

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY JANUARY 10, 2011

Present: Marcia Johnson, Greet Swiston, Amy Sangiolo, Brian Yates, Lisle Baker, Charlie Shapiro, Scott Lennon, Cheryl Lappin

Also present: Deb Crossley, Ted Hess-Mahan, Fischman, Albright, Linsky, Fuller, Danberg

City Staff: Jennifer Molinsky (Interim Chief Planner for Long Term Planning) Candace Havens (Interim Director of Planning and Development), Seth Zeren (Chief Zoning Code Official), John Lojek (Commissioner, Inspectional Services Department), Marie Lawlor (Assistant City Solicitor), Brian Lever (Senior Preservation Planner), Rebecca Smith (Committee Clerk)

FAR Working Group: Alan Schlesinger, Tom Greytak, Henry Finch, Chris Chu

Planning Board: David Banash, Scott Wolf, Howard Haywood, Joyce Moss

Historical Commission: David Morton, Zachary Blake

#18-11 HIS HONOR THE MAYOR requesting the confirmation of Candace Havens as the Director of Planning and Development, effective January 1, 2011 pursuant to Section 3-3 of the City Charter. [12/23/2010 @ 4:49PM]

ACTION: **APPROVED 8-0**

NOTE: Ald. Johnson began the meeting by introducing Bob Rooney, Chief Operating Officer. Mr. Rooney presented a synopsis of the search that the Executive office has gone through to fill this position and they've concluded that no one would be better for the job than Ms. Havens, whom he noted holds all the necessary skills and characteristics necessary for the position of Planning Director; she demonstrates the management and planning capabilities desired, and has a strong focus on economic development. Following Mr. Rooney's presentation, Ald. Yates moved approval of the confirmation which the Committee carried unanimously.

A public hearing was held for the following item:

#142-09(6) INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT requesting to amend Chapter 30, §30-15(u) and TABLE 1 regarding Floor Area Ratio (FAR) to institute a new method of calculating maximum FAR for single and two family structures in residential districts based on a sliding scale tied to lot size and zoning district; to amend § 30-1 definitions of "gross floor area" and "floor area ratio" to

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at KCahill@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

include additional building features, accessory structures, and mass below first story; to amend § 30-1 to add definitions of “carport”, “porch,” “enclosed porch”, and “mass below first story”; to delete the reference to §30-15 Table 1 contained in §30-21(c) and replace it with a reference to §30-15(u); to determine a date, between six (6) and twelve (12) months from date of passage, that the above amendments will become effective; and to extend the expiration dates of §30-15(u) paragraphs 1, 2, and 3 so they remain in effect until such date that the above amendments become effective. [12/15/10 @ 4:37PM] (90 days to expire on 04/08/11)

ACTION: **HELD 8-0**

NOTE: Jennifer Molinsky, Interim Chief Planner for Long Term Planning, gave a thorough presentation on the proposed amendments, the process and findings of the FAR Working Group, the Planning Department’s analysis of the proposal, and the recommendation of the Planning Department (*presentation is attached at the end of this report*). After the presentation, Ald. Baker began the discussion by commending the quality of Ms. Molinsky’s presentation. He continued by clarifying the point that this proposed FAR limit is a limit on what is allowed as of right; it doesn’t prohibit anything from being built, but anything over the FAR limit would need to go through the special permit process. Ald. Hess-Mahan questioned whether the Planning Department did a study of special permits granted over the last year to see if those applications would be necessary under the new proposal. Ms. Molinsky responded by informing him that a study was done and that the majority, though not all, of the applications submitted would not be necessary under the new proposal. This new proposal is intended to give relief to homeowners looking to make small additions so that they do not have to go through the lengthy and costly special permit process.

Joyce Moss, Planning & Development Board Member, questioned whether the width of the street was taken into consideration when putting the proposal together. Ms. Molinsky responded by stating that many factors were taken into account including the topography but she doesn’t believe that road width was taken into account. Other members of the Planning Board, Scott Wolf and Howard Haywood questioned the need for the adjustment to FAR and FAR in general. Mr. Wolf questioned why, if there are other dimensional controls, do we need to have FAR instead of amending some of the other controls that exist; Mr. Haywood followed up by challenging the need for this amendment, stating that he believes this is an overreaction to the concern of “monster houses” in the 1990’s and that the larger homes still seem like they’d be able to put significant additions on to their pre-existing buildings. To address Mr. Wolf, Ms. Molinsky clarified that neither FAR nor the other dimensional controls should be used alone, that they merely complement each other and that together they create the desired effect for regulation. To address Mr. Haywood, Ms. Molinsky explained that in the current ordinance there is a significant bonus given; in the proposed ordinance the bonus is much reduced so larger lots will not be able to add any more capacity under the new proposal than they are able to currently. This proposal addresses constraints on small lots and is created with the intention of allowing small lots to have a little extra capacity so

that they are able to make modest additions and upgrades without going through the costly and time consuming special permit process.

Ald. Crossley also praised the presentation given by Ms. Molinsky as well as the immense work done by the FAR Working Group and the Planning Department. Her one remaining concern is equity. Though the FAR Working Group and Planning Department have done as much testing as could possibly be done, she is still concerned that this isn't lenient enough and that some people will still have to go through the special permit process for modest changes.

Ald. Baker noted that the challenge has always been to balance the rights and needs of the individual parcels with the impact that additions have on neighboring properties. Ald. Baker also shared his concerns about losing the less expensive housing in the City as those structures become more developed over time. He assured those present that the Committee has been consistently aware of the nature of the housing stock and if/how the proposal would affect it.

Ald. Johnson encouraged the Planning & Development Board members to join the Zoning and Planning Committee for their working session on the 24th for further discussion and also shared her opinion on Mr. Haywood's comment, saying that while she appreciates his point of view, regulation is necessary. Being the owner of a home in a more thickly settled district, she speaks first hand when stating that it is important to home owners on smaller lots that the capacity on neighboring lots be controlled. With that comment, Ald. Johnson opened the public hearing.

Phillip Herr, 20 Marlborough Street spoke first. Mr. Herr submitted a letter to the Committee with a few suggested changes to wording (*letter is attached to the end of this report*); all in all though, he supports this proposal and applauds the work that has been done to create it.

Marc Hershman, 162 Cynthia Road also applauded the work done but disagrees with the proposal. He shared his opinion that this will put further unnecessary restrictions on Newton resident's ability to manage the property that they own. He further shared that the difficulty this would create would cause homeowners to move out of the City and populate surrounding towns where regulations are less strict. Ald. Yates questioned that logic stating that the purpose of the proposal is actually to loosen restrictions for many homeowners. Ms. Molinsky and Commissioner Lojek addressed Mr. Hershman's concern that finishing attics and basements under this proposal would increase a property's FAR; they explained that finishing such spaces wouldn't increase a property's FAR because the space will be counted in the original calculation, finished or not. The proposal doesn't discourage finishing unfinished areas of the home at all. Commissioner Lojek asks the Committee to consider that some of the arguments that are being made are not legitimate.

Alan Schlesinger, 117 Westchester Road, commented on the necessity of FAR as one tool among many to provide regulation. He supports the idea that FAR should include not just habitable space but mass above grade, and shared that the most difficult part of this process is finding the right numbers. There has been an enormous amount of testing of the numbers proposed but we still won't know for sure what happens until we implement them and that's why the FAR Working Group has urged a tracking of the numbers and a mechanism for later review.

Anatol Zuckerman, 17 Noble Street Newton, MA addressed the Committee, stating that he is unsure whether or not to support the change. He does like that it gives some privilege to small lots since they are so constrained now, but he does not like that the proposal is based on the notion that the bigger the mass the worse the structure is. He stated that some of the most beautiful houses in Newton could not be built under current zoning which is meant to avoid monster homes; he says the monstrosity of a house is not the mass or size but rather the quality of the design. He proposes having method of regulation that doesn't depend on mass, but rather on maximum open space, which gives maximum allowable living space, through increased setbacks and increased height restrictions.

Jane Franz, of 12 Glastonbury Oval, supports the proposed changes, telling the Committee that she lives in a modest home on a modest lot and that being given the ability to add small structures without going through the permit process would be a great change.

Jay Walter, 83 Holbroke Street supports the proposed amendment and applauds the efforts of the Committee, the Working Group, and the Planning Department. He stated that the changes made in 2009 were not well thought out, but this body has analyzed a significant amount of data with this proposal and he is confident in the structure of the amendment; he stated that it is complicated but it's complicated because it is fair. His only concern is the definition of porches. He suggested that the definition should be structured around solid walls instead of just glass and screen.

Hearing and seeing no other individual wishing to speak, Ald. Johnson closed the public hearing. The working session for this item will take place on January 24th at 7:45pm in room 202 of City Hall.

#235-10 ALD. BAKER & YATES on behalf of the Newton Historical Commission requesting updates to §22-50, **Demolition of historically significant buildings or structures.**, to minimize inconveniences to homeowners proposing modest changes and to enhance protections for historic structures proposed for demolition, with specific amendments designed to (1) reduce the number of applications filed and allow smaller projects to occur without review; (2) establish a minimum period of delay for full demolition if the structure is found to be preferably preserved; and (3) extend the existing period of delay, as has occurred in other communities, for structures proposed for full demolition if the structure is found to be preferably preserved. [8/30/10 @3:19PM]

ACTION: **HELD 8-0**

NOTE: Ald. Baker introduced Brian Lever, Senior Preservation Planner. Mr. Lever presented his proposal to amend section 22-50 of the City ordinances- Demolition Delay: Demolition of Historically Significant Buildings or Structures. Mr. Lever proposes that, in order to continue to preserve historically significant buildings while also decreasing the amount of unnecessary applications submitted for minor projects, the following three changes should be made:

- 1) Increase the minimum percentage of a façade that's going to be altered, demolished, or covered to 50% from 25%

- 2) Establish a minimum delay period before issuing a waiver
- 3) Lengthen the delay period (currently 12 months) to 18 months for full demolition.

Increasing the minimum percentage of a façade to be altered or demolished would eliminate many of the applications pertaining to minor projects that homeowners are looking to complete and which also become a burden on Mr. Lever due to the volume of such applications. Establishing a minimum delay period before issuing a waiver and lengthening the delay period to 18 months would aid in the preservation of buildings as it would allow more time to reconsider demolition of preferably preserve structures. Often times during the delay the homeowner or developer sees that it may be cheaper or preferable to maintain the existing structure, allowing the community to keep a building with significance and character.

Upon completion of the presentation Mr. Lever answered questions from the Committee. Ald. Swiston asked for clarification for whether the delay travels with the property or with the owner. Mr. Lever replied saying that the delay is always attached to the property. Ald. Sangiolo asked Mr. Lever if being on the National Register protects a home; it does not. Ald. Shapiro inquired about the penalties should someone not comply with the ordinance; Mr. Lever informed him that the fine is \$300 per day until mitigation is reached.

Ald. Johnson then opened the public comment period. Commissioner Lojek addressed the Committee in support of loosening the application requirements. Our ordinance is so restrictive and increasing the percentage of a wall to be altered or demolished would eliminate the unnecessary review of many small projects. Additionally, Commissioner Lojek asks that the Committee think about the fact that buildings constructed just over 50 years ago have to go under review by the Historical Commission; this is entering an era of architecture that many would not necessarily consider to be preferably preserved, yet homeowners are still required to file for a delay which frustrates them and detains the permitting process for the City. Hearing and seeing no other individuals asking to speak, Ald. Johnson closed the public comment period.

Ald. Yates moved approval of the item which was withdrawn as some Committee members still have questions about the item. Ald. Yates then moved hold and requested that those members submit their questions to Ald. Baker, Mr. Lever, and himself. The working session for this item will take place on January 24th at 7:45pm in room 202.

Respectfully Submitted,

Marcia Johnson, Chairman

11 JAN 10 P 10:13

CITY CLERK
NEWTON, MA. 02159

NEWTON BOARD OF ALDERMEN ZONING AND PLANNING COMMITTEE

January 10, 2011
Public Hearing
Petition #142-09(6)

Overview

- Definition of FAR
- Background of FAR and FAR Reform
- FAR Working Group Process and Findings
- FAR Proposals
- Planning Department Analysis
- Planning Department Recommendations

Definition of FAR

FAR regulates the amount of gross floor area that can be built on a site

$$\text{FAR} = \frac{\text{gross floor area of building(s)}}{\text{lot size}}$$

Definition of FAR

- Current FAR limits for residential districts in Newton:
 - SR1 = .2 or .25 (depending on age of lot)
 - SR2 = .3
 - SR3 = .35
 - MR1, MR2, MR3 = .4

Definition of FAR

Examples

Zone	FAR Limit	Lot Size (sq. ft.)	Allowable GFA (sq. ft.)
SR2	.3	25,000	7,500
SR2	.3	10,000	3,000
SR2	.3	5,000	1,500
SR3	.35	25,000	8,750
SR3	.35	10,000	3,500
SR3	.35	5,000	1,750

Definition of FAR

- "FAR limit" – maximum FAR as defined in zoning
- "Allowable GFA" – maximum allowed gross floor area a house is allowed under FAR limits without a special permit
- "Actual FAR" – the FAR of an actual house, calculated based on gross floor area and lot size

History of Residential FAR in Newton

- Residential FAR limits adopted in 1997
- Result of concern about large houses being built on sites previously occupied by much smaller homes
- At the time of adoption, applied to:
 - New construction
 - Existing homes where more than 50% of the existing home was demolished

History of Residential FAR in Newton

Concerns arose about large, out-of-scale development made possible by:

- Exemptions from GFA (and therefore FAR)
- Large expansions made without regard to FAR under 50% demolition rule

History of Residential FAR in Newton

Recent ordinances regarding FAR:

- March 2009: 50% demolition provision eliminated; FAR made applicable to existing residences (Ord. Z-44); led to concerns about small additions
- August 2009: FAR bonus adopted for qualifying projects; sunsets Feb. 28, 2011 (Ord. Z-51)

FAR Working Group

• Appointed by President of Board of Aldermen and Mayor in 2009

- | | |
|---|------------------------------|
| • Treff LaFleche, Architect | • Tom Greytak, Homeowner |
| • Chris Chu, Architect | • Peter Sachs, Architect |
| • Henry Finch, Architect | • Alan Schlesinger, Attorney |
| • K. Edward Alexander,
American Society of
Architects, Emeritus | |

• Joined/ supported by staff of Planning Department,
Commissioner of Inspectional Services

Working Group Considerations

- Perception that FAR limits do not accurately reflect actual residential structures / neighborhoods
- Concern about exemptions from “gross floor area” (basement, attic, garage) creating undesirable design incentives
- Concern that FAR limits particularly constraining on small lots
- Concern that new construction reflect current usage and be in keeping with Comprehensive Plan

Working Group Process

- Field work and initial data analysis
 - Mapping FAR across City & field visits
 - Data analysis
 - Examples from ISD, Planning of specific cases
- Preliminary proposals & testing
- Final proposals

Working Group Findings

1. FAR's role is to regulate *above grade mass*

Distinct role from other dimensional controls

Dimensional Control	Regulates
Height limits, half story regulations	Building proportions
Lot coverage, open space requirements	Open space provision
Setback requirements	Placement of structure on lot, distance from abutters/street
FAR	Mass above grade

Working Group Findings

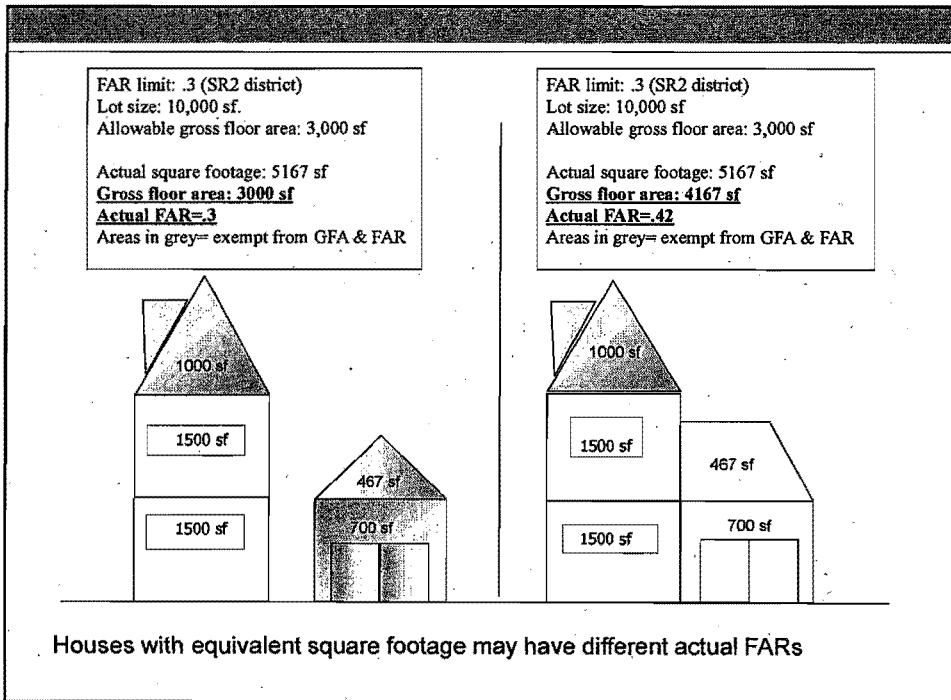
2. Addressing exemptions in definition of "Gross Floor Area" central to reforming FAR

- "GFA" currently includes: first/second stories, attached garages, enclosed porches if heated
- "GFA" currently excludes: basements, attics, detached structures

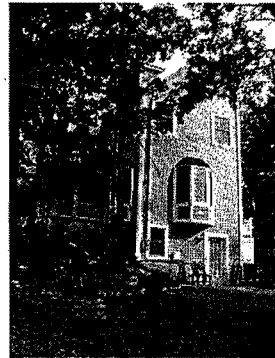
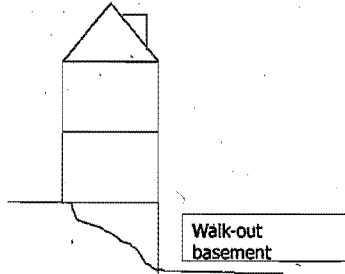
Working Group Findings

Exemptions from definition of Gross Floor Area lead to:

- Houses may be conforming to FAR limits but still build out of proportion to neighbors by using exemptions that add visible
- Houses with equivalent area may have different actual FARs
- Unintended design incentives



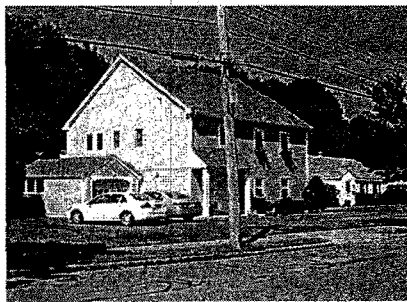
Basements



- Add significantly to above-grade mass but currently exempt

Attics

- Add significantly to mass above grade but currently exempt if less than 2/3 size of the floor below



Garages

Currently, detached garages are exempt but attached garages are not, providing incentive for:

- Basement garages with retaining walls
- Detached garages placed close to residence



Accessory Space

- Detached structures, space above detached garages is currently exempt



Balconies, porches

- Add to above grade mass, currently exempt if unheated



Working Group Findings

3. FAR is limiting on small lots

- Small lots are more likely to be constrained by FAR limits – either exceeding them already, or close built-out under FAR
- Median residential lot (for SF, 2F, and 3F in residential districts): **9,457 sq. ft.**

Table 1: Estimate of Current Nonconformities With Respect to FAR (assumes no use FAR bonuses)

ZONE	SR1		SR2		SR3	
	Parcels	Non-conforming	Parcels	Non-conforming	Parcels	Non-Conforming
ALL	1,599	26%	7,799	23%	6,217	15%
0-4999	2	100%	108	95%	436	57%
5000-6999	18	72%	655	70%	1,366	27%
7000-9999	83	75%	1,990	37%	2,652	10%
10000-14999	294	49%	3,314	14%	1,337	3%
15000-19999	489	27%	1,149	4%	261	0%
20000-24999	186	12%	308	1%	85	0%
25000+	527	0%	275	0%	80	0%

ZONE	MR1		MR2		MR3	
	Parcels	Non-conforming	Parcels	Non-conforming	Parcels	Non-conforming
ALL	3,115	23%	939	38%	43	37%
0-4999	433	61%	347	71%	8	75%
5000-6999	883	38%	282	30%	12	67%
7000-9999	1,028	11%	218	8%	15	13%
10000-14999	566	2%	83	5%	7	0%
15000-19999	127	1%	9	0%	1	0%
20000-24999	50	0%	0		0	
25000+	28	0%	0		0	

Working Group Findings

4. FAR is limited as a preservation tool:

- Zoning districts too “blunt” – more variation in City’s neighborhoods than can be accounted for in residential zones with single FAR limit
- FAR does not address aesthetics

Working Group Proposals - Definitions

1. **Amend definition of "Gross Floor Area" to include more elements of residential structures, eliminate exemptions**

Residential Building Element	Current Definition of GFA	Proposed Definition of GFA
Basements, crawl spaces, and other above-grade elements below first story	Excluded	Portions may be included
First and second floors	Included	Included
Atria/other vertical spaces	Included	Included
Space above the second story	Included if full third story; excluded if spaces meets definition of a half story	Portions may be included
Enclosed porches	Included only if heated	Included if enclosed by glass
Open porches, carports, port-cocheres	Excluded	Excluded
Attached garages	Included	Included
Detached garages and any space above	Excluded	Garages included; portion of space above may be included
Other detached accessory buildings	Excluded	Included, one shed up to 120 sf may be exempt

Working Group Proposals - Definitions

New definitions to support proposed changes:

- **Carport** : A one-story roofed structure permanently open on at least three sides and designed for or used for occupancy by a motor vehicle. For the purposes of this ordinance, a one-story port-cochere meets the definition of a carport.
- **Mass below first story**: For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

Working Group Proposals - Definitions

- **Porch**: A roofed projection that extends from the façade of a residential structure and that is neither heated nor air conditioned. A porch may share no more than two exterior walls with the residential structure. Railings or solid walls on the projecting facades of the porch may be no higher than 36" as measured from the finished porch floor; the remainder of these facades may be open to the elements or enclosed by mesh, glass, or similar material.
 - **Porch, enclosed**: A porch enclosed for any portion of the year by any nonpermeable material such as glass or a similar material.
 - **Porch, unenclosed**: A porch that at all times is either enclosed by permeable materials such as mesh or similar material or is unenclosed by any material.

Working Group Proposals - Definitions

New calculations in proposed GFA definition:

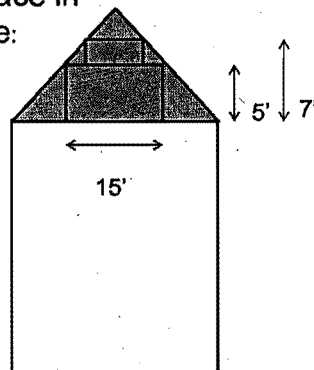
• Attic areas:

Any space above the second story, whether finished or unfinished, that meets all of the following criteria:

- Lies within the area of a horizontal plane that is five (5) feet above the floor and which touches the side walls and/or the underside of the roof rafters;
- Is at least seven (7) feet in any horizontal dimension, as measured within the area having a wall height of five feet or more;
- Has a minimum ceiling height of seven (7) feet on at least 50 percent of its required floor area; and
- Has a floor area of not less than 70 square feet as measured within the area having a wall height of five feet or more.

Working Group Proposals - Definitions

Meets dimensional requirements for habitable space in building code:

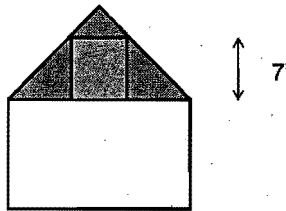


- Within plane that is 5' above the floor & touches rafters
- At least 7' in any horizontal direction
- Minimum ceiling height of 7' on at least 50% of floor area
- Floor area of 70 sq. ft. or more (measured on area that has at least 5' ceiling)

Working Group Proposals - Definitions

• *Space above garages:*

- Detached garages and any space above the first story of a detached garage that has a ceiling height of 7' or greater



Working Group Proposals - Definitions

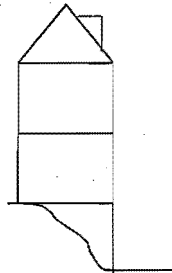
• *Mass below first story:*

A portion of mass below the first story, to be calculated as follows: The lesser of 50% of the floor area of mass below first story OR the following: X/Y * floor area of mass below first story, where:

X = Sum of the width of those sections of exposed walls below the first story having an exterior height equal to or greater than four (4) feet as measured from existing or proposed grade, whichever is lower, to the top of the subfloor of the first story

Y = Perimeter of exterior walls below first story

Working Group Proposals - Definitions

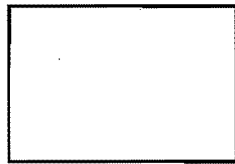


Example:

Assume basement perimeter is 100'

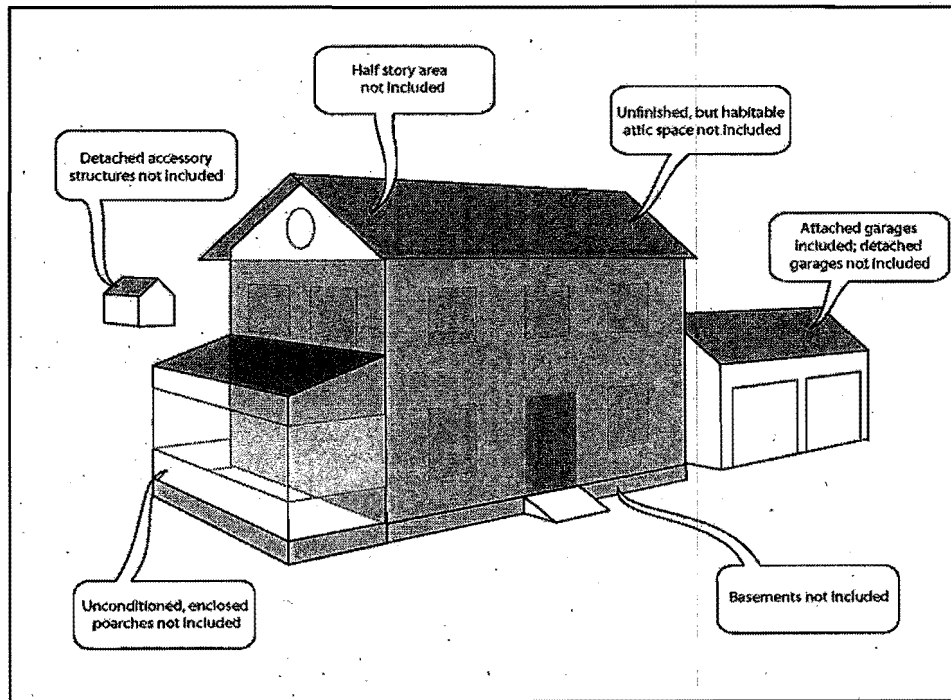
Assume 40' of that has height of 4' or more, then:

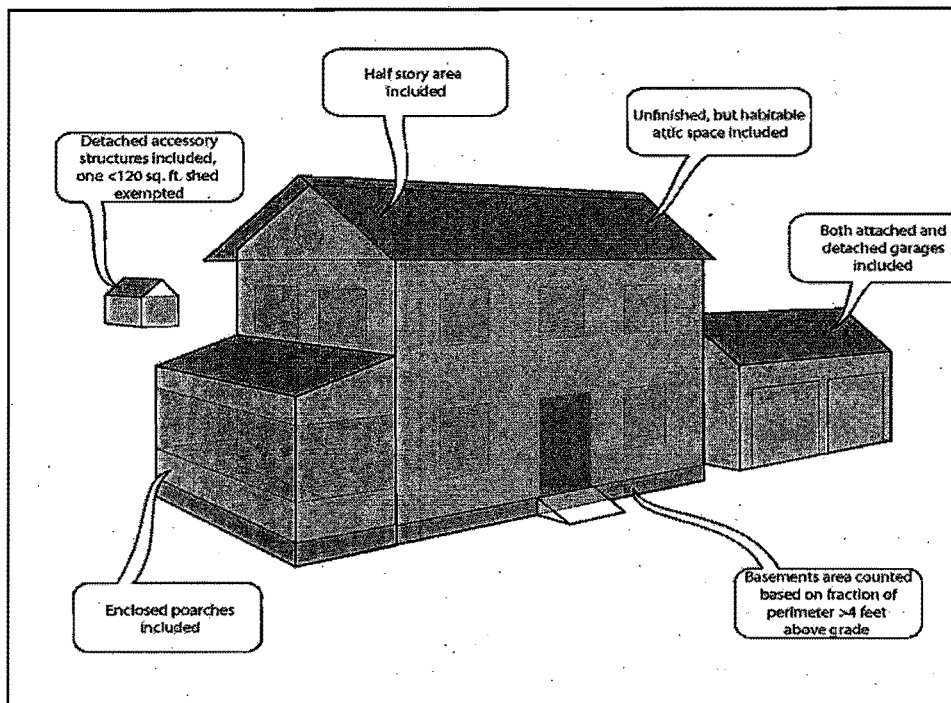
40/100 or 40% of basement floor area would count toward GFA



30'

20' If basement floor area=600 sq. ft., then 240 sq. ft. would count toward GFA





Working Group Proposals – FAR Limits

- 2. New sliding scale of FAR limits tied to lot size, zoning district, and giving modest increase in capacity to smaller lots**

Working Group Proposals – FAR Limits

Rationale for sliding scale:

- Changing definition of GFA means average house would see an increase in its actual FAR of .05; leaving FAR limits as is would put many into nonconformity
- Raising just by .05 still results in higher nonconformities and doesn't address constraints felt by smaller lots
- Tying to zone AND lot size provides a more nuanced solution and also addresses constraints felt by owners of small lots

Lot Size Category (sq. ft.)	FAR Range for Lot Size Category/Zone				
	SR1	SR2	SR3	MR1	MR2/MR3
0 to 4999	.46	.46	.48	.58	.58
5000 to 6999	.46 to .43	.46 to .43	.48	.58 to .53	.58 to .53
7000 to 9999	.43 to .33	.43 to .38	.48 to .41	.53 to .48	.53
10000 to 14999	.33 to .31	.38 to .33	.41 to .38	.48	.53 to .43
15000 to 19999	.31 to .28	.33	.38	.48 to .43	.43 to .38
20000 to 24999	.28 to .26	.33	.38 to .36	.43 to .38	.38
25000+	0.26	.33	.36	.38	.38

Working Group Proposals – FAR Limits

- Smaller lots have higher FAR limits; however, the higher limits are still multiplied by smaller lot sizes, so allowable GFA is not excessive:
 - In SR1 or SR2, $.46 * 5,000 \text{ sq. ft. lot} = 2,300 \text{ sq. ft. GFA capacity}$
- The FAR limits fall linearly as lot sizes rise, or, in some cases hold steady. As a result, larger lots never have LESS allowable GFA than any lot smaller.

Working Group Proposals – FAR Limits

- While ranges and formulas would be in Zoning Ordinance, Planning and ISD would also provide an **online calculator** that could give FAR limit for particular lot based on zone and lot size

Working Group Proposals – FAR Bonus

3. Modest bonus for building to new setback lines

- Working Group original proposal was .02 higher in all categories, zones
- In discussions with Planning Department, it was agreed that limits would be shaved by .02 and the **.02 reserved as a bonus** for new construction/additions on old (pre-1954) lots built to new side setback standards

Working Group Proposals – FAR Bonus

- Proposed bonus differs from what is offered today:
 - .05 above FAR limits for additions to existing homes
 - An extra .02 for additions to existing homes where new construction meets new setbacks or doesn't extend further toward old setbacks
 - .05 for new construction on old lots meeting new lot setback and lot coverage standards
- **Proposed bonus gives .02 for any new construction on old lots provided new portion MEETS new lot setback standards**

Working Group Proposals – Implementation

4. Careful implementation

- 6-12 month delay before proposal would take effect
- Online calculator and other support materials
- Data collection / monitoring by ISD/Planning

Analysis

Usability / enforceability:

- More complex to ascertain FAR limit for particular lot
- Regulations clearer, loopholes eliminated, making enforcement easier
- Ensure that FAR functions more closely to the goal of regulating *mass above grade*

Analysis

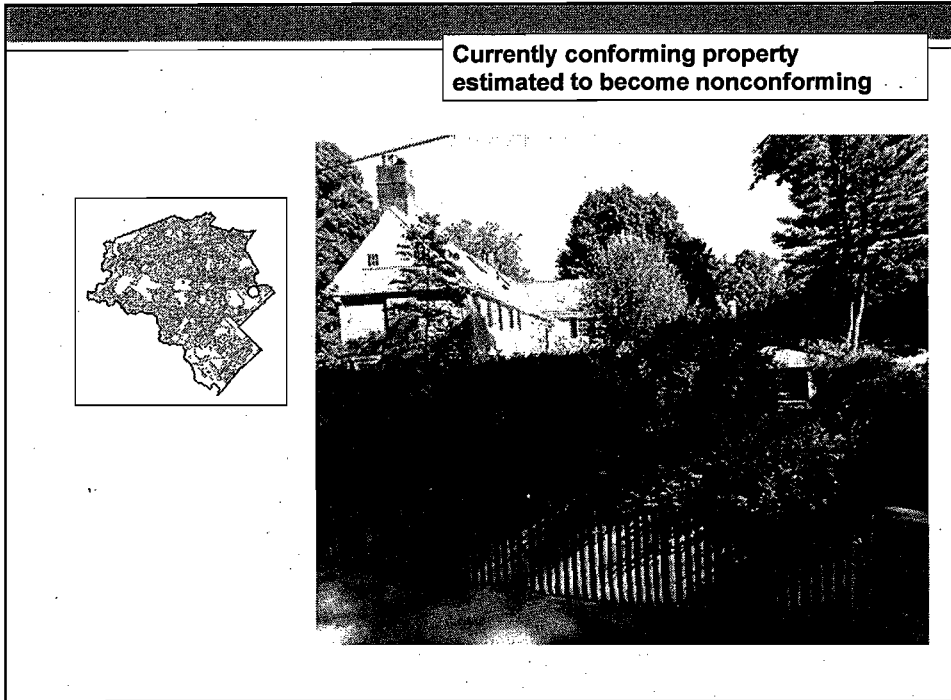
Design incentives

- Eliminates exemptions
- Neutral approach to design, but may still be incentives built-in
 - For example, no FAR incentive to detach garage under proposal, so more attached garages possible, though less incentive to put garage under house

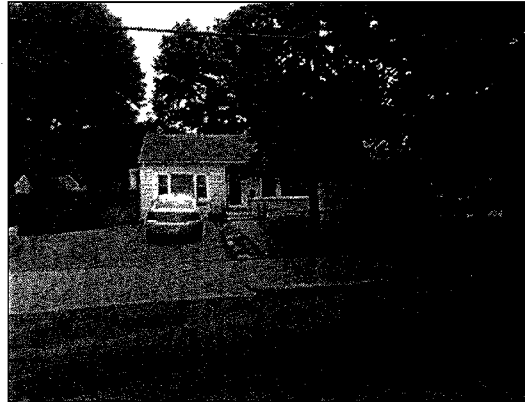
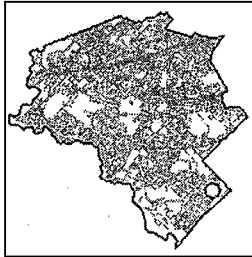
Analysis

Neighborhood impacts

- FAR is a poor tool to achieve neighborhood or housing preservation, but does effect both
- Will affect different housing styles differently
 - Existing houses without currently exempt elements will gain relatively more; existing houses with attics, detached garages, etc. may gain relatively less or become more constrained
 - Effect may be felt on neighborhood level as well



Proposal gives currently conforming property more developable capacity



Analysis

Neighborhood impacts (continued)

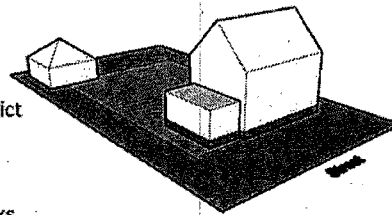
- Small lots
 - Significant or out-of-proportion development not expected on small lots
 - FAR rates may be higher on small lots, but actual GFA increase is small
 - May allow smaller houses to modernize but not change character completely

Warning: not directly comparable	COMPARED TO CURRENT ZONING, NO BONUS				COMPARED TO CURRENT ZONING WITH .05 BONUS			
	Lot Size	Total Number	Increase in Developable GFA Between Current and Proposed	Percent Undeveloped GFA Current Policies [excludes "free" elements]	Percent Undeveloped GFA Under Proposed Policies	Increase in Developable GFA Between Current and Proposed	Percent Undeveloped GFA Under Current Policies	Percent Undeveloped GFA Under Proposed Policies
SR1	ALL	1,599	41	38%	33%	(964)	46%	33%
	0-4999	2	NA	0%	0%	NA	0%	0%
	5000-6999	18	513	5%	17%	289	10%	17%
	7000-9999	83	280	4%	10%	73	10%	10%
	10000-14999	294	306	11%	12%	(249)	20%	12%
	15000-19999	489	421	22%	24%	(312)	33%	24%
	20000-24999	186	(80)	30%	23%	(1,229)	41%	23%
	25000+	527	253	51%	44%	(2,084)	59%	44%
SR2	ALL	7,799	42	31%	27%	(454)	39%	27%
	0-4999	108	64	1%	4%	39	2%	4%
	5000-6999	655	240	4%	10%	68	10%	10%
	7000-9999	1,990	249	12%	15%	(97)	21%	15%
	10000-14999	3,314	174	28%	26%	(402)	37%	26%
	15000-19999	1,149	(94)	40%	33%	(977)	48%	33%
	20000-24999	308	(133)	46%	38%	(1,372)	54%	38%
	25000+	275	(135)	58%	51%	(1,900)	64%	51%
SR3	ALL	6,217	200	38%	37%	(182)	45%	37%
	0-4999	436	167	8%	12%	17	14%	12%
	5000-6999	1,366	316	17%	22%	51	25%	22%
	7000-9999	2,652	384	32%	35%	13	39%	35%
	10000-14999	1,337	81	46%	41%	(505)	52%	41%
	15000-19999	261	(186)	58%	51%	(1,009)	63%	51%
	20000-24999	85	(173)	61%	54%	(1,327)	66%	54%
	25000+	80	(595)	76%	70%	(2,411)	79%	70%

Warning: not directly comparable			COMPARED TO CURRENT ZONING, NO BONUS			COMPARED TO CURRENT ZONING WITH .05 BONUS		
			Increase in Developable GFA Between Current and Proposed	Percent Undeveloped GFA Current Policies [excludes "free" elements]	Percent Undeveloped GFA Under Proposed Policies	Increase in Developable GFA Between Current and Proposed	Percent Undeveloped GFA Under Current Policies	Percent Undeveloped GFA Under Proposed Policies
Lot Size	Total Number							
MR1 ALL	3,115	148	34%	31%	(176)	40%	31%	
0-4999	433	252	8%	14%	100	12%	14%	
5000-6999	883	283	15%	19%	68	21%	19%	
7000-9999	1,028	288	27%	27%	(161)	34%	27%	
10000-14999	566	204	44%	40%	(365)	50%	40%	
15000-19999	127	35	58%	51%	(805)	62%	51%	
20000-24999	50	(720)	69%	60%	(1,811)	73%	60%	
25000+	28	(1,517)	78%	70%	(3,106)	81%	70%	
MR2 ALL	939	282	25%	27%	24	31%	27%	
0-4999	347	218	7%	11%	72	10%	11%	
5000-6999	282	350	17%	21%	57	24%	21%	
7000-9999	218	447	33%	34%	35	40%	34%	
10000-14999	83	399	46%	44%	(174)	51%	44%	
15000-19999	9	(564)	56%	46%	(1,305)	60%	46%	
20000-24999	0							
25000+	0							
MR3 ALL	43	276	21%	19%	(129)	27%	19%	
0-4999	8	349	3%	8%	99	6%	8%	
5000-6999	12	578	6%	8%	(43)	11%	8%	
7000-9999	15	231	19%	17%	(237)	27%	17%	
10000-14999	7	229	44%	39%	(322)	51%	39%	
15000-19999	1	(28)	28%	25%	(28)	28%	25%	
20000-24999	0							
25000+	0							

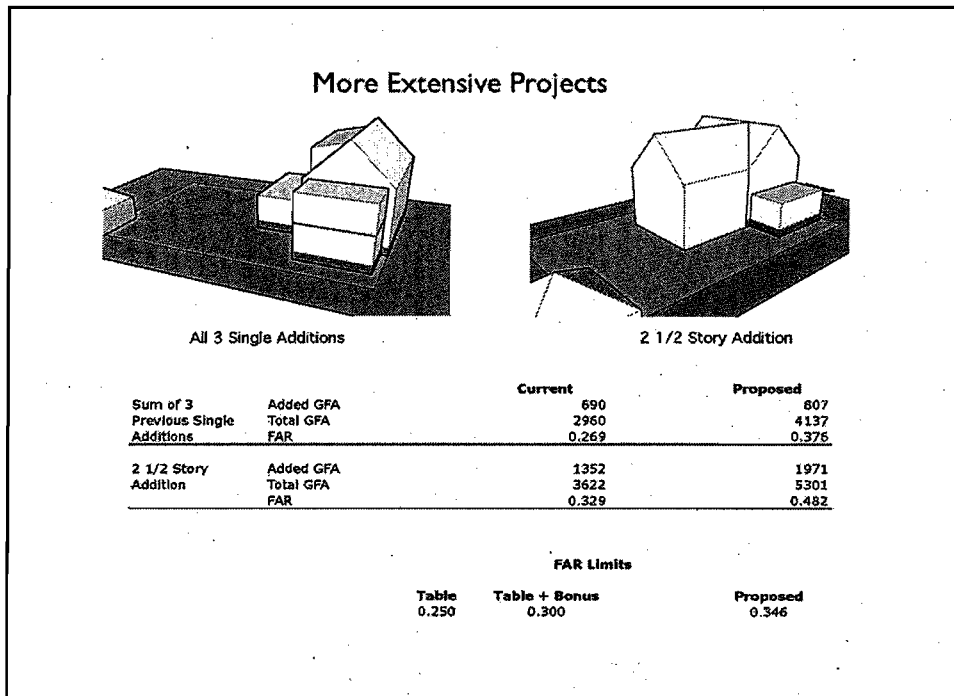
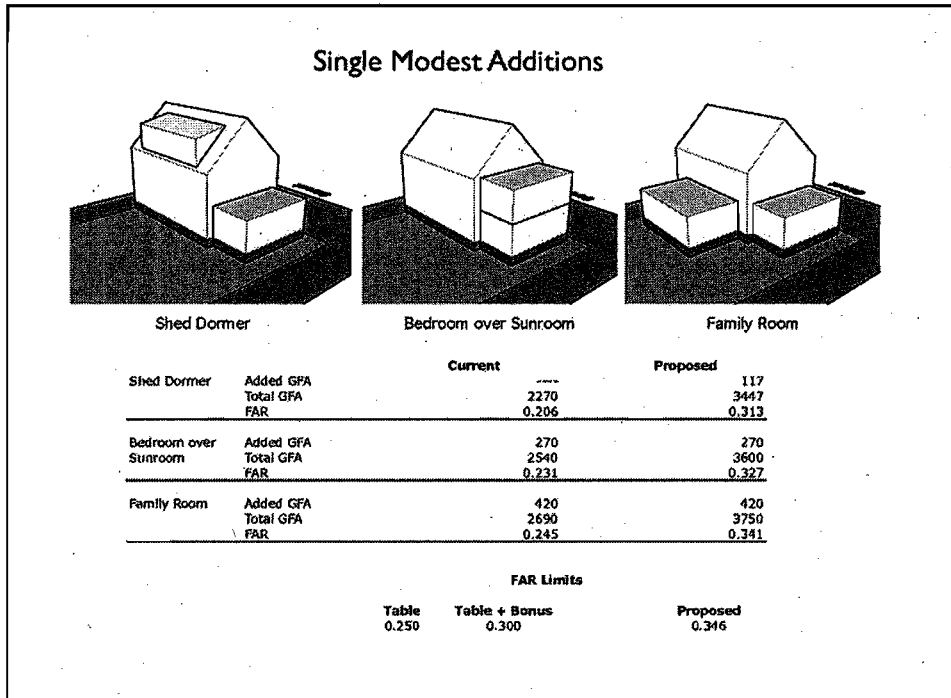
Example House and Lot

11,000 sq. ft lot (80' x 138') in an SR1 district
 Pre-1954 setback lines shown
 Garage subject to separate 5' setback



Additions will comply with Post-1953 setbacks

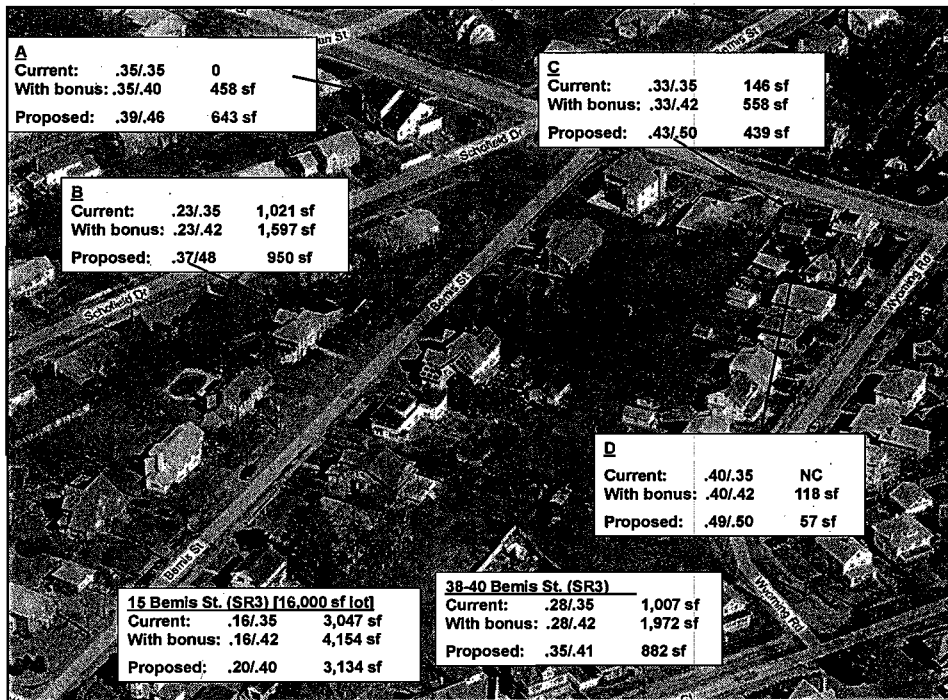
	Gross Floor Area	
	Current GFA	Proposed GFA
Basement	----	----
1st Floor	1000	1000
2nd Floor	1000	1000
3rd Floor	----	580
Sun Room	270	270
Garage	----	480
Total GFA	2270	3330
FAR	0.206	0.303
	FAR Limits	
Table	Table + Bonus	Proposed
0.250	0.300	0.346



Analysis

The effect of the FAR proposal will vary by lot depending on:

- What's there already – whether it exceeds FAR, is near FAR limits, or is well under
- How different the new calculation of actual FAR will be from the current – relates to how many elements of the house are currently exempt
- Whether or not the current house can use the current FAR bonus or not



Analysis

Nonconformity/ use of special permit to exceed FAR

- Lik ely reduce nonconformity rates but significant projects would still need special permit

	Lot Size Category (Sq. Ft.)	Total Number of Lots	Current Nonconformity Rate, Assuming No Bonus	Current Nonconformity Rate, Assuming .05 bonus for houses 10 or more years old	Proposal Nonconformity Rate
SR1	ALL	1,599	26%	14%	25%
	0-4999	2	100%	100%	100%
	5000-6999	18	72%	61%	39%
	7000-9999	83	75%	43%	45%
	10000-14999	294	49%	24%	50%
	15000-19999	489	27%	14%	24%
	20000-24999	186	12%	8%	22%
	25000+	527	0%	0%	9%
SR2	ALL	7,799	23%	12%	20%
	0-4999	108	95%	84%	78%
	5000-6999	655	70%	40%	41%
	7000-9999	1,990	37%	16%	28%
	10000-14999	3,314	14%	6%	16%
	15000-19999	1,149	4%	2%	10%
	20000-24999	308	1%	1%	7%
	25000+	275	0%	0%	2%
SR3	ALL	6,217	15%	8%	11%
	0-4999	436	57%	37%	42%
	5000-6999	1,366	27%	16%	20%
	7000-9999	2,652	10%	4%	6%
	10000-14999	1,337	3%	1%	4%
	15000-19999	261	0%	0%	1%
	20000-24999	85	0%	0%	4%
	25000+	80	0%	0%	0%

	Lot Size Category (Sq. Ft.)	Total Number of Lots	Current Nonconformity Rate, Assuming No Bonus	Current Nonconformity Rate, Assuming .05 bonus for houses 10 or more years old	Proposal Nonconformity Rate
MR1	ALL	3,115	23%	15%	19%
	0-4999	433	61%	47%	44%
	5000-6999	883	38%	23%	27%
	7000-9999	1,028	11%	5%	14%
	10000-14999	566	2%	1%	2%
	15000-19999	127	1%	1%	1%
	20000-24999	50	0%	0%	0%
	25000+	28	0%	0%	0%
MR2	ALL	939	38%	29%	31%
	0-4999	347	71%	59%	57%
	5000-6999	282	30%	19%	27%
	7000-9999	218	8%	6%	8%
	10000-14999	83	5%	5%	5%
	15000-19999	9	0%	0%	0%
	20000-24999	0			
	25000+	0			
MR3	ALL	43	37%	23%	40%
	0-4999	8	75%	75%	63%
	5000-6999	12	67%	25%	75%
	7000-9999	15	13%	7%	20%
	10000-14999	7	0%	0%	0%
	15000-19999	1	0%	0%	0%
	20000-24999	0			

Recommendation

Planning Department recommends adoption

- GF A definition eliminates loopholes, undesirable design incentives
- Sliding scale is nuanced, provides modest increases for smaller lots without overburdening neighbors
- .02 bonus provides incentive for stricter setbacks
- Preferable to other options studied (no increase in FAR limits, flat increase, other sliding scale approaches)

Recommendation

- Address FAR on rear lots before FAR reform would take effect



Philip B. Herr

(Home) 20 MARLBORO STREET, NEWTON, MA 02458 617-969-5367
 (Office) 447 CENTRE STREET, NEWTON, MA 02458 617-969-1805

11 JAN 10 2011
 13
 Fax 617-332-9499
 CITY CLERK
 NEWTON, MA. 02159

January 10, 2011

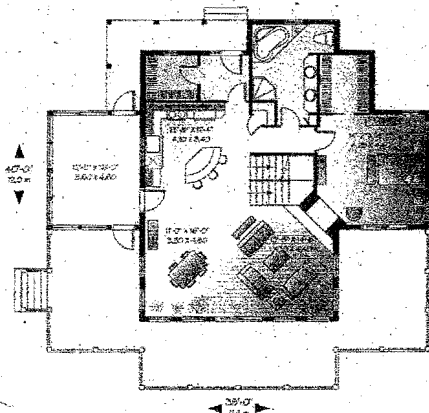
Newton Zoning and Planning Committee
 c/o Marcia Johnson, Chair
 City Hall
 Newton, MA

Petition #142-09(6) Residential FAR Amendments**Committee Members;**

The proposed amendments to Newton Zoning's FAR requirements for residential buildings in residential districts reflect a commendable effort by volunteer citizens, City staff, and your Committee to improve that much-discussed regulatory tool. The resulting proposal deserves approval not just because of the long hard effort put into it but more importantly because of the quality of the proposal.

The effort had a limited scope, and as a result the product has a limited scope, leaving unaddressed FAR requirements for other than single- and two-family dwellings out of the whole universe of uses, and for locations other than residential districts. Also unaddressed is how to apply FAR rules where a structure or lot is proposed for both one- or two-family use and some other use, such as a religious one. The unaddressed rules now look woefully inadequate to provide the clarity and fairness which those uses and locations deserve. It can be hoped that it will not be long before the remaining related topics are addressed, but it may be quite a while before anyone is ready to take on this subject again, given its history.

There are just a few wording concerns that should be resolved. First, the proposed definition of "Porch" appears to be regulating rather than defining when it states "A porch may share no more than two exterior walls with the residential structure." It would prohibit or unreasonably require some porches to be included in the gross floor area count because they were overlooked in crafting the words: see below for two perhaps unusual but not rare cases of "wrap around" or "farmers" porches sharing three walls.



The intent was more likely to not exclude from gross floor area any "floor area that is roofed and enclosed on three sides by walls, regardless of how permeable any enclosure might be." Substituting words such as those might resolve those problems.

Defining "porches" for exclusion from gross floor area, however, raises still other concerns, particularly when the roof or upper-floor supporting elements become so wide as to appear much like a wall. An alternative first sentence such as the following might deal with all of these concerns:

"Porch: A roofed structure with sides not more than 60% enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned."

Second, the listing of what "gross floor area" should include is necessarily a bit complicated and difficult to image. The following wording changes regarding what gross floor area shall include might help: they change no substance if I understand the proposal correctly.

The second sentence follows the precedent of the current first sentence of the gross floor area definition by speaking of the measurement being "taken within the perimeter of the outside walls," which leaves unclear whether the measurement is from the exterior face of that exterior wall, as is usual, or the interior face of it. The very commonly encountered language for that is to specify that "the measurement shall be taken from the exterior face of the exterior walls"

Finally, the indented outline portion of the definition might begin like this (changes redlined):

a. Gross floor area shall include:

- i. First and second stories;
- ii. Any ~~space~~floor area above the second story, whether finished or unfinished, that meets all of the following criteria:
 1. ~~It lies within~~below the area of a horizontal plane that is five (5) feet ~~above the floor~~it and which touches the side walls and/or the underside of the roof rafters.

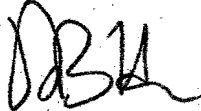
ADMINISTRATION

Imagining an hypothetical addition on my own house helped to better understand any burden that this proposal might impose of those proposing only a quite small addition. In about an hour I was able to determine that I could comfortably add more than 1,000 square feet to my Victorian house on a 5,500 square foot MR1-zoned lot on a hillside. If all I wanted was a 500 square foot bump for an exercise machine, determining eligibility was easy. My hope is that in such cases ISD will not require that I engage an attorney, a registered land surveyor, and an architect to document that the change fits the law. The amendment drafting helps by, for example, making clear that my basement won't count at all because nowhere does the foundation extend as much as four feet above grade. All I needed was a ruler. Computing the applicable portions of my attic will be a challenge for anyone not good at spatial visualization, a quality not universal even among land surveyors, but since my best estimate (taken sitting in my living room) left me with a

500 square foot margin for error I had no doubt about my determination that my exercise bump would fit.

If City staff including ISD can make it easy for folks to add small bumps without having to spend more on professionals than on construction, then this proposal may prove to be a real winner. Let me know if I can be of any further help.

Very truly,

A handwritten signature in black ink, appearing to read 'PBH', written over a horizontal line.

Philip B. Herr