

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO. Z-16

December 17, 2007

BE IT ORDAINED BY THE BOARD OF ALDERMEN  
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Zoning Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

**1. By adding to the provisions of Section 30-15, Density/dimensional requirements, the following new section:**

**Section 30-15(s) *Planned Multi-Use Business Development (“PMBD”)***

In any Business 4 District, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23, and may grant a special permit in accordance with the procedures provided in section 30-24, for the applicable density and dimensional controls set out in Table A of this section subject to the criteria for a Planned Multi-Use Business Development and further subject to the criteria and conditions set out below.

- (1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city’s long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city’s Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.
- (2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this section, a PMBD must meet the following threshold criteria:
  - (a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial, as classified by the City of Newton;
  - (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this section, rather than to those of section 30-15 Table 3;

- (c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in subsection 30-24(f);
- (d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and
- (e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings.

(3) *Additional Special Permit Criteria for a Planned Multi-Use Business Development.* In order to make the findings set forth in subsection 30-24(d), and in addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:

- (a) *Adequacy of public facilities.* Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by subsection (10)(f) of this section.
- (b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes;
- (c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The PMBD offers long-term public benefits to the city and nearby areas such as:
  - 1) Improved access and enhancements to public transportation;
  - 2) Enhancements to parking, traffic, and roadways;
  - 3) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
  - 4) Public safety improvements;
  - 5) On-site affordable housing opportunities except where allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and

- 6) Water and sewer infrastructure enhancements.
- (d) *Compatibility and integration with its surroundings.* The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering and/or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;
- (e) *Not inconsistent with applicable local plans or general laws.* The PMBD is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;
- (f) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths, which shall be determined by the board of aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;
- (g) *Enhanced open space.* Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement in Table A;
- (h) *Excellence in place-making.* The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;
- (i) *Comprehensive signage program.* All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of aldermen, which shall control for

all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape;

- (j) *Pedestrian scale.* The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel;
- (k) *Public Space.* The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;
- (l) *Sustainable Design.* The PMBD will at least meet the energy and sustainability provisions of zoning subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h);
- (m) *Pedestrian and Neighborhood Considerations.* If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:
  - 1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
  - 2) Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;
  - 3) Traffic signal additions or alterations; and
  - 4) Relocation or alterations to public transport access points;
- (4) *Lots.* In the application of the requirements of this section to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this section by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection (5) below.

- (5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's ordinance and shall be the primary contact for the city in connection with any dispute regarding violations of this section and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this section. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- (6) *Phasing.* Any development within a Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.
- (7) *Post-Construction Traffic Study.* A PMBD special permit granted shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development, in an amount approved by the board of aldermen in acting on the special permit, to secure performance as specified below:
- (a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.
  - (b) The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the city and paid for the applicant or successor in interest.

- (c) If the actually experienced total number of vehicle trips to and from the PMBD measured per subsection (7)(b) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per subsection (10)(f)iii by more than ten percent (10%), mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to achieve the required reduction within one year after notification, the bond or other security cited above may be forfeited and proceeds used by the city for traffic mitigation.

- (8) *Modifications.* Any material modification to a PMBD shall require an amendment to the site plan or special permit as approved by the board of aldermen in accordance with sections 30-23 or 30-24. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:

- (a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;
- (b) A change of use that results in a net increase in required parking for the PMBD (pursuant to section 30-19);
- (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;
- (d) Except as provided above, any reduction in beneficial open space; and
- (e) Modification governed by any condition identified by the board of aldermen in the special permit as not subject to modification without additional approval.

- (9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section. Where provisions of this

section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern.

(10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of special permit for a PMBD shall submit:

- (a) Scaled massing model or 3D computer model consistent with section 30-24(b);
- (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;
- (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (d) Site plans showing any “by-right” or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this section;
- (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus;
- (f) A Roadway and Transportation Plan reflecting the “EOEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
  - i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;
  - ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;

iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:

- a) the projected Base Volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
- b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for “pass-by” trips, and noting how those reductions compare with the PMBD guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;
- c) the means of making mitigations if it is found pursuant to the monitoring under subsection (7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;
- d) the projected trip reduction adjustment based on “pass-by” trips for use in projecting impacts on street traffic volumes.

iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;

v. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

vi. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;

(g) Proposed phasing schedule, including infrastructure improvements; and

(h) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.

- (11) *Electronic Submission and Posting of Application Materials.* Applicants must submit in electronic form all documents required under subsection (10) of this section and sections 30-23 and 30-24 and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS “Standard for Digital Plan Submittal to Municipalities,” or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt.

Table A.

**DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT**

The following rather than the provisions of Table 3 in section 30-15 shall apply to development under a PMBD special permit.

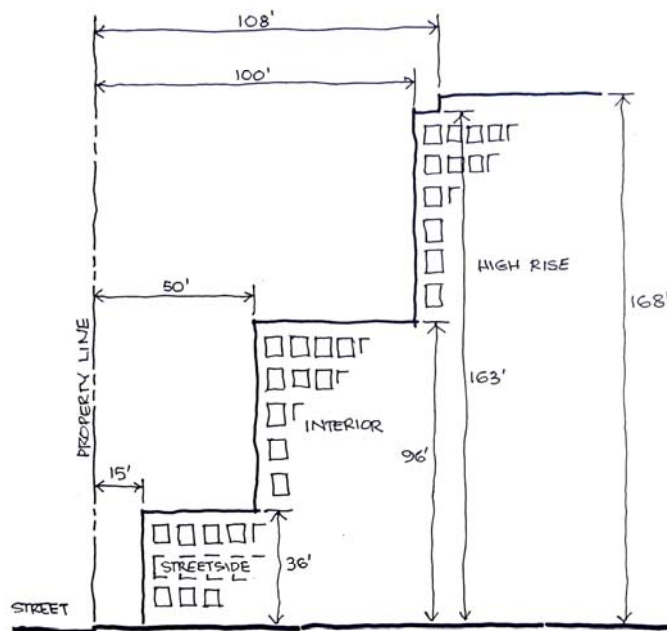
As noted at subsection 30-15(4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

<b>Area, frontage, and bulk</b>	<b>All development</b>
Minimum lot area	10 acres
Minimum lot frontage	100 ft.
Max. total floor area ratio	3.0
Min. lot area per dwelling unit	1,200 sq. ft.
Maximum lot coverage	n/a
Min. beneficial open space	20%

<b>Height and setbacks (8)</b>	<b>Streetside facade</b>	<b>Interior development</b>	<b>High rise development</b>
Height (feet)	36 ft.	96 ft.	96 ft. (2), (3)
Height (stories)	4	8	8 (1)
Front setback (7)	Lesser of 15 ft. or 1/2 building height (4)	Greater of 50 ft. or 1/2 building height	100 ft.
Side setback (7)	Greater of 15 ft. or 1/2 building height (5)		50 ft. (6)
Rear setback (7)			100 ft. (6)

**NOTES**

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the board of aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The board of aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 ft. of the Development Parcel as of December 17, 2007.
- (4) The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.
- (5) Side and/or rear setbacks shall be a minimum of 20 feet or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residence District or Multi-Residence or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and (c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the board of aldermen.



2. ***By adding to Section 30-1 Definitions, the following three definitions:***

*Open Space, Beneficial:* Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten percent (10%) of the otherwise applicable square footage requirements shall be made for the provision of well-maintained publicly available green planted areas.

*Development Parcel:* The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the board of aldermen in connection with a special permit under section 30-15(s).

*Height, Contextual:* The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering

division of the department of public works and (b) the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.

**3. By renumbering, in Section 30-11(d), subparagraph (12) as (13) and adding the following as new subparagraph (12):**

(12) In Business District 4, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s);

Approved as to legal form and character:

DANIEL M. FUNK

City Solicitor

Under Suspension of Rules

Readings Waived and Approved

19 yeas 5 nays (Ald. Harney, Johnson, Mansfield, Parker, Sangiolo)

(SGD) DAVID A. OLSON

City Clerk

(SGD) DAVID B. COHEN

Mayor