

City of Newton, Massachusetts**Department of Planning and Development**

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
MayorBarney S. Heath
Director**MEMORANDUM**

DATE: March 11, 2022

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

RE: **#127-22 Request for amendment to the Zoning Code to regulate “last mile” delivery services**
COUNCILORS LAREDO, DOWNS, CROSSLEY, RYAN, KALIS, DANBERG, KRINTZMAN AND ALBRIGHT
requesting an amendment to the Zoning Code to regulate “last mile” delivery services in the City of Newton.

MEETING: March 14, 2022

CC: City Council
Planning Board
Economic Development Commission
Jonathan Yeo, Chief Operating Officer

Introduction

The idea of regulating “last mile” delivery services (ex. Gopuff, Fridge No More, Getir, and Buyk) was presented to ZAP at their [January 24, 2022 meeting](#). ZAP, and other City Councilor input, guided Planning staff to develop a regulation that allows these types of uses in Newton’s commercial and industrial areas, but with additional standards within the village centers and along commercial corridors that require these uses to have an in-store component and sufficient transparency.

Several Councilors docketed this item following new reports of this new use popping up in greater Boston. Around the same time, the need for a new zoning use arose from an inquiry the City’s Economic Development Director and Inspectional Service Department (ISD) received by a “last mile” business looking to open a in one of Newton’s village centers. Based on our existing Use Regulations (Article 6), ISD determined that this type of business would be categorized as a Retail Sales use (Sec. 6.4.30), which is allowed by-right in Newton’s business zones (BU). Newton’s village centers are primarily zoned BU1 and BU2. As it stands, a “last mile” delivery operator could open in any of our village centers by-right without any requirement that the space be open to the public or have a transparent façade along the street.

Working closely with an advisory group made up of members from the Planning Board, Economic Development Commission (EDC), and the Regional Chamber, City staff are recommending a new zoning

use definition, Microfulfillment Center, for your review (Attachment A). In addition to meeting with this advisory group weekly throughout February, Planning staff have presented to the entire Planning Board, EDC, and the Real Estate/Restaurant sub-committees of the Regional Chamber.

Why Regulate and Not Ban Outright

We don't allow warehouses or distributions in our village centers currently

“Last mile” delivery businesses, or more accurately described as “microfulfillment centers”, as they are most typically built out, physically resemble mini-warehouses or distribution centers. Our existing zoning does not allow warehouses or distribution centers in our village centers or commercial corridors, with some exception by Special Permit. The discrepancy between the typical warehouse model with no in-store option and ISD’s interpretation that these microfulfillment center uses are retail warrants action. Speaking directly with representatives of microfulfillment centers, we understand they have models with an in-store retail component giving it the appearance like a convenience store or bodega. As written, the draft zoning requires this if locating in the Business 1 (BU1) and Business 2 (BU2) zones, which are typically high pedestrian areas in or adjacent to village centers.

E-commerce is here to stay

E-commerce and on-demand delivery services have been impacting traditional brick-and-mortar retail for years now. Over the last year, spurred largely by the pandemic, cities across the United States have seen a rapid rise in the number of “last mile” delivery services both as a primary business and as a supplement to existing businesses. Through proper regulation these businesses can locate in Newton providing a clearly desired service, contribute to the local commercial tax base, and not detract from the active and vibrant village centers we strive for.

Traffic Reduction and Sustainability

While this may seem counterintuitive, allowing these businesses to locate in centrally positioned areas may lead to a reduction in automobile usage. We have learned that most deliveries taking place in Boston, Cambridge, and Brookline are happening via e-bike and scooter. While zoning cannot require the usage of e-bikes and scooters and it is unclear if bike/scooter delivery will be viable in Newton, it does seem certain locations greatly encourage the use and is more efficient for the business.

Staff recognize there are additional considerations when it comes to curbside management and the possibility of congestion caused by delivery trucks, automobiles, or e-bikes/scooters, more frequently coming and going from village centers. Other requirements outside of zoning may be considered, like limiting the size of the delivery trucks or requiring dedicated curbside space for delivery vehicles. In the meantime staff believe the parking requirements will mitigate this by requiring dedicated space(s) for delivery vehicles in addition to the standard parking requirements based on the space size and number of employees.

Viable business option for difficult to lease commercial spaces

It is no secret that opening and maintaining a business in Newton’s village centers is difficult. While this is because of a number of factors, one is associated with the certain space location or configuration. For example, below grade space at Piccadilly Square along Union Street in Newton Centre or the former L’aroma Café in West Newton that is located behind buildings and has no street frontage could be occupied by these businesses with minimal impact. Additionally, historically deep spaces for when retailers needed more back of house space for storing goods, are now typically too large and therefore

too expensive, for smaller/independent businesses that we want to see in village center. Allowing microfulfillment centers in the back of spaces could lead to the demising of these larger spaces leading to smaller, more affordable, space along the street that did not exist before.

Potential Concerns for Locating in Village Centers

To be expected, if and how to allow these uses within village centers is the most contentious issue. Planning staff and the advisory group initially thought there could be some benefits to allowing these uses in village centers as long as other concerns, such as impact on the pedestrian vitality along the street, could be mitigated. Ultimately the advisory group, along with the Planning Board and EDC, felt there were still potential impacts that could not be mitigated through zoning. For example, concerns were raised about the size, number, and frequency of trucks delivering goods to the microfulfillment center and of deliveries from the microfulfillment center to customers. There were also concerns that these uses would have a negative effect on small businesses in village centers. While locating centrally, such as in a village center, may allow for deliveries via e-bike or scooter it is still unclear how feasible that would be in Newton. Existing village center commercial spaces also tend to lack parking and adequate loading space, resulting in trucks idling in the street. However, this condition already exists today and is applicable to many other uses that are allowed as of right in village centers. The question is, do the benefits of allowing microfulfillment centers in village centers outweigh the potential impacts?

While the draft proposal allows them under certain conditions, there are two additional alternatives for ZAP’s consideration based on the advisory group’s input and other meetings. First, if the cons outweigh the pros for allowing these uses in village centers then they can be prohibited from the BU1 and BU2 districts. Second, if the design requirements are not considered strong enough, then they can be removed and the use only allowed if located off the street by a certain distance. Doing this eliminates their ability to locate on the street entirely, but the potential traffic and congestion issues remain.

FAQ

Q: How do the proposed parking requirements compare to that for Retail store or service establishment?

A:

Use	Parking Stalls Required	Additional Standards
Retail store, showroom Service establishment	1 per 300 sf plus 1per 3 employees	
Microfulfillment Center	1 per 750 sf plus 1per 4 employees	2 dedicated spaces for delivery vehicles for the first 2,500 sf and an additional 1 space for every additional 2,500 sf.

Q: Can we require microfulfillment centers use e-bikes or scooters for deliveries?

A: No, not through zoning.

Q: Would other businesses fall under this new use definition? For example, a UPS store, take-out pizza shop, an existing convenience store, or caterer?

A: The Commissioner of ISD is responsible for determining all uses according to Sec. 6.1.A of the Zoning Ordinance. The ISD Commissioner has reviewed the draft definition and has stated, as written, these

other uses would not fall under the definition. An existing convenience store, with the majority of the space dedicated to in-person sales would not be considered a microfulfillment center, even if the convenience store supplements its sales with delivery.

Q: Would “ghost kitchens” fall under this new use definition?

A: Yes, as written, according to the ISD Commissioner. “Ghost kitchens” as a standalone facility are professional food preparation and cooking facilities set up for preparation of delivery-only meals.

Q: Will these businesses negatively impact existing businesses within Newton?

A: Both the Planning Board and EDC expressed concern that these businesses could have a negative impact on existing stores within the village centers. The hypothetical impacts discussed included being able to outbid for retail space similar to what we have seen with banks, contributing to less foot traffic in village centers, and harming the public realm through the increased coming and going of delivery vehicles. However, these have not been proven and we should note that a microfulfillment center has been operating off of Needham Street for nearly two years with little issue.

Q: Are other municipalities in the region exploring zoning updates to regulate this use?

A: Yes, however they are mostly exploring the issue and not moving forward with any zoning amendment at this time. Planning staff have spoken with Boston, Brookline, Watertown and Cambridge. Cambridge believes its retail definition that requires an in-person component will either prevent these businesses at the street entirely or mitigate them through the in-person requirement. Cambridge recently updated its business/commercial uses entirely.

Q: Are there other regulations, within or outside of zoning, that could be considered?

A: Yes. There could be an additional administrative review for stores looking to locate in certain locations. This administrative review could focus on things like design, traffic, and public safety. Outside of zoning other City Ordinances, either existing or newly created, could limit the types and sizes of delivery vehicles or set additional standards for curbside management on-street.

Looking Ahead

While it may be important to create new regulations for last mile delivery services, limiting where they can locate does nothing to help desirable businesses locate and thrive in Newton. Therefore, the advisory group has recommended exploring other targeted zoning amendments that would level the playing field for desirable businesses to locate within Newton immediately following the creation of this new use. Working through our advisory group, we have spoken with property owners, business owners, and real estate brokers who spoke in support of the following changes:

- Eliminate parking requirements for ground-floor non-residential uses under a certain square footage of leasable space
- Revise the Use Table for commercial and industrial uses that:
 - Combines and categorizes uses to ease understanding and enforcement
 - Introduce new uses for the 21st century economy (ex. co-working)
 - Remove or modify specific rules applying to certain uses

Next Steps

Planning staff recommend that following ZAP's review of the draft proposal that a Public Hearing be set for the April 25, 2022 ZAP meeting.

Links

Newton Zoning Map -

<https://www.newtonma.gov/home/showpublisheddocument/27803/637393052403770000>

Attachments

Attachment A - Microfulfillment Centers – draft zoning use definition

Draft Zoning Definition
Microfulfillment Centers

Attachment A (#127-22)

Use Table (Sec. 4.4.1) -

Business, Mixed Use & Manufacturing Districts	B U 1	B U 2	B U 3	B U 4	M U 1	M U 2	M U 3	M U 4	M	L M	Definition / Listed Standards
Microfulfillment Center	L	L	-	-	L	L	-	-	L	L	6.4.XX

Number of Parking Stalls (Sec. 5.1.4) -

Use	Parking Stalls Required	Allowed by Special Permit
Microfulfillment Center	1 per 750 sf plus 1 per 4 employees	

Off-Street Loading Requirements (Sec. 5.1.12) -

Table of Off-street Loading Requirements		
Number of bays required for new or expanded uses by gross floor area of structure of land use (in sf)		
Uses	Under 5,000 sf	5,000 - 50,999 sf
Microfulfillment Center	0	1

Use Definition -

6.4.XX Microfulfillment Center

A. Defined. A facility whose primary use is for the receipt, transfer, short-term storage, dispatching, coordination, preparation, routing of package delivery, and parking of vehicles, associated with the delivery of goods directly to consumers.

B. Standards for Allowed Uses

- 1. Size.** The following size requirements shall be required for Microfulfillment Centers in accordance with the following table.

Zoning District	Maximum Gross Floor Area
Business 1 and 2	5,000 square feet
Mixed Use 1 and 2, Manufacturing and Limited Manufacturing	10,000 square feet

Draft Zoning Definition
Microfulfillment Centers

Attachment A (#127-22)

- 2. **Parking.** In addition to complying with the parking requirements of Sec. 5.1, the operator of a Microfulfillment Center shall provide onsite parking spaces dedicated for deliveries in accordance with the following:
 - a. Microfulfillment Centers shall provide a minimum of two off-street parking stalls for the first 2,500 square feet of gross floor area and an additional one off-street parking stall for every additional 2,500 square feet of gross floor area. Fractions ending in 0.5 or higher shall round up to the nearest whole number.
 - b. Sections 5.1.3.B and 5.1.3.D shall not be applicable to parking spaces required under this section 6.4.XX.B.2.
- 3. **Design Standards.** The following design standards shall be required in the Business 1 and 2 and Mixed Use 1 and 2 Districts when the Microfulfillment Center use is located at street-level, and any gross floor area is located less than 16 feet from the street-facing building facade, and any point of the building containing the use is located less than 30 from a street.
 - a. A minimum percent of the gross floor area of the use shall be devoted to the on-site display of goods for sale, and/or the rendering of on-site personal services, for use or consumption by the immediate purchaser in accordance with the following table.

Zoning District	Minimum Gross Floor Area Retail Component
Business 1 and 2	20%
Mixed Use 1 and 2	15%

- b. **Transparency.** A minimum of 50 percent of the street-facing building facade at ground level shall consist of clear windows that allow views of the indoor space used for the on-site personal services and display of goods.