



Zoning & Planning Committee **Agenda**

City of Newton **In City Council**

Monday, February 28, 2022

6:30 PM NOTE EARLY START TIME

The Zoning and Planning Committee will hold this meeting as a virtual meeting on Monday, February 28, 2022 at 6:30 PM. To view this meeting using Zoom, use this link: <https://us02web.zoom.us/j/88558403887> or call 1-646-558-8656 and use the following Meeting ID: **885 5840 3887**

Items Scheduled for Discussion:

6:30 PM Public Hearing

#113-22 Request for Amendment to Zoning Ordinance to allow restaurants for nine months to add outdoor seating

HER HONOR THE MAYOR requesting to amend the Zoning Ordinance to insert a new Section 5.1.14 to allow restaurants for nine months to add outdoor seating on their private property regardless of the impact on any applicable parking and seating requirements from April 1, 2022 until January 1, 2023.

Zoning & Planning Held 8-0 on 01/24/22; Public Hearing set for 02/28/22

7:00 PM Public Hearing

#42-22 Citizens petition to amend the village center district

ATTORNEY PETER HARRINGTON ET AL., submitting a 60-signature citizen to strike Chapter 30, Section 4.1 Business Districts, in its entirety and insert, in place thereof, the following 4.1. Village Center District; 4.1.1. District Intent and 4.1.2. Dimensional Standards.

Zoning & Planning Held 8-0 on 01/10/22; Public Hearing set for 02/28/22

#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

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

Respectfully Submitted,

Deborah J. Crossley, Chair



#113-22

City of Newton, Massachusetts
Office of the Mayor

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Fax
(617) 796-1113
TDD/TTY
(617) 796-1089
Email

Ruthanne Fuller
Mayor

rfuller@newtonma.gov

January 12, 2022

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

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2022 JAN 12 PM 3:09
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NEWTON, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting an amendment to the Zoning Ordinances to insert a new Section 5.1.14 (below) to allow restaurants for nine months to add outdoor seating on their private property regardless of the impact on any applicable parking and seating capacity requirements from April 1, 2022 until January 1, 2023.

Four restaurants were able to operate in their private parking lots as part of the Governor's COVID-19 emergency provisions which expires on April 1, 2022. This docket item would provide those restaurants with temporary relief for this dining season and give them an opportunity to address any zoning or special permit conditions so they could do so permanently.

Proposed language:

“From April 1, 2022 until January 1, 2023, all restaurants shall be allowed to add outdoor seating on their private property regardless of the impact on any applicable parking and seating capacity requirements set forth elsewhere in the zoning ordinance or any applicable special permit. All such seating shall be approved by the Director of Inspectional Services and Director of Planning to ensure the proposed seating will operate appropriately and safely and all applicable licensing requirements shall still apply.”

Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

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(617) 796-1120
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Barney S. Heath
Director

MEMORANDUM

DATE: February 24, 2022

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

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Devra Bailin, Director of Economic Development

RE: **#113-22 Request for Amendment to Zoning Ordinance to allow restaurants for nine months to add outdoor seating**
HER HONOR THE MAYOR requesting to amend the Zoning Ordinance to insert a new Section 5.1.14 to allow restaurants for nine months to add outdoor seating on their private property regardless of the impact on any applicable parking and seating requirements from April 1, 2022 until January 1, 2023.

MEETING DATE: February 28, 2022

CC: City Council
Planning & Development Board
Jonathan Yeo, Chief Operating Officer
Jonah Temple, Assistant City Solicitor
Andrew Lee, Assistant City Solicitor

Introduction

In the spring of 2020, Governor Baker issued an Emergency Order, which provided Massachusetts communities with the flexibility and authority to permit licensing of restaurants to serve customers and have seating in outdoor spaces on adjacent privately owned space, often affiliated parking lots, and temporarily removed as part of the Emergency Order any conflicts with current zoning and/or special permit conditions. The Emergency Order permitting this activity is set to expire on April 1 of

this year. Cognizant of the urgency, the Zoning & Planning Committee voted on January 24th, to set this docket item down for public hearing on February 28th.

Last year in Newton, there were four restaurants that provided outdoor dining service in their adjacent parking areas. All of the restaurants contacted by Economic Development Director, Devra Bailin, relayed that the income derived from this additional and often customer preferred seating helped to offset indoor dining losses. As to any reported noise impacts from using outdoor space, Inspectional Services, did not receive any complaints with respect to any of these seating areas.

Proposed Temporary Extension Sought

The proposed zoning amendment would seek to temporarily extend the current outdoor private property dining exemption from existing current zoning and special permit requirements for the upcoming April 1 to December 31, 2022 dining season. This extension would permit restaurants to continue to offer outdoor dining to their customers dining during this upcoming uncertain period for diners. A draft zoning amendment to enable this continuance is shown below. Even with this extension, restaurants seeking to use adjacent properties would still need to obtain local and state licensing approvals and abide by their conditions.

Proposed Zoning Amendment

Insert a new Sec. 5.1.3.G:

From April 1, 2022 until and including January 1, 2023, a restaurant shall be allowed to place outdoor seating on its off-street parking stalls without any impact on any applicable parking and seating capacity requirements set forth elsewhere in this Chapter 30 or any applicable special permit. All such seating shall require prior approval from the Director of Inspectional Services and Director of Planning to ensure the proposed seating will operate appropriately and safely, and all applicable licensing requirements shall still apply.



Ruthanne Fuller
Mayor

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

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Barney S. Heath
Director

MEMORANDUM

DATE: February 25, 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

RE: **#42-22 Citizens petition to amend the village center district**
ATTORNEY PETER HARRINGTON ET AL., submitting a 60-signature citizen to strike Chapter 30, Section 4.1 Business Districts, in its entirety and insert, in place thereof, the following 4.1. Village Center District; 4.1.1. District Intent and 4.1.2. Dimensional Standards.

MEETING: February 28, 2022

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

Introduction

Planning staff have analyzed the citizen's proposal (Attachment A) to create a new village center zoning district. Generally, Planning staff understanding of the proposal is to allow for greater density in village centers by-right in order to obtain more affordable housing and seek compliance with the recent MBTA communities State requirements. At a high level, the proposal objectives align with the community visions gathered during the first phase of our ongoing Zoning Redesign: Village Center work, specifically making it easier to build housing in village centers.

In advance of the February 28, 2022 public hearing at ZAP, Planning staff sent clarifying questions and comments (see below) and met directly with the petitioner. This memo is meant to summarize our understanding of the proposal. In addition, staff have concerns moving forward with the adoption of this proposal, or any other proposal, before being properly vetted by the broader community and undergoing economic analysis to prove feasibility. As part of the Zoning Redesign: Village Centers work Planning staff will be working with consultants Utile and Landwise to analyze potential zoning scenarios for consistency with the community engagement results from 2021 as well as financial feasibility. Staff can incorporate ideas from the citizens petition as part of this analysis.

Proposal Overview (staff review)

The following questions and comments were shared with the petitioner on February 15, 2022. Planning staff received a response from the petitioner on February 16, 2022 (Attachment B).

Can you please confirm that our understanding of the proposal's height and bulk allowance aligns with your intent?

- Non-residential buildings are limited to 2.0 floors
- Residential buildings, with multi-family units and certain affordability requirements, allow the following number of floors below by-right:
 - 3.0 floors with a flat roof
 - 3.5 floors with a pitched roof
- There is no Special Permit allowance for greater height or bulk

Proposal Outreach

We understand you presented this to Newtonville Area Council. Are there any additional organizations or groups of community members you presented this to, in addition to obtaining the required 60 signatures? How was the proposal received by these different community groups? If at all, did you revise the proposal to incorporate their feedback?

Compliance with the MBTA Communities Multi-Family Requirements

Since creating your proposal, the State has released additional draft guidelines on how MBTA communities can comply with the multi-family zoning district requirements. Has your proposal been analyzed to determine if it meets these requirements (i.e district size, density, and unit capacity)? If not, would you support the necessary revisions to bring your proposal into compliance with the State requirements?

Technical Comments and Questions***Introduction***

The first sentence of the proposal states, "Strike Chapter 30, Section 4.1. Business Districts, in its entirety and insert, in place thereof, the following." Section 4.1 of the current zoning contains the requirements for all Business Districts, BU1-BU5. Section E. District Designation of your proposal states, "Unless otherwise designated in Section 1.3.2 of this chapter, this zoning District shall apply to all areas previously zoned Business 1." Is it the intent to eliminate all other Business Districts, BU2-BU5?

Sec. 4.1.2.A.i and ii – Pitched Roof Allowance and Story Height

The proposal appears to limit flat roofed buildings to two stories unless residential uses are included, at which point it may be three stories. There appears to be no limit to the number of stories for a building with a pitched roof as written.

There are no standards set for how tall each story can be or overall building height in feet. Is this intentional?

Sec. 4.1.2.A.ii – Affordability

Will the Inclusionary Zoning Ordinance not apply to the proposed district? The requirements differ from Sec. 5.11 of the current ordinance. Is the 10% residential requirement, limited to those earning below 50% AMI, applied only to the residential square footage of the building or to the entire building square footage?

Sec. 4.1.2.A.iii – Usable Space

What is “usable space?” Please define.

Sec. 4.1.2.A.iii – Dormer Allowance

Section 1.5.4.G of the current ordinance allows for certain sized dormers as a proportion of the overall building façade. Your proposal sets absolute requirements that have no relationship to the overall size and scale of the building. What is the intent behind this?

Sec. 4.1.2.B.i – Building Coverage

Requires building coverage to not exceed 85% - what is the intent for the remaining 15%? What is building coverage? Please define. For reference, current Business districts currently have no max lot coverage requirement.

Sec. 4.1.2.B.ii – Front Setback

Requires a minimum front setback of 5 feet. What is the intent behind this?

The averaging provision for the front setback will still apply as per section 1.5.3.B unless otherwise provided.

Sec. 4.1.2.B.iii – Setbacks Adjacent to Residential Districts

Requires a minimum setback distance of 50 feet from any “single-family or two-family zoning district.” Please define which zoning districts apply - Newton does have the SR1, SR2 and SR3 districts, but does not have any “two-family zoning districts.”

A 50-foot required setback distance will render many lots completely unbuildable. Is this the intent? Has an analysis been done to determine the number of lots that would be unbuildable?

Sec. 4.1.2.C.1 – Use Standards

Proposed uses are limited to “Commercial retail, office, hospitality or other commercial uses not assigned to another use district under this chapter.” If a use is not allowed in another district does that mean it would be allowed in this Village Center district? Please clarify and define allowable uses. (does not appear to include such uses as personal service, banks, funeral home, health club, parking facilities, hospitals, vehicle repair and sales, etc.)

Sec. 4.1.2.D – Special Permits and Site Plan Review

Special Permits are currently required for any development over 20,000 square feet. Is the increase to 30,000 square feet in the village center district only, or across all other districts as well?

Requires a special permit to allow mechanicals and HVAC on a roof. What is the intent of this? Is it not preferable to locate mechanicals on the roof then say in front of the building?

Site Plan Review is required for any project requiring a Special Permit. The current ordinance requires Site Plan Review for any project between 10,000 to 19,999 square feet. Is the intent to remove that requirement for village center district projects?

Other Dimensional Standards and Requirements

No dimensional standards are provided other than height, front setback and lot coverage - what about side and rear setbacks? Lot area per unit? Lot area? FAR? Building height?

The proposal should evaluate how other requirements would be treated, e.g., parking, 5th special permit criterion and sustainable design, and I&I. Also, we or the Council may want to codify special permit conditions such as CMP, pest, vibration, bicycle parking, unbundling parking and rent, etc.

Next Steps

At this time, Planning staff recommended that the ZAP Committee vote no action necessary (NAN) on this item. The questions and comments above make it clear that this proposal is not ready for adoption. However, this proposal will be incorporated into the ongoing Zoning Redesign: Village Center work and Planning staff hope petitioner, and all petition signers, remain involved as this effort gets underway.

Attachments

Attachment A Citizens petition to amend the village center district

Attachment B Petitioner response (February 16, 2022)

VILLAGE CENTER DISTRICT AMENDMENT - 2021

Strike Chapter 30, Section 4.1. Business Districts, in its entirety and insert, in place thereof, the following. (1)

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NEWTON, MA. 02459

floor immediately below. Such area shall not be restricted by the conditions of §4.1.2. A. ii. (3) Dormers, as defined in Section 1.5.4.G., may not exceed ten (10) feet in width and separation between dormers shall be not less than 15 feet. No Special Permit or variance may allow for greater size, capacity, or use.

4.1. VILLAGE CENTER DISTRICT

4.1.1. DISTRICT INTENT

To create a zoning district for Newton Village Centers that maintains a “village scale” and answers the demands created by the recent amendment to MGL Chapter 40A, Section 3 to allow multi-family housing or mixed-use development as of right or by special permit in “eligible locations”. (2)

4.1.2. DIMENSIONAL STANDARDS

A. Building Height. Building height is limited to two stories unless otherwise provided.

- i. A flat roofed building with allowed uses set forth in §C. i and C. ii below, shall be limited to two stories.
- ii. A three story, flat roofed building is allowed, provided that not less than forty (40%) per cent of the floor area of said building is for multi-family residential use and further provided that ten (10%) percent of the floor area of said residential use is for units that are deed restricted for occupancy or ownership by occupants with limited assets earning less than fifty (50%) of the Greater Boston Area Median Income. Said restriction is to be in a form approved by the City of Newton Law Department. (3)
- iii. A pitched roof on any building may contain usable space under the roof, provided such usable space does not exceed 60% of the floor area of the

B. Other Dimensional Use Standards.

- i. Building coverage shall not exceed 85% of the lot area.
- ii No building shall be set back less than five (5) feet from a property line adjacent to a public way or private way to which the public has a right of access, excluding foot and bicycle easements.
- iii No building shall be set back less than 50 feet from an adjoining single family or two family zoning District.
- iv Existing non-conforming structures may be torn down and replaced. Any increase in floor space shall be vertical and shall not extend beyond the pre-existing, nonconforming building footprint.
- v. Party Walls are permitted.

C. Use Standards

- i. Commercial retail, office, hospitality, or other commercial use not assigned to another use district under this chapter.
- ii. Residential use above the first floor (including multi-family use).
- iii. All buildings, structures, and additions located on a lot in single and separate ownership, may be available for use in common or in connection with contiguous or adjacent lots without the requirement of a Special Permit.

VILLAGE CENTER DISTRICT AMENDMENT - 2021

- iv. Development of a building on a separately owned lot shall be considered a separate project and shall not require a Special Permit even though connected by party walls.
- v. **Any building construction in excess of two stories shall be subject to the provisions on section 7.4 of this chapter (Site Plan Approval).**

D. A Special Permit is required for:

- i. Any development in the Village Center districts of 30,000 square feet or more of gross floor area.
- ii. Use of the roof for the installation and/or storage of mechanical systems, including HVAC equipment.
- iii. A Site Plan Review is required in connection with a Special Permit.

E. District Designation.

Unless otherwise designated in Section 1.3.2 of this chapter, this Zoning District shall apply to all areas previously zoned Business 1.

Amendment to Section 3 of Chapter 40A, the State Zoning Law.

Section 3 A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative . . . ; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A."

FOOTNOTES

¹ *Newton has five Business use districts and four Mixed Use districts. During Zoning Redesign, these districts should be consolidated to conform to the form-based standards being adopted. This is a proposal to amend areas now zoned Business 1, most significantly by allowing residential use as of right rather than by a Special Permit and limiting height of buildings.*

² *From Eastport, Maine to Kansas, to the Pacific coastal towns; from Ireland to Italy, a village center is immediately recognizable by the predominance of two and three story buildings, its mix of commercial uses, residential uses and local businesses to serve the village residents.*

³ *Assume a lot in a Village Center District contains 10,000 square feet of land. 85% lot coverage times two floors (above the first floor) equals 17,000 square feet plus 5,100 square feet under the sloped roof (60% of 8,500 square feet third floor) equals 22,100 square feet for residential use. 1,700 square feet of space is for low income housing.*

Residential unit size will have to be adjusted to allow for exterior and unit perimeter walls, hallways and stairways.

This formula falls within the form based concept of zoning. It provides an option for developers and land owners to expand building space and to provide housing for an economically disadvantaged portion of the population.

It also qualifies to meet the goals of providing such housing without the necessity of obtaining a special permit, as set out in MGL c.40A, §3, as amended by Chapter 358 of the Acts of 2021.

We, the undersigned voters of the City of Newton, hereby by petition the Newton City Council to hold a public hearing and act upon the attached amendment to the Newton Zoning Ordinance, titled "Village Center District Amendment - 2021", in accordance with Section 10-2 of the Newton City Charter, that says, in part, "The city council . . . shall hold a public hearing and act with respect to every petition which is addressed to it, which is signed by at least 50 voters, and which seeks the passage of a measure." The amendment is intended to limit building height and preserve the unique character of our villages.

Signature

Print Name & Address

Ward

✓ Peter Harrington	157 Lowell Ave	2/1
✓ Colleen Minaker	Colleen Minaker 32 Bemis St.	2/1
✓ Mr THOMAS TUCKER	157 Lowell Ave	2/1
Maura Harrington	Maura Harrington 157 Lowell Ave	2-1
✓ James B Hollands	30 Brooks Ave	2-1

We, the undersigned voters of the City of Newton, hereby by petition the Newton City Council to hold a public hearing and act upon the attached amendment to the Newton Zoning Ordinance, titled "Village Center District Amendment - 2021", in accordance with Section 10-2 of the Newton City Charter, that says, in part, "The city council . . . shall hold a public hearing and act with respect to every petition which is addressed to it, which is signed by at least 50 voters, and which seeks the passage of a measure." The amendment is intended to limit building height and preserve the unique character of our villages.

Signature	Print Name & Address	Ward
	Carol O'Grady 920 CENTRE ST	6
	Jon Clarys 23 Buswell rd 02458	
	CARA STEFFY 43 HIGHLAND AVE #3 NEWTONVILLE	
	Robert Williams 47 Washington Park Newbury	
	JAMES WOOD 47 WASHINGTON PARK 02460	2
	Lorraine Sanik 411 Newtonville Ave	
	Jonathan Fischer 411 Newtonville Ave	
	Jenny Chen 79 Walnut St.	
	Diana Reoupy 90 Highland St.	
	Fran Mancini 38 Carleton St	
	JAY Goldman 41 Vineyard Rd	
	Emma Barson 40 Bolton	
	Darius Eslamii 40 Bolton	
	Nicole Babich 110 Madison AVE Newbury MA	
	Kyle Zinchuk 110 Madison Ave Newbury MA	

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Signature	Print Name & Address	Ward
	Mark Rubel 51 Brooks Ave	2-1
	Helen K. Rubel 51 Brooks Ave	2-1
	Daniel Harris 17 Maerdeen	
	Doug Marand 12 Marion St	
	Lynne Marand " "	
	Robert DeSantis 46 Parsons	3
	Hilary Bialk 16 Creole Dr.	
	Liana Amichangco 15 Ohio Ave	
 (CITIZEN)	JEFFREY SITTEN, 120 CENTER ST	3
	William Swartz 113 Edinburgh St	
	Jacob Weidberg 145 Langley Rd	
	TOM DIGOSTINO 359 CABOT ST	
	Susan Poole 71 Fresenden St	2
	Christine Bradh 701 Washington	

Petition to the Newton City Council to consider a
compromise amendment to the Zoning Ordinance for Newton Villages

We, the undersigned Newton Voters request the Newton City Council consider and approve the attached proposal for amendment to the Newton Zoning Ordinance.

Name	Address
✓ ¹ G. G. G. G.	61 Waban Park
✓ ¹ Anne Reenstierna	90 Waban Park
✓ ² Eric Reenstierna	" " "
✓ ³ Barbara J. Dittusson	93 Waban Park
✓ ⁴ W. A. D. D.	93 WABAN PARK
✓ ⁵ Bernard J. G. G. G.	116 Jewett St
✓ ⁶ J. M. G. G.	116 Jewett St
✓ ⁷ M. I. G. G.	38 WABAN ST
✓ ⁸ Jennifer Furse	110 Jewett St.
✓ ⁹ Wendy P. P.	38 WABAN ST.
✓ ¹⁰ John G. G.	110 Jewett St.
✓ ¹¹ Kevin R. R. R.	92 HAWTHORN ST.
✓ ¹² Thomas K. K.	141 Jewett St #2
✓ ¹³ Arthur-LeBasseur	98 Jewett Street
✓ ¹⁴ JOE CROWLEY	129 WABAN ST
(15) ✓ ¹⁵ Quatha Adams	227 Jackson Rd, Newton MA 02458

**Petition to the Newton City Council to consider a
compromise amendment to the Zoning Ordinance for Newton Villages**

We, the undersigned Newton Voters request the Newton City Council consider and approve the attached proposal for amendment to the Newton Zoning Ordinance.

Name

Address

- | Name | Address |
|------------------------------|-----------------------------|
| ✓ ¹ Julie Lavelly | 35 Waban St Newton 02458 |
| ✓ ² EUGENE LAUREL | 35 WABAN ST NEWTON MA 02458 |
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(8)

PRESS RELEASE

Contact: **(#42-22) - Attachment A**
Peter F. Harrington
617-969-2050
pfh@aol.com

September 30, 2021

A zoning amendment to protect Newton village centers from over development has been filed with the City Council by Peter F. Harrington, a West Newton Attorney familiar with zoning law.

“This proposal is intended to protect the visual character of our villages, encourage reasonable village redevelopment and meets new state requirements for multi-family residences,” according to Mr. Harrington.

Innovations included in the amendment include elimination of special permits, a strict limit on building height and a bonus allowance for sloped roofs. The two story threshold height limit in village centers remains the same. A third floor is allowed, as of right, if it is used for multi-family housing. Under the present law a third floor requires a special permit. If a sloped roof is added the owner can use the interior attic space.

Harrington, a former Vice President of the Newton Board of Aldermen and a former Newton State Representative said, “We need to address the new State requirements while the City Council is rewriting our zoning ordinance. They are discussing Village Center zoning. This proposed zoning law meets the State’s new requirements and we can take advantage of the Council calendar meet our obligations.”

Some of the objectives of this proposal are to eliminate uncertainty of development in our villages for both neighbors and builders, speed up the time between conception and production, allow flexibility in unit design, provide an opportunity to build new naturally affordable housing, and preserve the New England Village character of our community

Over 65 Newton voters have signed a petition asking the City Council to hold a public hearing on Harrington’s proposed zoning amendment. Under Section 10 of the City Charter a public hearing is required if 50 or more citizens request it.

In January 2021 Governor Baker signed an amendment to Section 3 of Chapter 40A, the State Zoning Law.

Section 3 A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative. . . ; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.”

end

From: Peter F. Harrington

To: Barney Heath, Director of Planning & Development
Jennifer Caira, Deputy Director of Planning & Development
Zachery LeMel, Chief of Long Range Planning
Nevena Pilipovic-Wengler, Community Engagement Planner

Date: February 16, 2022

Subject: #42-22 Citizens petition to amend the village center district

Proposal Overview

Can you please confirm that our understanding of the proposal's height and bulk allowance aligns with your intent?

- Non-residential buildings are limited to 2.0 floors

Response: Yes. It is my understanding that this is the current limitation in our village centers. From my investigation, it appears that most residents are satisfied with this limitation.

- Residential buildings, with multi-family units and certain affordability requirements, allow the following number of floors below by-right:

- o 3.0 floors with a flat roof
- o 3.5 floors with a pitched roof

Response: Yes

- There is no Special Permit allowance for greater height or bulk

Response: Yes. However, I have been working with other land use attorneys and Attorney Schlesinger will recommend a 4th floor by Special Permit and I think we will agree that there should be some limitation on the size of the building without requiring a special permit. I understand that 20,000 square feet is the current limitation.

Proposal Outreach

We understand you presented this to Newtonville Area Council. Are there any additional organizations or groups of community members you presented this to, in addition to obtaining the required 60 signatures? How was the proposal received by these different community groups? If at all, did you revise the proposal to incorporate their feedback?

Response: While I have spoken to many about this proposal it has been in the nature of an explanation and I have received little to no feedback. The exception has been a series of discussions with Attorneys Morris and Schlesinger.

Compliance with the MBTA Communities Multi-Family Requirements

Since creating your proposal, the State has released additional draft guidelines on how MBTA communities can comply with the multi-family zoning district requirements. Has your proposal been analyzed to determine if it meets these requirements (i.e., district size, density, and unit capacity)? If not, would you support the necessary revisions to bring your proposal into compliance with the State requirements?

Response: My proposal has not been analyzed to determine if it meets the requirements of the Massachusetts guidelines. I have no objection to such a review. Knowing the complications of accepting content changes, I would have to review any such proposal before agreeing to it.

Technical Comments and Questions Introduction

The first sentence of the proposal states, “Strike Chapter 30, Section 4.1. Business Districts, in its entirety and insert, in place thereof, the following.” Section 4.1 of the current zoning contains the requirements for all Business Districts, BU1-BU5. Section E. District Designation of your proposal states, “Unless otherwise designated in Section 1.3.2 of this chapter, this zoning District shall apply to all areas previously zoned Business 1.” Is it the intent to eliminate all other Business Districts, BU2-BU5?

Response: Footnote 1 of my submission says, “¹ Newton has five Business use districts and four Mixed Use districts. During Zoning Redesign, these districts should be consolidated to conform to the form-based standards being adopted. This is a proposal to amend areas now zoned Business 1, most significantly by allowing residential use as of right rather than by a Special Permit and limiting height of buildings.”

Sec. 4.1.2.A.i and ii – Pitched Roof Allowance and Story Height

The proposal appears to limit flat roofed buildings to two stories unless residential uses are included, at which point it may be three stories. There appears to be no limit to the number of stories for a building with a pitched roof as written.

Response: Good point. I would like to confirm that I intended that the reference to a pitched roof follow the guidelines in the ordinance and that the roof be the roof over the third floor. My intent was that the space under the third-floor roof could be used for residential purposes.

There are no standards set for how tall each story can be or overall building height in feet. Is this intentional?

Response: It was my intent that the current standards should apply. I assumed there was a limitation on the height of a sloped roof.

Sec. 4.1.2.A.ii – Affordability

Will the Inclusionary Zoning Ordinance not apply to the proposed district? The requirements differ from Sec. 5.11 of the current ordinance.

Response: My intent was to introduce a discussion about changing the terms of the inclusionary zone, in this district, by requiring 10% of the space be used for affordable housing and allowing owners to have some flexibility in the type or size of the units. For example, a builder/owner might find a three or a four-bedroom unit preferable to two or three studio units. I was one of the Aldermen that introduced the 10% contribution in the early 1970’s. Now might be a good time to update the concept.

Is the 10% residential requirement, limited to those earning below 50% AMI, applied only to the residential square footage of the building or to the entire building square footage?

Response: This subject should be included in the proposed discussion mentioned in the preceding paragraph. My opinion is that it should be limited to the area used for housing. That way it will more closely align with the current ordinance.

Sec. 4.1.2.A.iii – Usable Space

What is “usable space?” Please define.

Response: *Perhaps habitable space as defined in §8.3 leaves open the possible inclusion of low ceiling areas under a pitched roof, I think we should develop a new definition that excludes that space. I would suggest a definition that excludes space with a ceiling height of less than 5, 6 or 7 feet. I would look to builders and/or developers for more information on this subject.*

Sec. 4.1.2.A.iii – Dormer Allowance

Section 1.5.4.G of the current ordinance allows for certain sized dormers as a proportion of the overall building façade. Your proposal sets absolute requirements that have no relationship to the overall size and scale of the building. What is the intent behind this?

Response: *My intent was that building be limited to 3½ stories and dormers be allowed to create space but they be individual dormers, not to run the length of roof.*

Sec. 4.1.2.B.i – Building Coverage

Requires building coverage to not exceed 85% - what is the intent for the remaining 15%? What is building coverage? Please define. For reference, current Business districts currently have no max lot coverage requirement.

Response: *When the world and I were younger, the BUI zone did have control over the amount of space a building could take up. I prefer spaces between buildings, as opposed to a solid block of building. I agree with Councilor Baker’s preference for setbacks, even minimal setbacks. Since I was writing the proposal, I inserted my preference.*

Sec. 4.1.2.B.ii – Front Setback

Requires a minimum front setback of 5 feet. What is the intent behind this?

Response: *same as above. I think it is important to the public interest to try to avoid the creation of the canyon effect in our villages.*

The averaging provision for the front setback will still apply as per section 1.5.3.B unless otherwise provided.

Sec. 4.1.2.B.iii – Setbacks Adjacent to Residential Districts

Requires a minimum setback distance of 50 feet from any “single-family or two-family zoning district.” Please define which zoning districts apply - Newton does have the SR1, SR2 and SR3 districts, but does not have any “two-family zoning districts.”

Response: *We could change that to MR 1. There are some that think it should apply to single and two family uses [as opposed to districts].*

A 50-foot required setback distance will render many lots completely unbuildable. Is this the intent? Has an analysis been done to determine the number of lots that would be unbuildable?

Response: *No analysis has been done. This is not an unresolvable problem. You have the information as to how many lots would come under this provision. The intent is to protect the owners of single- and two-family homes from “monster” buildings adjacent to their back yards. One of the problems we have created is that we are building gentrified, expensive housing in buildings that dwarf adjacent single- and two-family homes.*

Sec. 4.1.2.C.1 – Use Standards

Proposed uses are limited to “Commercial retail, office, hospitality or other commercial uses not assigned to another use district under this chapter.” If a use is not allowed in another district does that mean it would be allowed in this Village Center district? Please clarify and define allowable uses. (does not appear to include such uses as personal service, banks, funeral home, health club, parking facilities, hospitals, vehicle repair and sales, etc.)

Response: The City has written the zoning ordinance in a manner that identifies uses allowed in various districts. There is an argument that uses not identified are not allowed. My intent would be to allow a broad range of uses to provide changes in the commercial market to be allowed in our village districts. Over the 60 years± that I have observed business use in our village centers, I have noted a significant change in the type of business and the type of product sold. I would like to avoid a situation where new businesses are required to seek a change in the ordinance in order to open up. However, the standards could be changed to apply uses allowed under section 4.4.1 of the zoning ordinance.

Sec. 4.1.2.D – Special Permits and Site Plan Review

Special Permits are currently required for any development over 20,000 square feet. Is the increase to 30,000 square feet in the village center district only, or across all other districts as well?

Response: I recommend the special permit waiver apply to construction under MGL 40A, §3A in the village centers.

Requires a special permit to allow mechanicals and HVAC on a roof. What is the intent of this? Is it not preferable to locate mechanicals on the roof then say in front of the building?

Response: It is not preferable to neighbors, village customers and visitors to see a forest of waste pipes projecting from the roofs of village buildings. When builders had more pride in the finished product, they took measures to diminish the impact of such visual eyesores. Since the City policy is to reduce parking requirements, more basement spaces should be available and the mechanicals can go back to the basement level of the building.

Site Plan Review is required for any project requiring a Special Permit. The current ordinance requires Site Plan Review for any project between 10,000 to 19,999 square feet. Is the intent to remove that requirement for village center district projects?

Response: Only if such removal were required in order to conform to the guidelines under MGL 40A, §3A.

Other Dimensional Standards and Requirements

No dimensional standards are provided other than height, front setback and lot coverage - what about side and rear setbacks? Lot area per unit? Lot area? FAR? Building height?

The proposal should evaluate how other requirements would be treated, e.g., parking, 5th special permit criterion and sustainable design, and I&I. Also, we or the Council may want to codify special permit conditions such as CMP, pest, vibration, bicycle parking, unbundling parking and rent, etc.

Response: I had to leave something for others to resolve. These issues seemed appropriate for discussion and decision by the Councilors.

Thank you for your thoughtful comments.

VILLAGE CENTER DISTRICT AMENDMENT - 2021

Strike Chapter 30, Section 4.1. Business Districts, in its entirety and insert, in place thereof, the following. (1)

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iv.
CITY CLERK
NEWTON, MA. 02459

floor immediately below. **Such area shall not be restricted by the conditions of §4.1.2. A. ii. (3)** Dormers, as defined in Section 1.5.4.G., may not exceed ten (10) feet in width and separation between dormers shall be not less than 15 feet. No Special Permit or variance may allow for greater size, capacity, or use.

4.1. VILLAGE CENTER DISTRICT

4.1.1. DISTRICT INTENT

To create a zoning district for Newton Village Centers that maintains a “village scale” and answers the demands created by the recent amendment to MGL Chapter 40A, Section 3 to allow multi-family housing or mixed-use development as of right or by special permit in “eligible locations”. (2)

4.1.2. DIMENSIONAL STANDARDS

A. Building Height. Building height is limited to two stories unless otherwise provided.

- i. A flat roofed building with allowed uses set forth in §C. i and C. ii below, shall be limited to two stories.
- ii. A three story, flat roofed building is allowed, provided that not less than forty (40%) per cent of the floor area of said building is for multi-family residential use and further provided that ten (10%) percent of the floor area of said residential use is for units that are deed restricted for occupancy or ownership by occupants with limited assets earning less than fifty (50%) of the Greater Boston Area Median Income. Said restriction is to be in a form approved by the City of Newton Law Department. (3)
- iii. A pitched roof on any building may contain usable space under the roof, provided such usable space does not exceed 60% of the floor area of the

B. Other Dimensional Use Standards.

- i. Building coverage shall not exceed 85% of the lot area.
- ii. No building shall be set back less than five (5) feet from a property line adjacent to a public way or private way to which the public has a right of access, excluding foot and bicycle easements.
- iii. No building shall be set back less than 50 feet from an adjoining single family or two family zoning District.
- iv. Existing non-conforming structures may be torn down and replaced. Any increase in floor space shall be vertical and shall not extend beyond the pre-existing, nonconforming building footprint.
- v. Party Walls are permitted.

C. Use Standards

- i. Commercial retail, office, hospitality, or other commercial use not assigned to another use district under this chapter.
- ii. Residential use above the first floor (including multi-family use).
- iii. All buildings, structures, and additions located on a lot in single and separate ownership, may be available for use in common or in connection with contiguous or adjacent lots without the requirement of a Special Permit.

VILLAGE CENTER DISTRICT AMENDMENT - 2021

- iv. Development of a building on a separately owned lot shall be considered a separate project and shall not require a Special Permit even though connected by party walls.
- v. **Any building construction in excess of two stories shall be subject to the provisions on section 7.4 of this chapter (Site Plan Approval).**

D. A Special Permit is required for:

- i. Any development in the Village Center districts of 30,000 square feet or more of gross floor area.
- ii. Use of the roof for the installation and/or storage of mechanical systems, including HVAC equipment.
- iii. A Site Plan Review is required in connection with a Special Permit.

E. District Designation.

Unless otherwise designated in Section 1.3.2 of this chapter, this Zoning District shall apply to all areas previously zoned Business 1.

Amendment to Section 3 of Chapter 40A, the State Zoning Law.

Section 3 A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative . . . ; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A."

FOOTNOTES

¹ *Newton has five Business use districts and four Mixed Use districts. During Zoning Redesign, these districts should be consolidated to conform to the form-based standards being adopted. This is a proposal to amend areas now zoned Business 1, most significantly by allowing residential use as of right rather than by a Special Permit and limiting height of buildings.*

² *From Eastport, Maine to Kansas, to the Pacific coastal towns; from Ireland to Italy, a village center is immediately recognizable by the predominance of two and three story buildings, its mix of commercial uses, residential uses and local businesses to serve the village residents.*

³ *Assume a lot in a Village Center District contains 10,000 square feet of land. 85% lot coverage times two floors (above the first floor) equals 17,000 square feet plus 5,100 square feet under the sloped roof (60% of 8,500 square feet third floor) equals 22,100 square feet for residential use. 1,700 square feet of space is for low income housing. Residential unit size will have to be adjusted to allow for exterior and unit perimeter walls, hallways and stairways. This formula falls within the form based concept of zoning. It provides an option for developers and land owners to expand building space and to provide housing for an economically disadvantaged portion of the population. It also qualifies to meet the goals of providing such housing without the necessity of obtaining a special permit, as set out in MGL c.40A, §3, as amended by Chapter 358 of the Acts of 2021.*

We, the undersigned voters of the City of Newton, hereby by petition the Newton City Council to hold a public hearing and act upon the attached amendment to the Newton Zoning Ordinance, titled "Village Center District Amendment - 2021", in accordance with Section 10-2 of the Newton City Charter, that says, in part, "The city council . . . shall hold a public hearing and act with respect to every petition which is addressed to it, which is signed by at least 50 voters, and which seeks the passage of a measure." The amendment is intended to limit building height and preserve the unique character of our villages.

Signature

Print Name & Address

Ward

✓ Peter Harrington	157 Lowell Ave	2/1
✓ Colleen Minaker	Colleen Minaker 32 Bemis St.	2/1
✓ Mr THOMAS TUCKER	157 Lowell Ave	2/1
Maura Harrington	Maura Harrington 157 Lowell Ave	2-1
✓ James B Holland Sr	30 Brooks Ave	2-1

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Signature	Print Name & Address	Ward
	Carol O'Grady 920 CENTRE ST	6
	Jon Clarys 23 Buswell rd 02458	
	CARA STEFFY 43 HIGHLAND AVE #3 NEWTONVILLE	
	Robert Williams 47 Washington Park Newtonville	
	JAMES WOOD 47 WASHINGTON PARK 02460	2
	Lorraine Sanik 411 Newtonville Ave	
	Jonathan Fischer 411 Newtonville Ave	
	Jenny Chen 79 Walnut St.	
	Diana Reoupy 90 Highland St.	
	Fran Mancini 38 Carleton St	
	JAY Goldman 41 Vineyard Rd	
	Emma Barson 40 Bolton	
	Darius Eslamii 40 Bolton	
	Nicole Babich 110 Madison AVE Newtonville MA	
	Kyle Zinchuk 110 Madison Ave Newtonville MA	

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Signature	Print Name & Address	Ward
✓ Mark Rubel	Mark Rubel 51 Brooks Ave	2-1
✓ Helen K. Rubel	Helen K. Rubel 51 Brooks Ave	2-1
✓ Daniel Harris	Daniel Harris 17#Merdeen	
✓ Doug Marand	Doug Marand 12 Marion St	
✓ Lynne Marand	Lynne Marand " "	
✓ Robert DeSantis	Robert DeSantis 46 Parsons	3
✓ Hilary Bialk	Hilary Bialk 16 Creole Dr.	
✓ Liana Amichangco	Liana Amichangco 15 Ohio Ave	
✓ Jeff D. Sitter (CITIZEN)	JEFFREY SITTER, 120 CENTER ST	3
✓ William Swartz	William Swartz 113 Edinburgh St	
✓ Jacob Weisberg	Jacob Weisberg 145 Langley Rd	
✓ Tom DiGostino	TOM DIGOSTINO 359 CABOT ST	
✓ Susan Poole	Susan Poole 71 Fresenden St	2
✓ Christine Bradh	Christine Bradh 701 Washington	

(14)

Petition to the Newton City Council to consider a compromise amendment to the Zoning Ordinance for Newton Villages

We, the undersigned Newton Voters request the Newton City Council consider and approve the attached proposal for amendment to the Newton Zoning Ordinance.

Name Address

✓ ¹ G. G. G. 61 Waban Park

✓ ¹ Anne Reenstierna 90 Waban Park

✓ ² Eric Reardon " " "

✓ ³ Barbara J. Dittusson 93 Waban Park

✓ ⁴ W. A. D. 93 WABAN PARK

✓ ⁵ Bernard J. G. 116 Jewett St

✓ ⁶ J. M. B. 116 Jewett St

✓ ⁷ M. I. H. 38 WABAN ST

✓ ⁸ Jennifer Furse 110 Jewett St.

✓ ⁹ Wendy P. 38 WABAN ST.

✓ ¹⁰ John Small 110 Jewett St.

✓ ¹¹ Kevin R. K. 92 HAWTHORN ST.

✓ ¹² Thomas Keppeler 141 Jewett St #2

✓ ¹³ Arthur-LeBasseur 98 Jewett Street

✓ ¹⁴ JOE CROWLEY 129 WABAN ST

(15) ✓ ¹⁵ Quatha Adams 227 Jackson Rd, Newton MA 02458

**Petition to the Newton City Council to consider a
compromise amendment to the Zoning Ordinance for Newton Villages**

We, the undersigned Newton Voters request the Newton City Council consider and approve the attached proposal for amendment to the Newton Zoning Ordinance.

Name

Address

- ✓¹ Julie Lavelly 35 Waban St Newton 02458
- ✓² EUGENE LAUREL 35 WABAN ST NEWTON MA 02458
- 3
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- 14
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(8)

September 30, 2021

A zoning amendment to protect Newton village centers from over development has been filed with the City Council by Peter F. Harrington, a West Newton Attorney familiar with zoning law.

“This proposal is intended to protect the visual character of our villages, encourage reasonable village redevelopment and meets new state requirements for multi-family residences,” according to Mr. Harrington.

Innovations included in the amendment include elimination of special permits, a strict limit on building height and a bonus allowance for sloped roofs. The two story threshold height limit in village centers remains the same. A third floor is allowed, as of right, if it is used for multi-family housing. Under the present law a third floor requires a special permit. If a sloped roof is added the owner can use the interior attic space.

Harrington, a former Vice President of the Newton Board of Aldermen and a former Newton State Representative said, “We need to address the new State requirements while the City Council is rewriting our zoning ordinance. They are discussing Village Center zoning. This proposed zoning law meets the State’s new requirements and we can take advantage of the Council calendar meet our obligations.”

Some of the objectives of this proposal are to eliminate uncertainty of development in our villages for both neighbors and builders, speed up the time between conception and production, allow flexibility in unit design, provide an opportunity to build new naturally affordable housing, and preserve the New England Village character of our community

Over 65 Newton voters have signed a petition asking the City Council to hold a public hearing on Harrington’s proposed zoning amendment. Under Section 10 of the City Charter a public hearing is required if 50 or more citizens request it.

In January 2021 Governor Baker signed an amendment to Section 3 of Chapter 40A, the State Zoning Law.

Section 3 A. (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

(b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (i) the Housing Choice Initiative. . . ; (ii) the Local Capital Projects Fund established in section 2EEEE of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.”

end

February 18, 2022

Deborah J. Crossley, Chair
Zoning and Planning Committee
City of Newton
1000 Commonwealth Ave.
Newton, MA 02459

Re: Village Centers Redesign

Dear Councilor Crossley;

As Land Use practitioners in the City we have naturally been following the Zoning Redesign process since its inception in 2010, and we believe that the 2016 recodification was on the whole a success.

Among the goals of the Zoning Reform Group leading to Zoning Redesign were:

- Better organize the Ordinance for ease of use
- Simplify and streamline the permitting and review process
- Recognize each village center and commercial corridor is unique
- Encourage mixed use residential redevelopment in village centers
- Create “soft transitions” between village centers and residential neighborhoods
- Allow moderate flexible growth on commercial corridors
- Rationalize and streamline parking regulations
- Protect neighborhood character and scale
- Create more diverse housing opportunities

and others.

In addition, we are cognizant of changing conditions and in particular the need for the City to address the Housing Choice legislation of Chapter 358, and we hope this suggestion may be a step towards addressing the challenges of the legislation.

It may not be necessary to draft an entirely new Ordinance for the areas we define as Village Centers. Experience has shown that the MU-4 District can be adapted to closely align with the goals envisioned in the Community Feedback process of 2021. In particular the existing MU-4 allows retail on the ground level and commercial or residences above with a height limit of 5 stories by special permit. There have been three MU-4 projects approved to date, and to make it more adaptable going forward some modifications in the District based on experience may be advisable.

Deborah J. Crossley, Chair
February 18, 2022

In 2012 the City adopted the MU-4 District which was initially applied to Austin Street and Trio and later in Newton Highlands. In parallel with the Zoning Redesign process Newton has also adopted amendments to the Comprehensive Plan, revisions to the MU-3 District, the Climate Action Plan, the Economic Development Plan and the Arts and Culture Plan all having effects on the zoning discussion. Other amendments have been made to the Ordinance and the map as circumstances have arisen.

We have also monitored and participated in the significant ongoing public process and community engagement which you have conducted over several years¹.

We are not sufficiently informed to comment specifically on all the responses in the 2021 Community Engagement. However, we note that a certain consensus has evolved from the Zoning Reform Group. In particular a significant number of comments refer to:

- Village centers as having retail below with housing above;
- General height limits of 2-4 stories ;
- Accessibility to transportation
- Mix of incomes
- Some increases in density, but concerns were expressed
- A mix of retail uses – some “neighborhood retail” concept, and outdoor dining
- Enhancement of green spaces for functional public gatherings

While unanimity is elusive, these objectives ought to provide guidance for what – the Village Centers provision of the Zoning Ordinance should be designed to do. At the same time, we are mindful of the thoughtful plans which the City has already adopted and specifically the pending requirements of Housing Choice under Chapter 358 of the Acts of 2020.

We propose for discussion and deliberation, that the MU-4 District be amended to allow buildings of ground floor retail with up to 2 stories of housing as of right (3 stories total), with a fourth story allowed on established incentives. Uses currently allowed by special permit in the MU-4 District might be allowed as of right in a building with retail on the 1st floor and housing on floors 2 and 3 including perhaps:

- Assisted living
- For profit school
- Business incubator

¹ In 2016 a public engagement effort included the “pattern books” and that was followed by a series of public meetings at the Library. The Village Centers were specifically the focus of the 2021 Community Feedback including the Vision Kits, interactive fora, business engagement and focus groups. In October 2021 the “Community Input Compilation” was issued, a comprehensive catalogue of the comments of the public on a variety of elements of zoning. Hundreds of residents participated. There was no shortage of opinions!

Deborah J. Crossley, Chair
February 18, 2022

- Business services

We propose that where a special permit is not required for buildings up to 3 stories that UDC or Planning Department design review, but not approval might be required.

For dimensional and parking issues a comparison of the existing MU-4 District to a possible alternative is attached as Exhibit A.

In summary the proposal is to utilize the existing MU-4 District as a baseline for allowing as of right developments of up to 3 stories with minor dimensional changes such as reduced requirements for setbacks, parking or other requirements which would normally require special permits and allowing for special permits for additional height or density consistent with the existing provisions of MU-4.

This proposal is submitted as general thoughts of the undersigned with collective input on specific issues. We call to the Council’s attention that notwithstanding our setting forth a draft on these issues certain specifics bear discussion including that this proposal:

- Eliminates the option for 5th floors
- Proposes no specific density but controls bulk by f.a.r. and setbacks
- Proposes different setbacks from residential uses than commercial
- Proposes parking waivers to make the 3 story buildings including housing truly “as of right”

The authors of this letter do not necessarily each endorse every specific element of this proposal. This letter is intended to provide the Council with a menu of options as to uses, height, density setbacks and parking to help apply the existing framework of the MU-4 District to the types of village center housing envisaged in the Comprehensive Plan and which we find consistent throughout the prior community participation programs. We believe that if the Council can choose among the menu items and with relatively small changes to the ordinance and some changes to the zoning maps a lot of progress can be made.

Very truly yours,

Peter F. Harrington

Terrence P. Morris

Alan J. Schlesinger

cc: Zoning and Planning Committee

Jennifer Caira

Zachary LeMel

Danielle Delaney

Deborah J. Crossley, Chair
February 18, 2022

EXHIBIT A

	MU-4 Existing	MU-4 Alternative
Height	2 stories -Yes 3 stories – No 3 stories – 2 residential above retail – Yes 4 stories – SP 5 stories - SP	2 stories -Yes 3 stories – SP By right 3.5 By Right 4 stories – SP on criteria *
Density	1000 s.f. unit waivable by special permit	
F.A.R	2 stories – 1.0 3 stories – 1.5 4 stories – 2.0 SP 5 stories – 2.5 SP	2 stories – 1.0 3 stories – 1.5 3.5 stories – 1.75 4 stories – 2.0 SP
Building size	20,000 s.f. as of right Over 20,000 s.f. by special permit	No change
Lot Minimum	10,000 s.f.	TBD None for housing above first floor retail
Front setback	No minimum, max 10'	No Change
Side setback	0 except 20' at residential zone (waivable)	0 except 20' at residential use
Rear setback		0 except 20' at residential use
Building setback	Over 40' step back	Same
Transparency	Required	Same

Deborah J. Crossley, Chair
February 18, 2022

Parking	Per Table 5.1	Same except 1:1 for housing above 1 st floor retail **
Loading	Per 5.1.12	Same except None for housing above first floor retail up to 3 stories
Mapping Requirement	None	Restricted to one side of street
Site Plan Review	Council 7.4	Administrative

* Special Permit criteria could include for example, building setback at or above 3rd floor, additional affordability, open space, transportation management.

** Minimum parking could be tied to transportation management, Zipcars, T subsidies

PETER F. HARRINGTON157 LOWELL AVENUE
NEWTONVILLE, MA 02460

February 22, 2022

Zoning & Planning Committee
Newton City Council
1000 Commonwealth Avenue
Newton Centre, MA 02459

Dear Councilors,

A hearing on my Petition for a Village Zoning District in Newton is scheduled for Monday, February 28th. Because of the complexity of the issues and the time limitation we all are forced to recognize, I thought I would send you some background material that I hope is helpful.

Since most of our villages are zoned BU 1, I tried to follow the format in the ordinance for the BU 1 zone District. My intent was to present issues for discussion and, hopefully, adoption. Having sat in your position on the Board of Aldermen, in the state legislature and as a private citizen on a zoning advisory committee, I recognize that the decision is yours to make. Realizing that you might not agree with all I propose, I reached out to two land use attorneys, Alan Schlesinger and Terry Morris and a Human Scale development proponent, Architect Marc Hershman, for additional advice.

Alan Shlesinger suggested we use the MU 4 format and we have developed a supplemental recommendation for a Village Zone ordinance. A copy has been sent to you by separate mail. Among ourselves, we have some disagreements over various items in the documents, however, we all agree that they should be discussed.

One of life's difficulties is trying to follow the special concepts used by planners, developers, attorneys and architects. I have prepared a chart to help us follow the various terms we will be using.

Mathematical Terms:

1 Mile = 5,280 feet

1 step for an average to short person = 2.2 feet; for an average to a tall person = 2.5 feet

1/4 mile = 1,320 feet or 600 steps [2.2 feet each]

Acre = 43,560 square feet

 $\pi = 3.14$

r = radius of a circle

Area of a circle = π times r squaredArea of a 1/4 mile circle = $3.14 \times 1,742,400 [1,320 \times 1,320] = 5,471,136$ square feet

5,471,136 square feet = 125.6 acres

50 Acres + 20% for streets and sidewalks = 60 acres

60 acres = 2,613,600 square feet

PETER F. HARRINGTON

157 LOWELL AVENUE
NEWTONVILLE, MA 02460

A circle with a 912 foot radius contains 2,611,675 square feet or 60 acres

50 acres plus 20% for streets and sidewalks will occupy @ 48% of a circle with a ¼ mile radius [2,613,600/ 5,471,136)

Present BU 1 zone housing unit density is 36 units per acre (by special permit)
Present MU 4 zone housing unit density is 43.5 units per acre (by special permit)

Housing Unit Density Chart:

Zone	Units per Acre	Sq Ft of land per unit
SR 1	1.74	25000
SR 2	2.90	15000
SR 3	4.36	10000
MR 1	8.71	5000
MR 2	14.52	3000
MR 3	36.30	1200
MR 4	43.56	1000
BU 1	36.30	1200
BU 2	36.30	1200
BU 3	36.30	1200
BU 4	36.30	1200
MU 1	4.36	10000
MU 2	4.36	10000
MU 3	54.45	800
MU 4	43.56	1000

MGL Chapter 40A, §3A density requirement = 15 units per acre.

Part of my purpose in outlining the above information is to provide you with the background that has resulted in the formation of my opinion that meeting the requirements of MGL c. 40A, §3A should not be an arduous task. We have the tools in our zoning toolbox. The big issue is giving up special permit review. If planned with cautious forethought, you should be able to come up with an acceptable solution.

Thank you.

Peter F. Harrington

MEMORANDUM RE: PROPOSED ZONING ORDINANCE

February 22, 2022

**To: Zoning & Planning Comm.
Newton City Council**

**From: Peter F. Harrington
Newtonville**

This Memorandum is intended to review some of the points I would like to present as background for your decisions on a new Village Center Zoning District ordinance.

I have been following the zoning process in Newton since 1970. The guiding principles, for most changes, were: i) to provide housing for people of limited income; seniors, single moms and working families; ii) to protect the residential character of our neighborhoods, iii) preserve our villages and local businesses.

In this new century, those principles seemed to have been set aside in favor of “urbanization” of Newton. Some say that buildings in our villages are old and need to be replaced and modernized.

The single largest investment that most people make, other than a pension plan, is the purchase of their home. A great deal of thought goes into it. For some, it is a first step to another home, for many it is a decision that lasts their lifetime. People consider the type of neighborhood, the school district, local traffic, public transportation, access to play areas, access to shopping and other important matters.

A new Village Center Zoning Ordinance will bring change to our neighborhoods. Many are concerned about its impact.

Need for Business Uses: It has been an accepted precept that cities and towns needed a strong commercial segment to maintain a stable revenue plan to provide a balanced plan for tax income and municipal spending. It was believed that you cannot run a city on taxes from the homeowners; a village or a town, perhaps, but not a city.

The Legislature changed the tax laws to allow cities and towns to tax business 190% of homeowners tax rate. For example, if your home was valued at \$750,000.00 and the tax rate is \$10.50 per \$1,000.00 of value, your tax would be \$7,875.00. A commercial property valued at \$750,000.00 would be taxed at the rate of \$19.95 per \$1,000.00 for \$14,962.50.

Businesses do not use schools (60% of our budget, or \$6.30 of a \$10.50 tax rate) and have a lower demand on other municipal services. Business contribution to our taxes is an enormous help. Those who complain about business taxes say that businesses pay about \$15.00 per thousand of real estate valuation for services they don't use.

Village Economics: Historically, the village business community provided goods and services to village residents. In recent years that model has changed with the introduction of regional and national sales outlets, internet sales and home delivery of goods. Most village business property owners rely heavily on personal service businesses for tenants. The increasing cost of rent eliminates undercapitalized enterprises from starting up and places a heavy burden on the locally owned “Mom & Pop” businesses.

While new tenants will help support a local business, they will not be a determining factor for success or failure. The vibrant village is more important to the apartment developer than the apartment building is to business.

Housing Crises: There are those who say there is a housing crisis and we need more housing.

As a result of the 2010 federal census Massachusetts lost one member of congress. Since then, the Massachusetts population has risen about 5%, mostly due to immigration from abroad. However, studies show that Massachusetts is among the top five states that people are leaving.

Boston wants to expand its commercial base. Boston wants suburban communities to build new residential units to house workers for the expanding commercial base. Newton has agreed to build 8,300 such units.

The real Newton housing crises is for moderate income families earning less than \$100,000.000. The housing we are building is not designed for families earning less than \$100,000.00.

Our present plan is to build a lot of one and two bedroom apartments. Some are for low and moderate income people/ families receiving a government subsidy. The rest are sold or rented at market rate.

The first floor of the apartment building is for commercial use. It seems a good plan for the developer. The question remains, “Is it a good plan for Newton?” There is no hard evidence that the new commercial taxes will offset the municipal cost of the new residents.

MEMORANDUM RE: PROPOSED ZONING ORDINANCE

Home costs: Depending on the builder, the average cost of construction is between \$275.00 and \$300.00 per square foot. Add the cost of the land, financing costs (7 to 10%), soft costs (architect, engineer, attorney, etc.), sale cost (stamp tax, attorney & broker (6%) and profit (30%) and you have a minimum sale price that is beyond the reach of most moderate income families. A 20% down payment (a conventional mortgage requirement) for a \$750,000.00 housing unit or home is \$150,000.00. Young families do not have that much savings.

Floor Area Ratio: The application of a FAR formula appears to be a more even-handed method of regulating residential family use of land and goes a long way toward the elimination of the accusation of discrimination. A general definition is that the FAR controls the size of the house based upon the size of the lot. Problems arise when the size of the lot is too small or the size of the house is too large.

Special Permits, Waivers and exceptions: The Newton Zoning Code is replete with exceptions. If the purpose of the new proposed code is to standardize the regulation of the uses of land, there should be less opportunity to vary the standards, rather than more. The State has set up two formulas for changing of zoning requirements within a zoning district; one is a variance and the other is to allow special permits. The variance system has strict rules that are used to guide the ZBA in its decision making process. The special permit process in the zoning ordinance allows a wide latitude in the decision making process. Also, many look upon the

Newton Special Permit options as a matter of right to allow developers to redefine neighborhoods.

The plan to control the size of homes in hopes of keeping the price down is not working. Developers do not build to help the public good, they build for profit.

The hope that building more units will saturate the market and the prices will go down, is not working.

The recently approved project on Highland Ave, with units said to be 2,300 square feet, are expected to sell for 1.2 million dollars. Again, out of range for families earning less than \$100,000.00 per year.

gentrification in this study, the neighborhoods must have experienced dramatic increases in median home values, household income and college educational attainment.

Boston Globe, July 2020

A new housing plan: We may well need a new housing plan. The question is why are we building and for whom? There does not seem to be any clear decision on who is going to benefit and is the cost worth the benefit?

Section 2A of the acts of 1975 [amendment to MGL 40A], confirms municipal authority "... to encourage housing for persons of all income levels; ...".

If we want to build low income and/or affordable housing for working families, we need a new plan that encourages non-profit builders to come forward.

1. A non-profit entity can build residential units as well as, or better than, a for profit entity;
2. A non-profit entity has greater flexibility to ensure that the units remain affordable (they do not see the project as a profit center for investors; they are familiar with affordability regulations, etc.).
3. A non-profit entity can rent or sell the end product for less than a for profit entity.

Boston is the third most "intensely gentrified" city in the United States, according to a new report, behind only San Francisco, which topped the study rankings, and Denver, Colorado.

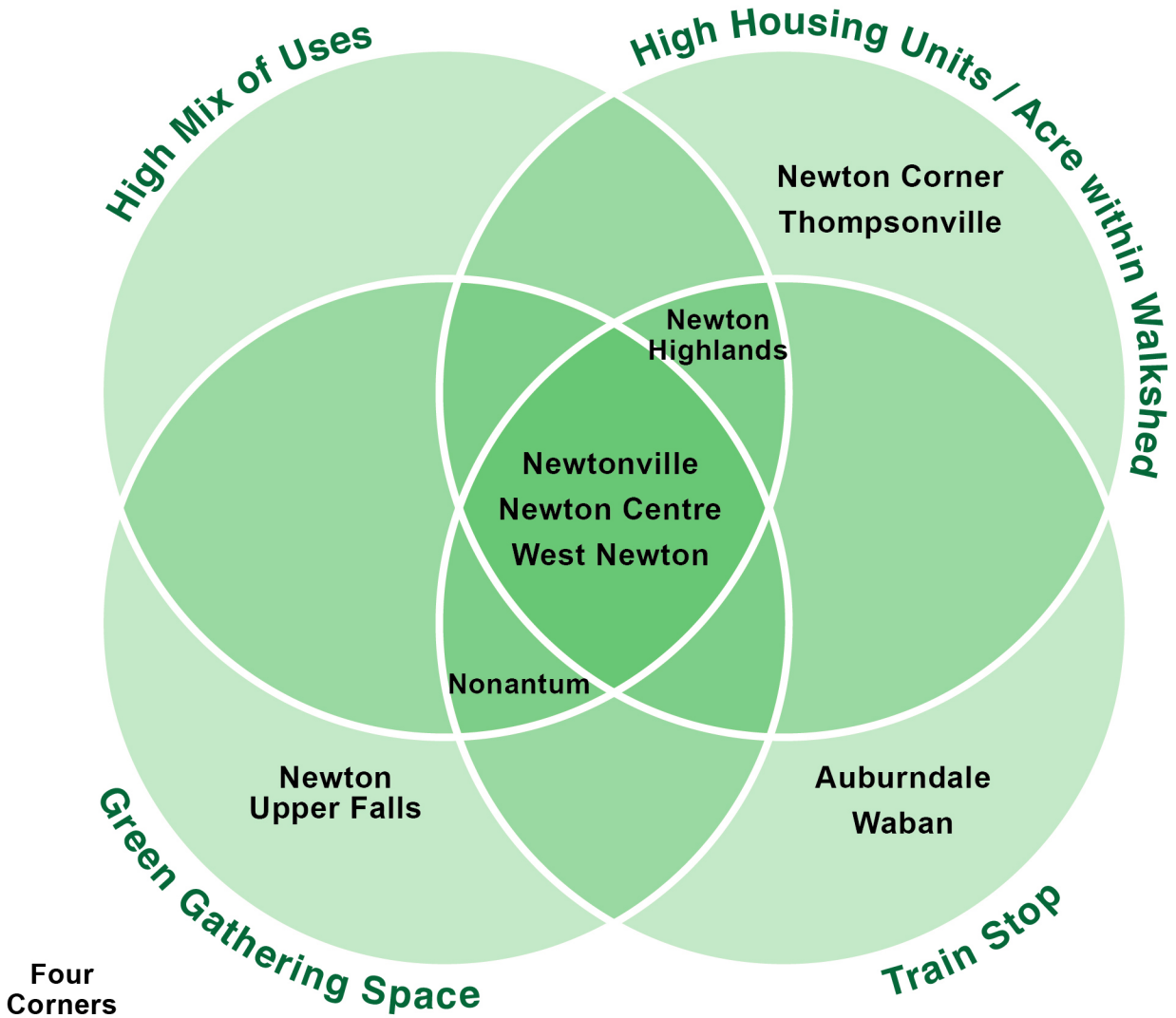
Researchers from the National Community Reinvestment Coalition, an economic justice nonprofit in Washington, D.C., examined more than 72,000 census tracts, or neighborhoods, across 940 metro areas for signs of gentrification between 2013 and 2017. The San Francisco-Oakland metro area led the list, with the highest proportion of gentrifying neighborhoods, followed by Denver, Boston, Miami, and New Orleans.

To meet the criteria for

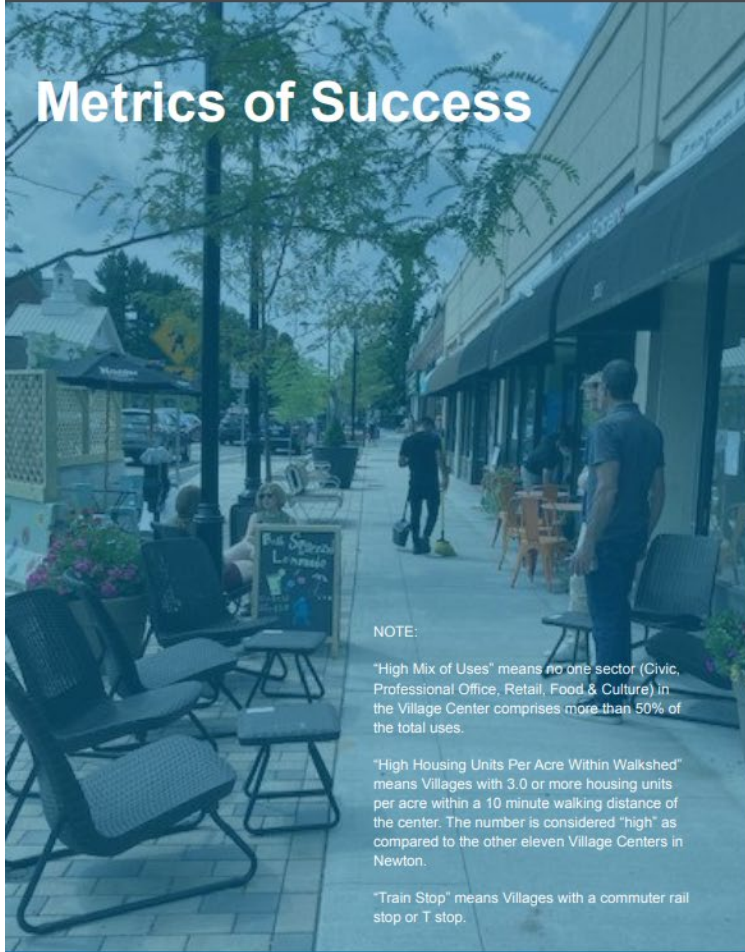
Peter F. Harrington

Metrics of Success

#42-22



Metrics of Success

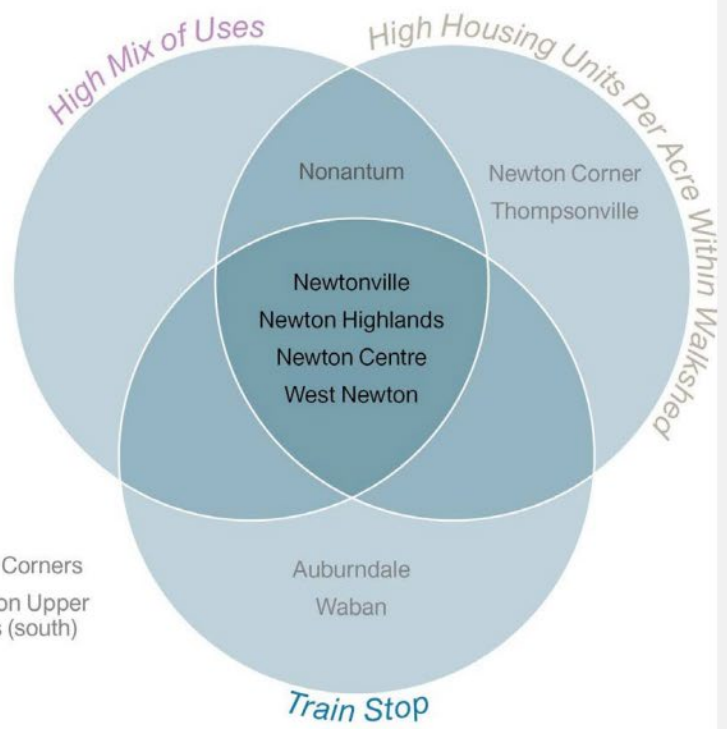


NOTE:

"High Mix of Uses" means no one sector (Civic, Professional Office, Retail, Food & Culture) in the Village Center comprises more than 50% of the total uses.

"High Housing Units Per Acre Within Walkshed" means Villages with 3.0 or more housing units per acre within a 10 minute walking distance of the center. The number is considered "high" as compared to the other eleven Village Centers in Newton.

"Train Stop" means Villages with a commuter rail stop or T stop.





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: February 25, 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: February 28, 2022

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

Last year Planning staff undertook an engagement process to hear from the Newton community on their future visions for village centers. In tandem, Utile provided parallel quantitative analyses probing the various metrics of success for vibrant village centers. This foundation of work leads us into Phase 2 of the village center Zoning Redesign effort. As a reminder, the community takeaways from Phase 1 are:

- Create more communal & public space + activation
- Increase accessibility to buildings and infrastructure within village centers
- Incorporate climate resiliency through built structures and green spaces
- Help small businesses to begin, stay and thrive in Village Centers
- Make the permitting process easier, clearer, and multi-tiered
- Add more diverse housing options and encouraging mixed-use projects
- Prioritize safe and accessible routes, especially walking and biking
- Incentivize the preservation and adaptive reuse of historic buildings¹

¹ This takeaway was added following the 11/15 Public Info Session and the 12/16 ZAP Meeting

During the 2021 engagement, community members identified those aspects of village centers that they believe work well today but most of the feedback focused on how the village centers could be improved. Overwhelmingly people wanted more vibrant and active village centers with more places to gather both formally and informally and more easily accessible to all. Zoning alone can not achieve this vision; both public and private investment is necessary. Zoning however is an important tool and first step in allowing the types of development that are consistent with the community's vision.

ZAP ended 2021 with a discussion focused on a menu of zoning tools that could be tweaked or created to facilitate the above and further Citywide policy objectives (see Attachment A). Phase 2 will kick-off at the upcoming ZAP meeting where Utile and Planning staff will present on the goals & outcomes, methodology, and community outreach.

Phase 2 - Overview and Goals

Phase 2 will translate the community takeaways into tangible design scenarios for "large" and "small" 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 "large" and "small" village centers.

Phase 2 - Methodology

The work will fall into the following general categories: (1) Analysis and scenarios for "Large" Village Centers, (2) Analysis and scenarios for "Small" Village Centers, and (3) Inform the community and receive public comment. For steps one and two, Utile will generate alternative development scenarios under Newton's existing zoning, using typical village center parcels as test cases. After establishing this baseline and understanding the resulting economics, Utile will generate development scenarios on the same parcels under a range of proposed zoning changes, with the goal of finding a zoning framework that results in development that is financially feasible and realizes the community goals.

To inform the financial modeling, the economic sub-consultant, Landwise, will review existing conditions (market and demographic data), assess market conditions (economic forecasts, recent development financials), and verify some of the findings with developers working in Newton. This work will lead to a set of recommendations on the financially viable range of zoning updates that accounts for market cycles, developer expertise, and underlying project economics.

At the February 28 ZAP meeting Utile and Landwise will present an analysis of what could be built under the current zoning on several test sites in Newton Centre. New development is not currently being proposed on these sites, they have been chosen as they represent typical parcel sizes and conditions that can be found across other larger village centers. Utile has analyzed various scenarios of development that could be possible by-right or by special permit under the current zoning. Landwise has done a pro-forma analysis of the most intense development scenarios to determine if they are feasible under current market conditions.

Utile and Landwise have found that under the existing zoning development is generally not financially feasible and in just a few cases it is borderline feasible. The borderline feasible scenarios still do not achieve the goals identified by the community such as the creation of public spaces, increased sustainability, subsidizing small businesses, etc. These findings are consistent with the lack of investment in village centers. Recent developments in village centers have typically sought a rezoning of the property.

The next step for Planning, Utile and Landwise will be to analyze potential zoning scenarios that do achieve the community goals. This will include drawing from existing zoning districts, such as Mixed Use 4, ideas received from the community, and examples from other communities.

Phase 2 - Outreach & Engagement

As always, the Planning team is committed to equitably and inclusively engaging the Newton community. The development scenarios for “large” and “small” village centers presented at ZAP will serve as the foundation for the outreach material with the overarching goal being to inform, and receive feedback from, the community on how the development scenarios (1) align and facilitate the 2021 engagement takeaways, and (2) appropriately consider market conditions (i.e. feasibility). Achieving these two goals means the Planning team can confidently develop a technical zoning framework for Newton’s “large” and “small” village centers for ZAP to begin debating before the end of 2022. Staff plan to present a more detailed engagement proposal at the March 14 ZAP meeting.

Looking Ahead

At the upcoming ZAP meeting, the Planning team hopes to receive feedback on the Phase 2 methodology and outcomes. Moving forward, we expect to return to ZAP once a month to present project updates and incorporate Committee input.

Attachments

- Attachment A Zoning Tools Matrix
- Attachment B Phase 2 Timeline

(#38-22) - Attachment A

Engagement Takeaways	Zoning Tools						Non-Zoning Tools
	Dimensional Standards	Development Standards	Allowable Uses	Allowable Density	Permitting / Process	Incentive	
Create more communal & public space + activation	Setbacks that prioritize active use	Open space/ community space requirements for new development & redevelopment	Update Use Table		Public realm design guidelines that address accessibility, green infrastructure, and activation considerations	Height and density bonuses in exchange for greater public realm enhancements	X
Increase accessibility to buildings and infrastructure within village centers	Ensure minimum sidewalk widths	Follow universal design guidelines Require affordable accessible housing units			Public realm design guidelines that address accessibility, green infrastructure, and activation considerations	Height and density bonuses in exchange for public realm accessibility improvements	X
Incorporate climate resiliency through built structures and green spaces	Exemptions for sustainable building design components	Tier sustainability benchmark requirements for different sized projects Planting/open space requirements for new development & redevelopment		Height and density allowance for sustainability measures	Public realm design guidelines that address accessibility, green infrastructure, and activation considerations	Height and density bonuses in exchange for increased sustainability measures	X
Help small businesses to begin, stay and thrive in village centers	Smaller retail spaces Flexible ground floor story height	Flexible parking requirements	Simplify home business regulations Update Use Table	Upper floor residential above ground floor retail Expand built-in customer base	Flexible parking requirements Streamline process for use change in existing space	Height and density bonuses in exchange for subsidized commercial space	X
Make the permitting process easier, clearer, and multi-tiered	Update standards for by-right projects	Update standards for by-right projects Design guidelines	Tiered process for by-right and Special Permit projects Update Use Table		Tiered process for by-right and Special Permit projects "How To" guide for small builders and developers	Streamlined process in exchange for greater levels of affordability, sustainability, accessibility, etc.	
Add more diverse housing options and encouraging mixed-use projects	Setback requirements that allow for missing middle housing	Flexible parking requirements	By-right mixed use and multi-family projects Update Use Table	Height and density allowance for missing middle and mixed-use buildings	Tiered process for by-right and Special Permit projects		X
Prioritize safe and accessible routes to and through village centers, especially walking and biking	Ensure minimum sidewalk widths	Promote bicycle, shuttle, rideshare, and other alternatives to driving infrastructure Flexible parking requirements	Update Use Table	Height and density allowance for missing middle and mixed-use buildings	Public realm design guidelines that address accessibility, green infrastructure, and activation considerations	Height and density bonuses in exchange for greater public realm enhancements	X
Incentivize the preservation and adaptive reuse of historic buildings		Update standards for by-right projects			Streamlined process for adaptive reuse.	Streamlined process in exchange for a certain level of preservation of the existing building.	X

Phase 2 Timeline

(#42-22) - Attachment B

