



Zoning & Planning Committee Report **Revised**

City of Newton **In City Council**

Thursday, February 15, 2024

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, and Danberg

Absent: Councilor Kalis

Also Present: Councilors Malakie, Farrell, Lucas, Leary, Block, and Greenberg

City Staff: Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Olivia James, Community Engagement Specialist; Jennifer Wilson, Assistant City Solicitor; and Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - February 15, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

#21-24 Discussion concerning ZAP Committee workplan for the new term
COUNCILORS BAKER AND OLIVER requesting a discussion with Zoning and Planning Committee concerning the work plan of the ZAP Committee for the new 2024-2025 term.

Action: Zoning & Planning Held 6-0 (Councilor Albright Not Voting)

Note: The Chair noted that the Committee will be holding a public hearing on February 26, 2024, regarding item #49-24, which if adopted would require electrification of all new construction and substantial renovations. He also asked Committee members to let the Committee if they know of any upcoming items that have not been docketed. This information would be used to aid in scheduling conversations. The Committee voted 6-0 (Councilor Albright Not Voting) on a motion to hold from Councilor Krintzman.

#43-24 Quarterly update on projects using the VCOD overlay districts
COUNCILORS ALBRIGHT AND DANBERG requesting updates on any potential projects brought to the Planning Department under the new Village Center Overlay District. The updates should include indications of interest and actual permits filed; for which villages and under which zoning districts; number of stories and units.

Action: Zoning & Planning Held 6-0 (Councilor Albright Not Voting)

Note: The Chair noted that this discussion will only be a brief update regarding the VCOD (Village Center Overlay District). Jennifer Caira, Deputy Director of Planning, outlined that there are two main components to the VCOD update with one being the submission of the zoning for compliance with MBTA Communities Act Guidelines, and the development of the application for development within the VCOD.

Submission for MBTA Communities Act Guidelines Compliance

The VCOD was passed in part to satisfy compliance with MBTA Communities Act Guidelines from the Executive Office of Housing and Livable Communities (EOHLC). These guidelines had restrictions on what could be counted towards compliance. Due to these restrictions, parcels over 30,000 sf; and Auburndale and other areas due to not being 5 acres of contiguous area were not submitted as part of the submission package. The parcels that were VC2 and on a mixed-use priority street were also not included in this submission. This is due to the concern of our inclusionary zoning ordinance not being economically feasible for these parcels. MAPC is currently conducting our economic feasibility analysis and we have been in communication with EOHLC to ensure that we are not penalized. This economic feasibility analysis is required due to the City's Inclusionary Zoning Ordinance allowing for more units at deeper levels of affordability than the state guidelines. A couple of Councilors raised concerns that VC2 required mixed use not being included in the submission. Ms. Caira reaffirmed that the City will still comply without these parcels. The Chair and Zachary LeMel, Chief of Long Range Planning, both noted that the VCOD is a tool for compliance and the Planning Department's decisions were on how to frame what was passed by the City Council for EOHLC.

The Planning Department in advance of this meeting shared the following materials with the full Council that were part of the MBTA Communities Act compliance submission:

- Cover memo on Newton's MBTA Compliance Submission – [click here](#)
- Memo from the City Clerk certifying that the text and maps are up to date – [click here](#)
- A copy of the City of Newton Chapter 30: Zoning Ordinance – [click here](#)
- A copy of the updated City of Newton Zoning Map – [click here](#)
- The MBTA Communities Workbook for Mixed Use Required – [click here](#)
- The MBTA Communities Workbook for Residential Development – [click here](#)
- Shapefiles for the part of the VCOD submitted to EOHLC – [click here](#)

Development of Application for Development Within VCOD

Ms. Caira noted that the Planning Department is coordinating with other departments and is working with ISD on how to collect data and on the unique requirements of the VCOD. The Planning Department is developing public information sheets which will be available soon. Inquiries have been made regarding potential development in all districts along with some restaurants looking to take advantage of the reduced parking requirements. The [Assessing Database](#) has been updated with the new zoning and the City is looking at ways to better identify

properties within the VCOD in the Assessing Database. A Councilor asked if a DRT meeting will be held for by-right development within the VCOD. Ms. Caira said that there is a place for that and that it is being explored.

Further questions regarding the VCOD can be submitted to vcod@newtonma.gov.

The Committee voted 6-0 (Councilor Albright Not Voting) on a motion to hold from Councilor Krintzman.

#85-24 Request for discussion and possible amendments to enhance the preservation of existing homes.

COUNCILORS BAKER, OLIVER, MALAKIE, KALIS, GETZ, LUCAS, LOBOVITS, AND WRIGHT requesting a discussion and possible amendments to Chapter 30 Zoning or other City Ordinances to enhance the preservation of existing homes over their replacement by larger and more expensive structures.

Action: **Zoning & Planning Held 7-0**

Note: The Chair noted that this discussion would be to figure out how to go about tackling this issue in both the short and long term. Mr. LeMel noted that the Planning Department is looking for this discussion to provide the Department with some direction as to what they would like done due to this being a multi-faceted issue. Councilors noted concern with smaller homes being bought by developers resulting in a loss of lower-cost housing in Newton. Ms. Caira added that this is due to the current zoning allowing for these new developments to be more profitable than the existing structure.

A few Councilors on the Committee indicated a preference for expanding the possibility of adaptive reuse within more parts of the City. Other Councilors noted a preference to instead limit what could be built if a developer looks to redevelop a property. This limiting new development can be through site controls such as increasing setbacks or through reducing the scale of new development. A Councilor not on the Committee proposed that the City find ways to help assist first-time homebuyers who are interested in purchasing these smaller homes where possible.

Regarding the preservation of older homes, the City has previously received a grant from the Massachusetts Historical Commission to look at expanding the number of homes that could be subject to demolition delay.

Ms. Caira noted that while the VCOD was about 3% of the City's land area this will be a much larger undertaking and will require coordination between the Council and the Planning Department regarding outreach. Councilors noted support for collaborating on this outreach.

The Committee voted 7-0 on a motion to hold from Councilor Krintzman.

#41-24 Amend the setbacks in the MR zones to encourage preservation of existing buildings

COUNCILORS ALBRIGHT, DANBERG, KRINTZMAN, AND LEARY seeking a discussion with the Planning Department to consider ordinance amendments that would revise the metrics in the multi-residence (MR1, MR2 and MR3) zones, to regulate the size of new buildings better, enable a wider range of housing options close to public transit, and better incentivize preservation and renovation of existing housing stock.

Action: **Zoning & Planning Held 7-0**

Note: This item was discussed jointly with item #85-24. A written report can be found with item #85-24.

#76-24 Discussion and possible ordinance amendment to deal with grade changes created during construction causing stormwater runoff on neighboring properties

COUNCILORS ALBRIGHT, LIPOF, WRIGHT, AND LEARY requesting a discussion with the Planning Department to address concerns relative to the trend of significantly raising grade elevations on lots, using retaining walls, terracing and other means to add soil to conceal a raised basement, which can lead to new buildings that are significantly taller than nearby existing houses in the area and cause denuding of wooded areas and increase stormwater runoff. This discussion may result in an ordinance change to Chapter 30 section 5.4.2 which would require a special permit or other means of city review of all retaining walls over 4 feet on a site.

Action: **Zoning & Planning Held 7-0**

Note: Olivia James, Community Engagement Specialist, described that the current zoning only requires a special permit for retaining walls over 4 ft when they are within the setback. The current zoning also measures the height of a building from the average finished grade elevations around the perimeter of the building. This leads to the developers maxing out the site and manipulating height and FAR (floor area ratio) using grading and retaining walls. The attached presentation shows examples of the negative effects retaining walls have on a property.

Ms. James also described that before 2009 a special permit was required for any grade changes more than 3 feet and that in 2009 the ordinance was changed to only require a special permit for retaining walls over 4 ft within the setback. The VCOD requires a special permit for all retaining walls over 4 ft regardless of location. There have also been updates to the stormwater ordinance that helps to mitigate some of the stormwater effects caused by retaining walls. A list of these requirements can be found in the attached presentation.

Two categories of potential solutions were presented with the straightforward proposal being to require a special permit for retaining walls over 4 ft regardless of location. The more complex proposals included measuring height from the existing grade or a fixed point, measuring height along the front elevation, setting a maximum height for individual or terraced retaining walls, look at when a basement counts towards FAR.

Councilors expressed support that these proposals were a good start and urged that action needs to be taken to discourage these grade changes. Committee members also requested that criteria on retaining walls be included in the ordinance to help guide the Land Use Committee.

Councilors expressed a desire to continue discussion at a future meeting on this topic. The Committee voted 7-0 on a motion to hold from Councilor Krintzman.

#83-24 Discuss and Implement Key Metrics & Reporting Process

COUNCILORS OLIVER, WRIGHT, GETZ, LAREDO, FARRELL, KALIS, ALBRIGHT, AND MICLEY requesting discussion and implementation of a public reporting process for key metrics relevant to the Planning Department. The discussion should include the topics to address, which metrics to include, where, and how often they should be reported. We would expect that our discussion will lead to a list of topics and metrics that need to be prioritized based on existing data availability as well as staff time. We further acknowledge that this is likely to be an iterative process.

Action: **Zoning & Planning Held 7-0**

Note: The docketing Councilor noted that this item is to identify areas where the city can collect data on what is going on and can easily display it for public consumption. He stated that the first goal would be to identify what data is already collected by the City and how it could be best displayed on the City's website. Councilors recommended seeing how to coordinate with other departments and see what other communities are doing in terms of reporting. The Committee voted 7-0 on a motion to hold from Councilor Krintzman.

The meeting adjourned at 9:40 pm.

Respectfully Submitted,

R. Lisle Baker, Chair



Grading and Retaining Walls

Docket #76-24

Zoning and Planning Committee
February 15, 2024
Department of Planning and Development



Agenda

- Overview
- Existing Regulations
- Issues
- Potential Solutions
- Next Steps
- Questions for the Committee

Overview

Issues

- Sites are being maxed out
- Developers manipulate height and FAR by using grading and retaining walls
- Impact on neighboring houses

Existing Regulations

Height

Zoning ordinance sets maximum height and floor area limits for new single and two-family homes.

Height is measured from the average finished grade elevations around the perimeter of the building.



Grading and Retaining Walls

Prior to 2009 a Special Permit was required to change existing grades by more than 3 feet

This rule was difficult to reasonably implement and interpretations were necessary over time to allow for foundation excavation and similar work

In 2009, at recommendation of the zoning task force, this provision was replaced by a Special Permit requirement for retaining walls over 4 feet in height in the setback

A Special Permit is required for all retaining walls over 4' regardless of location in VCOD zoning



Stormwater

Ordinance updated in June 2022

Previous requirements:

- Any development or redevelopment creating an increase in impervious area of 400 sf or 4%

New requirements:

Stormwater management review and permit now required for:

- Any residential development or redevelopment
- Any development or redevelopment creating more than 400 sf of new impervious area
- Construction of retaining walls
- Trench excavation requiring dewatering
- Land disturbances of more than 5,000 sf

Issues

Height

Measuring height from finished grade allows for the manipulation of existing grades, which can result in homes that appear taller than adjacent homes



Before

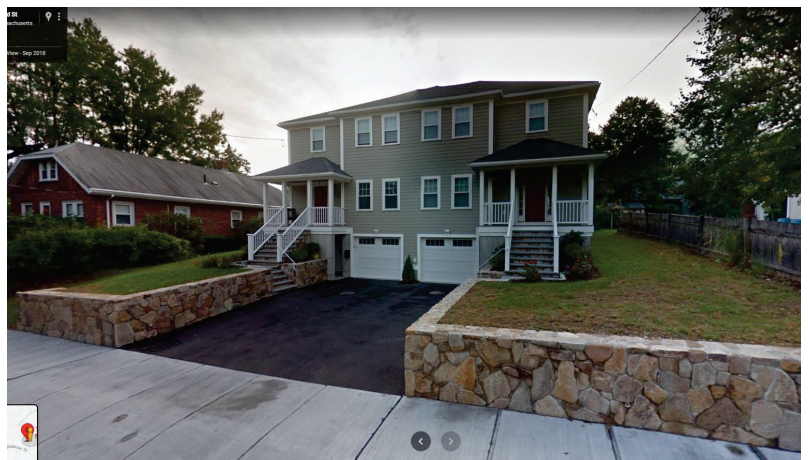


After



Height

Raising the existing grade is often done to construct a full basement where there is a high water table, to include a tucked under garage, or to maximize FAR



Retaining Walls

There are no height restrictions or Special Permit requirement for retaining walls outside of setbacks

Retaining walls are often used to allow construction on steep lots or create a flat yard



Retaining Walls

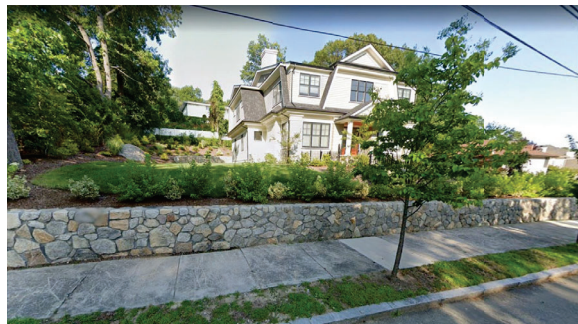
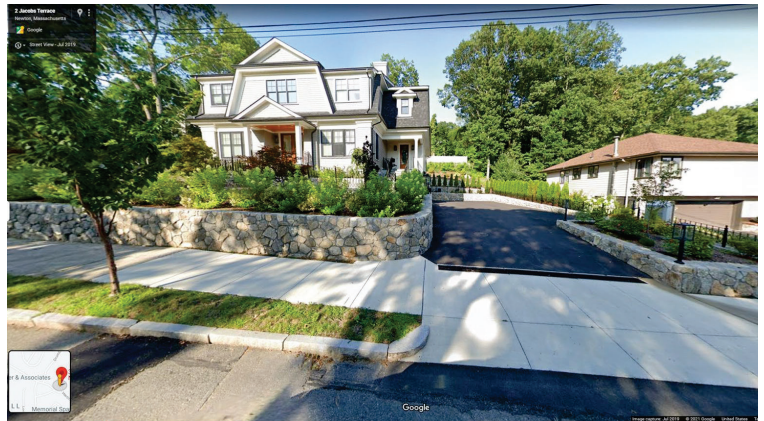
Large retaining walls present aesthetic and safety concerns for adjacent properties





After

Before



Before



After



Potential Solutions

Straight Forward

- Require special permit for retaining walls or series of retaining walls exceeding 4' anywhere on the property

Complex

- Measure height from existing grade or a fixed point such as the back of sidewalk
- Measure height along the front elevation, not average grade
- Set a maximum height for individual or terraced retaining walls
- Explore when basement counts towards FAR

Next Steps

Research past building permits to better understand the issues and how prevalent they have been

Work with Engineering and ISD to further develop possible solutions

Questions for the Committee

- Are we missing any related issues?
 - Which of these issues are of greatest concern?
 - Aesthetics (building height and massing, views of retaining walls)?
 - Retaining wall safety?
 - Stormwater runoff?
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