

**MEMORANDUM**

**DATE:** September 9, 2020

**TO:** Zachery LeMel, Chief of Long Range Planning, Newton Planning Department

**FROM:** Councilor Lisle Baker

**RE:** Comments on the Planning Department's revised provisions of the Residential Component of the Department's proposed new zoning ordinance attached to a Planning Dept. memo dated August 7, 2020 in response to a subsequent Planning Dept. memo dated August 11, 2020 regarding #88-20 DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance; as well as companion docket items related to zoning redesign, including #30-20, #38-20, and #148-20

**CC:** Deborah Crossley, Chair, Zoning & Planning Committee  
City Council  
David Olson, Clerk of the Council; Nathan Giacalone, Clerk of the Zoning and Planning Committee  
Barney Heath, Director, Department of Planning and Development;  
Cat Kemmett, Planning Associate; Neil Cronin, Chief of Current Planning  
Planning Board  
John Lojek, Commissioner of Inspectional Services  
Alissa O. Giuliani, City Solicitor  
Jonathan Yeo, Chief Operating Officer

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**1. Executive summary.**

This memo constitutes my response to a request from Chair Crossley for written comments on the Residential Component of the Planning Department's proposed new zoning ordinance for the City which follows in detail below. I regret to report, however, that the more I understand about the proposed new ordinance, especially its Residential Component, the more concerned I become that adopting it would not be in the best interests of the City of Newton. It marks a radical change in our controls on the use of land without assuring an improvement in the quality of life in our varied village and neighborhoods that such a major change should achieve. Indeed, the process itself of its adoption has become a divisive issue in itself at a time when our residents are justifiably focused on other issues, such as the Pandemic, their livelihoods and the education of their children. I remain open to persuasion otherwise, but I respectfully suggest the Planning Department substitute for this time and resource consuming global zoning redesign more specific modifications to our current zoning framework which both Councilors and residents alike can more easily follow and understand. That overall recommendation aside, a number of the provisions of the proposed ordinance mark advances, such as the treatment of garages as design elements; others are much more problematic, such as increases in density from which appear to provide opportunities for developers to profit while increasing impacts on neighbors and public services. I elaborate these comments below.

## 2. Introduction.

By email dated September 2, 2020 Chair Councilor Crossley requested that members of the Zoning and Planning Committee, and other interested Councilors, offer our “questions, comments, and requests for information” in writing to you. The subject is the Planning Department’s revised provisions of the Residential Component of the Department’s proposed new zoning ordinance attached to a Planning Dept. memo dated August 7, 2020 in response to a subsequent Planning Dept. memo dated August 11, 2020. In her prior memo dated August 21, she asked that we “dig into the details...[and] ask what is most concerning, unclear, difficult, and what questions need to be answered” for a “workable product.” It has taken more time than I expected, but this memo constitutes my response. As she suggested, I have used the August 11 memorandum as a framework, quoting from it below, with some preliminary comments as Chair Crossley had suggested orally in our last Zoning and Planning meeting that if something were omitted we should mention that as well.

This the most complex legislative matter I can recall since I began serving on the City Council in 1980, including the last zoning redesign in 1988. No one memo can do justice to this effort, so I respectfully reserve the right to supplement these comments as appropriate.

Also, as this topic will be discussed by the Zoning and Planning Committee at its September 14 meeting, consistent with my past practice, I am providing my comments to you in advance, copying those copied in the Planning memo dated August 11, and asking that Council Clerk post a copy on the City Council website for the public to be aware, consistent with the advice of the Massachusetts Supreme Judicial Court in *Boelter v. Board of Selectmen*, 479 Mass. 233 (2018), as well as requesting that a copy also be attached to the Zoning and Planning Committee Report for the September 14 so these comments will be easily accessible as part of the public record of our work. This process is important because we all need time to reflect on these issues in advance of the meeting on the 14<sup>th</sup> and not rely only upon your summary of our comments, thoughtful and well-intentioned as that summary may be.

Finally, despite the long history of discussion of Zoning Redesign this term, this is the first time we have been invited to provide our views in writing about the Residential Component as a whole, so I will address those issues first.

## 3. General comments.

### **A. The new zoning framework the Department recommends we adopt - a form-based code – has become a problem in itself, diverting time and resources from the Department and the Council seeking to address discrete problems in our current ordinance about which there appears to be common concerns.**

Over the last years, I have seen the process of updating Newton’s zoning change from an attempt to respond to some issues that arose in the initial recodification of our zoning ordinance – such as garages that dominated the streetscape of the houses they served, or teardowns of what was entry level housing in Newton to make way for McMansions, or limits on new construction which encouraged building to all the available setbacks next to neighbors or the street – to a whole new “form based” code. To the best of my understanding, such a code has been adopted in only one Massachusetts city, Somerville. That is a far more urban community than Newton with its many varied neighborhoods, villages and commercial areas. That distinction raises concerns that this is not the right framework also for Newton.

We are proceeding down this path despite the fact that to the best of my knowledge the full City Council has not endorsed the idea of a form-based code. It is not clear to me, at least, why some changes in our current zoning ordinance could respond to these problems better than we do now, but without the disruptions, uncertainty, and confusion that this wholesale revision involves. Moreover, to this original

plan for a makeover in our ordinance has been added the Department's recommendations in its ~~most recent~~ <sup>#88-20</sup> iteration that Newton abandon single family zoning and add more density to the City by allowing two-family homes in any new construction and multi-family housing in existing homes, both as of right. Thus, this effort has now moved from rectifying discrete problems to an entirely new model of suburban density.

This work is also ongoing while the citizens of the City are more properly focused on responding to the Pandemic than the arcane subject which provides the framework for the built environment of the City, but which is invisible to almost all until something affects their property, and by then it is too late as the changes that affect their lives will have been made. I therefore will continue to request that we focus on those things we can attend to and do those – as we did at the end of the last Council term - with climate friendly elements of housing, rather than continue down this path of a wholesale ordinance redesign. (For example, the modifications to our existing simple standards for garages was originally docketed years ago and it has now been officially deferred until 2022.) This protracted process has allowed buildings to be constructed in the interim that many will regret, and meanwhile, we continue to expend time largely outside of the view of the public except for a few advocates, architects and lawyers, and occasional concerned citizens who communicate with us. This is not a good place for Newton to be.

To be specific, I urge the Department, and by implication, my colleagues, to revisit the garage ordinance sooner rather than later, to look at interim adjustments in our existing limits on the floor area of residential buildings to make for smaller buildings upon reconstruction, and to explore new housing opportunities in village commercial centers. These are places where your Department's energies could be better spent, at least until after the Pandemic, in my judgment.

**B. We have no comparison of the proposed ordinance to what is now in effect, not just a comparison of with what the Department earlier proposed.**

It is important for the public to understand the significant changes in our current ordinance effected by the proposed revisions, which include new categories of land uses, new zones, new dimensional controls, and new maps of new zones, as well as significant changes in the intensity of uses allowed. Before we even consider a straw vote or other sense of the Committee on the Residential Component of the new ordinance, we need to understand how it differs from the old and to what degree. If we are to continue down this path, I respectfully request that the Department allocate time to build that comparison. Individual case studies can be helpful, but they are not sufficient. It is not a justification to avoid that work to say that the new proposal is so different from what we now have that comparisons are difficult. If anything, that argues against the changes as a whole. Why give up what we have for something different if we cannot well understand what the differences may be? We have precedents in the Council before where provisions of a proposed new Charter were compared side by side with their counterparts in the current Charter, and new material highlighted. Given the importance of the decision being asked of the Council, surely such a comparison is within the capacity of the Department to prepare.

Beyond that basic issue of comparing existing to proposed, it is difficult to follow what the Department recommended as we were provided in the August 7 memorandum with a red-lined version of the Department's prior draft, but not a version as proposed, nor a comparison with the current ordinance so that it is clear what we are being asked to replace. Both would be of aid to our process. In the meantime, however, it is not only possible but also likely that some key elements may be missed as part of our review.

**C. Specific elements of the Residential Component omitted from the August 11 memo framework for discussion.**

**1. The change in minimum frontage and the addition of a frontage maximum for a new lot.**

A key dimension of the Residential Component is the elimination of a minimum lot size and a reduction in the applicable required frontage for a new lot to be built upon. For example, in a Single

Residence zone, the current ordinance requires a minimum of 140 feet for a new lot. In the new ~~R1 zone~~ **#88-20**, the least dense, that number drops by almost half to 80 feet. In an R2 zone it would be 60 feet (with a maximum of 110), an R3 and R4 zone 50 feet (with a maximum of 100 feet). Note that the net effect of this reduction is denser construction of new homes. Also, the frontage reduction can itself encourage the demolition of existing homes to make way as larger lots are divided or even subdivided. Moreover, much of the beneficial open space in Newton – in the sense of tree canopy and plant materials – comes from the mature trees that dot the landscape, as well as open space surrounding some of the homes on larger lots. That public amenity maintained at private expense can be lost, a process we already see in the demolition process as trees are cut as the buildings come down.

**2. The elimination of a minimum lot size in the proposed new ordinance.**

One of the changes to Newton zoning effected a number of years ago was to avoid the construction of new homes on lots of less than 5,000 square feet as being out of scale with Newton as it developed. Without such a minimum lot size, many more lots can be built upon. Again, if the Council were to determine that it wishes to change that minimum lot size, it could assess the impacts more easily under our current ordinance. We cannot do so in the context of the Residential Component proposed.

**3. The elimination of Floor Area Ratio as a control on oversized development without considering whether and how it might be improved.**

Floor area ratio (FAR) as a means of controlling building mass was developed and implemented with the encouragement of the then leadership in the Planning Department to help control teardowns and oversized houses. It is still not clear why the current Planning Department is recommending that this tool - which I recall was hard won -- now be abandoned. For example, limiting the floor total floor area to be built to a percentage of the lot size allows larger houses on larger lots and smaller homes on smaller lots. On the other hand, as I understand the proposed new zoning, a 7,000 or a 21,000 square foot lot in an R2 district could have the same maximum house size. Also, if there is a concern that some elements of a lot count for purposes of the Floor Area Ratio which are really not part of the building envelope created by front, side and rear setbacks, might we simply amend the FAR limits to exclude that portion of the lot not within the allowable building setbacks on four sides? That would help address the problem of building on narrow or “pork chop” lots where land area not needed for the structure counts toward the limits on its size.

**4. Clarification of changes in carefully designed features of our current zoning ordinance, such as Rear Lot Subdivisions.**

Over the years, the City Council has taken great pains to shape aspects of the current zoning ordinance with great care. For example, the division of a parcel to allow a residence to be constructed on a rear lot was carefully crafted to allow it be done only under special permit, with specific standards and guidelines above and beyond what could be done as of right. Before any change in the ordinance should take place, it is important to sort out what has been removed and what is proposed to take its place, and why.

**5. Clarification of what is unchanged, even if renumbered and relocated.**

It is very difficult to follow what is in our current ordinance has essentially been transplanted into the proposed version. Without more guidance from the Department, how are members of the Council and the public to know? For example, the dimensional limitations on the size of separate structures that can be built on a lot appear to be the same as in the current ordinance, but it would be helpful to know what is new and what is proposed to be changed, echoing an earlier comment.

**6. Under current zoning certain dimensional nonconformities can be relieved as needed by a special permit from the City Council with conditions designed to protect abutting properties; the proposed ordinance appears to create whole new classes of dimensional nonconformities for which there is uncertain relief, if any.**

Much of the rationale for the proposed changes is to reduce nonconformity – the fact that many existing lots and structures do not conform to current zoning requirements. How many homeowners annually seek relief from such rules through Special Permits from the Council? Is such nonconformity relief focused on one or more elements in particular, like FAR? The Department should undertake such a review before creating more nonconformities with the new ordinance without understanding if and how such new nonconformities might be better addressed under the current ordinance. Aside from learning from that historical data, what new nonconformities would be created with the new dimensional controls on house types? A justification for a form-based code is attempting to make as of right what was discretionary before. It would be ironic if the Council were to trade a regime of nonconformity which is relatively well-understood, and can be relieved by special permit so long as the result is not substantially more detrimental to the neighborhood, for a regime which is novel and untested, but ultimately requires similar relief for many properties which might now be conforming but become nonconforming under the proposed new zoning.

**7. No consideration of the housing opportunities that might be created in commercial areas without disrupting existing neighborhoods.**

While I understand the Chair’s desire to proceed through the proposed ordinance in sections, some of the housing opportunities we seek might be found in Village Commercial areas, should we not discuss these at the same time, rather than revisit the Residential Component at that time?

**4. Specific comments on the Department’s August 11 Memorandum.**

With this general background in mind, including all the reservations expressed, here is the August 11 memorandum from the Department with my comments in italics.

*[Excerpts from the Department’s August 11 Memorandum appear below, with comments at intervals.]*

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**Guiding Questions to Review Article 3 – Residence Districts**

In preparation for the upcoming ZAP meeting on August 13<sup>th</sup>, the Planning Department has created a series of questions connected to the revisions proposed in Article 3 – Residence Districts. The series of questions is organized in order as they appear within the draft zoning text. The Planning Department suggests this be used to guide the study and review of the draft. It is intention of the Planning Department to fully introduce these draft revisions at the upcoming ZAP meeting, though it will most likely require multiple meetings to have sufficient discussion within the Committee on all items.

**Guiding Goals and Objectives**

- Facilitate an increase and diversity of housing opportunities citywide
- Promote economic and environmental sustainability
- Ensure new development, and renovations, respect the physical character and scale of existing neighborhoods and align with adopted visions

*[Comment: As indicated in a prior memo from me and Councilor Wright, both the 8/7/20 and 8/11/20 Planning memo contains a significant error: The 3rd straw vote goal approved at the Zoning and Planning Committee meeting on April 27, 2020 was as follows: “Context: Preserve and protect what we like in our neighborhoods.*

*Encourage new development to fit in the context of our neighborhoods and village” has a very different intent and purpose from what the Planning memo reports: “respect and control the physical character and scale of existing neighborhoods and new development according to adopted visions.” This statement needs correction in both memos. This is more than a technical objection. I voted for the original goal in Committee because it spoke of neighborhood preservation not just in scale but in what we like about them – which includes variations in density of use across the City. Unlike some other suburbs, Newton has some areas of single-family, two-family and multi-family use, with varying lot sizes and building types. This heterogeneity is one of the reasons new families continue to be attracted to the City.*

*This is not the only alteration in what the Committee voted on April 27. Here is the exact language from the Zoning and Planning Committee*

*“Housing: A Zoning Code more responsive to a demand for housing that serves a range of incomes; promote sustainable community development patterns.”*

*That is very different from “Facilitate an increase and diversity of housing opportunities citywide” as the Planning Department’s recasting implies an increase in housing – not what we voted – and that it be citywide – rather than targeted for the most appropriate contexts. These could be village commercial areas, which would allow both the housing opportunity and neighborhood preservation goals to be more compatible rather than in conflict, which is the result of the Department’s responses to them.*

*Finally, the third element of the Committee’s straw vote was as follows: “Sustainability: Environmental Stewardship, fiscal strength and meeting community needs.” Again, this is different from the Department’s rewriting that its zoning is designed to “promote economic and environmental sustainability.” Those are worthy goals themselves, but they omit the important dimension of fiscal strength for the City where new land uses can put demands on city and school services without creating the equivalent new tax revenue to support them.*

*Why take the time to dwell on these distinctions? It is because the Planning Department’s rewriting of what the Committee voted for are used to justify the recommendations that follow. The Council in its wisdom may elect to vote for any or all of the proposed zoning changes recommended by the Department, but it does not advance the cause of either clarity or confidence in the outcome for the Department to justify the means it recommends by altering the ends voted in Committee that they are designed to serve.]*

### **3.1 Residence Districts**

#### *Dimensional Standards & Building Types*

The proposed five residence zoning districts (R1, R2, R3, R4 and N) are the foundation for regulation across Newton’s neighborhoods and roughly correspond to five of the existing residential districts (SR, SR2, SR3, MR1 and MR2). Taken all together, these district can be viewed as a transect that moves from larger lots/less building types (R1, R2, and R3) to smaller lots/more building types (R4 and N). This typically corresponds with Newton’s existing residential development patterns as areas further away from public transit and village centers to areas in much closer proximity to these resources, respectively.

*[Comment: This statement does not fit with the current pattern of Newton land uses. Newton is not so graduated in the location of its uses of land. In fact, the City is much more heterogenous. Some residential areas, such as Chestnut Hill, are next to major commercial areas, like the Chestnut Hill Shopping Center and the Route Nine commercial corridor. Others are more distant. This situation requires maps that can be clearly understood and how what they show differs from the existing zones and to what degree.]*

1. **Do the required district lot and setback dimensional standards, as well as the allowed mixture of building types, facilitate the desired development patterns as explained above?**

*[Comment: If the ends are not accurate, then the means to these ends is not accurate as well. It is not wise to change to a form-based code the full implications of which cannot be fully understood.]*

2. **Certain building types are only allowed by Special Permit within a given district. Is that appropriate or should they be allowed by-right or not at all?**

*[Comment: Moreover, in the draft provided, the Department indicated that a key element not yet before the Committee is the decision about what entity and under what standards discretionary relief would be provided for provisions of ordinance, either for the grant of a special permit under M.G. L. c. 40A, Sec. 9, or a finding that a particular provision could be lawfully relaxed for a non-conforming property under a finding that such a change would not be substantially more detrimental to the neighborhood under M.G.L.c.40A, Sec. 6. The choice of entity and standards for decision is different from the threshold question of what the proposed ordinance should allow or prohibit or whether some discretionary relief, (other than a zoning variance by the Newton Zoning Board of Appeals for hardship unique to the parcel, always available), is involved. These comments assume that the City Council will still act in both the Section 9 and Section 6 roles, though I understand that is not the Department's recommendation. If appointed entities, like the Planning Board, were to so act for some or all of such discretionary relief, these recommendations might change.]*

**a. House D in R2**

*[Comment: This choice illustrates the difficulty of the current ordinance. It is built, as the Department's memo indicates, around the idea of house types as the primary land use. Beyond that, do we want to limit the opportunity for people to build or own one floor homes that are easier for seniors to navigate?]*

**b. Triple Decker in R3**

**c. Small Apartment House in R4**

**d. Small Multi-Use Building in N**

### 3.2 Building Types

#### *Special Permit Allowance to Vary Building Type Dimensional Standards (sec. 3.2.2)*

One of the stated objectives driving the Zoning Redesign process has been to simplify and streamline the permitting and review process. Lowering the administrative burden and streamlining the process could go together with revised rules and regulations that truly reflect the City's goals. Allowing development by-right that conforms to these new rules and regulations can be a predictable way to accomplish this. The proposed building type dimensional standards are either derived from measurements of Newton's existing residential buildings (House A through Duplex) or from urban design best practice (Triple Decker through Small Multi-Use Building). This way, new construction of these building types should respect the existing physical character and scale of neighborhoods.

### Decisions

1. **Should the draft remove the allowance to increase beyond the maximum building type dimensional standards by Special Permit?**
  - a. **If yes, should certain building component allowances replace the Special Permit as a simpler and more predictable mechanism?**

- b. If no, should there be a cap placed on how much a Special Permit increase is allowed for each building type?**

*[Comment: No to the first question and yes to the second, though with qualifications. Some building components are modest, but other elements, such as a side or rear addition, can have impacts on abutters that the special permit process provides a way to condition and ameliorate. The Planning Department, to the best of my knowledge, has not done any systematic analysis of the pattern of special permits to see what are granted routinely and with what conditions and which are the subject of more intense review because of impacts on neighbors. Zoning amendments should be guided by that experience. It was a prior review of this type that led to the current de minimis ordinance which does allow minor changes as of right. But when minor becomes major without appropriate additional review, homeowners become developers and neighbors can be adversely affected. That is what setbacks and other dimensional controls are designed to help achieve. Owner gains some protection from what happens next door in return for some control on what they can do themselves, which Justice Holmes once called the “reciprocity of advantage.” The problem is not just lack of an examination of our Newton special permit experience. The premise of the house type as the fundamental building block of the proposed new zoning code is that it will limit oversized structures. To allow additions to be made as of right can mean significant increases in size, and intensity of use that often goes with it, undermining that goal.]*

*Two-units within House A, House B, and House D By-Right*

Within the Additional Standards section for the above building types is a proposal to allow new construction of these building types to have a maximum of two-units. These building type standards are based on corresponding single-family existing residential structures throughout Newton. This change would allow, it does not force or require, new construction of these building types to have two-units. Property owners have every right to build or renovate these building types as single-family homes. Allowing this throughout all of Newton’s residential neighborhoods could help fairly and equitably distribute housing opportunity within building forms that respect the existing physical character and scale of neighborhoods.

**Decisions**

- 1. Should new construction of these building types, based on the existing form of single-family homes in Newton, be allowed to have a maximum of two-units by-right?**
- 2. Should this provision be reserved for single-family zones within a certain distance to public transit (Green, Line, Commuter Rail, Express Bus) and village centers?**
  - a. ¼ mile?
  - b. ½ mile?
  - c.

*[Comment: No, to both questions. A constant criticism of residents is that the entry level housing is being demolished for much more expensive housing oversized for the lot and their neighborhoods. We have heard concerns from architects and others that the Department’s proposal would add to, rather than respond, to this problem. A number of comments we have received have pointed out the incentives for tear downs of entry level housing in single family zones will increase as developers will now have two units to sell in place of one, an opportunity potentially available city-wide. Despite how it is phrased, this is effectively the end of single-family zoning in the city, though single family homes can remain until a developer offers a price that will allow it to be torn down to make way for more expensive two-family homes. Also, if it is to occur, it may make no sense to provide such opportunities only on the basis of access to transit when so many residents still need cars, and the whole fabric of commuting by mass transit to work is being undone by the Pandemic. That demand for single family housing remains high is an indication of the value these homes command in the market, but that demand may shift as homes next door are torn down to make way for new two-family homes.]*

The Planning Department recommends the removal Small Shop (sec. 3.2.13). Though this form currently exists in Newton, it seems the goals of promoting economic sustainability and increasing housing opportunity warrants new development of this type to have ground floor commercial with residential or office above. Or, the draft should allow existing buildings that match this form to have an opportunity to build an additional story for residential or office, which is captured in the Shop House (sec. 3.2.11) and is proposed only in the Neighborhood General District immediately adjacent to village centers.

### Decisions

1. **Should the new Zoning Ordinance encourage new single-story commercial development through the Small Shop building type, or should it be removed?**

*[Comment: Again, it depends on the location. It used to be the case that some of the buildings next to the Newton Centre T station were apartments above commercial space. Toward the end of the last century, the owners found that office use would pay more and the apartments were no more. Shop buildings can be useful, but it depends on the use and the location. Also, if the premise is that it supports upper story residential, perhaps the residential use should be assured in some way.]*

### 3.3 Building Components

#### *Building type increases through Building Components*

Per discussions at ZAP, with city staff, and the architects/builders focus group, the Planning Department recommends updates to building components that allows existing homes to reasonably expand as homeowners needs change and for new development to expand beyond the maximum allowable footprint in a simpler, more predictable, manner. Building Components incorporate the innovative thinking found in the Current Ordinance *De Minimus* regulation, data on Newton's existing residential massing, and urban design best practice. The Planning Department recommends that building components that can modestly increase footprint, Side Wing (sec. 3.3.2.F) and Rear Addition (sec. 3.3.2.G), on the smaller building types (House A – Duplex) be capped at 25% and for the larger building types (Townhouse Section – Small Multi-Use Building) be capped at 10% beyond the maximum building footprint. 25% for the smaller building types is based on data of existing housing stock, which allows a development with an appropriately sized lot to match the majority of existing structures of that building type. Adding such building components requires available lot coverage and space within the established setbacks, which helps ensure such increases are proportional and only occur on appropriately sized lots.

### Decisions

1. **Should building components have a maximum allowance per building type?**
  - a. **If yes, is 25% appropriate for (House A through Duplex) and 10% (Triple Decker through Small Multi-Use Building)?**
  - b. **If no, what is the appropriate mechanism to regulate the expansion of each building type to meet the evolving needs of homeowners?**

*[Comment: A prior comment has elaborated on this issue.]*

### 3.4 Design Standards

#### *Garage Design Standards (sec. 3.4.1)*

Utilizing form-based mechanisms the draft zoning language creates standards to achieve the goals of minimizing the visual impact/dominance of garages within neighborhoods and the public realm. The draft ordinance breaks down how residential building types can provide garages in a variety of configurations that respond to the variety of Newton's lot sizes and layouts, without compromising on these goals. In this way, the new language greatly increasing both the level of predictability and flexibility for developing garages as part of new construction or an addition.

1. **Should front-facing garages be required to setback from the front elevation of the house unless certain design mitigation measures are met?**

*[Comment: yes. Note that the hard copy of the current zoning ordinance that I recently received from the Committee Clerk contains as operative limitations on garages which I recall the Council reconsidered and which are not to be final until 2022, unless otherwise amended.]*

2. **Should front facing garages with space for two cars be required to be designed with individual doors?**

*[Comment: yes.]*

3. **Should a home only be allowed to have one attached front-facing garage, regardless of how many units?**

*[Comment: This seems reasonable to avoid the visual and public safety impacts of garages becoming the dominant feature on the streetscape. As a general matter, the general thrust of these proposed changes is positive. It still seems possible to do something along these lines even within the framework of our current ordinance, however.]*

### 3.5 Alternative Lot/Building Configurations

#### *Multi-Unit Conversion (sec. 3.5.2)*

Per our discussions at ZAP, a majority of the Committee, additional City Councilors in attendance, and Planning Board members voiced support for Multi-Unit Conversion as a mechanism to incentivize the preservation of Newton's existing building stock and promoting an increase in diverse housing opportunities throughout the city. From this feedback, the Planning Department recommends expanding the allowed building types that can utilize this mechanism (sec. 3.5.2.A). Second, city staff recommend that Multi-Unit Conversions be allowed by-right if creating six residential units or less. To ensure the exterior of the building is preserved, and generally limit abuse of this mechanism, additional language has been added from the current ordinance limiting exterior alterations (sec. 3.5.2.B).

#### Decisions

1. **Should Multi-Unit Conversion be allowed by-right? If yes, what is the appropriate number of units allowed by-right?**
2. **Should Multi-Unit Conversion be allowed by-right only within a certain distance to public transit (Green, Line, Commuter Rail, Express Bus) and village centers?**
  - a.  $\frac{1}{4}$  mile?
  - b.  $\frac{1}{2}$  mile?

*[Comment: No to both 1 and 2 (which includes both a and b). The relevance of mass transit is no longer clear; see prior comments on two family homes available as of right. Also, multi-unit conversion can occur by special permit under if the parcel has enough land to subdivide the lot to allow the same number of units. This is an important safeguard that should be maintained to offset additional density with more open space with special permit review to protect nearby properties from unintended impacts. Also, the Council spent many months arriving at a good accessory apartment ordinance – acknowledged as a statewide model - which allows a unit that is truly accessory to be created, while providing safeguards for abutters, such as allowing some units as of right and others by special permit, as well as homeowner occupancy and controls on exterior alterations; those provisions would apparently be gone or unused. (It is unclear whether multi-unit properties would continue also to allow internal accessory apartments; see prior comments on the two-family properties.) There are also issues of over-crowded student housing in multi-family units near local colleges which these conversions would only make more difficult. Finally, when the Pandemic subsides, these are ripe properties for Airbnb use and not*

*long-term renters, something prohibited by the current accessory apartment ordinance and lodging house provisions of our current zoning ordinance.]*

**3. Are the mechanisms limiting exterior alterations appropriate?**

*[Comment: controls on exterior alterations are wise – see the accessory apartment provisions of our current ordinance. How these would work needs exploration.]*

**4. Should the development of affordable housing be incentivized through multi-unit conversion? If so, what is the appropriate requirement (50%, 75%, 100%)?**

*Courtyard Cluster (sec. 3.5.3)*

Courtyard Cluster development is a building form that promotes community interaction through compact living clustered around a semi-private shared open space. The smaller than typical residential unit size is meant to provide a non-subsidized form of housing that is generally less expensive. Courtyard Clusters can also provide greater flexibility for families as their needs change over time and alternatives for seniors looking to downsize and remain in Newton. Given the intent of this development type, the Planning Department recommends limiting Courtyard Cluster developments to the R4 and N districts, which are proposed to be close to amenities and resources found in village centers and public transit hubs.

**Decisions**

**1. Is it appropriate to limit Courtyard Cluster development to residence districts near village centers and public transit?**

*[Comment: Courtyard clusters should not be allowed without special permit, as cluster development can be done under special permit under current zoning. This provision requires more thought.]*

**3.6 Uses**

*Adaptive Reuse of Existing Buildings (sec. 3.6.1)*

The adaptive reuse section of the proposed zoning ordinance identifies a limited range of uses that might be allowed in an existing building by special permit to allow for its adaptive reuse. Most commonly, these types of buildings have been converted into museum, arts, or educational uses, including such examples as the Durant-Kenrick House, the New Art Center, and the Allan House. The draft ordinance proposes to expand the menu of potential reuse uses to include other arts related uses, general office space, and restaurant/cafes. This idea expands the opportunities for new commercial space, sensitively incorporated into an otherwise residential area and creating an opportunity for a neighborhood-based restaurant or allowing an expanding home business to stay in location. The idea is in line with how neighborhoods historically evolved, created walkable areas with neighborhood serving uses, and this provision allows a certain degree of evolution, in a way that is highly controlled, based on the special permit process.

**Decisions**

**1. Should all adaptive reuse projects require a Special Permit? If not, which should be allowed by-right?**

**2. Should adaptive reuse be allowed in all Residence Districts?**

**a. If no, which districts should it be limited to?**

**b. If yes, are extra controls needed (i.e. Adaptive Reuse is only allowed on arterial/major collector streets)?**

*[Comment: The premise of separating residential from commercial properties has been foundational for zoning. A few exceptions are where they abut residential properties as nonconforming uses, such as along Commonwealth Avenue between Centre Street and Grant Avenue. If they are allowed, having them reserved for*

*major arterials helps avoid the potential impacts commercial uses – or adaptive uses with impacts like commercial ones - can have on abutting or nearby residential properties. In addition, adaptive uses should be allowed only by special permit where the context makes sense. For example, a restaurant on the corner of Centre Street and Commonwealth Avenue – even if less than block from a residence – is very different from allowing it – even with a special permit – in the middle of a residential neighborhood. It is easy in the focus on form rather than function of the Department’s zoning proposals to lose sight of the fact that zoning was designed to zone – to separate uses which can conflict with each other – just like we have traffic control by pavement markings and stoplights rather than by lawsuits. In the seminal U.S. Supreme Court case that upheld local zoning against challenge, the Court opined that “a nuisance may be merely a right thing in the wrong place, -- like a pig in the parlor, instead of the barnyard.” Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Again, to return to what the Zoning and Planning Committee voted – we want to preserve what we like about our neighborhoods - and that may mean keeping commerce in commercial zones. As the U.S. Supreme Court said in another case upholding local zoning: “A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs.... The police power is ... ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.” Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).]*

### **3.7 Parking Requirements**

The proposed ordinance parking requirements differ in other way by more proactively addressing the transportation impacts of development. The minimum parking requirements are reduced and maximum parking requirements are introduced. This approach derives from the recognition that minimum parking requirements generally have been demonstrated to produce a range of unintended consequences ranging from environmental impacts and increased traffic. These impacts were partly the result of minimum parking requirements creating an environment that favors automobile use over any other mode.

#### **Decisions**

- 1. Should on-street parking count towards the minimum parking requirement for non-residential uses within the Residence Districts?**
- 2. Should the following buildings be exempt from parking requirements within the Residence Districts:**
  - a. 1- and 2- unit residential buildings?**
  - b. Ground story non-residential uses less than 5,000 sf?**
  - c. Accessory uses?**
- 3. Should parking minimums be removed entirely?**

*[Comment: No to all three questions. All it will do is push cars on to the streets and make the overnight parking ban – a useful idea – difficult if not impossible to enforce. If so, the impact on sections of Newton near Brookline which bans overnight parking year- round, and whose residents might now find Newton a tempting alternative, as well as college students who have found neighborhood streets welcome garaging away from campus, need to be considered. Moreover, the premise that parking attracts cars has been contested – and Newton is not a compact city where walking, subways, and cabs offer easy alternatives to having your own automobile available for comings and goings involving other people or heavy objects – especially in the time of the virus where residents are uneasy about ride or transit sharing. Having parking required on site assures that the adverse impacts of on-street parking are avoided and keeps the streets clear in the residential areas.]*

#### **Driveway Access (sec. 3.7.1.E)**

Similar to garages, driveways can greatly impact the look and feel of a property as it relates to the neighborhood because it provides access into the property where that property meets the public realm. The draft zoning language on

driveways is meant to help Newton achieve its goals around promoting sustainable design and can support greater public safety as well.

### Decisions

1. **Should a maximum driveway width be set at the lot line to reduce paving and enhance public safety (note driveway widths can increase further into the property)? If so, what are the appropriate maximums:**
  - a. **10 ft for residential properties with eight-units or less?**
  - b. **20 ft for residential properties with nine-units or more?**
2. **Should a single-family property only be allowed one curb cut?**
3. **Should a second curb cut require a Special Permit?**

*[Comment: It depends on the site. This question illustrates some of the challenges of the zoning as proposed. Some major decisions, such as the size of houses and house lots, are as of right, but here a special permit is contemplated for a minor element. In some cases, it may be a problem and in others not so much, depending on the lot size and the neighborhood context, and even whether an existing sidewalk exists in front. Residential driveways should generally be narrow – especially if lengthy – but as important as the width may be the materials and the location. In general, it is important to have driveways that minimize impacts on neighbors. Also, to preserve green space it may be important to allow ways for parking to occur in the front setbacks rather than assume a garage which may be more intrusive and expensive.]*

[End of Planning Memo insert]

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### 3. Conclusion.

It is important to recognize that of all the Newton ordinances, zoning is one of the most impactful and yet most invisible. Residents buy and rent in Newton with expectations of some sense of stability. The traditional path was that a home would be bought and sold as lifestyle changes. Now there is a sense that homeowners want both stability in terms of what their neighbors can do but also more chances to change their own arrangements to suit their needs. This presents a fundamental tension which zoning in Newton has traditionally resolved by providing for stability for most residential properties but allowing limited change in intensity or scale by Council-granted special permit. By and large this regime has served Newton well. We should not forsake it for another zoning regime that focuses on form over function without a clear demonstration that it will be an improvement.

Thank you.