

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY MARCH 12, 2012

Present: Ald. Johnson (Chairman), Danberg, Yates, Lennon, Swiston, Kalis; absent: Ald. Baker, Sangiolo; also present: Ald. Hess-Mahan
City Staff: Eve Tapper (Chief Planner for Current Planning), Seth Zeren (Chief Zoning Code Official), Marie Lawlor (Assistant City Solicitor), Rebecca Smith (Committee Clerk)
Economic Development Commission: Chris Steele, Chair
FAR Working Group: Chris Chu, Henry Finch

Re-Appointment by His Honor the Mayor:

#399-11(2) JAMES H. MITCHELL, 83 Countryside Road, Newton Centre, being re-appointed as an associate member of the Zoning Board of Appeals for a term to expire February 1, 2013 (60 days 03/29/12). [01/30/2012 @ 4:34PM]

ACTION: **APPROVED 6-0**

NOTE: The committee previously had reservations about Mr. Mitchell's appointment given that he is also on the Licensing Commission. The committee wants to encourage the Executive office to appoint an assortment of individuals to different positions instead of having only a certain number of people filling multiple roles. Candace Havens, Director of Planning and Development, informed the committee that Mr. Mitchell is happy to step down from the Licensing Board in order to continue to serve on the ZBA. However, he will have to wait to resign until another individual has been found to take his place. A letter on behalf of the committee will be sent to the Mayor's office requesting that a new appointee for the Licensing Commission be identified expeditiously. With that understanding, the motion to approve was made which carried unanimously.

Appointment by His Honor the Mayor:

#390-11(2) WILLIAM MCLAUGHLIN, 117 Hammond Street, Newton, being appointed as a full member of the Zoning Board of Appeals for a term of office, filling the full member position vacated by Selma H. Urman, Esq., to expire on September 30, 2012 (60 days 03/06/12). [01/30/2012 @ 4:34PM]

ACTION: **APPROVED 6-0**

NOTE: Mr. McLaughlin joined the committee. He was first nominated as an alternate member by Mayor Cohen and is now being appointed as a full member. He has been a resident of the city for nearly 19 years and after putting 6 children through the

Newton school system he feels he should give something back to the community. This is an area he is passionate about and one in which he can share his expertise. He initially learned about the ZBA after being before them for his day job; he joined the field of real estate development following his graduation from Harvard College with a major in economics. He has worked in the real estate development business now for 25 years. He shared that he is well versed in land use laws and has a particular area of focus in 40B special permits. In his personal experience this city has been intensely developed over the course of centuries and has developed very complicated bylaws. The ZBA should help to decipher situations where they may be a true unique hardship. He believes that a common sense approach should be taken when addressing variances. When asked about whether his relationship with Can-Do would pose a conflict with the appointment, he stated that he would not sit on applications pertaining to that organization. Ald. Danberg moved approval of the item which carried unanimously.

#49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]

ACTION: **HELD 6-0**

NOTE: Seth Zeren, Chief Zoning Code Official, joined the committee to provide an update on the FAR data collection. He gave a brief history of FAR and then proceeded to walk the committee through the planning department's memo (attached) which provides them with charts of data collected thus far based on 100 worksheets collected over the last 12 months. Mr. Zeren noted that this data doesn't reflect all construction in this time: if there was no change to the external structure or if it was obvious that there wouldn't be an issue with FAR then the applicant wasn't made to fill out the worksheet. Ald. Kalis questioned this, to which Mr. Zeren explained that there are quite a large number of projects going through ISD and there was a sense that they can't force people to do it. The information has been difficult to obtain. Prior to October 15, 2011 few people were submitting information that showed they'd do better under the new rule than the old. After October 15, 2011 the department has seen an uptick in projects doing better under the new rules and they expect to see a larger pool to draw conclusions from come the summer when construction picks up.

Ald. Johnson asked Ald. Hess-Mahan if he's seen many special permits before Land Use relating to FAR. He stated that there have been some and have all passed. He shared that by in large they are seeing that most FAR projects that come through could go through some type of administrative site plan review to speed the process. To go through the Board adds some unnecessary time to rather minor petitions.

Eve Tapper, Chief Planner for Current Planning, elaborated, sharing that there have been 10 applications strictly related to FAR over the last year. She shared that there has not been an uptick in applications since October 15, 2011; for the most part it has slowed

down because people have figured out what the rules are and people are designing their houses to fit those restrictions.

The Planning Department met with members of the FAR working group to review the data collection. Present from the working group were Chris Chu and Henry Finch whom both briefly addressed the committee. Ms. Chu gave a bit of background to FAR and explained that the number the FAR working group settled on was a bit higher but the Board scaled it back. She thinks that perhaps we may end up close to the number that the FAR working group had initially suggested. Mr. Finch explained that he believes the change to FAR eliminated many gimmicks and now focuses more on mass and not use. He still sees area for manipulation though and sees areas for further improvement. In general he and the working group as a whole recommend that the data collection period, which continues through October 15, 2012, should run its course before any changes are made. Ald. Johnson requested that a written report be submitted to the committee at the end of June to provide insight about the data collected up to that point. The motion was then made to hold the item, which carried unanimously.

#162-11 ALD. YATES requesting a report from the Director of Planning and Development on the status of the update of the *Open Space and Recreation Plan*, particularly as it pertains to the Charles River Pathway. [05/12/11 @ 10:16AM]

ACTION: **HELD 6-0**

NOTE: Ald. Yates stated that he has been attending the planning meetings which currently revolve around survey data collection. It is unclear to him what the outcome will be from this and shared some concern that the survey didn't communicate certain ideas for open space. Mr. Zeren then presented on behalf of the Planning Department. He shared that the survey had a bit of a slow start but is being well advertised and distributed at this point. He shared that they are having the advisory committee meet on the 28th to review results and to think about drafting the open space plan. The Planning and Development Board will have a public hearing regarding this on July 9th.

To give a bit of background, Mr. Zeren explained that the open space and recreation plan's last update for period 2003-2007. This plan is the proposal for how the city intends to use its open space and when we have an updated version there are more options for where the city can draw funding from. This is an opportunity to think about the city's priorities and where the city wants to be going in the next 5-10 years.

Alderman Yates expressed his interest in having this wrapped into the master plan of the city, opining that if this is what's supposed to guide the city in its open space activities then we should figure out what the status will be as it relates to the charter. He would like this resolved. Ald. Yates also requested that the Planning Department report back to the committee on this item at least once with the action item to be docketed shortly thereafter. The motion to hold was made which carried in committee unanimously.

Respectfully Submitted,

Marcia Johnson, Chairman

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)

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CITY CLERK
NEWTON, MA 02459

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
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Setti D. Warren
Mayor

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: March 9, 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: #49-11 Ald. Johnson, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning and Development and Commissioner of Inspectional Services review with the Zoning and Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments.

MEETING DATE: March 12, 2012

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner of Inspectional Services

INTRODUCTION

In February 2011, the Board of Aldermen adopted new residential floor area ratio (FAR) regulations under Ordinance Z-77, which changed both the way FAR is calculated and allowed FAR limits. The new regulations became effective on October 15th, 2011. When the new rules were adopted in February, the Committee requested that the Planning and Inspectional Services (ISD) Departments collect data to compare the "old" and "new" FAR calculations of actual and proposed construction projects in the period before and after the new FAR regulations became effective. In the past twelve months, the Departments have collected approximately 100 worksheets comparing FAR calculations. On February 7, 2012, ISD and Planning staff met with the former members of the FAR working group to discuss how

they saw the new FAR rules as working. This memo describes the data collected to date and discusses what the Departments have learned since the new FAR rules went into effect.

DATA COLLECTION

The FAR worksheets collected to date (see Table 1), represent the following:

- Actual projects: for which building permits were obtained
- Potential projects: worksheets submitted for possible additions or new homes
- Existing properties: FAR calculations for existing homes where no construction was planned

Table 1: Worksheets by zone

Zone	Number of Worksheets	Worksheets from Zone As a Percentage of Total Lots in Zone
MR1	8	0.23%
MR2	5	0.50%
SR1	14	0.93%
SR2	46	0.56%
SR3	23	0.31%

These worksheets do not include all development over the past 12 months. In the many cases where additions were very clearly compliant with FAR, worksheets were not submitted. ISD issues a total of 2,000-2,500 building permits per year, but does not have a concrete estimate for the total number of permits issued which might have an FAR implication. For more information on the methodology of data collection, please see the Planning Department Memorandum dated October 21, 2011.

ANALYSIS

Planning Department staff has classified the worksheets received to date into four categories as described below and shown in the following tables:

- Nonconforming under both the old rules and the new rules
- Conforming under both the old rules and the new rules
- Conforming under the old rules and nonconforming under the new rules
- Nonconforming under the old rules and conforming under the new rules

These charts demonstrate that, notably, the percentage of projects which report doing better under the new rules than under the old rules has risen sharply and the percentage of projects which do worse under the new rules has declined since they came into effect on October 15, 2011.

Table 2: Breakdown of data collected before October 15, 2011

	Nonconforming under both rules	FAR conforming under both rules	Conforming under old rule, nonconforming under new rule	Nonconforming under old rule, conforming under new rule	Total
MR1	1	2	4	0	7
MR2	1	2	0	0	3
SR1	0	7	6	0	13
SR2	1	10	20	1	32
SR3	1	4	6	2	13
Total # (%)	4 (6%)	25 (37%)	36 (53%)	3 (4%)	68

Table 3: Breakdown of data collected after October 15, 2011

	Nonconforming under both rules	FAR conforming under both rules	Conforming under old rule, nonconforming under new rule	Nonconforming under old rule, conforming under new rule	Total
MR1	0	0	0	1	1
MR2	0	1	0	0	1
SR1	0	2	0	0	2
SR2	0	5	6	2	13
SR3	0	4	2	2	8
Total # (%)	0 (0%)	12 (48%)	8 (32%)	5 (20%)	25

FAR WORKING GROUP ADVISORY MEETING

The former members of the FAR Working Group met in February to discuss how the new rules are working. The group expressed broad consensus that the FAR rules appear to be working as intended, but that some adjustments may be necessary. The group agreed that these adjustments should be based on data and that the full year testing period (ending October 15, 2012) should be allowed to play out before considering changes. The group discussed several ways in which the FAR limit and calculations of gross floor area could be tweaked to encourage better design. These ideas are listed below grouped by the general degree of consensus within the group.

General Agreement:

- The group was concerned that the FAR limit number may be too low in some or all zones.
- The group supported the idea that small increases in FAR could be freed from special permit review, such as by allowing some administrative discretionary approval or review by another board or commission, such as the ZBA.
- The majority of the group did not support the idea of granting a gross floor area (GFA) credit to accessory structures/garages to incentivize detached garages. The majority felt that the essential principle to “count everything” was central to preventing “gaming” of the FAR rules. However, there was discussion that detaching the garage, with requirements for a separation

distance and locating the garage in the rear yard, would minimize the overall bulk of the main structure.

- The group agreed that it would be helpful to have a definition of a "sloping roof" (as it relates to the definition of "half story").

No consensus:

- The group was split on whether there needed to be changes to the calculation of mass below the first story. Proponents noted that the four-foot threshold for including a portion of the basement in GFA means that an inch of grading around a house (going from 4' to 3'11") could mean a difference of hundreds of square feet of allowed floor area. Others noted that there would always be houses close to any regulatory line and that grading around a house was a reasonable way to reduce the appearance of bulk.
- The group was also evenly split regarding whether to revise the calculations for space above the second story. Some expressed concern that the new rules might incentivize lower-pitched roofs. Others countered that flat-roofed houses were unlikely to sell, and that predications that the new rules would lead to a surge in flat roofs were greatly exaggerated.
- The group was also split on whether the rules should be adjusted to provide exemptions for expansions of existing homes that stay within the footprint, for example, adding dormers to a third floor.

POLICY DECISION

The key policy question is whether the revised FAR rules have led to new homes and additions that are more in keeping with the scale and character of their neighborhoods. The data to date can show numerically what projects have been proposed or approved, but does not show whether these houses or additions are in keeping with their surroundings. This more difficult and subjective judgment must wait until plans and renderings are submitted and/or homes constructed, and requires looking at the size and design of structures in context.

Possible actions include:

- Take no action at this time and leave the new regulations as they are.
- Modify the FAR limit, now or at a later date.
- Modify the method of calculating gross floor area.
- Modify the FAR limit and the method of calculating of gross floor area.

RECOMMENDATION

The FAR rules now extend to provide reasonable regulation of allowed bulk for all homes in the City. Some larger new home designs, which would have been just under the old FAR limits are now permitted only by special permit. Many smaller homes on smaller lots now have more development potential for modest additions. The Planning Department agrees with the FAR Working Group that the

full testing period should be allowed to play out so that the largest possible pool of data can be collected and the first houses built under the new rules can be viewed. After this period, ISD, the Planning Department, and the Board would have the data and experience with the new regulation to discuss how the FAR limit and the calculation could be tweaked in small ways to achieve the development outcomes desired.