Zeren, Chief Zoning Code Official 

RE: #400-11: Ald. Gentile, Harney, Sangiolo requesting establishment of a Business 5/Riverside Zone: a mixed-use transit-oriented district at the site of the current Riverside MBTA rail station. The proposed new zone shall allow by special permit a single commercial office building not to exceed 225,000 square feet with a maximum height of 9 stories, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center.

MEETING DATE: January 9, 2012

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

INTRODUCTION

The request before the Board of Aldermen is to create a zone that enables the development of the Riverside MBTA station (referred to generally as Riverside). This 22-acre site, which includes a transit station, bus stop, and large parking lot, is cited in the City's *Comprehensive Plan* as a favorable site for mixed-use, transit-oriented development. The property is currently zoned for Public Use and, since no other existing zoning designation will facilitate the integrated mixed-use development deemed appropriate for this site, a new zoning text must be created. The crafting of a new zone provides an opportunity to shape development that is site-specific, that incorporates specific dimensional controls and requirements for impact mitigation, open space, and mixed uses, which has both lower impacts on the community and greater benefits for the City as a whole.

Process

Development of the Riverside site will require two sets of aldermanic committee reviews: first by the Zoning and Planning Committee and thereafter by the Land Use Committee. The Zoning and Planning Committee is charged with considering text changes to the City's Zoning Ordinance and making recommendations to the full Board, which takes final action. Once a zoning text is crafted and approved by the full Board, a prospective developer can submit a request to rezone the specific site (in this case, Riverside MBTA Station site) along with an application for a special permit for a specific development. Special permits and map changes are considered separately by the Land Use Committee, again with final approval resting with the full Board of Aldermen. If approved, the City's zoning map will be changed to the new zone and the developer then can apply for a building permit and begin construction. The Planning and Development Board advises the Board of Aldermen on zoning amendment matters and it has been the practice for the Planning and Development Board to hold public hearings concurrent with the Board Committees and to make its recommendations in advance of Board action.

BACKGROUND

The Riverside site is located adjacent to the terminus station for the MBTA Green Line, a bus terminal, and a 960-space commuter-oriented parking lot. To the northwest is the Charles River, and Route 128 is to the southwest. Grove Street, a designated scenic road borders the site on the southeasterly side, and the MBTA tracks define its northeast side. Both the 2007 *Newton Comprehensive Plan* and the 2011 *Mixed-Use Centers Element* advocate for the creation of a mixed-use development at the Riverside MBTA station which embraces excellence in placemaking. Riverside is viewed by many as an important site for economic development with the potential to create new jobs, provide housing for seniors and young families, improve public facilities, and generate new tax revenue. It is also important to note that a development that fills the City's coffers, but saddles the community with adverse impacts is unwelcome and creating a balance among the wants and needs of the City as a whole is paramount.

The Planning Department considered many factors in analyzing the options for development and zoning of the site. Staff reviewed the recommendations of the 2007 *Newton Comprehensive Plan* and, in particular, the 2011 *Mixed-Use Centers Element*; revisited the input received in previous meetings with the community and the developer; and, finally, evaluated various zoning approaches as described in this report.

COMPREHENSIVE PLAN/MIXED-USE CENTERS ELEMENT

The *Mixed-Use Centers Element*, adopted in the fall of 2011, calls for a number of changes to the Zoning Ordinance and to Planning Department procedures to support improved mixed-use development in the future. The *Element* advocates for taking the best lessons from Newton's successful village centers and applying them to new mixed-use developments to create excellent

places integrated with and appropriately scaled to their surroundings. It favors regulation of impacts and mitigation of those impacts in land use decisions. It also stresses the desire for collaboration between City officials, the community, and the developer, as well as the use of metrics of expected impacts and establishment of thresholds for impacts to provide developers with clarity and certainty and to assure the community that the effects of development will do no harm. The main areas where impact metrics are recommended are: design, traffic generation, school enrollment, and fiscal impacts. As recommended by the *Element*, Planning staff is currently developing such impact models. In the event that the mitigations fall short of expectations, various measures can be required of the developer including a change in the mix of uses, additional traffic improvements, or a revised site plan. This approach is largely performance-based and described in more detail in Section III.

ZONING OPTIONS

While a developer may desire more flexibility in the design, uses, and phasing of development to make sure it is financially feasible, the community often expresses a desire for more predictability about the potential impacts on local roads, on schools, on the appearance of the area, and on City finances. The Planning Department analyzed a myriad of zoning approaches to determine which could be implemented to best balance all of these needs.

I. Base Zone vs. Overlay Zone

A **base zone** is a common fundamental means to control land use control. Each of Newton's existing districts (SR-2; BU-1; MU-1, etc.) is a base zone. Base zones generally contain the following elements:

- Uses that are allowed by right
- Uses that are allowed conditionally by special permit
- Development standards, such as dimensional, density standards, and setbacks

An **overlay zone** is a set of standards applied to an area on top of a base zone. An overlay typically modifies specific features of the underlying zone in one or a few small ways, while leaving most provisions of the base zone intact. For example, the historic districts are considered overlay zones; the core character of the base zone applies, but physical changes to structures within the designated district (with some minor exceptions) are subject to review by the District Commission, whereas structures in similarly-zoned areas outside of the District are not subject to such review.

II. General vs. Specific Zones

Municipalities typically use a relatively small number of zoning districts with general criteria to regulate land use. For example, in Newton, three single-family districts are used to regulate tens of square miles of land which vary in their age of development, architectural character, topography, lot size, and proximity to village centers. These broadly-applied zoning districts can control a lot of land with a few common sets of rules. A new zoning district that could be applied on the Riverside site could be written broadly enough to be applicable for future development sites in village centers or other commercial areas as well. Alternatively, some

municipalities have created zones with unique site-specific standards to create new neighborhoods or large mixed-use developments. These zones can be clearly named for the area they are intended to regulate and can contain specific rules that address particular concerns of the community more succinctly than a regulation applied widely in a City.

III. Performance Zoning and Contextual Standards vs. Set Dimensional Standards.

As previously noted, performance zoning requires both the measurement of the expected impacts a proposed project will have on the community and implementation of efforts to mitigate these impacts. With exception of portions of the PMBD (described below), the Newton Zoning Ordinance (NZO) does not include such specific performance zoning elements. Instead, the NZO relies upon set dimensional standards (i.e. setbacks, lot coverage, and open space) that are the same for each parcel within a particular zone regardless of where a lot is located or how development on that site may impact abutting properties. If a property owner proposes a project that meets the dimensional standards required for the zone in which that parcel is located, he or she can build the project as of right. The Board of Aldermen may allow exceptions to these standards through approval of a special permit for a project. However, a special permit can only be approved if the Board finds that the proposal meets certain criteria (generally found in Section 30-24(d) of the NZO). These criteria are very general in nature.

With performance zoning methods, site-specific criteria are used to more directly monitor project impacts. Some impacts, such as traffic or school enrollment are more easily dealt with by the performance zoning approach above. Other types of impacts, particularly those of design, building mass and form, are harder to measure or mitigate. One method of addressing these design impacts is to incorporate contextual design standards into a zone. These standards would allow certain features on a particular site, such as building height and floor area ratio, depending upon the dimensions of other structures that surround it. The NZO already includes a few provisions along these lines. For example, averaging of front setbacks based on the setbacks of structures existing on either side are allowed by Section 30-15(d)) and limiting the height of a structure relative to the height nearby buildings is established in the PMBD (see below). These contextual standards are particularly relevant where a zone may be applied in various areas of the City. In each area, the contextual standards would change, ensuring that new construction is compatible with that of its immediate neighbors.

- IV. Planned Multi-Use Business District. The City's Planned Multi-Use Business District (PMBD), which was adopted by the Board in December 2007, is an example of both an overlay and performance-based zone. This zoning designation was intended to guide development of mixed-use development in conjunction with an underlying Business 4 base zone. The overlay focused on impacts, both positive and negative, that the project would have on the City's various resources (i.e. public facilities, utilities, housing options, public transportation, open space, pedestrian amenities and compatibility and integration with the community) and how these impacts would be mitigated if necessary. This overlay applies to sites in the City with frontage on a major arterial roadway and, therefore, would not be applicable at the Riverside site. However, many of the Board members who participated in the Mixed-Use Element workshop last year, noted the value of the work that had been done and urged that the best

features of this overlay be reconsidered for future mixed-use sites, particularly if there are incentives to encourage developers to use it.

SUMMARY

Over the last two years, developers BH Normandy, LLC have presented several visions of what a redeveloped site could look like and any of the zoning mechanisms mentioned in this report could be used to achieve a desired outcome. Petition #400-11 introduces one such set of parameters, which are prescriptive in nature: *a single commercial office building not to exceed 225,000 square feet with a maximum height of 9 stories, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center.* However, these parameters reflect neighborhood concerns about impacts on the surrounding area and, as suggested by the *Mixed-Use Element*, impact thresholds could be established that would allow design flexibility within the site, but would result in no greater impacts than those that would be generated by those described in the docket language. If the ultimate goal is to create a low-impact development at Riverside that integrates a mix of uses and creates a vibrant transit-oriented, community-focused destination, such flexibility in the site development features could be beneficial provided the impacts are controlled. The options outlined in this memo lay the groundwork for creating mechanisms to measure project impacts, set thresholds, and ensure that our community is both enhanced and protected.

RECOMMENDED ACTION AND NEXT STEPS

After reviewing these zoning approaches with the Committee, Planning staff will present three zoning texts. Each of these represents an example of different zoning approach including: 1) a base zone reliant on dimensional controls, 2) the PMBD, which is an example of an overlay zone over a BU4 zone; and 3) a base zone with performance standards, which combines features of the two. These will be reviewed in greater detail at the Committee's next meeting on January 23rd. Due to the high level of public interest in the redevelopment of this site, a community meeting will be held on February 2nd in the Board Chamber to hear public comments that may inform the continued work of the Committee and staff.

ATTACHMENT A: AREA MAP

