

## **Village Center Zoning Amendment**

This zoning amendment is offered as an alternative zoning treatment for Newton village centers. It maintains a “village scale” and answers the demands created by the recent amendment to MGL Chapter 40A, Section 3 to allow multifamily housing or mixed-use development as of right or by special permit in “eligible locations”

The purpose of the amendment is to provide a mixed use suburban village center with controlled scale and density to complement other residential and business uses within the village confines.

Newton village centers are mostly zoned Business Use 1. Residential use is allowed above the first floor, by special permit. If the special permit requirement for residential use is eliminated, we will make a significant change that will allow us to meet the obligations imposed by the recent amendment to Chapter 40A, §3.

We can reduce massing control by allowing 3 stories by right. We can encourage construction of more traditional building types by permitting use under a sloped roof and restricting dormers [hopefully, reducing the number of box buildings that create the appearance of converted mills or factories]. If we want to have some influence over the retail value of the housing costs we can apply size limitations, using the same concepts used in regulating house sizes in other zones.

There seems to be general acceptance of three-story buildings. For reference, see the Newtonville Area Council Survey and the Survey Report by the Principal Group.

There is much confusion over the Pattern Book, Washington Street Vision Plan, Zoning Reform, and Zoning Redesign. Questions such as “What is it?”, “Who is it for?”, and “What will it do?” abound. The lack of clarity and the apparent failure to acknowledge voter concerns have caused many voters to object.

Objection arises when the discussion turns to taller and larger buildings. Whether it is a “monster home” in a single family neighborhood or an outsized building of mixed use in or near a village center, neighbors speak out in opposition. Their opposition is concentrated on building height.

Arguments against mixed use buildings often become distorted when opponents are accused of ulterior motives, such as racism or NIMBY. A review of the discussions show that both sets of opponents have a common objection, size.

Arguments that the construction of 30 units includes 6± low/moderate income units fail to overcome objection when the building exceeds three stories. The same applies to projects with 50, 75 or 100+ units.

By using the new tools, added to the zoning tool box, we can address the current housing issues without destroying many years of work updating, revising and creating our current user-friendly zoning code.

The question about two family zoning is another contentious item. However, it seems that we already have two family, as of right, zoning throughout the city. It is more a question of the use and definition of terms. If this is correct, it may well provide a flexible opportunity to add dwelling units to our housing stock. A problem to be addressed is homeowner resistance because of the cost of permits, inspection and an anticipated increased real estate tax.

In single family neighborhoods, two family homes are not called two family. The Newton Ordinance 30.1.5.1. has the following definitions:

*Single-Family, Detached. A building or structure that contains only one dwelling unit.*

*Single-Family, Attached. A building or structure that either:*  
*1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or*  
*2. Contains 2 dwelling units and is not a two-family detached dwelling.*

*Dwelling Unit. One or more rooms forming a habitable unit for 1 family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.*

*Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.*

It is my understanding that an accessory apartment is allowed everywhere as a second dwelling unit in a single-family home. It is just not called a two family or a multi-family, it is a single family attached home(s).

Perhaps we should review the rezoning effort to determine how much success has been achieved and its impact on the goals, including:

- (i) identify the range of the number of new units we are expecting to add;
- (ii) identify the range of time over which we expect to build them;
- (iii) identify potential development districts, such as village centers and project development potential, then reduce it by an agreed factor to determine development probability;
- (iv) assess the effect of the demolition delay ordinance;
- (v) factor in the impact of all the new zoning tools, not just the ones under consideration at the time;
- (vi) develop a time line projecting the natural growth we might expect from the use of the new tools;
- (vii) consider other factors that might speed up or slow down the growth process;
- (viii) review public safety concerns related to proposed density increases.

## **PROPOSED AMENDMENT TO NEWTON ZONING ORDINANCE, CHAPTER 30:**

- (i) Amend §4.1.3 Building types.
  - (a) Include a limitation of a three-story building;
  - (b) Allow for a sloped roof.
  - (c) provide for the inclusion of a 6/12 pitch sloped roof above the third floor;
  - (d) allow additional residential use in the area under a sloped roof as part of a dwelling unit located directly below, not to exceed 50% of the unit floor area of the floor below.;
  - (e) Dormers should be limited in width to 6 or 8 feet and should have a minimum distance of separation; and
  - (f) sloped roofs on the dormers should be required.
  
- (ii) Amend §4.4.1 [uses] to allow residential use above the first floor by right and strike the requirement for a Special Permit in a BU1 zoning district.
  
- (iii) Additional undrafted amendments to protect the visual environment necessary to maintain a walkable, viable village;
  - (a) establish Front Setbacks where necessary to avoid canyon effect on narrow streets and on east west streets;
  - (b) restrict use of flat roofs for installation of exposed mechanical systems;
  - (c) require internal consolidation of gas exhaust vent pipes to prevent disturbance of visual completion of a village concept [as opposed to an industrial or perception].
  - (d) Elimination of special permit requires a close adherence to ordinance standards. There should be a provision to prohibit waivers, special permits or variances to expand building size, floor area and height not allowed under this section.
  
- (iv) Other amendments. Amendments (required by §24B of H2050).
  - (a) not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; or
  - (b) a reduced parking space to residential unit ratio requirement, pursuant to this section; provided that a reduction in the parking requirement will result in the production of additional housing units.

**GLOSSARY [COMMONLY USED TERMS]**

**Housing Agreement:** A group of mayors of cities in metropolitan Boston agreed that the area needed to add 185,000 housing units.

**Housing Crisis:** Boston is growing faster than at any time in the last 50 years. 86.2 million square feet of development worth more than \$43.4 billion has been approved, including 45,532 residential units, 9,884 of which are income-restricted units. The metropolitan area needs to provide Boston with an additional housing units.

**Multi-family** A building containing three or more dwelling units. In Newton, accessory apartments, while meeting the requirements of a dwelling unit, do not qualify as a dwelling unit for the purposes of two, three or four family homes.

**Newtonville Area Council Survey**

**Transit Oriented Development** Is defined by the Transit Oriented Institute as vibrant, livable, sustainable communities. Also known as TOD, it's the creation of compact, walkable, pedestrian-oriented, mixed-use communities centered around high-quality train systems. It is a regional node containing a mixture of uses in close proximity (office, residential, retail, civic). It will allow residents to live, work and play in the same area. Newton does not meet the criteria required to qualify for a TOD.

**Urbanized Village Center** A high density mixed business and residential use that is dependent on other communities to provide jobs, retail and business customers and goods and services desired by the inhabitants.

**Village** A geographic area of land, loosely defined by most village residents as that area within one or more postal districts. The Mayor's Department of Planning and Development recently reduced the size of Newtonville and increased the size of Nonantum to redefine those villages.

**Village Center** A collection of buildings that provide space for the distribution of goods and services to the nearby residential community.

**DEFINITIONS: CONTAINED IN SECTION 16 OF HOUSE 2050:**

**"Accessory dwelling unit"**, a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including but not limited to additional size restrictions, owner-occupancy requirements and restrictions or prohibitions on short-term rental of accessory dwelling units. "As of right", development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval.

**"Eligible locations"**, areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.

**"Gross density"**, a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.

**"Lot"**, an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

**"MBTA community"**, a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of Chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

**"Mixed-use development"**, development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.

**"Multi-family housing"**, a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

**APPLICABLE PROVISIONS OF HOUSE 2050**

**SECTION 16.** Section 1A of Chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the introductory paragraph the following definitions:

"Accessory dwelling unit", a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in floor area than 1/2 the floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including but not limited to additional size restrictions, owner-occupancy requirements and restrictions or prohibitions on short-term rental of accessory dwelling units. "As of right", development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval.

"Eligible locations", areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.

"Gross density", a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.

"Lot", an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

"MBTA community", a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

"Mixed-use development", development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses;

"Multi-family housing", a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building

**SECTION 17.** Said section 1A of said chapter 40A, as so appearing, is hereby further amended by striking out the definition of "Transfer of development rights" and inserting in place thereof the following definition:

"Transfer of development rights", the regulatory procedure whereby the owner of a parcel may convey development rights, extinguishing those rights on the first parcel, and where the owner of another parcel may obtain and exercise those rights in addition to the development rights already existing on that second parcel.

**SECTION 18.** Said Chapter 40A is hereby further amended by inserting after section 3 the following section:

Section 3A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of Chapter 131 and Title 5 of the state environmental code established pursuant to section 13 of Chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(c) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative as described by the governor in a message to the General Court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2EEEE of Chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of Chapter 23A.

(c) The department, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.

**SECTION 19.** Section 5 of said Chapter 40A, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right:

(a) multifamily housing or mixed-use development in an eligible location;

(b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or

(c) open-space residential development;

(2) an amendment to a zoning ordinance or by-law to allow by special permit:

(a) multi-family housing or mixed-use development in an eligible location;

(b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9;

(c) accessory dwelling units in a detached structure on the same lot; or

(d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

3) zoning ordinances or by-laws or amendments thereto that:

(a) provide for TDR zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or

(b) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with section 3 of Chapter 40R. Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote. If, in a city or town with a council of fewer than 25 members, there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

**SECTION 20.** Section 9 of said Chapter 40A, as so appearing, is hereby amended by inserting after the word "interests," in line 34, the following words, provided however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

**SECTION 21.** Said section 9 of said Chapter 40A, as so appearing, is hereby further amended by striking out, in lines 39 and 43, the word "cluster" each time it appears and inserting in place thereof in each instance the following words: open space residential.

**SECTION 22.** Said section 9 of said Chapter 40A, as so appearing, is hereby further amended by inserting, after the word "control," in line 47, the following words: provided however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing open space residential developments to be permitted as of right, without the need for a special permit or other discretionary zoning approval.

**SECTION 23.** Said section 9 of said Chapter 40A, as so appearing, is hereby further amended by striking out the seventh paragraph and inserting in place thereof the following paragraph: Zoning ordinances or by-laws may also provide that special permits may be granted for reduced parking space to residential unit ratio requirements after a finding by the special permit granting authority that the public good would be served and that the area in which the development is located would not suffer a substantial adverse effect from such diminution in parking.

**SECTION 24.** Said section 9 of said Chapter 40A, as so appearing, is hereby further amended by inserting after the twelfth paragraph the following paragraph: special permit issued by a special permit granting authority shall require a simple majority vote for any of the following: (a) multifamily housing that is located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be



affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of Chapter 184;

(b) mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of Chapter 184; or

(c) a reduced parking space to residential unit ratio requirement, pursuant to this section; provided, that a reduction in the parking requirement will result in the production of additional housing units.

**SECTION 25.** Section 17 of said Chapter 40A, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:

The court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000 to secure the payment of costs if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs. The court shall consider the relative merits of the appeal and the relative financial means of the plaintiff and the defendant.