

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

TUESDAY, JULY 13, 2010

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

Absent: Ald. Lennon and Shapiro

Others Present: Juris Alksnitis (Planning Dept.), John Lojek (Commissioner, Inspectional Services), Tom Greytak, Treff LaFleche, Peter Sachs, Alan Schlesinger, Jen Molinsky (FAR Working Group Members), Phil Herr, Karyn Dean (Committee Clerk)

#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]

**ACTION:** **HELD 6-0**

**NOTE:** Tom Greytak of the FAR Working Group addressed the Committee. He explained that the FAR Working Group had completed its report and delivered it to the Committee several weeks ago. He said that the group coalesced around the goals of developing recommendations for zoning amendments that would ensure a fairer application of FAR limits by more clearly defining what is included in the calculations of gross floor area (GFA) and by eliminating exemptions to the GFA; that would ensure a fairer distribution of massing to ensure that smaller lots have some opportunities for minor expansions that would be compatible with the existing character within their neighborhood; and that would be simpler to understand and apply and ensure enforceability. The Group was here to discuss its findings now that the Committee had time to review the report.

Gross Floor Area

The Committee spent much of the discussion focused on the portion of the FAR final report relative to Gross Floor Area (GFA) represented in the attached chart.

Basements

Mr. Greytak presented a PowerPoint explaining how basements might contribute to GFA and it is attached to this report for reference. The basic concept is that any part of the exterior basement wall that is more than 4 feet above grade becomes involved in the calculation for GFA and Floor Area Ratio (FAR). The percentage of the exterior wall that is over 4 feet above grade is multiplied by the perimeter of the building to find the GFA for the basement. Please see the examples on the attached presentation and the

formula which is being proposed. The definition of a basement is not being changed in this proposal, just the way it is calculated in terms of FAR.

The Group explained that typically, homes are constructed with materials that will rot places at a level of 4 feet above grade. There are other standards as well as these can vary across the country dependent upon weather for that area. The rule of thumb is that basements rise 4 feet above grade in general and that is why the 4 feet model is being used in this proposal.

The FAR group said that it would be easier to allow the definition of basement, the two and a half story rule and building height control mass related to basements because those definitions exist and ISD knows how to apply them. However, they decided that unless they find a way to provide the proper disincentives and incentives so that people don't take advantage of how basements on steeply sloping sides affect FAR, developers will search for those sites to build buildings with bigger mass. This proposal is the best way they could find to prevent gaming of the system in this area.

Ald. Yates was concerned about builders mounding the site to their advantage. Group members said they can't control everything a builder might do, but they are trying to work in as many controls as reasonably possible. Commissioner Lojek said there are grade plane controls. The average grade plane is measured 6 feet out from the foundation and it would lower the average grade plane and there would be penalties for that. There are also drainage requirements that would make mounding an extremely expensive proposition in the end. Generally, builders are not going to do something to make their expensive projects more expensive and less appealing.

#### A Note about "Story"

*If more than half of the basement is out of the ground, then it is considered a "story" and no longer a basement. If a basement, for example, has a room height of 8 feet and more than 4 feet on the average around the perimeter is out of the ground, it is considered a story and calculated as such; if it has a room height of 12 feet and more than 6 feet on average around the perimeter is out of the ground, it is considered a story and calculated as such, etc. The definition of "story" has not changed. Please see attached Example 1(b) and Example 3 of story calculations.*

#### Space Above Second Story

The Group explained that this is typically attic space and currently, this space is excluded if it meets the definition of a half story. The proposal is to include this space if it meets the definition of a habitable room, whether it is finished or unfinished, and would be included as part of FAR.

#### Enclosed Porches

Currently, porches are included only if the space is heated. The proposal is to include all enclosed porches. The structure underneath the porch is a good indicator as to what a future use might be. The space might be screened and unheated initially and therefore

not included in the FAR calculation, but later enclosed and heated. The Group does not want to discourage porches as an architectural element and said this is open for discussion. The Committee asked for more guidance on the definition of “enclosed” and the Group said they would work on that.

Detached Garages

Detached garages are currently excluded but the proposal includes them. Commissioner Lojek said he has seen projects that have been trying to work the system by building garages 3 feet away from the house and thereby excluding the space from FAR. People have also been adding other features to the detached garages which add significant mass to the site (playrooms, workout rooms, etc.) and yet it is not being counted toward FAR.

First and Second Stories, Atria/Other Vertical Spaces, Open Porches, Attached Garages and Other Detached Structures

There were no questions or discussion related to these elements. No changes are being proposed for these elements except for *Other Detached Structures* which will now be included with one exemption for a detached shed or other structure less than 120 square feet.

The Committee will discuss the proposed Sliding FAR Scale as indicated in Working Group Final Report at their meeting in September. The Committee voted to hold this item with thanks to the FAR Working Group members.

#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]

**ACTION:**      **HELD 5-0 (Ald. Sangiolo not voting)**

**NOTE:** Phil Herr addressed the Committee. He explained that the City is looking for housing development in business areas among other areas. The existing regulations have some ambiguities that they are trying to address in the Newton Housing Action Plan Initiative (HAPI). They looked for a definition of lot area and found none. The proposal is that lot area be defined as the horizontal area of a lot exclusive of any area in a street or recorded way open to public use. Ald. Baker said he would like to have thought given to how to deal with the variety of streets and ways in the City including private ways. Mr. Herr said the various private arrangements don’t deduct from the lot area. Only public ways or recorded easements deduct from the lot area.

HAPI also proposed changing the definition of setback line to a line equidistant from the lot, street or public way line which establishes the nearest point to that line at which the nearest point of a structure may be erected.

Juris Alksnitis said there also is no definition of “lot” and the zoning tables of dimensional controls are filled with references to lot and lot area. There could be unintended consequences from defining these terms in a particular way that might affect

the dimensional controls. Care needs to be taken in defining these terms. Ald. Baker said defining “lot” is necessary and would like to see that addressed. He asked the Committee to docket an item for that purpose and the Committee agreed. Mr. Alksnitis will work with the Law Department to frame the docket item. Ald. Swiston asked him to also determine if definitions for “street line” and “public way line” are necessary.

The Committee voted to hold this item.

#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]

**ACTION:**      **HELD 5-0 (Ald. Sangiolo not voting)**

**NOTE:** Mr. Herr addressed the Committee. The concept of Mixed Use districts (1 and 2) is to provide a mix of residential and business uses in those areas. The current zoning for those districts in Newton requires 10,000 per square feet per dwelling unit for the residential portion which is prohibitive in any mixed use context. This negates the desired intention. The suggestion is to make the requirement consistent with other business districts which is 1,200 square feet per residential dwelling unit.

Ald. Yates said this was a mistake when originally drafted and should be corrected. The Committee agreed that this item was ready to be moved to a public hearing on September 27, 2010. The Committee will hold this item until that time.

#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]

**ACTION:**      **HELD 5-0 (Ald. Sangiolo not voting)**

**NOTE:** Mr. Herr explained that the Mixed Use 2 district allows housing units above the first floor but the Mixed Use 1 district does not. This was due to the uses of the two districts that distinguished them from each other historically, but those distinctions no longer exist.

Ald. Yates said he agreed with this concept but did not feel it was necessary to limit the first floor uses to office or research and development enterprises. He would like to broaden this to include all first floor uses that are included in business districts. Mr. Alksnitis said the Mixed Use 1 district is structured in a way that provides only 3 or 4 categories of uses and non-retail uses. Mr. Herr said they could allow the dwelling units to be above any use that is allowed in that district instead of specifying the uses. The suggestion is to amend the language to “(5) Dwelling units above the first floor.”

Ald. Baker asked how many residential dwelling units this might likely create and Mr. Herr said it would be just a handful – perhaps 10 or fewer. Mixed Use 1 is not a large area. Ald. Johnson asked Mr. Alksnitis to calculate that number and let the Committee know. Ald. Yates asked what the focus of the Mixed Use Task Force is. Mr. Herr said it is looking at making legislation that is easy to use, unlike the PMBD, which would make substantial residential development on Needham Street less likely.

The Committee agreed that this item was ready to be moved to a public hearing on September 27, 2010. The Committee will hold this item until that time.

Motion to adjourn.

Respectfully Submitted,

Marcia Johnson, Chairman

## Elements of Gross Floor Area

	Current Definition of GFA	Proposed Definition of GFA
Basements	Excluded	Included: a percentage of "mass below first story," which may include basements, crawl spaces, and other above-grade features lying below the first story, that exceed a standard exemption for foundation walls. In no event can more than 50% of the floor area of an area below the first story be counted toward FAR.
First and second stories	Included	Included
Atria / other vertical spaces	Included	Included
Space above the second story	Excluded if space meets the definition of half story; included if it exceeds maximum space to be counted as a half story	Included if it meets the dimensional definition in the Building Code of a habitable room (70 sq. ft. or more, with min. ceiling heights of 7' on at least 50% of its area and 5' ceiling heights on remainder)
Enclosed porches	Included only if heated	Included
Open porches, carports, port cocheres	Excluded	Excluded
Attached garages	Included	Included
Detached garages and any space above the first floor with a ceiling height of 7 feet or more	Excluded	Included
Other detached structures	Excluded	Included, with one exemption for a detached shed or other structure less than 120 sq. ft.

~~FAR Limits~~

~~The Working Group is proposing a sliding scale of FAR limits for each of the three SR and MR districts it studied. As noted above, the scale takes into account the average rise in actual FARs resulting from the changes to the definition of gross floor area and also addresses the specific challenges faced by small lots, as well as the need to ensure that new development respects its surroundings.~~

~~In all residential zoning districts, the Working Group proposes that lots be divided by size into seven categories. FAR limits are set for the very beginning and very end of each category. For lot sizes falling in the between the two ends of a category, the FAR limit will vary smoothly, that is, linearly. This is the same approach used with the~~

## Basement contribution to the Gross Floor Area

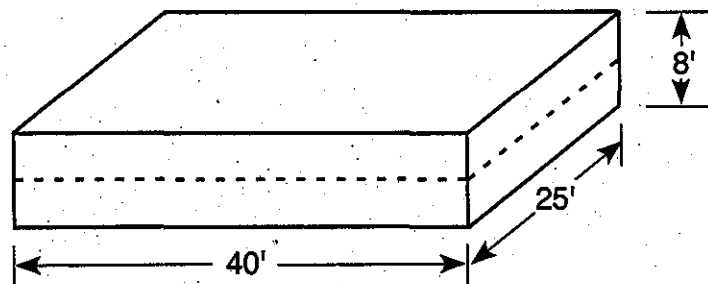
$$= X/Y * \text{Floor area of mass below first story}$$

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 first floor

Y = Perimeter of exterior walls below first story

but, if X/Y is greater than 1/2, then the space is no longer a basement, but a story (this assumes an 8 foot basement height)



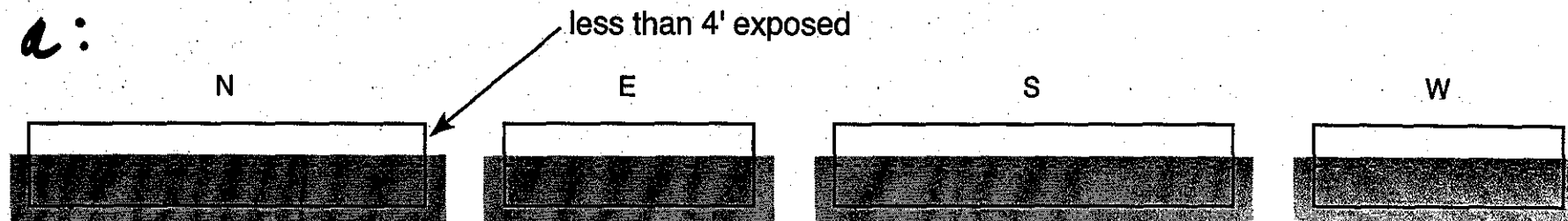
Typical basement used as an illustration

Floor area = 1,000 sq. ft.  
Perimeter = 130 feet = Y

Dashed line used as a reference is 4 feet below the top of the first floor

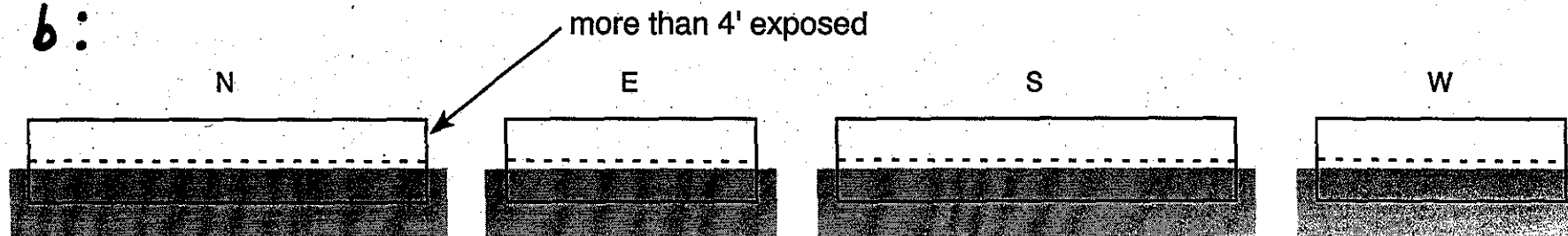
### Example 1: flat grade

*a:*



$X = 0$  GFA = 0

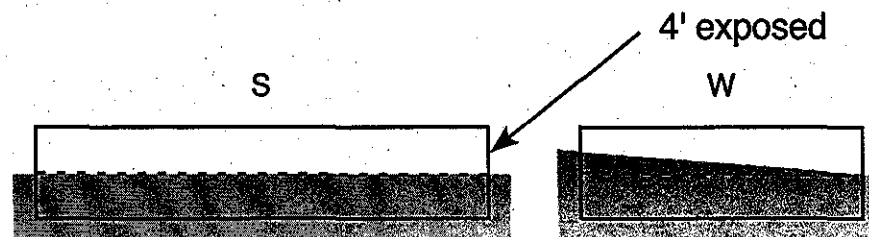
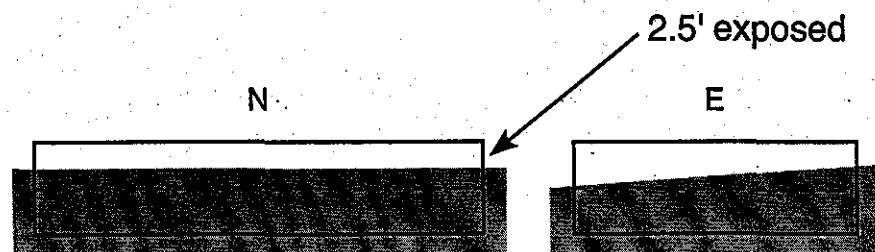
*b:*



This becomes the first story and GFA = 1,000 sq. ft.

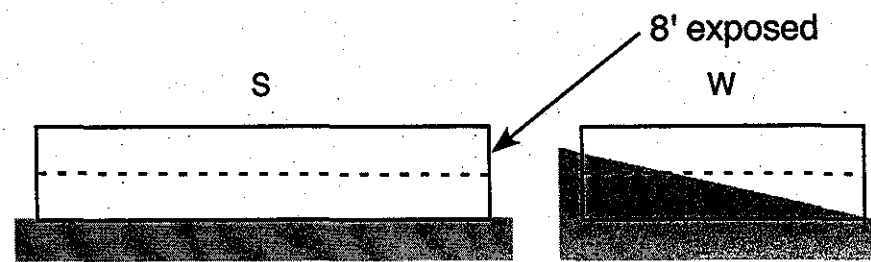
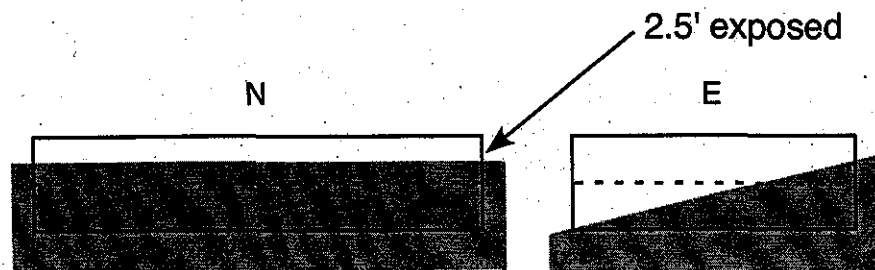


### Example 2: uniform modest grade



$X = 0$  GFA = 0

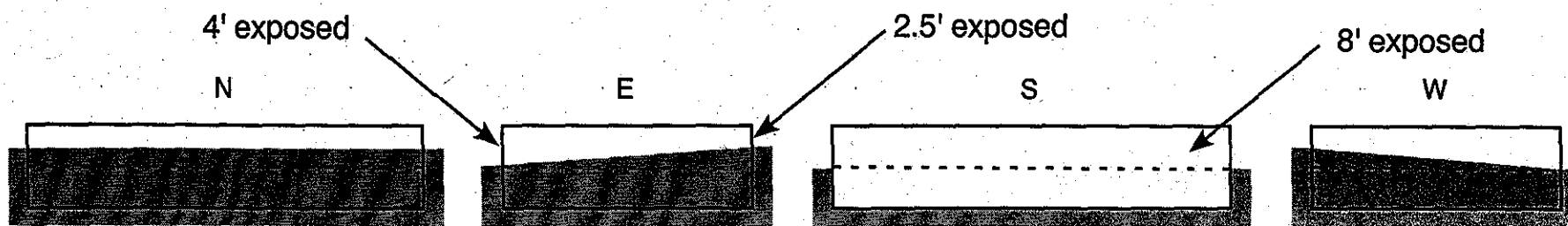
### Example 3: uniform extreme grade



$X = 76.4'$   $Y = 130'$   $X/Y = 0.59$

This becomes the first story and GFA = 1,000 sq. ft.

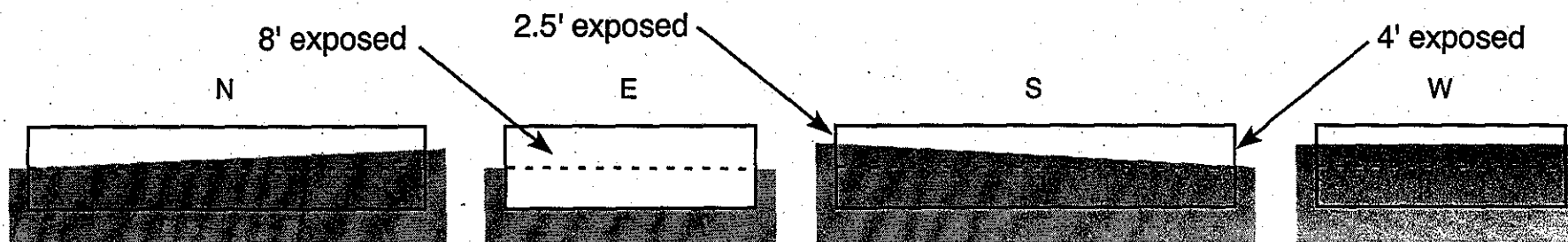
### Example 4: modest grade on short sides, 1 exposed long side



$X = 40'$   $Y = 130'$   $X/Y = 0.308$

GFA = 308 sq. ft.

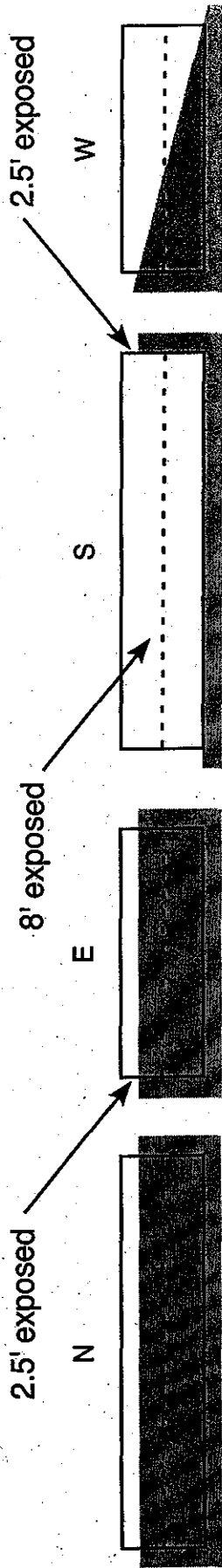
### Example 5: modest grade on long sides, 1 exposed short side



$X = 25'$   $Y = 130'$   $X/Y = 0.192$

GFA = 192 sq. ft.

**Example 6: uneven grade, 1 exposed long side**



$X = 58.2'$   $Y = 130'$   $X/Y = 0.448$

GFA = 448 sq. ft.