

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MAY 10, 2010

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

Also Present: Ald. Crossley, Hess-Mahan and Merrill

Others Present: John Lojek (Commissioner, Inspectional Services Dept.), Candace Havens (Interim Director, Planning and Development Dept.), Juris Alksnitis (Planning Dept.), Harvey Creem (Chairman, Zoning Board of Appeals), Tabetha McCartney (Chairman, Planning & Development Board), Alan Schlesinger (Member, FAR Task Force), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#123-10 CHRISTOPHER STEELE, 189 Carlton Road, Waban, appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 3, 2013. (60 days 7/2/10) [04/13/10 @ 7:08 PM]

ACTION: **APPROVED 8-0**

NOTE: Mr. Steele addressed the Committee. He explained that he helps companies translate their business needs into location needs with site selection and real estate consulting. He also helps communities understand what it is about them that is interesting and important as business inputs in terms of building business attraction strategies and on building economic development plans. Applying these interests and experiences to his own community was something he was very interested in doing. He has been attending EDC meetings since March and is looking forward to adding his opinion to the discussion.

Ald. Yates felt that Mr. Steele was extremely qualified and wondered why he was not considering the Planning Board. Mr. Steele said the mission of the EDC better fits what he can contribute. He felt it was important to take a holistic view of the city and how all the villages could come together towards that end for solutions to a variety of challenges.

Ald. Yates moved to approve Mr. Steele's appointment and the Committee voted 8-0.

#93-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 30-27** of the City of Newton Ordinances governing membership of the Zoning Board of Appeals by providing selection criteria guidance and process so that the level of expertise in related areas, or the equivalent combination of experience and/or education is present in order to enhance the ability of

the Board to increase its level of service to Newton. [03/26/10 @ 12:31 PM]

ACTION: **HELD 8-0**

#92-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 22-3(a)** of the City of Newton Ordinances governing membership of the Planning Board by providing selection criteria guidance and process so that the level of expertise in related areas, or the equivalent combination of experience and/or education is present in order to enhance the ability of the Board to increase its level of service to Newton. [03/26/10 @ 12:29 PM]

ACTION: **HELD 8-0**

NOTE: Items #93-10 and #92-10 were discussed together. Ald. Johnson explained her rationale behind these two docket items. She said the new Mayor is looking at the membership of all the boards and commissions and these items are a response to conversations with him on that topic. She would like the Board to be able to provide some clear guidance to him, and future mayors, as to the kind of capabilities, skills, knowledge and experience that is needed or desirable on various commissions. Since the Zoning Board of Appeals (ZBA) and the Planning & Development Board (P&D Board) report into the Zoning and Planning Committee, she felt this was a good place to start. She also had several conversations with Candace Havens and John Lojek to help form these items.

Ald. Johnson said she wanted to make it clear that she was not indicating that they were looking for current board members to go. This is to provide ongoing guidance to mayors and presidents of the board to come. This is to benefit the City at large and document good practice.

Brookline Model

Ald. Sangiolo added that Commissioner Lojek had indicated at a previous meeting that he knew of one or more communities that had some requirements around membership to these types of boards. Mr. Lojek explained to the Committee that there are some broad guidelines in some appointment categories and some specific guidelines in others that he was aware of. He served on a Building Commission that runs all town construction for Brookline which had very specific guidelines. There had to be an engineer (usually structural), an architect and a licensed builder along with two other citizens. A contracts attorney was appointed to one of those slots and the fifth person was almost always a redundancy of one of the specified professions. The Building Commission had very distinct tasks and needed very distinct areas of expertise. There were other boards that were less specific and the application process lent itself to garnering those in the areas of real estate, planning, law and/or development work. Some of these guidelines were set out in the by-laws and some by policy.

Tracking Boards/Commissions

Commissioner Lojek added that the conversation about this issue began at the department heads meeting at Mt. Ida College. The question of boards and commissions came up and the Mayor said he needed to know more about them. He tasked Andrew Warner with gathering the information of the functions and qualifications of members. Ald. Sangiolo said the boards and commissions are listed but they are in various places on the City's website. Andrew Warner will be taking over the task of tracking them and keeping them up-to-date. Ald. Johnson said this has been a long standing issue and has been out of sync for awhile. Recently, the Clerk's office added a new webpage that lists all the boards/commissions to which the Board of Aldermen make appointments. The information regarding membership, functions and responsibilities can be found there, as well as vacancies and an online application. The Mayor's office will be adding a similar page for boards/commission over which they have appointing authority but it is not yet finished.

Guidelines for Newton

Ald. Baker said that Newton's Design Review Committee had some specific requirements for its membership and that made sense as they looked at particular building projects. He was more cautious about the ZBA and P&D Board because they look at policy development and there is some regulatory function as Board of Survey, but that is rare. He asked Mr. Lojek if he saw the need to make the proposed types of changes in membership. Mr. Lojek said he liked the model of Brookline's Building Commission. There are some specific requirements and some left open for discretion. He felt on every board and commission there should be some specificity as to a certain level of technical experience because it is needed. Symbiotic relationships are formed and much is learned between members, but there needs to be a baseline of experience to best serve the public. The decisions made by these boards affect residents of the City. If a decision of the Commissioner's was overruled, it could have vast implications for the City on how land is developable or non-developable, etc. Therefore, the people making the decisions need to do so based on sound information, experience and judgment.

Ald. Johnson referenced the amended guidelines for membership of the Urban Design Commission which was approved by the Board of Aldermen in 2009 and it provides guidelines for specific professions. She said the ZBA and the Planning & Development Board potentially have a greater impact on the City than the Urban Design Commission and yet there is no guidance whatsoever.

Ald. Swiston felt it made sense to have some minimum requirements for these boards still provide some room for flexibility. Ald. Baker pointed out that the current membership of both boards has done a fine job without having the restrictions of the proposed guidelines. Ald. Shapiro felt the proposed language should strengthen the specific skill sets to some degree.

Response to Questions from Planning Dept.

Candace Havens, Interim Director of the Planning & Development Dept., prepared a memo which answered some outstanding questions from the last discussion of these items, which was attached to the agenda. It includes descriptions of the roles and

responsibilities of the Planning & Development Board and the Zoning Board of Appeals; by-laws, composition and current Board members and their areas of expertise and experience; and feedback from the members in regard to the proposed amendments to membership. In addition to this information, Ms. Havens said she was starting to put together a chart of other communities to see how they have assigned duties. She said there were differences based on several variables including the structure of the government but concluded that it would be better to make calls to the communities to find out how their arrangements were working for them.

Response from the Planning & Development Board

Tabetha McCartney, Chair of the Planning & Development Board, addressed the Committee. She said the board members have discussed this issue a bit since it was presented to them. She explained that she has been filling holes in the Planning Board herself because there has not been a surplus of people volunteering to fill them. Her emphasis, having arrived at the board as only the second woman, has been to think about having the Board reflect the diversity of the City better and has made it her task to recruit people who do so. As Ms. Havens reported through her memo, 60% of the board's work is related to community development and the distribution of CDBG funds. People with little or no expertise in these areas were overseeing the use of that money and she found that inappropriate. Ms. McCartney also pointed out that the make-up of the board had been all white and that needed to be more balanced. Ald. Swiston asked if there is a Newton residency requirement for membership to the Board. Ms. McCartney said there is.

Response from the Zoning Board of Appeals

Harvey Creem, Chairman of the Zoning Board of Appeals, addressed the Committee. He said he has been the chair for about a year and a member of the ZBA for 7 years. Until about 10 years ago, the make up of the ZBA had been all lawyers. There are currently 5 members and 5 associate members. Five of the ten members are attorneys but not all are practicing. Some are involved in real estate and one is an engineering manager. He feels there is a relatively diverse selection of people on the ZBA and in his experience, he has not heard anyone say that the current ZBA isn't getting the job done adequately. On any particular case, 5 people sit on the board (on a rotating basis) and 4 need to vote to grant a variance or to overturn the decision of the Commissioner of ISD. He feels that the current board is able to handle the current tasks. Perhaps if different tasks were assigned they might need some different expertise but that is not the case at this time.

Determining Criteria

Ald. Baker said the positions are filled by some criteria for these boards. Ald. Johnson has some thoughts about specifying some criteria and Ms. McCartney has some others. Mr. Creem on the other hand feels the system is working well as it is. Ald. Baker went on to say he felt the touchstone seems to be whether there is a particular kind of activity that goes on in the decision making body that requires a certain expertise. The other question is differences of perspective. A neighborhood association member may bring a different perspective on a development project that someone from a development background, for example. The question would be what would these particular boards

need in terms of expertise to get their job done well, and how should they be codified. Ald. Baker said he is still not convinced this process would result in a better outcome considering there are still the checks and balances of the Mayor appointing and the Board reviewing appointments.

Follow Up

Ald. Johnson said she was hoping for some further feedback from the ZBA and the P&D Board. She would like to hear about the aspects that are working well, and aspects that would be helpful that are currently missing. There is support from the Mayor, the Director of Planning & Development and the Commissioner of Inspectional Services to take a closer look at these issues and to codify some guidelines. Ald. Johnson hoped the boards would work with the Committee and help them determine the proper language and proper guidance. She asked the Chairmen of both boards to communicate in the coming days to Ald. Sangiolo, Ms. Havens, Mr. Lojek or herself. Mr. Creem said he would prefer to have this discussion in person rather than in writing. Ald. Sangiolo said she would be happy to meet with him for some feedback.

Ald. Baker asked for a copy of the report in which the discussion to alter the composition of the Urban Design Commission took place. It is attached to this report. The Committee voted unanimously to hold #93-10 and #92-10.

FAR Informational Presentation

Ms. Havens explained that the Planning Department would be coming to the Committee soon with the results of the FAR Task Force. In preparation for that, a refresher course in FAR seemed like a good idea and Juris Alksnitis offered a PowerPoint presentation on the subject. It is attached to this report.

Alan Schlesinger, member of the FAR Task Force addressed the Committee. He said the policy approach that was taken was to tilt the numbers to allow more development on smaller lots that were going to get squeezed, and lower the FAR numbers on the larger lots. All they did was put forward suggestions of various combinations and then a decision would need to be made on how the balancing should go. Ald. Yates asked if they considered splitting the smaller residential districts into two types to reflect that some of them are in compliance but big chunks of them are not. Mr. Schlesinger said they did not divide by districts but by lot sizes.

Follow Up

Ms. Havens said that the FAR Task Force could present their report at the next meeting of the Zoning and Planning Committee. Ms. Havens said she would also like to discuss the transition period that is part of the FAR working group's conclusions.

Ald. Baker said the current FAR ordinance (Z-51) has a sunset clause of July 30, 2010 to some of its provisions and suggested docketed an extension. The Committee agreed and an extension to October 31, 2010 will be docketed.

Respectfully submitted,
Marcia Johnson, Chairman

February 2, 2009 Zoning and Planning Committee Report – Excerpt

#22-09 DIRECTOR OF PLANNING & DEVELOPMENT recommending various amendments to Chapter 22 of the Revised Ordinances of Newton, 2007, ARTICLE IV, Urban Design and Beautification Commission, including changing the name to *Urban Design Commission*, deleting the Advisory board, and expanding its powers and duties to include special permits.

ACTION: APPROVED AS AMENDED 8-0

NOTE: Architect Richard Griffin, the Chair of the Commission, was present to explain the need for the change. The current language requiring different design fields and different ward residences has made it difficult to find members who satisfy both criteria. Committee members felt that broad geographic representation was still a worthy objective if an overwhelming obstacle as a requirement. It was therefore agreed to amend the draft language to include representation from all wards to the extent practicable. Jennifer Molinsky presented the other proposed changes. Beautification is dropped from the title of the Commission although retained in some of the detailed language where appropriate. Advice on special permits was to be inserted in place of zoning changes. The Committee agreed that the addition of special permits made sense but that zoning changes could be kept as well. Retention of a separate section on Commission advice to the Planning and Development Board seemed unreasonable so the Board was added to the list of advisees with the Board of Aldermen, the Mayor etc. The Committee agreed with the elimination of the Advisory Board and voted unanimously on a motion by Alderman Danberg to approve the draft text (a clean copy and redlined version are attached) as amended.

FAR Refresher

ZAP Meeting
May 10, 2010

Agenda

- History of Floor Area Ratio (FAR) in Newton
- Key FAR elements
- FAR Study Working Group progress

History of FAR in Newton

- Zoning was initially adopted in 1922; minimum lot areas and frontage were first established in 1940.
- Major overhaul in 1953 giving us current two-tier time-based system (old lot/new lot) with increased dimensional requirements for post-53 lots.
- Major overhaul in 1987, including minimum open space requirement along with dimensional controls for business zones and for religious and non-profit educational uses.
- From 1940 – 1997 Newton relied largely on standard dimensional controls to establish building envelope and guide development.

History of FAR in Newton

- Concerns about "monster houses" arose in late 1990s; most appeared to be on large lots, though some concern for overbuilding on small lots.
- Several petitions brought to Board of Aldermen in spring 1997 to control the mass of new structures in residential districts, curb demolitions, including a petition to establish FAR.

History of FAR in Newton

- FAR ordinance passed April 1997
- Immediately amended (July '97) to remove attic space from GFA calculation, and to reduce FAR limits significantly (by .1 across all districts)
- In general, FAR applied to new construction and to existing dwellings when over 50% of an existing house was demolished.
- Original FAR formula: $\Phi + \alpha + \psi + \zeta + \omega / \mu = \text{FAR}$

Recent amendments to FAR

- Ordinance Z-35, Nov. 3, 2008: Revised definition of "Floor area gross" clarifying that attics and half stories had to be above the 2nd story in order to be excluded from countable area.
- Ordinance Z-44, March 16, 2009: Deleted in its entirety the "infamous" Footnote 7 from Table 1.
- Ordinance Z-51, August 10, 2009: Deleted Footnotes 5 and 6 from Table 1 and instead provided new Section 30-15(u) in the body of the Zoning Ordinance addressing multiple FAR considerations.

Recent amendments to FAR

Main outcomes of these amendments:

- 1 - Relief for additions -- response to "mudroom revolt" after removal of 50% loophole in Fn7
- 2 - Bonus for new construction -- continuance of FAR old Fn 6 re: development of old lots to new lot dimensional controls)
- 3 - Special permit relief --continuance of FAR old Fn 5)
- 4 - Precludes use with *de minimis* relief; prevents new nonconformities.

Revised FAR formula: $(\Phi + \alpha + \psi + \zeta + \omega / \mu) + \text{bonus} = \text{FAR}$

FAR main concepts

- FAR = gross floor area (gfa) of building / lot size
- According to A Planner's Dictionary,

"The floor area ratio (FAR) was developed as a more refined and adaptable measure of intensity than building coverage. It expresses in one measure, instead of several, the mathematical relation between volume of building and unit of land. However, FAR cannot replace more traditional bulk controls entirely. Often, it is not a sufficient height control nor does it regulate the placement of the building on the site."

FAR main concepts

- Typical issues under scrutiny have been over how to define gross floor area and what FAR limit to allow in each zoning district
- In debates about gross floor area, questions arose about whether to count:
 - Above ground space (the visible mass of a residence)
 - All livable space
 - Livable space on first two floors only
 - Garages

Determinants of FAR

Residential FAR determined by:

- Definition of "Gross Floor Area"
- Component definitions of "basement", "attic", "garage", "half story" and the like.
- Countable areas (e.g. rooms, stairs, closets, atria, etc.)
- Uncountable areas (qualifying basements, half stories above 2nd story, etc.)
- FAR limits as set out in Sec. 30-15, Table 1 together with new provisions in Section 30-15(u).

Determinants of FAR

Individual location characteristics:

- Lot size
- Lot age (old lot/new lot)
- Age of building (over/under 10 yrs)
- Zoning district

Gross Floor Area: Current Definition

Current definition: "(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. (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."

Gross Floor Area: Current Definition

- Definition counts square footage on first, second stories and in attached garages
- Would count third story, if it exists and does not qualify as "½ story"
- Exempts detached garage, detached living areas, basements, ½ stories

Gross Floor Area: Ongoing Issues

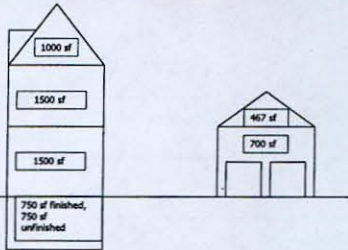
How best to address:

- Basements
- Attics
- Garages, attached & detached
- Detached living space, sheds, cabanas
- Enclosed porches
- Balconies, atria

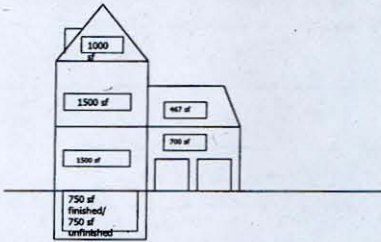
Gross Floor Area: Ongoing Issues

- Perception that FAR limits are too restrictive and do not accurately reflect actual residential structures or neighborhood fabric
- Exemptions (basement, attic, garage) create undesirable design incentives
- FAR limits particularly constraining on small, "old" lots

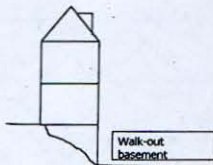
GFA: Example 1: Current Calculation



GFA: Example 2: Current Calculation



Basements



- Count all? Count only finished space?
- Refine definition of basement?
 - Walkouts
 - "Finishable" space vs. never habitable

Attics

- Count all? Count only finished space?
- Refine definition of attic?
- Bonus for finishing space within building envelope?
- "Lookback" period?



Garages

- Current garage area on SF, 2F, 3F properties in residential districts:
 - Attached: 1.7 million sf
 - Detached: 2.4 million sf
- Currently, detached garages are exempt but attached garages are not, resulting in:
 - Basement garages with steep drives
 - Detached garages placed close to residence

Garages

- Count attached garages? Detached? Carports? Exempt garage space, but up to a limit?



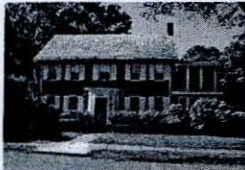
Accessory Space

- Count living space above detached garages?
 - There is >99,000 sf of this space on SF, 2F, 3F properties in residential districts in the City
- Cabanas? Sheds? Other structures?
 - There is >400,000 sf of shed and >11,000 sf of cabana space on SF, 2F, 3F properties in residential districts in the City



Balconies, porches

- >844,000 sf enclosed porch space on SF, 2F, 3F properties in residential districts



Atria



- Current definition: "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)."

Small Lots

- FAR is limiting on small lots
- Median residential lot (for SF, 2F, and 3F in residential districts): **9,457 sq. ft.**
- 25% of lots are below 7,000 sq. ft.
- 75% of lots are below 12,800 sq. ft.

FAR Study-Working group progress

- Completed its work examining "actual" FAR by zoning district, Assessor's neighborhoods
- Looked at alternative definitions of gross floor area
- Considered alternative FAR limits (Sec. 30-15, Table 1) seeking to reflect neighborhood fabric.
- Anticipate circulating final report soon.

PROJECT TYPE	LOT		MAXIMUM FAR WITH BONUS
Addition to existing home (more than 10 years old)	New (post-1953) lot		FAR in Table 1 + .05
	Old lot (pre-1953)	Conforms to old setbacks	FAR in Table 1 + .05
		Conforms to new setbacks or does not extend further into setback	FAR in Table 1 + .07
Addition to recently built home (less than 10 years old)	Any		FAR in Table 1 (NO BONUS)
Construction of new home	New lot (post-1953)		FAR in Table 1 (NO BONUS)
	Old lot (pre-1953)	Conforms to new setbacks	FAR in Table 1 + .05
Any	Any		Special permit available