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Barney S. Heath  
Director

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## MEMORANDUM

**DATE:** April 22, 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  
Cat Kemmet, Planning Associate

**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:** April 25, 2022

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

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### Introduction

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, also known as dark stores or mini-warehouses. These storefronts, not open to the public, are stocked with groceries and other home goods that are marketed as deliverable within 15- to 30-minutes. For more information, see this [recent Boston Globe Article](#).

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, along with size, parking, and design standards (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.

## **Background**

The idea of regulating “last mile” delivery services (ex. Gopuff, Fridge No More, Getir, and Buyk) was originally presented to ZAP at their [January 24, 2022 meeting](#). ZAP, and other City Councilor input, guided Planning staff to develop a new zoning use definition, Microfulfillment Centers, which was introduced to ZAP at their [March 14, 2022 meeting](#). The key issue that arose was whether to allow Microfulfillment Centers in village centers at all. Prior to the pandemic, Newton’s village centers suffered from vacant storefronts due to the difficulty of both attracting and maintaining desirable businesses. A healthy mix of uses within village centers contributes to the convenience and vibrancy we seek within our communities. Instant delivery services provide significant convenience, while providing little to nothing towards vibrancy and community. Following multiple advisory group discussions that included representatives from the Economic Development and Planning Commissions, the Charles River Chamber and a village center property owner, Planning staff presented two revised options to ZAP at their [March 28<sup>th</sup> meeting](#). The two options for village centers included allowing microfulfillment centers as long as they were located away from the street or not allowing the use at all in village centers. At the direction of ZAP, three options for village centers were included in the notice for the public hearing: not allowing the use, allowing the use as long as it met listed standards such as being set back from the street, or requiring a special permit for the use.

## **Proposal**

### Use

The attached draft ordinance includes a new use definition, Microfulfillment Centers, along with parking, loading, size, and design standards. The draft proposes allowing the use according to listed standards in the Business 4, Mixed Use 1, Mixed Use 2, Manufacturing, and Limited Manufacturing zoning districts. For the Business 1 and Business 2 zoning districts, which make up the majority of village centers and adjacent commercial areas, the draft provides three options: not allowed, allowed subject to listed standards, and special permit required.

### Size

The proposed draft limits microfulfillment centers in the BU1 and BU2 zones (if ultimately permitted in these zones) to a maximum size of 5,000 square feet and in all other zones (BU4, MU1, MU2, M, and LM) to a maximum size of 10,000 square feet.

### Parking

The draft ordinance proposes a parking requirement of one stall per 1,000 square feet and one stall per four employees. This parking requirement is consistent with the parking requirements for manufacturing, research, and wholesale business uses. This is one of the lowest parking requirements for a use and is appropriate for a use that will not be open to the public, such as retail or restaurant. This parking requirement would be applied if a new space is created, however it is most likely that a microfulfillment center would move into an existing commercial space, in which case a credit is applied

for the previous use and additional parking stalls are only required if the new parking requirement is higher than the previous use. Off-street loading bay requirements in Section 5.1.12 are consistent with similar uses and would require one loading bay for microfulfillment centers with more than 5,000 square feet of gross floor area. Parking and loading requirements from Section 5.1 of the Zoning Ordinance can also be waived by special permit.

While microfulfillment centers will not require parking for the public, they are expected to have unique needs regarding deliveries. Microfulfillment centers will have regular deliveries of goods to the site as well as frequent trips for drivers who are delivering orders to customers. While some delivery trips may be on electric bicycle or scooter, it is likely that most trips will be vehicular trips. The advisory group felt that it was important that microfulfillment centers provide adequate parking dedicated to deliveries, particularly if they are located in village centers where the standard parking requirement may not apply due to parking credits from the prior use. There was concern that deliveries for these uses could block streets if adequate parking was not provided on site. For these reasons, the draft ordinance contains delivery parking standards in Section 6.4, which are not subject to the parking credit calculation or ability to waive by special permit in Section 5. The parking standard requires a minimum of two off-street parking stalls dedicated for deliveries for the first 2,500 square feet of gross floor area and an additional one stall for every additional 2,500 square feet of gross floor area.

At the last ZAP meeting there were concerns raised that the parking requirements may be too high. The standard parking requirement is consistent with similar uses. Planning staff recommend a comprehensive review of all parking requirements so as not to give an advantage to one particular use when it has been frequently conveyed that parking requirements are preventing more vibrant uses from easily locating, particularly in village centers.

#### Design Standards

In addition to ensuring deliveries are not disruptive to surrounding neighborhoods and businesses, the primary concern with where microfulfillment centers locate is their impact on the pedestrian environment and vitality of the street. Since these uses are not open to the public they may appear as dark or blank facades along the street. To mitigate this the proposed draft includes design standards for microfulfillment centers in the Business 1, 2, 4, and Mixed Use 1 and 2 districts. The design standards require the use to be located more than 16 feet from the street-facing building façade or that any point of the building containing the use be located at least 30 feet from a street. Allowing the use in business zones, but set back from the street could allow for these uses to fill retail space that is otherwise difficult to lease.

#### **Recommendation**

Planning staff recommend the City Council adopt the proposed draft ordinance, including the option to allow microfulfillment centers in Business 1 and 2 districts subject to listed standards. The standards will mitigate the potential impacts of the use in village centers while allowing for the use in central locations, which could encourage delivery by electric bicycle or scooter. In reality the number of viable locations that can meet all of the listed standards will likely be limited, however it could be an attractive option for deep commercial spaces where another retailer only needs the front portion or for commercial spaces set far back from the street which may be difficult to lease. Additionally, when the zoning is updated for village centers the use table will also need to be updated, providing another opportunity to revisit this use.

## Looking Ahead

While it is important to create new regulations for microfulfillment uses, restricting the use too broadly may result in harming both Newton consumers and commercial economic development vibrancy overall. . 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 21<sup>st</sup> century economy (ex. co-working)
  - Remove or modify specific rules applying to certain uses

## Links

Newton Zoning Map -

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

## Attachments

Attachment A - Microfulfillment Centers Draft Ordinance April 25, 2022

Use Table (Sec. 4.4.1) -

Business, Mixed Use & Manufacturing Districts	BU1	BU2	B U 3	B U 4	M U 1	M U 2	M U 3	M U 4	M	L M	Definition / Listed Standards
<b>Microfulfillment Center</b>	-- or L or SP*	-- or L or SP*	–	L	L	L	–	–	L	L	6.4.XX

P = Allowed By-Right    L = Allowed Subject to Listed Standards    SP = Special Permit by City Council Required    -- Not Allowed

Number of Parking Stalls (Sec. 5.1.4)

Use	Parking Stalls Required	Allowed by Special Permit
<b>Microfulfillment Center</b>	1 per 1000 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	51,000 – 100,999 sf	101,000 – 150,999 sf	151,000 – 300,000 sf	Over 300,000 sf
Retail Trade, Wholesale and Storage, Transportation Terminal, Manufacturing, and Public Utility	0	1	2	3	4	1 for each additional 150,000 sf
Business Services, Office Building, Hotel, Motel & Dormitory, <b>Microfulfillment Center</b> , and Research Laboratory	0	1	1	2	3	1 for each additional 150,000 sf
Recreation, and Institution	0	0	1	1	2	1 for each additional 150,000 sf

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.

\* The City Council will consider allowing Microfulfillment Centers in the BU1 and BU2 zoning districts subject to listed standards, by Special Permit, or not allowed.

**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
Business 4, Mixed Use 1 and 2, Manufacturing and Limited Manufacturing	10,000 square feet

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.** In the Business 1\*,2\* and 4 and Mixed Use 1 and 2 Districts, if the Microfulfillment Center use is located at street-level, the use shall be:
  - a. Located more than 16 feet from the street-facing building facade; or
  - b. Any point of the building containing the use is located at least 30 feet from a street.

\* The City Council will consider allowing Microfulfillment Centers in the BU1 and BU2 zoning districts subject to listed standards, by Special Permit, or not allowed.



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**DATE:** April 22, 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  
Nevena Pilipovic-Wengler, Community Engagement Planner  
Cat Kemmett, Planning Associate

**RE:** **#38-22 Discussion and review relative to the draft Zoning Ordinance regarding village centers**  
ZONING & PLANNING COMMITTEE requesting review, discussion and possible ordinance amendments relative to Chapter 30 zoning ordinances pertaining to Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

**MEETING:** April 25, 2022

**CC:** City Council  
Planning Board  
Jonathan Yeo, Chief Operating Officer

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### Introduction

At the [February 28, 2022 ZAP meeting](#), Planning Staff, Utile, and Landwise introduced and kicked-off the phase 2 Zoning Redesign: Village Center work. Phase 2 will translate the community takeaways from phase 1 in 2021 into tangible design scenarios for village centers. These scenarios will be tested against their alignment with the community visions, financial feasibility, and zoning process. Working with ZAP and the broader community, the goal will be to come up with a set of recommended scenarios that will lead to a concrete set of zoning regulations and standards calibrated to Newton's village centers of different scales.

After analyzing typical development sites in a "large" village center under the existing zoning ([see 2/28/22 presentation](#)), Utile returned to ZAP on March 28, 2022 with similar analysis (urban form and financial feasibility) on the same development sites using alternative zoning standards ([see 3/28/22 presentation](#)). At the March 28, 2022, meeting Utile and Landwise presented a proposal for a tiered framework for village centers, which would use a center, periphery, and edge model for larger village centers. The three tiers were based on the existing Mixed Use 4 (MU4), Business 3 (BU3), and Business 2

(BU2) zoning districts. At the April 25, 2022 ZAP meeting, Utile and Landwise will present further refinements to the proposed districts.

## I. **Key Takeaways from February 28 and March 28 ZAP Discussions**

### Existing Village Center Zoning Can Not Achieve Outcomes Desired

In nearly every development scenario, under the existing zoning regulations for Business 1 and Business 2 construction by-right and by Special Permit, the three parcels analyzed resulted in financially infeasible projects and less than desirable urban forms. Below are the key constraints within Newton's current zoning, which were used as a basis to identify proposed amendments.

#### *Physical Constraints Under Current Zoning*

- Parking requirements are the biggest limitation on building size.
  - Parcels that could provide more and smaller housing units are prohibited from doing so because the site cannot accommodate the required parking.
- The number of units is also restricted by the lot area per unit requirement. The building size permitted by other dimensional controls (floor area, height, setbacks, etc.) often allows for more units than what is permitted by the lot area per unit. This leads to projects with fewer units that are typically larger and more expensive.
- Maximum allowable building heights often do not allow for market-minimum floor-to-floor heights within the allowable number of stories. The existing zoning assumes 12 feet floor to floor for each story. Market-standards are:
  - Ground floor retail = 15 ft
  - Office space = 12.5 ft
  - Residential = 10.5 ft
- Setbacks requirements have a greater impact on smaller parcels. Parcels in village centers are relatively small (many are less than 10,000 sf).

#### *Financial Constraints Under Current Zoning*

- Residential
  - Generally, projects with an FAR of less than 1.0 are not financially feasible.
  - Typically, on smaller sites, such as those common in village centers, parking needs to be located below-grade to accommodate the building and provide the required number of stalls. Below grade parking costs between \$50,000 and \$100,000 per space.
- Office
  - Generally, projects with an FAR of less than 1.0 are not financially feasible.
  - Feasible projects need to minimize, or waive, overly burdensome parking ratios.

## II. Even Adapting Existing MU-4, BU-3 and BU-2 Zoning Fails

With input from ZAP, the project team analyzed the same parcels, to see what would be allowed if they were rezoned to MU4, BU3, and BU2 depending on their location, under both by-right and special



permit conditions. While this proved to be more viable than the existing zoning, they still found that desirable development was limited by the parking requirements, floor to floor heights, lot area per unit, and setback/stepback requirements. By-right development was also limited by the maximum floor area of 20,000 square feet. In addition, the project team found that in some cases financially feasible projects resulted in a less than desirable form, such as a small building with large surface parking.

### **III. Looking Ahead to April 25 ZAP Presentation**

The project team has further refined the proposal to address some of the elements of the revised MU4, BU3, and BU2 zones which proved infeasible or undesirable, including:

- Requiring a half story (through either a pitched roof or stepback) for the top floor when building to the maximum number of stories.
- Increasing the overall height is increased to allow industry standard commercial and residential floor to floor heights.
- Removing lot area per unit minimums.
- Eliminating parking minimums for ground floor commercial and reducing parking minimums for all other uses.
- Limiting the maximum building footprints in lieu of the maximum by-right gross floor area.
- Reducing the threshold for a Special Permit from sites greater than one-acre to three-quarters of an acre.
- Introducing a minimum frontage buildout to ensure the building is located at the front of the parcel and parking is either located to the rear or underground.

The project team believes these changes allow for both feasible and desirable development that aligns with what many community members want to see, based on our engagement.

- The requirement for a pitched roof or setback upper story reduces the mass and appearance of building heights. Increasing the overall building height however allows for commercial and residential floor to floor heights that meet industry standards.
- Removing the lot area per unit allows for the creation of smaller units within the same size building envelope.
- Eliminating parking requirements for ground floor commercial and reducing other commercial and residential parking minimums is consistent with special permits that are frequently granted for these uses. Reducing mandatory parking requirements allows for more financially feasible development, compelling alternative transportation usage, and importantly removes the need for parking waivers for small businesses locating in retail spaces where off-site parking has never existed.
- Controlling building footprint will encourage breaking larger buildings into multiple smaller buildings.
- Setting a special permit threshold based on the size of the development parcel may facilitate smaller infill development and missing middle housing. The allowance for more by-right housing

in our large Village Center zones is an important consideration with respect to achieving compliance with the State's MBTA communities requirement.

Lastly, the project team recommends that site plan review be incorporated into by-right developments and that design guidelines be developed to further ensure new development is consistent with the vision for vibrant village centers. The project team has started reviewing design guidelines in other communities, such as those utilized in Watertown.

### **Next Steps**

With the input gathered at the April 25 ZAP meeting, the project team will make any necessary further refinements to the proposed zoning regulations. The project team will also start to test the periphery and edge zoning districts (revised BU3 and BU2) on medium and small village centers. Once ZAP has reached a level of comfort with the basic regulations of the zoning districts, Planning staff will conduct community outreach while simultaneously working on the proposed mapping and technical writing of the ordinance. Planning staff have created a community engagement network made up of volunteers representing a broad range of community groups (both formal and informal). Each network member has agreed to participate in a number of meetings over the coming months to help provide feedback on the clarity of outreach materials and to then distribute the materials to their organizations/friends/neighbors/etc. The network members will not be providing direct feedback on the policy proposals but will help the Planning department ensure materials created are accessible to the public and will help convey information to a broad spectrum of constituents.