



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#240-21
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

DATE: September 24, 2021

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Cat Kemmett, Planning Associate

RE: **#240-21 Requesting an amendment to Chapter 30**
DIRECTOR OF PLANNING AND DEVELOPMENT requesting ordinance amendments to the Newton Zoning Ordinance, Chapter 30 (1) in order to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance.
Zoning & Planning Held 6-0 on 07/08/21
On 08/16/21 Zoning & Planning Split Item #240-21 into (1) to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance; and (2) to amend the definition in Section 1.5.1.B Two Family Detached; Public Hearing Closed 6-0 (Councilor Leary not voting) on 08/16/21
Zoning & Planning Approved (1) 6-0 (Councilor Leary not voting) on 08/16/21
Zoning & Planning Held (2) 6-0 (Councilor Leary not voting) on 08/16/21

MEETING: September 27, 2021

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Neil Cronin, Chief of Current Planning
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer
City Council

Overview

On August 16, 2021, ZAP held a public hearing to discuss Docket Item #240-21, zoning cleanup items. Committee members voted to approve all changes, except a proposed amendment to the definition of Two-Family, Detached (Sec. 1.5.1.B). Because this specific amendment represents a more substantive change compared to the other cleanup items, one Committee member requested additional details regarding the history and context of the current definition before considering a vote.

After analyzing Planning memos and ZAP reports documenting the creation of the current definition, summarized below, Planning staff recommend Option 2 as proposed at the August 16, 2021 ZAP meeting:

Current Definition (Sec. 1.5.1.B)	Proposed Definition (Option 2)
<p>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.</p>	<p>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. <u>Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.</u></p>

History

Prior to 2015, the Zoning Ordinance defined two-family buildings in the following way:

Pre-2015 Definition	Current Definition (Sec. 1.5.1.B)
<p>Dwelling, two-family. A building or structure that meets all of the following requirements:</p> <ul style="list-style-type: none"> (a) It contains (2) dwelling units; (b) It contains either: (1) a common floor-ceiling assembly between the upper and lower level dwelling units; or (2) a common wall connector and a common roof connector, as defined in section 30-1. 	<p>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.</p>

The current definition of Two-Family, Detached was created during the larger Zoning Ordinance Recodification process. At that time, the ZAP Committee made substantial changes to the language to prevent two-family buildings that had minimal mass connecting the two units, which some Committee members found aesthetically undesirable and not in keeping with the intent of the two-family housing type. The memos and reports in Attachment A outline in more detail the process ZAP took in 2015 that led to the current definition.

Creation of the Current Definition

Based on our analysis of the 2015 ZAP documents, even at the time there was hesitancy to make this shift toward stricter design parameters in the definition, including the below points:

- The current definition was given additional attention because of “a house that was built on Watertown Street...unlike anything else in the neighborhood.” The then ZAP chair based much of the project’s irregularity on the “garages in the middle connecting them.” (June 15, 2015 ZAP Report) The now adopted Garage Ordinance should prevent most of the types of development the then ZAP Committee was looking to prevent within the Two-Family, Detached definition.
- The Planning staff, then and now, agree that the issues around the new construction of two-family homes “are best addressed through the dimensional regulations and the composition of

district standards, rather than through the definition of the word two-family.” (June 16, 2015 ZAP Memo)

- The 2015 ZAP Committee researched how other communities define Two-Family and found that “most define it very simply and it seems to work well.” Based on this the then ZAP Chair said, “it was best to keep this [definition] simple and not include things that someone could not do.” (July 20, 2015 ZAP Report)
- The Commissioner of ISD spoke then of the unintended consequences of requiring the shared wall extend the entire height of the building would be buildings that “end up looking like boxes.” (August 17, 2015 ZAP Report) Based on reviewing newly constructed two-family homes, this seems to be true in most new developments.

Furthermore, the existing definition limits design options for two-family buildings. Currently, a garage is not considered part of a dwelling unit, because it is not habitable space. Living space (which does not include garages) must be touching living space in the adjacent unit for the full height of the separation. Because of this, having two attached garages touching is not allowed, nor is it allowed to have one garage touching living space of an adjacent unit. Building professionals and homeowners have pointed to this inflexibility as a barrier to good and varied design.

Revisions Considered

On August 16, staff presented two different definition options for ZAP and the Planning Board to consider. Option 1 is as follows: *“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, including garages, and/or is divided horizontally so that one dwelling unit is above another. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.”*

Based on the understanding that some members find two-families only connected by the garages with no living space above to be undesirable, this Option 1 also included an amendment to Sec. 3.4.4.F requiring habitable space above the garages if they share a wall. 1 and 1 ½ story residences would be exempt from this habitable space requirement.

At this time, staff are recommending adopting the simplified language proposed as Option 2, shown above, which offers greater flexibility for Two-Family, Detached residences. This option removes the requirement for full separation between two units and would also allow garages to touch, or for garage space to touch living space in an adjacent unit. In addition, living space would not be required above garages that touch. The overall mass of a Two-Family, Detached building will still be controlled by FAR and other zoning dimensional controls such as setbacks and lot coverage, however this option would allow flexibility in how that mass is assembled. Most ZAP Committee members and several members from the building professional community voiced support for Option 2 at the public hearing.

Looking Ahead

Staff believe the proposed changes would make the definition of Two-Family, Detached clearer. This proposed amendment does constitute a shift in existing policy. However, based on our research we also believe this new definition is in line with much of the thinking that took place in 2015, when the current definition was last updated. In addition, staff believe the Garage Ordinance addresses most of the previous issues.

This revision is not intended to resolve all issues Committee members have raised associated with the current regulations for two-family buildings. Staff look forward to discussing possible tools to address these outstanding questions with Committee members in the future.

Attachments

Attachment A 2015 ZAP Memos and Reports

CITY OF NEWTONIN BOARD OF ALDERMENZONING & PLANNING COMMITTEE AGENDA

TUESDAY, JUNE 16, 2015

7:45 PM
Room 211**ITEMS SCHEDULED FOR DISCUSSION:**

- #6-15 ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]
- #278-14 ALD. YATES proposing to amend Chapter 30 of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers. [07/31/14 @ 12:03PM]
- #222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances. [06/07/13 @ 1:31 PM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, please contact John Lojek, at least two days in advance of the meeting: jlojek@newtonma.gov, or 617-796-1064. For Telecommunications Relay Service dial 711.

ITEMS NOT SCHEDULED FOR DISCUSSION:**REFERRED TO ZONING & PLANNING, LAND USE AND FINANCE COMMITTEES**

- #104-15 ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department with the following information: How many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify to be included on the State's Subsidized Housing Inventory List. If a property is not currently on the list, what can be done to make it eligible. [04/09/15 @ 12:00PM]

REFERRED TO PROG. & SERVICES AND ZONING & PLANNING COMMITTEES

- #127-15 ALD. SANGIOLO requesting discussion with Health Department, Inspectional Services Department and the Economic Development Commission regarding the policy of food truck operations in the City of Newton. [05/11/15 @ 10:22AM]
- #80-13 THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #107-15 HIS HONOR THE MAYOR requesting discussion of approaches to create middle income housing as a means of allowing City of Newton employees the opportunity to live in the community in which they work. [04/24/15 @ 2:38PM]
- #108-15 HIS HONOR THE MAYOR requesting consideration of changes to the Zoning Ordinance that would facilitate the creation of accessory apartment units, supportive of Newton's seniors. [04/24/15 @ 2:38PM]
- #109-15 HIS HONOR THE MAYOR requesting consideration of changes to the inclusionary housing provisions of the Zoning Ordinance to increase the required percentage of affordable units to 20% with the additional 5% set aside for middle income households. [04/24/15 @ 2:38PM]
- #110-15 HIS HONOR THE MAYOR requesting discussion of The Smart Growth Zoning Overlay District Act M.G.L. Chapter 40R and its potential application in Newton. [04/24/15 @ 2:38PM]
- #95-15 ALD. CROSSLEY, JOHNSON, LEARY, HESS-MAHAN, DANBERG, ALBRIGHT AND BLAZAR requesting a discussion with the Planning Department to consider the mix of uses in the Wells Avenue Office Park, with and without a second egress to the site, pursuant to the recent MAPC study recommending a strategic introduction of retail and restaurant uses to attract and sustain healthy commercial uses, and some number of residential units sufficient to support an economically viable and vibrant mixed use environment. [04/13/15 @ 2:46PM]

- #86-15 ALD. CROSSLEY, ALBRIGHT, HESS-MAHAN, & JOHNSON requesting a review and discussion of Community Development Block Grant expenditures and past years' accounting to assess progress in meeting citywide program goals as adopted in the consolidated plan, including creating and sustaining affordable housing, as well as facilities improvements in approved neighborhood districts. [03/30/15 @ 6:02 PM]
- #447-14 ALD. SANGIOLO proposing an ordinance requiring the submission of building plans with applications for full or partial demolitions. [11/13/14 @ 2:03pm]
- #448-14 ALD. SANGIOLO requesting a discussion with the Newton Historical Commission regarding their process and policy of reviewing demolition applications. [11/13/14 @ 2:03pm]
- #338-14 ALD. HESS-MAHAN, KALIS, SANGIOLO AND DANBERG proposing a Large House Review ordinance requiring design review and approval of by-right single and multi-residence residential structures exceeding certain dimensional limits to be determined, to expire by December 31, 2015. [09/05/14 @ 9:39AM]
- #265-14 ALD. BLAZAR, YATES AND DANBERG requesting:
1. to amend Section 22-50 to increase the time period for determinations of historical significance to 30 days, and to increase the time period for hearings, rulings and written notice on appeals from historical significance determinations to 60 days;
 2. to amend Section 22-50 to increase the time period to hold a public hearing as to whether or not a historically significant building or structure is preferably preserved to 60 days;
 3. to amend Section 22-50 to increase the demolition delay period for buildings and structures on or eligible for listing in the National Register of Historic Places to 30 months;
 4. and to amend Section 22-50 to increase the demolition delay period for all other preferably preserved buildings or structures to 24 months.
- [07/07/14 @ 12:35PM]
- #446-14 ALD. SANGIOLO requesting a discussion with the Commission on Disability regarding the status of City compliance with ADA regulations. [11/13/14 @ 2:03pm]
- #445-14 ALD. SANGIOLO requesting an update with members of the Newton Fair Housing Committee on the status of housing opportunities in the City of Newton. [11/13/14 @ 2:03pm]
- REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES**
- #315-14 ALD. HESS-MAHAN, ALBRIGHT, CROSSLEY AND DANBERG proposing an amendment to Chapter 2 of the City of Newton Ordinances setting forth

requirements for procurement of materials and services by non-governmental recipients of federal, state or local funds administered by the City, such as CDBG and CPA funds. In order to encourage non-profit and other private organizations to participate in affordable housing, cultural and other public-private collaborations, such procurement requirements should accommodate the needs of non-governmental recipients for flexibility given the multiple public and private sources of funds necessary for any project by not placing undue or unreasonable burdens on them. [08/04/14 @ 5:08PM]

- #266-14 ALD. BLAZAR, YATES AND DANBERG requesting:
1. to amend Section 22-50 to require that in the event there is a transfer of legal or beneficial ownership of a preferably preserved property during the demolition delay period, the full demolition delay period will restart from the date of the transfer of ownership;
 2. and further requesting to amend Section 22-50 to require that in the event a transfer of legal or beneficial ownership of a preferably preserved property occurs after the expiration of a demolition delay period but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures of Section 22-50(c)(5). [07/07/14 @ 12:35PM]
- #238-14 ALD. SANGIOLO requesting the Executive Department and Planning Department work with the Board of Aldermen to develop a Housing Production Plan in accordance with 760 CMR 56.03(4) and guidelines adopted by the Department of Housing and Community Development as soon as possible. [06/09/14 @ 11:55AM]
- #212-14 BOARD OF ALDERMEN requesting a discussion with the Executive and Inspectional Services Departments and the Commission on Disability regarding the creation of full-time positions to address the city's need re 1) ADA requirements and 2) zoning enforcement, including State building code, Newton's zoning ordinance, and special permits. [05/23/14 @ 11:03AM]
- 140-14 ALD. CROSSLEY AND HESS-MAHAN requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to include a "lodging house" ordinance to promulgate rules requiring annual fire, safety and health inspections and licensing of buildings providing single room occupancy and/or congregate living arrangements. [04/04/14 @ 6:29 PM]
- #429-13 ALD. HESS-MAHAN requesting repeal and/or amendment of Zoning Ordinances Section 30-1, Definitions, 30-8(b)(2), Special Permits in Single Family Residential Districts, and 30-10(d)(4), Number of Parking Stalls, concerning "Congregate Living Facility", as required by federal and state anti-discrimination and fair housing laws and regulations. [12/06/13 @ 9:51 AM]

- #428-13 ALD. HESS-MAHAN requesting periodic updates on complaints of discrimination filed again the City of Newton under Section 504 of the 1973 Rehabilitation Act, the Fair Housing Act, and Title II of the Americans with Disabilities Act, based on the City's denial of housing and exclusion from participation by people with disabilities in the Newton HOME and CDBG programs filed with the U.S. Department of Housing and Urban Development. [12/06/13 @ 9:51 AM]
- #427-13 ALD. HESS-MAHAN requesting discussion and periodic updates of steps the City of Newton is taking to ensure that its implementation of the Consolidated Plan, Annual Action Plan and Citizen Participation Plan and use of CDBG, HOME and ESG funds comply with federal and state fair housing and anti-discrimination laws and regulations, and its duty to affirmatively further fair housing. [12/06/13 @ 9:51 AM]
- #266-13 ALD. YATES requesting that the Law Department provide the Zoning & Planning and Land Use Committees and other interested members of the Board with legal advice on what parties have standing to challenge zoning ordinances and the relevant court cases involving uniformity. [08/05/13 @ 12:28PM]
- #129-13 ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for "attached dwellings" in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**. [05/25/13 @ 5:14 PM]
- #308-12 ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @ 3:59 PM]
- #282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*.

REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES

- #273-12 ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer.

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #257-12 RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9,

2001, which allows certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates.

- #11-12 ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]
- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

ZONING REFORM – PHASE 2

- #22-15 ALD. YATES requesting that utilization of the Massachusetts Rental Voucher Program be added as an allowable means of complying with the inclusionary zoning provision in Phase II of Zoning Reform. [01/05/15 @ 9:53PM]
- #21-15 ALD. YATES requesting that priority be given to completing the Intent and Purposes of the Zoning Ordinance in Phase II of Zoning Reform. [01/05/15 @ 9:53PM]
- #323-14 ALD. YATES, NORTON, COTE AND SANGIOLO proposing to amend Chapter 30 to require that the front doors of single-family homes, two-family homes and other residential structures face the street on which their lots are located. [08/25/14 @ 11:42AM]
- #139-14 ALD. ALBRIGHT requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to clarify rules relative to retaining walls. [04/09/14 @ 8:32 AM]

Public Hearing to be assigned:

- #404-13 NATASHA STALLER et al. requesting a revision to the zoning District boundary Lines so as to transfer from Multi-Residence 1 District to a Single Residence 3 District the following properties:
Assessors’ parcels SBL nos. 61-037-0004 through 61-037-0013; 61-042-0007 through 61-042-0023; 65-019-0001; 65-019-0007 through 65-019-0012; 65-019-0014 through 65-019-0022; 65-019-0009A; 65-019-0017B and 65-019-0022A.

Also requesting transfer from a Single Residence 2 District to a Single Residence 3 District SBL no. 65-019-0015A. [11/01/13 @ 12:57 PM]

A MOTION TO AMEND THE PREVIOUSLY APPROVED POSTPONEMENT OF DOCKET ITEM #404-13 TO APRIL 7, 2014 TO SUBSTITUTE RECOMMITTAL OF THE ITEM TO THE ZONING & PLANNING COMMITTEE WAS APPROVED BY VOICE VOTE ON MARCH 17, 2014.

- #267-13 LAND USE COMMITTEE proposing to amend Section 30-21(c) to permit de minimis relief for alterations, enlargements, reconstruction of or extensions to lawfully nonconforming structures in which the nonconformity is due to Floor Area Ratio (FAR) requirements set out in section 30-15(u) Table A, subject to administrative review by the Planning Department.
- #264-13 ALD. YATES requesting that the Zoning Reform Group or its successor consider amending City of Newton Zoning Ordinances Chapter 30 to develop additional residential districts reflecting the small lots in older sections of the City and map changes to bring the zones of more residential sections of the City into conformity with the existing land uses. [08/05/13 @ 12:28PM]
- #81-13 DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]
- #65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]
- #64-13 NEWTON HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation. [02/05/13 @ 11:35 AM]
- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05/10/11 @ 3:19 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]

- #164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]
- #142-09(7) ALD. HESS-MAHAN AND JOHNSON proposing a Resolution to request that the Director of Planning and Development and the Commissioner of Inspectional Services reconvene a Floor Area Ratio working group to review and analyze the definition of “*Floor area, gross*” for residential structures as it is used in the definition and calculation of “*Floor area ratio*” in **Section 30-1** with respect to actual usage, and, if necessary, make recommendations for amendments thereto and in the dimensional regulations contained in **Section 30-15(u)** and *Table A* of **Section 30-15(u)**, the purpose of which is to regulate the size, density and intensity of use in the construction or renovation of, or additions to a residential structure, to more accurately reflect and be compatible with neighborhood character, and to ensure that a proposed residential structure is consistent with and not in derogation of the size, scale and design of other existing structures in the neighborhood, and is not inconsistent with the City’s Comprehensive Plan. [07/03/14 @ 9:10AM]

Respectfully Submitted,

Marcia T. Johnson, Chairman



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#240-21
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

James Freas
Acting Director

MEMORANDUM

DATE: June 12, 2015

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: James Freas, Acting Director of Planning and Development

RE: #222-13 - ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in Chapter 30, Section 30-1 of the City of Newton Zoning Ordinances.

#278-14 - ALD. YATES proposing to amend Chapter 30 of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers.

MEETING DATE: June 16, 2015

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



The design of two-family homes in Newton has presented a number of challenges in various neighborhoods of the City and a number of changes to the definition of this home type have been introduced to try to address those issues. At the February 9, 2015 meeting of the Zoning and Planning Committee, it was suggested that a return to a simpler definition might be preferable over continued modifications to the current, multi-part definition. Staff concurs, recommending a simple definition for two-family. Other issues that have been raised regarding two-family homes are more appropriately addressed through changes to dimensional requirements for two-family homes and zoning districts that more closely adhere to the desired development of Newton's neighborhoods.

The City Zoning Reform effort has thus far focused on the clarity and understandability of the Zoning Ordinance. An essential element of clarity is simplicity. The challenge of how our existing two-family definition works is that it appears to be attempting to deal with multiple problems, most of which are not best addressed through the definition. The only problem the definition should be concerned with is conveying the meaning of the word being used.

Given Newton's development patterns and current desirability in the housing market, the challenge presented by new two-family developments appears to be primarily about size and perhaps setbacks. There are also concerns raised about design, particularly the placement of front doors and garages. Ultimately, part of the challenge around two-family homes appears to have been around preventing builders from using the two-family rules to effectively put two large single family homes on a lot, linking them with a breezeway or garages. Again, this issue appears to be about size and scale, especially as that relates to the character of the surrounding neighborhood.

All of the issues above are best addressed through dimensional regulations and the composition of district standards, rather than through the definition of the word two-family. Such regulations would be a central component of Phase 2 and addressing them would be best done in a more comprehensive approach that would allow consideration of the myriad of issues that would come into play.

Staff recommends the following definition:

Two-Family, detached. A building that contains 2 dwelling units and is either divided vertically so that the units are side by side but separated by a shared wall or is divided horizontally so that one unit is above the other.

Attachment:

Attachment A, Zoning Text – Clean Version

Attachment B, Zoning Text – With Edits

1.4.4. Validity

Nothing in this Chapter shall be construed as establishing regulations or restrictions which are not uniform for each class or kind of buildings, structures, or land, and for each class or kind of use in each district.

Ord. No. S-260, 08/03/87

1.4.5. Effect of Invalidity

If it is determined by a court of competent jurisdiction that any provision of this Chapter is invalid as applying to any particular land, building or structure by reason of such land, building or structure having been placed in an excessively restrictive district, such land, building or structure shall thereby be zoned in the next least restrictive district created by this Chapter.

(Rev. Ords. 1973 §24-33)

Sec. 1.5. Rules of Measurement

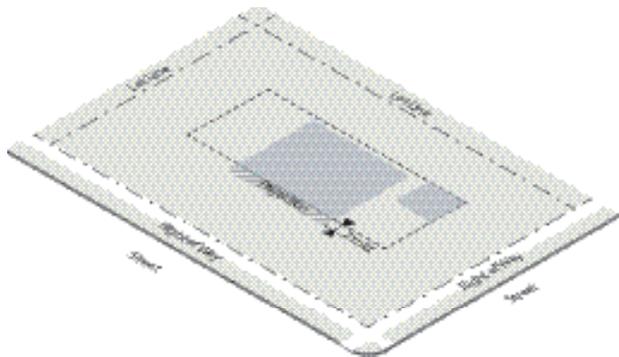
1.5.1. Building Types

- A. **Single-Family, Detached.** A building or structure that contains only one dwelling unit.
- B. **Two-Family, Detached.** A building that contains 2 dwelling units and is either divided vertically so that units are side by side but separated by a shared wall or is divided horizontally so that one unit is above another.
- C. **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.
- D. **Multi-Family.** A building or structure containing 3 or more dwelling units.
- E. **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.

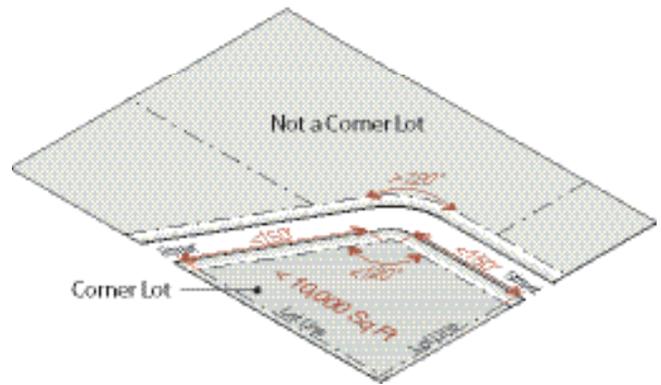
(Ord. No. X-38, 12/02/02)

1.5.2. Lot

- A. **Lot Line.** A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the Commonwealth used as a aqueduct or land formerly an aqueduct now owned by the City and adjoining land shall not be termed a lot line.
- B. **Lot Area.** Lot area is the horizontal area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.
- C. **Lot Area Per Unit.** The minimum lot area required for each unit on the lot.
- D. **Lot Coverage.** The percentage of the lot area which is covered by buildings, including accessory buildings, except in the following cases:
 1. The area covered by roof overhangs of up to 2 feet shall not be included in the calculation of lot coverage; and
 2. The lot coverage requirements contained in Sec. 3.1, shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a single- or two-family residence.



2. In the case of a lot on a street and a public footway, the required lot frontage may be measured along the public footway following approval of a special permit by the Board of Aldermen; and
 3. In the case of corner lots, the frontage when measured on the street line shall run to the point of intersection of the 2 street lines.
- F. **Lot, Corner.** A lot fronting on 2 intersecting streets which form an interior angle of 120 degrees or less; or a lot located on a bend in a street where the street bends so as to form an interior angle of 120 degrees or less; or a lot on a curve in a street or on a curve at the intersection of 2 streets where 2 lines tangent to the street line at the intersection of each side of the lot with the street line form, if prolonged towards the curve, an interior angle of 120 degrees or less. Only that part of a lot contiguous to a corner, bend or curve, and having an area not in excess of 10,000 square feet, and a maximum length on either street, except in case of a bend or curve, of not more than 150 feet, shall be deemed a corner lot. The provisions of this paragraph shall apply to a lot fronting on an open space dedicated to the public use in the same manner as to a lot fronting on a street.



- E. **Lot Frontage.** The required lot frontage shall be measured on the street line, except in the following cases.
 1. In the case of a lot on a street, the line of which has a curve with a radius of less than 200 feet, the required lot frontage shall be measured along the setback line;

1.4.4. Validity

Nothing in this Chapter shall be construed as establishing regulations or restrictions which are not uniform for each class or kind of buildings, structures, or land, and for each class or kind of use in each district.

Ord. No. S-260, 08/03/87

1.4.5. Effect of Invalidity

If it is determined by a court of competent jurisdiction that any provision of this Chapter is invalid as applying to any particular land, building or structure by reason of such land, building or structure having been placed in an excessively restrictive district, such land, building or structure shall thereby be zoned in the next least restrictive district created by this Chapter.

(Rev. Ords. 1973 §24-33)

Sec. 1.5. Rules of Measurement

1.5.1. Building Types

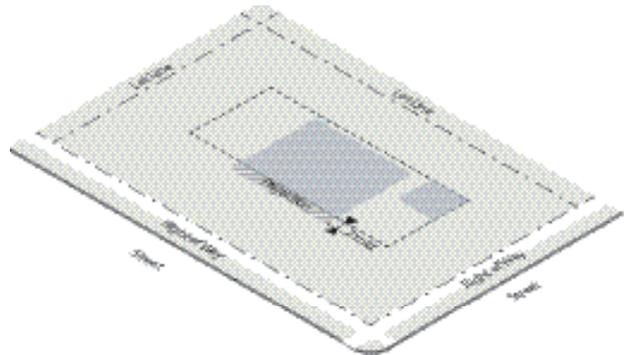
- A. **Single-Family, Detached.** A building or structure that contains only one dwelling unit.
- B. **Two-Family, Detached.** A building ~~or structure~~ that contains 2 dwelling units; and ~~contains is~~ either ~~a common floor-ceiling assembly between the upper and lower level dwelling units, or a common wall connector and a common roof connector, divided vertically so that units are side by side but separated by a shared wall or is divided horizontally so that one unit is above another.~~
 - 1. ~~Common Wall Connector. An interior wall that is shared by and separates the 2 dwelling units of a two-family dwelling and meets all of the following requirements:~~
 - a. ~~It is no less than 12 feet in length;~~
 - b. ~~It exists at the ground story level and is at least one story in height;~~
 - c. ~~It separates enclosed interior space in each of the dwelling units;~~
 - d. ~~It is designed to give the appearance that it connects the 2 dwelling units to each other;~~
 - 2. ~~Common Roof Connector. An exterior roof surface that meets all of the following requirements:~~
 - a. ~~It extends over the common wall a minimum of 12 feet over the interior spaces of each dwelling unit;~~
 - b. ~~The roofing material over each dwelling unit has identical materials and color;~~
 - c. ~~The roof surfaces do not have any vertical separation, subject to the following exceptions:~~
 - i. ~~A dormer shall not be deemed a vertical separation;~~
 - ii. ~~A vertical separation between the roof surface of 1 dwelling unit and the roof surface of the other dwelling unit may be allowed if all of the following conditions are met:~~

- a) ~~The difference between the mean grade slope of 1 dwelling unit and the mean grade slope of the other dwelling unit is more than 3 feet;~~
 - b) ~~The vertical separation between the roof surface of 1 dwelling unit and the roof surface of the other dwelling unit does not exceed the difference between the mean grade slope of each of the 2 dwelling units;~~
 - c) ~~The roof surfaces may have varied roof slopes, but if so, they shall conform to the requirements stated in paragraphs a) and b) above.~~
 - d. ~~It is designed to give the appearance that it connects the 2 dwelling units to each other.~~
- C. **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.
- D. **Multi-Family.** A building or structure containing 3 or more dwelling units.
- E. **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.

(Ord. No. X-38, 12/02/02)

1.5.2. Lot

- A. **Lot Line.** A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the Commonwealth used as an aqueduct or land formerly an aqueduct now owned by the City and adjoining land shall not be termed a lot line.
- B. **Lot Area.** Lot area is the horizontal area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.
- C. **Lot Area Per Unit.** The minimum lot area required for each unit on the lot.
- D. **Lot Coverage.** The percentage of the lot area which is covered by buildings, including accessory buildings, except in the following cases:
1. The area covered by roof overhangs of up to 2 feet shall not be included in the calculation of lot coverage; and
 2. The lot coverage requirements contained in Sec. 3.1 shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a single- or two-family residence.



- E. **Lot Frontage.** The required lot frontage shall be measured on the street line, except in the following cases:
1. In the case of a lot on a street, the line of which has a curve with a radius of less than 200 feet, the required lot frontage shall be measured along the setback line;

CITY OF NEWTONIN BOARD OF ALDERMENZONING & PLANNING COMMITTEE REPORT

TUESDAY, JUNE 16, 2015

Present: Ald. Johnson (Chairman), Danberg, Baker, Hess-Mahan, Yates, Kalis, Sangiolo and Leary

City Staff Present: James Freas (Acting Director, Planning Dept.), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), John Lojek (Commissioner, Inspectional Services), Karyn Dean (Committee Clerk)

#6-15 ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]

ACTION: **HELD 8-0**

NOTE: James Freas, Acting Director, Planning Department addressed the Committee. He provided a PowerPoint presentation which is attached to this report. Steve Jobs once said "It takes a lot of hard work to make something simple, to truly understand the underlying challenges and come up with elegant solutions." George Proakis, Director of Planning from the City of Somerville gave a presentation to the Committee last week, which also embodied this theme. The basic notion for Phase 2 is to develop a clear understanding of the existing City and to understand the challenges that presents, and come up with the tools necessary to regulate it to get the desired result in the future.

Mr. Freas said he felt it would be useful to start with a Pattern Book. Measuring the City to find out what currently makes up the City of Newton would be a first step in the process, as it was in Somerville. This would determine the lot sizes and building sizes in each of the neighborhoods, showing in fine detail exactly what the built environment is. Then elegant solutions need to be found to retain what we have in the City as well as how to build what we would like to have. Dimensional controls, use controls, development standards and special permits are all within the existing zoning toolbox.

Additional tools could be added that are not currently being utilized such as building types, build-to lines and separating the "box" from the "attachments."

Building Types

Building types as a regulatory tool is something that could be utilized. The zoning ordinance would identify a set of building types. For each district, the ordinance would then identify the building types and land uses allowed. Further restrictions might prohibit some building types from certain land uses. Building types is a tool that gives the City finer grained control over how development or re-development happens. This helps speak directly to how the City is designed and how people experience the City through the types of buildings that actually exist.

Mr. Freas used the example of a “paired house” building type (which is actually not something that exists in Newton.) The building type would have a description: A paired-house is “A moderate floor plate, semi-detached, residential building type with up to two vertically stacked dwelling units. A paired house is attached on one side to another paired house.” There would be an illustration as well. A property owner would determine their district, then would see which building types are allowed in that district. There would be a two-page spread that describes the range of size of lots; then there would be a maximum and minimum building size range that would be allowed. That would be determined through FAR, as Newton currently measures, or perhaps a different method as is done in Somerville in which they use minimum and maximum depths, widths, and heights. A “cottage” building type for example, would have a different set of dimensional controls on the lot and the building but may be allowed in the same district. Newton would have to determine its own building types.

Zoning Lot

The lots could also be regulated as well by overlaying a “zoning lot” over the physical lot. Denver uses this concept of “zoning lot” as distinct and separate from the physical lot. This would keep the mass and size of houses down because one could only build within that envelope and not the overall lot. So a larger lot would not necessarily allow for a larger building than a smaller lot would, depending on the district. A Committee member pointed that that narrow long lots can be challenging to deal with. Mr. Freas said Somerville, for example, imposes maximum depths on the building itself, so it wouldn’t matter how long the lot might be.

Box and Attachments

Mr. Freas explained that there would be a by-right “box” that one could build and there would be “attachments” to it that would also be by-right within certain regulations. Somerville has created a standard set of regulations that apply to each of their by-right “additions”. This is a tool they have identified that has been useful. It was mentioned by a Committee member that it would be advisable to use language that would allow for innovations in building design.

It was asked what the response would be to those who feel their freedom as property owners to design their own home would be limited. Mr. Freas said the building types are meant to get you to the “box” and outside of that that are many “attachments” either by-right, or by special permit that can be allowed and configured. This is not meant to get any more detailed than that.

Build-to Lines

Build-to lines would define minimum and maximum setbacks. It helps to define the public/private realms. The street is the public realm; the front yard is the semi-public realm (it is available for the public to see, but not access); and the private realm and back yard are the private realm. Rear lot subdivisions are problematic because a home in the back lot invades the private realm of the house in the front lot. Other things can be regulated through these setbacks as well such as the snout house problem because a minimum setback for a garage and parking space could be farther back than the front of the house.

Interim Measures

There was concern that construction, development and demolition is happening in the City and by the time the inventory is done, neighborhoods will have already changed significantly, particularly in places like Oak Hill Park. Adopt measures to deal with snout houses, impose zoning lots on long, narrow lots, and find other methods that can solve the problems that are currently on the Zoning & Planning agenda in the short-term. These could be adopted now while the rest of the process is ongoing.

Commissioner Lojek was concerned with making changes here and there as has been done in the past. This has led to difficulties, for example, average setbacks are challenging to calculate; with buildings built prior to 1922, an accessory building may be built that is exempt from lot coverage restrictions but does not specify if that applies to detached or attached structures and if living space could be added above it. Furthermore, why should old buildings have these provisions at all. Changes would impact several sections of the ordinance so that need to be done in a coordinated way. The private sector has people working 24/7 looking for oddities in the zoning ordinance to get around them to their advantage. He does not want to see more knee-jerk reactions that could create more work and more confusion. While writing something new that is supposed to be comprehensive, he would rather not see these piecemeal changes. Committee members agreed that while phase 2 should be comprehensive and fix the oddities, there could be reasonable interim changes in the meantime, and the Planning Staff had recommended a dual process as well. The demolition moratorium was voted down with the idea that some action would be taken in order to address the problems voiced by constituents.

Ald. Sangiolo would like to see an ordinance that doesn't allow more than perhaps a 25% increase to the size of a new structure over a demolished structure, as an interim measure. She will talk to Mr. Freas about docketing a broad item on this issue.

Next Steps

- Mr. Freas said he would like to build a process that gets the staff out talking to people and taking the inventory action in order to define the communities.
- A copy of the RFP will be provided to the Committee to review for the next meeting in order to provide feedback.
- Ald. Johnson would like to Committee to prioritize the issues that could be dealt with in the interim. It is important to move forward with Phase 2 in a comprehensive way and

time should be spent wisely on short-term fixes so as not to detract too much from the overall goal.

The Committee voted to hold this item and will take it up again at the June 22nd meeting.

#278-14 ALD. YATES proposing to amend Chapter 30 of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers. [07/31/14 @ 12:03PM]

ACTION: **HELD 7-0 (Ald. Hess-Mahan not voting)**

NOTE: Both #278-14 and #222-13 will be discussed together. Ald. Hess-Mahan explained that, for him, these docket items arose from a house that was built on Watertown Street. The house was unlike anything else in the neighborhood. It is in a MR zone so a two-family could be built by-right. The original design presented to the City was two houses with garages in the middle connecting them. Dave Norton in Inspectional Services said this was not a two-family design as there was no common wall connector or roof connector that enclosed living space. The next design then included 6 feet by 12 feet of habitable space behind the garage and it satisfied the ordinance. While it didn't look very good, it did in fact satisfy the letter of the ordinance so was approved. It was on a long thin lot, so they turned the structure sideways which did not provide pleasant views for the neighbors on either side. Ald. Hess-Mahan felt it was very likely that after the owners received the certificate of occupancy, that "living space" behind the garage was eliminated, making for a deeper garage.

He felt that a building design or designs should be offered which show exactly what a two-family should look like and any other design would not qualify. Currently, the ordinance describes a two-family, detached as a building that contains two dwelling units and is either divided vertically so that units are side-by-side or separated by a shared wall, or that are divided horizontally so that one unit is above another. This did not prevent the previously described home from being built.

Ald. Hess-Mahan feels that a two-family is a typical double-decker or a typical side-by-side that has the same ridge line along the top of the house. There are a couple of exceptions, like the Philadelphia style house which has 3 floors; the first floor unit has one floor, and the second and a smaller third floor make up the second unit. An attached dwelling which has a side-by-side configuration with two gables facing the front, without a common ridge line, looks like two townhouses attached to each other and not a typical two-family. This is not a two-family, in his opinion. The definition of two-family needs to change and be as simple and clear as possible. It should be specified that if the units are divided vertically, they have to be divided so that both buildings have a common ridge line, or could also be a one-story attached to a two-story. He has seen a number of those in his neighborhood. The language needs to be worked on and illustrations included for clarity. It was suggested that an intent statement be made as well in the ordinance.

Mr. Freas said on larger lots, there is room to build two structures and connecting them with the garage made the structure by-right in that circumstance. By closing down on the dimensional controls there would be no space for two single-family houses, but just space for one building which will bring things back to more traditional styles.

Next Steps

Ald. Hess-Mahan will work with Mr. Freas on some illustrations and some language for the definition of two-family. This will be looked at in conjunction with the interim measures as was discussed in the previous item.

The Committee voted to hold this item.

#222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances.
[06/07/13 @ 1:31 PM]

ACTION: **HELD 7-0 (Ald. Hess-Mahan not voting)**

NOTE: See note above. The Committee voted to hold this item.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

Zoning Reform Phase 2

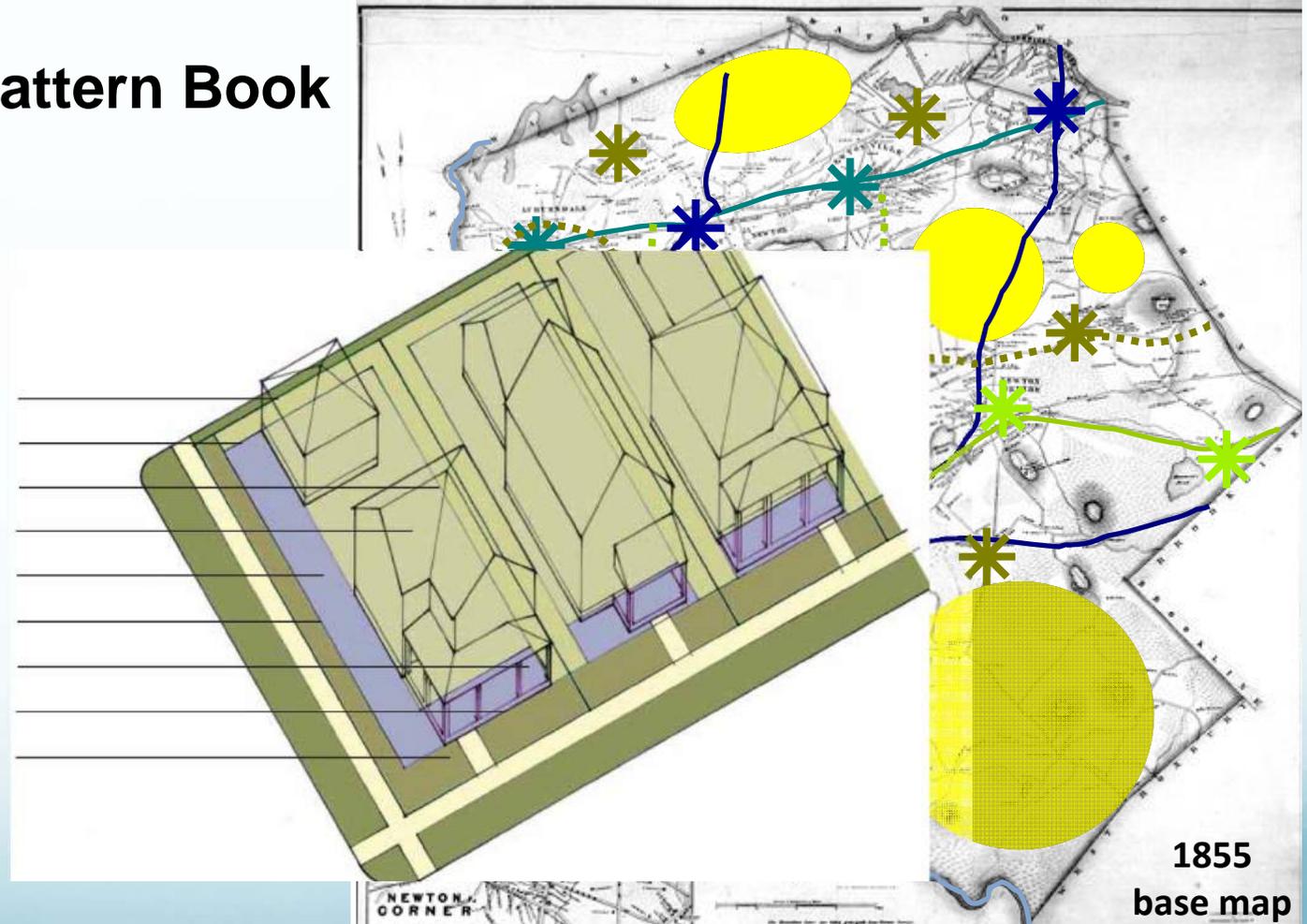
“It takes a lot of hard work to make something simple, to truly understand the underlying challenges and come up with elegant solutions.”

- Steve Jobs

Understanding the Challenges

Newton Pattern Book

- Property Line
- Rear Alley Setback Line
- Side Yard Setback Line
- Buildable Area
- Side Street Facade Zone
- Side Street Setback Line
- Front Facade Zone
- Front Yard Setback Line
- Front Yard
(Front Terrace for ground floor commercial uses)



Elegant Solutions

- The Zoning Toolbox
 - Dimensional Controls
 - Use Controls
 - Development Standards
 - Special Permits

Adding to the Toolbox

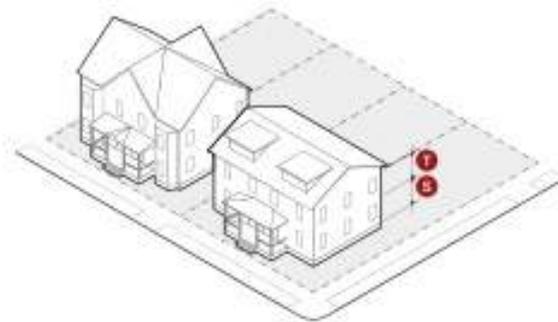
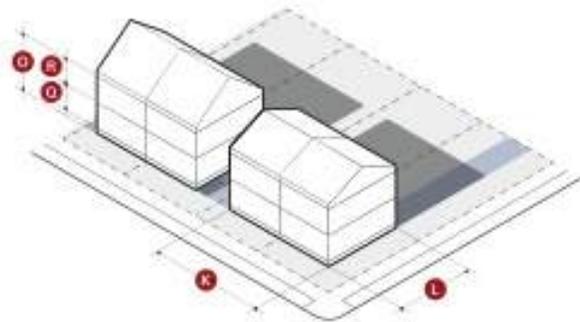
- Building Types
- Build-to-lines
- Separating the “box” from the “attachments”

PAIRED HOUSE (cont.)

A moderate floor plate, semi-detached, residential building type with up to two vertically stacked dwelling units. A paired house is attached on one side to another paired house.

c. Height & Massing

d. Uses & Features



MAIN BODY

d Facade Build Out (min)	50%
k Width (min/max)	22' min. 28' max.
l Depth (min/max)	28' min. 48' max.
n Building Height (max)	2.5 stories (28 ft.)
f Story Height (min/max)	9 ft. 12 ft.
First Floor Elevation (min)	2 ft.

PERMITTED BUILDING COMPONENTS

Awning	See §3.D.2
Entry Canopy	See §3.D.3
Bay	See §3.D.4
Balcony	See §3.D.5
Deck	See §3.D.6
Dormer Window	See §3.D.8
Cross Gable	See §3.D.9
Side Wing	See §3.D.10
Rear Addition	See §3.D.11

FACADE COMPOSITION

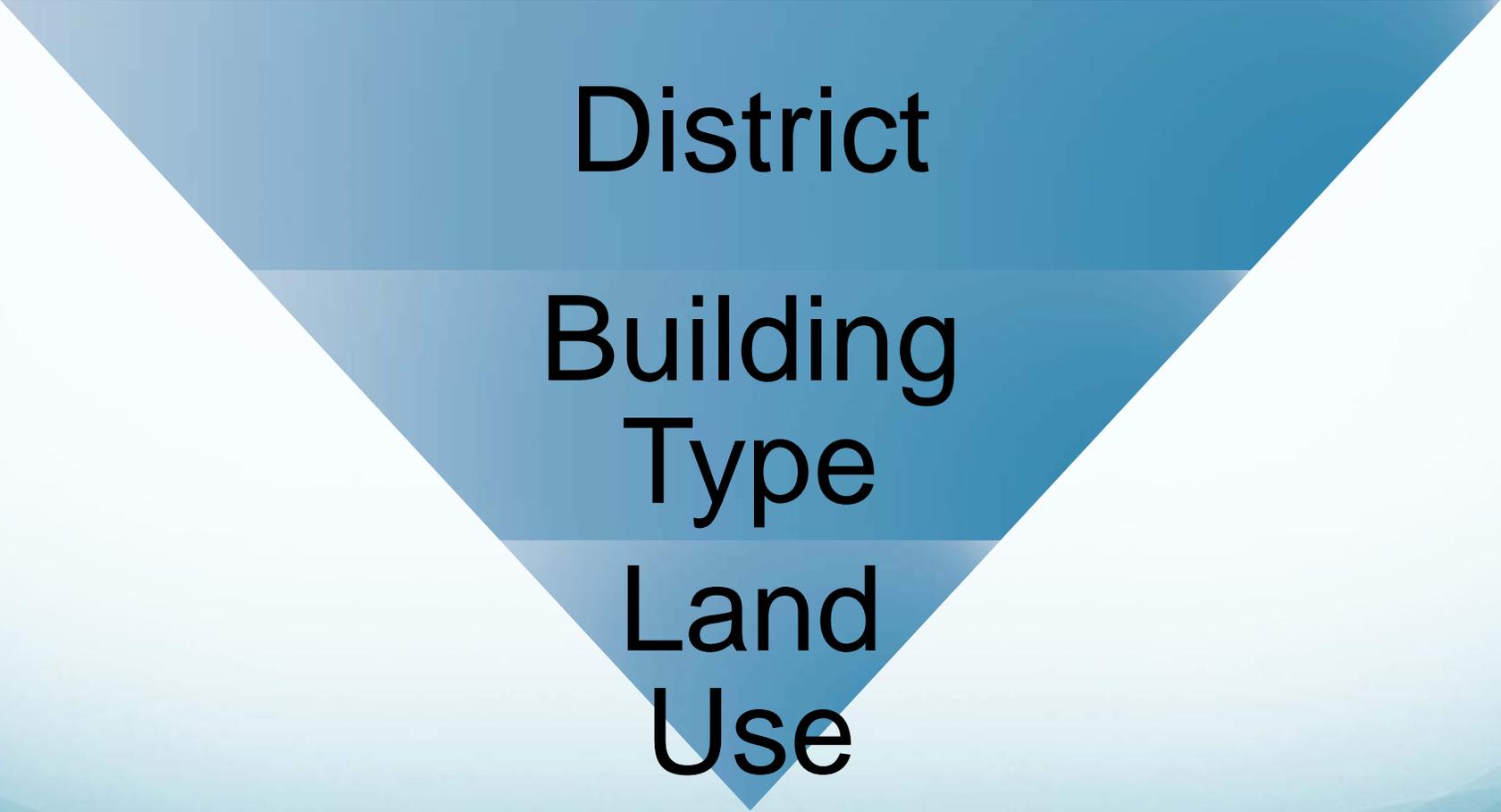
s Ground Story Fenestration (min/max)	20% min. 50% max.
u Upper Story Fenestration (min/max)	20% min. 50% max.

PERMITTED BUILDING FRONTAGE

	(1 required)
Stoop	See §3.E.2
Portico	See §3.E.3
Porch, Projecting	See §3.E.4
Porch, Engaged	See §3.E.5

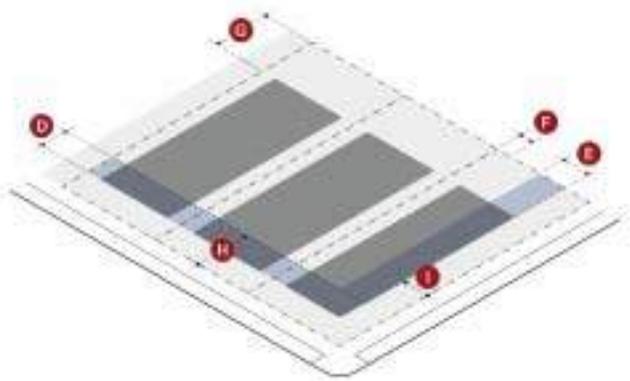
USE & OCCUPANCY

Use Category	Residential
Dwelling Units (max)	2
Outdoor Amenity Space (min)	1/ Dwelling Unit



District Building Type Land Use

Build-to-Lines



The diagram shows a 3D perspective of a building with various setbacks. Red circles with letters D through I are placed around the building to indicate the locations of different setback lines. D is at the front-left corner, E is at the front-right corner, F is at the side-right corner, G is at the rear-right corner, H is at the front-left side, and I is at the front-right side.

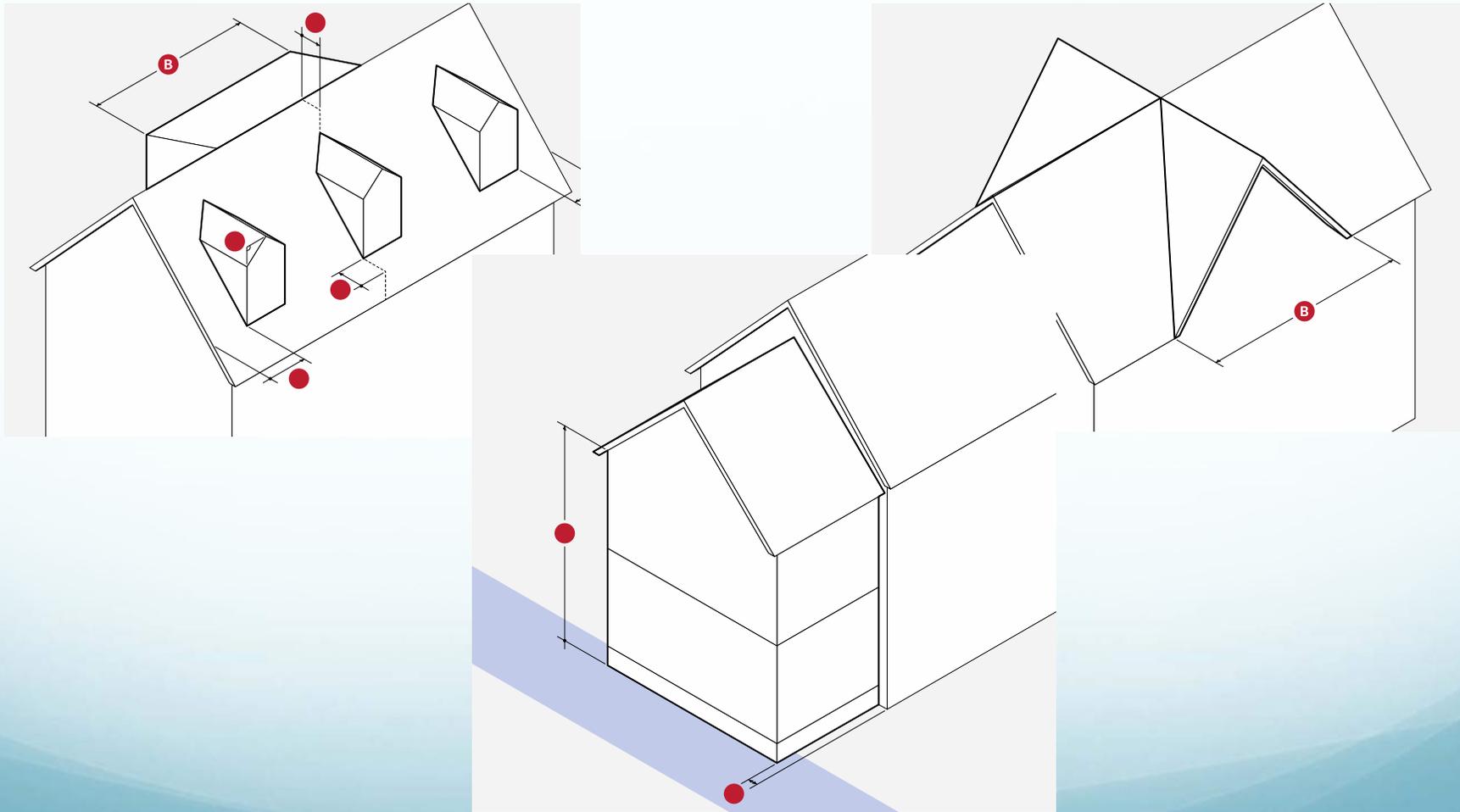
BUILDING SETBACKS	
Contextual Front Setback (see §.3.B.2.b)	Required
D Primary Front Setback (min/max)	10 feet 20 feet
E Secondary Front Setback (min/max)	10 feet 20 feet
F Side Setback (min)	5 feet
G Rear Setback (min)	20 feet

PARKING SETBACKS	
H Primary Front Setback (min)	20 feet
I Secondary Front Setback (min)	10 feet

Box & Attachments

HOBBY SEARCH





Discussion



CITY OF NEWTONIN BOARD OF ALDERMENZONING & PLANNING COMMITTEE REPORT

MONDAY, JULY 20, 2015

Present: Ald. Johnson (Chairman), Baker, Kalis, Leary, Yates, Danberg and Hess-Mahan

Absent: Ald. Sangiolo

Also Present: Ald. Albright and Crossley

City Staff Present: James Freas (Acting Director, Planning Dept.), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#167-15 MEGAN RISEN, 47 Grafton Street, Newton, appointed as a member of the
PLANNING & DEVELOPMENT BOARD for a term to expire February 1, 2017.
 [06/19/15 @ 11:39PM]

ACTION: APPROVED 5-0-2 (Ald. Baker and Hess-Mahan abstaining)

NOTE: Ms. Risen joined the Committee. She explained that the Planning & Development Board makes many choices about the future of Newton and she thinks about the impact that will have on her, her family and her neighbors. She feels the City is at a crossroads and the decisions being made now will determine what it will look like in 20 years. Ms. Risen mentioned that she is in real estate development, mostly in Detroit. She has seen communities that have gone through difficult times and what it has taken to rebuild them. Her interests also include historic preservation, affordable housing and she has a background in gerontology.

Committee Questions/Comments

A Committee member asked how she would evaluate projects while on the Planning & Development Board. She said her decision making philosophy is to collect as many points of view and as many points of data as possible as she has a research background. Her decisions are made based on processing that information and she feels decisions should not be made quickly. They will have long-term impact and talking more about that will help form the Newton that is most desirable to the residents. There are many paths the City can take so forming some consensus and then taking the appropriate steps is necessary.

The replacement of the smaller housing stock with larger homes in the City has been a topic of discussion lately. A Committee member asked Ms. Risen her opinion on that. She felt that she did not have enough data at this point in time, but as a resident of the City, and as a developer, she understands there are impacts, both positive and negative, on both sides. She does feel the character of Newton is so unique and she would like to see that preserved because she is very interested in historic preservation. All the villages have individual character and that needs to be considered. She is interested in people coming to Newton to build and work as long as there is a solid contribution that adds to the unique character of the City and doesn't detract from it. It is

imperative to hear from the residents of the different villages because all things will not translate well to all villages.

A Committee member asked based on her interests, if she would like to serve on the Council on Aging or the Historical Commission. She answered that she did have interest in the Historical Commission as well but was told she could not serve on both.

Mr. Risen was asked how she would keep transportation, diverse housing options and sustainability in mind when making decisions on the Planning & Development Board. She said incorporating issues of the environment into any new building is a must and should be part of any contract with a developer. She noted that she lived in Newton Corner, Newton Centre and just moved to Waban. Those experiences have shown her many different sides of the City and the how transportation issues impact everyone in different ways. The traffic has gotten so much worse in the last 10 years in her opinion. Looking back at old reports she noted that transportation was problematic in 1996 and 1986 as well.

A Committee member asked about parking in the City. In Newton Centre, for example, the parking has overrun the neighborhoods and there need to be some new ideas for dealing with the issue. Ms. Risen said when she lived in Virginia, the City she lived in built a new parking structure that was 3-level's high. The skyline was maintained and the need was met. She notices that the traffic and parking situation in Newton Centre has gotten much worse and she feels the solution would be to build a parking structure in the triangle parking lot. It can be done in an aesthetically pleasing way and does not need to detract from the charm of Newton Centre.

Ms. Risen was asked about adding residential density to villages and her experience or thoughts on that. She said it depended on the village and the project. She thought the new condos on Adams Street in Nonantum were a fantastic project and they are attractive and work well. A huge condo complex on Short Street in Waban may not be the best idea, but she would need more data. Again, it's important to maintain the charm of the City, village by village.

It was asked if Ms. Risen had any familiarity with CDBG funds. She said she's not that knowledgeable but would be learning more. She is particularly interested in what is happening with senior citizens in the City and finding ways to allow them to stay in their homes, financially.

Ald. Yates moves to approve Ms. Risen's appointment and the Committee voted in favor. Ald. Hess-Mahan and Baker abstained.

#6-15 ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable

both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]

ACTION: **HELD 7-0**

NOTE: James Freas, Acting Director of the Planning Department addressed the Committee. He had provided an updated draft RFP for the Phase 2 zoning reform project which was included with the agenda. He apologized for some errors that mention “transportation” as he did use some language from another document when putting the RFP together and those references were meant to be changed.

Content of RFP

Ald. Baker was concerned because he wasn’t sure what should be in the place of the references to transportation and was disappointed with the errors. He noted that there were many good ideas in the document as well, but wanted to be sure there would be no errors to detract from quality of the document. He was also concerned that the problems that have been highlighted in Committee over the past several months are not addressed in the RFP, including neighborhood based planning to build on the work of the Comprehensive Plan. He was not sure this document is adequately or accurately presenting what the City would like the consultant to do.

Mr. Freas said the intent of the RFP is not to ask a consultant to propose solutions right from the start. The point is to have them come to the community, get feedback from the community and then develop solutions based on that information. The role of the consultant is to facilitate the discussion and the public engagement and their first task is to listen. Mr. Freas said the intent is to have conversations about what is to remain intact and what needs to change in terms of the future.

Ald. Baker is trying to figure out what the output will be when the process is done. A lot of work has gone into the zoning ordinance to provide the platform for the next round, but he is not seeing the connection based on the information in the current draft of the RFP. It is an 18-month process that will take significant resources, so he wants to be sure they are delivered the product they actually want. Part of the challenge is to set out a work plan with responsibilities and accountability.

Ald. Johnson said they need a new, corrected version of the RFP in order to comment appropriately. She wanted to be sure that the thoughts from the Zoning & Planning Committee’s previous discussions are included in the document. For instance, Committee members mentioned that the smaller houses being replaced with larger houses has been an issue. The current ordinance has been unable to address this sufficiently. If the consultant can directly address this problem, and others that have been mentioned, then that would be the desired output. Those issues should be highlighted in the RFP document as well as the Phase 2 items that remain on the agenda. Ald. Johnson noted quite a bit of information has been gathered for a consultant to leverage including work from the Zoning Reform group and that should be mentioned in the RFP.

Master Planning vs. Pattern Book

A couple of Committee members wondered if village master planning would be connected to this process. Mr. Freas said he had come away from previous meetings of Zoning & Planning with the impression that there was not an interest in doing master or neighborhood planning. The original master planning and village proposal suggested that they work on the City piece by piece and the message he received from various channels as well as Zoning & Planning, was that was not the desired approach. In response to that, the notion of the pattern book was substituted for the master planning process as a data driven, more quantitative analysis of the City an approach to produce the zoning ordinance. This would include a sampling of the built environment and turning that data into dimensional standards of the various building types that would be in the pattern book. Ald. Albright would like to see more detail regarding the pattern book and how that would be developed relative to the community engagement process.

A Committee member said Needham has been doing master planning since 2001 and he has spoken to people there and it was a key issue for him. He noted that the Mayor had spoken of doing some master planning. Another Committee member felt that there had been some concern with starting in one area and taking each area as a separate piece. It would take years to finish the process. Mr. Freas said the RFP is directed towards producing a zoning ordinance as opposed to master planning which looks at a whole range of issues. The other way to look at this is to get the zoning ordinance into a good place, and then pursue much smaller master plans.

Another Committee member felt that whether it's a Master Planning process or a Pattern Book, the limiting or deciding factor should not be the timeline. If one takes longer than the other, but is the better choice, that is fine.

Ald. Johnson said that there seem to be conflicting points of view in Committee and the RFP needs to be very clear in order to get the best result. Mr. Freas said he believes the pattern book approach is the best approach to upgrading the zoning ordinance. Master planning should be set aside and when the capacity is there to pursue it, it can be taken on.

Next Steps

- Ald. Johnson would like to know how other communities have been implementing this mode of zoning and would like Mr. Freas to bring some examples to Committee. It would helpful to know how it's working in the real world.
- An updated version of the RFP needs to be provided incorporating the suggestions from the discussion this evening and from previous discussions as well, including references to available resources such as Zoning Reform Group report, Village Studies, etc.

The Committee voted to hold this item.

#222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances.
[06/07/13 @ 1:31 PM]

ACTION: **HELD 7-0**

NOTE: Ald. Hess-Mahan explained that this originally arose from a two-family home that was built in Newton, which was essentially two single-family homes connected by garages with nominal living space behind the garages. That was enough to conform to the current definition of a two-family based on the "common wall connector" requirement. He had heard from a developer that he hoped to build many more of those types of "two-family" houses in the City. He looked for a definition of a two-family which was more in-line with a traditional two-family one would typically find in Newton. The definition he is proposing is: "A building that contains two dwelling units and is either divided vertically so that units are side-by-side but separated by a shared wall extending the entire height of one or both units; or divided horizontally so that one unit is above the other." He included the term "a shared wall *extending the entire height of one or both units*" because this would avoid the design that employs two single-family houses connected by garages that was described earlier.

He would also like to see the Philadelphia style home considered a two-family as well (see illustrations attached). He spoke to Commissioner of Inspectional Services, John Lojek and he felt certain the Philadelphia style would be encompassed in the definition.

Ald. Hess-Mahan noted that other things such as wings, ells and gables could be added, as allowed, but these would be the basic designs with the ridge line as the common roof for both units for any side-by-side building. People have been getting around that by having the common roof over the garage, or doing "linguine" passageways.

Committee Questions/Comments

Committee members liked the illustrations and felt it made things clearer. Ald. Hess-Mahan said it was best to keep this simple and not include things someone could *not* do. Once you start pointing out things that can't be done, it basically allows all other things that aren't listed. This could have some terrible unintended consequences.

It was asked if Ald. Hess-Mahan looked at other communities. He explained that most define it very simply and it seems to work well. In Newton, however, there have been so many examples of developers finding odd ways around the definition and producing buildings that are undesirable.

A Committee member said that garages are now desirable in a way that they were not 75 years ago. That drives developers to find ways to include them in their designs, no matter how untraditional the final design may be. Ald. Hess-Mahan said he doesn't like "snout houses" or other bad designs that incorporate garages, and he would like to address that in a different way. He thinks requiring the setback for a garage to be greater than the setback for the house would

solve many problems; or limiting to 50% the area of the front façade that may be occupied by a garage. The Committee would like to docket an item to address the garage issue for all residential districts.

There was some question whether “Attached” or “Detached” should be used in the definition. While the two units are “attached” to each other, they are “detached” from any other structure. That is how this term has been used in the Newton ordinance.

Ald. Johnson asked the Law and Planning Departments, as well as Committee members of Zoning & Planning and Land Use, to consider these definitions to determine if there might be any vulnerabilities or situations that could circumvent the intent.

Next Steps

- Mr. Freas will provide clarity on the “attached” versus “detached” usage in the definition
- Include #278-14 in the next discussion of this item
- Report back any vulnerabilities to the intent of the definition
- The Committee will docket an item to address garages, drafted by Ald. Hess-Mahan and Ald. Baker

The Committee voted to hold this item.

#376-14 PLANNING & DEVELOPMENT DEPARTMENT requesting that **Chapter 30 ZONING** be deleted in its entirety and replaced with the Zoning Reform Phase 1 Zoning Ordinance. [10/22/14 @ 7:48PM]
RECOMMITTED TO ZONING & PLANNING ON 7/13/15

ACTION: **HELD 7-0**

NOTE: This item was held with no discussion.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman

#278-14

Sec. 1.5. Rules of Measurement

1.5.1. Building Types

A. Single-Family, Detached.

A building or structure that contains only one dwelling unit.

B. Two-Family, Detached.

A building that contains 2 dwelling units and is either: (i) divided vertically so that the units are side by side but separated by a shared wall extending the entire height of one or both units; or ~~is~~ (ii) divided horizontally so that one unit is above another.

Comment [t1]: "Height" is defined as: "The vertical distance between the elevations of the following: (a) the average grade plane and (b) the highest point of the roof."

C. 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.

D. Multi-Family.

A building or structure containing 3 or more dwelling units.

E. 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.

Section 1.5.1.B. Two-Family, Detached

Illustrations

Fig. 1 Vertical crosswise

Fig.2 Horizontal

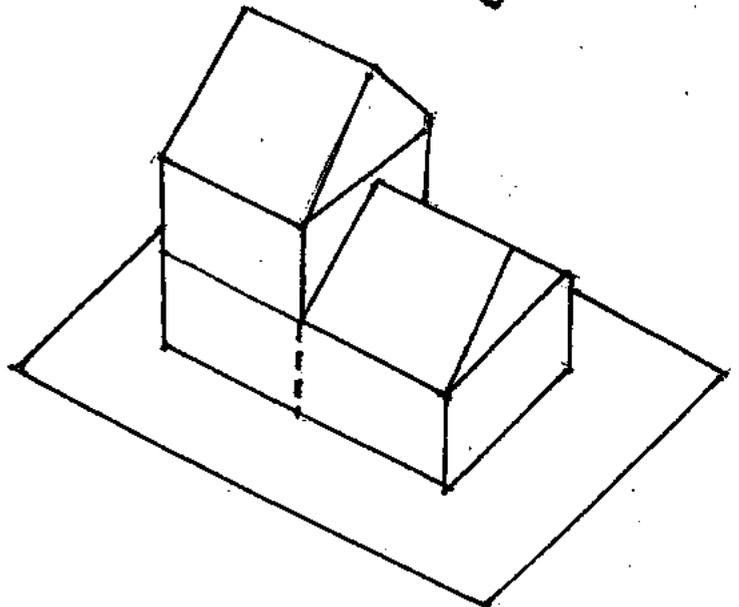
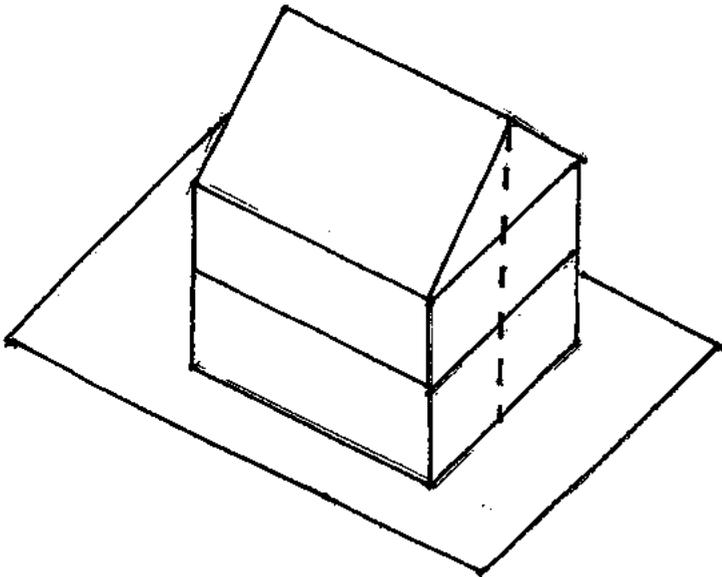
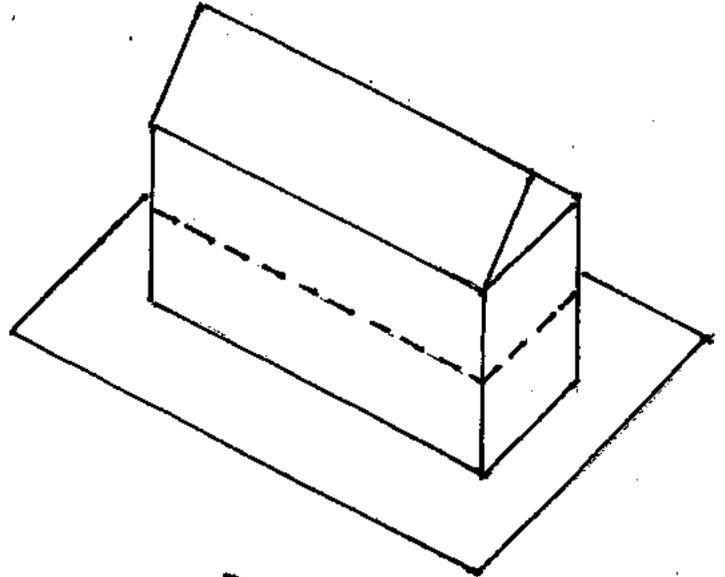
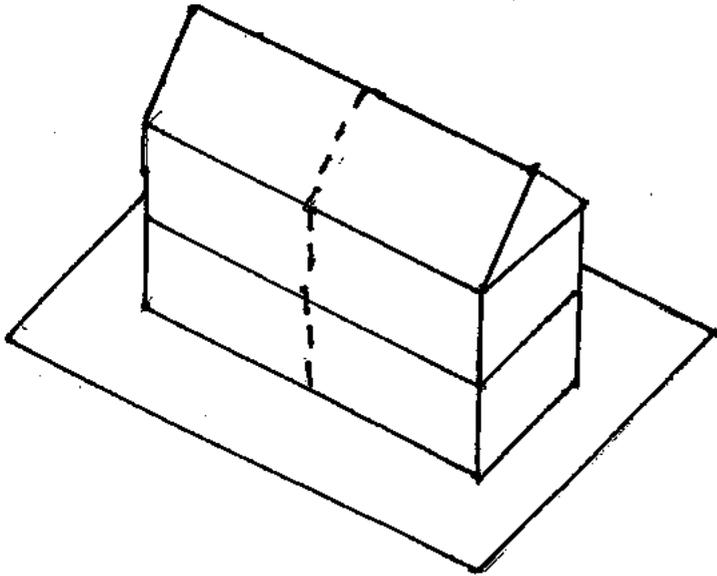


Fig. 3 Vertical Lengthwise

Fig. 4 Vertical 2.5 & 1.5 story units

CITY OF NEWTONIN BOARD OF ALDERMENZONING & PLANNING COMMITTEE REPORT

MONDAY, AUGUST 17, 2015

Present: Ald. Johnson (Chairman), Danberg, Baker, Leary, Yates, Hess-Mahan, and Sangiolo

Absent: Ald. Kalis

Also Present: Ald. Brousal-Glaser

City Staff: James Freas (Acting Director, Planning Dept.), John Lojek (Commissioner, Inspectional Services), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#6-15 ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]

ACTION: **HELD 7-0****NOTE:** A revised draft of the Phase 2 RFP was provided to the Committee in advance of this meeting, attached to the agenda. It can be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/68239/08-17-15%20Zoning%20&%20Planning%20Agenda.pdf>

James Freas, Acting Director of Planning explained that the Committee had expressed two primary problems with the previous draft. First, the wealth of existing information such as the Zoning Reform Group report, Comprehensive Plan and other studies had not been mentioned in the RFP, therefore, he added that a document review would be one of the tasks. Second, greater clarity was needed relative to future planning of the community. Mr. Freas added a task to lead a dialogue in the community about the future character of the City and where growth areas should occur, if any.

Interim and Phase 2 Issues

A Committee member believed the consultant should know what the issues of immediate concern would be. Mr. Freas said he purposely left this a bit vague so that it could be more defined while working with the consultant. The Committee member was under the impression that all the agenda items that had been characterized as Phase 2 would be detailed in the RFP in one way or another. There were some interim issues that the Committee had agreed to address, but the others should be put forward as part of the work product of the consultant.

Mr. Freas explained that the interim issues have been identified by the Committee and the Planning Department will tackle those items. There was concern from the Committee member that while some were actual docket items there were others that came up in discussion while reviewing the Phase 1 ordinance. The previous reports and notes will be consulted to identify those items, but Mr. Freas felt while there may be some incidental things he did not recall that there were large, significant issues that were not docketed.

Framework and Controls

The framework of the current ordinance has use oriented districts and a series of dimensional controls dependent on the district and the use. A Committee member's concern was, as the current RFP is written, the pattern book would eliminate dimensional controls and use controls and the zoning ordinance would take on a completely new framework. Mr. Freas said that formed based codes have use controls, dimensional controls, parking standards etc. Anyone responding to this RFP will understand that so there is no difference there. Uses will still be defined and associated with districts. The Pattern Book leads towards building design without disregarding the rest. The notion is to change the controls to make them more consistent. The RFP is written from the perspective of the recommendations of the zoning advisory group report to open the door to consider new zoning districts and essentially a new framework. The Committee member did not support this and disagrees with the zoning reform group. He would like to work within the current framework.

Charrettes

Mr. Freas explained that a charrette would be a 5-7 day process punctuated by various meetings and events that people can attend as it suits their schedules. It will include presentations and opportunities to provide input. Committee members were supportive of this and likened it to an Open Studio concept. The idea is to do the work in an open atmosphere and see work in progress instead of behind closed doors.

A Committee member pointed out that residents can be very enthusiastic about this kind of participation but if they see their ideas unrealized, they are not happy.

Pattern Book

A Committee member expressed concern that there were many lots that were mis-zoned and non-conforming by size or other factors. Mr. Freas said most of what is addressed in the Pattern Book is designed to resolve those issues. There are other issues identified in the RFP that were taken from the zoning reform group advisory report as additional issues to address. Ald. Yates suggested adding language such as "Designing districts and ordinance language to respond to the uses documented in the pattern book."

A Committee member pointed out that the City is limited to six zones right now and they don't fit the vast majority of the City. The consultant should bring some common sense to creating zoning districts that actually fit the needs. The overarching difficulty is the City has 13 villages with their differences and a multitude of neighborhoods with different characteristics. There are some instances of the as-built environment that are undesirable, such as rear lots and subdivisions that have turned from all one-story capes to a row of mismatched home sizes and

shapes that don't make sense. The consultant needs to have some free range to look at the built environment to determine what is working and what is not. The Committee member felt the RFP needs to move forward and was not concerned with the content as it gets to the issues that need to be addressed. The rest comes from the collaboration with the consultant. In the end, this ordinance may reduce the need for so many special permits.

Transition Community

Some Committee members felt it should be spelled out in the RFP that Newton is a transition community between urban and suburban and is very unique in that way. There will be issues to consider in light of this. Some areas can tolerate development and other areas cannot and there can be no blanket solutions for the entire City.

Enforcement

Some Committee members was concerned about the Inspectional Services Department capacity to enforce the zoning ordinance and wanted to have built in mechanisms so that Commissioner Lojek's staff doesn't have to be over-burdened. Commissioner Lojek explained that if a special permit is being violated, a stop work order can be imposed. The choices are then to put the property into compliance or go in to amend the special permit. Fines can be difficult to impose because if the building is not complete, it cannot be assumed they have violated the special permit. If they request a Certificate of Occupancy and are in violation then fines can be imposed without ambiguity. People think that ISD can just enforce but residents get lawyers and take the City to court and it's not always a straightforward process. The zoning ordinance will not help any further with enforcement. A Committee member it was worth asking the consultant if they have any ideas or have seen any solutions that could be helpful in this area. Also, it would be helpful to test the ordinance and try to "break" it to look for loopholes and any unintended consequences and fix those as much as possible.

Next Steps

Mr. Freas noted that the consultant will be asked to identify problems, explore a solution set and provide a final draft ordinance. Ald. Johnson noted that the consultant will be working with the Zoning & Planning Committee and the RFP should not limit the scope by being too specific.

The Committee would like the following concepts added to the RFP:

- A reference to Newton's status as a transition community
- An appendix to list the concerns that have been expressed in Committee and addressed in docketed items referred to Phase 2
- References to enforcement
- Highlight that the used based zoning will not be lost
- A footnote as to what "charrette" means

Mr. Freas will make these edits and will submit back to Committee members for further review and then get it out to the consultant as soon as possible. Ald. Johnson will communicate to Mr. Freas when the final input is complete.

The Committee voted to hold this item.

#278-14 ALD. YATES proposing to amend **Chapter 30** of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers. [07/31/14 @ 12:03PM]

ACTION: **HELD 7-0**

NOTE: This item and #222-13 will be discussed jointly. Ald. Hess-Mahan provided draft language and some illustrations to further demonstrate the intent of what is meant by a “two-family” building. It was attached to the agenda. He was reluctant to include any illustrations that demonstrated what was *not* intended as that could lead to loopholes. He would like to require that the two units have a shared wall that extends the entire height of one or both of the swelling units; or are divided horizontally so that one dwelling unit is above the other.

Commissioner Lojek agreed that illustrations are always helpful. He also felt that keeping the definition as simple as possible is best. His suggestion was to not require that the shared wall extend the entire height of the building because the building would end up looking like boxes. Ald. Hess-Mahan felt that it would be necessary in order to avoid the problems that have come up in the past. The illustrations are not meant to be templates and other elements such as porches, ells, etc. could be added but the basic structure should be divided into a two-family by way of these illustrated examples.

Ald. Sangiolo wondered what the definition was that led to the traditional two-families that were built in the City previous to the problematic ones being built now. Ald. Hess-Mahan replied that it was the style of the time and no one was considering these other odd configurations so that’s all that was built. But people are now looking for ways to get around the intent of the ordinance and by following the stated requirements, are able to build two-family buildings that are really two one-family homes attached by a garage. This is the problem he is trying to solve. If this language needs to be adjusted, it could be done in Phase 2, but this can put an interim measure in place.

Ald. Hess-Mahan would like to add the word “dwelling” in front of each instance of the word “unit”. The Committee agreed with this amendment and will move this item on to public hearing on September 16th as well as item #222-13. The Committee voted to hold both items.

#222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30**, Section 30-1 of the City of Newton Zoning Ordinances. [06/07/13 @ 1:31 PM]

ACTION: **HELD 7-0**

NOTE: See note above.

#222-13(2) THE ZONING AND PLANNING COMMITTEE proposing to amend **Chapter 30**, City of Newton Zoning Ordinances, to regulate the dimensions and setbacks of front facing garages in residential zoning districts. [08/03/15 @ 10:15AM]

ACTION: **HELD 7-0**

NOTE: Ald. Hess-Mahan provided several examples of garage zoning requirements from other communities which employ a number of different methods of controlling garage-dominant building. The examples were attached to the agenda. He explained that there are a number of homes that have been built in the City that have a significant portion of the front of the home taken up by the garage. He understands that it gives properties larger backyards when this design is employed but it is problematic and results in large swaths of pavement and multiple cars in the front of the house. The dominant feature of the home becomes the garage and detracts significantly from the streetscape and the feeling of a residential neighborhood.

Some possible solutions could include requiring a setback which is greater than the front of the home, and/or that only a certain percentage of the front façade may be occupied by the garage. There could also be multiple design standards with suggested design elements for garages. There are many examples of good design around the City. It was suggested that perhaps there could be some incentive to produce better design so builders would not need to look for loopholes. Mr. Freas said this may be something to look at in Phase 2 instead of in this interim measure, but agreed it should be explored.

Committee members were supportive of these concepts and agreed they would like to see some predictability and consistency to what would be approved in design. Mr. Freas said he would also try to test various options to find any unintended consequences to avoid loopholes. He will work on a draft for this proposed ordinance. The Committee voted to hold this item.

Meeting adjourned.

Respectfully Submitted,

Marcia T. Johnson, Chairman