

From: Peter F. Harrington

To: Barney Heath, Director of Planning & Development
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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.