

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, SEPTEMBER 27, 2010

7:45pm- Aldermanic Chamber (Public Hearing), Room 202

ITEMS SCHEDULED FOR DISCUSSION:

Public Hearing assigned for September 27, 2010:

#216-10 KSKIM UBS EQUITY PARTNERS LLC, owners of property at 19-31 Needham Street, proposing that chapter 30 section §30-13(a) *Allowed Uses in Mixed Use 1 Districts*, be amended by adding a new subsection (5) as follows: “(5) Service establishment;” and that existing subsection (5) be re-numbered (6) and that section §30-13(b) *Special Permits in Mixed Use 1 Districts* be amended by deleting subsection “(4) service establishment;” and re-numbering subsequent subsections (4) through (15). 7/26/10 @2:26 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]

#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]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

#142-09(4) INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT requesting discussion of findings of Floor Area Ratio Working Group and

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.

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]

The following item was filed after the close of the Docket and requires a suspension of the Rules to be referred to Committee:

#92-10(2) ZONING & PLANNING COMMITTEE proposing a RESOLUTION to His Honor the Mayor providing selection criteria guidance for membership on the *Planning & Development Board* 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 service to the City. [9-13-10@11:41AM]

The following item was filed after the close of the Docket and requires a suspension of the Rules to be referred to Committee:

#93-10(2) ZONING & PLANNING COMMITTEE proposing a RESOLUTION to His Honor the Mayor providing selection criteria guidance for membership on the *Zoning Board of Appeals* 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 service to the City. [9/13/10 @11:41AM]

#253-10 ALD. YATES proposing a RESOLUTION to the Conservation Commission and the Mayor’s Advisory Committee on Renewable Energy requesting that they investigate the possibility of establishing a Brightfield Solar Energy Array on the Flowed Meadow site similar to the one in Brockton. [09/07/10 @ 8:31pm]

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

#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]
- #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]
- #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]
- #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.
- #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

- #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]
- #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.
- #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.
- #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]
- #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.
- #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]

- #122-09 ALD. SANGIOLO on behalf of Armando Rossi requesting a discussion of the proliferation of signage in the city.
- #336-08 ALD. LAPPIN requesting a discussion re the creation of an index for the zoning ordinances. [9/12/08 @ 10:31 AM]
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #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.

Respectfully Submitted,

Marcia Johnson, Chairman

216.10

SCHLESINGER AND BUCHBINDER, LLP

ATTORNEYS AT LAW

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OF COUNSEL
HEATHER G. MERRILL

July 26, 2010

Scott F. Lennon, President
Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

10 JUL 26 PM 2:26
CITY CLERK
NEWTON, MA. 02159

Re: Petition for zoning change

Dear President Lennon:

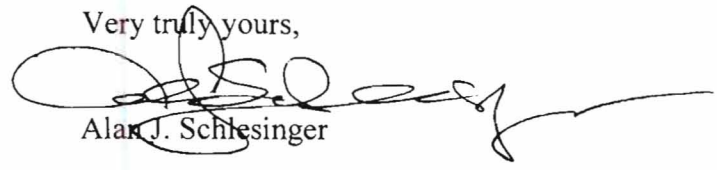
I represent KSKIM UBC Equity Partners LLC ("Petitioner"), owners of property at 19-31 Needham Street, being Section 51 Block 28 Lot 25 located in the Mixed Use 1 District in Ward 5.

In accordance with G.L. c. 40A Section 5 the Petitioner submits to the Board of Alderman proposed amendments to the Revised Ordinances Chapter 30 (the "Zoning Ordinance") as follows:

1. Revised Ordinances Chapter 30 Section 13 (a) be amended by addition of a new sub-section (5) as follows:
 - (5) Service establishment
 and by renumbering sub-section (5) as sub-section (6)
2. Revised Ordinances Chapter 30 Section 13 (b) subsection (4) be amended to read:
 - (4) Intentionally deleted;

The net effect of these changes is to change "service establishments" from a use requiring a special permit in the Mixed Use 1 District to a use allowed as a matter of right.

Very truly yours,



Alan J. Schlesinger

cc: Alderman Marcia Johnson, Chairperson, Zoning and Planning Committee

- (7) Commercial outdoor amusement or recreation place or places of assembly, including an outdoor motion picture theater;
- (8) Place of amusement or assembly other than a bowling alley;
- (9) Facility engaged in recombinant DNA research or technology;
- (10) Telecommunications and data storage facility;
- (11) Other uses similar or accessory to those authorized by this section which are not injurious to the neighborhood as a Limited Manufacturing District.

(f) *Site Plan Approval, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be

available for use in common or in connection with a contiguous or adjacent lot.

(g) *Special Permit, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.

(Ord. No. T-65, 12-18-89; Ord. No. T-75, 3-5-90; Ord. No. T-319, 12-20-93; Ord. No. V-156, 1-5-98; Ord. No. W-33, 3-5-01; Ord. No. W-34, 3-5-01)

Sec. 30-13. Mixed Use Districts.

(a) *Allowed Uses in Mixed Use 1 Districts.* In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;

NEWTON CODE — ZONING

- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises;
- (5) Uses similar or accessory to those authorized by section 30-13(a).

(b) *Special Permits in Mixed Use 1 Districts.* In Mixed Use 1 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Retail store, provided that a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area;
- (2) Wholesale business;
- (3) Storage or distribution facility;
- (4) Service establishment;
- (5) Restaurants and businesses which hold a Common Victualler—All Alcoholic, or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area;
- (6) Inside sales, service, display or storage of motor vehicles;
- (7) Outside storage, display and sale of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and

prospective purchasers and such reasonable display lighting of vehicles as the board of aldermen shall approve;

- (8) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;
- (9) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 30-18A;
- (10) Multi-family dwelling;
- (11) Garage repair shop;
- (12) Bank, excluding drive-in facilities;
- (13) Recombinant DNA research or technology, as defined in sections 12-20 et. seq. of the Revised Ordinances as amended;
- (14) Veterinary hospital;
- (15) Telecommunications and data storage facility;
- (16) Uses similar to or accessory to those authorized by section 30-13(b) which are not injurious to the neighborhood.

(c) *Allowed Uses in Mixed Use 2 Districts.* In Mixed Use 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that

no recombinant DNA research or technology is involved;

(7) Uses similar or accessory to those authorized by section 30-13(d).

- (3) Retail store;
- (4) Library or museum;
- (5) Bank, excluding drive-in facilities;
- (6) Theatre, hall or club;
- (7) Personal services;
- (8) Retail dry cleaning or laundry;
- (9) Service establishments;
- (10) Job printing under 3,000 square feet;
- (11) Restaurants having not more than 50 seats;
- (12) Bakery, the products of which are sold at retail and only on the premises;
- (13) Dwelling units above the first floor, provided that the first floor is used for an allowed use described above;
- (14) Accessory parking facilities, provided they are limited to a single level;
- (15) Uses similar or accessory to those authorized by section 30-13(c).

(d) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (c) herein which are permitted are:

- (1) Office;
- (2) Research and development facility;
- (3) Bank, excluding drive-in facilities;
- (4) Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
- (5) Dwelling units above the first floor;
- (6) Accessory parking facilities;

(e) *Special Permits in Mixed Use 2.* In all Mixed Use 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Assembly or fabrication of materials manufactured off-premises in a building not exceeding 10,000 square feet of gross floor area;
- (2) Sanitarium, convalescent or rest home;
- (3) Broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;
- (4) Laboratory;
- (5) Hotel or motel;
- (6) Funeral home;
- (7) Job printing over 3,000 square feet;
- (8) Parking lots, provided that they are limited to a single level;
- (9) Multi-family dwelling;
- (10) Inside sales, service, display or storage of motor vehicles;
- (11) Garage repair shop;
- (12) Restaurants over fifty (50) seats and such businesses which hold a Common Victualler—All Alcoholic or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city;
- (13) Gasoline service station. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been

#216-10



#216-10

Click the Print button to print this map.



<p>Assessor's Map For: KSKIM UBC EQUITY PARTNERS LLC 19-31 NEEDHAM ST Unit 21-1 Neighborhood: 2</p>	<p>Map for Reference Only NOT A LEGAL DOCUMENT</p> <p>Because of different update schedules, current property assessments may not reflect recent changes to property boundaries. Check with the Board of Assessors to confirm boundaries used at time of assessment.</p>	
<p>CITY OF NEWTON MASSACHUSETTS ASSESSING DEPARTMENT 1000 COMMONWEALTH AVE. NEWTON CENTRE, MA 02459 PHONE: 617-796-1160</p> <p>9/13/2010</p>		

WORKING MEMORANDUM

TO: ZONING AND PLANNING COMMITTEE OF THE BOARD OF ALDERMEN

FROM: CANDACE HAVENS, INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT
 JURIS ALKSINITIS, INTERIM ZONING ADMINISTRATOR

RE: PETITION #154-10 PERTAINING TO DEFINITIONS FOR "LOT AREA" AND
 "SETBACK LINE"

DATE: JULY 9, 2010

CC: JOHN LOJEK, COMMISSIONER OF INSPECTIONAL SERVICES

10 JUL -9 PM 2:53
 CITY CLERK
 NEWTON, MA 02159

BACKGROUND

Arising from discussions within the Newton Housing Partnership, a collaborative initiative took shape in 2008-2009 involving housing advocates and providers, City of Newton staff, boards, and commissions, and civic groups. Called the Newton Housing Action Plan Initiative (HAPI), its actions and observations are summarized in the report "HAPI: An Overview", December 29, 2009. HAPI issued a draft report on "Mixed-Use Friendly Zoning" dated August 19, 2009, last revised October 22, 2009. The report identifies a number of barriers within the Newton Zoning Ordinances creating obstacles to mixed-use business and housing development in village centers and along commercial corridors. In particular, this report outlines six regulatory problem areas within the Zoning Ordinances, and provides suggestions for amending the Zoning Ordinances to remedy these problems. Several of the less complex problems are now being brought forward for discussion. Petitions #153-10 and #183-10, respectively, pertaining to Mixed Use items have been docketed for discussion, with the goal of enacting the necessary amendments in the near future. Discussions regarding petition #154-10 pertaining to clarifying selected definitions are also being initiated. The following information is provided for use by the Zoning and Planning Committee at its working session on July 13, 2010.

PETITION #154-10, proposing to amend Section 30-1, Definitions, by adding a definition for "lot area" and also revising the existing definition for "setback line"

Lot area

At present the Zoning Ordinance contains no formal definition of "lot area", and the meaning of this term is generally inferred from the contexts in which it appears. Section 30-1, Definitions, provides definitions for "Lot, corner," "Lot coverage," and "Lot, interior" but not for a typical lot. Section 30-15, Density/dimensional requirements, describes "Lot frontage", defines "Rear lot", and refers to area of lots in multiple provisions within this section. *Table 1-Density and Dimensional Controls in Residence Districts and for Residential Use* enumerates the standard controls such as "minimum required lot area", "lot area per unit", while Floor Area Ratio (FAR), maximum lot coverage, and minimum open space are all based on lot area. Similarly, lot area is a key factor applicable to institutional as well as commercial uses. As a result, any new definition of "lot area" needs to be considered carefully, recognizing that such a definition has the potential for affecting many controls governing development.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that the following new definition be inserted in Section 30-1, Definitions:

"Lot Area: the horizontal area of a lot exclusive of any area in a street or recorded way open to public use."

Review of some typical definitions of "lot area" contained in the publication A Planners Dictionary, by the American Planning Association Planning Advisory Service indicates simple to more complex approaches such as:

"The computed area contained within the lot lines." (Wood River, Ill.)

"The total horizontal area within the lot lines of a lot, but not including the private driveway area of a flag lot." (Multnomah County, Ore.)

"The horizontal area within the exterior lines of the lot, exclusive of any area in a public or private way open to public uses." (Quincy, Mass.)

"The area within a lot, including land over which easements have been granted, but not including any land within the limits of a street upon which the lot abuts, even if fee to such street is held by the owner of the lot." (Maynard, Mass.)

Issues in Newton which merit further exploration include the following:

- Whether "lot area" should be based on legal ownership of land, regardless of whether such land falls within private or public ways.
- Whether "lot area" should reflect legal rulings pertaining to multiple lots which are deemed to have common metes and bounds and may be considered "one" lot.

In addition, it is noted that the Section 30-1 definition of "Lot line" includes a special exception whereby a lot line dividing an aqueduct from an abutting property "shall not be termed a lot line." This creates a number of anomalies in the calculation and application of various dimensional controls, and implies the need for further definition of what may constitute a lot line for the purposes of defining "lot area".

Setback line

Section 30-1, Definitions provides the following definition:

"Setback line: A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected. "

In addition, Section 30-15(e), *Setback Line*, articulates details concerning the method of measurement from lot lines to a structure, vestibule, or porch, and establishes exceptions for certain elements which may project into setback.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that the current definition of "Setback line" within Section 30-1, Definitions be altered as indicated in bold:

"Setback line: A line equidistant from the lot, **street or public way** line which establishes the nearest point to **that [the lot]*** line at which the nearest point of a structure may be erected. "

*Deleted text

The above revision seeks to correlate the definition of "setback line" with the proposed new definition for "lot area" discussed above.

WORKING MEMORANDUM

To: Zoning and Planning Committee of the Board of Aldermen

From: Candace Havens, Interim Director of Planning and Development
Juris Alksnitis, Interim Zoning Administrator

Re: Pet. #153-10, pertaining to altering the lot area per dwelling unit requirement to allow a reasonable density for dwellings in MU-1 and MU-2 districts.

Pet. #183-10, pertaining to adding dwellings above the first floor as a use in the MU-1 district.

Date: July 9, 2010

cc: John Lojek, Commissioner of Inspectional Services

10 JUL - 9 PM 2: 53
CITY CLERK
NEWTON, MA. 02159

BACKGROUND

Arising from discussions within the Newton Housing Partnership, a collaborative initiative took shape in 2008-2009 involving housing advocates and providers, City of Newton staff, boards, and commissions, and civic groups. Called the Newton Housing Action Plan Initiative (HAPI), its actions and observations are summarized in the report "HAPI: An Overview", December 29, 2009. HAPI issued a draft report on "Mixed-Use Friendly Zoning" dated August 19, 2009, last revised October 22, 2009. The report identifies a number of barriers within the Newton Zoning Ordinances creating obstacles to mixed-use business and housing development in village centers and along commercial corridors. In particular, this report outlines six regulatory problem areas within the Zoning Ordinances, and provides suggestions for amending the Zoning Ordinances to remedy these problems. Two of the less complex problems are now being brought forward for discussion as Petition #153-10 and #183-10, respectively, with the goal of enacting the necessary amendments in the near future. The following information is provided for use by the Zoning and Planning Committee at its working session on July 13, 2010.

PETITION #153-10 – Proposal to Amend Section 30-15, Table 1, to allow for a reasonable density for dwellings in Mixed Use 1 and 2 Districts.

Lot area per dwelling unit in Mixed Use, Business, and Multi-Residence districts.

Section 30-15, *Table 1-Density & Dimensional Controls in Residence Districts and for Residential Use* establishes 10,000 sq. ft. as the minimum lot area per unit for residential development in the MU-1 and MU-2 districts. This contrasts with 1,200 sq. ft. per unit for the BU1, BU2, BU3 and BU4 districts, and also with significantly lower requirements in the Multi-Residence districts. The following table summarizes minimum lot area requirements for multi-residential development in all mixed use, business, and multi-residence zones:

Type of res. dev.	Min. lot area per unit by Zone (sf)					
	MU1&2	BU1-4	MR-1	MR-2	MR-3	MR-4
Attached DU	n/a	n/a	4,000	4,000	4,000	n/a
Multi-Fam. Dwelling	10,000	1,200	n/a	3,000	1,200	1,000
Garden Apartment	n/a	n/a	n/a	2,000	n/a	n/a
DU above 1 st floor	10,000	1,200	n/a	n/a	n/a	n/a

While it is unclear at this time why the lot area requirement for MU 1 & 2 is so disproportionate in comparison with other zones, it has had a prohibitive effect on the development of housing within MU-1 and MU-2 zones. The petitioners seek to provide a revised density requirement that will facilitate development of housing in these districts at an appropriate density.

Possible Zoning Ordinance text change:

At this time, the subject petition does not make a specific proposal for language amending the Zoning Ordinance. However, the HAPI report on "Mixed-Use Friendly Zoning" suggests that Section 30-15, *Table 1 – Density & Dimensional Controls in Residence Districts and for Residential Use* be amended as follows:

In the LOT AREA PER UNIT column at the MIXED USE 1 AND 2 row:
Replace "10,000" with "1,200."

Such a change would make possible increased housing development opportunities which would apply to residential development meeting the definition of "Multi-family dwelling" (Section 30-1) and located within the MU-1 and MU-2 districts, where multi-family development is subject to special permit. In addition, a reduced density factor would also apply to as of right residential development meeting the definition of "Dwelling units above the first floor" articulated in Section 30-13(c)(13) for the MU-2 district. As discussed below, while such development is not now contemplated within the MU-1 district, it is the subject of Petition #183-10 seeking to add this type of residential use to available uses in this district.

PETITION #183-10 – Proposal to Amend Section 30-13(a), Allowed Uses in Mixed Use 1 Districts, to add as of right dwelling units on the second floor (and above) where selected uses are located on the first floor.

As-of-right second-floor dwellings in the Business and Mixed-Use districts.

At the present time, housing units above first floor commercial uses are allowed by right in Business 1-4 districts and in the Mixed-Use 2 district, but not in the Mixed Use 1 district, where this type of use is not contemplated either by right or by special permit. It is also noted that Section 30-15, *Table 3-Dimensional Requirements for Commercial Districts* allows two-story buildings as of right in the BU-1, BU-2, and MU-2 districts while requiring a special permit for buildings three stories and higher. In effect, this makes available as-of-right dwelling units only within the second floor of a two-story building in these districts. Table 3 also provides for three-story buildings as of right in the BU-3, BU-4, BU-5, and MU-1 districts, while requiring a special permit for buildings 4 stories and higher. As a result, in districts BU-3 and BU-4 as-of-right dwelling units are possible within stories two and three above the ground floor, but not in the BU-5 and MU-1 districts, which do not contemplate this use. In comparison, multi-family dwellings as defined in Section 30-1, are allowed in BU 1-4 and also in MU 1 & 2 zones subject

to special permit. In addition, Table 3 enumerates various FAR, building height, and gross floor area thresholds which may trigger a special permit or site plan approval requirements.

At the time the MU-1 and MU-2 zones were adopted in 1987, various properties along Needham Street then located within the Manufacturing zone were rezoned to the new and more restrictive MU-1 zone. As a result, the uses allowed as of right within the current MU-1 zone are comprised to a significant extent by industrial and assembly type uses. This may also explain why a residential use, such as second floor dwellings were not included in MU-1, as such residences might potentially be located inappropriately above industrial rather than commercial activities. Neither the Manufacturing nor the Limited Manufacturing zones allow any residential uses. However, in the MU-2 district, which does not allow industrial uses, dwelling units above commercial uses are available as of right, including over a research and development facility not engaging in recombinant DNA work.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that Section 30-13(a) be amended by inserting a new subsection (5) and renumbering existing subsection (5) as (6), so that the section would read as follows (new text in bold):

"(a) Allowed Uses in Mixed Use 1 Districts. In Mixed Use 1 districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in Section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises
- (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;**
- (6) Uses similar or accessory to those authorized by section 30-13(a)."

The proposed amendment would make possible the development of second floor dwellings in MU-1 in situations where the first floor use is either an office use or research and development use, excluding recombinant DNA research and technology. In comparison, 2nd floor dwellings are allowed in BU 1-4 districts above a range of enumerated uses, including office, retail, bank, theatre, dry cleaning or laundry, printing, restaurants, and bakery. However, research and development uses of any kind are not allowed in BU1-4 either as of right or by special permit. Yet, in MU-2 zones, non-recombinant DNA research and development uses are allowed as of right, as are second floor dwellings above such uses. The proposed change seeks to achieve treatment of second floor dwelling units in a manner consistent with the MU-2 district.

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NEWTON HOUSING ACTION PLAN INITIATIVE (HAPI)

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A collaborative effort among the Newton Housing Partnership, CAN-DO, U-CHAN, Newton Planning & Development Department, Newton League of Women Voters, AvalonBay Communities, Newton Planning & Development Board, Newton Fair Housing Task Force, NCDF.; Newton Human Rights Commission; Newton Economic Development Commission

MIXED-USE FRIENDLY ZONING

August 19, 2009; revised October 20 and 22, 2009

There is wide consensus in Newton that we should be removing the dysfunctional barriers to mixed-use development of business and housing in our village centers and along commercial corridors. Many of those regulations are impenetrable to understand, internally inconsistent, and outdated in their content. These following makes a start with six zoning amendments that attack provisions whose problems have surfaced in the course of the initiatives that HAPI has pursued. Fixing these would be a major step forward in finally beginning to implement the policy consensus supporting well-guided mixed use in villages and other special places. These are the six items.

1. Amend "grandfathering" rules to give business-zoned lots much the same protection against zoning changes imposed after their creation that is enjoyed by residential uses.
2. Allow second-floor dwellings in the Mixed-Use 1 district without need for a special permit, just as they are now allowed in Mixed-Use 2, Business-1, Business-2, Business-3 and Business-4 districts.
3. Make the density rule in the Mixed-Use 1 and 2 districts essentially the same as it now is in Business-1, Business-2, Business-3 and Business-4 districts, finally making mixed use feasible in the currently misnamed Mixed Use districts.
4. Add a new sub-section to the text explaining how the various dimensional rules apply in the case of residential and commercial uses on the same lot, because how that works is far from clear now, even to zoning mavens.
5. Add a definition of "lot area" to the Zoning, whose 12 pages of definitions don't include one, clarifying whether or not things like that paved link between Austin and Highland at the City parking lot in the Newtonville village center can be counted as "lot area" even though it is used like a street. Right now, no one seems to know for sure.
6. Fix the footnotes in the table of dimensional regulations for Commercial districts: they not only are confusing, they are often absolutely in direct conflict with each other, making it impossible to know the real rule.

These amendments are neither easy reading nor a magic cure-all, but they are a real start on what we hope will prove to be a relatively quick and easy improvement.

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MORE UNIFORMLY APPLICABLE "GRANDFATHER" RULES**1) AMEND SECTION 30-15(C) TO EXTEND DIMENSIONAL "GRANDFATHERING RULES" TO NON-RESIDENTIAL DISTRICTS AND USES.**

In B1, B2, B3, B4, MU-1 and MU-2 zoning districts lot area must be at least 10,000 square feet and frontage must equal at least 80 linear feet. Half of the land area within Newton's Business Districts is contained in lots that cannot meet one or both of those requirements. The City's Zoning has extensive "grandfathering" rules to protect older lots from area and frontage rules after they were created, but they don't help with this problem because they apply only in Residential Districts. The State's Zoning Act also has extensive "grandfathering" rules but they apply only to one- and two-family dwellings, so they also don't help.

Allowing owners of small lots in business districts to make use of them for new or altered buildings could be achieved by their being granted the same vested rights as are given to lots in residential districts under Newton Zoning and to one- and two-family dwellings under existing State laws. By doing so, it would facilitate development consistent in scale with the current and historic pedestrian scale of village center holdings, which in turn is a scale suitable for the types of shops and businesses many advocate for those areas.

ZONING TEXT CHANGE: Amend Section 30-15(c) of the Newton Zoning Ordinance so that it reads as follows:

(c) Exceptions Applicable in All Districts. Any increase in area, frontage, or setback requirements prescribed in this section shall apply to any lot in any zoning district except to the extent that either the provisions of Massachusetts General Laws, Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

Any increase in area, frontage, or setback requirements prescribed in this section shall not apply to any lot if all of the following requirements are met:

- (1) At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the lot
 - a) conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increased requirements, and
 - b) had at least five thousand (5,000) square feet of area, and
 - c) had at least fifty (50) feet of frontage.
- (2) The size or shape of the lot has not changed since the lot was created unless such change complied with the provisions of section 30-26.

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- (3) Either:
- a) The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, or
 - b) If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single family or two-family dwelling.

ENABLING MIXED USE IN THE MIXED-USE DISTRICTS

- 2) AMEND SECTION 30-13(A) ALLOWED USES IN MIXED USE 1 DISTRICTS TO ALLOW DWELLING UNITS ABOVE THE FIRST FLOOR, AS IS ALLOWED IN MU-2 AND IN BU-1, 2, 3 AND 4.**

Allowing residential use on the second floor by right simply facilitates a land use relationship that is so widely applauded that it has become a cliché in the "Smart Growth" literature. The current provision for such use reflects an earlier era's intentions and concerns that no longer are consistent with the kind of City that we seek. This change simply extends the same option to MU-1 that already applies (never used for reasons we hope to resolve with these changes) in BU 1, 2, 3 and 4 and in MU-2.

ZONING TEXT CHANGE: Amend Section 30-13(a), inserting a new subsection (5) and renumbering existing subsection (5) as (6), so that the section reads as follows.

"(a) Allowed Uses in Mixed Use 1 Districts. In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises;

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- (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;
- (6) Uses similar or accessory to those authorized by section 30-13(a)."

3) AMEND SECTION 30-15 TABLE 1 TO ALLOW A REASONABLE DENSITY FOR DWELLINGS IN THE MIXED USE (MU-1 AND MU-2) DISTRICTS.

Table 1 requires 10,000 square feet of lot area per dwelling unit in the so-called "Mixed Use" districts, some believe as a result of an error, since such a low density virtually precludes any developer choosing to use it. That rule is now almost a generation old and not a single dwelling unit has been produced under its terms, although hundreds have been built in the MU districts by developers who understandably avoided its terms through use of Chapter 40B. Mixed use, if it is to include housing, is essentially impossible in the Mixed Use districts unless that density rule is changed.

A reasonable lot area requirement for these districts would be the same as is required for dwelling units in the Business 1, 2, 3 and 4 districts, 1,200 square feet per dwelling unit. Impacts of that change have been examined and found to be benign at worst, positive at best, depending upon perspective¹. The following would accomplish the change.

ZONING TEXT CHANGE: Amend Section 30-15 Table 1 Density & Dimensional Controls in Residence Districts and for Residential Use as follows.

In the LOT AREA PER UNIT column at the MIXED USE 1 AND 2 row REPLACE "10,000" with "1,200."

CLARIFYING APPARENT INTENTIONS

There exist a number of cases where there either is no clear provision regarding certain questions, such as "what determines required lot area when there are multiple uses and buildings on the same site," or where there are one or more too many answers, and they are in conflict, such as the rules for setbacks for parking facilities. The following items are intended to address a number of those cases that are of particular importance in village centers and for mixed-use development.

Putting resolution of the current ambiguities into clearer language to be adopted may raise significant debate, but it is better to have the generic debate at a point other than when an applicant has invested in a different interpretation than has been made in the

¹ "Needham Street Zoning Study," August 3, 2007, by P. Herr for the Newton Planning Department.

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past. In some cases, the ambiguities have not previously been tested, so whatever is adopted will be new territory.

4) INSERT A NEW SECTION 30-15(L) SPECIFYING HOW DIMENSIONAL PROVISIONS APPLY TO LOTS PROPOSED FOR MULTIPLE PRINCIPAL USES.

There are a number of respects in which it is not clear in the Zoning Ordinance how the rules apply in the case of premises being developed for two or more principal uses on the same lot, perhaps but not necessarily in the same building. An added subsection would provide at a single place the answers to those questions that we can anticipate, such as the one regarding how minimum lot area is to be determined in such cases.

ZONING TEXT CHANGE: Amend Section 30-15 by inserting the following new subsection (l):

"(l) Mixed use development. The dimensional regulations of Section 30-15 shall apply as follows in the case of both residential and commercial uses being on the same lot, whether in one or more principal buildings.

"(1) The minimum lot area shall equal the lot area required under Table 1 for the number of dwelling units involved or the applicable minimum lot area in Table 3, if larger.

"(2) The total floor area ratio requirement of Table 3 shall not be exceeded, with the calculation to include the gross floor area for both the residential and commercial uses.

"(3) The applicable frontage requirement from Table 1 shall be observed.

"(4) All other dimensional requirements of Table 3 shall be observed.

"(5) Beneficial open space shall be provided in an amount equal to the smaller of 500 square feet per dwelling unit or 20% of the total lot area."

5) AMEND SECTION 30-1 DEFINITIONS BY INSERTING A NEW DEFINITION OF "LOT AREA" AND REVISING THE "SETBACK LINE" DEFINITION FOR CLARITY.

Lot area in some instances is reasonably different from the simple horizontal area within the lot lines, such as when part of the lot is within a public way. Such clarification in the Ordinance would be helpful and is common.

ZONING TEXT CHANGE: Amend Section 30-1 as follows:

(a) Insert the following definition at its appropriate alphabetical location:

"Lot Area: the horizontal area of a lot exclusive of any area in a street or recorded way open to public use."

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- (b) Revise the definition of "Setback Line" so that it reads as follows"

"Setback Line: 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."

6) AMEND SECTION 30-15 TABLE 3 TO RESOLVE THE EXISTING CONFLICT IN CERTAIN CASES BETWEEN FOOTNOTE 10 AND OTHER FOOTNOTES AND TO CLARIFY INTENT.

In certain cases, two footnotes dealing with required side or rear setbacks are equally applicable but prescribe different distances to be required as setbacks. There exists uncertainty whether Zoning does or should oblige the entirety of a building that contains among other things parking to be set back an additional five feet from property lines versus only obliging that the parking itself be so set back.

The following revisions are intended to add clarity and result in requirements that appear to be consistent with what has been community intent, not to either stiffen or weaken them, although given some interpretations of course both of those may possibly be the result. The test for adoption should be if the result is a reasonable one, not whether it in fact is consistent with conflicting rules codified (or left unaddressed) in the past.

ZONING TEXT CHANGE: Amend Section 30-15 Table 3 as follows:

- A. Reword footnote 10 so that it reads as follows:

"10. Except when abutting a residential district, the setback shall be 1/2 the building height or twenty (20) feet whichever is greater. Surface parking facilities shall be set back no less than five (5) feet from the side and rear property lines."

- B. Remove the reference to footnote 10 from the column headings for side and rear setbacks, and add the reference to footnote 10 to the side and rear setback entries in each row under MIXED USE 1 and MIXED USE 2.

- C. Add the following language at the end of footnotes 5 and 6:

"Surface parking facilities shall be set back as noted in Section 30-19(i) except no less than five (5) feet from the side and rear property lines."

- D. Delete the second sentence of footnote 8 which reads "Except as noted in Section 30-19(i), parking need not comply with these setbacks."

(See revised Table 3 on the final two pages)

NEXT STEPS

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Given the largely technical nature of these changes, the next steps towards docketing of a proposal might be:

1. Circulate this draft among persons having had the most involvement with such provisions, including a broad array of City staff, key members of the Board of Aldermen, and a number of attorneys and architects whose practice has given them experience with the current rules, as well as to the HAPI Working Group, the EDC, and any others who request it.
2. Based upon response from those sources, revise the draft, and widen the discussion before actually docketing any item(s), with the aim of docketing by the end of the calendar year.

Mixed-use friendly 2.doc

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SECTION 30-15
TABLE 3 – DIMENSIONAL REQUIREMENTS FOR COMMERCIAL DISTRICTS [REVISED PER TEXT ABOVE]

ZONING DISTRICT ¹¹	MAX.# OF STORIES	BLDG. HEIGHT ¹²	TOTAL FLOOR AREA	GROSS FLOOR AREA/SITE PLAN APPROVAL	THRESHOLD BY SPECIAL PERMIT	MINIMUM LOT AREA	LOT COVERAGE	SET BACKS				
								FRONT	SIDE	REAR		
BUSINESS 1												
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
BUSINESS 2												
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
BUSINESS 3												
As Of Right	3	36	1.50	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
BUSINESS 4												
As Of Right	3	36	1.50	10,000-19,999	20,000	10,000		Avg. ¹	½ bldg. ht. ²		0 ³	
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
By Special Permit	5	60	2.25	10,000-19,999	20,000	25,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
By Special Permit	6	72	2.50	10,000-19,999	20,000	30,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
By Special Permit	7	84	2.75	10,000-19,999	20,000	35,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
By Special Permit	8	96	3.00	10,000-19,999	20,000	40,000		½ bldg. ht. ⁴	½ bldg. ht. ²		0 ³	
BUSINESS 5												
As Of Right	3	36	1.00	10,000-19,999	20,000	0	0.25	15	10 ⁵		15 ⁵	
By Special Permit	4	48	1.50	10,000-19,999	20,000	0	0.25	15	10 ⁵		15 ⁵	
LIMITED MANUFACTURING	3	36	0	10,000-19,999	20,000	0	0.25	25	20 ⁶		20 ⁶	
MANUFACTURING												
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000		15 ⁷	½ bldg. ht. ⁸		½ bldg. ht. ⁸	
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000		15 ⁷	½ bldg. ht. ⁸		½ bldg. ht. ⁸	
MIXED USE I												
As Of Right	3	36	1.50	10,000-19,999	20,000	40,000		15 ⁹	7.5 ¹⁰		7.5 ¹⁰	
By Special Permit	4	48	2.00	10,000-19,999	20,000	40,000		15 ⁹	7.5 ¹⁰		7.5 ¹⁰	

(continued)

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#183-10

ZONING DISTRICT ¹¹	MAX.# OF STORES	BLDG. HEIGHT ¹²	GROSS FLOOR AREA			THRESHOLD BY SPECIAL PERMIT	MINIMUM LOT AREA	LOT COVERAGE		
			TOTAL FLOOR AREA	AREA/SITE PLAN APPROVAL	RATIO			FRONT	SIDE	REAR
MIXED USE 2	2	24	1,000	10,000-19,999	20,000	10,000	15 ⁹	7.5 ¹⁰	0 ¹⁰	
As Of Right	3	36	1,500	10,000-19,999	20,000	10,000	15 ⁹	7.5 ¹⁰	0 ¹⁰	
By Special Permit	4	48	2,000	10,000-19,999	20,000	10,000	15 ⁹	7.5 ¹⁰	0 ¹⁰	

¹ Avg. - The setback on any lot shall be the average of the setbacks of the building nearest thereto on either side. A vacant lot or a lot where a building is set back more than ten (10) feet shall be counted as though occupied by a building set back ten (10) feet.

² 1/2 bldg. ht. - one-half the building height or a distance equal to the side yard setback of the abutting property at any given side yard except, when abutting a residential zone, the setback shall be one-half the building height or fifteen feet, whichever is greater. Surface parking facilities shall be set back as noted in Section 30-19(f) except no less than five (5) feet from the side and rear property lines.

³ When abutting a residential or public use zone, the rear setback in the Business 1-4 Districts shall be 1/2 the building height or 15 feet, whichever is greater. Surface parking facilities shall be set back as noted in Section 30-19(f) except no less than five (5) feet from the side and rear property lines.

⁴ 1/2 bldg. ht. - the setback shall be one-half the building height unless the average as described in footnote 1 above is less, then apply Avg.

⁵ 20 feet when abutting a residential district. Surface parking facilities shall be set back as noted in Section 30-19(f) except no less than five (5) feet from the side and rear property lines.

⁶ 40 feet when abutting a residential district. Surface parking facilities shall be set back as noted in Section 30-19(f) except no less than five (5) feet from the side and rear property lines.

⁷ 15 feet or 1/2 building height or the average setback of adjoining properties, whichever is greater.

⁸ 1/2 building height, except, when abutting a residential or public use zone, the setback shall be 1/2 building height or 20 feet, whichever is greater.

⁹ Minimum front setback; if building height exceeds one story, front setback must be equal to total height of building. Parking facilities shall be set back no less than twenty (20) feet in the Mixed Use 1 District and fifteen (15) feet in the Mixed Use 2 District.

¹⁰ Except when abutting a residential district, the setback shall be 1/2 the building height or twenty (20) feet whichever is greater. Surface parking facilities shall be set back no less than five feet from the side and rear property lines.

¹¹ Religious and non-profit educational uses are allowed in all commercial districts. Accordingly, the "As Of Right" Dimensional Requirements for Commercial Districts, as set out in this Table 3 of sec. 30-15 apply to such uses, except for the Public Use and Open Space/Recreation Districts, in which the dimensional controls for the Single Residence 1 Zoning District from Table 2 shall apply.

¹² Building height shall also regulate structures.

NOTE: The front, side, and rear setback requirements for parking facilities in the Business 1-4 and the Manufacturing Districts shall not be less than five (5) feet or, when abutting a residential or a public use zone, less than ten (10) feet.

WORKING MEMORANDUM

To: Zoning and Planning Committee of the Board of Aldermen

From: Candace Havens, Interim Director of Planning and Development
Juris Alksnitis, Interim Zoning Administrator

Re: Pet. #153-10, pertaining to altering the lot area per dwelling unit requirement to allow a reasonable density for dwellings in MU-1 and MU-2 districts.

Pet. #183-10, pertaining to adding dwellings above the first floor as a use in the MU-1 district.

Date: July 9, 2010

cc: John Lojek, Commissioner of Inspectional Services

10 JUL - 9 PM 2: 53
CITY CLERK
NEWTON, MA. 02159

BACKGROUND

Arising from discussions within the Newton Housing Partnership, a collaborative initiative took shape in 2008-2009 involving housing advocates and providers, City of Newton staff, boards, and commissions, and civic groups. Called the Newton Housing Action Plan Initiative (HAPI), its actions and observations are summarized in the report "HAPI: An Overview", December 29, 2009. HAPI issued a draft report on "Mixed-Use Friendly Zoning" dated August 19, 2009, last revised October 22, 2009. The report identifies a number of barriers within the Newton Zoning Ordinances creating obstacles to mixed-use business and housing development in village centers and along commercial corridors. In particular, this report outlines six regulatory problem areas within the Zoning Ordinances, and provides suggestions for amending the Zoning Ordinances to remedy these problems. Two of the less complex problems are now being brought forward for discussion as Petition #153-10 and #183-10, respectively, with the goal of enacting the necessary amendments in the near future. The following information is provided for use by the Zoning and Planning Committee at its working session on July 13, 2010.

PETITION #153-10 – Proposal to Amend Section 30-15, Table 1, to allow for a reasonable density for dwellings in Mixed Use 1 and 2 Districts.

Lot area per dwelling unit in Mixed Use, Business, and Multi-Residence districts.

Section 30-15, *Table 1-Density & Dimensional Controls in Residence Districts and for Residential Use* establishes 10,000 sq. ft. as the minimum lot area per unit for residential development in the MU-1 and MU-2 districts. This contrasts with 1,200 sq. ft. per unit for the BU1, BU2, BU3 and BU4 districts, and also with significantly lower requirements in the Multi-Residence districts. The following table summarizes minimum lot area requirements for multi-residential development in all mixed use, business, and multi-residence zones:

Type of res. dev.	Min. lot area per unit by Zone (sf)					
	MU1&2	BU1-4	MR-1	MR-2	MR-3	MR-4
Attached DU	n/a	n/a	4,000	4,000	4,000	n/a
Multi-Fam. Dwelling	10,000	1,200	n/a	3,000	1,200	1,000
Garden Apartment	n/a	n/a	n/a	2,000	n/a	n/a
DU above 1 st floor	10,000	1,200	n/a	n/a	n/a	n/a

While it is unclear at this time why the lot area requirement for MU 1 & 2 is so disproportionate in comparison with other zones, it has had a prohibitive effect on the development of housing within MU-1 and MU-2 zones. The petitioners seek to provide a revised density requirement that will facilitate development of housing in these districts at an appropriate density.

Possible Zoning Ordinance text change:

At this time, the subject petition does not make a specific proposal for language amending the Zoning Ordinance. However, the HAPI report on "Mixed-Use Friendly Zoning" suggests that Section 30-15, *Table 1 – Density & Dimensional Controls in Residence Districts and for Residential Use* be amended as follows:

In the LOT AREA PER UNIT column at the MIXED USE 1 AND 2 row:
Replace "10,000" with "1,200."

Such a change would make possible increased housing development opportunities which would apply to residential development meeting the definition of "Multi-family dwelling" (Section 30-1) and located within the MU-1 and MU-2 districts, where multi-family development is subject to special permit. In addition, a reduced density factor would also apply to as of right residential development meeting the definition of "Dwelling units above the first floor" articulated in Section 30-13(c)(13) for the MU-2 district. As discussed below, while such development is not now contemplated within the MU-1 district, it is the subject of Petition #183-10 seeking to add this type of residential use to available uses in this district.

PETITION #183-10 – Proposal to Amend Section 30-13(a), Allowed Uses in Mixed Use 1 Districts, to add as of right dwelling units on the second floor (and above) where selected uses are located on the first floor.

As-of-right second-floor dwellings in the Business and Mixed-Use districts.

At the present time, housing units above first floor commercial uses are allowed by right in Business 1-4 districts and in the Mixed-Use 2 district, but not in the Mixed Use 1 district, where this type of use is not contemplated either by right or by special permit. It is also noted that Section 30-15, *Table 3-Dimensional Requirements for Commercial Districts* allows two-story buildings as of right in the BU-1, BU-2, and MU-2 districts while requiring a special permit for buildings three stories and higher. In effect, this makes available as-of-right dwelling units only within the second floor of a two-story building in these districts. Table 3 also provides for three-story buildings as of right in the BU-3, BU-4, BU-5, and MU-1 districts, while requiring a special permit for buildings 4 stories and higher. As a result, in districts BU-3 and BU-4 as-of-right dwelling units are possible within stories two and three above the ground floor, but not in the BU-5 and MU-1 districts, which do not contemplate this use. In comparison, multi-family dwellings as defined in Section 30-1, are allowed in BU 1-4 and also in MU 1 & 2 zones subject

to special permit. In addition, Table 3 enumerates various FAR, building height, and gross floor area thresholds which may trigger a special permit or site plan approval requirements.

At the time the MU-1 and MU-2 zones were adopted in 1987, various properties along Needham Street then located within the Manufacturing zone were rezoned to the new and more restrictive MU-1 zone. As a result, the uses allowed as of right within the current MU-1 zone are comprised to a significant extent by industrial and assembly type uses. This may also explain why a residential use, such as second floor dwellings were not included in MU-1, as such residences might potentially be located inappropriately above industrial rather than commercial activities. Neither the Manufacturing nor the Limited Manufacturing zones allow any residential uses. However, in the MU-2 district, which does not allow industrial uses, dwelling units above commercial uses are available as of right, including over a research and development facility not engaging in recombinant DNA work.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that Section 30-13(a) be amended by inserting a new subsection (5) and renumbering existing subsection (5) as (6), so that the section would read as follows (new text in bold):

"(a) Allowed Uses in Mixed Use 1 Districts. In Mixed Use 1 districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in Section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises
- (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;**
- (6) Uses similar or accessory to those authorized by section 30-13(a)."

The proposed amendment would make possible the development of second floor dwellings in MU-1 in situations where the first floor use is either an office use or research and development use, excluding recombinant DNA research and technology. In comparison, 2nd floor dwellings are allowed in BU 1-4 districts above a range of enumerated uses, including office, retail, bank, theatre, dry cleaning or laundry, printing, restaurants, and bakery. However, research and development uses of any kind are not allowed in BU1-4 either as of right or by special permit. Yet, in MU-2 zones, non-recombinant DNA research and development uses are allowed as of right, as are second floor dwellings above such uses. The proposed change seeks to achieve treatment of second floor dwelling units in a manner consistent with the MU-2 district.