

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, JUNE 28, 2010

7:45 pm - Room 202

ITEMS SCHEDULED FOR DISCUSSION:

A public hearing will be held on the following item:

#142-09(3) ZONING & PLANNING COMMITTEE proposing that subsection 30-15(u) of Chapter 30 relative to floor area ratio, as established by Ordinance Z-51, dated August 10, 2009, be amended by extending the provisions of paragraph nos. 1. 2. and 3. from July 30, 2010 to October 31, 2010. [05/11/10 @ 10:10 AM]

Please see attached public hearing notice.

A public hearing will be held on the following item:

#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]

Please see attached public hearing notice.

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

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#184-10 HIS HONOR THE MAYOR requesting authorization to eliminate the part time Chief Zoning Code Official and the part time Principal Planner positions (19 hours each) and to create a full time (37.5 hours) Chief Zoning Code Official position, which salary will be absorbed in the existing FY2011 Planning Department budget, although there may need to be additional funding for benefits. [6/14/10 @ 6:20PM]

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

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #114-10 ALD. YATES AND RICE requesting reports from the Conservation Commission and Board of Survey on compliance with condition of permits given to allow the development of the Laura Road subdivision. [04/07/10 @ 10:59 PM]
- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #142-09(4) INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT requesting discussion of findings of Floor Area Ratio Working Group and consideration of recommended revisions to Chapter 30 regarding FAR limits tied to lot sizes and definitions of “gross floor area”, “carport”, “mass below first story”, “porch”, “enclosed porch”, and “floor area ratio” as well as phasing of ongoing changes. [05/11/10 @ 7:07 PM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #294-03 ALD. BAKER, YATES, JOHNSON AND MANSFIELD requesting analysis and discussion of possible remedies for demolition of modest housing and replacement with oversized structures out of character with the surrounding neighborhood, including examining the experience of other communities, including those out of state, who have worked to address this problem. **(Recommitted by Full Board 8-14-06)**

- # 7-99 ALD. PARKER requesting discussion of possible zoning amendments to create additional residential districts with different FAR and lot size requirements.
- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.
- #207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must

be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM]

#61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

#475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]

#288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2, 3 and 4 districts.

#333-97(2) ALD. YATES proposing that Chapter 30 be amended to prohibit without a special permit in any zoning district the approval of a subdivision that would be accessed by any public way on which the Level of Service at the point of access is already a D, E, or F, for at least one hour per week or if the additional traffic to be generated by the subdivisions would cause the Level of Service at the point of access to a public way to fall to D, E, or F for at least one hour per week. [8-7-07 @2:05 PM]

#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]

- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #30-10(2) POST AUDIT & OVERSIGHT COMMITTEE requesting a discussion with the Planning & Development Department relative to the governance process of the Newton Community Development Authority (NCDA), including recommendations and potential changes to the NCDA. [01/26/09 @ 9:00 PM]
- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.
- #10-06 ALD. JOHNSON, DANBERG, SANGIOLO, BAKER, & HESS-MAHAN requesting the adoption of legislation to enable the establishment of neighborhood conservation districts in Newton.
- #217-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more, containing one or more residential units in any residential district.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #336-08 ALD. LAPPIN requesting a discussion re the creation of an index for the zoning ordinances. [9/12/08 @ 10:31 AM]
- #122-09 ALD. SANGIOLO on behalf of Armando Rossi requesting a discussion of the proliferation of signage in the city.

Respectfully Submitted,

Marcia Johnson, Chairman

CITY OF NEWTON
PUBLIC HEARING NOTICE
FOR
MONDAY, JUNE 28, 2010

A Public Hearing will be held on Monday, June 28, 2010 at 7:45 PM, second floor, NEWTON CITY HALL before the ZONING & PLANNING COMMITTEE and the PLANNING & DEVELOPMENT BOARD, for the purpose of hearing the following petitions, at which time all interested parties shall be heard. Complete text for these items is on file in the office of the Clerk of the Board of Aldermen, first floor, Newton City Hall and on the City's website at www.ci.newton.ma.us under Board of Aldermen/Committees/Zoning & Planning/2010.

Notice will be published Monday, June 14 and Monday, June 21, 2010 in the NEWS TRIBUNE and Wednesday, June 23, 2010 in the NEWTON TAB, with a copy of said notice posted in a conspicuous place at Newton City Hall.

- #142-09(3) ZONING & PLANNING COMMITTEE proposing that **subsection 30-15(u) of Chapter 30** relative to floor area ratio, as established by Ordinance Z-51, dated August 10, 2009, be amended by extending the provisions of paragraph nos. 1. 2. and 3. from July 30, 2010 up to December 31, 2010.
- #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 as follows: Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development and at least one citizen who has expertise or demonstrated interest in professional design/engineering and at least one citizen who has experience with or demonstrated interest in the zoning process in Newton.

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. Z-51

August 10, 2009

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

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

1. Delete in their entirety Footnotes 5 and 6 in section 30-15 Table 1 *Density & Dimensional Controls in Residence Districts and for Residential Use*; renumber subsequent footnotes.
2. Add, in section 30-15, the following new subsection 30-15(u):
 - (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 conjunction with section 30-21(c). The provisions of this paragraph shall expire on July 30, 2010.
 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

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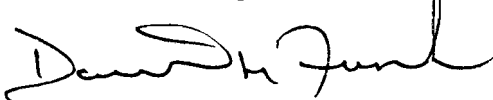
post-1953 setback requirements, or, if the footprint of the existing structure presently extends beyond the post-1953 setback requirements, shall extend no closer to the lot line than the present structure. The provisions of this paragraph shall expire on July 30, 2010.

3. 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 and 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 July 30, 2010.
4. 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.

3. In subsection 30-21(c), delete the word "and" before clause (4) of the first paragraph of this subsection and add the following clause:

, and (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, nor shall it be used to increase the FAR beyond that shown in Table 1.

Approved as to legal form and character:



DANIEL M. FUNK
City Solicitor

Under Suspension of Rules

Readings Waived and Adopted

16 yeas 6 nays (Aldermen Brandel, Gentile, Harney Lappin, Sangiolo, and Schnipper)
absent (Aldermen Merrill and Vance)



(SGD) DAVID A. OLSON
City Clerk



(SGD) DAVID B. COHEN
Mayor

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SEP 09 2009

MAYOR'S OFFICE

#152-10

Background on docket # 152-10 – From Ald. Baker

Our current zoning ordinances providing general parking regulations for number of employees on the largest shift, restaurants and places of assembly, and provide credits for multiple uses in hotels for such uses in the same or an adjacent building. (See generally 30-10(d)(13).)

Well over a decade ago, in considering the Middle Campus student center project at Boston College, the Planning Department used this framework to estimate a demand for some additional spaces for that Boston College facility. The Land Court disagreed, saying that any multiple use credit was not available, and held the restriction unreasonable as applied not only to that project but the entire Middle Campus, but said something like that Planning analysis might be reasonable, though it was not in the ordinance.

The implication is that not only here, but potentially elsewhere for BC (such as the Newton Centre Campus) and other colleges, we may not have an enforceable parking restriction. (The Chestnut Hill case also had a Board parking waiver denial upheld by the court, since it found the College estimate of one new space unpersuasive since it did not take into account that even multiple users of the same parking space might now stay longer than before, with a remand to the Board, which is another story.)

Ideally, an amendment should have a planning analysis behind it to take into account what would be an appropriate general citywide baseline parking requirement, credit for nearby multiple uses, and offset for extended daytime or other use of any spaces, all that would be reasonable as a ordinance which might be appropriate for multiple Newton colleges and universities.

Ms. Havens and I concluded that it would be better to do a discussion item so the Department could think about the planning issues and we could decide how to proceed and what might appropriate to docket.

In short, depending on the case, our parking rules for colleges and universities are not as clear as they might be, though again this background information should not be construed as indicating that the Board may not still have a role for any BC Middle Campus project, or any other such use, a separate topic.

#184.10



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Office of the Mayor

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SETTI D. WARREN
MAYOR

June 14, 2010

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

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to authorize the elimination of the Part Time Chief Zoning Official and the Part Time Principal Planner/Zoning, and authorize the creation of a Full Time Chief Zoning Code Official. The salary for this position will be absorbed in the FY2011 Planning Department budget, although there may be a need for additional funding for benefits.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

10 JUN 14 PM 6:20
CITY CLERK
NEWTON, MA. 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS
Department of Planning and Development

#184.10

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Mayor Setti D. Warren
Honorable Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

Dear Mayor Warren and Honorable Board of Aldermen:

I am writing to you at this time to request authorization to change two part-time, 19 hour planning positions (Chief Zoning Official and the Principal Planner/Zoning), to one full time, 37.5 hour position.

The salary for this position can be absorbed in the existing Planning Department budget although, depending on benefits chosen, there may be a need for some additional funding for benefits.

Respectfully submitted,

Candace Havens,
Interim Director of Planning and Development