

CITY OF NEWTON
IN BOARD OF ALDERMEN
ZONING & PLANNING COMMITTEE REPORT
MONDAY, SEPTEMBER 24, 2012

Present: Ald. Johnson (Chairman), Ald. Baker, Swiston, Yates, Danberg, Kalis, Lennon, and Sangiolo; also present: Ald. Hess-Mahan, Albright, Linksy and Fuller

Staff: Seth Zeren (Chief Zoning Code Official), Candace Havens (Director of Planning & Development), James Freas (Chief Planner Long Range), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), David Olson (Clerk of the Board)

#60-10(2) ALD. HESS-MAHAN proposing that Chapter 30 sections 30-15(s)(10) and 30-24 be amended to substitute a requirement for a three-dimensional computer model for the option of providing a scaled massing model for special permit applications in the Planned Multi-Use Business District (PMBD), per Section 30-15(s)(10)a), and for commercial and/or multi-family development with a gross floor area of greater than 20,000 square feet, per Section 30-24(b) in order to facilitate compliance with recent amendments to the Open Meeting Law and that Sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [08-06-12 @11:59AM]

ACTION: **APPROVED SUBJECT TO SECOND CALL 7-0**

Please refer to the Planning Department memo of September 21, 2012 for additional information

NOTE: Seth Zeren, Chief Zoning Code Official, addressed the Committee. He noted that the Planning Memo addressed the questions and comments that were raised at the Public Hearing on this item on September 10, 2012. Ald. Hess-Mahan noted that 3-D computer generated model for the Riverside project was created using Google Maps and it was not quite as useful as it could be. He, therefore, was looking for a different kind of model and liked the flexibility that allows the Planning Dept. to work with the petitioner to find the best solution.

The existing language notes that the petition must be received by registered mail by the Clerk's office and that is never how it has been done. Ald. Hess-Mahan proposes changing the language as it is very misleading. He proposed the following:

Replace the current Section 30-23(b) with the following:

(b) Applications. A written application for a site plan approval, on forms provided by the city clerk and accompanied by fifteen (15) sets of plans prepared as provided below, shall be submitted in accordance with the procedures of this section and the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval petitions by delivery or registered mail, return receipt requested, to the city clerk, who shall transmit such application to the board of aldermen and the department of planning and development. ~~If the application is submitted by delivery, the city clerk shall give the applicant a written receipt therefor, indicating the date of such submission.~~

Similar language is found in current Section 30-24(a) and should also be changed accordingly. Please refer to the September 28, 2012 Planning Department Memo for detailed language change

Ald. Baker thought there should be a Rules amendment that would be complimentary to this modification. A Rules change could take longer and he wondered if they should hold this item until the Rules change could take place. Ald. Hess-Mahan said that the Rules refer to the storage and submission of electronic digital format in the Clerk's office and Planning Dept. Mr. Zeren thought that it was probably not necessary. Ald. Baker said after the Law and Planning Departments reviewed this further, that a Rules change be docketed if necessary.

The Committee voted to approve this item subject to second call.

#150-09(7) DIRECTOR OF PLANNING & DEVELOPMENT proposing that Chapter 30 section 30-13 be amended to establish a Mixed Use 4 (MU4) District; that Section 30-15 be amended to create a new Section 30-15(w) and revised Table 1 and Table 3 providing dimensional standards for development in the MU4; Section 30-15(w) shall include specific standards and special permit criteria for height, residential density, setbacks, accessibility, street-level transparency, lobbies for low-activity uses, open space, and an incentive for including mixed-use residential dwellings; and that Sections 30-13(h) and 13(i) be renumbered and revised to include specific special permit criteria and allow shared parking and connections with adjacent lots. [08-06-12 @11:53AM]

ACTION: **APPROVED AS PRESENTED IN THE SEPTEMBER 21 PLANNING MEMO 8-0**

Please refer to the Planning Department memo of September 21, 2012 for additional information

NOTE: . Mr. Zeren noted that the Planning Department does recommend approving the rezoning map change. The language that has evolved over the past few months has captured all of the vision of the Joint Advisory Planning Group (JAPG) as well as the Comprehensive Plan. It helps bring the zoning ordinance forward and addresses the particular needs of this site and this village.

Philip Bram Way

In 1947, the city took the Austin St land for the purposes of the parking lot. Part of that Board Order was a provision that defines the legal encumbrances associated with Philip Bram Way such as easements and rights-of-access. Any development in the Austin St. lot couldn't occupy that right-of-access but could conceivably use it as part of their traffic pattern to provide access to a garage, etc. It still counts as part of the parcel, but an unbuildable part. Ald. Kalis asked that the RFP spell out this exception.

Street Setbacks

This is a good illustration of why the zoning text covers certain features like use and dimension but does not address the specific characteristics of this site. The Public Hearing raised questions about the setbacks and the text requiring a minimum front setback of 5 feet and maximum setback of 10 feet. The Planning Dept. is no longer recommending requiring that, but the spirit is still alive from a design perspective. The widening of sidewalks is encouraged but it could be part of the Special Permit, Design Review and RFP processes. Ald. Danberg said she felt the wider sidewalks was a very important goal. Ald. Baker said he was amenable to taking it out of the requirements, but wondered if it should be part of the Special Permit criteria. Ald. Yates said he would like it to be clear that the wider sidewalk would be used for some purpose, for example, for chairs. Ald. Baker said there was real value in and of itself in a deeper setback and that requiring that it be filled with chairs or tables was not necessary. Mr. Zeren said he felt the topic was addressed in revised Section 30-13(j) Special Permit, Building Size as follows:

In granting a special permit, the Board of Aldermen shall make a finding that the proposed site plan and building form is compatible with the neighborhood context, that the proposed project improves the pedestrian environment through design, creation of open space, and/or improvements to the public way, including plans for their maintenance and use, and that the proposed uses enhance the commercial and civic vitality of the vicinity.

Ald. Baker would like to add “including deeper sidewalks” after “creation of open space”. Mr. Zeren suggested “widening sidewalks” and Ald. Baker agreed with the language. He said one of the issues is that there should be consideration for deeper setbacks than is desired or permissible so as to produce a greater setback than zero feet in appropriate situations to get the sidewalk, light and air that a building setback provides. He would be happy to go back to a bright line definition if that was too complicated. Ald. Swiston agreed that she would like to encourage setbacks greater than zero. Ald. Danberg does not want to encourage things like a lawn in front of a building. Mr. Zeren said they don’t want to oversubscribe what is to be done with the open space on the sidewalk. Ald. Yates was concerned about achieving beneficial open space and not anything that could prove to be detrimental. He would add after “design” the words “additional setback from the sidewalk”. This is one way to improve the pedestrian environment. Ald. Baker agreed with Ald. Yates’ additional language.

Diversity of Housing Opportunities

This is part of the larger discussion regarding the provision for affordable housing and diverse housing type. It was noted in the Public Hearing that word housing was not included in the Statement of Purpose and that was an oversight by the Planning Department. This is being addressed by adding in Section 30-13(h)(1) d) Expand the diversity of housing options available in Newton. The use of the word “diversity” is being used advisedly. They are not saying it is restricted to affordable housing, it could include smaller units, and not just include an affordability spectrum but also on a building with an elevator, or is residentially close to the commuter rail, etc. It provides for a range of housing options. The current Zoning Ordinance in Section 30-24(f) requires 15% of units approved under a special permit to be affordable. The Austin St. RFP explicitly requires 25% as recommended by the JAPG and the Board of Aldermen. Mr. Zeren said that developers for Austin St. are encouraged to reach the 25%.

Lot Area Per Dwelling Unit

Mr. Zeren said this does not set the minimum size of a dwelling unit, it sets the maximum density on a parcel. Basically, it addresses a certain number of units per acre. For example, one could get about 64, 1200 square foot units on the Austin St. site. A provision is included for that to be modified by Special Permit. There were concerns that changing the number of units during the Special Permit process could impact a project and no longer make it viable. If the standard were reduced to 1,000 square feet, and therefore, 74 units, that might mitigate the need for changes in the process and lower the perception of risk. Ald. Kalis was concerned that 1,000 square feet was still too high and is too restrictive. He asked how the Planning Dept. decided on 1,000 square feet and Mr. Zeren noted that it was the recommendation made at the Public Hearing. The Planning Dept. had recommended 600-1,200 and the Committee asked them to go back up to the 1,200 square foot standard. The Planning Dept. is happy to entertain any recommendations between 600 and 1,200 square feet. The size of the units cannot be regulated, per se, because they cannot regulate the use of the interior space. Again, it is based on maximum density on a parcel. Ald. Baker wanted to be cautious with density as compared to other parcels in the city. He would not like to see more than 1,000 square feet as the maximum for a unit. Ald. Kalis asked if it would just be another hurdle for developers if they wanted to build a unit that was less than 1,000 square feet. Mr. Zeren noted that it could be an issue if they wanted to exceed 74 units on the parcel.

Commercial Establishment Size

Mr. Zeren stated that there was concern at the Public Hearing whether the 5,000 square feet limit on retail, service and restaurant establishments would make it more difficult to find tenants for the space. The Planning Department proposes keeping the 5,000 square feet limit because they noticed that most of what they've seen as active retail storefronts are under that limit. A larger format retailer is a different type of tenant that may not be appropriate to the site. They would like to see 5 or 6 retailers along a stretch of land instead of just one. It may potentially create a hurdle but they feel the risk is worth the reward. Ald. Danberg agreed that more establishments were favorable for the feeling they want for the area.

Bank Uses

Mr. Zeren said that based on many discussions, the Committee may no longer want to specifically restrict banks from being located on the street level. Significant retail foot traffic is generated by banks and the restriction may also increase developer's sense of risk. New commercial development is going to expect higher retail rent and banks are able to pay more per square foot. The Planning Department recommends allowing banks by right at street level, but keeping the special permit requirement for street level office space.

Ald. Danberg disagrees with the recommendation of the Planning Department. She feels that using the special permit process is the way to go to allow banks at street level. She also feels that some areas of the City are quite saturated with banks and banks follow banks into an area. Ald. Kalis agreed with Ald. Danberg. Mr. Zeren noted that the number and concentration of banks matter, but that number can be guided and controlled when property owners work together. There are a number of non-regulatory measures that can be more effective than

addressing the retail mix. When property owners come together they work to make the mix that will be the most beneficial for all of them and the village. Ald. Johnson said that there are several ways of controlling this issue. She feels the overall vibrancy of the village needs to be examined and is not a one size fits all solution. An overlay discussion would be advantageous. Ald. Baker said he is not ready to say banks can there by-right. He said they really do want to see a particular kind of street level mix. He proposed using this as a test period and if it didn't work it could be addressed. Ald. Kalis said he would like to see what is assumed for the economic model, for example, what a bank might pay compared to another type of retailer. He also feels that banks are good anchor tenants.

Ald. Albright thought that some chain stores might not be able to come in as tenants with the 5,000 square feet limit. Ald. Lennon agrees with the recommendation of the Planning Department. He agrees with Ald. Johnson and would like to have an overlay zone discussion. Three of the committee members preferred keeping this a special permit process and the remainder is in agreement with the Planning Dept. recommendation.

Building Heights and Setbacks

There was concern expressed at the Public Hearing that higher ceiling heights of more than 12 feet, as proposed, were needed for first floor retail use and 15-20 feet was not uncommon. Mr. Zeren said they wanted to avoid awkward building design due to zoning restrictions. A 15 foot first floor is a realistic expectation and provides for some flexibility in design. The Planning Department recommends increasing the height at which the stepback begins from 36 feet to 40 feet with the maximum height remaining at 60' overall.

Economic Feasibility

Mr. Zeren explained that a pro forma model is a tool that is used in the development analysis to determine the viability of a particular development proposal. In this case a fairly generic model is being used because the particulars are not yet known and this is broad stroke analysis. He presented a spreadsheet with the capability to model different financial scenarios. That spreadsheet was not available at the time of this report. This is an excerpt from the Planning Department memo on the topic of economic feasibility:

The question of whether the proposed zoning text prohibited economically viable development was raised in several comments. City staff has considered the financial feasibility of development on the site, including conducting a *pro forma* analysis in cooperation with the Economic Development Commission(EDC). The financial feasibility of development on this site will ultimately be strongly influenced by factors outside this proposed zoning text, including public amenities such as structured public parking or a greater percentage of affordable housing. Based on this analysis and the strong interest of developers in the site, staff is confident that the proposed zoning text allows for an economically viable development. A spreadsheet with the capability to model different financial scenarios was produced as part of the *pro forma* analysis work with the EDC. At the request of the Committee, staff will be prepared to demonstrate that model at the meeting.

Planning & Development Board

Candace Havens, Director of Planning and Development joined the Committee to give a summary of the Planning and Development Board's discussion. *Please refer to the report dated September 27, 2012 for more details.*

She reported that the Board supported the staff recommendations across the board. They also unanimously supported the map change.

Ald. Yates moved approval as presented by the Planning Department and the Committee approved the item unanimously.

#150-09(8) DIRECTOR OF PLANNING & DEVELOPMENT proposing a certain parcel of land located at 28 Austin Street in Newtonville identified as Section 24, Block 9, Lot 15, known as the Austin Street Municipal Parking Lot be rezoned to the Mixed Use 4 (MU4) District to allow a mixed-use development. [08-06-12 @11:53AM]

ACTION: **APPROVED 8-0**

NOTE: Ald. Yates was concerned with the disruption of parking during the construction period and the impact it would have on the area. Ald. Johnson said it was difficult at this point to answer that question. She did say that she would anticipate working with the Traffic Engineer to re-work parking in the area, just as they did with parking changes with the new Newton North High School. Ald. Baker said he recognized there certainly are concerns.

The Committee voted to approve this item unanimously.

#152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]

ACTION: **HELD 8-0**

NOTE: Ald. Baker said the general conclusion in the Planning Dept. memo is that there is a baseline of some parking requirements that they may be able to devise, and that they need a mechanism to vary the baseline on context. He does have some concerns, however, and believes it needs more time and attention. He moved to hold this item and the Committee voted unanimously to hold.

Respectfully Submitted,
Marcia Johnson, Chairman



Setti D. Warren
Mayor

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Candace Havens
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WORKING SESSION MEMORANDUM

DATE: September 21, 2012

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

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner for Long Range Planning
Seth Zeren, Chief Zoning Code Official 

RE: #60-10: Ald. Hess-Mahan proposing that sections 30-15(s)(10) and 30-24 of the City of Newton Ordinances be amended to substitute a requirement for a three-dimensional computer model for the option of providing a scaled massing model for special permit applications in the Planned Multi-Use Business District (PMBD), per Section 30-15(s)(10)a), and for commercial and/or multi-family development with a gross floor area of greater than 20,000 square feet, per Section 30-24(b) in order to facilitate compliance with recent amendments to the Open Meeting Law and that Sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen.

MEETING DATE: Working Session on September 24, 2012

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

EXECUTIVE SUMMARY

The Zoning and Planning Committee held a public hearing on Petition #60-10 on September 10, 2012. The current regulations require that applicants proposing large commercial or multi-family developments provide a physical model with a special permit application. Petition #60-10 seeks to replace the existing requirement with a 3D computer model. Petition #60-10 also seeks to make the site plan review and special permit procedures of the Zoning Ordinance and the Rules of the Board of Aldermen conforming through other changes to Sections 30-23 and 30-24. (See the Planning Department memorandum dated September 7, 2012 for more information).

Members of the public and the Board of Aldermen raised several important issues at the public hearing including:

- What level of details should be called out in the Ordinance to ensure the model provides a useful representation of the proposed development and the neighborhood context?
- Who should prepare or certify that the 3D model is accurate?
- Does a requiring a computer-based model create an undue burden on developers?
- Similarly, is a computer-based model accessible to the general public, including those who do not have access to computers or expertise in the type of software demonstrated?

Level of detail

The intent of this provision is to provide sufficient detail so those who view it are able to readily understand the relationship of the project to its surroundings. How this is carried out may vary depending on the scale of the project, complexity of the design, topography, and other considerations. As such, staff suggests that the level of detail needed be left to the discretion of the Planning Director and recommends adding the following text, excerpted below, to the requirements in 30-24(b).

“...a 3D computer-generated model including such details as necessary to show the relationship of the project to its surroundings at the discretion of the Director of Planning and Development...”

Certifying the model

The existing text requires the physical model be built by an architect, engineer, or land surveyor. Graphic representations of structures could be prepared not only by design professionals, but by graphic artists. The key consideration is whether they accurately depict the architect’s design. As such, Planning staff supports the recommendation made by some of the participants that the ordinance should not too closely specify who creates the model, but rather the ordinance should include a requirement that the model be submitted by a licensed professional to provide assurance that the model faithfully represents his or her design.

Burden on developers

The proposed 3D model is only required for large commercial developments that are already likely producing 3D models as part of their design process or community engagement process. The SketchUp software demonstrated at the public hearing is widely used in the design and architecture professions and developing a model as described is a relatively easy and inexpensive proposition, particularly in comparison to the current requirement to provide a physical model.

Public accessibility

City staff believes that an appropriate software format can be selected to ensure that the technology is widely accessible, free, and works on most computer systems. Staff is also committed to access for all interested parties. If this Petition is approved, Planning staff will work with the Information Technology Department to develop procedures and capacities to ensure accessibility. Access can be provided remotely by providing or linking to online instructions or tutorials on using 3D model software. For visitors to City Hall, software and current models can be loaded onto the computer kiosk in the City Hall Rotunda where customer service staff are available to assist them.

PROPOSED TEXT CHANGES**1. Replace the current 30-15(s)(10)a) with the following:**

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

a) A 3D computer-generated model consistent with section 30-24(b);

2. Replace the current Section 30-24(b) with the following:

(b) Contents of the Application. Each application for a special permit shall be accompanied by a site plan submission prepared in accordance with the provisions of section 30-23(b).

The applicant shall also submit a 3D computer-generated model, including such details as necessary to show the relationship of the project to its surroundings. The level of detail included in the model shall be at the discretion of the Director of Planning and Development. The architect of record shall certify that the model is an accurate representation of the proposed design. For any commercial and/or multi-family development with a gross floor area of 20,000 square feet or more a model shall be provided as follows: for a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the model shall show the proposed development, all abutting properties and abutters to such abutting properties; for a proposed development containing a gross floor area 50,001 to 100,000 square feet, the model shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater; for a proposed development containing a gross floor area in excess of 100,000 square feet, the model shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater. The model shall be provided to the City in a file format acceptable to the Director of Planning and Development, in consultation with the Clerk of the Board of Aldermen, the City Solicitor, and the Chief Information Officer.

3. Add the word "3D" to the current Section 30-24(j)(2), to read:

(j)(2) 3D computer-generated model that shows the relationship of the project to its surroundings consistent with section 30-24(b);

4. Replace the current Section 30-23(a) with the following:

(b) Applications. A written application for a site plan approval, on forms provided by the city clerk and accompanied by fifteen (15) sets of plans prepared as provided below, shall be submitted in accordance with the procedures of this section and the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval petitions by delivery or registered mail, return receipt requested, to the city clerk, who shall transmit such application to the board of aldermen and the department of planning and development. If the application is submitted by delivery, the city clerk shall give the applicant a written receipt therefor, indicating the date of such submission.

5. Replace the current Section 30-24(a) with the following:

(a) Whenever a special permit is required under the provisions of this ordinance, a written application for a special permit, on forms provided by the city clerk and accompanied by plans prepared as provided in section 30-23(b) shall be submitted in accordance with the procedures of this section and the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval petitions by delivery or registered mail, return receipt requested, to the city clerk, who shall transmit such application to the board of aldermen and the department of planning and development. If the application is submitted by delivery, the city clerk shall give the applicant a written receipt therefor, indicating the date of such submission. Whenever an application for a special permit is required under the provisions of this ordinance, site plan approval in accordance with section 30-23 shall also be required and an application for such approval shall be filed concurrently with the application for special permit.

6. Add the following to Section 30-24(c) and renumber the other subsections accordingly:

(c) Procedures.

- (1) As part of an application for special permit, an applicant must comply with the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval

RECOMMENDATION

The Planning Department believes that the proposed text above achieves the intent of Petition #60-10 and recommends that the item be advanced to the full Board of Aldermen for final consideration. Planning staff looks forward to addressing any remaining questions or comments.



Setti D. Warren
Mayor

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#150-09(7) & (8)

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Candace Havens
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WORKING SESSION MEMORANDUM

DATE: September 21, 2012

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

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner for Long Range Planning
Seth Zeren, Chief Zoning Code Official

RE: #150-09(7): The Director of Planning and Development proposing that section 30-13 be amended to establish a Mixed Use 4 (MU4) District; that Section 30-15 be amended to create a new Section 30-15(w) and revised Table 1 and Table 3 providing dimensional standards for development in the MU4; Section 30-15(w) shall include specific standards and special permit criteria for height, residential density, setbacks, accessibility, street-level transparency, lobbies for low-activity uses, open space, and an incentive for including mixed-use residential dwellings; and that Sections 30-13(h) and 13(i) be renumbered and revised to include specific special permit criteria and allow shared parking and connections with adjacent lots. A complete copy of the proposed text can be obtained from the Planning Department on the second floor of City Hall, or at 617-796-1120, or szeren@newtonma.gov.

#150-09(8): The Planning Department proposing a certain parcel of land located at 28 Austin Street in Newtonville identified as Section 24, Block 9, Lot 15, known as the Austin Street Municipal Parking Lot be rezoned to the Mixed Use 4 (MU4) District to allow a mixed-use development.

MEETING DATE: Working Session on September 24, 2012

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

EXECUTIVE SUMMARY

The Zoning and Planning Committee held a public hearing on Petitions #150-09(7) and #150-09(8) on September 10, 2012. These petitions propose the creation of a new Mixed Use 4 zone and the mapping of that zone onto the City-owned parking lot at 28 Austin Street. When the zoning status of the parcel is finalized, the City will release an RFP to solicit development proposals for a new mixed-use residential development on the site (see the Planning Department memorandum dated September 7, 2012 for a complete background). This memorandum addresses the comments and questions raised at the public hearing and where appropriate provides recommended changes to the proposed text.

ANALYSIS

Members of the public and the Board of Aldermen made many insightful comments and raised additional questions at the Public Hearing. Following the meeting, staff grouped the comments into the following major topics, discussed in detail below: the economic feasibility of development within the zone, the appropriateness of height and setback requirements, how to ensure viable street-level retail, and how to encourage affordable housing.

Site-specific vs. general mixed-use standards

Some comments focused on issues such as the future status of Philip Bram Way, the number and location of public parking facilities, and the ratio, design, and location of affordable housing units. The proposed zoning district focuses on the core standards for a MU4 zone, including regulation of allowed uses, setting a building design envelope, and specific criteria for granting special permits, that could apply to not only Austin Street, but in other appropriate sites. The JAPG report described a number of desired public amenities, including affordable housing, open space, and public parking as part of the overall vision for 28 Austin Street and since they are site-specific, are best addressed during the RFP; because the City owns the site it has greater latitude for specifying unique features that may not be applicable elsewhere.

Economic Feasibility

The question of whether the proposed zoning text prohibited economically viable development was raised in several comments. City staff has considered the financial feasibility of development on the site, including conducting a *pro forma* analysis in cooperation with the Economic Development Commission (EDC). The financial feasibility of development on this site will ultimately be strongly influenced by factors outside this proposed zoning text, including public amenities such as structured public parking or a greater percentage of affordable housing. Based on this analysis and the strong interest of developers in the site, staff is confident that the proposed zoning text allows for an economically viable development. A spreadsheet with the capability to model different financial scenarios was produced as a part of the *pro forma* analysis work with the EDC. At the request of the Committee, staff will be prepared to demonstrate that model at the meeting.

Diversity of housing opportunities

Several speakers felt that affordable housing or diverse housing opportunities should have a more prominent place in the proposed zoning text, given the importance of affordable housing the JAPG report. Planning staff has reviewed the proposed text and agrees that the Statement of Purpose should be revised to include a reference to housing. Staff recommends the following addition to the proposed Section 30-13(h)(1):

- d)** Expand the diversity of housing options available in Newton.

This addition broadly covers the goals of providing restricted affordable housing, naturally affordable housing (i.e. smaller units on dense sites), and different styles of housing (apartments and townhouses in addition to single-family homes).

At the public hearing, some expressed confusion over whether the proposed zoning district requires 25% affordable housing. The zoning district does not specifically call out a percentage of affordable housing because the current Inclusionary Zoning Ordinance in Section 30-24(f) requires 15% of the units approved under a special permit to be affordable; this provision would apply to projects that include housing if this zone is used elsewhere. The Austin Street RFP explicitly requires 25% as recommended by the JAPG and the Board of Aldermen.

Building height and setbacks

The proposed zoning district allows appropriate density to encourage pedestrian vitality and a diverse mixture of uses and housing. One commenter suggested that the 36-foot façade height to the required setbacks was too low to accommodate a first floor retail use and two floors of residential above and suggested that retail floor-to-ceiling heights range from 15 to 20 feet today, significantly higher than the 12 feet assumed in Newton's Zoning Ordinance. The 36-foot limit could make it difficult to stack two levels of residences over shops before stepping back, as has been envisioned. Planning staff has consulted with APA materials and concurs that a 15-foot $\pm$ first floor is a realistic expectation. Adding a 15-foot first floor to two 12-foot second floors would total 39 feet before stepping back, which makes sense structurally. Therefore, staff recommends increasing the height at which the stepback begins from 36 feet to 40 feet with the maximum height remaining at 60' overall.

Bank uses

Many features of the zoning text are intended to encourage an active and vibrant pedestrian environment. Several members of the public expressed concerns that a requirement for a special permit for banks located at street level may hamper the ability of a developer to lease new ground floor space and limit the range of tenants available. New development is also likely to require higher rents that banks are better positioned to afford, increasing the overall financial viability of development. In light of the recent discussion surrounding banks and similar uses in village centers, the Committee may no longer want to specifically restrict them from street level, since some banks attract significant retail foot traffic and more banks are increasing their hours of operation. Given the number of other public

benefits the Committee expects to see in a proposed development (public parking, affordable housing, open space, limited height, etc.), not being able to locate bank tenants at street level may negatively impact the overall development feasibility and increase developer's sense of risk. The Planning Department recommends allowing banks by right at street level, but keeping the special permit requirement for offices at street level.

Commercial establishment size

The proposed zoning district also includes a limit on the size of retail, service, and restaurant establishments to 5,000 square feet without a special permit. One person questioned whether these numbers would, in fact, add a barrier to the tenanting of commercial space. Planning staff recognize that this requirement could concern some developers and create a barrier to the reuse of the zone over time for larger format uses. On the other hand, it may also create an incentive to emphasize more numerous, smaller shops and other businesses. A visually diverse streetscape is an essential element of creating an attractive pedestrian environment in keeping with the vision for village revitalization and the statement of purpose for this zone. Planning staff reviewed several recent commercial development proposals and found that new retail construction typically assumes establishments smaller than 5,000 square feet. In contrast, a typical Walgreens or CVS is 10,000 -15,000 square feet in floor area. Therefore, the Planning Department recommends retaining the 5,000 square foot special permit threshold for business establishments.

Lot area per dwelling unit

The lot area per dwelling unit (DU) standard does not regulate the size of apartments, but rather the number of dwellings that may be located on a given piece of land (e.g., a lot area per DU requirement of 10,000 square feet per DU roughly equals four units per acre). The Committee heard from members of the public who were concerned that the proposed 1,200 square feet was too high a ratio given the desire to create diverse, affordable and "naturally affordable" housing and would result in an insufficient number of apartments to make the development viable. (Under the 1,200 square feet per DU standard, a maximum of 62 dwellings would be allowed on the Austin Street site without a special permit). The Committee has previously considered the possibility of reducing the lot area per dwelling unit below the currently proposed 1,200 square feet per DU. The Planning Department recommends that the standard could be reduced to 1,000 square feet per DU (as is allowed for multifamily buildings in the MR4 zone), with further reductions in density permitted by special permit as currently proposed. (Under the 1,000 square feet per DU standard, a maximum of 74 dwellings would be allowed on the Austin Street site without an additional special permit). No development on this site is likely to take place without some special permit requirement; however, developers may view the 1,200 square foot requirement as another source of risk that the number of dwelling units required to make the project feasible will not be approved during the special permit process.

Street Setback

The text presented at the public hearing included a minimum front setback of five feet to encourage the widening of sidewalks to make room for outdoor seating and an enhanced pedestrian environment for which sidewalks are currently too narrow to accommodate. However, this concern may be better addressed in the RFP due to its site specific nature. After considering possible applications elsewhere, a zero-foot setback may be more appropriate where there is no need for a wider sidewalk.

Philip Bram Way

Planning staff have been working with the Law Department and Engineering Division of DPW to find documents that specifically define the legal encumbrances associated with Philip Bram Way, such as easements and rights-of-access. No final determinations have been made as of this writing; however, the findings will not affect the zoning text or map change and will be included in the Austin Street RFP to prospective developers.

RECOMMENDATIONS

The Planning Department believes that the proposed zoning district will be an effective tool for guiding mixed-use development on the Austin Street site, elsewhere in Newtonville, and in other village centers where the Board of Aldermen deems appropriate. The Planning Department recommends the following for the proposed zoning district:

- Add a statement about providing diverse housing opportunities to the Purposes of the district
- Stepbacks begin at 40 feet instead of 36 feet
- Allow banks by right at street level; keep special permit requirement for offices at street level
- Discuss whether to require a special permit for commercial establishments over 5,000 square feet
- Lower the lot area required per dwelling unit to 1,000 square feet
- Reduce front setback to zero feet for MU4, but require five feet in Austin Street RFP

Staff recognizes the concern expressed at the public hearing that the zone should allow and encourage economically viable development that enhances the Village of Newtonville. It is impossible to remove all uncertainty about what the future holds for the Austin Street parking lot, either for the developer or for the City, but risks can be minimized. The Planning Department has consulted the Economic Development Commission, APA resources, and members of the Newton design and development community and believes that the proposed zoning text allows for viable and appropriate development.

ATTACHMENT A: Proposed zoning text amendments creating a Mixed Use 4 Zone

PROPOSED ZONING TEXT AMENDMENTS

Add the following definitions to Section 30-1: Definitions

- **Mixed-use residential building:** A building occupied by both residential and nonresidential uses.
- **Street level:** The level of a building the floor of which is nearest to the grade of the adjacent sidewalk.

Section 30-13(h) Establishment and purposes of the Mixed Use 4 District (existing 30-13(h), etc. to be re-lettered)**(1) Purposes.** The purposes of the Mixed Use 4 District are to:

- Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's *Comprehensive Plan*.
- Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.
- Allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community.
- Expand the diversity of housing options available in Newton.
- Promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community.

(2) Allowed uses. In the Mixed Use 4 District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Table B, below. In granting a special permit in accordance with the procedures of Section 30-24 for a use enumerated below, the Board of Aldermen shall make a finding that the proposed use will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed use fills a demonstrated need for the use within the vicinity, and that the proposed use is not inconsistent with the purposes of this Section, 30-13(h)(1) or the *Newton Comprehensive Plan*.

TABLE B: PRINCIPAL USES FOR THE MIXED USE 4 DISTRICT ¹	
Uses similar to or accessory to the following may be allowed as determined by the Commissioner of Inspectional Services ²	
Commercial	
• General office, including but not limited to research and development, professional offices, and medical office, above or below street level	BR
• At street level ³	SP
• Animal Services, including but not limited to sales and grooming and veterinary services; excluding overnight boarding	SP
• Retail sales establishments that are 5,000 square feet or less in area, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, art gallery, and general merchandize store	BR
• More than 5,000 square feet of gross floor area	SP
• Personal service establishments that are 5,000 square feet or less in area, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop-off	BR
• More than 5,000 square feet of gross floor area	SP
• Business service establishments that are 5,000 square feet or less in area, including but not limited to copying and printing establishments and shipping services	BR
• More than 5,000 square feet of gross floor area	SP
• Eating and drinking establishments with 50 seats or less	BR
• More than 50 seats	SP
• Open between the hours of 11:30 p.m. and 6:00 a.m.	SP
• Retail banking and financial services	BR
•	
•	
• Health club	SP
• Place of entertainment and assembly, theater, club	SP
• Lodging, including but not limited to bed and breakfast, hotel, motel	SP

• Open-Air Business	SP
Residential	
• Multifamily dwellings (a building containing three or more dwelling units) above street level	BR
• At street level	SP
• Live/work space or home business	BR
• Assisted living or nursing home	SP
Civic, Public, and Community	
• Community use space	BR
• Day care services for adults or children	BR
• Place of religious assembly	BR
• Government offices or services	BR
• Park or garden	BR
• Nonprofit or public school	BR
• Library or museum	BR
• Other uses allowed in Section 30-6	BR
Transportation and Infrastructure	
• Parking, public or accessory to an allowed use	BR
• Parking, non-accessory commercial	SP
• Car-sharing services, bike rental, electric car-charging stations	BR
• Public rail or bus station	BR
Prohibited	
Drive-in business, hospital, manufacturing, funeral home, sales of motor vehicles, car wash, gas station or motor vehicle service station, fast food establishments as defined in Section 30-1, personal storage warehouse	

¹ Uses listed in Table B are permitted as of right in the Mixed Use 4 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. Where more than one enumerated classification could apply to a proposed use, the most specific classification shall be employed; where the uses are equally specific, the most restrictive classification shall be employed.

² Any use determined to be similar to a use listed in Table B 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 B.

³ Street level as defined in Section 30-1; street-level entry lobbies permitted per Section 30-15(w)(5)

Add the following to Section 30-15, Table 1:

Zoning District	Minimum Required Lot Area	Minimum Lot Area per unit	Minimum lot Frontage	
Mixed Use 4	10,000	1,000	80	SEE TABLE 3 for other dimensional controls

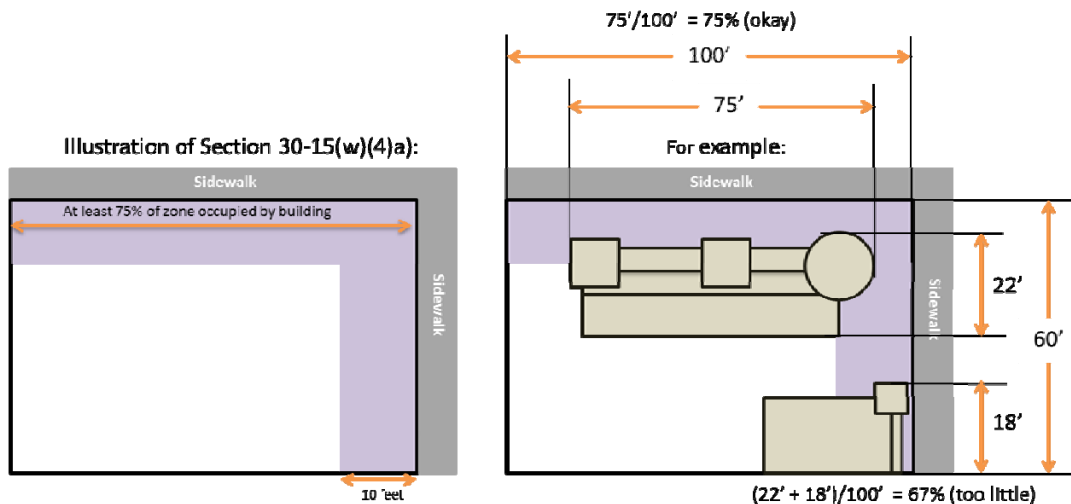
Add the following to Section 30-15, Table 3:

Zoning District	Max. # of Stories	Bldg. Ht. (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.)
Mixed Use 4											
As of Right ¹⁴	2	24	1.0	10,000-19,999	20,000	10,000	N/A	0% or 5% ¹⁴	0-10 ¹⁴	0 or 20 ¹⁴	0 or 20 ¹⁴
By Special Permit ¹⁴	4	48	2.0	10,000-19,999	20,000	10,000	N/A	0% or 5% ¹⁴	0-10 ¹⁴	0 or 20 ¹⁴	0 or 20 ¹⁴
Mixed-use residential, by right ¹⁴	3	36	1.5	10,000-19,999	20,000	10,000	N/A	0% or 5% ¹⁴	0-10 ¹⁴	0 or 20 ¹⁴	0 or 20 ¹⁴
Mixed-use residential, by Special Permit ¹⁴	5	60	2.5	10,000-19,999	20,000	10,000	N/A	0% or 5% ¹⁴	0-10 ¹⁴	0 or 20 ¹⁴	0 or 20 ¹⁴

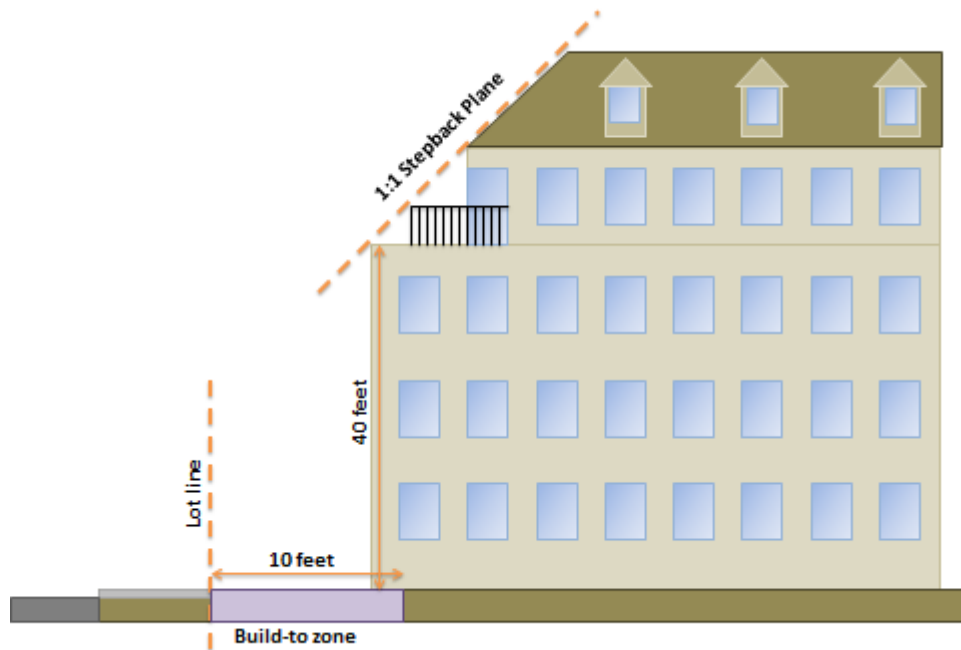
¹⁴ See sec. 30-15(w) for additional dimensional requirements for developments within the Mixed Use 4 Zone.

30-15(w) Design Standards for the Mixed Use 4 District. Notwithstanding any provisions of Section 30-15 to the contrary, buildings and structures in the Mixed Use 4 Zone shall conform to the following standards:

- (1) Height.** Buildings in the Mixed Use 4 Zone shall be a minimum of two (2) stories and shall conform to the limits for building height and stories established in Section 30-15, Table 3. The Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24 to allow up to four (4) stories and forty-eight (48) feet of building height by finding that the proposed structure(s) is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of Section 30-13(h)(1).
- (2) Mixed-Use Residential Incentive.** Buildings that meet the definition of Mixed-Use Residential Buildings per Section 30-1 shall conform to the specific limits for building height and stories established in Section 30-15, Table 3. The Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24 to allow up to five (5) stories and sixty (60) feet of building height by finding that the proposed structure(s) is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of Section 30-13(h)(1).
- (3) Residential Density.** The Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24 to waive the lot area per dwelling unit requirement of Table 3 by finding that the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of Section 30-13(h)(1) than strict compliance with these standards.
- (4) Setbacks.** The Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24 to waive the following setback requirements by finding the proposed plan can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of Section 30-13(h)(1) than strict compliance with the following standards.
 - a) A minimum of 75% of the frontage of the lot facing a public way shall contain a building(s), the first floor façade of which is setback between zero and ten feet from lot line.



- b) No side or rear setbacks are required, except, where abutting a residential district, the required side and rear setbacks shall be no less than twenty (20) feet.
- c) Any portion of a building greater than 40 feet in height must be setback one foot from the adjacent lot line for each additional foot of height.



(5) Accessibility. The design of the building(s) and the site plan shall comply with the Americans with Disabilities Act and the rules and regulations of the Massachusetts Architectural Access Board.

(6) Transparency and Entrances. Commercial uses in a Mixed Use 4 Zone must meet the following requirement. The Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24 to waive these requirements by finding the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of Section 30-13(h)(1) than strict compliance with the following standards.

- a) There shall be at least one entrance every fifty feet of building frontage facing a public way.
- b) A minimum of 60% of the street-facing building façade between two feet and eight feet in height above the street-level floor must consist of clear windows that allow views of indoor space or display areas.
- c) Display windows used to satisfy these requirements shall be changed and maintained to create an active window display; any illumination of the display shall be internal to the façade of the building.

(7) Lobbies for low-activity uses. Section 30-13, Table B, permits office uses at street level by special permit only. Entryways and lobbies at street level are allowed for office uses occurring above or below street level subject to the following requirements:

- a) Any dedicated entranceway and lobby space for such uses may not exceed a total of fifteen (15) linear feet of an exterior building wall and 400 square feet of gross floor area.

(8) Open Space. Parcels greater than one acre in area shall provide beneficial open space totaling no less than 5% of the total lot area. Parcels smaller than one acre in area are encouraged to provide and maintain attractive landscaping where it enhances the public realm, environmental sustainability, and/or the appearance of the site.

Renumber Sections 30-13(h) and 13(i) to Sections 30-13(i) and 13(j) and revise the new Sections 30-13(i) and 13(j) as follows:

~~(h)~~ (i) Site Plan Approval, Building Size. In all Mixed Use Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with Section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot. However, nothing herein prohibits phased development of a property, shared open space, pedestrian or vehicular connections between parcels, shared parking between the parcel(s) and other parcels in the vicinity, and/or similar design features that are in keeping with the vision for the subject parcel in the Comprehensive Plan and supporting documents.

~~(i)~~ (j) Special Permit, Building Size. In all mixed-use districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with Section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to Section 30-23. In granting a special permit, the Board of Aldermen shall make a finding that the proposed site plan and building form is compatible with the neighborhood context, that the proposed project improves the pedestrian environment through design, creation of open space, and/or improvements to the public way, including plans for their maintenance and use, and that the proposed uses enhance the commercial and civic vitality of the vicinity. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot. However, nothing herein prohibits phased development of a property, shared open space, pedestrian or vehicular connections between parcels, shared parking between the parcel(s) and other parcels in the vicinity, and/or similar design features that are in keeping with the vision for the subject parcel in the Comprehensive Plan and supporting documents.