

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY JANUARY 24, 2011

Present: Ald. Johnson (Chairman), Sangiolo, Lappin, Baker, Lennon, Shapiro, Yates, Swiston

City Personnel: Candace Havens (Director of Planning and Development), Marie Lawlor (Assistant City Solicitor), John Lojek (Commissioner, Inspectional Services Department), Rebecca Smith (Committee Clerk)

Planning and Development Board: Joyce Moss, Howard Haywood, David Banash

FAR Working Group: Alan Schlesinger, Chris Chu, Treff LaFleche

Historical Commission: David Morton

#26-11 HIS HONOR THE MAYOR submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to include a Mixed-Use Centers Element [01-07-11 @ 4:20 PM]

ACTION: **REFERRED TO PLANNING AND DEVELOPMENT BOARD (to be reported back by April 1, 2011)**

NOTE: Candace Havens, Director of Planning and Development, joined the table to discuss the item. She informed the Committee that the draft amendment is the result of a several month process by a group led by Mr. Phil Herr. This group looked at sites around the City that are large enough to be considered mixed-use and discussed the scope of what they'd like to see on those sites. Alderman Yates questioned if this proposal would mitigate the amount of lawsuits that are filed by neighboring businesses in the mixed-use district. Ms. Havens responded by stating that this process would involve neighbors from an early stage but there is no guarantee that this would prevent things getting tied up in the court system. This item must be reviewed by the Planning and Development Board before the Committee can vote on it; Ms. Havens requested that the Committee refer it to the Planning and Development Board with an April 1st return date. The Committee agreed on that date and voted unanimously to refer it.

Appointment by His Honor the Mayor

#19-11 RONALD C. LIPOF, 10 Hammond Pond Parkway, #101, Chestnut Hill, appointed as a member of the Economic Development Commission for a term of office to expire December 31, 2013. [12/28/2010 @ 9:47PM]

ACTION: **APPROVED 6-0 (Lappin not voting)**

NOTE: Mr. Ronald Lipof joined the table to discuss his appointment to the Economic Development Board. Mr. Lipof was raised in Newton and lives here currently. He wants to give back to the City and participate where sees he can add value. Over the past 25

years Mr. Lipof has advised businesses during their start up and crisis management phases. He's worked with these businesses to develop revenue models, fine tune deliveries of service, and look for economies of scales and efficiencies. Mr. Lipof has recently begun his own business which he's grown significantly from just a \$300 investment. He stated factors such as having the ability to look outside the box and make good partnerships as reasons for his accomplishments.

Ald. Yates recommended that Mr. Lipof encourage the EDC to look at the Main Street Program in Boston (a program focusing on business district revitalization) and see if it is applicable to the villages of Newton. Ald. Johnson noted that she'd love to see the EDC think about how to encourage different retail stores to open in the area so that our village centers aren't so repetitious; recently it seems that prime real estate in the village centers is being dominated by banks and nail salons. After these brief comments, Ald. Lappin moved approval of the appointment which carried unanimously.

Appointment by His Honor the Mayor

#20-11 JOYCE MOSS, 229 Franklin Street, Newton, appointed to the Economic Development Commission for a term to expire December 31, 2013.
[12/28/2010 @ 9:47PM]

ACTION: **APPROVED 7-0**

NOTE: Joyce Moss addressed the Committee. She has been a resident of Newton for 32 years. During those years Ms. Moss became a planner, eventually finding herself in village planning and then economic development. Ms. Moss sees this as an opportunity to serve the City where she can provide the most benefit. Ms. Moss shared that she likes the direction Newton has been moving in and the different efforts being made to redefine the use of certain properties, such as the Austin Street lot. Ms. Moss sees the EDC as being much more owned now than it used to be; she is impressed with the Mayor's interest in the EDC and the EDC's concern that they maintain a close relationship with him.

During her time as an Economic Development Specialist in Needham Ms. Moss' work often focused on the Needham Street Corridor and what kind of job potential existed there; Ms. Moss knows this area well and is open to discussing Ald. Yates' interest in creating a light manufacturing and foreign trade subzone in the area, which is not something that the town of Needham had considered during the time she was employed there. Ald. Yates also asked Ms. Moss if she is familiar with the Statutory EDC Industrial Corporation Enabling Act and, if so, if that's something she could see the EDC becoming. Ms. Moss is not familiar with the entire statute but she stated that corporations that have eminent domain and bonding capacity are more effective than advisory committees. She stated that one can't compare our EDC with those kinds of bodies, nor does she think that the City would be interested in making the EDC into something like that as those bodies are not just advisory.

Ald. Sangiolo inquired about whether Ms. Moss' appointment to the EDC will affect her seat on the Planning and Development Board. Ms. Moss responded by explaining that she can serve on both concurrently, but that it is her intent to prepare to leave the P&D Board as they search for a replacement. Ald. Shapiro and Ald. Lappin praised Ms. Moss as they've both worked with her in different capacities in the past.

After these last statements, Ald. Yates moved approval of the appointment which carried unanimously.

Appointment by His Honor the Mayor

#21-11 DARRYL SETTLES, 52 Hood Street, Newton, appointed to the Economic Development Commission for a term of office to expire December 31, 2013. [12/28/2010 @ 9:47PM]

ACTION: **APPROVED 7-0**

NOTE: Darryl Settles joined the Committee at the table. Mr. Settles has extensive background working in downtown Boston, specifically the South End. Mr. Settles spent 7 years on the MDC during Governor Weld's administration and currently serves on the Massachusetts Convention Center Authority Board, the Board of the Huntington Theatre, the Board of the MFA, and was on the Board for the Wang Center. Mr. Settles started out as an engineer who got into sales and marketing and eventually found himself in real estate development. Mr. Settles started in the South End in 1990. He owned Bob the Chef's, later started The Beehive, and has now opened a new restaurant called Darryl's.

Mr. Settles has played an active role in development throughout Boston and he'd like to continue that in Newton. He is particularly interested in developing more of a night life in this City. Newton has many residents who are looking for places to go in their own neighborhoods and would welcome new establishments so that they don't always have to drive downtown. Mr. Settles sees much opportunity for Newton Center as the village where a night life could be cultivated. When asked if he has enough time to be on this Board with the other Boards he serves on Mr. Settles said a definite "yes". With that Ald. Lappin moved approval which carried unanimously through the Committee.

#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 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: **APPROVED AS AMENDED 6-1-1 (Lappin opposed; Sangiolo abstaining)**

NOTE: The Committee began the discussion of the item by sharing their reactions from the public hearing. They were surprised and disappointed that the public did not recognize or listen to the value and the details of the proposed amendment. Because the public didn't absorb the true nature of the amendment, they were unwarrantedly critical of it. One particular misconception that Commissioner Lojek noted was that the public thinks that once they've maxed out their FAR they can't do any more additions or renovations, which is not so. The FAR limit is what's allowable by-right; a homeowner can always get a special permit for projects that would go above the limit.

Ald. Johnson accepted comments from two members of the public. She recognized Mark Hershman, 162 Cynthia Road, first, who shared the same concerns he did at the public hearing. Mr. Hershman believes that this amendment will create unintended consequences (i.e. garages to be built underneath and in the front of homes, flat roofs) and will drive people out of Newton. He believes that a less severe change could be proposed and adopted. Ald. Johnson then recognized Chris Utano, of Pine Cone Construction, Inc., who had submitted a memo to the Committee voicing his concerns. He believes that the FAR changes are going to significantly affect the design of buildings. He respectfully requested that they review his memo before making a decision.

The Committee determined that the implementation date (if it's approved by the full Board) will be October 15, 2011. The rationale is that the seven month lead time to implementation will give people time to complete the project proposals that they are currently in the process of planning and submitting without getting caught in the transition. Over these seven months the Committee will work with the Planning Department and ISD to generate a communication education process so that the public learns exactly what is going to take place and how they'll be affected. Materials will be created and a system to distribute them effectively will be determined. Furthermore, the Planning Department and ISD will collect and analyze data from building permit applications submitted from now until the implementation to see how they are affected by the new method of calculating FAR.

The Committee approved the item as amended, with an effective date of October 15, 2011 and with the changes that Phil Herr suggested in the memo he submitted, which is attached to this report.

#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 (A) reduce the number of applications filed and allow smaller projects to occur without review; (B) establish a minimum period of delay for full demolition if the structure is found to be preferably preserved; and (C) 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: **235-10(A) APPROVED 7-0**
 235-10(B), (C) HELD 7-0

NOTE: The Committee began by deciding to separate this item into three sections so that they may hold three votes. Brian Lever, Senior Preservation Planner, began discussing section A. The goal of this section is to decrease the amount of unnecessary applications submitted. To accomplish this, Mr. Lever proposes an increase to the percentage of a wall altered or demolished from 25% to 50%. Changing this requirement would make it easier on homeowners to do small projects without having to apply for review. Seeing as no Committee members had any further questions or concerns about this section, Ald. Yates moved approval, which carried unanimously.

The Committee moved onto section B which in the draft ordinance states that a minimum four month delay must occur before a waiver is filed for or granted. Ald. Lennon questioned the four month delay and why it is necessary. Mr. Lever responded by stating that during the four month delay the homeowner would not be allowed to come before the commission with the same proposal; this, hopefully would encourage them to change their minds about total demolition and generate a different proposal. Mr. Lever stressed that the four month delay only applies to *total demolition* proposals.

Whether a four month initial delay is the best tactic to keep people from repeatedly submitting the same denied request in a small window of time was debated. Commissioner Lojek proposed that instead of just having the initial four month delay we could have a system where a homeowner is always required to wait three months between being denied and resubmitting the same request. Ald. Yates requested that, should this get passed, the final draft ordinance should state that a homeowner may come before the commission during the delay if they've devised an alternative proposal which entails preserving the home.

The Committee then moved on to section C. President Lennon questioned the extension to 18 months, stating that the current 12 month wait seems to be an adequate amount of time, and is actually quite a long time for a homeowner who is planning construction. Alderman Swiston voiced a similar concern. She is uncomfortable with imposing a community benefit on homeowners without the homeowner being compensated at all. She cited New Hampshire's policy of giving a tax break to owners of historic buildings. Hearing the concerns of the Committee, Mr. Lever asked if they would be more willing to support an extension to 18 months just for buildings on the National Historic Register. This was not discussed at length though seemed to carry some support. Ald. Yates then moved to hold sections B and C until Mr. Lever, the docketers, and Marie go back to the drawing board on these sections and present some new ideas to the Committee the next time the item is taken up.

Respectfully Submitted,

Marcia Johnson, Chairman

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NEWTON MAYOR'S MIXED USE TASK FORCE

City of Newton, Massachusetts
Setti D. Warren, Mayor
Philip B. Herr, Committee Chair
Candace Havens, Interim Director Dept. of Planning & Development
Mixed use Task Force Website

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37
159

DRAFT MIXED-USE CENTERS ELEMENT

October 8, 2010

Mayor Warren appointed a 20-member Mixed Use Task Force in June, 2010, and asked the members to prepare a draft modification of the 2007 *Newton Comprehensive Plan* to deal with mixed-use centers. The following is the final Task Force draft for such a modification, structured as a new element to be inserted into that *Plan*.

Following review by the Mayor and any resulting changes having been made by the Task Force, the Draft will be sent to the Board of Aldermen for its review and potential adoption. Prior to adoption, the Draft will be reviewed and reported on by the Planning and Development Board, probably following a public workshop on it. After receipt of the Planning and Development Board report a public hearing will be held by the appropriate committee of the Board of Aldermen, following which the full Board will vote on approval or not of the modification.

Two additional items have been prepared by the Mayor's Task Force as informational materials as of this same date but are not intended for adoption into the *Comprehensive Plan*. "Collaborative Impact Assessments" expands upon material in the draft element regarding impact studies to be made early in the project design process, bringing together those proposing the development, City staff and officials, and citizens from the vicinity and beyond. "Illustrative Performance-Based PMBD" sketches how the existing City Zoning governing mixed-use centers might be modified to reflect the proposed *Comprehensive Plan* modification and "Collaborative Impact Assessments."

- 1. Vision Page 1
- 2. Strategy 1
- 3. Designing Mixed use 2
- 4. Access and Transportation 5
- 5. Housing in Mixed use 8
- 6. Finance and Mixed use 10
- 7. Mixed-use Guidance Process 13

DRAFT**MIXED-USE CENTERS**

"Plans are nothing – planning is everything."

Dwight Eisenhower

1. VISION

The livability of Newton has been greatly enhanced by its traditional mixed-use village centers. The future livability of the City can be further enhanced through the creation of a number of well-located and well-designed new mixed-use centers. Those centers should be exemplars of excellence in place-making, being great places in which to work, live, shop, recreate, or just visit and be within. In doing so they would accommodate a share of the modest amount of growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. Doing so would help avoid growth straining the scale and ambiance of existing centers and without overburdening the capacity of the locations where these new centers are to be developed. They would further benefit the City by adding both jobs and fiscal support. Careful guidance should assure that the interests of the vicinities within which they are sited are given careful consideration regarding the location, programming, and design of these new centers.

2. STRATEGY

To achieve that vision the City needs an approach that makes the creation of such integrated mixed-use centers not only possible, which they are today (with the first such currently undergoing review), but also attractive to both those who might propose them and those impacted by them. Mixed-use development on appropriate sites needs to be made more appealing to those doing development than would be the more usual separations among business, residential, and civic development. Since no feasible wholly vacant site for such use appears to exist anywhere in the City, such development also has to be more attractive than continuing existing under-utilization of already developed land. Finally, such mixed-use development should be responsive to what the City seeks rather than, as has too often been true, having the City revise its plans to accommodate those of developers.

To achieve that, the City needs a decision-making structure that provides advance clarity of intentions, sensible guidance, and reasonable regulatory and financial requirements. For those planning development, the approach should facilitate prompt decisions and provide predictability about what will or will not be likely to gain approval. For people in nearby neighborhoods the approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing it, going beyond the minimum requirements for public voice as stipulated in statutory law.

An important step in satisfying those conditions will be the adoption of this element of the *Comprehensive Plan*. Another will be the adoption of zoning revisions that will address the now-evident obstacles to usage of our existing PMBD mixed-use regulations. Still another important step will be the structuring of a review process that supports collaborative evaluation

DRAFT

in a process involving both City and applicant-supported professionals and community citizens seeking a shared understanding of impacts early in the planning process.

The reality of having two new mixed-use developments currently being proposed strongly colors the timing and strategic approach for the preparation of this Element of the *Comprehensive Plan* and of the implementing steps that it calls for. In light of that, this sequence of efforts is needed.

- As we have been doing in recent months, people from a broad variety of perspectives need to be engaged in shaping an image of what good mixed-use development for Newton would be, and what the essentials of a good process for achieving that would be. That effort was begun during the preparation of this element, and should continue through all of the steps to follow.
- This Mixed-Use Centers Element for the *Comprehensive Plan* needs to be adopted, which will formally evidence that the element appropriately reflects City intentions.
- The basic regulatory measures necessary for implementing the *Plan's* intentions need to be adopted. Doing so will give further evidence of the City's intentions, and will provide the basic regulations needed to better guide this form of development.
- The tools and procedures for a collaborative input and review process need to be put in place, assuring a well-structured and well-informed voice for both neighborhoods and Citywide interests to assist in enabling those proposing development and for the City officials and staff to give shape to developments that will be rewarding from all of those perspectives. This will involve not only regulatory efforts but also developing needed analytic tools and structuring needed participatory processes.

3. DESIGNING MIXED USE

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change and at the hands of many actors. Despite those and other differences between then and now, locating, programming, and designing new mixed use would do well to learn from our existing village centers. One lesson is that while the full set of villages serves us well, those centers are highly individual. No tight template governing their development would have produced as good an outcome as has some invisible hand that has allowed broad variations. However, the set of village places does have some powerful consistencies, and those are critical to their success. In guiding development of new mixed use, we shouldn't be overly prescriptive about how development should be shaped, but should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

These are important among them.

- Each village center is made up of a mix of uses, not simply one dominant one.

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- The uses are not segregated from each other but rather are mixed at fine grain.
- They are easy to move within and among on foot.
- To a greater or lesser extent, the uses are interrelated, to some degree serving or depending on each other; so that the adjacencies and integration are not just symbolic, they are functional.
- It is usually hard to define where the village center ends: the zoning map came too late to dictate otherwise. To successfully replicate that kind of “soft” transition from center to surroundings is challenging, but critically important in the long term.

Guidance

The lessons from our existing villages are clear. The design intention for mixed-use development should be to create positive, even integrating, relationships with the surrounding context, not buffering the new from the existing, unless dictated otherwise by unusual circumstances. Functional and visual integration of uses within the development is critical for supporting vitality. Shared places or spaces or both are critical to that intention, which suggests new buildings oriented to both new and existing streets they share with others, not turning their backs on them, or alternatively using some other means, such as shared common connected outdoor spaces, to accomplish comparable integration.

The vitality sought can be achieved only given a true sharing of place among dwellings and businesses, and having at least some businesses that provide nearby residents with jobs or services or other benefits. Connections by both street and pedestrian pathways are critical to accomplishing that. There should be both precedent and flexibility regarding the categories of use that are part of the mix, and there should be flexibility for the location of those uses within the center regardless of the configuration of the underlying zoning districts in order to achieve the overall design intent.

Truly vibrant mixed-use centers typically involve not only a mix of commercial and residential uses but also include a significant public amenity that helps in the creation of a sense of place. They typically are co-located at an accessible public transportation node. It is important both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

Mixed-use development absent one or more of the above qualities is certainly possible, but lacking them would make it more difficult to achieve the kind of outcome that is being sought, so would require some offsetting contributions through programming, design or location.

The shaping of buildings and spaces so as to achieve the goals being sought should be guided by an insistence upon consistency of outcomes with intentions such as the following, to which the complex tables of numerical rules would be made secondary.

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally conveying an image of

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having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.

- For example, exceeding the height of the highest nearby buildings might be allowed, but only upon finding that any shadow effects, view blockage, or departure from established precedents would not be a damaging intrusion, and evidence that the increased height would enable a superior organization of buildings and open spaces, benefitting the overall design.
 - Similarly, the acceptable amount of bulk will depend in part on the visual impact of that bulk. A skillful massing design can make a relatively high level of bulk preferable visually to a smaller but less suitably configured amount of bulk.
 - In addition, there are other considerations in assessing the acceptable amount of bulk, importantly including the ability of the public infrastructure to support the functional demands associated with bulk and the activities it supports, such as traffic, for which metrics for what is “acceptable” should be defined. By managing bulk in this way, for example, efforts towards reducing dependence on single-occupant auto travel would be rewarded with proportionately lightened bulk limits if traffic were the limiting bulk consideration.
- The configuration of buildings and landscaping should create positive outdoor spaces, contributing to the quality of the experience of visiting the place, and not just be vegetated (open space) leftovers between buildings.
 - Respect for the environment that goes beyond minimally satisfying land use and environmental requirements is expected as a part of achieving contextual integration.
 - Roofscapes should be made into positive assets through their design and forms of usage, providing functional benefits (e.g. solar energy conversion, recreation) as well as visual interest and attractiveness as seen from buildings within and neighboring the development.
 - Creative use should be made of the potential of vertically mixed uses in considering the distribution of uses within and beyond the development.
 - Good-faith efforts should be made both during, and subsequent to, development to enhance the extent to which the entire center benefits Newton residents through targeted employee recruitment efforts, training or apprenticeship opportunities, or similar initiatives.

Other design considerations are articulated in the access, housing, and finance sections.

Actions

- Make efforts to develop guidance more concrete than included here to provide a basis for judging the appropriateness of new development, carefully reflecting the reality that Newton

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isn't, say, Williamsburg. A cherished quality of the City is that "appropriateness" varies sharply among the villages and other sub-areas of the City. The outcome might be a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include modeling that uses measurable metrics for determining early if a proposal, after considering its location, site size, building size, mix of uses and design, is likely to be appropriate. Having such metrics can reduce arbitrariness and increase predictability, much as is done with great complexity by LEED, which dares to be prescriptive and measurable about this topic for the whole of the United States. Much the same was done with great simplicity by the point system in the *Santa Fe Architectural Design Review Handbook* (1988) prepared by Santa Fe architects and planners for a community thought to be visually homogenous only by those who don't know it well. Less exceptional descendants of such work also exist (e.g. "Workbook for Successful Redevelopment," Naperville, IL, 2002).

- Where the above guidance appears appropriately applicable for development other than large-scale mixed-use centers, that guidance should be incorporated into either Newton's Zoning or some other enforceable guidance to be adopted by the Board of Aldermen.

4. ACCESS AND TRANSPORTATION

Background

The Transportation and Mobility element of the *Comprehensive Plan* makes clear a planning intention that is important to planning for mixed-use development centers since they are inherently well-suited to help in meeting the cited objective.

"We want to assure that the design of new development is well-related to the transportation system that the City intends, rather than development dictating what that system must be, just as fully as we want the design of the transportation system to be well-related to the development that the City intends, rather than serving only the City as it exists or as predicted rather than intended."

Guidance

By locating a mix of uses within a compact area some trips that otherwise would be made in autos can be made on foot. By concentrating a substantial amount of development, mixed-use centers also concentrate potential trip ends, improving the feasibility of alternatives to single-occupant auto trips, ranging anywhere from car pooling to rail transit, even enhancing the feasibility of shuttle bus connections. Bicycle access and pedestrian access both between uses within the development and between those uses and ones in the off-site areas around them can substantially reduce the share of trips made by auto if alternative means of access are made easy, safe and pleasant. No mixed-use center should fail to make those efforts.

The mix of uses within the development can within limits be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential

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on the low end to retail on the high end. Including more housing and less retailing means fewer trips from the same amount of floor area. Further efforts at trip and parking demand management become feasible where mixed-use centers have an over-arching management structure. Car-pooling, company parking protocols and vans, incentives for employee and others to use public transportation, all can contribute to auto trip reduction.

Finally, development at a relatively high density creates enough value to enable some level of mitigation of the traffic impacts that it causes. That mitigation will be welcomed by neighbors and others when it facilitates provision or enhancement of public transportation, removal of existing safety concerns or traffic flow impediments, or skillful traffic engineering at intersections, which often can greatly improve traffic movement with little physical change. However, choices get harder when the scale, mix of uses, and feasible alternative mode and demand management efforts are inadequate to offset trip volumes projected from the development.

The way the City addresses those hard choices should be no different for mixed-use development than for single-use development. The location, programming, design, and management of all major developments and the access provisions related to them should be guided so that conjunctively they essentially cause no harm, meaning among other things that the ease of travel by persons of all abilities regardless of mode is not materially worsened as a result of the development and its related "mitigations," and the means of achieving that do not do damage to community or environmental values, thereby damaging the qualities of the City that we want. We don't want quiet residential streets to be turned into major arteries, even if doing so allows traffic to flow more easily than before, any more than we want to see accessibility for pedestrians or bicyclists damaged in order to facilitate auto travel. Whether or not at the expense of the developer, we don't want to have to accept new concrete sound barriers to block new traffic noise in order to accommodate a major new development.¹

There are measurable "warning flags" that could alert both City officials and developers that such unacceptable circumstances may potentially be involved, despite all of the design and programming skill provided up to that point. The percentage of increase in traffic which a new development is likely to place on any street, whether a lane or an expressway, is an indicator of the likelihood that avoiding travel deterioration will entail street alterations which could be damaging to the nearby quality of life. Where a proposal crosses that threshold of concern, special attention and resolution of any concerns should be called for, possibly entailing project programming revision, additional transportation management efforts, skilled design of the street alterations so that on balance they are acceptable, or through reduction in the proposed scale of the development. Testing for such flags can be done simply and inexpensively early in the design process, saving missteps.

Certain access efforts are particularly critical for large scale mixed-use developments because of their scale, mix of uses, and the importance of their being integrated with their surroundings. These are examples

¹ The principles behind these intentions are drawn from ones advocated nationally by two organizations: "Complete Streets" whose website is www.completestreets.org and "Context Sensitive Solutions," whose website is www.contextsensitivesolutions.org.

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- 1) Mixed-use developments should have excellent pedestrian and bicycle connections both among different uses within the site and between those uses and the surrounding environs. The new developments should be permeable through interconnections to adjacent developments, wherever possible both by foot and by auto. Visible and adequate bicycle storage areas, and appropriate changing locations with showers for office users, will help support the use of bicycles for commuting.
- 2) The visual and environmental impacts of surface parking should be mitigated and pedestrian accessibility enhanced through locating and designing parking facilities with that in mind, not obliging pedestrians to cross open parking lots in order to reach their destinations.
- 3) Where feasible, accommodate parking in structures, but use surface parking where it can be positive, such as in buffering pedestrians from moving traffic.
- 4) Wherever possible the visual impact of parking facilities should be mitigated with intervening retail or other uses, unless those facilities are of rare design quality themselves².

Actions

- Expand on the contents of the City's street functional classification system in order to make it more useful. Currently it is only a listing of the street segments that are included under each of six categories. Added to that should be information regarding the street design and usage that are appropriate for that category of streets. That would provide important policy guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale development.
- Complement the street functional classification system by adopting a design type classification, as proposed in the "Transportation and Mobility" element of this *Plan*. The *Plan* shows six design categories ranging from Regional Center Roads to Parkways. Just as with the functional classification, this classification should include information about what is or is not appropriate change to the road for consistency with each design type. Having done that would provide predictability for those contemplating large scale developments that might entail street changes, and would be of great value in evaluating such proposals regarding the consistency of project-proposed street alterations with the City's intentions for the design and character of any affected roads.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back of envelope, but quicker and less demanding than the sophisticated studies that would continue to be the basis for final design and approval actions. That capacity would enable an important aspect of the collaborative input and review approach described in the Vision above, engaging City officials and staff, the applicants, and community residents.

² See Paul Goldberger, The Sky Line, "Wheelhouse," *New Yorker*, August 9, 2010, describing an example in Miami Beach designed by Herzog & deMeuron.

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- Develop an initial version of the “red flag” system suggested above to provide guidance to both those designing developments and those reviewing them regarding when traffic impacts threaten to result in unacceptable impacts as a consequence of either excessive congestion and disturbance or community and environmental damage to the environs. This would draw upon the above impact estimation. After some experience that system might be further refined and made an integral part of the City’s decision-making system.
- If feasible, integrate this “red flag” system with the parallel one being suggested regarding design and the “acceptable amount of bulk.”
- At the point at which it appears that Massachusetts law would allow it (such as authorization for local municipalities to create general development impact fees), explore creation of a transportation mitigation fund, which among other things would allow traffic mitigation resources to be used for any of a broad range of mitigating actions, not just ones related to road and traffic engineering alterations.

5. HOUSING IN MIXED USE

Background

The inclusion of residences in mixed-use developments has at least three important benefits for Newton. First, if well located, programmed, and designed such a mix of uses can enable new development to enhance our existing community rather than needing to be buffered from it. Such real mixed use can provide wonderfully vital places in which to shop, work, live, or all three, and can help make the development a welcome asset for the neighborhood.

Second, the increasing success of the mixed-use model makes it a valuable means of serving part of the housing needs of the City and the region. The housing in mixed-use developments is almost certain to chiefly serve young households and senior citizens, neither of which is well served by Newton’s existing dominantly large-dwelling housing stock.

Third, incorporation of dwellings in the development can make the spatial transitions between the development and any adjoining or nearby residential uses a less disruptive one than otherwise, enabling the new uses at those edges to be as compatible as possible with the existing neighborhood.

The benefits of including housing in large-scale centers is widely understood, but so too are the challenges to achieving that. Among them is the complex volatility of real estate markets, with housing, shopping, workplace and entertainment markets seldom moving in smooth unison, raising the challenge of how to achieve integration of those uses to produce the sought-after vibrancy when markets may make it nearly impossible at times to simultaneously develop all of them. That is one of the key issues dealt with below.

Guidance

Housing either within or adjacent and integrated with major centers can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that

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centers without such housing may not be able to achieve. The presence of housing within the development impacts considerations for location and design. Accordingly, the process being developed for City review and approval of proposals for mixed-use centers reflects having that mix, and all of the following presumes that full rich mix.

The housing within the development should have a clear identity as an important and distinct element, not being simply an after-thought or rule-satisfier. A small number of dwelling units surrounded by business uses and its parking makes it difficult to achieve that which is sought. Housing to be developed as a part of a mixed-use development must be sufficient in scale so that together with possible existing adjacent residential uses it can result in a real neighborhood being created, rather than the housing being an isolated residential fragment in a non-supportive, potentially even hostile, non-residential context. For that reason, it is important for the regulations guiding such development to have clear and explicit guidance on what is to constitute a sufficient housing component while also recognizing that the changing demands of the commercial real estate market may favor specific uses (i.e. retail, office, housing, and hotel) and not others in various market cycles.

Housing that already exists nearby can importantly contribute to the vitality and exchange that is sought, but achieving that would require skillful design of how the new buildings and uses relate to the existing ones as well as program efforts. Those might include enabling nearby residents to have easy access to the services being provided on-site, assuring that those services are appropriate to the neighbors, as well as to others, and if programmatically provided for, enabling neighbors to gain benefits from both open space and parking.

Given such measures, neighboring off-site units might be considered to be part of the development in determining the allowable scale of non-residential presence as discussed above, where there is evidence that the owners and residents of that adjacent housing have indicated their willing agreement with that inclusion.

Including adjacent residences within the programming concept and "counting" is one means of recognizing market uncertainties inhibiting simultaneous residential and non-residential development. Additionally, any required minimum residential component might be programmed to be provided at a different time than other uses in order to reflect market conditions, but only if there are offsetting benefits that compensate for the delay and also enforceable assurances that the mandated ratio will in fact be attained within a reasonable period of time.

It is important that housing commitments be firmly guided regarding type, location, design and timing of construction in order to produce the kind of vitality and great places being sought. Housing provisions should reflect both the populations appropriately served at that place and time and the amenities in that environment, chosen following discussion with related City officials and housing-related organizations.

Parking demand created by mixed-use developments will reflect the mix of activities, proximity to public transportation, and project-wide demand management efforts. Those considerations may substantially change parking demand, thereby justifying departure from the usual rules of Newton's parking standards when substantiated by, among other things, recent experience in this and surrounding communities with similar developments.

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Compliance with the usual rules for regulating business activity conducted in a dwelling should not be required, although alternative controls to assure an appropriate ambiance for family living should apply. Such development might even allow "live/work" units combining both living and working space with the spatial allocation between them subject to change over time.

Open space is essential, including some amount reasonably located for use exclusively by residents and their guests. Unusual but tried ways of providing open space such as green terraces and roofs may help in meeting this need.

It is important that the type of housing being produced within the City helps to address needs not being well-served by the existing stock of housing, and unless direction is provided, the housing being produced also may not well serve those needs. A current example is the need for housing suitable for seniors at most income levels seeking to down-size or, sometimes, upsize their accommodations.

Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the impacts of the housing upon the adequacy of each of the affected school facilities that are likely to accommodate its enrollment impacts.

6. FINANCE AND MIXED USE**Background**

New mixed-use centers clearly can bring substantial amounts of new revenue and new jobs to the City, but too commonly what is claimed and discussed is gross impacts on revenue and jobs, not the net impact after taking into consideration second-order impacts. Those second-order impacts are more difficult to estimate than the gross impacts, but they deserve attention anyhow, since they are often very large, and considering them may substantially change perceptions about development proposal benefits, for better or worse.

Taxes perhaps best illustrate the point. New development brings new tax revenues, but it also brings new service demands. Those costs in some cases can turn what seemed to be a fiscal asset into a fiscal liability. If a new retail development chiefly serves Newton then it likely competes with businesses already here, so that its NET impacts on taxes may well be substantially lower than its gross impacts. On the other hand, the opposite could be true. Some businesses, even local ones, can attract other businesses or support existing ones with their purchases, resulting in those other businesses prospering and expanding, resulting in larger fiscal impacts than just those of their own properties. Similar second order impacts deserve attention when considering jobs, traffic, and other impacts.

The benefits of fiscal gain are readily understood, in part because they are so clearly local. Property taxes generated in Newton go to the City of Newton and benefit its residents. The benefits of gaining jobs are less self-evident, in part because in a metropolitan area they are seen

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as regional. New jobs located in Newton will largely be held by non-residents of Newton, and workers resident in Newton largely hold jobs not in Newton but elsewhere within the metropolitan area. However, there are a number of good reasons for caring about bringing jobs to Newton, aside from the tax support they bring with them.

First, bringing jobs to Newton to some extent means more jobs for the region and for Massachusetts, and that is good for everyone. Second, the City is expected to grow somewhat in population over the years, and there will be benefits if the current balance of the number of jobs held by Newton residents and the number of Newton residents who hold jobs can be maintained. Such "balance" is a widely sought goal. Newton has it, and has had it, more or less, for decades. Losing that balance would mean more commuter traffic and more dependence on other places.

Three mixed-use centers have recently been discussed within Newton, totaling perhaps 1.5 million square feet of non-residential floor area and about 600 dwelling units, one (Chestnut Hill Square) is currently under review. The total amount of business floor area among the three is sufficient to accommodate nearly 4,000 jobs, an 8% addition to the current total of jobs in Newton, while that amount of housing would be a 2% increase in the Citywide total. Together their tax payments ("New Growth" in Prop 2½ terms) at current rates would be about \$13 million, about a 7% increase in the annual City-wide tax levy allowed under Prop 2½. Those amounts of growth are not inconsistent with the expectations and projections for growth made in the Newton *Comprehensive Plan*. As noted above, net figures will change after considering economic "multipliers" and accounting for unavoidable new expenses and "shifting" rather than "creating" jobs and housing, but despite that the above figures provide a helpful background.

Guidance

It is well-understood that business development in Newton pays in taxes and fees substantially more than it costs the municipality to serve it, offsetting the reality that on average taxes and fees paid by residents are somewhat lower than the costs of municipal services for them. What happens to the fiscal balance when mixed-use development combines both business and residences?

The market for housing in mixed-use centers will unquestionably be largely at opposite ends of the adult life cycle, young couples and empty-nesters. Data from the Newton School Department make clear that the ratio of enrolled pupils to dwelling units is far lower in multi-family dwellings than in single-family ones. Reflecting that, analyses make it clear that on average the tax revenues and tax-supported costs for dwelling units in multifamily developments, including those units whose values and legitimate tax payments are restricted to a below-market level, are almost equal, if anything providing a small positive balance to the overall tax impact. That means that the fiscal impact of mixed-use developments is almost independent of the number of dwelling units they contain, but rather chiefly reflects the favorable balance resulting from the well-understood positive impacts of business development. Importantly, that means that choosing the amount of housing to include in such developments can be considered independent of concern over fiscal impacts.

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- Clarify and document the City's requirements regarding development-related impact fees and exactions.

By paying taxes new development supports City costs, including those associated with the facilities and services for which it creates need. When that need is quite location-specific, it is common to have the development causing the cost bear at least part of it through absorbing public improvement costs, monetary contribution, or some other form of contribution. Current Massachusetts law is not generous in allowing for impact fees or exactions. Statutory authorizations for such treatment are few and narrow, and the courts view of constitutionality has been sharply restrictive. Despite that, some Massachusetts municipalities have home rule legislation authorizing significant charges to be made. Newton's current practices in that regard result in quite substantial efforts by developers to, in effect, restore net capacity of certain infrastructure to what it was without that development. The Commonwealth does the same through the MEPA process for certain costs, importantly highway transportation. However some cost generators, notably school impacts, have not been treated in that way. In short, Newton could do more, but only within limits.

However, there is no apparent rationale for charging fees to mitigate impacts for mixed-use developments but not for single-use developments having equal or larger impacts. Doing so could create a disincentive for developers to propose development under the mixed-use regulations being advocated. If City intent is to establish this type of policy, any impact fee requirements should be addressed as applying to ALL new development, and not uniquely to mixed-use development.

Quite apart from what the City does or does not do about mixed-use development, the City should set out clear and reasonable expectations about the fiscal mitigation it expects *before* it considers large developments. Whether these are transportation or other fiscal impacts, developers should be able to know--in advance-- how our community expects new development to deal with the impacts it creates and what mitigation is reasonable. One by one, *ad hoc* negotiation may not be efficient or equitable for either the City or developers. While it is recognized that new development impact identification often results during the special permit process, we should at least document our expectations in one place so that developers know how to translate our values into project costs without surprise, and so that community residents can know what can or cannot equitably be asked of new development.

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the fiscal impacts of the proposed development upon the City.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed use or not. Models for producing projections of such impacts are commonplace, but they almost all share the quality of producing projections that lack credibility among those who don't like what they hear unless those persons themselves were a part of producing the projections. Newton should create a system which gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City

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should specify the scoping requirements, prepare the mathematical/metric models to be used, and assist but not dominate the execution. The developers and interested community members would help in utilization of the modeling by gathering information and critiquing its use. Doing the job that way is more difficult than hiring a consultant to write a report, but is far more valuable for the decision-making process.

Note that this step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

- Make efforts to use mixed-use development as a means of improving the local job-gaining likelihood of persons for whom our housing efforts are trying to make Newton a welcoming community.

If resources for doing so can be found, such an effort would be highly supportive of the policy intent of supporting socio-economic diversity in Newton which now is being implemented almost exclusively through support for below-market housing.

7. MIXED-USE GUIDANCE PROCESS

Background

Mixed-use developments can be created under the City's existing zoning, as is currently proposed at Chestnut Hill Square, and there is every reason to hope that upon their completion such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* makes the City's intentions about such developments clearer, intended to encourage creation of such developments and to guide both applicants and those responding to their proposals.

However, resting on existing rules and the *Comprehensive Plan* alone would for mixed-use developments fall short of what can be accomplished using the process refinements suggested in this Element of the *Plan*. The likelihood of developers choosing mixed-use development and the City gaining the benefits of it will be greatly enhanced by the City taking actions to improve both the regulatory framework for such development and the context for how City agencies and staff, those doing development, affected neighborhoods and other affected interests relate to each other in the consideration and approval of such proposals.

Guidance and Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community efforts to create objective projections of the likely impacts of large-scale development upon the vicinity and the City at large.

Action proposals for doing this are included above in the Design discussion regarding impacts upon neighborhood character and the environment; in the Access and Transportation discussion about traffic and the "red flags" it might raise; in the Housing discussion about impact upon schools; and in the Finance portion regarding fiscal impacts. Each of those

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subjects has been part of the debate regarding each of the three mixed-use developments that have been proposed. The only one of those topics that has had the benefit of publicly-discussed analytics to inform the decisions has been traffic.

Well-informed dialog about traffic has largely involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. Not surprisingly, given how “black box” that dialog has been, the results have often not been persuasive for many of the parties that have been concerned about such developments. There often may be no public agreement even on the scale of traffic impacts, let alone agreement on appropriate mitigations.

Beyond traffic, there has been discussion and assertions on the other topics, but no real public dialog supported by credible analyses. The debate about project approvals in some cases has lacked agreed-upon estimates of even the range within which important impacts are likely to fall.

Newton City government is rich in data, both historic and current. The City is rich among its population as well as among its (busy) staff in expertise on how to utilize those data resources to produce helpful estimates and projections. So, too, are the developers of major projects and their consultants. What would be helpful would be to organize a way of using all of those resources in a well-structured way early in the evolution of development proposals. That could support informed understanding of what can be agreed upon regarding the range within which impacts of development are likely to lie, not only for traffic but also for a range of equally important topics in other areas of concern: design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

Doing that would give new value to the data that the City carefully collects, and if skillfully managed might go far towards reducing conflict in the shaping of new development, ultimately reducing costs for all parties, and reducing the time needed to reach decisions.

- Adopt amendments to the existing zoning that will improve the process for approval of such developments so that they can work better for applicants, for the affected vicinities and interests, and for the City.

There now is a body of experience in Newton that helps to identify where changes would be of value. When the Northland proposal was active, the developer asked for changes to PMBD to fit their development on Needham Street, and those zoning requests were given a formal public hearing prior to the withdrawal of the project. BH-Normandy has suggested a different set of revisions for its proposed development at Riverside. Each sought different changes to the height and setback regulations, land use rules, open space rules, and parking or loading rules, as well as individually seeking other departures, as well.

The need for project-specific relief in each of these cases is no surprise, given the large scale of the developments proposed, and the history of the City’s regulatory processes, in which zoning rules and action on special permits relying on such change are often taken in tandem. It is perfectly reasonable for Aldermen to want to have a specific example of what a regulatory change would entail before adopting it. That is how the B-4 district and many other provisions have been created or revised.

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It is critically important to structure such change processes so as to avoid overburdening the Zoning Ordinance with a steadily expanding set of project-specific departures. At least equally important, we should have a structure that provides advance clarity about what changes may appropriately be made to reflect project-specific considerations, and which ought to be universally applicable, to be relied upon under all circumstances.

Given that in the past two years three such large-scale mixed-use developments have been proposed in Newton, and a number of others in nearby communities, it is important for the City to put those major changes into place in the near future. Clearly the best way to accomplish that would be through a carefully prepared set of revisions to the existing Planned Mixed Business Development (PMBD) zoning, leaving for some future effort those features requiring longer consideration.

- Consider the potential applicability of much of the guidance of this element for developments that are smaller in scale than the very large ones for which this material has been developed, and for our existing village centers in which the mix of uses is on separate lots developed not at once but rather over many decades.

Good regulation for large-scale mixed residential/commercial developments will contain a number of provisions that would be inappropriate in those other contexts, most obviously the insistence upon integration of a residential presence, as well as a number of other provisions that flow from that. However, many of the provisions in this Element would be perfectly appropriate in many other contexts. Where applicable, the potential benefits of this effort for those other kinds of circumstances deserve to be pursued.

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SETTI D. WARREN
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December 27, 2010

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to appoint Mr. Ronald C. Lipof of 10 Hammond Pond Parkway, #101, Chestnut Hill to the Economic Development Commission. His term of office shall expire December 31, 2013 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Very truly yours,

Setti D. Warren
Mayor

10 DEC 28 A 9:47
CITY CLERK
NEWTON, MA. 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

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DEDICATED TO COMMUNITY EXCELLENCE

RONALD C. LIPOF

10 Hammond Pond Pkwy, #101 ☐ Chestnut Hill, MA 02467 ☐ (617) 912-1020 ☐ rlipof@ggsoriginal.com

EXECUTIVE SUMMARY

COMMITMENT | LEADERSHIP | INTEGRITY

A tested entrepreneurial visionary who transfers business strategies into profits and enterprise growth for the best interest of shareholders, customers and employees. A strategic leader launching emerging growth ventures and moving them to the next level through merger, sale and IPO. Expertise includes the evaluation of forward-looking efforts in connection with corporate and strategic alliance development to drive growth through partnerships, and negotiating and structuring merger and acquisition transactions. Dedicated to generating results, quality, service, and uncompromising ethics.

AREAS OF EXPERTISE

- Strategic / Tactical Planning
 - Business Development
 - Cost Control Management
 - Mergers / Acquisitions
 - Small Business Start-Up
 - Strategic Alliance Development
 - Profitability Improvement
 - Operations Management
 - Capital & Equity Sourcing
-

PROFESSIONAL EXPERIENCE

GGS ORIGINAL, LLC

PRESIDENT / CHIEF EXECUTIVE OFFICER (2009 - PRESENT)

GG's Original is a wholesale manufacturer of fresh prepared specialty foods including Gluten-Free, Italian and Kosher items for retail and food service organizations. Our products are currently available in 250 locations including Shaw's Supermarkets, Star Market, Giant Foods and specialty/ gourmet stores throughout New England, Maryland and Virginia.

- Founded the company in one of the most challenging economic times.
- Negotiate and secured all customer, vendor and strategic alliance relationships.
- Develop all marketing and branding materials for thirty products across five product lines.
- Hire all senior management team members.

ACHIEVEMENTS:

- Grew presence in customer stores to 250 locations in first 12 months.
- Developed and launched thirty products over five product lines in first 12 months.
- Reduced overhead and operating costs through strategic alliance development, a new branding initiative, and the restructure of production staff utilization.
- Launched eCommerce initiative to broaden the company's selling geography and increase operating margins.

STRATEGIC RESOLUTION PARTNERS (1989 - PRESENT)

FOUNDER AND MANAGING PARTNER

Strategic Resolution Partners specializes in providing strategic and business planning, operating management assistance, financial and organizational restructuring, identifying and closing equity financing rounds, strategic alliance development, capital sourcing, joint venture structuring, merger and acquisition representation and turnaround activities, for emerging growth and middle market companies.

RONALD C. LIPOF

THE WELLNESS COMMUNITY-GREATER BOSTON (2002 - 2009)

PRESIDENT/CHIEF EXECUTIVE OFFICER

Nonprofit cancer support and education service provider throughout Greater Boston.

President/CEO (2006 - 2009)

Chairman of the Board of Directors (2005 - 2006)

Member of the Board of Directors (2002 - 2006)

STARNET, INC. (2001 - 2002)

CHIEF STRATEGIST

\$30 million wholesale Internet access and fixed wireless service provider (Assets Sold).

BEANSPOUT NETWORKS, INC. (2000 - 2001)

CHIEF STRATEGY OFFICER

Early stage pediatric marketing services and technology firm (Assets Sold).

ZIPLINK, INC. (1997 - 2000)

CHIEF STRATEGIC & DEVELOPMENT OFFICER

\$25 million wholesale Internet access and web appliance development company

ACHIEVEMENTS:

- Grew revenue by over 700% from \$3 million to \$25 million.
- Launched industry's first web appliance products and secured first-mover status.
- Established sales policies and procedures; developed and managed sales forecasting, and managed channel and reseller sales to 7,000 Internet Services Providers nationwide.
- Secured 12% market share for company in 6 months.
- Secured strategic alliances with blue chip companies including Motorola, Timex, Nortel Networks, Williams Communications, Casio, and WebTV.
- Secured strategic investments from Nortel Networks and Williams Communications.
- Raised a total of \$82 million: \$22 million from private investors, \$10 million from strategic partner, and \$50 million in Nasdaq IPO.
- Drafted company's S-1 Registration statement, negotiated with investment bankers and conducted company's IPO road show.

FLEET CREDIT CORPORATION (1985 - 1990)

ASSISTANT VICE PRESIDENT

Asset-based, leasing, small business and communications lending.

RESPONSIBILITIES:

- Served as an asset-based lender for fully-followed receivable and inventory financings; and a cash flow communications lender for small business, start-up and emerging growth telecommunications companies.
- Analyzed, structured, underwrote and closed new asset-based credit facilities; and selling a variety of personal and business financing accommodations in the \$1 million to \$10 million range.
- Performed due diligence and audits on prospective new clients that covered collateral and financial evaluation (including modeling projections), and general business diligence to identify the risks for a given transaction.
- Performed audits on existing clients' books and records for collateral authenticity supporting asset-based loans and factoring relationships.
- Prepared credit approval documents and presented the proposed transaction to senior management.

PROFESSIONAL/CIVIC ORGANIZATIONS AND AFFILIATIONS

Member, City of Newton, Massachusetts Ward 7 Committee (2009-present)
Delegate, 2010 Democratic State Convention (2010)
Member, Barak Obama New England Steering Committee (2007-present)
Massachusetts State Senate Candidate 2004 Special Election (2004)
Gubernatorial Appointee, RI Youth Alcohol & Substance Abuse Commission (1987)
On-Air Television (NewTV) and Radio Political Analyst (2004-present)
Host, CityWatch on 1550 WNTN Radio in Newton, MA (2009-present)
Creator, "Facing Cancer Together" National Cancer Television Broadcast (2007)
Member, Massachusetts Governor Deval Patrick's Business Cabinet (2006-Present)
Chair, The Wellness Community-Greater Boston Board of Directors (2005-2006)
Member, Topf Center for Dance Education Board of Directors (2001-2004)
Member, Duke Children's Hospital National Board of Advisors (2000-2005)
Publication: "The Virtual ISP, Crossing the Chasm", *Boardwatch Magazine* (1999)
Member, National LifePage Organ Donor Coalition (1995-1997)
Real Estate Salespersons License, Massachusetts Board of Registration (1986)
Member, National "Just Say No" to Drugs Campaign (1981)

EDUCATION

BACHELOR OF SCIENCE

Boston University School of Government, Boston, MA (1985)

BANK ADMINISTRATION

Robert Morris Associates Commercial Lending Credit Program, Providence, RI (1986)
Fleet Credit Corporation Loan Officer Development Program, Providence, RI (1987)

REAL ESTATE ADMINISTRATION

Lee Institute School of Real Estate, Dedham, MA (1986)
American Real Estate Academy, Waltham, MA (2008)

HONORS AND AWARDS

The Boston Celtics Heroes Among Us Award (2007)
The Ellie Fund Fighting & Fabulous Award for the fight against breast cancer (2007)
Honoree of The Boston Business Journal 40 Under 40 Awards (2002)
The Albert Gore, Jr. LifePage Achievement Award (1996)
NewTV Red Carpet Award, Best Overall Public Access Field Production (2008)
2008: NewTV Red Carpet Award, Best Public Access Show (2008)
Winner, ACM-NE 10th Annual Video Festival Community Impact Award (2007)



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December 27, 2010

10 DEC 28 A 9:47
CITY CLERK
NEWTON, MA 02459

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to appoint Ms. Joyce Moss of 229 Franklin Street, Newton to the Economic Development Commission. His term of office shall expire December 31, 2013 and her appointment is subject to your confirmation.

Thank you for your attention to this matter.

Very truly yours,

Setti D. Warren
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

JOYCE G. MOSS, AICP
229 Franklin Street Newton, Massachusetts 02458
(617) 969-1074 joycegmos@verizon.net

PROFESSIONAL EXPERIENCE

Economic Development Specialist, Needham, MA

2007-2009

New position under the direction of Council of Economic Advisors (CEA): Responsible for developing, implementing short and long-term strategies for the Town's commercial and mixed-use areas;

- Designed/directed initiative to make the New England Business Center (Highland Avenue) more competitive; wrote Needham section of report to state to expedite funding for Needham St/Highland Ave Corridor;
- Successfully advocated for official policy directive by Needham BOS to explore feasibility of Green Line or Silver Line along ROW parallel to Needham St/Highland Ave;
- Established initiative to increase foot traffic in Needham Center and promote collaboration and communication among Town government, downtown merchants, and local business association;
- Advocated for more business-friendly permitting practices, particularly for small businesses;
- Achieved Economic Target Area status (ETA) under the Commonwealth's Economic Development Incentive Program (EDIP);
- Provided economic development staff support for the Downtown Study Committee and Report that produced new downtown zoning;
- Conceived and carried out 'visualizing density' workshops to evaluate TOD project at Needham Heights;
- Member of Board of Directors, *Newton-Needham Chamber of Commerce*; member of Chamber's Economic Development Subcommittee.

Economic Development Officer, Westwood, MA

2004-2007

Under the policy direction of Economic Development Advisory Board (EDAB): Responsible for developing plans, creating tools and incentives to foster commercial real estate development and local business retention and expansion.

- Worked successfully with Town to (a) develop Mixed Use Overlay [MUOD] zoning; (b) establish Economic Target Area status for Westwood, and (c) establish a coordinated review and outreach plan for pre-permitting activities related to Westwood Station, a TOD mixed-use development project on 235 acres at University Avenue;
- Created a public/private incentive plan to encourage redevelopment of 60 acres of underutilized commercial/industrial land on Route One;
- Advocated to boards for businesses seeking to locate in and/or to those already established in Westwood.

Tourism Brochure, MetroWest Chamber of Commerce

2003

- Conceived, secured funding for, and executed a cultural tourism map initiative featuring town centers and historic landscapes in the MetroWest Chamber's 10-town service area.

Downtown Manager, Town of Natick/ Exec. Director, Natick Ctr. Associates, Inc., Natick's public/private downtown revitalization partnership

1995-2002

Worked with Natick- its boards, institutions, committees and commissions- to revitalize downtown Natick:

- Leveraged \$3 million in private investment; increase of 70,000 sq. ft of downtown retail space;
- Instituted and directed revitalization activities: strategic planning; re use/ redevelopment of downtown properties, market analysis; design master plan; streetscape/ storefront improvement; civic art;
- Worked with Planning Bd, BOS on zoning and regulatory actions related to downtown; on design standards for project review in the downtown;
- Worked with the Chamber and Small Business Development Center to create a regional micro-loan fund;
- Developed partnerships and programs to beautify the downtown and celebrate the Natick community;
- Advocated at state and local levels of government for establishment of TCAN, the Natick Arts Center;
- Established partnerships among the business community, civic institutions, and advocacy groups to develop downtown projects and enlarge the constituency for downtown revitalization;
- Established a farmers' market; a merchants' council; an arts and commerce task force;
- Wrote successful grant applications for land conservation, tourism development, farmers market development as well as those traditionally available for downtown revitalization through DHCD.

Resume of Joyce G. Moss, AICP, continued

- Mill Village Coordinator** 1993-1994
Downtown Revitalization Partnership Program, DHCD
- Organized a sub-regional partnership among business/ property owners, town officials and residents to revitalize historic mill village centers in two Blackstone Valley towns.
- Open Space Planner (Intern), Grafton, Massachusetts** 1992
- Researched and analyzed data; authored the *1992 Grafton Open Space & Recreation Plan*
- Researcher (Intern), Lincoln Institute of Land Policy** 1991-1992
- Researched and wrote about state and municipal growth management practices for the Institute's 1992 publication, *Managing Change in America's Communities*.
- Freelance Editor** 1985-1988
- Worked with writers to develop and edit their manuscripts:
In the Shadow of the Great Blue Hill, Karen Dacey, Univ. of America Press, 1995;
A Woman's Guide to Good Health After 50, Marie Felton, M.D., AARP, Scott, Foresman, 1987.
- Magazine Reporter, Money Magazine, Time, Inc.** 1982-1984
- Reported on the local perspective for monthly magazine about finances.

PROFESSIONAL AWARDS

- Federal Home Loan Bank Award for Community Development** 2000
- Presented to Natick Center Associates, Inc. Given annually to one non-profit organization in each New England state that demonstrates superior work in economic development.
- Walton Small Business Leader of the Year Award** 1999
- Presented by the MetroWest Chamber of Commerce.
- American Planning Association-New England Chapter, Annual Planning Awards** 1993
- Best Project by a Graduate Student: *1992 Grafton Open Space and Recreation Plan*.

COMMUNITY SERVICE EXPERIENCE

- Mayor's Mixed Use Zoning Task Force** 2010
- Short-term initiative (4 months) established to recommend an amendment to Comp Plan.
- Community Preservation Act Committee (CPA), Newton, MA; Chair, FY 2009.** 2003-2009
- Committee recommends grant awards to projects that create affordable housing, preserve historic resources, protect open space. Authorized under the Community Preservation Act, September, 2000.
- Planning and Development Board, Newton, MA** 1994-present
- Mayoral appointment. Decisions involve subdivision; allocation of federal and state community development funds; advisory actions to BOA on zoning and planning.
- Comprehensive Plan Advisory Committee, Newton, MA** 2002-2007
- Committee was charged with developing the Newton Comprehensive Plan. Plan adopted 2007.
- Newton Framework Plan Committee, Newton, MA** 1998-2000
- Committee produced a policy framework to guide the development of the comprehensive plan.

EDUCATION

- Tufts University, Department of Urban and Environmental Policy/ Planning M.A.:** Area of concentration:
Land Use Policy/Planning
- Harvard University, Graduate School of Education** M.A.T.: History/Social Studies
- University of Rochester** A.B.: History/Political Science



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

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December 27, 2010

10 DEC 28 A 9:47
CITY CLERK
NEWTON, MA. 02159

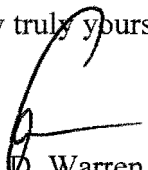
Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to appoint Mr. Darryl Settles of 52 Hood Street, Newton to the Economic Development Commission. His term of office shall expire December 31, 2013 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Very truly yours,


Setti D. Warren
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

Darryl Settles

As President and Founder of WiSe Urban Development, formed in 2010, Settles' mission is to foster the development of multi-family affordable housing in urban communities in partnership with local non-profit owners to create vibrant and sustainable neighborhoods. WiSe provides the development expertise and capacity to manage the activities of each redevelopment from pre-development through completion.

Darryl Settles is the President of D'Ventures Limited, LLC, a business consulting and investment company based in Boston, Massachusetts where he has successfully fused his passions for music and hospitality by transforming unique concepts into acclaimed events and establishments.

Recognized as an innovative entrepreneur and an icon in Boston's hospitality industry, Settles has received a myriad of awards for his leadership and vision over the years, and was most recently awarded the Tiffany "10" Community Award, the Bostonian We-Are-Boston Community Leadership Award and Stuff@Night's 100 Players of Boston's Nightlife.

D'Ventures projects have included The Beehive Restaurant & Lounge, which Settles helped found and develop. Settles entered the restaurant business in 1990 when he purchased Bob's Southern Bistro (formerly Bob the Chef's Restaurant) and repositioned the restaurant to include live jazz music, full carryout service, catering services, and an expanded menu.

Prior to entering the restaurant business, Settles was a successful marketing executive at Digital Equipment Company.

Settles' enthusiasm for livening and expanding Boston's music and social scene led him in 2001 to start the BeanTown Jazz Festival, a weekend of local and national music, food, and art. Settles founded BeanTown Sounds, an artist-booking agency specializing in the finest jazz, soul, blues, and top 40 bands in the Boston area in 2003 and now works with Berklee College of Music to produce future festivals and other jazz related events.

Settles strong sense of community has prompted him to contribute much of his time to local

boards, institutions, and civic organizations including the Massachusetts Convention Center Authority; Metropolitan District Commission, Associate Commissioner; Berklee College of Music Advisory Board; The Huntington Theater Board; The Museum of Fine Arts Board; and the Massachusetts Restaurant Association Board.

Settles received his B.S. Degree from Virginia Polytechnic Institute and State University.

January 20, 2011

To: Members of the Zoning and Planning Committee,

From: Chris Utano, Pine Cone Construction Inc.

Re: Proposed amendments to FAR definitions and regulations.

11 JAN 21 P 12:09
CITY CLERK
NEWTON, MA. 02159

Dear Sirs and Madams,

Introduction

I was provided an opportunity recently to discuss the proposed amendments to FAR definitions/calculations with Alderman Lappin and Jennifer Molinsky. This opportunity was sincerely appreciated. During the discussion we agreed that it was important to document concerns and thoughts regarding the potential changes and to share them with the larger audience, hence this document was drafted.

It should be noted that I write as both a resident of the Oak Hill Park neighborhood, and as a local builder whose company resides in, and solely builds in the Oak Hill area. The protection and progression of our neighborhoods is of significant interest and concern to me on several levels.

Background

Our team has been building single family homes in Newton for sixteen years. This opportunity has provided us with a strong understanding of the architectural fabric of our neighborhoods, and an ability to lend an expert opinion. There are few as intimate with the transition our neighborhoods are experiencing and what prospective buyers desire in homes for their families than both me and my team. We agree in principal that reasonable controls are required to ensure that our neighborhoods remain beautiful in character while they progress.

Positives on New Construction Under Current FAR Rulings

1. Under the existing FAR guidelines, we have the ability to build the type and size of homes that that our clients believe are sized appropriately for our neighborhoods and meet their needs. Please see examples of these homes in Exhibit A.
2. Our homes have attracted and introduced affluent and middle class citizens to our city. The vast majority of recent new people buying these homes are professionals in the medical, law, and financial sectors.
3. New homes are providing increased tax revenue for our city without raising the tax rate. The average property tax dollar per year more than doubles on the homes we build in the Oak Hill area. Higher tax dollars lead to more flexible budgeting and amenities that help improve the lives of our citizens.
4. Neighborhoods are absolutely becoming more beautiful and attractive. For example, the home we built at 130 Hartman Road replaced a decrepit home that both the City's Health and Inspectional Services departments have thanked us numerous times for tearing down.

Negative Impact

There is an understanding that the proposed changes will not 'technically' prohibit new construction, however the reality is that they would cripple the ability to build desirable and profitable homes in our neighborhoods.

In certain circumstances, the proposed amendment would provide higher FAR limits. For example, a 10,000 sf lot that is SR2 zoning converting old to new, would have its limit increased from .35 to .40. That is a positive result. However, the amendment to FAR definitions would

1. Require builders to include the square footage from the attic in the FAR calculations. Please note that this variable would be included in the vast majority of new homes. Using the above mentioned example, the new limit would gain us 500 sf (.05*10,000), however the inclusion of a typical 950 sf attic would result in a loss of 450sf for the builder and the home owner.
2. Require a percentage of the basement square footage to be added in some calculations. In the event a home is being built on a hill, such as 26 Clifton Road, the garage is logically designed under the first floor. However, the builder is now penalized for this design because by definition we now need to include a percentage of the basement square footage in the final calculations.

Actual Examples of the Impact of Amended FAR Ruling

Exhibit A includes homes which our team has built over the past year, along with current and proposed FAR examples, and a final determination showing whether the existing home is in or out of compliance with the proposed limits. You will note that all of these homes would fall out of compliance with the proposed FAR changes.

Now consider the attempt to build a home on these lots, meet FAR limits, and build a desirable and profitable home for a buyer. Here are several outcomes:

1. Builder might eliminate the usable area in the attic, possibly with a flat or alternative, unattractive, roofing designs with a small pitch, which is not optimal for New England's snowy weather conditions. The finished attic areas typically have been used as a study area for the children, office, and playroom. These are amenities that homeowners require in today's society, and they are a positive influence on the home.
2. Builder might design with more mass in the back of the home maximizing the rear set-backs. Today we do not maximize the rear set-backs because the space and privacy of a backyard, especially in Newton, is invaluable. The result would be a reduction of the most private land a family has, the backyard, both by affecting their own space, and on the flip-side infringing on the privacy of the abutting neighbor.
3. The proposed changes to FAR have a significant adverse impact on the value of the land. Higher allowable FAR yields higher land value, however the amendment gives more in the way of higher limits, but then eliminates those gains and takes more away from the home by amending the definitions. As previously mentioned, these families are looking to maximize livable space in the home.
4. An adverse affect of this would be lower real estate values, lower taxes. This is true for both new and older homes.
5. New homes would not be built. The value of new construction homes would be less therefore, the value of the neighborhoods would not increase to the level that they currently have. Our transitioning neighborhoods would remain in a unbalanced state.
6. Prospective Buyers may consider communities other than Newton to obtain a suitable home relative to the value and size, which would be a detriment to our community and to us as a contractor
7. The ability, as a contractor, to build a home for profit in Newton under the new amendment would diminish and therefore cause us to potentially expand our business to other communities.

8. Buyers are valuing homes by calculating the price per square footage. If the FAR amendments lend us to build smaller homes, there is a distinct possibility that these buyers will find a greater value in neighboring towns such as Needham and Wellesley.
9. As a result of the home value decline, applicable real estate taxes would also decline, potentially causing a negative impact to our community and education system, which played a significant role to my family moving into this community as well as many others.

Summary

The proposed FAR amendments would severely limit the quality and quantity of new home construction, and every positive impact that results from a new home in our city.

The mass of a structure is most effectively controlled by height, lot coverage, and set-back limits. There is little debate to this statement. Collectively they govern the mass of a structure in a more direct manner than FAR limits. The proposed changes to the FAR will have a more direct impact on the design, and not the mass, of a structure, therefore resulting in a builder's attempt to maximize/challenge the lot coverage and set-back limits. This takes us in a negative direction and is not something that beautifies our neighborhood and decreases value.

I invite you to drive by the homes listed in Exhibit A. Ask yourself whether we as a community are better off if these homes had not been built. I hope you appreciate their beauty, their placement on the lot, and the deliberate and successful attempt to keep backyards enjoyable for families.

Keep in mind that what people notice most is that which is in the line of sight, and while navigating our streets, the open space is what has the single greatest impact on a person's perspective.

Sincerely,

Chris Utano

11 JAN 21 P 12:09
CITY CLERK
NEWTON, MA. 02159

Location		Lot sf	Zoning	New Lot Bonus y/n	
26 Fox Hill Road		12,138	SR2	y	
Current FAR Limit	Current Allowable sf	Built sf on 1st and 2nd floors	Proposed FAR Limit	Proposed Allowable sf	Built sf on 1st, 2nd floors, attic, and basement
0.35	4248.3	4247	0.4	4855.2	5507
This house is out of compliance with the proposed FAR calculations and definitions because the attic and basement square footage is included in the calculation.					

Location		Lot sf	Zoning	New Lot Bonus y/n	
41 Redwood Road		15,585	SR2	y	
Current FAR Limit	Current Allowable sf	Built sf on 1st and 2nd floors	Proposed FAR Limit	Proposed Allowable sf	Built sf on 1st, 2nd floors, and attic
0.35	5454.75	5443	0.35	5454.75	6443
This house is out of compliance with the proposed FAR calculations and definitions because the attic square footage is included in the calculation.					

Location		Lot sf	Zoning	New Lot Bonus y/n	
45 Village Circle		10,037	SR2	y	
Current FAR Limit	Current Allowable sf	Built sf on 1st and 2nd floors	Proposed FAR Limit	Proposed Allowable sf	Built sf on 1st, 2nd floors, attic, and basement
0.35	3512.95	3511	0.4	4014.8	4716
This house is out of compliance with the proposed FAR calculations and definitions because the attic square footage is included in the calculation.					

Location		Lot sf	Zoning	New Lot Bonus y/n	
130 Hartman Road		10,000	SR2	y	
Current FAR Limit	Current Allowable sf	Built sf on 1st and 2nd floors	Proposed FAR Limit	Proposed Allowable sf	Built sf on 1st, 2nd floors, and attic
0.35	3500	3499	0.4	4000	4387
This house is out of compliance with the proposed FAR calculations and definitions because the attic square footage is included in the calculation.					

Location		Lot sf	Zoning	New Lot Bonus y/n	
62 Westgate Road		16,100	SR2	n	
Current FAR Limit	Current Allowable sf	Built sf on 1st and 2nd floors	Proposed FAR Limit	Proposed Allowable sf	Built sf on 1st, 2nd floors, and attic
0.3	4830	4826	0.33	5313	5676

This house is out of compliance with the proposed FAR calculations and definitions because the attic square footage is included in the calculation.

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
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 Fax 617-332-9499
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 NEWTON, MA. 02159

January 10, 2011

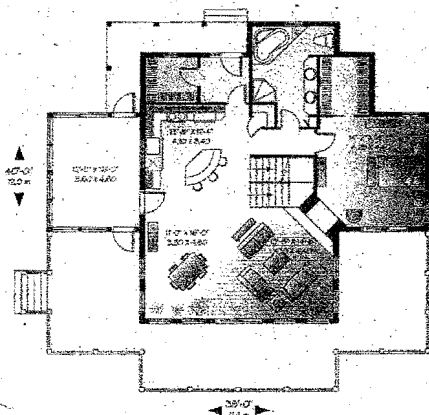
Newton Zoning and Planning Committee
 c/o Marcia Johnson, Chair
 City Hall
 Newton, MA

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.

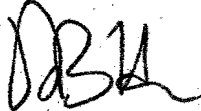
ADMINISTRATION

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 light blue horizontal line.

Philip B. Herr

142-09(6)

11 JAN 28 P 3:06

CITY CLERK
NEWTON, MA. 02159

Petition #142-09(6) Proposed Changes

Petition 142-09(6): Proposed Amendments Relating To Residential FAR

Summary

Item # 142-09(6) FAR AMENDMENT ADVERTISEMENT LANGUAGE: 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 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.

Specific Proposed Changes

The following proposed amendments (1 through 5 below) would take effect on a October 15, 2011 future date (hereinafter "effective date") to be determined by the Board of Aldermen:

Add the following definitions to Sec. 30-1:

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.

Porch: A roofed structure with sides not more than sixty percent (60%) enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned. ~~projection that extends from the facade 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.

2. Amend the following definitions in Sec. 30-1:

Floor area ratio:

- (a) For residential structures in residential districts, gross floor area of all buildings on the lot divided by total lot area.
- (b) For all others: Gross floor area of all buildings on the lot divided by total lot area. Any portion of a basement not used for storage, parking or building mechanicals shall be included in determining floor area ratio.

Floor area, gross:

- (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half story above the second story as defined in this ordinance.
- (a) For residential structures and buildings accessory to residential structures in residential districts, the sum of the floor area of all principal and accessory buildings whether or not habitable, except as excluded below. Floor area measurements shall be taken from the exterior face of the exterior walls within the perimeter of the outside walls of each building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this section.
 - a. Gross floor area shall include:
 - i. First and second stories;
 - ii. Any floor area space above the second story, whether finished or unfinished, that meets all of the following criteria:

Petition #142-09(6) Proposed Changes

1. It lies below 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;
 2. Is at least seven (7) feet in any horizontal dimension, as measured within the area having a wall height of five feet or more;
 3. Has a minimum ceiling height of seven (7) feet on at least 50 percent of its required floor area; and
 4. 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.
- iii. Atria, open wells, and other vertical open spaces, where floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10);
 - iv. Enclosed porches;
 - v. Attached garages;
 - vi. Detached garages and any space above the first story of a detached garage that has a ceiling height of 7' or greater;
 - vii. Other detached accessory buildings, such as sheds or cabanas, except as exempted in (b)(iii) below.
 - viii. 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

- b. Gross floor area shall not include:
 - i. Unenclosed porches;
 - ii. Carports; and
 - iii. One detached accessory building equal to or less than 120 square feet in size.

(b) For all others: The floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

3. Amend the provisions of 30-15(u) by replacing 30-15(u) in its entirety with the following:

Petition #142-09(6) Proposed Changes

(u) The floor area ratio (FAR) shall apply to all one and two family structures, whether new or existing, according to the FAR limits contained in Table A below. The following exceptions shall apply:

1. For construction on lots created before 12/7/1953, an additional increase in FAR of .02 above the amount shown in Table A shall be allowed, provided that new construction proposed using additional FAR granted under this paragraph shall comply with setback requirements for post-1953 lots. Any increase in FAR granted through this section may not create or increase nonconformities with respect to lot coverage or open space and may not be used in conjunction with section 30-21(c).

2. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

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TABLE A: ALTERNATIVE FAR FOR SINGLE AND TWO FAMILY STRUCTURES IN RESIDENTIAL DISTRICTS

Lot Size Category	SR1	SR2	SR3
Less than or equal to 4,999 square feet	Maximum FAR=46	Maximum FAR=.46	Maximum FAR=.48
5,000 to 6,999 square feet	<p><i>Maximum FAR ranges from .46 to .43 depending on lot size.</i></p> <p>Maximum FAR=.46 - [.000015* (lot size-5000)]</p>	<p><i>Maximum FAR ranges from .46 to .43 depending on lot size.</i></p> <p>Maximum FAR=.46 - [.000015* (lot size-5000)]</p>	Maximum FAR=.48
7,000 to 9,999 square feet	<p><i>Maximum FAR ranges from .43 to .33 depending on lot size.</i></p> <p>Maximum FAR = .43 - [.000033* (lotsize-7000)]</p>	<p><i>Maximum FAR ranges from .43 to .38 depending on lot size.</i></p> <p>Maximum FAR = .43 - [.000017* (lot size-7000)]</p>	<p><i>Maximum FAR ranges from .48 to .41 depending on lot size.</i></p> <p>Maximum FAR = .48 - [.000023* (lot size-7000)]</p>
10,000 to 14,999 square feet	<p><i>Maximum FAR ranges from .33 to .31 depending on lot size.</i></p> <p>Maximum FAR = .33 - [.000004* (lot size-10000)]</p>	<p><i>Maximum FAR ranges from .38 to .33 depending on lot size.</i></p> <p>Maximum FAR = .38 - [.000010* (lot size-10000)]</p>	<p><i>Maximum FAR ranges from .41 to .38 depending on lot size.</i></p> <p>Maximum FAR = .41 - [.000006* (lot size-10000)]</p>
15,000 to 19,999 square feet	<p><i>Maximum FAR ranges from .31 to .28 depending on lot size.</i></p> <p>Maximum FAR =</p>	Maximum FAR = .33	Maximum FAR = .38

Petition #142-09(6) Proposed Changes

	.31 - [.000006* (lot size-15000)]		
20,000 to 24,999 square feet	Maximum FAR ranges from .28 to .26 depending on lot size. Maximum FAR = .28 - [.000004* (lot size-20000)]	Maximum FAR = .33	Maximum FAR ranges from .38 to .36 depending on lot size. Maximum FAR = .38 - [.000004* (lot size-20000)]
25,000 square feet or more	Maximum FAR = .26	Maximum FAR = .33	Maximum FAR = .36

Lot Size Category	MR1	MR2/MR3
Less than or equal to 4,999 square feet	Maximum FAR = .58	Maximum FAR = .58
5,000 to 6,999 square feet	Maximum FAR ranges from .58 to .53 depending on lot size. Maximum FAR = .58 - [.000025* (lot size-5000)]	Maximum FAR ranges from .58 to .53 depending on lot size. Maximum FAR = .58 - [.000025* (lot size-5000)]
7,000 to 9,999 square feet	Maximum FAR ranges from .53 to .48 depending on lot size. Maximum FAR = .53 - [.000017* (lot size-7000)]	Maximum FAR = .53
10,000 to 14,999 square feet	Maximum FAR = .48	Maximum FAR ranges from .53 to .43 depending on lot size. Maximum FAR = .53 - [.000020* (lot size-10000)]
15,000 to 19,999 square feet	Maximum FAR ranges from .48 to .43 depending on lot size. Maximum FAR = .48 - [.000010* (lot size-15000)]	Maximum FAR ranges from .43 to .38 depending on lot size. Maximum FAR = .43 - [.000010* (lot size-15000)]
20,000 to 24,999 square feet	Maximum FAR ranges from .43 to .38 depending on lot size. Maximum FAR = .43 - [.000010* (lot size-15000)]	Maximum FAR = .38

Petition #142-09(6) Proposed Changes

	(lot size-20000)]	
25,000 square feet or more	Maximum FAR = .38	Maximum FAR = .38

4. Amend 30-15 Table 1 by removing some FAR limits from Table 1:

Delete, in Sec. 30-15 Table 1, all numbers listed under the TOTAL FLOOR AREA RATIO column for the following zoning districts: Single Residence 1; Single Residence 2; Single Residence 3; Multi-Residence 1; Multi-Residence 2; Multi-Residence 3, excepting the number for the category of Residential Care Facility; and Multi-Residence 4, excepting the number for the category of Residential Care Facility. Add a cross reference to Sec. 30-15(u) Table A for determining FAR for single and two-family dwellings in these districts.

5. Amend 30-21(c) clause (5) by changing the reference to "section 30-15 table 1" to "section 30-15(u) Table A":

, (5) the de minimis relief provided in this section shall not apply to buildings in which the nonconformity is due solely to FAR requirements set out in ~~section 30-15 Table 1~~ section 30-15(u) Table A, nor shall it be used to increase the FAR beyond that shown in ~~Table 1A~~.

The following proposed amendment (6) would take effect upon passage:

6. Effective upon passage, amend the current provisions of Sec. 30-15(u) to extend the expiration dates in paragraphs 1, 2, and 3 until October 15, 2011 the "effective date" of the above listed proposed amendments.

- (u) The floor area ratio (FAR) contained in section 30-15 Table 1 shall apply to all one and two family structures, whether new or existing, with the following exceptions:
1. For renovation of or addition to existing one and two family structures, a cumulative increase in FAR of up to .05 above the amount shown in Table 1 shall be allowed, whether such structures are conforming or lawfully nonconforming as to FAR, provided that the certificate of occupancy for the original construction of the existing structure was granted at least ten (10) years prior to the date of application for additional FAR pursuant to this paragraph or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure for at least ten (10) years prior to the date of application. Any increase in FAR granted through this section may not create or increase nonconformities with respect to lot coverage, open space, or setback requirements and may not be used in

Petition #142-09(6) Proposed Changes

conjunction with section 30-21©. The provisions of this paragraph shall expire on ~~February 28, 2011~~Effective Date ~~October 15, 2011~~.

2. For renovation of or addition*to existing one-and two-family structures on pre-1953 lots meeting all of the criteria of section 30-15(u)(1), an additional increase in FAR of up to .02 above the amount shown in Table 1 and the amount available in section 30-15(u)(1) shall be allowed, provided that any renovations or additions proposed using additional FAR granted under this paragraph or section 30-15(u)(1) shall comply with post-1953 setback requirements, or, if the footprint of the existing structure extends beyond the post-1953 setback requirements, shall extend no closer to the lot line than the present structure. The provisions of this paragraph shall expire on October 15, 2011 ~~February 28, 2011~~Effective Date.
1. For construction of new one- and two-family structures, an additional FAR of .05 above the amount shown in Table 1 shall be allowed for initial construction on pre-1953 lots when post-1953 lot setback on lot coverage requirements and pre-1953 open space requirements are met. This provision may not be used concurrently with section 30-15(u)1 or 2, nor shall it apply to additions to any structure. The provisions of this paragraph shall expire on October 15, 2011 ~~February 28, 2011~~Effective Date.
2. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

11 JAN 28 P 3: 06

#142-09(6)DRAFT

CITY CLERK
NEWTON, MA. 02159

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

January , 2011

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

That the Zoning regulations, Chapter 30 of the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

A. The following amendments 1 through 6 below shall become effective on October 15, 2011:

1. Add the following definitions to Section 30-1:

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.

Porch: A roofed structure with sides not more than sixty percent (60%) enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or 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.

2. Delete, in paragraph (a) of the definition of "*Floor area ratio*" in section 30-1 Definitions, the words "a building" and insert in place thereof the words "all buildings."
3. Delete, in its entirety, paragraph (a) of the definition of "*Floor area, gross*" in section 30-1, and insert in place thereof the following language:

"Floor area, gross:

(a) For residential structures and buildings accessory to residential structures in residential districts, the sum of the floor area of all principal and accessory buildings whether or not habitable, except as excluded below. Floor area measurements shall be taken from the exterior face of the exterior walls of each building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this section.

a. Gross floor area shall include:

- i. First and second stories;
- ii. Any floor area above the second story, whether finished or unfinished, that meets all of the following criteria:
 1. It lies below the area of a horizontal plane that is five (5) feet above it and which touches the side walls and/or the underside of the roof rafters;
 2. Is at least seven (7) feet in any horizontal dimension, as measured within the area having a wall height of five feet or more;
 3. Has a minimum ceiling height of seven (7) feet on at least 50 percent of its required floor area; and
 4. 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.
- iii. Atria, open wells, and other vertical open spaces, where floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10);
- iv. Enclosed porches;
- v. Attached garages;
- vi. Detached garages and any space above the first story of a detached garage that has a ceiling height of 7' or greater;
- vii. Other detached accessory buildings, such as sheds or cabanas, except as exempted in (b)(iii) below.
- viii. 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: $X/Y * \text{floor area of mass below first story}$

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

b. Gross floor area shall not include:

- i. Unenclosed porches;
- ii. Carports; and
- iii. One detached accessory building equal to or less than 120 square feet in size."

4. Delete, in its entirety, paragraph (u) of section 30-15 and insert in place thereof the following language and Table:

"(u) The floor area ratio (FAR) shall apply to all one and two family structures, whether new or existing, according to the FAR limits contained in Table A below. The following exceptions shall apply:

1. For construction on lots created before 12/7/1953, an additional increase in FAR of .02 above the amount shown in Table A shall be allowed, provided that new construction proposed using additional FAR granted under this paragraph shall comply with setback requirements for post-1953 lots. Any increase in FAR granted through this section may not create or increase nonconformities with respect to lot coverage or open space and may not be used in conjunction with section 30-21(c).
2. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood."

TABLE A: FAR FOR SINGLE AND TWO FAMILY STRUCTURES IN RESIDENTIAL DISTRICTS

Lot Size Category	SR1	SR2	SR3
Less than or equal to 4,999 square feet	Maximum FAR=.46	Maximum FAR=.46	Maximum FAR=.48
5,000 to 6,999 square feet	<i>Maximum FAR ranges from .46 to .43 depending on lot size.</i> Maximum FAR=	<i>Maximum FAR ranges from .46 to .43 depending on lot size.</i> Maximum FAR=	Maximum FAR=.48

	.46 – [.000015* (lot size-5000)]	.46 – [.000015* (lot size-5000)]	
7,000 to 9,999 square feet	<i>Maximum FAR ranges from .43 to .33 depending on lot size.</i> Maximum FAR = .43 – [.000033* (lot size-7000)]	<i>Maximum FAR ranges from .43 to .38 depending on lot size.</i> Maximum FAR = .43 – [.000017* (lot size-7000)]	<i>Maximum FAR ranges from .48 to .41 depending on lot size.</i> Maximum FAR = .48 – [.000023* (lot size-7000)]
10,000 to 14,999 square feet	<i>Maximum FAR ranges from .33 to .31 depending on lot size.</i> Maximum FAR = .33 – [.000004* (lot size-10000)]	<i>Maximum FAR ranges from .38 to .33 depending on lot size.</i> Maximum FAR = .38 – [.000010* (lot size-10000)]	<i>Maximum FAR ranges from .41 to .38 depending on lot size.</i> Maximum FAR = .41 – [.000006* (lot size-10000)]
15,000 to 19,999 square feet	<i>Maximum FAR ranges from .31 to .28 depending on lot size.</i> Maximum FAR = .31 – [.000006* (lot size-15000)]	Maximum FAR = .33	Maximum FAR = .38
20,000 to 24,999 square feet	<i>Maximum FAR ranges from .28 to .26 depending on lot size.</i> Maximum FAR = .28 – [.000004* (lot size-20000)]	Maximum FAR = .33	<i>Maximum FAR ranges from .38 to .36 depending on lot size.</i> Maximum FAR = .38 – [.000004* (lot size-20000)]
25,000 square feet or more	Maximum FAR = .26	Maximum FAR = .33	Maximum FAR = .36

Lot Size Category	MR1	MR2/MR3
Less than or equal to 4,999	Maximum FAR =	Maximum FAR =

square feet	.58	.58
5,000 to 6,999 square feet	<p><i>Maximum FAR ranges from .58 to .53 depending on lot size.</i></p> <p>Maximum FAR = .58 - [.000025* (lot size-5000)]</p>	<p><i>Maximum FAR ranges from .58 to .53 depending on lot size.</i></p> <p>Maximum FAR = .58 - [.000025* (lot size-5000)]</p>
7,000 to 9,999 square feet	<p><i>Maximum FAR ranges from .53 to .48 depending on lot size.</i></p> <p>Maximum FAR = .53 - [.000017* (lot size-7000)]</p>	<p>Maximum FAR = .53</p>
10,000 to 14,999 square feet	<p>Maximum FAR = .48</p>	<p><i>Maximum FAR ranges from .53 to .43 depending on lot size.</i></p> <p>Maximum FAR = .53 - [.000020* (lot size-10000)]</p>
15,000 to 19,999 square feet	<p><i>Maximum FAR ranges from .48 to .43 depending on lot size.</i></p> <p>Maximum FAR = .48 - [.000010* (lot size-15000)]</p>	<p><i>Maximum FAR ranges from .43 to .38 depending on lot size.</i></p> <p>Maximum FAR = .43 - [.000010* (lot size-15000)]</p>
20,000 to 24,999 square feet	<p><i>Maximum FAR ranges from .43 to .38 depending on lot size.</i></p> <p>Maximum FAR = .43 - [.000010* (lot size-20000)]</p>	<p>Maximum FAR = .38</p>

25,000 square feet or more	Maximum FAR = .38	Maximum FAR = .38
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5. Delete, in Sec. 30-15 Table 1, all numbers listed under the TOTAL FLOOR AREA RATIO column for the following zoning districts: Single Residence I; Single Residence 2; Single Residence 3; Multi-Residence 1; Multi-Residence 2; Multi-Residence 3, excepting the number for the category of Residential Care Facility; and Multi-Residence 4, excepting the number for the category of Residential Care Facility; and add a cross reference to Sec. 30-15(u) Table A for determining FAR for single and two-family dwellings in these districts.

6. Delete, in clause (5) of subsection 30-21(c), as inserted by Ordinance Z-51, the words "section 30-15 Table 1" and insert in place thereof the words "section 30-15(u) Table A"; and delete the second reference to Table 1 in said clause (5) and insert in place thereof the words "Table A."

B. The following amendment (7) shall become effective upon passage:

7. In subsection 30-15(u), as most recently amended by Ordinance Z-72, delete in the last sentences of paragraph numbers 1, 2, and 3, the words "February 28, 2011," and substitute in place thereof the words "October 15, 2011."

Approved as to legal form and character:

DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTID. WARREN
Mayor

PLANNING AND DEVELOPMENT BOARD MINUTES

January 28, 2011 City Hall, Planning and Development Department Rm 202, 9:00 a.m.
 1000 Commonwealth Avenue, Newton, Massachusetts 02459

115 FEB -4 A 8:42
 CITY CLERK
 NEWTON, MA. 02159

Full Members Present:

David Banash
 Joyce Moss

Alternate Members Present:

Howard Haywood

Staff Present:

Kathleen Cahill, Community Development Senior Planner
 Candace Havens, Planning Director (ex-officio)

Action 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 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.

J. Moss expressed her reservations about voting in favor of the item because of concern for residential property owners who propose modifications just over the threshold for FAR, which would then require them to obtain a special permit. One suggestion was to have an apolitical design review body that would act as a 'safety valve' for modifications that modestly exceed the FAR threshold. This could prove especially useful during the first year while the FAR limits are being observed. H. Haywood agreed that FAR revisions don't address design and was concerned that the special permit process could be burdensome for people with fewer means. D. Banash agreed that design review or some administrative review of minor exceptions is worth further study, yet he supported the amendment as written; though it may not be perfect, he believes the new language is thoughtful and able to address the flaws in the current ordinance, particularly for the smallest lots, and is better than current language. He was encouraged that post-enactment review by the Planning and Development Department was welcomed. C. Havens also supported the amendment, felt it was well-conceived and thoroughly vetted. She also noted that most of the previous FAR requests that required special permits were heard and acted upon in one night with the help of attorneys, thus reducing the time for decisionmaking and costs to petitioners.

The motion by D. Banash to approve #142-09(6) as amended by the Zoning and Planning Committee on January 24, 2011, failed 2-2 (Haywood and Moss opposed). There being no further business, the meeting was adjourned at 9:00 a.m.

Respectfully Submitted,

Candace Havens
 Director of Planning and Development



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development


Telephone
(617)-796-1120

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(617) 796-1142

TDD/TTY
(617) 796-1089

DATE: December 7, 2010

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

FROM: Candace Havens, Interim Director of Planning and Development 
Jennifer Molinsky, Interim Chief Planner – Long Range Planning
Brian Lever, Senior Preservation Planner

SUBJECT: **Petition # 235-10** Ald. Baker and Yates on behalf of the Newton Historical Commission requesting updates to **Section 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.

CC: Mayor Setti D. Warren
Board of Alderman
John Lojek, Commissioner, Inspectional Services Department
Marie Lawlor, Assistant City Solicitor
Donald Lang, Chair, Newton Historical Commission

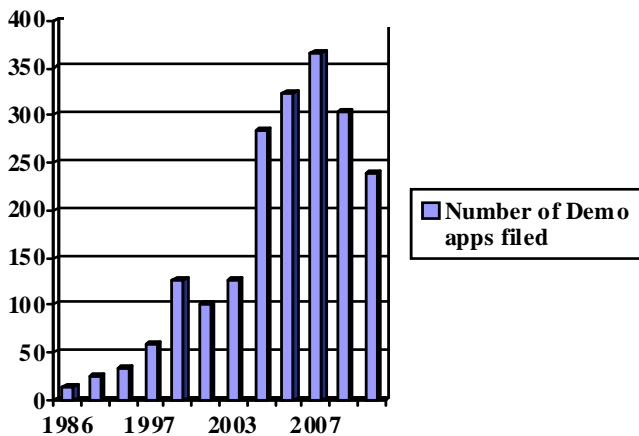
The purpose of this memorandum is to provide the Zoning and Planning Committee with information on petition #235-10 regarding amendments to the Demolition Delay Ordinance. A change to the Demolition Delay Ordinance requires a vote by the Board of Aldermen.

BACKGROUND

In 1985, the Demolition Delay Ordinance was enacted enabling the Newton Historical Commission (NHC) to delay the demolition of historically significant buildings and structures, the loss of which was considered to be detrimental to the historic resources and heritage of the City. Initially the delay was six months, later extended to one year. In order for the one-year delay to be imposed, a building or structure has to be found both historically significant (requiring review of the Historical Commission) and preferably preserved (meaning its loss will be detrimental). During the one-year delay, property owners may apply to waive the remainder of the delay based upon mitigating circumstances.

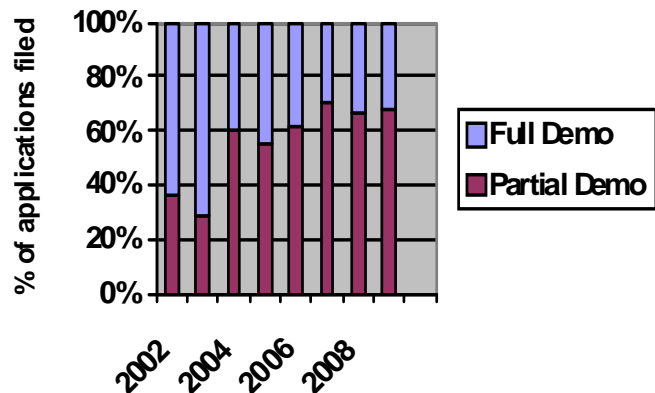
In 2003, the Commission adopted an internal review policy regarding partial demolition, defining it as demolishing or altering greater than 25% of a façade or roof. This policy change was formally adopted as part of the ordinance change in 2008, which also granted a staff level review. The Planning Department and the Historical Commission have since engaged in a review of the effectiveness of the Demolition Delay and have noted the following issues: (1) The number of filings for demolition review is higher in Newton than any other community in Massachusetts; in fact, Newton annually receives two to three times as many applications as the City of Boston due to the strict filing procedures narrowly defining demolition; (2) the Historical Commission has been inundated with requests for waivers of the Demolition Delay even before a building is put on the one-year delay and in other cases applicants apply for a waiver immediately upon the delay determination and keep returning until a waiver is obtained; (3) the effectiveness in preserving historic buildings and structures in Newton is diminished due to the issuance of waivers for replacement buildings; (4) in comparison to other communities such as Cambridge, Newton's delay saves far fewer buildings from destruction; (5) preservation staff in Newton spend far more time on demolition review than any other job responsibility (and more than other staff in other communities), which takes time away from other important job functions such as grant writing, historical research, and public outreach.

Number of Demolition Review Applications Filed



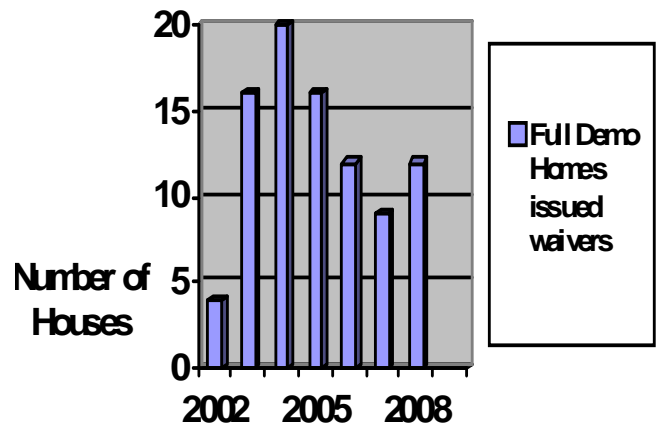
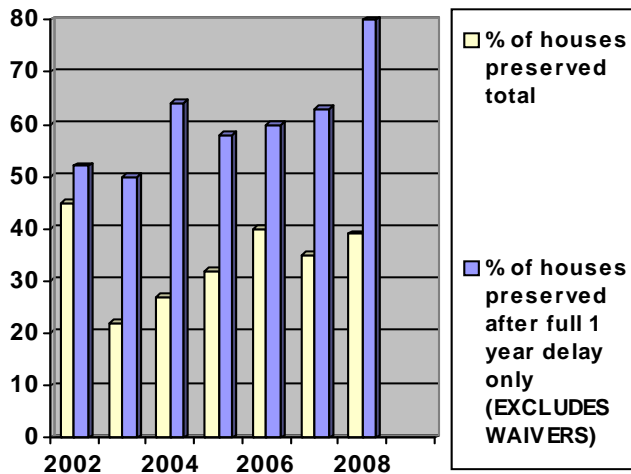
***25% threshold policy adopted in 2003**

Full Versus Partial Demolition Breakdown



The 2003, change resulted in the filing of many more applications for partial demolition, defined as altering or demolishing greater than 25% of a roof or façade. Other communities define partial demolition as removing 25% of a building - not 25% of a roof or façade. Currently roughly ¾ of applications are for partial demolition where they once occupied less than ½ of applications filed. In many cases where the houses are small 25% of a façade can be altered by simply adding or removing a mudroom, sliding glass door, or some other alteration that is small in scope. From 2003 to 2008 Historical Commission meetings often considered 20 to 30 agenda items and meetings lasted into the night. The 2008 staff approval resulted in a screening process whereby staff

could sign off on smaller changes that occurred to historic buildings. There are still hundreds of applications filed, but the burden of review has been shifted to staff rather than the Historical Commission. Demolition review occupies the most time of all staff responsibilities. Since the 2003 change, the efforts to save historic buildings have suffered. In order to move through the dozens of applications before them in an evening, the Historical Commission issued numerous waivers of the Demolition Delay, spending only a few moments per application instead of focusing only on substantial projects that affected significant buildings. Meanwhile, applicants sometimes waited hours for the brief review of their item, which was frustrating for many. Due to the increase in waivers, historic buildings were demolished at a faster rate than ever before.



Before the 2003 change, between 40% and 50% of applications for full demolition resulted in buildings being saved. Of the buildings found preferably preserved in 2003, only 22% were saved. In contrast the, number of buildings that were saved as a result of undergoing the entire one-year delay has been in excess of 50% each year. Our conclusion is that ***a building is far more likely to be preserved if it undergoes the full delay.*** The more waivers issued, the fewer buildings preserved. Newton preservation staff has spoken with their counterparts in Cambridge and Brookline and learned that waivers of the Demolition Delay are not issued as quickly or as easily as they are in Newton; staff in Cambridge estimate that over 50% of demolition applications annually filed result in the building being saved, a significant advantage over Newton.

PROPOSAL

To address these issues, the Historical Commission has proposed the following changes to the Demolition Delay Ordinance:

- 1) Loosen the filing threshold by increasing the definition of partial demolition from 25% to 50% of a façade or roof, thereby reducing the number of applications filed.
- 2) Insitute a minimum period for full demolition applications found preferably preserved of four months. This period is intended to promote the reuse of buildings. After four months an applicant can then apply for a waiver of the delay for a replacement building. Partial demolition applications will not be affected and can be issued waivers at the first meeting.

- 3) Increase the total length of the Demolition Delay to 18 months. As discussed, the longer an applicant undergoes the delay, the more likely the building is to be preserved. Currently, five communities in Massachusetts - Acton, Amesbury, Brookline, Chatham, and Middleborough - have 18-month delays. In the case of Brookline and Acton the extra six months beyond the year delay is only for National Register-listed or other specially designated historic properties. The experience of Chatham and Amesbury is illustrative of the impact of increasing the demolition delay to 18 months:

Chatham: Chatham's Commission has had an 18-month delay for over three years; previously, the delay was 12 months. The Chairman of the Commission reports that there has been no negative reaction to the change and that the Commission still issues waivers of the delay on an as needed basis. The Chairman stated that 12 months was insufficient to dissuade people from demolishing buildings, but since the change, the Chatham Historical Commission has been much more successful in preserving buildings and that often people do not even apply to demolish buildings upon hearing about the delay and choose to renovate instead.

Amesbury: Amesbury's Historical Commission found that a demolition delay of one year or less was not sufficient for applicants to fully investigate and implement alternative solutions to demolition. A member of the Commission notes that in a couple of situations, reasonable alternatives to demolition were found but the delay expired before they could be implemented and the owners found it more cost effective to demolish the structures than wait a few more months until they could be moved.

PLANNING DEPARTMENT ANALYSIS

The Planning Department has reviewed this matter with the Historical Commission and recommends adoption of the proposed changes. The Planning Department believes the changes will allow City staff to focus on substantial projects most in need of review, and through increasing the length of the Demolition Delay, provide a greater incentive for the preservation of Newton's historic properties.

ATTACHMENTS

Attachment A – Memo from Newton Historical Commission

Attachment B – Demolition Delay Ordinance marked up with proposed changes. Text that is struck through is text proposed to be deleted and bold text is text proposed to be inserted.

MEMO FROM NEWTON HISTORICAL COMMISSION

The Newton Historical Commission voted unanimously at its January 28, 2010 hearing to propose the changes set forth in the attached copy of the Demolition Delay Ordinance. We are confident that these changes will have the dual benefit of reducing the number of historically significant buildings and structures demolished annually, while simultaneously making it less complicated for city residents doing remodeling projects.

The intent and purpose of the Demolition Delay Ordinance is *“the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.”* The ordinance was adopted because historical preservation was determined to be an important and integral component of the *Newton Comprehensive Plan*.

Following that directive, the Commission's single most important task is to prevent the total demolition of historically significant buildings and structures to the greatest extent possible. Projects that involve an addition or a renovation are infinitely preferable simply because much of the original building or structure will remain intact. The proposed changes are consistent with the operational concept in play during the last review of the Demolition Delay Ordinance that the openings in the net be enlarged to permit the smaller fish to escape while simultaneously catching the larger fish.

The proposed changes are intended to ease the burden on City residents doing remodeling projects and will reduce the number of projects subject to the review of the Historical Commission and its staff. This will be accomplished simply by increasing the percentage of any single exterior wall surface, which includes exterior wall surfaces that would be enveloped by subsequent additions that requires review. The proposed changes are intended to reduce the number of total demolitions and expediting review of remodeling projects as follows:

- Extend the period of the demolition delay for a total demolition from one (1) year to eighteen (18) months. The demolition delay for a remodeling project would remain unchanged at one (1) year.
- Further, projects involving total demolition that are determined to be preferably preserved would be prohibited from presenting their proposal for a replacement building or structure for four (4) months.
- Increase the filing threshold allowing more small remodeling projects to occur without review.

Please refer to the attachment for specifics.

PROPOSED CHANGES TO THE DEMO DELAY ORDINANCE

DIVISION 2. DEMOLITION DELAY

Sec. 22-50. Demolition of historically significant buildings or structures.

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The commissioner of inspectional services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

(1) *Items requiring review by the commission at a hearing.* Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.

a) Additions or ~~rear~~ells determined to be architecturally significant by commission or commission staff.

- ~~b) Attached garages determined to be architecturally significant by commission or commission staff.~~
- c) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.
- d) Porches determined to be architecturally significant by commission or commission staff, except open decks, ~~and staircases, and entryways. which are not original to the structure and therefore~~ **which are excluded from review.** ~~excluded from review.~~
- e) Removal or **envelopment by subsequent additions** ~~covering~~ of ~~25~~**50**% or more of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions.~~ Each wall is calculated by square footage individually.
- f) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff. ~~including but not limited to the following items.~~

~~i) Brackets~~

~~ii) Crown molding~~

~~iii) Porch columns and railings~~

~~iv) Bay windows~~

~~v) Dormers~~

~~vi) Chimneys~~

(2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*

- a) Removal or alteration of the roof structure** ~~a) Construction of new dormers which encompass less than 50% of the roof surface.~~
- ~~b) Construction on existing flat roofs, which will not alter a significant architectural feature.~~
- e)b** Repair or replacement of existing and original **historic** porches with similar materials to match existing.
- ~~d) Removal of less than 50% of the roof structure.~~
- ec)** Demolition or construction of additions or alterations not visible from a public way.

fa) Removal or **envelopment by subsequent additions** covering of ~~25~~50% to ~~50~~100% of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions~~. Each wall is calculated by square footage individually.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

a) Open porches **and entryways** consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.

b) ~~b)~~ **Demolition or** construction of new additions which **remove, alter, or envelop** impact ~~50~~25% or less of a single exterior wall;

~~b)c)~~ **Removal or alteration of less than 50% of the roof structure**

ed) Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

Historically significant building or structure: Any building or structure which is in whole or in part fifty or more years old and which

- (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
 - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
 - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

- c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

Preferably preserved: An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) *Procedure.*

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.
- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:
 - a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
 - b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
 - c) a description of the proposed plans for demolition and the reason(s) therefore.
- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is

not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
 - a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
 - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:
 - a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and
 - b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose

loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

(6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

a) No demolition permit shall be issued **for a Total Demolition of a building or structure** until **eighteen (18) months** ~~one (1) year~~ after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such ~~one (1) year~~ **eighteen (18) month** period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

ia) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,

ii) ~~has~~ agreed to accept a demolition permit on specified conditions approved by the commission.

iii) **If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.**

iii)iv) **Notwithstanding the following. The commission shall not review the applicant's proposal for a replacement building or structure until four months subsequent to the determination that the building or structure which is the subject of an application for a demolition permit for Total Demolition is preferably preserved.**

b) **No demolition permit shall be issued for a Partial Demolition of a building or structure until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition**

permit and the owner of the building or structure, if different from the applicant, has:

- i) agreed to accept a demolition permit on specified conditions approved by the commission.**
- ii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.**

(7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.

(8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.

(9) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the

commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non compliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstatement of the fine for non-compliance with this ordinance.

- (f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.
- (i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.
- (j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.
- (k) *Applicability.*
- (1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

(2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances. (Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V- 98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08)