

To the Newton Zoning and Planning Committee:

This document contains a Newton-wide data analysis showing A) problems with House Type assignment equitability and legality, and B) huge increases in single-family home nonconformity resulting from the House Type assignments, residential redistricting, and increased minimum setbacks specified by the Newton Planning & Development Department in their proposed new zoning ordinance.

House Types specify story height and footprint area limits that are assigned on a lot-by-lot basis to each single-family home [SFH] in Newton in the proposed new zoning ordinance. The Newton Planning & Development Department [the Planning Department] has represented that the assignments will limit large house sizes, preserve neighborhood character, and achieve greater economic equality. This is not true. The actual House Type assignment data shows that the lot-by-lot House Type assignments favor large homes while applying punitive restrictions to smaller homes, and that the assignments are made independently of neighboring homes. Larger homes are favored because generous Special Permit House Types have been preemptively assigned to them. In sharp contrast, the smallest House Type (C) has been given arbitrarily small story height and footprint limits that result in 83.4% nonconformity for Type C based on footprint and story height alone.

The Planning Department has also represented that the proposed new zoning ordinance will decrease overall SFH nonconformity. This is not true. **The overall Newton SFH nonconformity rate caused by the new House Type assignment story height and footprint limits alone is 33.7% with the preemptive Special Permit assignments and 53.8% without the preemptive Special Permit assignments, as shown in Tables 1 and 2. Once the redistricting and increased setback specifications are added to the House Type story height and footprint specifications, the Newton SFH nonconformity rate rises to 89.0% with Special Permit House Types and 92.6% without Special Permit House Types, as shown in Tables 3 and 4. This means that almost every single-family home in Newton will become nonconforming if the new zoning ordinance is passed.**

| Quantity | Units | House A | House A SP | House B | House B SP | House C | House C SP | House D | House D SP | Total |
|--|------------------|---------|------------|---------|------------|--------------|------------|---------|------------|--------------|
| Max Story Height Specification From Planning Department | Story Height | 2.50 | 2.50 | 2.50 | 3.00 | 1.50 | 1.50 | 1.00 | 1.00 | |
| Max Footprint Specification From Planning Department | Square Feet | 2,400 | 3,000 | 1,400 | 2,000 | 1,200 | 1,800 | 3,500 | 4,000 | |
| Max Footprint times Max Story Height | Square Feet | 6,000 | 7,500 | 3,500 | 6,000 | 1,800 | 2,700 | 3,500 | 4,000 | |
| Number of SFH Classified as House Type by Planning | Number of Homes | 1,350 | 1,891 | 6,893 | 2,701 | 1,595 | 823 | 1,732 | 90 | 17,075 |
| Total Land used by SFH with House Type | Square Miles | 0.86 | 1.49 | 2.12 | 1.07 | 0.45 | 0.28 | 0.83 | 0.07 | 7.17 |
| Ave Lot Size of SFH with House Type | Square Feet | 17,693 | 21,994 | 8,577 | 11,076 | 7,853 | 9,476 | 13,351 | 22,270 | 11,711 |
| Ave. Livable Bldg Area of SFH with House Type | Square Feet | 3,429 | 4,390 | 2,138 | 2,868 | 1,511 | 1,703 | 2,039 | 3,246 | 2,521 |
| # of SFH Exceeding Max Story Height of House Type | Number of Homes | 74 | 129 | 264 | 0 | 830 | 256 | 87 | 6 | 1,646 |
| # of SFH Exceeding Max Footprint Limit of House Type | Number of Homes | 175 | 663 | 2,244 | 646 | 971 | 44 | 1 | 43 | 4,787 |
| # of SFH that are NONCONFORMING in Either Max Story Height and Footprint | Number of Homes | 235 | 738 | 2,387 | 646 | 1,330 | 282 | 88 | 48 | 5,754 |
| % of SFH that are NONCONFORMING in Either Story Height and Footprint | Percent of Homes | 17.4% | 39.0% | 34.6% | 23.9% | 83.4% | 34.3% | 5.1% | 53.3% | 33.7% |

| Quantity | Units | House A | House B | House C | House D | Total |
|--|------------------|---------|---------|--------------|---------|--------------|
| Max Story Height Specification From Planning Department | Story Height | 2.50 | 2.50 | 1.50 | 1.00 | |
| Max Footprint Spercification From Planning Department | Square Feet | 2,400 | 1,400 | 1,200 | 3,500 | |
| Max Footprint times Max Story Height | Square Feet | 6,000 | 3,500 | 1,800 | 3,500 | |
| Number of SFH Classified as House Type by Planning | Number of Homes | 3,241 | 9,594 | 2,418 | 1,822 | 17,075 |
| Total Land used by SFH with House Type | Square Miles | 2.35 | 3.19 | 0.73 | 0.90 | 7.17 |
| Ave Lot Size of SFH with House Type | Square Feet | 20,203 | 9,281 | 8,405 | 13,791 | 11,711 |
| Ave. Livable Bldg Area of SFH with House Type | Square Feet | 3,990 | 2,344 | 1,577 | 2,098 | 2,521 |
| # of SFH Exceeding Max Story Height of House Type | Number of Homes | 203 | 370 | 1,086 | 93 | 1,752 |
| # of SFH Exceeding Max Footprint Limit of House Type | Number of Homes | 1,688 | 4,944 | 1,794 | 91 | 8,517 |
| # of SFH that are NONCONFORMING in Either Max Story Height and Footprint % of SFH that are | Number of Homes | 1,767 | 5,087 | 2,153 | 178 | 9,185 |
| NONCONFORMING in Either Story Height and Footprint | Percent of Homes | 54.5% | 53.0% | 89.0% | 9.8% | 53.8% |

Section 1: Problems with House Type Assignment Equitability and Legality

Spreadsheets obtained from the Planning Department¹ show that the only variables used in the House Type assignments were story height and house footprint. Story height is available in the Newton Assessors Database. Sasaki, Inc., Newton’s Pattern Book consultant, supplied the address-specific footprint inputs from GIS analytical tools² as footprint measurements are not in the Newton Assessors Database. (Newton homeowners often have to get a land survey to measure footprint and setbacks as part of a building permit application.) In calculating nonconformity of each home, this 2020 nonconformity analysis uses the most recent 2020 story height from the Assessors Database, rather than the initial Sasaki story height from 2018. In addition, instead of using the Sasaki footprint inputs alone, the address-specific footprint used for this 2020 nonconformity calculation was the maximum of the Sasaki footprint and the ground floor measure from the Assessors Database.

Using the newer story heights and supplemented footprint calculation, the single-family home nonconformity is, again, 33.7% with the Special Permit assignments and 53.8% without the Special Permit assignments, based on story height and footprint alone, as shown in Tables 1 and 2. If the original 2018

¹ Planning Department Spreadsheets used for their 2/25/19 Build-Out Analysis presentation to the Zoning and Planning Committee were obtained with Public Records Requests 19-81,19-82,19-86 and 19-87. These contained the address-specific House Type assignments and the story heights and footprints used to calculate the assignments for 17,245 properties. 170 of these properties were rejected for having questionable data, leaving a sample of 17,075 SFH in the nonconformity analysis. At the 5/5/20 Zoning Redesign Office Hours, the Newton Planning and Development Department confirmed that these House Type assignments were still in effect, and this verbal conversation was confirmed in a 5/10/20 email sent to the Planning Department. The most recent House Type story height and footprint specifications were obtained from a 5/29/20 Planning Department memo to the Zoning and Planning Committee available at <http://www.newtonma.gov/civicax/filebank/documents/104000/06-01-20%20Zoning%20&%20Planning%20Agenda.pdf>

² 5/18/20 email from Zachary LeMel (Long Range Planner, Planning Department).

Sasaki story heights and footprints were used for the nonconformity calculation instead,³ the nonconformity would be only slightly lower at 29.1% nonconformity with Special Permits and 50.1% nonconformity without Special Permits.

Tables 1 and 2 show that the House Type induced nonconformity is highest for the smallest house type, House Type C, which is 83.4% nonconforming with the Special Permit assignments and 89.0% without the Special Permit assignments. Again, these high nonconformity rates are only the result of the House Type story height and footprint specifications only, and do not include the effects of redistricting and footprint.

One of the most inequitable features of the initial House Type Assignments is that 980 House Type C and C SP homes (a subset of the total 2,418 C and C SP homes) were automatically made 100% nonconforming by the House Type assignment algorithm and this appears to have been done intentionally. These were all the 980 single-family homes in Newton with 1.75 story heights and footprints under 1,800 sq. ft. at the time of the House Type assignment. All of these homes, including mine, were automatically assigned to House Type C or C SP, even though House Type C or C SP has a 1.5 story height limit and these homes all had 1.75 story heights. If these homes had larger footprints and/or 2 stories, they would have been classified as Type B houses and been conforming. Instead, these 980 modest older homes have all been made nonconforming for no logical or defensible reason. This 100% nonconforming algorithm for 1.75 story homes under 1,800 sq. ft. also appears to be intentional, because it has been brought to the attention of the Planning Department twice in writing and yet they have never mentioned the issue once at a Zoning and Planning Committee meeting.

As previously stated, House Type assignments are only based on each existing home's story height and footprint, with the lot size and surrounding neighborhood being completely irrelevant. My Type C home, for example, has no nearby Type C neighbors, but is surrounded by Type A and B's with one lone Type D as a rear abutter. This means that my House Type C home will be arbitrarily nonconforming through House Type assignment compared to all other homes on my street, all of which would remain conforming with the new House Type assignments of story height and footprint.

Please note that my mid-sized 2,200 sq. ft. home has had the same story height and footprint since 1932 and is conforming in every single way under the current zoning, except lot size and frontage. **And nonconformity due to lot size and frontage are explicitly excluded from Special Permit requirements in the current zoning ordinance Section 7.8.2.A.1.a.**⁴ Please also note that all the other homes on my street are owned by Partners Healthcare, so that the act of making my home nonconforming through House Type assignment will give the Partners Healthcare lawyers more power over future building on my property. This is because immediate neighbors have a voice in the Special Permits that my property will now need to do almost anything because of the rezoning. I am much more afraid, however, that the House Type assignments and my property's new nonconforming status would also give the Inspectional Services Department [ISD] Commissioner more power over the form of my current property. My fear is based on the following sections in the proposed new ordinance:⁵

Section 2.4.3.A: The Commissioner of ISD is responsible for determining the building type classification of an existing building. Classification of existing buildings as building types is based on which building type the existing building most closely resembles.

³ Tables 1 and 2 can be resent using the original Sasaki data if requested. Some dates in the Sasaki file indicated that the data was from FY2017, which is why FY2020 Assessors Database data was used as a supplement.

⁴ This exclusion will be further discussed in *Section 2: The Effects of Redistricting and Increased Minimum Setbacks on Nonconformity*.

⁵ 10/19/18 Draft Zoning Ordinance.

Section 2.4.3.C: A Property Owner may submit a written request to reassess the building type classification assigned to their property and receive a written decision in return. A property owner may also appeal the decision of the Commissioner of Inspectional Services to the Zoning Board of Appeals.

Section 10.1.4.A.1 Preexisting nonconforming lots, structures, or uses may continue in the same form and use so long as the nonconformity remains otherwise compliant with the ordinance.

Section 10.1.4.B.1 The Commissioner of Inspectional Services shall determine whether a property owner has provided reliable evidence of nonconforming status.

Section 10.1.4.B.2 The burden of proving that a lot, structure, use, site characteristic, or sign is a preexisting nonconformity rests entirely with the property owner.

These proposed new ordinance sections (2.4.3 and 10.1.4) give the ISD Commissioner more power over individual homeowners in assigning building type and also **make homeowners vulnerable to not being able to use their existing home in its current form if they cannot prove preexisting nonconforming status to the ISD Commissioner**. In effect, the new proposed ordinance allows the ISD Commissioner to first create nonconformities through building type assignments and then later require proof from property owners that their newly created nonconformity was “preexisting” in order for them to continue using their homes in the same form. The proposed new sections 10.1.4 is radically different from the current zoning ordinance section on nonconformities (section 7.8) which does not involve the ISD Commissioner at all and does not require property owners to provide proof of preexisting nonconformity to continue using their home in its same form. The current zoning ordinance section on nonconformities mainly deals with the effect of nonconformity on City Council issued Special Permits for future construction, not current form and, again, with no explicit role of the ISD Commissioner.

Importantly, numerous public record emails show a relationship of longstanding cronyism between some Newton senior executive staff and private practice attorneys. A small sample of this cronyism was documented by me from Public Record Request emails and sent to the Land Use Committee on 11/23/18 in regard to their 11/27/18 vote on the Newton-Wellesley Hospital Area Council. This 11/23/18 document has examples of secret deals, repeated use of personal disparagement, and, most damningly, deletion of important public records in the custody of the Inspectional Services Department. Anyone reading this document should understand my extreme alarm at the House Type Assignments and the increased power of the ISD Commissioner in the proposed new zoning ordinance sections 2.4.3 and 10.1.4. The unelected office of the ISD Commissioner already has far too much power and should not be given more power by instituting the House Type assignments and the proposed new ordinance sections 2.4.3 and 10.1.4. This increased power will only further enable Newton’s longstanding senior executive staff cronyism.

Besides being unfair to smaller homes and a boost to staff power, the elaborate system of eight House Type assignments also appears to be unique and subject to legal challenges under M.G.L. 40A, §4 (“Uniform Districts”). Somerville’s House Type assignment list was obtained through a public records request to see if Somerville had similar more generous Special Permit footprint sizes for larger houses and punitive story height restrictions for smaller homes. Somerville does NOT have this. In fact, Somerville only has two detached single house types: “Detached House” with a story height limit of 2.5 and “Cottage” with a story

height limit of 2.0. All other Somerville principal⁶ residential building types are for attached or multi-unit housing, such as duplexes or detached triple decker. Furthermore, Somerville has classified 11,321 buildings as Detached Houses and only 768 buildings as Cottages. This is quite different from the eight single-family House Types (A, A SP, B, B SP, C, C SP, D, D SP) proposed on a lot-by-lot basis across Newton, shown in Table 1.

Somerville appears to be the only Massachusetts municipality with Form-Based Zoning (building types) applied city-wide to residences, and this only became effective in Somerville on 12/12/19, less than a year ago.⁷ If passed, Newton's proposed lot-by-lot zoning based on existing house size will be far more lot specific, proscriptive, and inequitable than Somerville's single-family zoning.

M.G.L. ch.40A §4 ("Uniform Districts") states the following.

Section 4. Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.

Districts shall be shown on a zoning map in a manner sufficient for identification. Such maps shall be part of zoning ordinances or by-laws. Assessors' or property plans may be used as the basis for zoning maps. If more than four sheets or plates are used for a zoning map, an index map showing districts in outline shall be part of the zoning map and of the zoning ordinance or by-law.

Assigning House Type story height and footprint size on a lot-by-lot basis based on existing buildings appears to possibly violate M.G.L. ch.40A §4, although this will only be known if a Massachusetts property owner has the funding to challenge this type of zoning in court. Again, Somerville's lot-by-lot Building Type specifications have only been in existence since 12/12/19 and appear far more equitable and less restrictive than Newton's proposed new zoning. I'm sure that the Newton Law Department will unequivocally state that Newton's proposed new zoning is in compliance with M.G.L. ch.40A §4, but there is no real legal precedence for knowing this given the newness of form-based zoning in Massachusetts where M.G.L. ch.40A §4 applies. Court challenges are prohibitively expensive for most Newton residents, especially the homeowners of the smaller homes most affected by House Type assignments.

Section 2: The Effects of Redistricting and Increased Minimum Setbacks on Nonconformity

A comparative nonconformity analysis was run showing the nonconformity under the current zoning districts and setbacks compared to the nonconformity under the proposed new zoning districts and setbacks.⁸ Results are shown in Tables 3 and 4.

⁶ Somerville does have an **accessory** Backyard Cottage Type with a 1.5 story height, but it is only an accessory building type.

⁷ An attempt was made to find other Massachusetts municipalities using form-based zoning. South Hadley and Lowell both appear to have some form of this, but I was unable to find specifications related to residence house types.

⁸ Current and proposed setbacks were obtained from 4/3/20 Planning Department memo to the Zoning and Planning Committee, available at [http://www.newtonma.gov/civicax/filebank/documents/102861/04-03-20%20Planning%20Memo%20#88-20%20\(updated%20on%2004-10-20\).pdf](http://www.newtonma.gov/civicax/filebank/documents/102861/04-03-20%20Planning%20Memo%20#88-20%20(updated%20on%2004-10-20).pdf). The measured rear and side setback measures for each SFH in Newton was obtained from the Sasaki supplied values. **Sasaki had side setback values of less than 1' for 497 homes, and rear setbacks of less than 1' for 2455 homes. These were assumed to be too small to measure and included in the nonconforming count for both current and proposed zoning.** Current and proposed zoning districts were obtained from Public Record Requests 19-81,19-82,19-86, 19-87, and 20-93 (the new R4 District). Current Zoning Specifications that are different before and after 12/7/53 for lot creation use the Assessors Database "Built" field value of <1954 to apply the older zoning specification.

Setback minimums in the proposed new zoning ordinance are only a function of zoning district and NOT a function of House Type in the Planning Department’s proposed new zoning ordinance. Nonetheless - Tables 3 and 4 retained the House Type reporting structure of Tables 1 and 2. This was done for two reasons. First of all, the huge increases in nonconformity due to redistricting and increased setback minimums were more evenly distributed across house sizes, compared to the nonconformities due to House Type specifications. Tables 3 and 4 show the evenness of this distribution. While the smallest House Type (C and C SP) is again the hardest hit with 86.2% nonconformity, due to redistricting and setbacks alone, the largest House Type (A and A SP) is not far behind at 80.3% nonconformity as shown in Table 4. The nonconformity rate for all Newton single-family homes, due to redistricting and increased setbacks only, would change from 52.6% under the current code to 82.8% under the proposed new code as shown in Tables 3 and 4.

Secondly, after the comparative nonconformity due to redistricting and setbacks alone was calculated, it was desired to also obtain the total nonconformity due to the proposed new code’s redistricting, increased setbacks AND the house type restrictions. Retaining the House Type reporting structure made this possible. **Once the proposed House Type story height and footprint restrictions were added to the proposed redistricting and increased setbacks, the nonconformity rate for all Newton SFH would be 89.0% with Special Permit House Type assignments and 92.6% without Special Permit House Type assignments.** Thus, almost all Newton single-family homes will be nonconforming under the proposed new ordinance.

| Table 3: Newton Planning Current House Type Assignments for Detached Single Family Homes [SFH] with Preemptive Special Permits Assigned by Planning to Large Homes. Nonconformity Analysis Showing Effects of House Types, Redistricting, and Increased Minimum Setbacks. | | | | | | | | | | |
|---|------------------|---------|------------|---------|------------|---------|------------|---------|------------|--------------|
| Quantity | Units | House A | House A SP | House B | House B SP | House C | House C SP | House D | House D SP | Total |
| Number of SFH Classified as House Type by Planning Department | Number of Homes | 1,350 | 1,891 | 6,893 | 2,701 | 1,595 | 823 | 1,732 | 90 | 17,075 |
| % of SFH that are NONCONFORMING in Either Story Height and Footprint | Percent of Homes | 17.4% | 39.0% | 34.6% | 23.9% | 83.4% | 34.3% | 5.1% | 53.3% | 33.7% |
| Number of SFH Exceeding Side Setbacks with Current Zoning Code | Number of Homes | 403 | 666 | 2,746 | 1,031 | 679 | 372 | 604 | 38 | 6,539 |
| Number of SFH Exceeding Rear Setbacks with Current Zoning Code | Number of Homes | 303 | 585 | 1,462 | 680 | 386 | 177 | 321 | 13 | 3,927 |
| Number of SFH NONCONFORMING in Either Side or Rear Setbacks with Current Zoning Code | Number of Homes | 619 | 1,037 | 3,612 | 1,461 | 911 | 464 | 831 | 48 | 8,983 |
| % of SFH NONCONFORMING in Either Side or Rear Setbacks with Current Zoning Code | Percent of Homes | 45.9% | 54.8% | 52.4% | 54.1% | 57.1% | 56.4% | 48.0% | 53.3% | 52.6% |
| Number of SFH Exceeding Side Setbacks with Proposed New Zoning Code | Number of Homes | 919 | 1,131 | 4,866 | 1,759 | 1,159 | 626 | 1,213 | 63 | 11,736 |
| Number of SFH Exceeding Rear Setbacks with Proposed New Zoning Code | Number of Homes | 570 | 919 | 2,477 | 1,165 | 644 | 340 | 765 | 41 | 6,921 |
| Number of SFH NONCONFORMING in Either Side or Rear Setbacks with Proposed New Zoning Code | Number of Homes | 1,103 | 1,500 | 5,693 | 2,189 | 1,368 | 716 | 1,484 | 77 | 14,130 |
| % of SFH NONCONFORMING in Either Side or Rear Setbacks with Proposed New Zoning Code | Percent of Homes | 81.7% | 79.3% | 82.6% | 81.0% | 85.8% | 87.0% | 85.7% | 85.6% | 82.8% |
| Number of SFH NONCONFORMING in Either Story Height, Footprint, Side or Rear Setbacks with Proposed New Zoning Code | Number of Homes | 1,161 | 1,659 | 6,158 | 2,330 | 1,557 | 746 | 1,502 | 84 | 15,197 |
| Number of % NONCONFORMING in Either Story Height, Footprint, Side or Rear Setbacks with Proposed New Zoning Code | Percent of Homes | 86.0% | 87.7% | 89.3% | 86.3% | 97.6% | 90.6% | 86.7% | 93.3% | 89.0% |

| Table 4: Theoretical Newton House Type Assignments for Detached Single Family Homes [SFH] Using Current Assignments with Preemptive Special Permits Removed. Nonconformity Analysis Showing Effects of House Types, Redistricting, and Increased Minimum Setbacks. | | | | | | |
|--|------------------|---------|---------|---------|---------|--------------|
| Quantity | Units | House A | House B | House C | House D | Total |
| Number of SFH Classified as House Type by Planning Department | Number of Homes | 3,241 | 9,594 | 2,418 | 1,822 | 17,075 |
| % of SFH that are NONCONFORMING in Either Story Height and Footprint | Percent of Homes | 54.5% | 53.0% | 89.0% | 9.8% | 53.8% |
| Number of SFH Exceeding Side Setbacks with Current Zoning Code | Number of Homes | 1,069 | 3,777 | 1,051 | 642 | 6,539 |
| Number of SFH Exceeding Rear Setbacks with Current Zoning Code | Number of Homes | 888 | 2,142 | 563 | 334 | 3,927 |
| Number of SFH NONCONFORMING in Either Side or Rear Setbacks with Current Zoning Code | Number of Homes | 1,656 | 5,073 | 1,375 | 879 | 8,983 |
| % of SFH NONCONFORMING in Either Side or Rear Setbacks with Current Zoning Code | Percent of Homes | 51.1% | 52.9% | 56.9% | 48.2% | 52.6% |
| Number of SFH Exceeding Side Setbacks with Proposed New Zoning Code | Number of Homes | 2,050 | 6,625 | 1,785 | 1,276 | 11,736 |
| Number of SFH Exceeding Rear Setbacks with Proposed New Zoning Code | Number of Homes | 1,489 | 3,642 | 984 | 806 | 6,921 |
| Number of SFH NONCONFORMING in Either Side or Rear Setbacks with Proposed New Zoning Code | Number of Homes | 2,603 | 7,882 | 2,084 | 1,561 | 14,130 |
| % of SFH NONCONFORMING in Either Side or Rear Setbacks with Proposed New Zoning Code | Percent of Homes | 80.3% | 82.2% | 86.2% | 85.7% | 82.8% |
| Number of SFH NONCONFORMING in Either Story Height, Footprint, Side or Rear Setbacks with Proposed New Zoning Code | Number of Homes | 2,984 | 8,859 | 2,380 | 1,592 | 15,815 |
| Number of % NONCONFORMING in Either Story Height, Footprint, Side or Rear Setbacks with Proposed New Zoning Code | Percent of Homes | 92.1% | 92.3% | 98.4% | 87.4% | 92.6% |

The resulting overall single-family home nonconformity under the proposed new zoning ordinance should have been stated months ago by the Planning Department, long before the Zoning and Planning Committee even considered the proposed new House Types, redistricting, and setbacks. Instead, larger setbacks were introduced as a method to insure that other rezoning elements would be acceptable. But these larger setbacks were never practical because they introduced such high nonconformities for all single-family homes in Newton.

Finally, it must be clearly understood why nonconformities due to story height, footprint, and setbacks matter in a way that nonconformities due to lot size and frontage do not. The reason is that nonconformities due to lot size and frontage only prohibit subdivisions or building on vacant land in the current zoning code. **Nonconformities due to lot size and frontage alone do NOT require a Special Permit for single-family or two-family homes as explicitly stated in section 7.8.2.A.1.a of the current Newton zoning ordinance:**

7.8.2. Nonconforming Buildings, Structures, or Uses⁹

A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:

⁹ Current zoning ordinance. 2/28/20 version.

*a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase the nonconforming nature of the structure, and **no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;** [Emphasis added.]*

City Councilor Marc Laredo has made this point about lot size and frontage repeatedly at the Zoning and Planning Committee meetings, but has also been ignored each time. Instead, it appears that the Planning Department keeps including lot size and frontage nonconformity in blanket statements that Newton's current high degree of nonconformity needs to be "fixed" by the proposed new zoning code in order to decrease the number of Special Permits. In reality, the proposed new code dramatically increases the nonconformity that requires Special Permits.

Section 3: Conclusion

Please request that the Planning Department calculate Tables 1 through 4 themselves. They have access to all the data elements that I used and my methodology, including treatment of small setback measured values and the treatment of date dependent zoning specifications, is explained in footnotes 1 and 8. Calculating Tables 1 through 4 should take less than a day by a single member of the Planning Department.

If the Planning Department's recalculated nonconformities are also substantially higher under the proposed code compared to the current code (excluding lot size/frontage nonconformity) then please halt the rezoning process since the ostensible reason for the proposed new zoning ordinance (lower nonconformities) is not empirically valid.

As previously mentioned, Somerville is the only other Massachusetts municipality with form-based zoning applied city-wide to residences. Somerville form-based zoning also had a much more transparent public review process than Newton, however. Revised written iterations of Somerville's proposed form-based ordinance were introduced at least four times and had at least four separate public hearings (3/15, 3/18, 10/18, 12/19)¹⁰ before being passed in December 2019. These written iterations gave Somerville residents ample time and clear written information to review each proposed code version and also give meaningful input for the next version.

In sharp contrast, the Newton proposed new zoning ordinance is being done with only one written ordinance version released to the public - the initial 10/19/18 draft version. Instead of producing iterative written versions available for public review, the Newton code is being revised continuously at Zoning and Planning Meetings with bits and pieces of the revised written code buried within a mountain of other, often irrelevant documentation.¹¹ In creating the four tables in this analysis, for example, I had to really search for the most recent footprint and setback specifications. In addition, although some City Councilors have repeatedly asked for a nonconformity analysis of the proposed new ordinance, the Planning Department has never produced one, although they have the data elements to do so.

M.G.L. 40A, §5 requires a two-week period between the posting of a public hearing notice for a Zoning Ordinance change and the hearing, and the proposed ordinance must be available for review by the public

¹⁰ Somerville's City Council records were reviewed to obtain the four public hearing dates, but it's possible that an ordinance version and/or public hearing was missed in this review.

¹¹ An especially annoying feature is that the revised zoning specifications are often within a set of concatenated "Agenda" pdf's, requiring the user to hunt through numerous resumes, memos, and drawings for other docket items for the revised specifications in the proposed new zoning ordinance.

during this period. Given the timeline of the current proposed ordinance process, the difficulty in finding specific values in and quantitative analysis about the proposed new ordinance, and my past extremely negative experiences with some Newton senior executive staff, my sense is that the current plan is to have Newton residents **only** be given these legally required two weeks to review the entire several hundred page proposed new zoning code in writing. **Please make sure that this does not happen and that Newton residents are given a longer period than two weeks to review and offer feedback on the proposed written code.**

Finally, because of COVID-19, the Massachusetts state government has prohibited in-person public gatherings and curtailed even small private gatherings since late March 2020. And, again because of COVID-19, most working parents in Newton are far too busy trying to work remotely and school their children remotely to pay attention to zoning reform. This means that most of Newton's taxpaying, public school using, homeowners residents have absolutely no idea of the content of the proposed new zoning code that will radically affect the tax base, the public schools, and their homes. It isn't just that the COVID-19 gathering restrictions have all but prohibited outside discussions of the proposed new ordinance. It's that Newton residents are too overwhelmed by COVID-19 work and family problems to even hear about the proposed new ordinance, much less understand it.

It seems cynical and opportunistic to pursue this radical zoning reform, unlike any other municipality in Massachusetts, under the isolating circumstances produced by COVID-19. Although I have lived in Newton since 1993, I only became aware of the entrenched cronyism of some Newton senior executive staff in 2017 through Public Record Requests that returned emails documenting this cronyism. After reading the emails, I did not think that I could be shocked any further by staff actions, but I was wrong.

Please feel free to email me with questions or requests to see other permutations of the data.

Sincerely,

Debra Waller

A large black rectangular redaction box covers the signature and contact information of Debra Waller.