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Barney S. Heath
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MEMORANDUM

DATE: January 11, 2019

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 draft Zoning Ordinance.
Village Districts – Primarily Article 4, Reference to Articles 2 and 9.

MEETING DATE: January 14, 2019

CC: City Council
Planning Board
Jonathan Yeo, Chief Operating Officer
John Lojek, Commissioner of ISD
Alissa O. Giuliani., City Solicitor
Marie Lawlor, Assistant City Solicitor
Jonah Temple, Assistant City Solicitor

The Village Districts within the 1st Draft Zoning Ordinance regulate development activity in Newton's village centers and several other commercial areas. These districts were designed and mapped to reflect the existing scale and patterns of development in the villages with the exception of Needham Street where the districts represents the recommendations of the Needham St Vision Plan. Generally, the village districts are mapped to reflect the highest degree of development intensity in the center of the village, stepping down from there until reaching the adjacent neighborhoods; a pattern that reflects how Newton's villages generally were built up over time. There are three village districts in the 1st draft with the Village 1 District representing the lowest intensity and the Village 3 District representing the highest.

The following describes the primary 1st Draft Zoning Ordinance provisions that apply within the villages and other commercial areas, 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 1st 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 4, all of Article 2, and Article 9 Secs 9.2.3, 9.2.5, 9.2.6, 9.2.8, 9.2.10, and 9.2.12.

Village Districts

The three village zoning districts in the 1st draft zoning ordinance are designed, for the most part, to closely reflect the existing conditions of Newton's village centers and certain commercial areas. Each village district in the 1st 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.

As with the Residence Districts, the starting point for creating the Village districts, and the rules within them, was defining the building 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 are necessary to achieve consistency with that form and context over time as development activity occurs. 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 village.

While the Residence Districts place an entire similarly situated neighborhood into one zoning district, the Village Districts are tailored so as to differentiate the intensities of building – the different building scales - across a given village center. Each of Newton's Villages features a greater intensity of use (mostly measured in terms of height) at the approximate center of the village with that intensity stepping down as one moves towards the edge of the village center and towards the adjacent residential neighborhoods. In Newton Corner, for example, there is significant height at the center of the village, stepping down to a more moderate scale and finally to lower buildings before reaching the adjacent neighborhoods, resulting in three separate tiers and presented in the 1st Draft zoning as having parcels in each of the three village

districts. In contrast, a smaller village like Waban has only one tier and therefore only one village district represented. In this way, the existing context of Newton's villages is reflected in the proposed zoning.

The 1st draft zoning ordinance generally adheres closely to the existing context of the villages, only allowing greater height where it already exists. The exception to this approach is in those locations where prior policy decisions such as the Needham St Vision or the Riverside zoning district (MU3), would recommend differently. Overtime, new vision and master planning efforts for village centers across the City will be used to inform changes to this proposed baseline zoning, allowing the City Council to reallocate the Village Districts based on the decisions that come from these future plans. It should be noted that individual property owners always have the right to request a rezoning through the City Council.

Notes on Standards

Setbacks: Front setbacks are set at between 0 and 15 feet in order to create and support active pedestrian environments in the village centers and commercial areas. Side and rear setbacks are set as minimums. [compare to existing ordinance?]

Frontage Buildout (Sec. 2.3.6): Large gaps between buildings can disrupt the continuity of an active pedestrian environment and the success of walkable commercial districts. The frontage buildout rule sets a percentage of the total lot frontage that must be occupied by building, thereby limiting such gaps. In commercial and mixed-use districts this percentage is set high, as opposed to in residential neighborhoods, where the percentage is low.

Height & Massing (Sec. 2.6): Height in the 1st Draft Ordinance is measured in stories, which each story having an allowed height range. This approach establishes a maximum height (by adding together the ranges) that is easily observed/measured and allows the ordinance to include different rules at different stories depending on the building type and desired policy outcome. For example, ground floor commercial retail uses require a greater height than a ground floor residential use.

Fenestration (Sec. 2.7): Ground floors characterized by large openings that allow pedestrians to view the commercial interiors are an important part of any successful commercial or mixed-use district, so these percentages are high for those building types. Window signage, which might obstruct such views, are regulated in Article 8.

Residential Units Factor (Sec 2.8): The residential units factor is a mechanism for controlling residential unit density on a lot as it relates to the scale of the building. The building type standards, coupled with setbacks, lot coverage and other rules established by the zoning district, determine the scale of building allowed on a given lot, consistent with the desired context of the area. Therefore, the size of a building allowed is established by these characteristics. Separately, working from the size of the building, the maximum number of units allowed is established by the residential units factor standard. In this way, building

scale can be handled separately from the question of unit density, “tails” and other strange lot configurations don’t allow for greater density than would otherwise be expected, and bonus density can be granted independently of building scale.

Outdoor Amenity Space (Sec. 2.9): The outdoor amenity space standard requires that every residential unit have access to some minimum form of private or semi-private outdoor space. This space can be a yard, patio, or balcony or can be a shared space. In either approach, the outdoor space must be a minimum size per unit.

Public Gathering Space (Sec. 2.10): Projects over a certain size must include a public gathering space meeting the definitions and minimum size defined here.

Zoning District Specific Notes

Village 1: The Village 1 District encompasses the smallest of Newton’s villages as well as the edges of larger villages where they meet up with the adjacent Residence Districts. The district allows the small commercial and mixed-use building types resulting in a maximum height of 3 stories. A three-story small apartment building and a fabrication style building are allowed only by special permit.

Village 2: The Village 2 District applies to the center of the mid-sized Newton villages. This district allows the buildings found in the Village 1 District as well as a medium sized mixed use building that can be as high as four stories by special permit. The lined garage building type is also allowed by special permit with a maximum height of five stories.

Village 3: The Village 3 District applies in the centers of the largest of Newton’s villages. Five story buildings are allowed and can increase to 7 stories by special permit. Tall buildings of up to 10 stories are also allowed by special permit.

Alternative Development Options

Multi-Building Assemblage Rules (Sec 4.5.1)

The Multi-Building Assemblage rules are an important component of the 1st Draft zoning ordinance and will most frequently be applied in the Village Districts, though they are also applicable to Townhouses allowed in the Neighborhood General District. Basically, this is the set of rules that would allow, by special permit, multiple buildings to be built as part of a single development project including attached buildings. As an example, there is not a single building type by itself that would allow one to build a project at the scale of the Washington Place development. Assuming one had the appropriate Village 3 zoning to accommodate the height, the most applicable building type would be the Large Multi-Use Building. This building type though has a maximum width of 200 feet so to do a project of the size of Washington Place one would need to be able to do at least two, possibly three buildings, separated or attached depending on one’s desired configuration. The Multi-Building Assemblage Rules govern how that type of project could be done. These rules effectively mandate that the buildings be

treated and present as separate buildings, codifying an expectation the City has previously only expressed through design review and special permit conditions.

Staff has been exploring a different approach to the same outcome through the use of a concept referred to as “Zoning Lots,” which is the idea of creating a set of lots strictly for the purpose of demonstrating compliance with zoning and shown on a site plan, which would be attached to a special permit. These lots would not exist for any other purpose but would allow the application of the zoning rules to each building in a multi-building development, including attached buildings. While either approach gets to the same outcome, staff is interested in feedback as to which approach is easier to understand.

Allowed Land Uses

General (Sec. 4.6)

Broadly, the uses allowed in the 1st draft zoning ordinance for the Village Districts are the same or similar to those currently allowed in the Business 1 and 2 districts. Discussion of the commercial use categories are provided below along with changes to the draft that are currently under consideration.

Arts & Creative Enterprise Use Categories (Sec. 9.2.3)

The 1st Draft Zoning Ordinance separates out Arts related uses from similar retail or entertainment uses in recognition that these uses are slightly different in some of their fundamental characteristics. In addition, by separating them out, the Ordinance is able to provide special treatment that can encourage these types of uses, recognizing their economic and community benefits above and beyond strictly commercial uses. Some of the significant use categories in this section include:

Artisan Production Uses – Allowing for small spaces for the crafting of small products for direct sale is an increasingly important retail-like category. This type of entrepreneurial activity requires generally small spaces and, coupled with a small sales area, can enliven a shopping area. These types of uses are showing up in older walkable commercial districts as well as being sought out by higher-end commercially managed shopping environments and offer a solution to the challenge of the migration of retail to online sales.

Arts Exhibition Uses – Performance and exhibition space for the arts are difficult to find or create. Generally, these uses have fewer shows and less constant utilization than similar commercially oriented entertainment uses. Staff is considering ways to more clearly differentiate this use from the Assembly & Entertainment Use Category.

Work/Live Creative Studio Uses – Less of a residential use and more of an artist workspace with ancillary living space, work/live studios are an important part of creating an affordable environment conducive to building an artist community. The studio spaces at the Claflin School is a similar idea.

Commercial Service Use Categories (Sec. 9.2.5)

The greatest number of use categories fall into this section. Some are highlighted below:

Banking & Financial Services Uses – The 1st Draft Ordinance does not have any special requirements or rules associated with this use category. However, banks in village centers have been an ongoing issue of concern and staff has been discussing some potential policies that could be included in this section. One possibility would be to apply a proximity rule to ground floor banks, requiring that a new bank be at least some distance away from an existing bank. Another approach would be to limit the allowed storefront width of a bank, as Cambridge does. Either of these approaches address the issue of banks creating low activity sections on an otherwise active, pedestrian-oriented retail block, particularly for time periods outside of normal banking hours. A bank that partners and co-locates with a more active use such as a coffee shop could be exempted from such limitations, in part or completely.

Personal Service Uses – This use category lumps together a range of service uses that address health and well-being. Potentially, the listed uses could be separated into their own use categories. Notably, the Health Care Provider Use is included here, which includes doctor or dentist offices and similar. This use is not included as a standard office use as the nature of the use is in fact quite different, though they may locate in the same buildings as offices for lawyers or accountants. The key difference is in the volume of client visits. In a doctor's office, the very nature of the work is defined by the presence of the client and so there is a near constant stream of one or more clients present whereas a more typical office setting is more a place for conducting office work with more infrequent client visits.

Eating & Drinking Use Categories (Sec. 9.2.6)

The Eating & Drinking section includes the Restaurant/Café Use Category, which introduces two new uses for consideration:

Formula Eating and/or Drinking Establishment: A formula-based restaurant or café (there is a similar use defined under the Retail section) is one where, regardless of ownership, if the establishment is required to utilize formulaic features in its operation and/or design, such as in the menu, signage, décor, etc, that use would require a special permit in the village districts. It is a common recommendation that the economic strength of many village centers or "Main Street" type environments requires that the stores and restaurants be largely unique as opposed to representing a formula found all over the country. To put it another way, a village center dominated by formula establishments will be less competitive. In Newton, the unique stores and restaurants are an important and beloved aspect of the village centers, without which they would lose much of their identity, which would be a loss to the economic welfare of the village and the sense of community and identity of the City overall.

Zoning, as a general rule, cannot treat owners of property with the same uses differently. Zoning regulates use, not ownership. On this basis, a similar zoning requirement in

Wellfleet was invalidated in court. While it is not the intent of this proposed ordinance to regulate ownership per se, one could make an argument that this rule does so – the idea rests in a grey area. Ultimately, staff requests feedback from the Committee on the importance of this issue and willingness to address it in this manner.

A potential alternative approach is to create a set of criteria that attempt to mitigate the formulaic aspects of design that would be applied to all restaurant uses in the village districts. However, this approach would only get at the design issues such as signage and exterior décor, and that to a limited extent as allowed under zoning, and not at the underlying uniqueness of the restaurant or store.

Brewery – The 1st Draft Ordinance proposes to allow breweries and similar establishments in all of the Village Districts by special permit.

Lodging Use Categories (Sec. 9.2.8)

As proposed, hotels are excluded from the Village 1 District but it may be worth reconsidering this limitation as a small-scale boutique hotel might be an appropriate use in a small village or at the edge of a larger village. For this utilization, the Ordinance would need to explicitly allow this use in the small multi-use and/or the small apartment building types.

Motor Vehicle-Oriented Use Categories (Sec. 9.2.9)

Motor vehicle uses are those that generally feature as the primary use of the property, large numbers of motor vehicles or otherwise focus on the maintenance of service of motor vehicles. As should be no surprise, depending on the design of these uses, they can have a significant negative impact on a village center of walkable commercial area. As a result, where these uses are proposed to be allowed, they would require a special permit to consider the relationship between the proposed design and the location. There are increasingly new approaches to these types of uses being employed across the U.S. and in this region that could be appropriately located even in a village center of Newton and the special permit process will allow the City to steer applicants towards those design solutions.

Office Use Categories (Sec. 9.2.10)

There are two Office Use Categories included in the 1st Draft Ordinance that are effectively new to the Ordinance:

Co-Working Uses – Co-Working is a new type of use in the world today that basically involves a shared use office environment with a number of generally small companies sharing common resources in a managed space. A small number of these have located in the Newton over the last several years and the use is growing rapidly nationally and in the region. The success of these uses typically depends in part on a degree of flexibility in order to be responsive to the needs of the range of different businesses hosted. As these types of facilities are effectively the incubators of entrepreneurs and new companies, they are an important part of an overall economic development program.

Research & Development and/or Laboratory Uses – There are two key differentiations between the R&D/Lab use and general office. The first is that this use category can include scientific laboratory space, which is also governed by the rDNA/biotech provisions of the City Ordinances. Second, this type of space needs to be specifically allowed to engage in prototyping type work, which means the use requires the ability to do some minimal level of light manufacturing.

Retail Sales Use Categories (Sec. 9.2.12)

Retail sales is divided into five use categories representing uses with generally very different profiles in terms of space and customer interaction:

Building/Home Supplies & Equipment Uses – This use category governs uses where the products are typically large like construction materials, lawn mowers, furniture, etc. Customer pick-ups generally involve large vehicles so attention must be paid to how these vehicles will interact with the surrounding environment.

In discussions with retail property owners, staff has been made aware of a category within this use where the retailer uses their space simply for display and all products are delivered from a different location. Staff is considering separating this category out to be treated as typical consumer goods.

Consumer Goods – This use category essentially covers traditional retail. Rules provided for this, as well as the above use category, permits outdoor display of goods according to specific conditions.

Formula Retail – This use category is the same as the formula restaurants described above, except applied to retail establishments.

Fresh Food Market or Grocery Store Uses – Self explanatory.

Farmer/Vendor Market Uses – This use category covers outdoor farmer’s markets as well as the growing trend of food markets such as those recently locating in Boston like the Boston Public Market.

Parking, signage, and other development standards play a significant role in Newton’s villages. These parts of the 1st Draft Ordinance are scheduled for upcoming discussions.