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### MEMORANDUM

**DATE:** November 23, 2018

**TO:** Councilor Susan Albright, Chair  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development  
Rachel Nadkarni, Long Range Planner/Zoning Specialist

**RE:** #518-18 - DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the Zoning Redesign Project on a draft policy content outline of the new Zoning Ordinance.  
**Residence Districts – Primarily Article 3, Reference to Articles 2 and 9.**

**MEETING DATE:** November 26, 2018

**CC:** City Council  
Planning Board  
John Lojek, Commissioner of ISD  
Ouida Young, Acting City Solicitor  
Marie Lawlor, Assistant City Solicitor  
Jonah Temple, Assistant City Solicitor  
Jonathan Yeo, Chief Operating Officer

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The Residence Districts within the 1<sup>st</sup> Draft Zoning Ordinance regulate development activity in Newton's neighborhoods. These districts were designed and mapped to reduce non-conformities, make it simpler for a property owner seeking to make minor changes on their property to do so, to improve the degree to which development within neighborhoods is consistent with the valued character and scale of those neighborhoods, and to introduce mechanisms that allow for incremental degrees of neighborhood evolution in a manner that is controlled and consistent with neighborhood character. Development herein refers to everything from new buildings to minor additions or alterations to existing buildings.

The following describes the primary 1<sup>st</sup> Draft Zoning Ordinance provisions that apply within the neighborhoods, how they work and how the standards and rules could be changed in order to achieve different outcomes, and how they compare to the existing Newton Zoning Ordinance. This document will not cover development standards such as stormwater and parking or review processes such as the special permit process, as these topics will be addressed later in the 1<sup>st</sup> draft ordinance review process. The standards identified for these districts are drawn from the data gathered through the Pattern Book work and one aspect of the discussion will involve a presented set of case studies through which the Committee will be able to explore the implications of these numbers and begin to discuss adjustments to them. Finally, this document will identify key issues and policy questions for discussion and the inherent balancing or trade-offs involved.

Reading List: In preparation for this meeting, Committee members should read this memo, all of Article 3, Article 2 Secs 2.1 – 2.8, and Article 9 Secs 9.2.2 and 9.2.14 A, F, G, and H.

### **Residence Districts**

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The four residence zoning districts in the 1<sup>st</sup> draft zoning ordinance are the foundation for regulation across Newton’s neighborhoods and roughly correspond to five of the existing residential districts – SR 1 to 3 and MR 1 & 2. Each residence district in the 1<sup>st</sup> draft ordinance provides four primary pieces of information, the district description and purpose, the rules for lots and building placement on the lot, the building types or development alternatives allowed in the district, and the allowed uses. To be clear, a zoning district is not a neighborhood. Each zoning district regulates a set of similar, but not identical, neighborhoods, and therefore the rules and standards must encompass those differences.

The starting point for creating these residence districts and the rules within them was defining the form and context of the City – the work encompassed by the Pattern Book. In a more detailed sense, this meant looking at what rules and standards were necessary to achieve consistency with that form and context over time as development activity (from additions to new homes) occurred. The most important factors in defining the context are the types and scales of the buildings, the spacing between those buildings, their relationship to the street, and the ratio of built to unbuilt space on a given lot. So the rules in each district focus on these issues. Notably, a rule like minimum lot size falls away as it does not consistently or precisely address the issues above and is therefore extraneous. Instead, the buildability of a lot of land is determined by its capacity to accommodate an appropriately scaled building with the frontage, setbacks, and lot coverage requirements – in other words based on whether it fits into the context of the neighborhood.

With this context-based approach to zoning, the 1<sup>st</sup> draft ordinance is addressing one of the issues that appears to be forefront for many residents of the City, which is the replacement of existing homes with very large, out-of-scale homes. This issue is a complex and challenging one as it requires the balancing of a number of competing issues or interests, including:

1. Potential loss of property value or tax revenue;

2. Ability of property owners to expand their homes to meet changing needs;
3. Preservation of neighborhood character;
4. Retention of potentially more affordable building stock.

While the presented case studies begin to explore these issues, the upcoming build-out analysis will attempt to comprehensively investigate the implications of the 1<sup>st</sup> draft ordinance. As the 1<sup>st</sup> draft standards are largely derived strictly from the data presented in the existing city, this analysis will allow the Committee to consider shifts in the standards to achieve particular policy outcomes. The big issues here are whether the allowed homes are too big or too small and how many buildable lots are available for new construction. Some of the options to be considered include increasing or decreasing the allowed footprints of the building types; increasing or decreasing the required frontages; adding another residence district; varying building types standards by district; and/or adding building components such as side wings and rear extensions that would allow greater building sizes with a greater degree of control. See the attached case studies for examples and more information.

#### Notes on Standards

Front Setbacks: The 1<sup>st</sup> draft ordinance proposes that the contextual setback, the minimum and maximum setback based on that of the neighboring properties, be the base rule, with the listed setback standards only used where a contextual setback would not apply. The current zoning ordinance provides the contextual setback as an option.

Side Setback: The one place where the standards in the 1<sup>st</sup> draft ordinance are not based on the data and reducing non-conformity is for side setbacks. If staff had followed the data in this instance, the side setback standard proposed would likely have been zero. Instead, staff has proposed a minimum side setback of 7.5 feet depending on the district, which is the same as the current minimum and achieves 50% conformity. Higher minimum side setbacks are required in other districts.

Lot Coverage (Sec. 2.2.1.C & Sec. 2.3.2): The lot coverage standard in the 1<sup>st</sup> draft ordinance encompasses more than the existing ordinance, which only counts building footprints. The 1<sup>st</sup> draft ordinance proposes that lot coverage include all paved or otherwise “built” surfaces such that the standard reflects the built verse unbuilt aspects of the property. Driveways, patios, and decks would therefore all count towards the lot coverage maximum. Resulting lots will be more permeable for stormwater. This approach replaces the existing lot coverage and open space requirements.

Fenestration and Garage Rules (Sec. 2.7 & Sec. 3.4.2): A strong sense of community, the idea that people know and interact with their neighbors, is important to many Newton residents and supports a range of public policy objectives including public safety, adapting to climate change, and democratic participation. Research and observation of different places and neighborhoods has found that features of how a place is designed can strongly influence sense of community. Rules in the 1<sup>st</sup> draft ordinance relating to fenestration,

which is the amount of windows and doors, and garage placement are intended to begin to address design attributes of homes that can reduce barriers to this sense of community. Both sets of rules are based on the premise of creating opportunity for people in a home to be able to easily observe and access the public street in front of their home.

### Preserving Historic Homes

Based on conversations with some property owners/designers, another issue we are discussing is the potential for modest flexibility on certain zoning district standards in order to promote preservation of historic structures through additions rather than tear-downs. This issue recognizes that for many of the older homes in the City, those that predate zoning, the buildings can sit very close to lot lines or have other anomalies for which flexibility might be warranted.

### Zoning District Specific Notes

For each district there are questions and decisions for the Committee to discuss.

Residence 1: The Residence 1 District represents neighborhoods that have larger homes on larger lots. Potentially, the limit on the size of houses in this district could be increased or there could be no limit at all.

Residence 2: The Residence 2 District encompasses the greatest land area in the City and is where many of the questions/decisions raised relative to the 1<sup>st</sup> draft standards are most in need of resolution. These include whether this district should be split into two districts representing more traditional neighborhoods such as those close to the historic village centers versus those neighborhoods that developed around the middle of the last century and are most common on the southern end of the City. This district also includes special rules for the House D building type, which is a large footprint, single story home. This type of home is considered inconsistent with many neighborhoods in the City and further, has been found to generally have lesser energy efficiency than a two or more story home. This district therefore includes rules to limit the availability of this building type by requiring that they only be allowed where this building type already exists in a neighborhood.

Residence 3: The Residence 3 District is the first to introduce small-scale multi-family options. Primarily, this is a district of one and two unit homes but in some areas it also includes three and four unit homes and small apartment buildings. Allowing for this diversity, the district includes a proximity rule whereby a new three-unit home, for example, could be built in locations where there are already such homes present, otherwise a special permit is required.

Neighborhood General: Beyond the mixed-use nature of the Neighborhood General, noted in the Allowed Uses section below, this district also allows a wide range of building types including all of those allowed in the Residence 3 District as well as Townhouses, shophouses, and shops. The district has been applied in areas adjacent to Newton's historic

village cores where there is already a mixture of uses. Are there other areas where this district might be appropriate or should the proposed areas of this district be expanded?

### **Alternative Development Options**

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As the current zoning ordinance does, the 1<sup>st</sup> draft ordinance offers different development options. The current ordinance offers the options of rear lot subdivisions, attached units, and multi-unit conversions of existing homes. The 1<sup>st</sup> draft zoning ordinance retains these options, with modifications, and adds the option of courtyard clusters.

#### **Rear Lot Subdivisions (Sec 3.5.1)**

While rear lot subdivisions can allow for efficient use of land, they also present design challenges that can be disruptive to a neighborhood. The 1<sup>st</sup> draft ordinance goes further than the existing ordinance in addressing these challenges and controlling for the design outcomes for rear lot subdivisions. First, the 1<sup>st</sup> draft restricts the rear lot to only the House C building type, which is the smallest. Second, it provides for two possible siting approaches for the rear house; one facing the driveway entrance and the second facing forward. This second siting option is the one that is potentially most disruptive as the more public front of one home is directly adjacent to the private space at the back of the other home. To address this issue, the rear home is required to be placed so that it is only partially behind the front house.

#### **Attached Units (Sec 3.2.9 & Sec 3.5.4)**

The existing zoning ordinance allows attached units in all residential districts by special permit. However, the scale of these projects is often inconsistent with the surrounding context. The 1<sup>st</sup> draft ordinance restricts this building type, identified now as a townhouse, to the Neighborhood General district. In addition to the district and building type standards, projects that include a townhouse will also need to meet the requirements of the Multi-Building Assemblage section (as this section is particularly important for the Village Districts, we will likely spend more time on it during that discussion).

#### **Multi-Unit Conversions (Sec 3.5.2)**

Allowing a large single-family house to be converted into multiple units is a strategy employed in the existing ordinance to promote preservation of these large houses. The 1<sup>st</sup> draft ordinance carries this strategy forward with a more generous allowance for the number of units and a slightly less strict historic preservation standard. These standards are meant to increase the likelihood that this option is more attractive than tearing down the structure.

#### **Courtyard Clusters (Sec 3.5.3)**

The essential concept of a courtyard cluster is the idea of small attached or detached buildings surrounding a shared central green. While this development concept has been around for decades, in its current incarnation, the idea originates in the Pacific Northwest and has been spreading across the country. Its popularity stems from the sense of community created by the shared space and hamlet like environment and the form is particularly attractive to older adults. From the perspective of Newton's neighborhoods, the development approach allows for new homes to be introduced into a neighborhood in a way that is compatible with the scale and

character of many Newton neighborhoods. Locally, the Concord Riverwalk development is a prominent example of the development type.

The 1<sup>st</sup> draft ordinance allows this development approach on lots of at least .75 or 1 acre depending on the zoning district and requires a special permit. Allowed building types are identified by zoning district and a smaller footprint requirement than otherwise required outside of a courtyard cluster is specified. The Committee should consider whether this development approach might be acceptable by an administrative site plan review process rather than by special permit, given the extensive design requirements already specified in the ordinance. This approach to permitting could further encourage use of this form. Could the review process be tied to the size of the project and/or the district? Staff is also looking at the viability of this form on smaller lots than currently required.

## **Allowed Land Uses**

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### **General (Sec 3.6)**

Broadly, the uses allowed in the 1<sup>st</sup> draft zoning ordinance for the Residence Districts 1 through 3 are the same as are currently allowed. The key differences are in the sections identified below and in the addition of the Bed & Breakfast use category.

The Neighborhood General district is a new kind of mixed-use district, transitioning from the purely residential neighborhoods to the mixture of uses found in the village centers. As mapped, the neighborhood general district is replacing business district zoned areas on the existing zoning map. This district has a more limited range of allowed commercial uses than the adjacent village districts and features building types meant to be in scale with the adjacent neighborhoods.

### **Adaptive Reuse (Sec 3.6.1.B)**

The adaptive reuse section of the 1<sup>st</sup> draft 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. The section targets existing civic or house type buildings. 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 1<sup>st</sup> draft ordinance proposes to expand the menu of potential reuse uses to include other arts related uses, general office space, and restaurant/cafes. The idea is to expand 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. Are there additional uses to consider within the adaptive reuse framework?

### Accessory Uses (Sec 9.2.14)

The 1<sup>st</sup> draft zoning ordinance includes a few changes from the existing ordinance relative to accessory apartments with the following being those sections with the most substantial revisions.

Home Business: For home businesses, as has been discussed previously, it becomes easier to create a home business, for example by lifting the limit of one per dwelling unit, but at the same time the restrictions are clearer and more limiting. The 1<sup>st</sup> draft addresses many common concerns such as deliveries. A maximum parking requirement is set because parking lots are not conducive to residential neighborhoods and encourage greater amounts of traffic. The rules also provide for a maximum number of visitor cars associated with the business. Overall, these standards uphold the notion that a home business should be effectively invisible to one's neighbors. Rather than allowing the expansion of a home business by special permit, instead one can seek a special permit for adaptive reuse, recognizing that a home business that occupies more of a building is becoming less of an accessory use and more of a principal use.

Short Term Rentals: The 1<sup>st</sup> draft ordinance introduces for the first time a definition and set of standards governing short term rentals. Primarily the rules limit the time a short term rental may be used, limit the number of guests, and requires that the primary use of the property be as the owner's residence.

Commercial Event Rental: A related issue to the short-term rental issue in Newton has been the rental of homes for commercial or paid events. This section limits this accessory use such that it cannot coincide with the use of the property for a short-term rental. The Committee may also consider limiting this use to a certain number a year.

-- Possible Addition – Personal Kennel: One comment received relative to the 1<sup>st</sup> Draft Zoning Ordinance was with regard to allowing Personal Kennels and the concern that, by not specifying that the use is allowed within a home, it might therefore be not allowed. State law distinguishes between such kennels and commercial or veterinary kennels. Personal kennels would be appropriately allowed in residential districts as an accessory use and staff would propose adding this accessory use, borrowing from the state definition, and including this change in the 2<sup>nd</sup> draft zoning ordinance. The state definition is:

*"Personal kennel", a pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs*

*temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department, may be sold, traded, bartered or distributed if the transfer is not for profit.*

### **Parallel Ordinance Amendments**

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As design of the 1<sup>st</sup> draft ordinance progressed, staff had a number of conversations about parts of the general ordinance that might also need amendment in parallel with the zoning ordinance. This topic relates to the entire ordinance rather than just the Residence Districts and the Committee may discuss or not at the upcoming meeting as time permits. These topics will be addressed as part of future meetings on development review processes and environmental standards.

### **Planning Board**

In the current ordinance creating the Planning Board, the Director of the Planning Department is identified as an ex-officio member of the Planning Board. As the Planning Board adopts a greater role in the development review process, it seems appropriate that the Planning Director be removed as a member of this board. The Committee should consider alternative configurations of the Planning Board, which might include adding a member of the City Council.

### **Urban Design Commission**

The Urban Design Commission was originally created as a general advisory body to the City on all topics related to urban design, from streetscape and buildings to parks. Later, specific roles in sign and fence review were added. The 1<sup>st</sup> draft ordinance proposes a more formal design review role for the Commission. The ordinance creating the Urban Design Commission should be updated to reflect this new role.

### **Stormwater**

Rules for the management of stormwater associated with development has always been included in the Zoning Ordinance as part of the development standards applicable to all projects. The Utilities Division of the Department of Public Works has begun work on a new stormwater ordinance that would be part of the general ordinances and would likely replace the stormwater section currently proposed in the 1<sup>st</sup> draft ordinance.