

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY APRIL 9, 2012

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

Also present: Ald. Albright; Harney, Hess-Mahan, Fischman, Gentile

Planning Board: Joyce Moss (Chairman), Leslie Burg

Staff: Candace Havens (Director of Planning and Development), Seth Zeren (Chief Zoning Code Official), Eve Tapper (Chief Planner of Current Planning), Ouida Young (Associate City Solicitor), Maura O'Keefe (Assistant City Solicitor), Rebecca Smith (Committee Clerk)

#400-11 Ald. Gentile, Harney, Sangiolo requesting amendment to Section 30-13 to establish a Mixed-Use 3/Transit Oriented District (MU3/TOD) including a list of permitted uses and a requirement for all development greater than 20,000 square feet of gross floor area to obtain a "mixed-use development" special permit. The mixed-use development special permit shall require the creation of a development parcel governed by an organization of owners and limit development to no more than 225,000 square feet of office in one building, no more than 290 dwelling units in up to two buildings, and 20,000 square feet of retail and other commercial uses with a requirement for residential, office, and retail uses. Amend Section 30-15 to create a new Subsection (v) and revised Table 3 providing dimensional standards for development in the MU3/TOD. Section 30-15(v) shall include required setbacks from public ways of one half building height with exceptions for setbacks along public highways and rail yards, a requirement for a minimum of 15% beneficial open space, a maximum height of 135 feet for buildings, and a maximum FAR of 2.4. Amend Section 30-24 to include, but not be limited to, standards for project phasing; require pre-construction and post-construction studies of road and traffic impacts, water, sewer, and storm water impacts, and net fiscal impacts; incorporate additional criteria for the granting of a special permit; and set additional special permit filing requirements. Amend Section 30-19 to create new parking standards for this mixed-use development, which incorporates a shared-parking study. Amend the definitions in Section 30-1 for key terms related to the above provisions. Amend Section 30-5 to allow those public uses described in Section 30-6 in all zoning districts.

**ACTION: APPROVED 7-0-1 (Ald. Sangiolo abstaining)**

**NOTE:** Candace Havens, Director of Planning and Development, gave a Powerpoint presentation to the committee and distributed the revised language for the mixed use zone (see attached). Ms. Havens' presentation began with a recap on the different elements of this project that were examined over the years, addressed the amendments to the zoning text, and concluded with the Planning Department's recommendations.

This version of the amendment takes into consideration people's desire for more flexibility and provides a 10% flexibility for all three categories of uses (office, retail, residential). Changes to the use chart have also been made as a response to comments made

during the public hearing. In this new version, medical offices will only be allowed via special permit since this use would create much traffic, and manufacturing would be prohibited. Additionally electric car charging stations and business incubators will be allowed uses on the site. The Planning Department has also added clarifying language to uses that are defined as similar or accessory to another use.

Ms. Havens touched upon the topic of impact and impact studies. She stated that there is a requirement that, overall, there must be a positive net fiscal impact on the city. She explained that the city is restricted for how it can guard against negative fiscal impact as it pertains to the schools, though. The city cannot levy an impact fee, cannot control the configuration of apartments, and cannot discriminate against families. What the city can do is tailor solutions to the problems identified in the impact analysis conducted by the developer. The city can require the developer to submit a list of particulars to show what efforts are being made to address such issues.

Ms. Havens also turned the committee's attention to Page 24 of the planning memo. A ratio of 8:1 for mitigation of inflow has been determined. She explained that this ratio ensures that there would be more infiltration removed than would be going into the system. This ratio would address existing conditions as well as any new inflow.

Ms. Havens addressed the 40B alternative that could occur on this lot should the zone change not pass. She stated that a development on this lot would likely bring the city's affordable housing percentage up to 9% where the goal is 10%. There would be a little less traffic with a 40B development since 40B is only residential, but would also likely have a greater impact on the schools. The mixed use development proposed currently would provide a much more positive fiscal impact on the city since commercial tax rates are higher than residential tax rates. Furthermore, the mixed use development would have a lower impact on the schools.

Ms. Havens addressed a few other changes to the amendment. First it was explained that within the section referencing the organization of owners the language now allows for easements to be granted by the adjacent properties without those properties joining the organization of owners. Second, Ms. Havens commented on post construction studies. She noted that the document clarifies that post constructions will begin in the 12<sup>th</sup> month of full occupancy at each phase and will be complete after 24 months of the completion of the full development. Third, she noted that some language has changed to address some of the questions Ald. Baker has posed to the department, especially the question of river access. She noted that some properties are not within the city's jurisdiction but the Planning Department will do their best to make the greatest use of the site so that people can appreciate being by the river.

Ms. Havens explained that the Planning Department recommends approval of 400-11 as it achieves the balance between predictability and flexibility. Additionally she stated that the Planning Department recommends a vote of No Action Necessary for item #400-11(2).

Joyce Moss, Chair of the Planning Board walked the committee through their recommendation. The Planning Board agreed with the recommendations of the Planning Department in many respects (for the details of their recommendation please see attached) but suggested a significant change in the flexibility portion. They suggested that the percentage of flexibility traded to the retail category be up to 50%. Though there was much deliberation within the committee about whether this would be a good move for the city and the development, it was ultimately decided that the 10% flexibility would remain. Ald. Gentile also noted that 20k square feet of retail space would generate more traffic trips than the 290 residential unit. Additionally, the extra research and time delay to investigate the impact of a 50% flexibility for retail would be more trouble than it is worth since the intended project for this location would not use that extra percentage given.

Ald. Yates asked Ms. Havens if the Planning Department saw any reference in the Charles River Pathway plan for the use of the riverfront. Ms. Havens explained that the

department did research on this but was unable to find any clear initiative to make a link to the river from the site (Charles River Pathway Plan attached).

Ald. Yates also inquired about whether the Planning Department consulted Fred Russell (Director of the Utilities Department) on the 8:1 ratio. Ms. Havens did not consult Mr. Russell but discussed this with John Daghlian, Associate City Engineer, and Lou Taverna, City Engineer. Ald. Yates and Ald. Johnson also requested that Ms. Havens edit the language in the text to make it clear that, in reference to sanitary sewers and storm water, the intent is to not cause any harm or make the situation worse.

Ald. Baker requested that the Law Department look into the use of the term “appurtenant easement” and confirm that this is an appropriate use of it. Ouida Young, Associate City Solicitor, stated that she believes it is an appropriate use but will double check. Mr. Baker also requested that the Planning Department look at filing requirements for conceptual review and compare them against what ultimately comes out as the standards for filing so that everything lines up together.

After these comments, the motion to approve was made by Ald. Johnson. The motion carried 7-0-1 with Ald. Sangiolo abstaining as she may be deemed an abutter. The Planning Department will submit a further revised text amendment with the suggestions from this evening. This final document will be included in the Friday Packet.

#400-11(2) The Planning Department, requesting in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access to and from Route 128.

**ACTION: NO ACTION NECESSARY 7-0-1 (Ald. Sangiolo abstaining)**

**NOTE:** Please see the note from #400-11

Respectfully Submitted,

Marcia Johnson, Chairman



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Candace Havens  
Director

**WORKING SESSION MEMORANDUM**

RECEIVED  
Newton City Clerk  
2012 APR -6 PM 3:42  
David A. Olson, CMC  
Newton, MA 02459

**DATE:** April 6, 2012

**TO:** Alderman Marcia 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 an amendment to Section 30-13 to establish a Mixed-Use 3/Transit Oriented District (MU3/TOD) including a list of permitted uses and a requirement for all development greater than 20,000 square feet of gross floor area to obtain a "mixed-use development" special permit. The mixed-use development special permit shall require the creation of a development parcel governed by an organization of owners and limit development to no more than 225,000 square feet of office in one building, no more than 290 dwelling units in up to two buildings, and 20,000 square feet of retail and other commercial uses with a requirement for residential, office, and retail uses. Amend Section 30-15 to create a new Subsection (v) and revised Table 3 providing dimensional standards for development in the MU3/TOD. Section 30-15(v) shall include required setbacks from public ways of one half building height with exceptions for setbacks along public highways and rail yards, a requirement for a minimum of 15% beneficial open space, a maximum height of 135 feet for buildings, and a maximum FAR of 2.4. Amend Section 30-24 to include, but not be limited to, standards for project phasing; require pre-construction and post-construction studies of road and traffic impacts, water, sewer, and storm water impacts, and net fiscal impacts; incorporate additional criteria for the granting of a special permit; and set additional special permit filing requirements. Amend Section 30-19 to create new parking standards for this mixed-use development, which incorporates a shared-parking study. Amend the definitions in Section 30-1 for key terms related to the above provisions. Amend Section 30-5 to allow those public uses described in Section 30-6 in all zoning districts.

#400-11(2) The Planning Department, requesting in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access to and from Route 128.

**MEETING DATE:** April 9, 2012

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

## EXECUTIVE SUMMARY

The Riverside site is unique in many regards. It is bordered by a scenic road, the Charles River, Route 128, train tracks and an MBTA maintenance yard. Having been altered by the sand mine that once operated on the site, it is carved out of the banks adjacent to Grove Street and its irregular topography merits special consideration of site design features. The proximity of the MBTA Green Line, buses, and highway that serve the area provide a springboard for furthering a transit-oriented development, which can be further refined during the Land Use review process as walkways, bike paths, and transportation incentives are detailed. Its proximity to the Charles River and informal trails present opportunities for enjoyment of the area's natural resources and for activities and points of interest for those who live, work and visit the site ~ a true community asset.

Since the start of the zoning amendment process in January 2012, City staff, members the Board of Aldermen and residents throughout the City have expressed their interest in creating the best possible mixed-use development at Riverside. As noted in the City's *Comprehensive Plan*, and particularly its Mixed-Use and Economic Development Elements, this site is ideal for a variety of uses. Numerous conversations have ensued at Community Meetings, Committee meetings, and a public hearing that have articulated the various perspectives of those who have an interest in the City's future as a whole and are most directly affected. While consensus has not been reached on all aspects of what should be included in a zoning text that enables the optimal development on this site, the current text aims to balance as many of the desires expressed as possible in order to create the greatest good for the greatest number of people.

The proposed hybrid zoning model includes both traditional dimensional standards and performance-based provisions that measure, limit and mitigate the impacts of a possible project on the Riverside site. It includes requirements for before- and after-studies of the impacts on the City's infrastructure, as well as an analysis of the estimated fiscal impacts. The proposed text also includes caps on the square footage of the total development, as well as on specific categories of uses to create tangible standards with some flexibility around them to incentivize integration of uses on the site and allow for adaptability to market fluctuations

After analyzing other mixed-use projects in Massachusetts and other states, considering the dimensional standards utilized in other City zoning districts, studying the demographics of various types of businesses, assessing the scale and attributes of our village centers, talking with numerous developers about their approaches, and most of all, listening to what the voices in the community have to say, the Planning Department recommends approval of the zoning text presented in #400-11 with the amendments noted in the attached revised draft. With regards to #400-11(2), staff recommends the Board take no action on this item, as direct access is considered infeasible at this time for failure to meet federal standards for interstate access. Should laws or conditions change, the zone could be amended to allow for it at a later date.

## RESPONSES TO QUESTIONS AND CONCERNS

On March 22<sup>nd</sup>, the Zoning and Planning Committee and Planning and Développement Board held a public hearing, followed by a working session on March 26<sup>th</sup> at which Planning staff responded to many of the questions that arose during the hearing. This report summarizes the major areas of concern.

**Direct Access.** Many members of the public advocated for direct access between northbound and southbound Route 128 and the Riverside development site, while others objected to the provisions of #400-11(2), which would allow a density bonus for providing this direct access, preferring instead that direct access be a requirement rather than an option.

**Staff Response:** Director of Transportation, Clint Schuckel summarized the direct access issue as follows:

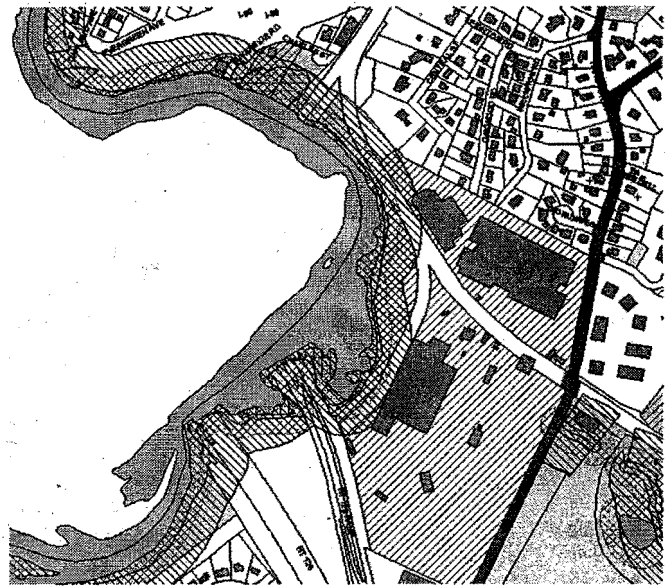
1. Federal Highway Administration (FHWA) criteria #4 states that direct access to a private road is not allowed from an Interstate Highway such as Route 128 (Attachment A). The criteria must be met for the State to be eligible for federal funding for infrastructure improvements and are not negotiable.
2. In the unlikely event that an exemption for this and/or other regulations were granted, a ramp would have to be designed such that it would greatly impact the development site and the surrounding area. For instance, southbound access would require an overpass from the Riverside site over the northbound lanes. In order to construct a cloverleaf ramp that will connect to the southbound lanes, it is likely the roadway would encroach on existing homes in the Lower Falls area. This scenario would also move the highway closer to the remaining homes.
3. Direct access will not capture all of the traffic bound to and from the site. For example, people wishing to avoid paying tolls at the intersection of Routes 90 and 128 may exit the highways elsewhere and approach the site from Grove Street, regardless of whether direct access is provided. In this vein, a density bonus for providing direct access may actually increase traffic on Grove Street, since there is no way to ensure that all new traffic will arrive at the site via the highway.

In addition, FHWA criteria #1 (Attachment A) requires that it be shown there is no other viable option for providing the necessary access except by way of a new interchange. However, adding a second access point to the site along the Collector/Distributor Road, traffic bound for the site from the highway or from the Lower Falls neighborhood will be able access the site, while avoiding the section of Grove Street between Route 128 and the existing entrance to the site.

Mr. Schuckel also looked into access to the Liberty Mutual site nearby in Weston. He noted that there is direct access to/from Liberty Mutual via ramps at an existing interchange (I-95 and I-90); however, Liberty Mutual does not have its own interchange (Attachment B). The access currently proposed by the Riverside developer with a roadway that goes directly to the northbound I-95/Route 128 off ramp (existing ramp for exits 23, 24, and 25) is similar to the one that accesses Liberty Mutual. There is a clear difference between these configurations and private access to or from a new, dedicated interchange, which is not allowed by federal regulations.

**Recommended Action:** Based upon the Director of Transportation's conclusion that a new interchange with direct access between Route 128 and the Riverside site is unattainable and/or undesirable, staff recommends that the Zoning and Planning Committee vote "no action necessary" (NAN) on Petition #400-11(2). Should circumstances change, the zoning text could be amended at a later date, provided that the developer reserves land now or otherwise provides for additional development in the future.

**"Riverside Center," 275 Grove Street.** The special permit for approval of this complex states that a connection to the MBTA site from the Riverside Center should be made if direct access is provided from the highway across the MBTA site to Riverside Center (Attachment C). However, this cannot be done without the permission of the adjacent property owner, the MBTA, which has not agreed to do so (Attachment D). Thus, such a connection is not being provided at this time. The City's Senior Conservation Planner has reviewed whether a roadway could be extended on DCR land to create such a connection and concluded that the conditions are unfavorable. DCR land is primarily on a slope adjacent to the river, subject to conservation restrictions, and within the 200-foot riverfront area. A portion of the area may also be within the 100-foot buffer to bank. In order to gain approval from the City's Conservation Commission and other permitting agencies, significant mitigation would be needed and it is unclear where and whether such mitigation could be performed. In addition, as State-owned parkland, building a road on the site would likely require special state legislation.



**Traffic Impacts.** Traffic impacts on the surrounding area as a result of a new development at the Riverside site are a general concern.

**Staff Response:** The proposed text encourages mixed-use and transit-oriented development for the benefits of creating synergies among uses that enliven a place, as well as to capture efficiencies in terms of trip generation. For example, when more uses are provided on-site that meet the needs of those who live, work and visit the site, people will not be as likely to get in their cars to seek basic goods and services. A good variety of uses that meet the needs of those who drive to the site means that one can park once and visit more than one place, thus reducing single-trip excursions. The availability of public transit options also allows for site visits without cars. The proposed zoning text requires traffic impact analyses to be provided and independently reviewed, as well as a transportation demand management plan that will require quantifiable and measurable means of incentivizing use of transportation alternatives and reducing traffic. Finally, design of the project and off-site mitigations will influence traffic management. The zoning text requires monitoring after completion of each phase and after final build-out to assure conformance with accepted levels of traffic.

At the time of special permit/site plan review, the traffic studies required by the proposed zoning text also will provide the Land Use Committee and the Planning and Development Board with the essential information necessary to determine whether a proposed rezoning and special permit are appropriate and what conditions and/or limitations should be placed on that future development to assure circulation and traffic volumes are within accepted levels. The proposed zone requires that a traffic study be submitted with a special permit application for any project greater than 20,000 gross square feet. The purpose of this study is to provide information to the Land Use Committee regarding possible traffic impacts to the City roadways as a result of the project. The zone also includes a finding, section 30-24(i)(2), that the project must offer long-term benefits to the City such as improved access and enhancements to public transportation and improvements to parking,

traffic and roadways. In addition, the zone requires post-construction studies to ensure that the expected goals in these areas are met.

**Parking.** Some argued there may be too much parking proposed for the site and that dedicated free parking for each use might encourage single-occupancy car trips and worsen traffic impacts; at the same time, others want to make sure there will be enough parking available to the public to deter overflow parking on neighborhood streets, especially on Red Sox game days.

**Staff Response:** Like traffic assessments, a parking analysis will be performed during the special permit process. The shared-parking analysis will look at what efficiencies can be created by the mix of uses (different combinations of uses have different traffic generation), but will also factor into the equation the impacts of parking during baseball season. Pricing of parking and availability of spaces to the general public will also be taken into account, as both affect parking behavior and utilization. This information will be used to establish parking standards during the special permit review process.

**Project Size and Scale.** While some believe that the project is too large, fearing its impacts will overwhelm the neighborhood, particularly with regards to traffic and school impacts, others argue that the development project anticipated may not be large enough to provide the financial means to afford beneficial improvements to infrastructure or to create enough activities to create a real sense of place.

**Staff Response.** Balancing the benefits of a development project (i.e., increased property tax revenue, potential new jobs, and a more attractive site) with the impacts such a project may have on the surrounding neighborhoods, is paramount. The size of a development is limited using three different, but complementary methods: (1) a cap on square footage, (2) dimensional standards, and (3) impact studies. The physical size of the project on the site, as limited in the proposed zone by hard caps on gross square footage, is in line with other transit-oriented developments in the region. The zone also limits the size of a development with conventional dimensional standards, such as FAR, setbacks, minimum open space, and building height. Finally, the proposed zone limits the size of a development through a measurement of its impacts on the City as a whole and in particular on the surrounding neighborhoods, including studies of the impacts of the project on the City's infrastructure (roadways, water, sewer, and storm water systems). A fiscal impacts analysis must show that the project has net positive affect on the City's finances. These studies will assist the Land Use Committee in its deliberations during the special permit process where conditions can be included to require impacts to be at or below specified levels. The zoning text also requires after-studies for traffic, water, sewer and storm water infrastructure. If the measured impacts in the after-studies fail to meet expected outcomes, further mitigation may be required until the initial goals are met. The purpose of these approaches is to assure the development causes no harm to the environs.

**Flexibility.** Balancing predictability with flexibility is one of the challenges of crafting a thoughtful zoning text. Predictability of outcomes is reassuring to both residents and developers, as it can define what can be built, what it will look like, and how it will function. Knowing what is possible allows developers to design a realistic project that can be financed if they know up front how much density will be allowed, what mix of uses is possible, as well as the process and submittals that will be required. Flexibility is also important. A development that cannot respond to market shifts runs the risk of failure. Flexibility in the zoning text also allows discretion at the special permit phase for creative designs that lower impacts and may offer benefits to both neighbors and the property owner. In general, limiting impacts while allowing flexibility as to how to meet those impact thresholds can be an effective, performance-driven approach.



**Recommended Action:** There is presently a cap of 580,000 square feet of gross floor area for all uses in three categories, excluding accessory parking: Categories A (225,000 square feet of office), Category B (20,000 square feet of retail), and Category C (335,000 square feet of residential not to exceed 290 units). To allow more flexibility and to encourage vertical integration within the site, planning staff recommends the following changes to the proposed zoning text:

1. Modify the requirement that all office uses be in one building to require the majority of the office space within one building, thereby allowing some office space to be located elsewhere on the site and encouraging some integration of uses.
2. Allow up to a 10% increase in the gross square footage permitted for all categories (A, B, and C) again, provided that the total square footage of the development does not exceed 580,000 square feet. This means, for example, if the gross floor area is increased in one category, the square footage elsewhere on the site must be reduced by the same number of square feet. This would allow for up to 247,500 square feet of office, 22,000 square feet of retail, and 268,500 square feet of residential (not to exceed 290 units), again within the 580,000 square foot cap. No specific minimum square footages are required, except that a Mixed-Use Development must contain at least one use from each of the three categories.
3. Retail uses (Category B) that are determined by the Commissioner of Inspectional Services to be accessory to another use on the site do not count toward the 20,000 square foot cap. This is intended to allow for goods and services that can meet the basic needs of those who live and work in the area so as to minimize the need for them to drive elsewhere for such things, thus reducing traffic.

**Uses.** Several questions were raised about the use table. For example, there was concern that the "uses similar to or accessory to" could provide a loophole to allow uses otherwise prohibited or allowed only by special permit. Also, inclusion of medical offices as a by-right use in Category A raised concerns based on its high-traffic-generating potential. One individual questioned whether research and development could lead to manufacturing as an accessory use. Another wondered whether the bike-sharing "Hubway" could be allowed.

**Staff Response:** The Table of Allowed Uses has been revised to address these points:

1. A phrase was added to clarify that the Commissioner of Inspectional Services is responsible for interpreting what uses are similar or accessory to other uses.
2. A new footnote(#2) states that any use similar to a use listed in Table A is subject to the same conditions as the use to which it is similar (i.e., by right or by special permit). An accessory use is only allowed if the use to which it is accessory is allowed.
3. Business incubators were added to the list of uses allowed by right.
4. Medical offices are now noted as allowed by special permit *only*.
5. Manufacturing has been added to the list of uses that are prohibited.
6. The table has been revised to read more easily, noting that retail sales, personal services, and eating and drinking establishments are allowed by right if less than 5,000 square feet in gross floor area per establishment, and require a special permit if greater than 5,000 square feet; this distinction is intended to encourage smaller retail stores, services, and restaurants for a local clientele and not a regional draw.
7. Bike rentals and electric car-charging stations were added as by-right uses that foster use of alternatives and reduce reliance on single-occupant vehicles.
8. Private non-accessory parking has been removed as a principal use, since it does not support the goals of a transit-oriented development.

**Site and design standards.** In particular, members of the public asked whether the proposed project provided adequate open space, should have more vertical integration of uses, or if the design truly qualifies as excellence in place-making, as recommended in the Mixed-Use Centers Element.

**Staff Response:** While the text does not establish design guidelines, it does require that the developers demonstrate that they are providing a "high quality architectural design and site planning 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." The features of the site including circulation patterns, design of open space, arrangement of building footprints, appearance of buildings, and other site design features will be considered by the Land Use Committee during review of the special permit/site plan and the developer must demonstrate efforts to create excellence in place-making. It also requires enhanced open space and a pedestrian-scale development, with a minimum of 15% beneficial open space of which half must be usable by the general public; the BU5 zone requires 25% landscaped area, the PMBD requires 20% beneficial open space, and the other mixed-use and business zones have no minimum requirements, so this requirement is somewhere in the middle and emphasizes that it be useful space. This zoning text allows for, but does not require, vertical integration of uses. The special permit criteria outlined in this zoning proposal along with a robust land use review will create the best opportunity for the type of development imagined in the Mixed-Use Centers Element.

**School Impacts.** There was general concern about the school impacts of a large residential component associated with a potential project on this site.

**Staff Response:** There are limits to what can be appropriately regulated through zoning in this regard. Newton cannot levy an exaction or impact fee to pay for increased costs to educate additional school children, nor can its regulations be discriminatory against families under the Fair Housing Act. Zoning is also limited in its ability to regulate the internal configuration of apartments, for example, by limiting the number of bedrooms. The proposed zoning text calls for an analysis of net fiscal impacts on the City, including impacts on the City's school system as part of the special permit approval process, and requires a net positive fiscal outcome. Solutions would need to be tailored to the nature of any problems identified during the special permit process.

**Water and Sewer.** Aldermen and members of the public expressed concern that the proposed large new development would overburden portions of Newton's water, sewer, and storm water systems and cited flooding in Lyons Field and backups in other nearby areas. The impacts on water, sewer, and storm water depend significantly on the water and sewer needs of the future tenants, the overall programming of the site, and the site design, which will be considered during the special permit review process. The proposed zoning text requires specific tests and analyses that the developer must perform and prove as part of a special permit filing, that the community will be well-served by the changes in capacity. Specifically, the text requires a detailed study of proposed surface runoff, an Environmental Site Investigation Report, solid waste master plan, a quantitative analysis showing water demands will not overburden the water supply of existing infrastructure, a master plan and schedule of sanitary sewer system improvements that improve upon existing conditions.

**Chapter 40B Development Option.** There is general concern that if a new mixed-use zone is not approved by the Board of Aldermen, the proposed developers of the Riverside site will build a 550-unit, all-residential project under Chapter 40B. Such a project would further the City's goals with respect to affordable housing, potentially bringing our total affordable housing percentage to around 9% or more, and would generate somewhat less traffic impacts along Grove Street and other neighborhood streets. On the other hand, a mixed-use

development will likely have a more positive net fiscal benefit to the City, as commercial property is taxed at a higher rate than residential. In addition, the impacts on the school system would be significantly less with the mixed-use project most recently presented. Finally, a mixed-use development would provide a sense of place and public destination for the general public in contrast to an all-residential project that would primarily benefit the residents and their visitors.

#### **OTHER PROPOSED TEXT CHANGES**

**Advisory council membership.** The language establishing the Organization of Owners notes that the membership of the council shall be determined in the special permit and shall ensure that all neighborhood interests are represented.

**Lot area and parcel size.** In the purpose and other sections, the former reference to 9.33 acres was changed to require no less than 9 acres, simply to round off the figure. The minimum lot area, in Tables 1 and 3, was changed to nine acres, as well, to prevent any subdivision of the Riverside parcel and subsequent succession from the Development Parcel and Organizations of Owners.

**After-studies and starting point.** To make it easier to reference, a new Section 30-24(c)(9) has been assigned to separate it from the remainder of 30-24(c)(8); both sections still address required impact and after-studies. The after-studies must start within twelve months of occupancy for each phase of development, and continue from two to five years after final build out. The Director of Planning and Development and Commissioner of Public Works would determine whether the developer's bond would be forfeited for failure to provide adequate mitigation.

**River access.** The language in the new Section 30-24(i)(5) was altered to reflect the ownership of land near the river by the MBTA, Mass DOT, and DCR with which coordination will be needed to access the Charles River banks. While the developer does not control land accessing the banks of the River, the development can be designed in such a way so as not to preclude future connections to the river and nearby trails.

**Community use space.** Community gardens were added to the definition of community use space.

**Development Parcel and Organization of Owners.** New language was added to the description and definition of Development Parcel to allow the Development Parcel to include access or other essential easements that cross neighboring parcels without requiring the owner(s) of such parcels to join the Organization of Owners simply because their property provides the access to the Mixed-Use Development.

#### **RECOMMENDATIONS**

The Planning Department recommends that the Zoning and Planning Committee approve Petition #400-11 as amended. The revised text achieves the delicate balance between flexibility and predictability needed to permit an economically viable development, while minimizing negative impacts on the surrounding neighborhoods. Flexibility is essential to allow a development to respond to changing market conditions and ensure its success and allows the Land Use Committee to entertain site designs and uses that maximize benefits to the City. Predictability about how much development will be allowed is important for developers to understand

expectations and secure financing and, overall, important for the economic success of the site. Assurances to the neighbors regarding project features and management of impacts are provided through impact studies and post-construction studies that require ongoing monitoring and enforcement.

Based upon Director of Transportation's conclusion that a new interchange with direct access between Route 128 and the Riverside site is unattainable and/or undesirable, staff recommends that the Zoning and Planning Committee vote "no action necessary" (NAN) on Petition #400-11(2). Should circumstances change, the zoning text could be amended at a later date, provided that the developer reserves space or otherwise plans ahead for additional development in the future.

Attachment A: FHWA Criteria for Interstate System Access

Attachment B: Aerial photos of Liberty Mutual access to Route 128

Attachment C: Excerpt from Special Permit Board Order 40-97(2) regarding Equity Office Building, Condition #5

Attachment D: Letter from Mark Boyle, MBTA Asst. General Manager for Development, dated October 18, 2010

Attachment E: Revised Draft Zoning Text for petition #400-11 and #400-11(2), dated April 9, 2012

Formerly Federal-Aid Policy Guide Non-Regulatory Supplement NS 23 CFR 630C

June 17, 1998

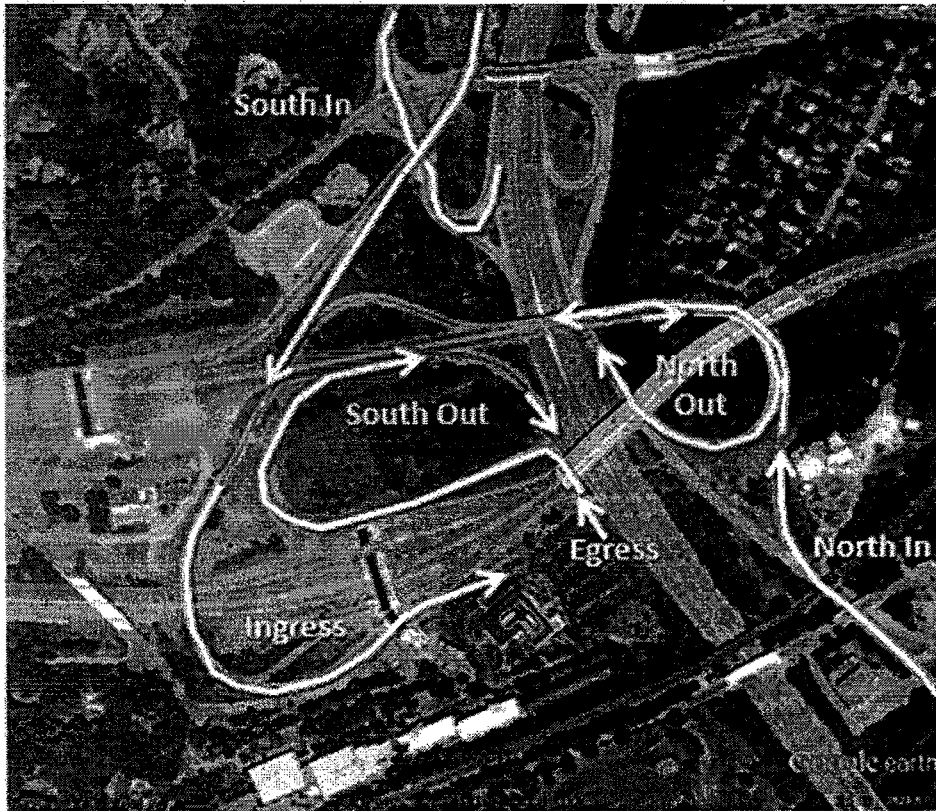
See Order 1321.1C FHWA Directives Management

**This document includes information on additional access to the interstate system, temporary closure of interstate highways, and locked gate access points on interstate highways that was formerly included in FHWA Federal Policy Guide Supplement NS 23 CFR 630C**

1. *Additional Access to the Interstate System*

- a. Policy. It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:
1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design-year traffic demands while at the same time providing the access intended by the proposal.
  2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.
  3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include an analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.
  4. The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.
  5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.
  6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.
  7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.
  8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

ATTACHMENT B



# ATTACHMENT C

#40-97(2)

Page 6

4. That the parking spaces in front of the building shall be designated for short term guest parking only; these parking spaces shall not be used from 7-9 AM. The petitioner shall install signs indicating such restrictions.
5. That if the MBTA creates a new access roadway from the Route 128 ramp into its Riverside property extending to the site's property line, the petitioner shall make all necessary modifications on its site to connect to such roadway and permit access to the site, thereby making it possible to reduce the use of Grove Street for vehicular access to and from the site. An amendment to this special permit will not be required for such modification.
6. That during construction the Construction Management Plan (C-7) dated January 28, 1997 rev. date 5/27/97 shall be implemented which shall include among other provisions the following safeguards:
  - a. Prior to the request for a demolition permit for the existing building, the petitioner shall submit a rodent control plan to the Health Commissioner for his review and approval. Evidence of such approval shall be submitted to the Commissioner of Inspectional Services prior to the issuance of a demolition permit.
  - b. The petitioner shall construct and maintain a security fence around the construction area of the site in compliance with the requirements of the State Code.
  - c. Except to allow for paving, all employees of contractors and subcontractors shall park on site and not on neighborhood streets.
  - d. During construction the petitioner shall provide street cleaning to remove mud or construction debris from streets abutting the site as requested by the Commissioner of Public Works.
  - e. The hours of exterior or structural construction shall be 7 AM. to 6 PM. Monday through Friday and 8 AM. to 6 PM. on Saturday. Work at other times may occur only with the advance approval of the Commissioner of Inspectional Services. Interior construction may be permitted at any time so long as noise levels comply with the City's Noise Ordinance.
  - f. The petitioner shall designate a person responsible for the construction process. That person shall be identified to the Police Department and the Commissioner of Inspectional Services, the Ward 4 Aldermen, the Auburndale Community Association, the Lower Falls Improvement Association, the Tri-Village Association and the abutters and shall be contacted if problems arise during the construction process.

  
City Clerk of Newton, Mass.



Deval L. Patrick, Governor  
Timothy R. Murray, Lt. Governor  
Jeffrey B. Mullin, MassDOT Secretary & CEO  
Richard A. Davey, General Manager  
and Rail & Transit Administrator



October 18, 2010

Mayor Setti D. Warren  
City of Newton  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

**Re: Rear Access Roadway, Riverside Development Project**

Dear Mayor Warren:

As you know, the MBTA has been asked to consider allowing an alternative access road behind its maintenance and layover facility at Riverside Station. The original concept for the road was contained in the permits granted for the adjacent 275 Grove Street-Riverside Center office complex. To avoid burdening Grove Street with additional site traffic, there was a permit condition to study the feasibility of constructing alternative access through the MBTA property. Now that a new project has been proposed for the MBTA's parcel, there is a renewed interest in this concept.

Please be advised that after serious analysis and consideration, the MBTA has determined that an alternative access roadway through the rear of the Authority's Riverside complex is neither feasible or safe. Staff from MBTA operations, safety, and environmental departments toured the site to evaluate the impacts on their respective areas of responsibility.

The area of the proposed roadway is adjacent to the Green Line's primary maintenance facility, as well as storage tracks associated with those functions. As a result, the MBTA believes construction of the access roadway would:

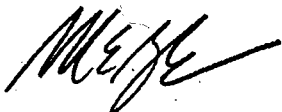
- Have a serious adverse effect on current maintenance operations;
- Present a significant safety issue due to its proximity to these maintenance functions;
- Require removal of the storage tracks which are a necessary component of current operations;
- Encroach upon the immediately adjacent watershed and wetland impact areas of the Charles River.



Based upon the above referenced impacts to the safe and efficient operation of the MBTA's Riverside maintenance facility, the Authority cannot approve an alternative access roadway through the rear of the complex.

Thank you and please contact me if you have any questions or need additional information regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'ME Boyle', written over a light blue horizontal line.

Mark E. Boyle  
Assistant General Manager for Development

Cc: Richard A. Davey, MBTA General Manager and Rail & Transit Administrator

WHEREAS, the 22-acre area owned by the Massachusetts Bay Transportation Authority (“MBTA”) and including the MBTA Station and lands adjacent to existing highways in the Riverside area of the City of Newton represents an unique opportunity to encourage mixed-use development based upon smart growth principles; and

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 transit-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*; and

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

WHEREAS, such controls and incentives are in the public interest and further the objectives of the City’s *Comprehensive Plan*; and

WHEREAS, this proposal provides a new zoning district for Mixed-Use Development and no land will be placed in this zone until the Board of Aldermen approves a map change;

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

**#400-11 TIER I – INITIAL ACTION**

1. *By re-designating the current Section 30-13(f) as Section 30-13(h); re-designating 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) Establishment and purpose of the Mixed-Use 3/Transit-Oriented District.***

***(1) Purpose.*** The purpose of the Mixed-Use 3/Transit-Oriented District is to allow the development of a mixed-use center on a parcel of no less than nine (9) acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City’s *Comprehensive Plan*, particularly the Mixed-Use Centers and Economic Development Elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.

***(2) Allowed uses.*** In the Mixed-Use 3/Transit-Oriented District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Section 30-13 Table A, subject to the development controls of Section 30-13(g) for developments of 20,000 square feet of gross floor area or more, the density and dimensional controls of Section 30-15, and the parking requirements of Section 30-19.

<b>TABLE A: PRINCIPAL USES<sup>1</sup></b>	
<b>Uses similar to or accessory to the following, as determined by the Commissioner of Inspectional Services<sup>2</sup></b>	
<b>Accessory Parking</b>	BR
<i>Mixed-Use Development</i>	
• <b>Mixed-Use Development if gross floor area exceeds 20,000 square feet, per section 30-13(g)</b>	SP
<i>Category A</i>	
• <b>General office: including but not limited to research and development, professional offices, , business incubator, and similar uses</b>	BR
• On the ground floor	SP
• Medical offices	SP
<i>Category B</i>	
• <b>Retail sales including, but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise</b>	BR
• Up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• <b>Personal services including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop off</b>	BR
• Up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• <b>Eating and drinking establishments</b>	BR
• up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• <b>Retail banking and financial services</b>	SP
• Automated Teller Machines	BR
• <b>Car-sharing services, car rental, bike rental, electric car-charging stations that reduce reliance on single-occupancy vehicles</b>	BR
• <b>Health club</b>	BR
• On the ground floor	SP
• <b>Place of entertainment and assembly, theater</b>	SP
• <b>Lodging, hotel, motel</b>	SP
<i>Category C</i>	
• <b>Multifamily dwelling (a building containing three or more dwelling units)</b>	BR
• <b>Live/work space or home business</b>	BR
• <b>Single-room occupancy dwelling or single-person occupancy dwelling</b>	SP
• <b>Assisted living or nursing home</b>	SP
<i>Public and Community</i>	
• <b>Community use space</b>	BR
• <b>Day care (adult or child)</b>	BR
• <b>Place of religious assembly</b>	BR
• <b>Government offices or services</b>	BR
• <b>Park or garden</b>	BR
• <b>Nonprofit or public school</b>	BR
• <b>Rail or bus terminal</b>	BR
• <b>Public parking</b>	BR
• <b>Library or museum</b>	BR
<i>Prohibited</i>	
• <b>Drive-in business, manufacturing, sales of motor vehicles, care wash, gas station or motor vehicle service station, fast good establishments as defined in section 30-1</b>	

<sup>1</sup> A use listed in Table A is permitted as of right in the Mixed-Use 3/Transit-Oriented District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Aldermen in accordance with the procedures in section 30-24.

<sup>2</sup> Any use determined to be similar to a use listed in Table A shall be subject to the same level of review as the use to which it is similar. An accessory use is only allowed if the use to which it is accessory is allowed, as shown in Table A.

(g) **Development by special permit in the Mixed-Use 3/Transit-Oriented District.** Land and buildings in the Mixed-Use 3/Transit-Oriented District may be used for any of the purposes authorized in 30-13(f)(2). Notwithstanding section 30-13(i), any development that proposes an aggregate gross floor area of 20,000 or more square feet among all buildings within the Development Parcel shall require a special permit for a Mixed-Use Development, which is defined to include a Development Parcel combining a residential use with at least two other principal uses listed in Table A as allowed by right or by special permit, in accordance with the procedures provided in section 30-24. Any proposed Mixed-Use Development shall comply with the following provisions and the provisions of sections 30-15(v) and Table 3, 30-24(c)(7), 30-24(c)(8), 30-24(c)(9), 30-24(i), 30-24(j), and 30-24(f).

(1) **Establishment of a Development Parcel.** The area developed under a special permit by this section must be organized into a Development Parcel as defined in Section 30-1. The Development Parcel may contain more than one lot and/or a portion of a lot together with any appurtenant easement areas located on adjacent parcels of land. The provisions of this Zoning Ordinance shall apply to the Development Parcel as it exists on the date that the 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. After the grant of a special permit per Section 30-13(g), the ownership may be further divided (subject to the establishment of an organization of owners defined in (3) below) and any interior lot lines shall be disregarded for zoning purposes. The Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the resulting Development Parcel is not less than nine (9) acres in size and does not create or expand any nonconformities.

(2) **Intensity of development.** The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A, and a community use space. The square footage in each category shall not exceed the maximums listed below, except, where approved by special permit in accordance with the procedures provided in section 30-24, the maximums may be adjusted by up to 10% in each category, so long as the total gross floor area of all uses, excluding accessory parking, does not exceed 580,000 square feet:

- a) Category A shall not exceed 225,000 square feet (excluding offices incidental to residential, retail and/or community uses), the majority of which must be contained within one structure;
- b) Category B shall not exceed 20,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the commissioner of inspectional services;
- c) Category C shall not exceed 335,000 square feet not to exceed 290 dwelling units.

(3) **Organization of Owners.** Prior to exercise of a special permit granted under this section, an organization of all owners of land within the Development Parcel, except for owners of land subject to appurtenant easements benefiting the Mixed-Use Development, shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the city or its representatives regarding compliance with the zoning ordinance. The organization shall serve as the liaison between the city and any owner, lessee, or licensee within the Development Parcel governed by a special permit granted under section 30-13(g). 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 special permit for a Mixed-Use Development, 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 the organization of owners to assure continued compatibility of the uses and activities within the Development Parcel and its

neighbors during and after construction. Membership of this advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

2. By adding a new Section 30-15(v) as follows:

(v) **Mixed-Use Developments in the Mixed-Use 3/Transit-Oriented District.** Any development permitted by special permit per section 30-13(g) must meet the following requirements and the requirements of Table 3. The Board of Aldermen may grant a special permit per section 30-24, including section 30-24(i), to allow exceptions to the by-right dimensional standards of the Mixed-Use 3/Transit-Oriented District, provided that the requirements of this section are met and no dimension exceeds those allowed in Table 3 for the Mixed-Use Development Special Permit.

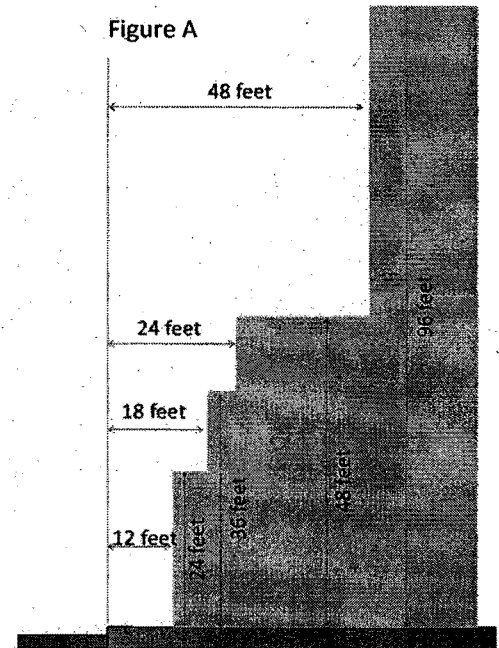
(1) **Setbacks.** Any structure or building must be set back a distance equal to at least half the height of that structure or building from any lot line, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a state instrumentality, the setback may be zero feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks (as illustrated in Figure A). In accordance with the procedures provided in Section 30-24, the board of aldermen may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

(2) **Beneficial Open Space.** At least 50% of the beneficial open space required by section 30-15, Table 3 for a Mixed-Use Development must be freely open to the public.

(3) **Exclusion of Public Structures from Zoning Requirements.** Any portion of the Development Parcel for the proposed development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, including, 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;
- ii. Minimum lot area; or
- iii. Floor Area Ratio.

(4) **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.



3. By adding the dimensional requirements for the Mixed-Use 3/Transit-Oriented District to Table 1 and Table 3 of Section 30-15 as follows:

**Table 1:**

Zoning District	Minimum Required Lot Area	Lot Area per unit <sup>1</sup>	Frontage	
MU3/TOD	9 acres	1,200	80	SEE TABLE 3 for other dimensional controls

**Table 3:**

Zoning District <sup>11</sup>	Max. # of Stories	Bldg. Ht. <sup>12</sup> (ft.)	Total Floor Area Ratio	Gross Floor Area/ Site Plan Approval (SF)	Threshold by Special Permit (Gross Floor Area; SF)	Min Lot Area (SF)	Lot Coverage	Beneficial Open Space	Front (feet)	Side (ft.)	Rear (ft.)
MU3/TOD											
As of Right	N/A	36	1.0	10,000-19,999	20,000	9 acres	N/A	N/A	15 <sup>9</sup>	10	15
Mixed-Use Development Special Permit, per 30-13(g) <sup>13</sup>	N/A	135	2.4	N/A	N/A	9 acres	N/A	15% <sup>13</sup>	½ bldg. ht. <sup>13</sup>	½ bldg. ht. <sup>13</sup>	½ bldg. ht. <sup>13</sup>

13. See sec. 30-15(v) for additional dimensional requirements for developments within the Mixed-Use 3/Transit-Oriented District.

4. By adding new sections 30-24(c)(7), 30-24(c)(8), 30-24(c)(9), 30-24(i), 30-24(j) as follows (and renumbering all the others):

(c)(7): **Project Phasing.** Any development subject to a 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 off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

(c)(8): **Adequacy of public facilities.** Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the petitioner as part of the special permit application process under 30-13(g) with the project scope determined by the director of planning and development and the commissioner of public works (peer reviews may be required, hired by the city and paid for by the petitioner):

- a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)
- b) Adequacy of water, sewer, and storm water infrastructure, including the water, sewer, and storm water analysis required in section 30-24(j)(8)
- c) Net fiscal impacts, including the fiscal impact analysis required in section 30-24(j)(9)

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within twelve months of occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development comply with the special permit.

The special permit shall also require a bond or other security satisfactory to the director of planning and development and commissioner of public works to secure performance. The bond or other security may be forfeited, at the election of the director of planning and development and commissioner of public works, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

**(c)(9): Post-Construction Traffic Study.** A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual 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 commissioner of public works and director of planning and development to secure performance as specified below:

- i. Monitoring of vehicle trips for this purpose shall begin within twelve months of full occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. Measurements shall be made at all driveway accesses to the Mixed-Use Development and/or intersections studied in the pre-construction Roadway and Transportation Plan. The commissioner of public works may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the LOS projected by the pre-construction Roadway and Transportation Plan.
- ii. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Mixed-Use Development at all points studied in the pre-construction Roadway and Transportation Plan shall be measured by a traffic engineering firm retained by the city and paid for by the petitioner or successor.
- iii. Mitigations will be required if actual total number of vehicle trips to and from the Mixed-Use Development measured per subsection (ii), above, summed over the 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. Within six months of notification, the owner of the Mixed-Use Development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner and listed in the Mixed-Use Development special permit in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The commissioner of public works and director of planning and development must approve any mitigation efforts prior to implementation.

**(i) Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District.** In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of

Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

- (1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent 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.
- (2) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas such as:
  - a) Improved access and enhancements to public transportation;
  - b) Improvements to parking, traffic, and roadways;
  - c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
  - d) Public safety improvements;
  - e) On-site affordable housing opportunities except where otherwise allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
  - f) Water, sewer, and storm water infrastructure enhancement.
- (3) *Fiscal Impacts.* The proposed Mixed-Use Development has a positive fiscal impact on the city after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
- (4) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-Use Development and abutting parcels and streets, with consideration given 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.
- (5) *Enhanced open space.* Appropriate setbacks, 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 proposed Mixed-Use Development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and **adjacent public property, whether or not it is currently available for public use, -are provided and take full advantage of the unique opportunities of the site and its nearby natural features** for use and enjoyment by the community at large.
- (6) *Excellence in place-making.* The proposed Mixed-Use Development provides high quality architectural design and site planning 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.
- (7) *Comprehensive signage program.* Notwithstanding the requirements of Section 30-20, all signage for the proposed Mixed-Use Development shall be in accordance with a comprehensive signage program developed by the petitioner and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the Mixed-Use Development and character of the streetscape.
- (8) *Pedestrian scale.* The proposed 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.
- (9) *Public space.* The proposed Mixed-Use Development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make 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.



- (10) *Sustainable design.* The proposed Mixed-Use Development at least meets the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).
- (11) *Adequacy of parking.* Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.
- (12) *Pedestrian and Neighborhood Considerations.* If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the petitioner has proposed feasible mitigation measures to eliminate such negative impact:
  - a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
  - b) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
  - c) Traffic signal additions, alterations, or roundabouts; and
  - d) Relocation or alterations to public transport access points.

**(j) Additional Filing Requirements for Special Permit in the Mixed-Use 3/Transit-Oriented District**

In addition to the provisions of sections 30-23 and 30-24, petitioners for a grant of a special permit under section 30-13(g) shall submit:

- (1) **Conceptual Plans.** Prior to submittal of an application for a special permit in the MU3/TOD, which will include items (2) to (12) below, petitioners shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Committee shall provide a forum for a public presentation whereby the Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:
  - a) Project description, including project purpose or design rationale;
  - b) Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;
  - c) Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to public lands nearby, north arrow and scale; and
  - d) Other information as may be requested by city staff to perform a zoning review and preliminary impact analyses.
- (2) Computer model that shows the relationship of the project to its surroundings consistent with section 30-24(b);
- (3) 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 Section 30-24(i);
- (4) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (5) Site plans showing any by-right or zoning-exempt alternatives;
- (6) 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 commissioner of public works, director of planning and development, and peer review consultants. The Plan should include the following:
  - a) 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
- b) 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.
  - c) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed-Use Development, documenting:
    - i) 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 commissioner of public works and director of planning and development;
    - ii) 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;
    - iii) The means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(8) and (9) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more; and
    - iv) The projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.
  - d) 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. Analysis shall include:
    - i) 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
    - ii) Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.
- (7) A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.
- (8) Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the commissioner of public works, director of planning and development, and peer review consultants and shall include the following:
- a) A study of the proposed project's surface water runoff relating to the Charles River and associated deep marsh system, which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for

irrigation reuse, including:

- i) A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the DEP Storm Water Management Policy and the City of Newton drainage policy;
  - ii) A drainage analysis based on the City's 100-year storm event of six inches over a 24-hour period, showing how runoff from impervious surfaces will be infiltrated on-site;
  - iii) An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;
  - iv) If a connection to the city's drainage system is proposed, a closed circuit television (CCTV) inspection, prior to approval of this permit, which shall be witnessed by the engineering division, the petitioner shall provide the city inspector with a video or CD prepared by a CCTV specialist hired by the petitioner. A post-construction video inspection shall also take place and be witnessed as described above; and
  - v) An evaluation of hydraulic capacity of the downstream drainage system submitted to the engineering division to determine any impact to the municipal drainage system.
- b) A master plan and schedule of the sanitary sewer system improvements, including:
- i) A plan showing a reduction in infiltration and inflow into the sanitary sewer system of at least eight gallons for every one gallon of sanitary sewage contributed by this development;
  - ii) A calculation of the life cycle cost of the proposed sanitary system;
  - iii) A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and
  - iv) A study showing how the developer will comply with the city's cross connection control program.
- c) A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.
- d) A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal, that demonstrates compliance with the city's solid waste master plan. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes; and
- e) A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the city, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The petitioner must coordinate this test with both the fire department and utilities division; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be submitted to the fire department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the utilities director.
- (9) Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
- (10) Proposed phasing schedule, including infrastructure improvements;
- (11) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon; and

(12) Submittal in electronic form of 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 petitioner or its representatives to the Board of Aldermen and pertaining to the special permit application, unless the petitioner 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 website within a reasonable time after receipt.

5. *By adding a new Section 30-19(d)(22) as follows:*

(22) Notwithstanding the other requirements of 30-19(d), by special permit from the Board of Aldermen in accordance with the procedures provided in section 30-24, the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the director of planning and development and peer reviewer at the petitioner's expense, if requested by the director of planning and development. Following the grant of a special permit under this section, no material change in the combination of uses, permitted either by right under section 30-13(f) or as part of a Mixed-Use Development special permit under section 30-13(g), shall be authorized until the petitioner submits a revised analysis demonstrating to the satisfaction of the director of planning and development 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.

6. *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 a Planned Multi-Use Business Development or a Mixed-Use Development (including any appurtenant easement areas benefiting a Mixed-Use Development) is located in connection with a special permit under Section 30-15(s) or 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 not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, 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, (ii) surface parking facilities or associated pedestrian circulation, (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 by adding the following Definition in Section 30-1 as follows:*

*“Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasias, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.”*

7. *By inserting a new Section 30-5(a)(4) as follows:*

(4) 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.

**Petition #400-11(2) - TIER II**

If #400-11 is adopted, consider amending it by inserting the following as Section 30-15(v)(5) and modifying Table 3 of Section 30-15, provided that all other dimensional standards are met:

(5) ***Incentives.*** For providing direct access to and from an interstate highway both northbound and southbound, the maximum allowed gross floor area may be increased up to 250,000 square feet not to exceed 1,200,000 square feet total gross floor area and an FAR of 3.0, including above-ground parking.

# Department of Planning and Development

1

## ZONING AND PLANNING COMMITTEE WORKING SESSION, APRIL 4, 2012

#400-11 Ald. Gentile, Harney, Sangiolo requesting an amendment to Section 30-13 to establish a Mixed-Use 3/Transit Oriented District (MU3/TOD) including a list of permitted uses and a requirement for all development greater than 20,000 square feet of gross floor area to obtain a “mixed-use development” special permit. The mixed-use development special permit shall require the creation of a development parcel governed by an organization of owners and limit development to no more than 225,000 square feet of office in one building, no more than 290 dwelling units in up to two buildings, and 20,000 square feet of retail and other commercial uses with a requirement for residential, office, and retail uses. Amend Section 30-15 to create a new Subsection (v) and revised Table 3 providing dimensional standards for development in the MU3/TOD. Section 30-15(v) shall include required setbacks from public ways of one half building height with exceptions for setbacks along public highways and rail yards, a requirement for a minimum of 15% beneficial open space, a maximum height of 135 feet for buildings, and a maximum FAR of 2.4. Amend Section 30-24 to include, but not be limited to, standards for project phasing; require pre-construction and post-construction studies of road and traffic impacts, water, sewer, and storm water impacts, and net fiscal impacts; incorporate additional criteria for the granting of a special permit; and set additional special permit filing requirements. Amend Section 30-19 to create new parking standards for this mixed-use development, which incorporates a shared-parking study. Amend the definitions in Section 30-1 for key terms related to the above provisions. Amend Section 30-5 to allow those public uses described in Section 30-6 in all zoning districts.

#400-11(2) The Planning Department, requesting in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access to and from Route 128.

## Riverside Rezoning

Direct Access

Riverside Center

Traffic Impacts

Parking

Project Size and Scale

Flexibility

Uses

Site Design Standards

School Impacts

Water and Sewer Impacts

40B Option

Other Text Changes

Recommendations

## Introduction

- 2009 - Design development
- 2010-2011 Community meetings and visioning
- January 2012 ZAP review of zoning text
- March 22<sup>nd</sup> Public Hearing for zoning text
- Response to comments
- Text revisions

## Riverside Rezoning

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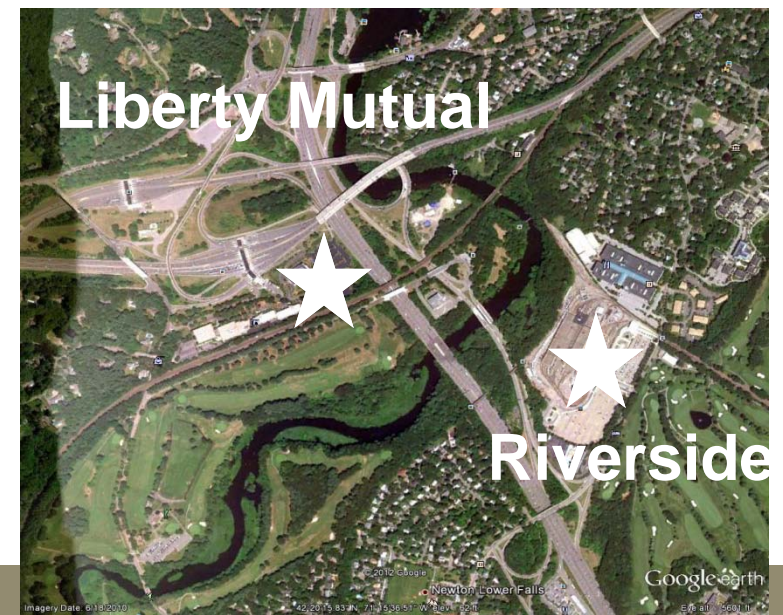
40B Option

Other Text Changes

Recommendations

## Direct Access

- FHWA Criteria #1 - no other options are available
- FHWA Criteria #4 - connection to public road required
- Ramp design standards would impact site and neighbors
- Not all traffic to the site comes via Rte. 128
- Liberty Mutual access





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Other Text Changes

Recommendations

## Connection to Riverside Center

- Board Order #40-97(2) requires Riverside Center office park to connect to MBTA parking lot site if direct access is provided
- MBTA determined connection “neither feasible or safe”
- Could access road circle behind tracks?
  - Would require DCR and ConCom approval
  - Within 200-ft. riverfront area and 100-ft. buffer zone
  - Alteration of state-owned parkland requires state legislation

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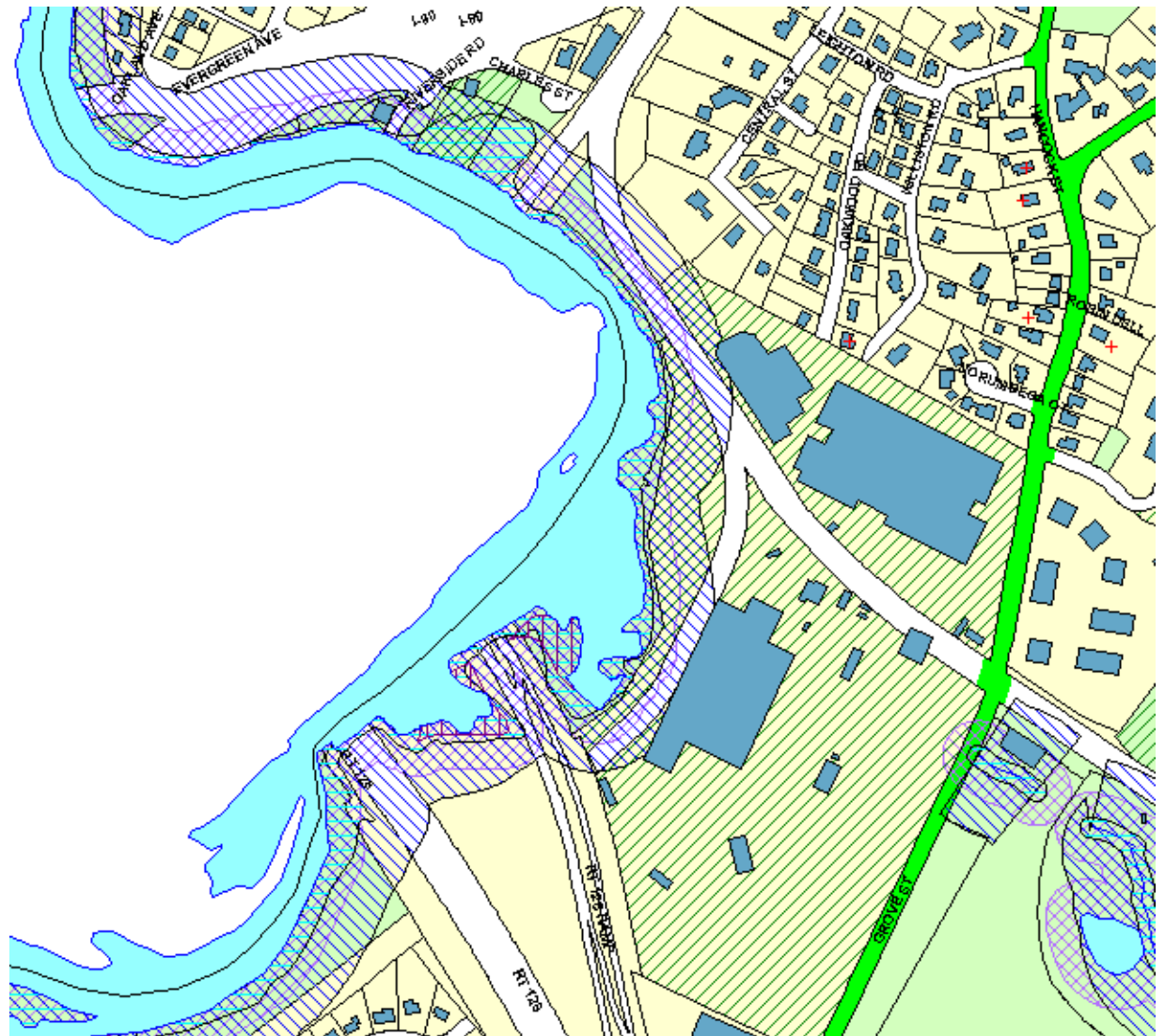
School Impacts

Water and Sewer Impacts

40B Option

Other Text Changes

Recommendations



## Riverside Rezoning

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Other Text Changes

Recommendations

## Traffic Impacts

- Concern about impacts on surroundings
- Text and *Plan* encourage mixed-use
  - Strengthens sense of place, lowers trip generation
  - Transit-oriented site
- **Impact analyses and after-studies are required**
  - Monitoring after each phase and completion
  - Mitigation required if impacts exceed projections
  - Bond to enforce

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Other Text Changes

Recommendations

## Parking

- **Too much parking or too little?**
  - Discourage single-occupancy vehicle use
  - Relieve neighborhoods of Red Sox game-day parking
- **Text requires shared-parking analysis**
  - Mix of uses
  - Availability
  - Pricing
  - Alternatives, including Zip Car, bike-sharing, TDM incentives
- **Analyses will inform special permit review**

## Riverside Rezoning

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Parking

### **Project Size and Scale**

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Other Text Changes

Recommendations

## Project Size and Scale

- Too big or too little?
- Need to balance benefits and impacts
  - Require developer to measure, limit, and mitigate impacts
- Overall development limited
  - Cap on total square footage and by use category
  - Dimensional standards including setbacks , height, and FAR
  - Impact studies
- Size and design review by UDC, LUC, and others at Concept Review and Special Permit

## Riverside Rezoning

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Other Text Changes

Recommendations

## Flexibility and Predictability

- **Predictability**
  - Clear idea of what can be built
  - Good for residents and developers
- **Flexibility**
  - Adaptable to changing market forces
  - Allow design improvements during special permit review
  - Require *majority* of office use in one building, not *all*
  - Allow 10% increase to caps by special permit not to exceed 580,000 square feet
  - Accessory uses in Category B don't count against principal use
- **Balance**

## Riverside Rezoning

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Flexibility

### Uses

Site Design Standards

School Impacts

Water and Sewer Impacts

40B Option

Other Text Changes

Recommendations

## Allowed Uses/Revisions

- Clarify interpretation of similar or accessory uses
- Business incubators added
- Medical offices allowed by special permit *only*
- Manufacturing prohibited
- Bike rentals and electric car-charging stations added
- Private non-accessory parking removed
- Revisions for readability

## Riverside Rezoning

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Water and Sewer Impacts

40B Option

Other Text Changes

Recommendations

## Site Design Standards

- Open space, vertical integration of uses, excellence in placemaking
- Part of the special permit process
- Text flexible enough to allow vertical integration of uses and excellent design
- Special permit criteria will guide the Land Use Committee's process



## Riverside Rezoning

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**School Impacts**

Water and Sewer Impacts

40B Option

Other Text Changes

Recommendations

## School Impacts

- Text requires a net fiscal impact analysis
  - Including school impacts
  - Requires a net positive impact
- Limitations on regulatory authority
  - Cannot levy exaction or impact fee
  - Cannot discriminate against families
  - Cannot regulate the internal configuration of apartments
- Solutions tailored to problem identified

## Riverside Rezoning

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School Impacts

**Water and Sewer Impacts**

40B Option

Other Text Changes

Recommendations

## Water and Sewer Impacts

- Flooding at Lyon's field and backups elsewhere
- Text requires analyses at special permit
  - Study of surface runoff
  - Master plan and schedule of sanitary sewer system improvements
  - Environmental Site Investigation Report
  - Solid waste master plan
  - Quantitative analysis showing water demands will not overburden the water supply of existing infrastructure
  - Impacts will be reviewed by Engineering Department
  - *Note clarification of 8:1 ratio, p. 24 ,b)i) to satisfaction of City Engineer and Director of Water and Sewer*

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### 40B Option

Other Text Changes

Recommendations

## 40B Option

- **Alternative proposal**
  - 550-unit, all-residential project
  - Could bring affordable housing percentage to 9%
  - Less traffic impacts on Grove Street
  - Greater school impacts
- **Mixed-use project**
  - More likely positive net fiscal impact
  - Commercial tax rate higher than residential
  - Lower impacts on schools
  - Greater potential for community benefits
- *Comprehensive Plan* favors mixed use

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40B Option

**Other Text Changes**

Recommendations

## Other Text Changes

- **Development Parcel and Organization of Owners**
  - New language to allow easements for access
- **Advisory council membership**
  - Determined in the special permit
- **Lot area and parcel size**
  - All consistently set at no less than 9 acres, prevents subdivision
- **After-studies and starting point**
  - After-studies begin within 12 months of occupancy of each phase
  - Last 24 months after completion of development
  - *Note: add full occupancy of each phase p. 20*
- **River access**
  - Reflects split ownership of land near the River
- **Community use space**
  - Now includes community gardens
- **P&D Board Recommendations**

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Other Text Changes

**Recommendations**

## Recommendations

- **Recommend approval of #400-11 as amended**
  - Balance of predictability and flexibility
  - Analyses and after-studies ensure performance goals are met
- **Recommend NAN of #400-11(2)**

**CITY OF NEWTON, MASSACHUSETTS**  
**Planning and Development Board**



April 9, 2012

Marcia Johnson, Chairman of Zoning and Planning Committee and  
Members of the Board of Aldermen  
1000 Commonwealth Avenue  
Newton, MA 02459

Setti D. Warren  
Mayor

Candace Havens  
Director  
Planning & Development

Anne Marie Belrose  
Community Development  
Manager

Members

Joyce Moss, Chair  
Scott Wolf, Vice Chair  
David Banash, Treasurer  
Leslie Burg, CPC Liaison  
Tabetha McCartney  
Doug Sweet  
Eunice Kim, Alternate

Dear Chairman Johnson and Members of the Board of Aldermen:

Prior to the public hearing of March 22, 2012 on the proposed zoning amendments docketed as #400-11 and #400-11(2), the Planning & Development Board (P & D Board) held its own public meeting on March 19, 2012 to review with staff its provisions. Subsequent to the hearing, the P & D Board presented a quorum at the ZAP working session of March 26, 2012 and deliberated at additional public meetings on April 2 and April 5, 2012. Before the Zoning & Planning Committee and the Board of Aldermen conclude their public process of reviewing and voting, the P & D Board respectfully submits this advisory report of its recommendations.

**BASIS FOR RECOMMENDATION**

This recommendation focuses primarily on those few areas where we take issue with the planning department’s latest recommendations (*Petition #400-11 and #400-11(2) April 9, 2012; Revised Draft; ZAP Working Memo, April 9, 2012*).

The vision for the new mixed-use centers elaborated in the Mixed-Use Amendment to the Newton Comprehensive Plan states that they should be “exemplars of excellence in place-making, being great places in which to work, live, shop, recreate, or just visit and be within”. While we agree that most of the department’s modifications will increase the potential for such an outcome at Riverside, we would go further in discouraging some remaining rigidities in the proposed zoning text, which may stifle creative solutions to achieving the objective of a “shining example of urban design”, and would give, instead, as wide a berth as possible to the upcoming land use planning process to achieve it.

**OBSERVATIONS AND RECOMMENDATIONS**

- We agree with the recommended 580,000 square foot limitation and overall FAR of 2.4 on a site no smaller than 9 acres;
- We also agree with the 10% rule regarding square footage that can be *traded from* Category A (office), B (retail) or (C) (residential) and *traded to* office or residential, but think that still greater flexibility---up to 50% -an additional 10,000 square feet<sup>1</sup> as opposed to the additional 2,000 square feet now recommended---should be allowed when *trading to* retail if an equal amount of

<sup>1</sup> One member dissented, voting instead for up to 25%, an additional 5,000 square feet.

1000 Commonwealth Ave.  
Newton, MA 02459  
T 617/796-1120  
F 617/796-1142

www.newtonma.gov

square footage is taken *from* the other two categories, separately or combined. Although we acknowledge that some additional flexibility is obtained by the proposed rule allowing that accessory retail uses not count toward the 20,000 square foot cap, we think total non-ancillary retail square footage should have a more flexible envelope without increasing overall square footage on the site<sup>2</sup>. In support of this position, we note below, by way of example, the following uses, the presence of which might contribute to efficiency from a trip reducing perspective and *vibrancy* from a place-making perspective, simply because the consumer needs they serve are universal:

- A small but appropriately sized market (e.g., Waban Market) could easily occupy between 5,000-8,000 square feet.
- In Massachusetts, the average sized CVS is 9,000 square feet; Walgreens and Brooks are about 12,000 square feet<sup>3</sup>.
- A 150 seat restaurant will occupy between 3,700 and 5,000 square feet, depending on its style.

But because all of these are uses that come with many location options for consumers, they don't necessarily draw much traffic from other parts of the city and region, or, as in the case of the restaurant, if they do, it is not at peak traffic periods. At these sizes, these uses alone could easily consume most of your retail allotment. Whether a retailer would decide to put a mini-mart and/or pharmacy or restaurant or two here strikes us as a market decision that might come up at a much later date, and should not be pre-empted by a prohibitive zoning policy put in place now.

Nor does suggesting an allowed trading allocation of up to 10,000 *additional square feet* for retail mean that such an outcome is even likely. Again, we merely do not wish to foreclose such possibilities and note, in any case, that individual retail uses over 5,000 square feet are subject to a discretionary special permit. In fact, should the flexibility rule come into play, the most *likely* outcome, assuming that we do not slip back into recession, is that additional square footage would come *from* residential and be added *to* office. Market reports over the last several years indicate a slowly accelerating increase in "large user" commercial space (non-retail) in the suburbs, and particularly along the prime stretch of Route 128 from "Burlington to Needham"<sup>4</sup>. Large users' space needs begin at approximately 100,000 square feet, the greatest number of large space seekers' needs cluster between about 175,000 to 250,000 square feet and go up more infrequently from there. Such space is usually in short supply. We are pleased to see that the 10% rule pretty much accommodates this current market reality.

- We agree with the planning department's recommendation to modify the requirement that *all* office uses be in one building and to require instead that the *majority* of the office space be within one building, thereby allowing some office space to be located elsewhere on the site and encouraging some integration of uses. Clearly this change will allow, as the department memo states, "more flexibility and encourage vertical integration within the site", but as in the case of retail, it doesn't legislate such an outcome. A single large user, should one come along, will almost certainly prefer a single building. But we applaud the fact that the modification cedes the best all around outcome to a dynamic land use planning process and doesn't allow the zoning text to foreclose it.

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<sup>2</sup> By way of comparison, Waban, which is designated "Neighborhood Center" in the Comprehensive Plan, contains approximately 48,000 square feet of commercial space and is the second smallest in the city. (Night Caps Corner, at Lexington and River St, is the smallest "neighborhood center" )The chairman of the EDC reports that the center in Waban contains approximately 33,000 square feet of retail.

<sup>3</sup> Boston Business Journal Book of Lists 2005- "Average Store Size of Businesses in Massachusetts"

<sup>4</sup> Colliers Meredith & Grew Market Reports 2010, 2011

- In the same vein, we examined the very sensitive topic of open space. Everyone wants as much as possible, including the members of our board, at least in the abstract. The developers have stated that the only way to get more is to allow them to build up, even though the cap on building square footage would remain the same. By the same token, the developer might be able to build lower, more humanly scaled buildings if one or more building footprints could be larger, albeit with some resulting diminution of open space. All but one on our board agreed that if some greater flexibility in the allocation of beneficial open space was given to the land use committee to determine, we might end up with a better site plan, better urban design and a better place. (Perhaps an outdoor *feature*-- think winter ice skating/summer frog pond and fountains-- might be worth several thousand square feet of grass).

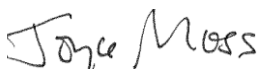
Our recommendation could take one of several forms, but its intent would be as follows:

- The percentage of beneficial open space would be specified within a range or left as is, but with the proviso that a deviation from the current minimum of 15% is allowable if and only if the Land Use Committee by a super majority is persuaded that the new site plan merits such deviation and the trade off provides a demonstrable benefit to the community.

### OTHER ISSUES AND CONCERNS

- The board felt that a commitment to addressing handicapped accessibility issues should be more explicitly stated in zoning. Although staff said it was not clear if such language could be in zoning, the board felt some statement should be made and recommended that the following language (or close variant of it) be added to 30-24 (i) *Additional Special Permit Criteria*, after (12) Pedestrian and Neighborhood Considerations:
  - (13) Accessible Design: The proposed Mixed Use Development will give appropriate consideration and allow for sufficient flexibility to address issues of accessibility, adaptability, “visitability”, and universal design.
- The board notes that there is frequently confusion with the term “*publicly accessible*” as it appears in 30-24(i). So as not to confuse public accessibility with accessibility for persons with disabilities, our board recommends in 30-24(i) (5) Enhanced Open Space, the substitution of the term “*available for public use*” for the words “*publicly accessible*”.
- In all impact studies for the Riverside project, both pre and post construction, we urge the planning department to include the abutters in the scoping process, and even in the final choice of analyst in those specific cases when department professionals remain in doubt about which firm should be chosen. We believe that the more neighborhood interests have a voice in scoping processes in particular, the greater confidence they will have in the resultant studies and the accuracy of findings and conclusions contained within.

Respectfully submitted on behalf of the Planning & Development Board,



Joyce Moss, AICP  
Chairman

Cc: Planning and Development Board  
Candace Havens, Director of Planning and Development  
Phil Herr  
Stephen Buchbinder





125 Summer Street, Suite 1701  
Boston, Massachusetts 02110

phone 617.425.7500 fax 617.425.7501  
www.equityoffice.com

April 11, 2012

**First Class Mail**

Alderman Marcia T. Johnson  
Chairman  
Zoning and Planning Committee  
39 Bemis Street  
Newtonville, MA 02460

Re: Board of Aldermen Docket # 400-11 and # 400-11 (2)

Dear Alderman Johnson:

We are the owners of the office building known as Riverside Center, 275 Grove Street, immediately adjacent to the Riverside MBTA Transit Station. We have been contributing members of the Auburndale community since 1998. During the past year we have heard about and sometimes seen various redevelopment proposals for a portion of the Riverside MBTA Station. Upon learning of possibilities for development and not having been contacted by the developer, we initiated a meeting with City personnel in early 2011 and expressed our general support for development and redevelopment, but also requested that our concerns about its effect and impacts on our asset be presented and considered during staff analysis and public discussions. Our goal is to be constructive and collaborative, and to protect our asset and its value to the City and its tax coffers. We filed comment letters on the Draft Environmental Impact Report in August, 2011. It was our hope that those comments and our concerns would be addressed by the developer, in staff reports and during the public discussion and debate.

It wasn't until earlier this week that we saw the final proposed zoning amendment as it was contained in the Planning Department memorandum for the Zoning and Planning Committee meeting of April 9, 2012. We continue to hope and urge that our concerns as presented orally to the City and through our DEIR comments will be discussed; preferably, of course, prior to a vote of the Board of Aldermen.

Riverside Center was permitted through change of zone ordinance V-118, # 4-97, and special permit # 40-97(2). During the debate, numerous committee and neighborhood meetings, there was considerable discussion focusing on future planning for the Grove Street area of the Auburndale Community should a portion of the Riverside MBTA station be redeveloped. It was acknowledged through traffic studies that a redevelopment of a portion

Alderman Marcia T. Johnson  
April 11, 2012  
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of the Riverside MBTA station could potentially greatly increase traffic on Grove Street and create traffic impacts that might block the exits from and at the signalized entrance to the then new Riverside Center development at peak hours because of congestion on Grove Street. Through a collaborative effort, the developer/petitioner and City representatives built into the zoning approvals a “relief valve” in the event of a redevelopment of the Riverside MBTA station which could cause adverse traffic impacts to Riverside Center and to Grove Street. The developer/petitioner agreed to be obligated in condition number 5 of its special permit to make all necessary modifications on its site to connect a roadway from the Route 128 ramp over the MBTA property to our site, to achieve access to and from the site on that roadway, thereby making it possible to reduce the use of Grove Street for vehicle access to and from the site and the MBTA Station, and allowing our site to continue to function well, as planned and approved.

Similarly, in condition number 26, the developer/petitioner was obligated to and did complete a study, in consultation with the City Traffic Engineer and Planning Department of possible long range improvements for regional access to the Grove Street area. The study was to include alternatives to reduce cut through traffic on Grove Street and Lower Falls and existing and future impacts from the Riverside MBTA station and Route 128 ramps onto Grove Street. That study was filed with the City.

Until reading the recent Planning Department memorandum earlier this week, we were unaware of the MBTA 2010 written negative response to the City’s request in furtherance of condition no. 5 of our Special Permit. It is interesting to note that similarly, the developer/petitioner was obligated (in conditions number 10 and 11 of the Special Permit) to discuss the possibilities of constructing a pedestrian walkway starting on our property, then over MBTA and then MDC property to the Charles River; the walkway and access to it would have been open for the users of the site and the general public from dawn to dusk. Access was denied by the MBTA. As well, in condition number 11 there was a requirement, if approved by the MBTA, for the developer/petitioner to construct a pedestrian walkway from our site to the MBTA Riverside Station platform which walkway and access to it would be open to the users of the site and the general public. This would have allowed pedestrians a shorter route to the platform. That request was also denied by the MBTA. Thus, the roadway connection concept option no longer exists, and the other two special permit obligations, albeit unsuccessfully, were satisfied, and certificates of occupancy were issued. The plans for each of those former possibilities were included in the Special Permit Plan set for Riverside Center.

Our 275 Grove Street redevelopment project is very successful. Our City of Newton fiscal 2012 tax bill is \$1,837,176.00. Our high valuation and resultant tax bill is rooted in our ability to attract high quality tenants. And that is due in great part to the ease of our tenants

Alderman Marcia T. Johnson  
April 11, 2012  
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to access from and egress to Route 128. Our DEIR Peer Review Analysis indicates that tenant attraction may be seriously diminished by the proposed redevelopment. The proposed project's new traffic signals and other proposed mitigations may add delays and increase travel time for Riverside Center traffic from and to Route 128, and cause our driveways to be blocked by congestion.

Thus, we have read the current version of the proposed new zone with a view toward our future planning and options should a redevelopment of our parcel be necessary as a result of negative impacts from a development on the Riverside MBTA station. We are comfortable that the new zone would allow us the opportunity to redevelop our property into another sustained economically viable project should that become necessary. Our site is approximately 11.3 acres, abuts the Charles River, is near public transportation, and fronts on a Scenic Road, thereby meeting all of the threshold requirements for a rezoning of our site to allow us by special permit to reconfigure and re-tenant the structure to include housing, retail and not just office uses. Peak traffic hours would be different.

We apologize for the lateness of this letter. However, we have just been able to digest the final version of the zone map amendment and the MBTA's 2010 letter. As a significant taxpayer, and an immediate abutter to the Riverside MBTA Station, we are disappointed that, although there is no legal obligation to do so, neither the potential developer of the Riverside MBTA station or the City has engaged us to discuss issues and impacts in a way similar to the way all parties collaborated in 1997, thinking about immediate and future site specific and neighborhood impacts and planning during that 1997 rezoning and redevelopment special permit process. If a similar process could take place we feel a good zoning map amendment and responsible redevelopment could be created on the Riverside MBTA site that sustains and recognizes our prior special permit and significant commercial asset.

Alderman Marcia T. Johnson  
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We look forward to working with you as the zoning and project proceeds.

Sincerely,



John Conley  
Vice President  
Portfolio Management

cc: Mayor Setti Warren  
Robert Rooney  
Candace Havens, Director of Planning & Development  
Eve Tapper, Chief Planner  
Board of Aldermen  
John Lojek, ISD Commissioner

**Petition #400-11 and #400-11(2)  
April 17, 2012**

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

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 transit-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*; and

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

WHEREAS, such controls and incentives are in the public interest and further the objectives of the City's *Comprehensive Plan*; and

WHEREAS, this proposal provides a new zoning district for Mixed-Use Development and no land will be placed in this zone until the Board of Aldermen approves a map change;

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

1. *By re-designating the current Section 30-13(f) as Section 30-13(h); re-designating 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) Establishment and purpose of the Mixed-Use 3/Transit-Oriented District.***

***(1) Purpose.*** The purpose of the Mixed-Use 3/Transit-Oriented District is to allow the development of a mixed-use center on a parcel of no less than nine (9) acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's *Comprehensive Plan*, particularly the Mixed-Use Centers and Economic Development Elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.

***(2) Allowed uses.*** In the Mixed-Use 3/Transit-Oriented District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Section 30-13 Table A, subject to the development controls of Section 30-13(g) for developments of 20,000 square feet of gross floor area or more, the density and dimensional controls of Section 30-15, and the parking requirements of Section 30-19.

<b>TABLE A: PRINCIPAL USES <sup>1</sup></b>	
Uses similar to or accessory to the following, as determined by the Commissioner of Inspectional Services <sup>2</sup>	
Accessory Parking	BR
<b>Mixed-Use Development</b>	
• Mixed-Use Development if gross floor area exceeds 20,000 square feet, per section 30-13(g)	SP
<b>Category A</b>	
• General office, including but not limited to research and development, professional offices, , business incubator, and similar uses	BR
• On the ground floor	SP
• Medical offices	SP
<b>Category B</b>	
• Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise	BR
• Up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop off	BR
• Up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• Eating and drinking establishments	BR
• up to 5,000 square feet of gross floor area	BR
• More than 5,000 square feet of gross floor area	SP
• Retail banking and financial services	SP
• Automated Teller Machines	BR
• Car-sharing services, car rental, bike rental, electric car-charging stations that reduce reliance on single-occupancy vehicles	BR
• Health club	BR
• On the ground floor	SP
• Place of entertainment and assembly, theater	SP
• Lodging, hotel, motel	SP
<b>Category C</b>	
• Multifamily dwelling (a building containing three or more dwelling units)	BR
• Live/work space or home business	BR
• Single-room occupancy dwelling or single-person occupancy dwelling	SP
• Assisted living or nursing home	SP
<b>Public and Community</b>	
• Community use space	BR
• Day care (adult or child)	BR
• Place of religious assembly	BR
• Government offices or services	BR
• Park or garden	BR
• Nonprofit or public school	BR
• Rail or bus terminal	BR
• Public parking	BR
• Library or museum	BR
<b>Prohibited</b>	
• Drive-in business, manufacturing, sales of motor vehicles, care wash, gas station or motor vehicle service station, fast food establishments as defined in section 30-1	

<sup>1</sup> A use listed in Table A is permitted as of right in the Mixed-Use 3/Transit-Oriented District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Aldermen in accordance with the procedures in section 30-24.

<sup>2</sup> Any use determined to be similar to a use listed in Table A shall be subject to the same level of review as the use to which it is similar. An accessory use is only allowed if the use to which it is accessory is allowed, as shown in Table A.

(g) **Development by special permit in the Mixed-Use 3/Transit-Oriented District.** Land and buildings in the Mixed-Use 3/Transit-Oriented District may be used for any of the purposes authorized in 30-13(f)(2). Notwithstanding section 30-13(i), any development that proposes an aggregate gross floor area of 20,000 or more square feet among all buildings within the Development Parcel shall require a special permit for a Mixed-Use Development, which is defined to include a Development Parcel combining a residential use with at least two other principal uses listed in Table A as allowed by right or by special permit, in accordance with the procedures provided in section 30-24. Any proposed Mixed-Use Development shall comply with the following provisions and the provisions of sections 30-15(v) and Table 3, 30-24(c)(7), 30-24(c)(8), 30-24(c)(9), 30-24(i), 30-24(j), and 30-24(f).

**(1) Establishment of a Development Parcel.** The area developed under a special permit by this section must be organized into a Development Parcel as defined in Section 30-1. The Development Parcel may contain more than one lot and/or a portion of a lot together with any easement areas located on adjacent parcels of land. The provisions of this Zoning Ordinance shall apply to the Development Parcel as it exists on the date that the 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. After the grant of a special permit per Section 30-13(g), the ownership may be further divided (subject to the establishment of an organization of owners defined in (3) below) and any interior lot lines shall be disregarded for zoning purposes. The Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the resulting Development Parcel is not less than nine (9) acres in size and does not create or expand any nonconformities.

**(2) Intensity of development.** The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A, and a community use space. The square footage in each category shall not exceed the maximums listed below, except, where approved by special permit in accordance with the procedures provided in section 30-24, the maximums may be adjusted by up to 10% in each category, so long as the total gross floor area of all uses, excluding accessory parking, does not exceed 580,000 square feet:

- a) Category A shall not exceed 225,000 square feet (excluding offices incidental to residential, retail and/or community uses), the majority of which must be contained within one structure;
- b) Category B shall not exceed 20,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the commissioner of inspectional services;
- c) Category C shall not exceed 335,000 square feet not to exceed 290 dwelling units.

**(3) Organization of Owners.** Prior to exercise of a special permit granted under this section, an organization of all owners of land within the Development Parcel, except for owners of land subject to easements benefiting the Mixed-Use Development, shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the city or its representatives regarding compliance with the zoning ordinance. The organization shall serve as the liaison between the city and any owner, lessee, or licensee within the Development Parcel governed by a special permit granted under section 30-13(g). 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 special permit for a Mixed-Use Development, 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 the organization of owners to assure continued compatibility of the uses and activities within the Development Parcel and its

neighbors during and after construction. Membership of this advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

2. By adding a new Section 30-15(v) as follows:

(v) **Mixed-Use Developments in the Mixed-Use 3/Transit-Oriented District.** Any development permitted by special permit per section 30-13(g) must meet the following requirements and the requirements of Table 3. The Board of Aldermen may grant a special permit per section 30-24, including section 30-24(i), to allow exceptions to the by-right dimensional standards of the Mixed-Use 3/Transit-Oriented District, provided that the requirements of this section are met and no dimension exceeds those allowed in Table 3 for the Mixed-Use Development Special Permit.

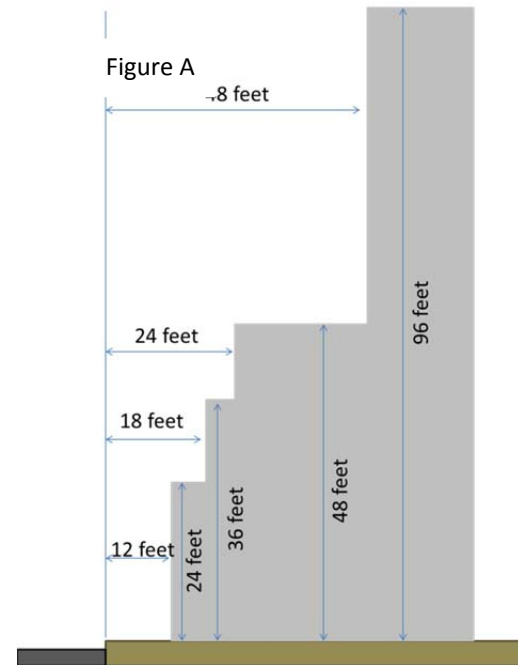
(1) **Setbacks.** Any structure or building must be set back a distance equal to at least half the height of that structure or building from any lot line, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a state instrumentality, the setback may be zero feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks (as illustrated in Figure A). In accordance with the procedures provided in Section 30-24, the board of aldermen may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

(2) **Beneficial Open Space.** At least 50% of the beneficial open space required by section 30-15, Table 3 for a Mixed-Use Development must be freely open to the public.

(3) **Exclusion of Public Structures from Zoning Requirements.** Any portion of the Development Parcel for the proposed development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, including, 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;
- ii. Minimum lot area; or
- iii. Floor Area Ratio.

(4) **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.





3. By adding the dimensional requirements for the Mixed-Use 3/Transit-Oriented District to Table 1 and Table 3 of Section 30-15 as follows:

**Table 1:**

Zoning District	Minimum Required Lot Area	Lot Area per unit <sup>1</sup>	Frontage	
MU3/TOD	9 acres	1,200	80	SEE TABLE 3 for other dimensional controls

**Table 3:**

Zoning District <sup>11</sup>	Max. # of Stories	Bldg. Ht <sup>12</sup> (ft.)	Total Floor Area Ratio	Gross Floor Area/ Site Plan Approval (SF)	Threshold by Special Permit (Gross Floor Area; SF)	Min Lot Area (SF)	Lot Coverage	Beneficial Open Space	Front (feet)	Side (ft.)	Rear (ft.)
MU3/ TOD											
As of Right	N/A	36	1.0	10,000-19,999	20,000	9 acres	N/A	N/A	15 <sup>9</sup>	10	15
Mixed-Use Development Special Permit, per 30-13(g) <sup>13</sup>	N/A	135	2.4	N/A	N/A	9 acres	N/A	15% <sup>13</sup>	½ bldg. ht. <sup>13</sup>	½ bldg. ht. <sup>13</sup>	½ bldg. ht. <sup>13</sup>

13. See sec. 30-15(v) for additional dimensional requirements for developments within the Mixed-Use 3/Transit-Oriented District.

4. By adding new sections 30-24(c)(7), 30-24(c)(8), 30-24(c)(9), 30-24(i), 30-24(j) as follows (and renumbering all the others):

(c)(7): **Project Phasing.** Any development subject to a 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 off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

(c)(8): **Adequacy of public facilities.** Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the petitioner as part of the special permit application process under 30-13(g) with the project scope determined by the director of planning and development and the commissioner of public works (peer reviews may be required, hired by the city and paid for by the petitioner):

- a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)
- b) Adequacy of water, sewer, and storm water infrastructure, including the water, sewer, and storm water analysis required in section 30-24(j)(8)
- c) Net fiscal impacts, including the fiscal impact analysis required in section 30-24(j)(9)

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within twelve months of full occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development comply with the special permit.

The special permit shall also require a bond or other security satisfactory to the director of planning and development and commissioner of public works to secure performance. The bond or other security may be forfeited, at the election of the director of planning and development and commissioner of public works, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

*(c)(9): Post-Construction Traffic Study.* A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual 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 commissioner of public works and director of planning and development to secure performance as specified below:

- i. Monitoring of vehicle trips for this purpose shall begin within twelve months of full occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. Measurements shall be made at all driveway accesses to the Mixed-Use Development and/or intersections studied in the pre-construction Roadway and Transportation Plan. The commissioner of public works may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the level of service projected by the pre-construction Roadway and Transportation Plan.
- ii. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Mixed-Use Development at all points studied in the pre-construction Roadway and Transportation Plan shall be measured by a traffic engineering firm retained by the city and paid for by the petitioner or successor.
- iii. Mitigations will be required if actual total number of vehicle trips to and from the Mixed-Use Development measured per subsection (ii), above, summed over the 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. Within six months of notification, the owner of the Mixed-Use Development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner and listed in the Mixed-Use Development special permit in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The commissioner of public works and director of planning and development must approve any mitigation efforts prior to implementation.

*(i) Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District.* In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of

Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

- (1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent 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.
- (2) *Housing, public transportation, parking, and utility infrastructure improvements.* The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas including:
  - a) Improved access and enhancements to public transportation;
  - b) Improvements to parking, traffic, and roadways;
  - c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
  - d) Public safety improvements;
  - e) On-site affordable housing opportunities, except where otherwise allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
  - f) Water, sewer, and storm water infrastructure improvements which increase capacity and lower impacts on the surroundings.
- (3) *Fiscal Impacts.* The proposed Mixed-Use Development has a positive fiscal impact on the city after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
- (4) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-Use Development and abutting parcels and streets, with consideration given 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
- (5) *Enhanced open space.* Appropriate setbacks, 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 proposed Mixed-Use Development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, whether or not they are currently available for public use, are provided and take full advantage of the unique opportunities of the site and its nearby natural features for use and enjoyment by the community at large.
- (6) *Excellence in place-making.* The proposed Mixed-Use Development provides high quality architectural design and site planning 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.
- (7) *Comprehensive signage program.* Notwithstanding the requirements of Section 30-20, all signage for the proposed Mixed-Use Development shall be in accordance with a comprehensive signage program developed by the petitioner and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the Mixed-Use Development and character of the streetscape.
- (8) *Pedestrian scale.* The proposed 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.
- (9) *Public space.* The proposed Mixed-Use Development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make 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.

- (10) *Sustainable design.* The proposed Mixed-Use Development at least meets the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).
- (11) *Adequacy of parking.* Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.
- (12) *Pedestrian and Neighborhood Considerations.* If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the petitioner has proposed feasible mitigation measures to eliminate such negative impact:
  - a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
  - b) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
  - c) Traffic signal additions, alterations, or roundabouts; and
  - d) Relocation or alterations to public transport access points.
- (13) *Accessible Design.* Consideration is given to issues of accessibility, adaptability, visitability, and universal design in development of the site plan.

(j) ***Additional Filing Requirements for Special Permit in the Mixed-Use 3/Transit-Oriented District***

In addition to the provisions of sections 30-23 and 30-24, petitioners for a grant of a special permit under section 30-13(g) shall submit:

- (1) *Conceptual Plans.* Prior to submittal of an application for a special permit in the MU3/TOD, which will include items (2) to (12) below, petitioners shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Committee shall provide a forum for a public presentation whereby the Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:
  - a) Project description, including project purpose or design rationale
  - b) Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;
  - c) Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to adjacent public property, whether or not it is currently available for public use, north arrow and scale; and
  - d) Other information as may be requested by city staff to perform a zoning review and preliminary impact analyses.
- (2) Computer model that shows the relationship of the project to its surroundings consistent with section 30-24(b);
- (3) 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 Section 30-24(i);
- (4) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (5) Site plans showing any by-right or zoning-exempt alternatives;
- (6) 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 commissioner of public works, director of planning and development, and peer review consultants. The Plan should include the following:

- a) 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.
  - b) 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.
  - c) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed-Use Development, documenting:
    - i) 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 commissioner of public works and director of planning and development;
    - ii) 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;
    - iii) The means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(8) and (9) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more; and
    - iv) The projected trip reduction adjustment based on “pass-by” trips for use in projecting impacts on street traffic volumes.
  - d) 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. Analysis shall include:
    - i) 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
    - ii) Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.
- (7) A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.
- (8) Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the commissioner of public works, director of planning and development, and peer review consultants and shall include the following:
- a) A study of the proposed project’s surface water runoff relating to the Charles

River and associated deep marsh system that shows how all storm water will be infiltrated on site, and which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:

- i) A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the Massachusetts Department of Environmental Protection's "Stormwater Management Handbook" and the City of Newton "Requirements for On-Site Drainage (Stormwater Management)";
  - ii) A drainage analysis based on the City's 100-year storm event of seven inches over a 24-hour period, showing how runoff from impervious surfaces will be infiltrated on-site;
  - iii) An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;
  - iv) If a connection to the city's drainage system is proposed, a closed circuit television (CCTV) inspection, prior to approval of this permit, which shall be witnessed by the engineering division; the petitioner shall provide the city inspector with a video or CD prepared by a CCTV specialist hired by the petitioner. A post-construction video inspection shall also take place and be witnessed as described above; and
  - v) An evaluation of hydraulic capacity of the downstream drainage system submitted to the engineering division to determine any impact to the municipal drainage system.
- b) A master plan and schedule of the sanitary sewer system improvements, including:
- i) A plan showing a reduction in infiltration and inflow into the sanitary sewer system to the satisfaction of the Commissioner of Public Works;
  - ii) A calculation of the life cycle cost of the proposed sanitary system;
  - iii) A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and
  - iv) A study showing how the developer will comply with the city's cross connection control program relating to sewer and drain pipes.
- c) A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.
- d) A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal that demonstrates compliance with Chapter 11 of the City Code and the Massachusetts Department of Environmental Protection Waste Ban. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes; and
- e) A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the city, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The petitioner must coordinate this test with both the fire department and utilities division; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be submitted to the fire department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the utilities director.
- (9) Fiscal impact analysis that includes new tax revenue and expenses related to, but not

limited to, school capacity, public safety services, and public infrastructure maintenance.

- (10) Proposed phasing schedule, including infrastructure improvements;
- (11) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon; and
- (12) Submittal in electronic form of 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 petitioner or its representatives to the Board of Aldermen and pertaining to the special permit application, unless the petitioner 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 website within a reasonable time after receipt.

5. *By adding a new Section 30-19(d)(22) as follows:*

- (22) Notwithstanding the other requirements of 30-19(d), by special permit from the Board of Aldermen in accordance with the procedures provided in section 30-24, the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the director of planning and development and peer reviewer at the petitioner's expense, if requested by the director of planning and development. Following the grant of a special permit under this section, no material change in the combination of uses, permitted either by right under section 30-13(f) or as part of a Mixed-Use Development special permit under section 30-13(g), shall be authorized until the petitioner submits a revised analysis demonstrating to the satisfaction of the director of planning and development 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.

6. *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 a Planned Multi-Use Business Development or a Mixed-Use Development (including any appurtenant easement areas benefiting a Mixed-Use Development) is located in connection with a special permit under Section 30-15(s) or 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 not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, 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, (ii) surface parking facilities or associated pedestrian circulation, (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 by adding the following Definition in Section 30-1 as follows:*

*“Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasias, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.”*

7. *By inserting a new Section 30-5(a)(4) as follows:*

(4) 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.