



Zoning & Planning Committee Report

City of Newton In City Council

Monday, March 11, 2024

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

Absent: Councilor Krintzman

Also Present: Councilors Leary, Farrell, Humphrey, Malakie, Lipof, and Greenberg

City Staff: Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning, Olivia James, Community Engagement Specialist; John Sisson, Economic Development Director; Jane Santosuosso, Principal Planner; Anthony Ciccariello, Commissioner of Inspectional Services; Ann Berwick, Co-Director of Sustainability; Bill Ferguson; Co-Director of Sustainability; Andrew Lee, Senior Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; 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 - March 11, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

#138-24 Reappointment of Jennifer Pucci to the Zoning Board of Appeals

HER HONOR THE MAYOR reappointing Jennifer Pucci, 22 Florence Court, Newtonville as an associate member of the Zoning Board of Appeals for a term of office set to expire on April 19, 2025. (60 Days: 05/03/2024)

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

Note: The Chair noted that the appointee's resume was included as backup material to the agenda and that the City has recently met the safe harbor threshold. Jennifer Pucci joined the Committee and outlined her experience as a litigator along with her experience working for the City's Law Department. She also stated her strong beliefs regarding public service along with being the co-chair of Newton Neighbors. Regarding the ZBA (Zoning Board of Appeals), Ms. Pucci noted how she has enjoyed her time on the ZBA and likes the quasi-judicial function of the body.

Councilors thanked Ms. Pucci for her service on the ZBA and her willingness to serve another term. Multiple Councilors asked Ms. Pucci regarding when she would decide to invoke safe harbor on a 40B project. Ms. Pucci stated that each project will need to be reviewed on its merits and that she will follow the guidance that has been received from the Law Department regarding this process.

Committee members voted 7-0 on a motion to approve from Councilor Albright.

#49-24 Discussion and possible adoption of an ordinance requiring electrification of all new construction and substantial renovations

HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, DANBERG, LEARY, HUMPHREY, KALIS, DOWNS, LIPOF, WRIGHT, MICLEY, BIXBY, AND GETZ requesting discussion and possible adoption of an Electrification Ordinance that would require all new construction and substantial renovations in Newton to be all-electric. This is in conjunction with the City's recent conditional approval by the State Department of Energy Resources (DOER) for participation in the Ten Communities Program.

Action: Zoning & Planning Approved 7-0

Note: On February 26th the Zoning & Planning Committee held a public hearing on the draft ordinance. ([02-26-24 Zoning & Planning Committee Report \(newtonma.gov\)](#)) Councilors in advance of this meeting were provided with an updated draft ordinance that reflects concerns raised at that meeting. (attached) Andrew Lee, Senior Assistant City Solicitor, noted that this ordinance is part of the Ten Communities Program overseen by the Department of Energy Resources (DOER) and any amendments to this ordinance will need to be approved by DOER.

Councilors asked why certain definitions were not defined in the ordinance. Anthony Ciccariello, Commissioner of Inspectional Services; and Attorney Lee, both noted that these terms are defined in the Massachusetts Building Code. A Councilor noted that under this draft ordinance, individuals will need to switch a gas stove for an electric stove when doing a substantial renovation. This is required even if the substantial renovation has no nexus with the kitchen. The Councilor added that in speaking with Ann Berwick, Co-Director of Sustainability, she noted that under the specialized code, the individual doing the substantial renovation is already required to wire everything to be electric-ready. The Chair noted that during deliberations by the Public Facilities Committee, an exemption for existing gas stoves was rejected by the Committee. In polling the Zoning & Planning Committee, Councilors were not in favor of creating this exemption. An effective date of January 1, 2025, was also set by unanimous consent.

Regarding the effect of this ordinance on historic buildings, Commissioner Ciccariello stated that the property would need to have been found historic by Newton Historic Preservation. A letter would also need to be submitted stating that compliance with the code would be a detriment to the historic character of the building. Attached is a copy of this provision of the Building Code.

Committee members voted 7-0 on a motion to approve from Councilor Albright.

#76-24(2) Discussion and possible ordinance amendment to require a special permit for retaining walls over 4ft

ZONING & PLANNING COMMITTEE AND COUNCILOR LIPOF requesting discussion and possible ordinance amendment to Chapter 30 Section 5.4.2 to require a special permit for all retaining walls over 4 feet on a site.

Action: Zoning & Planning Held 7-0; Public Hearing Set for 04/08/24

Note: Please see the note for item #76-24.

#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.

Zoning & Planning Held 7-0 on 02/15/24

Action: Zoning & Planning Held 7-0

Note: Olivia James, Community Engagement Specialist presented the attached presentation and noted that at the 2/15 meeting, the Committee proposed moving forward with a short-term option. This would for the City to begin addressing this issue while the Department explores additional solutions. This proposal would require a special permit for all retaining walls four (4) feet or greater in height. When there is a combination of walls placed within twenty-five (25) feet of each other will be measured as one wall from the base of the lowest wall to the top of the highest wall. The attached presentation also details the criteria that need to be satisfied in granting a special permit. Councilors asked if the special permit criteria were specific enough. Jennifer Cairra, Deputy Director of Planning, outlined that the applicant needs to prove to the City Council that the project satisfies the criteria and is responsible for any engineering studies needed on the project. A Councilor asked what the course of action for a property owner could be whose property is negatively impacted by an approved project. Attorney Lee stated that the Law Department will look into this. There were also questions as to why 4 feet was the threshold for a special permit. This threshold was set due to it being the current special permit threshold for retaining walls within the setback and that retaining walls under 4 feet do not require a building permit per the Massachusetts Building Code.

Councilors voted 7-0 on a motion to split the item, hold both items, and set a public for 04/08/2024 for 76-24(2) from Councilor Albright.

#132-24 Requesting discussion and amendments to Newton Zoning Ordinance, Chapter 30

HER HONOR THE MAYOR requesting discussion and amendments to the Newton Zoning Ordinance, Chapter 30, in order to clarify definitions, edit missing or incorrectly transcribed provisions, and revise inconsistencies in the ordinance.

Action: Zoning & Planning Held 7-0; Public Hearing Set for 04/08/24

Note: The Chair noted that the Committee was provided with a memo in advance of the meeting that outlined the proposed revisions to Chapter 30. Ms. James presented the attached presentation that detailed each proposed change. A Councilor noted if previous errors in the ordinance that have been sent to the Planning Department are included in this list. Ms. Caira and Mr. LeMel both asked that these be resent to make sure they are included. Committee members voted 7-0 on a motion to hold the item and set a public hearing for Monday, April 4th from Councilor Danberg.

#133-24 Requesting discussion and amendments to Newton Zoning Ordinance, Chapter 30 to incentivize small businesses

HER HONOR THE MAYOR requesting discussion and amendments to the Newton Zoning Ordinance, Chapter 30, in order to incentivize and promote small businesses.

Action: Zoning & Planning Held 7-0; Public Hearing Set for 04/08/24

Note: Ms. James presented the attached presentation which outlined the proposed revisions to codify current practice and clear up inconsistencies within the ordinance. Regarding the amendment to create a personal instruction use, a councilor noted concerns over increased parking demand. Mr. LeMel stated that these would only be allowed by-right in business districts and would require a special permit in residential districts. Committee members voted 7-0 on a motion to hold the item and set a public hearing for Monday, April 4th from Councilor Kalis.

#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.

Zoning & Planning Held 7-0 on 02/15/24

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

Note: The Chair stated that this is only to provide a brief update to the Committee in advance of a more robust presentation. Mr. LeMel outlined that this meeting is to brief the committee on the method being used for analyzing demolition and new construction data from 2017 to 2023. The Planning Department is also currently looking to see what other Communities are doing and noted that these will be complex solutions that will take time. A Councilor asked if the analysis could go back 10 years and have a ward breakdown along with markers of when major changes to the zoning ordinance took place. Another Councilor also noted individuals in the Community who have been compiling this data. Mr. LeMel stated that he could look into how far back the analysis could go and would reach out to those individuals regarding that data.

Councilors also proposed potential solutions for the Department to look into. These include having new lot standards apply to a lot when a building is demolished, charging a demolition fee that is based on the environmental cost of the demolition, and incentivizing deconstruction over demolition.

Committee members voted 6-0 (Councilor Albright Not Voting) on a motion to hold both items from Councilor Kalis.

#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.

Zoning & Planning Held 7-0 on 02/15/24

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

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

#136-24 Reappointment of Judy Weber to the Newton Affordable Housing Trust

HER HONOR THE MAYOR reappointing Judy Weber, 21 Belmont Street, Newton as a member of the Newton Affordable Housing Trust for a term of office set to expire on March 21, 2026. (60 Days: 05/03/2024)

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

Note: The Chair read items #136-24 and #137-24 into the record. Councilors voted 6-0 (Councilor Albright Not Voting) on a motion to approve both items from Councilor Danberg.

#137-24 Reappointment of John Downie to the Urban Design Commission

HER HONOR THE MAYOR reappointing John Downie, 285 Auburndale Avenue, Newton as a member of the Urban Design Commission for a term of office set to expire on March 31, 2027. (60 Days: 05/03/2024)

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

Note: This item was discussed jointly with item #136-24. Please see item #136-24 for a written report.

The meeting adjourned at 9:43 pm.

Respectfully Submitted,

R. Lisle Baker, Chair

Draft Newton Electrification Ordinance and Amendments to the Specialized Energy Code

Purpose

The City of Newton adopts this Ordinance in order to enable the City to participate in the State’s Fossil Fuel-Free Demonstration Project, 225 CMR 24.00. The purpose of the Fossil Fuel-Free Demonstration Project is to restrict and prohibit new building construction and Major Renovation Projects that are not fossil fuel-free in ten communities in Massachusetts. The Ordinance will protect the health and welfare of the City’s inhabitants and the environment by reducing greenhouse gases, which cause climate change, and by reducing other air pollutants.

The Ordinance requires new construction and Major Renovation Projects to use electricity instead of fossil fuels for heating and cooling systems and cooking and clothes drying appliances; and, for hot water, to use either electricity or thermal solar.

Definitions

“Department” means The Massachusetts Department of Energy Resources, as established by MGL chapter 25A.

“Commissioner” means the Commissioner of Inspectional Services of the City of Newton, as established by Section 5-16 of the Ordinances of the City.

“Fossil Fuel-Free Demonstration Project” means the project codified by the entirety of 225 CMR 24.00, enabling ten communities designated by the Department to require new construction and Major Renovation Projects to be fossil-fuel free, notwithstanding MGL chapter 40A; MGL chapter 142, section 13; MGL chapter 164; or any other general or special law to the contrary.

“Hospitals or Medical Offices” means a facility licensed or approved by the Department of Public Health to provide health care, including clinics licensed as health care facilities and facilities that provide substance use disorder treatment

services, including outpatient withdrawal management, opioid treatment programs, office-based opioid treatment programs, acute treatment services (inpatient detoxification), and clinical stabilization services.

“Major Renovation Project” means (a) low-rise residential additions over 1,000 square feet and additions exceeding 100% of the conditioned floor area of the existing dwelling unit; (b) additions over 20,000 square feet and additions that exceed 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential; (c) Level 3 Alterations as defined in the International Existing Building Code (IEBC 2021) (which exceed 50% of the existing conditioned floor area) exceeding 1,000 square feet for low-rise residential, or exceeding 20,000 square feet for all other building uses; or (d) Change of use of over 1,000 square feet per International Energy Conservation Code (IECC 2021) Sections R505; or (e) change of use of over 20,000 square feet or change of use of 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential, International Energy Conservation Code (IECC 2021) Sections C505.

“Research Laboratories for Scientific or Medical Research” means a building in which a laboratory procedure or research activity occurs, and where the building has an average ventilation at full occupancy greater than 0.5 cfm/sf. Such buildings shall provide the ventilation design documentation described in 225 CMR 23.00, Section C103.2, at the time of building permitting.

“Specialized Energy Code” means the building code in 225 CMR 22.00 and 23.00; including Appendices RC and CC, which add residential and commercial appendices to the Massachusetts Stretch Energy Code.

Applicability

The fossil fuel restriction applies to residential and commercial buildings located in the City that qualify as new construction or Major Renovation Projects, except as listed in the Section herein entitled “Exceptions.”

Exceptions

The requirements of this Ordinance do not apply to any of the following:

- A. Research Laboratories for Scientific or Medical Research;

- B. Hospitals or Medical Offices;
- C. Freestanding outdoor cooking appliances that are not connected to the building's natural gas or propane infrastructure;
- D. Freestanding outdoor heating appliances that are not connected to the building's natural gas or propane infrastructure;
- E. Emergency generators;
- F. Appliances to produce potable or domestic hot water from centralized hot water systems in buildings with a gross floor area of at least 10,000 square feet, provided that the architect, engineer, or general contractor on the project certifies by affidavit that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation costs, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.
- G. Fossil fuels for process loads for manufacturing, industrial, and commercial purposes.

Waivers

The City will entertain waiver requests for Major Renovation Projects with respect to which an architect, engineer, or general contractor on the project certifies by affidavit that compliance with the requirements of the Ordinance will increase the costs of the project by 50% or more, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.

Additionally, the City will entertain waiver requests for new construction and Major Renovation Projects with respect to which Eversource notifies the City in writing that the project is unable to comply with the Electrification Ordinance because of insufficient electric grid, transmission, distribution, or related electric infrastructure capacity in the particular location.

Application Requirements

When applying for a building permit for new building construction or a Major Renovation Project the applicant must submit documents with the application

that identify the heating and cooling and hot water systems and cooking and clothes drying appliances that will be installed and used in the building.

Compliance

The Commissioner shall not issue any building permit for the construction of a new building or Major Renovation Project unless the applicant submits the documentation set forth in the Section herein entitled “Application Requirements.” The Commissioner shall not issue a certificate of occupancy for any building subject to this Ordinance prior to inspection and confirmation that the heating and cooling and hot water systems and cooking and clothes drying appliances installed in the building comply with the applicant’s documents submitted pursuant to the Section herein entitled “Application Requirements.”

Effective Date

This Ordinance shall apply to all building permits, special permits, and comprehensive permits issued on January 1, 2025 and thereafter.

Amendments to the Specialized Energy Code

With adoption of the Fossil Fuel-Free Demonstration Project by the City, and upon approval by the Department, the following amendments to the Specialized Energy Code are adopted. These changes are enforceable by the Commissioner and will go into effect for any project seeking a permit after the effective date of this Ordinance.

a. Low-rise Residential Code (225 CMR 22 Appendix RC)

1. Sections RC102 and RC101 “Zero Energy Pathway” and “Mixed Fuel Pathway” shall not be permitted for use for new construction or Major Renovations.

b. Commercial and All Other (225 CMR 23 Appendix CC)

- i. Sections CC103 and CC105 “Zero Energy Pathway” and “Mixed-Fuel Pathway” shall not be permitted for new construction or Major Renovations, with the following exceptions:

1. Research Laboratories for Scientific or Medical Research;
2. Hospitals or Medical Offices;
3. Buildings heated with Clean Biomass Heating Systems as defined in 225 CMR 23, as the only combustion equipment;
4. Multi-family buildings over 12,000 square feet with permit application filed prior to January 1, 2027 may utilize gas or propane for domestic water heating as the only combustion equipment.

CHAPTER 5 [RE]

EXISTING BUILDINGS

User note:

About this chapter: Many buildings are renovated or altered in numerous ways that could affect the energy use of the building as a whole. Chapter 5 requires the application of certain parts of Chapter 4 in order to maintain, if not improve, the conservation of energy by the renovated or altered building.

SECTION R501 GENERAL

R501.1 Scope. The provisions of this chapter shall control the *alteration, repair, addition* and change of occupancy of existing *buildings* and structures.

R501.1.1 General. Except as specified in this chapter, this code shall not be used to require the removal, *alteration* or abandonment of, nor prevent the continued use and maintenance of, an existing *building* or *building* system lawfully in existence at the time of adoption of this code. Unaltered portions of the existing *building* or *building* supply system shall not be required to comply with this code.

R501.2 Compliance. *Additions, alterations, repairs* or changes of occupancy to, or relocation of, an existing *building, building* system or portion thereof shall comply with Section R502, R503, R504 or R505, respectively, in this code. Changes where unconditioned space is changed to *conditioned space* shall comply with Section R502.

R501.3 Maintenance. *Buildings* and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices and systems that are required by this code shall be maintained in conformance to the code edition under which installed. The owner or the owner's authorized agent shall be responsible for the maintenance of *buildings* and structures. The requirements of this chapter shall not provide the basis for removal or abrogation of energy conservation, fire protection and safety systems and devices in existing structures.

R501.4 Compliance. *Alterations, repairs, additions* and changes of occupancy to, or relocation of, existing buildings and structures shall comply with the provisions for *alterations, repairs, additions* and changes of occupancy or relocation, respectively, in this code and the *International Residential Code, International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code* and NFPA 70.

R501.5 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for *repairs*, provided that hazards to life, health or property are not created. Hazardous materials shall not be used where the code for new construc-

tion would not allow their use in *buildings* of similar occupancy, purpose and location.

R501.6 Historic buildings. Provisions of this code relating to the construction, *repair, alteration, restoration* and movement of structures, and *change of occupancy* shall not be mandatory for *historic buildings* provided that a report has been submitted to the code official and signed by the owner, a *registered design professional*, or a representative of the State Historic Preservation Office or the historic preservation authority having jurisdiction, demonstrating that compliance with that provision would threaten, degrade or destroy the historic form, fabric or function of the *building*.

SECTION R502 ADDITIONS

R502.1 General. *Additions* to an existing *building, building* system or portion thereof shall conform to the provisions of this code as those provisions relate to new construction without requiring the unaltered portion of the existing *building* or *building* system to comply with this code. *Additions* shall not create an unsafe or hazardous condition or overload existing *building* systems. ~~An addition shall be deemed to comply with this code where the addition alone complies, where the existing building and addition comply with this code as a single building, or where the building with the addition does not use more energy than the existing building. Additions shall be in accordance with Section R502.2 or R502.3.~~

An addition shall be deemed to comply with this code where the addition alone complies, where the existing building and addition comply with this code as a single building, or where the building with the addition achieves a certified HERS rating in accordance with **Table R406.5**. Additions shall be in accordance with Section R502.1.1, R502.2 or R502.3. □

R502.1.1 Large additions. *Additions* to a dwelling unit exceeding 1,000 sq ft or exceeding 100% of the existing *conditioned floor area*, shall require the dwelling unit to comply with the maximum HERS ratings for alterations, additions or change of use shown in **TABLE R406.5**.

There are concerns that there will be a need for additional funding when this project goes out to bid.

Councilors discussed approving the item with the condition that the cost for the stormwater improvements will come from the stormwater enterprise fund.

Councilor Crossley motioned to approve with the above condition which passed 6-1-1 with Councilor Gentile opposed and Councilor Laredo abstaining.

#140-22 Request for a Home Rule Petition

CHAIR OF THE PUBLIC FACILITIES COMMITTEE requesting a Home Rule Petition for special legislation to allow the City of Newton to enact an ordinance that requires new and substantially remodeled or rehabilitated residential and small non-residential buildings to use electricity instead of fossil fuels for heating and cooling systems, dryers and for domestic hot water, electricity or thermal solar.

Public Facilities Held 5-2-0 (Councilor Kalis and Norton opposed) on 02/09/22

Action: Public Facilities Approved 7-1 (Councilor Gentile opposed)

Note: The Chair noted that an updated Home-Rule petition (attached) was provided to the Committee before the start of this meeting. The change included clarifying the definition of substantial renovation, confining Newton Wellesley Hospitals exemption to their existing campus, updates to the wavier and appeal process for those who are unable to comply and there still needs to be further discussion on whether or not to exempt cooking.

Ann Berwick, Co-Director of Sustainability and Liora Silkes, Energy Coach joined the Committee for this discussion. Ms. Silkes explained that through the Energy Coach program she has been able to reach residents and educate them on a number of different issues. They are looking to improve the program and outreach moving forward.

Councilors made the following comments:

It was noted that any project above 20,000 sq ft is subject to the City's special permit process, where the Council can deal with electrification matters.

There were concerns raised about mandating electrification instead of encouraging residents to do so. It was also noted that if the Home Rule petition is approved by the State, then there should be a public hearing while developing the ordinance.

Councilors expressed the importance of making this step forward to help with the City's overall climate action goals. The education of residents on these issues is also vitally important.

Frank Stearns, Attorney for the Newton Wellesley Hospital requested to see the updated language regarding the hospital.

The Committee should not exempt cooking for commercial cooking due to the fact that the market is already moving in this direction.

Councilors noted that they also should not exempt cooking for residential properties due to the health and safety issues a gas stove can cause.

The Committee took a straw vote regarding including cooking for residential and commercial properties which passed.

It was noted that this can be changed if the Council has an opportunity to create an ordinance.

Councilor Crossley motioned to approve which passed 7-1 with Councilor Gentile opposed.

Respectfully Submitted,

Alison Leary, Chair

Grading and Retaining Walls

Docket #76-24

Zoning and Planning Committee
March 11, 2024
Planning & Development

Overview

- ▶ ZAP expressed interest in addressing concerns of raising grade elevations using retaining walls
- ▶ At 2/15 meeting ZAP proposed moving forward with one short term option while staff continue to explore additional solutions
 - ▶ Special Permit for retaining walls four feet or higher anywhere on property

Proposed Amendment

Sec. 5.4.2. Retaining Walls

A. Defined. A wall or terraced combination of walls, 4 feet in height or greater, to hold a mass of earth material at a higher position. ~~When a combination of walls is placed within a setback, height is measured from the foot of the lowest wall to the top of the highest wall.~~ For the purposes of this Sec. 5.4, a berm with a slope of 1:1 or greater is to be considered a retaining wall.

B. Standards. The placement of a retaining wall of 4 feet or more ~~within a setback~~ requires a special permit. ~~When a combination of walls is placed within 25 feet of each other, height is measured from the foot of the lowest wall to the top of the highest wall.~~

Proposed Amendment

5.4.2 – Add new section C:

C. Special Permit Criteria. In granting a special permit, the city council shall find:

1. That the lot presents challenging topography which limits the use of the property, such that it could not be improved without the implementation of retaining walls;
2. That the requested retaining wall will not adversely impact adjacent property or the public;
3. That the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized.

Next Steps

- ▶ Set public hearing
- ▶ Continue to explore other solutions to address issues

ZONING ORDINANCE CLEANUP

DOCKET #132-24 AND #133-24

Zoning and Planning Committee
March 11, 2024
Planning & Development

Jennifer Caira, Deputy Director,
Planning & Development
Zachery LeMel, Chief of Long Range Planning
Jane Santosuosso, Chief Zoning Code Official
Olivia Ashjian James, Community Engagement

Overview

Zoning cleanup conducted regularly to improve clarity, align language with practice, and correct inconsistencies

Two docket items to help facilitate focused discussion

- ▶ #132-24 Formatting / Clarifying
- ▶ #133-24 Incentivize Small Business

#132-24 Formatting / Clarifying

- Correcting "Design Review Team (DRT)" to "Development Review Team (DRT)" (Sec.9.2.4.B.1.)
- Clarifying Residential Uses for VC2 and VC3 Developments on Priority Streets (Sec.9.2.8.C.)
- Clarify when a Special Permit is required in the MRT Zone (Sec.9.2.4.B. and Sec.9.2.6.B.8.)
- Further break down the Building Dimensional Standards (Sec.9.2.5.B.)
- Clarify that Accessory Buildings (ex. detached garages) in the MRT are regulated by existing rules of Sec.3.4.3. and Sec.3.4.4. (Sec.9.2.5.B.)
- ISD Commissioner discretion on non-listed uses (Sec.9.2.8.C.)
- VCOD Site Plan Review fee reference is incorrect (Sec.9.2.9.B.7.a.)
- Zoning Ordinance is no longer aligned with the recently approved Stormwater Ordinance (Sec.5.3.)
- Retaining Walls Ordinance should reference the Stormwater Ordinance (Sec.5.4.2.B.)
- Remove outdated tables for breakdown of Inclusionary Units Required (Sec.5.11.4.)

#133-24 Incentivize Small Business

- Aligning home business regulations with practice and City intent (Sec.6.7.3.B.)
- Separate small private educational / tutoring / class services (i.e. coding academy, dance studio, etc.) from more general educational uses (Sec.6.3.14.A and Sec.6.4.26.A)
- Allowing Retail and Personal Service uses by-right in MU1 and BU5 Districts (Sec.4.4.1)

#132-24 Formatting / Clarifying

Correcting “Design Review Team (DRT)” to “Development Review Team (DRT)” (Sec.9.2.4.B.1.)

- ▶ Issue: Current language is incorrect
- ▶ Recommendation: Correct the language

Clarifying Residential Uses for VC2 and VC3 Developments on Priority Streets (Sec.9.2.8.C.)

- ▶ Issue: The use table in Sec.9.2.8.C. currently only states that residential uses are allowed by-right for all VC2 and VC3 properties. The table does not clearly address VC2 and VC3 properties on Priority Streets, which requires active uses along the façade.
- ▶ Recommendation: Add an “L” to the use table for residential uses in VC2 and VC3. Add reference to appropriate section within the VCOD where regulations can be found.

Clarify when a Special Permit is required in the MRT Zone *(Sec.9.2.4.B. and Sec.9.2.6.B.8.)*

- ▶ **Issue:** The current language only refers to “multiple buildings on a lot” triggering a Special Permit. This is not the intent, as accessory buildings should be allowed by-right. Instead, it should be clarified that “multiple principal buildings on a lot” requires a Special Permit.
- ▶ **Recommendation:** Add the word “principal” where needed

Further break down the Building Dimensional Standards *(Sec.9.2.5.B.)*

- ▶ **Issue:** All three VCOD zones (MRT, VC2, and VC3) are cited under Sec. 9.2.5.B. currently. This is confusing for referencing since each one stands on its own.
- ▶ **Recommendation:** Building dimensional standards should be further cited (*i.e., VC3 should be 9.2.5.B.1, VC2 should be 9.2.5.B.2, and MRT should be 9.2.5.B.3.*)

Clarify that Accessory Buildings (ex. detached garages) in the MRT are regulated by existing rules of Sec.3.4.3. and Sec.3.4.4. (Sec.9.2.5.B.)

- ▶ Issue: Although the MRT zone is defined as a residence district, it is not clear that the accessory building regulations found in Article 3 apply, which is the intent.
- ▶ Recommendation: Add an asterisk note under the MRT dimensional table with a reference to the accessory building regulations.

ISD Commissioner discretion on non-listed uses (Sec.9.2.8.C.)

- ▶ Issue: Standard language that is found at the end of the Use Tables in Sec. 3 & 4 giving the ISD Commissioner discretion to determine what to do with a non-listed use is not found in Sec. 9.
- ▶ Recommendation: Add in this language under the Use Table in Sec.9 (p.3-36)

VCOD Site Plan Review fee reference is incorrect (Sec.9.2.9.B.7.a.)

- ▶ **Issue:** The current text does not refer to the revised ordinances, which is where the fee requirements are located.
- ▶ **Recommendation:** Add language that refers to the appropriate revised ordinances

Zoning Ordinance is no longer aligned with the recently approved Stormwater Ordinance (Sec.5.3.)

- ▶ **Issue:** Section 5.3 does not reference the correct Chapter for the Stormwater Ordinance. In addition, Section 5.3.B refers to the previous stormwater regulations which have been addressed in the amended stormwater ordinance in Chapter 29.
- ▶ **Recommendation:** Update this section with the correct Chapter reference and remove language that is not aligned with the approved Stormwater Ordinance.

Retaining Walls Ordinance should reference the Stormwater Ordinance *(Sec.5.4.2.B.)*

- ▶ Issue: Regulations for retaining walls should reference the Stormwater Ordinance.
- ▶ Recommendation: Add in a reference to the stormwater ordinance in new Sec.5.4.2.B.1.

Remove outdated tables for breakdown of Inclusionary Units Required *(Sec.5.11.4.)*

- ▶ Issue: In 2021 the percent of inclusionary units required in a multifamily housing development for rental projects and ownership projects increased per the adopted ordinance. The outdated tables for each are still listed in Sec.5.11.4.
- ▶ Recommendation: Remove the outdated tables

133-24 Incentivize Small Business

15

Aligning home business regulations with practice and City intent *(Sec.6.7.3.B.)*

▶ Issue: There are two key issues

- ▶ Zoning requires a Special Permit for home businesses within MR zones
 - ▶ Not enforced in practice
- ▶ This is based on zone, not the actual use
 - ▶ A two-family in SR zone may have a home business in each dwelling unit by-right but same two-family in an MR zone may not

▶ Recommendation: Permit home businesses as an accessory use within MR districts the same way they are allowed in SR districts.

16

Separate small private educational / tutoring / class services (i.e. coding academy, dance studio, etc.) from more general educational uses *(Sec.6.3.14.A and Sec.6.4.26.A)*

▶ **Issue:** Prior to the 2015 recodification, small private “schools” were categorized under Personal Service use. After 2015, they were categorized as a School use. This was not intentional.

▶ **Recommendation:** There are several recommendations

- ▶ Modify definition of For-Profit School and Personal Service, and create a new use called Personal Instruction
 - ▶ Allow Personal Instruction by-right or by special permit as they are currently interpreted

Allowing Retail and Personal Service uses by-right in MU1 and BU5 Districts *(Sec.4.4.1)*

▶ **Issue:** Personal service is not permitted in BU5 or MU1. Retail is not permitted in BU5 and retail less than 5,000 square feet is not permitted in MU1. Retail over 5,000 square feet are allowed by special permit in MU1. There are already many existing nonconforming retail and personal service uses in MU1 and BU5 districts, however the use table allowances do not align with the physical uses on the ground.

▶ **Recommendation:** Allow retail and personal services uses by-right in MU1 and BU5

Next Steps

- ▶ Set public hearing
- ▶ Open to feedback

Thank you!

3.4.2. Accessory Uses Allowed

A. By Right in All Residence Districts. Such accessory purposes as are proper and usual with detached single-family dwellings or detached two-family dwellings, including but not limited to:

1. Housing of resident domestic employees;
2. Renting of rooms for not more than 3 lodgers;
3. Parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed 7 days;
4. Parking or storing of not more than 1 commercial vehicle per lot, subject to Sec. 6.7.3;
5. Home businesses subject to Sec. 6.7.3; and
6. Accessory apartments, subject to Sec. 6.7.1.

B. By Special Permit in All Residence Districts.

1. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1;
2. Home businesses subject to the provisions of Sec. 6.7.3; and
3. Accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences.

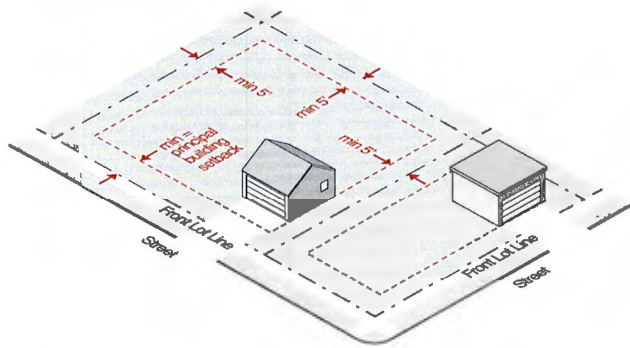
(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99; Ord. No. A-78, 06/20/16; Ord. No. A-95, 12/05/16; Ord. No. A-99, 01/17/17; Ord. No. A-105, 03/06/17; Ord. No.B-67, 02-16-21)

3.4.3. Accessory Buildings

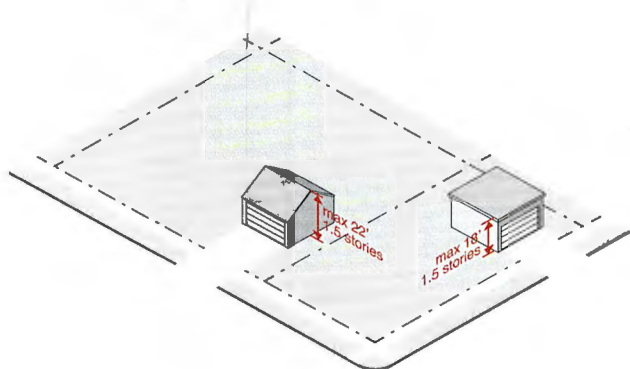
A. Except as provided in Sec. 6.7, accessory buildings shall conform to the following requirements:

1. An accessory building shall be no nearer to any side or rear lot line than 5 feet, and no nearer to

any front lot line than the distance prescribed for the principal building.



2. No portion of any accessory building shall be less than 5 feet from any point on any principal building on the subject lot.



3. An accessory building with a sloping roof shall have a maximum height of 22 feet. An accessory building with a flat roof shall have a maximum height of 18 feet. An accessory building shall have no more than 1½ stories.
4. The ground floor area of an accessory building shall not exceed 700 square feet.

B. Accessory structures other than accessory buildings referenced above must conform to the applicable setback requirements for the principal building.

(Ord. No. V-273, 12/06/99; Ord. No. Z-91, 06/06/11; Ord. No. A-78, 06-20-16; Ord. No. A-84, 10-17-16; Ord. No. A-105, 03/06/17; Ord. No. B-18, 12-17-18; Ord. No.B-67, 02-16-21)

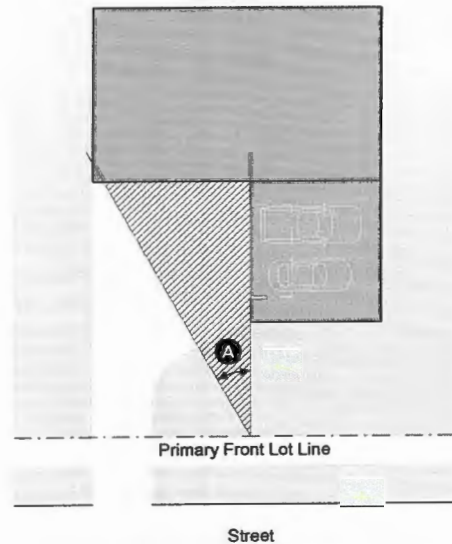
3.4.4. Garage Design Standards

A. Applicability

Garage Design Standards apply in all Residence Districts

B. Definitions

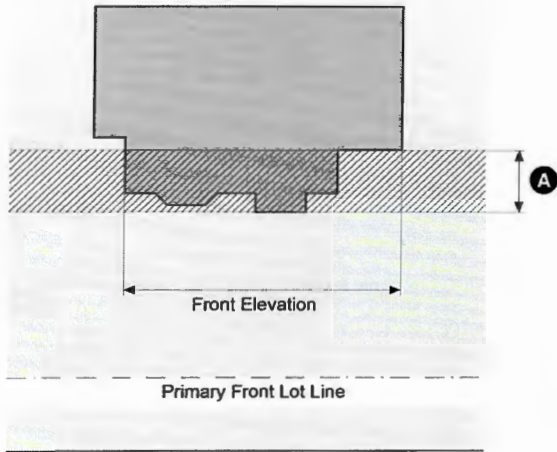
1. **Garage.** An attached or detached building, or portion of a building, that is able to be accessed by an automobile or is used or intended to be used primarily for the storage or parking of 1 or more automobiles. A detached Garage is an Accessory Building (See Sec. 3.4.3.)
2. **Front Facing Garage.** A Garage with a Garage Door or Doors facing the Primary Front Lot Line at an angle between 0 and 59 degrees perpendicular to the Primary Front Lot Line. The angle shall be measured between the Garage Door or Doors and a line parallel to the Primary Front Lot Line at the midpoint of the Primary Front Lot Line. If there is a curve at the midpoint, the angle shall be measured between the Garage Door or Doors and a line tangent to the curve at the midpoint of the Primary Front Lot Line.
3. **Side Facing Garage.** A Garage with a Garage Door or Doors facing the Primary Front Lot Line at an angle between 60 and 90 degrees. The angle shall be measured between the Garage Door or Doors and a line parallel to the Primary Front Lot Line at the midpoint of the Primary Front Lot Line. If there is a curve at the midpoint, the angle shall be measured between the Garage Door or Doors and a line tangent to the curve at the midpoint of the Primary Front Lot Line.



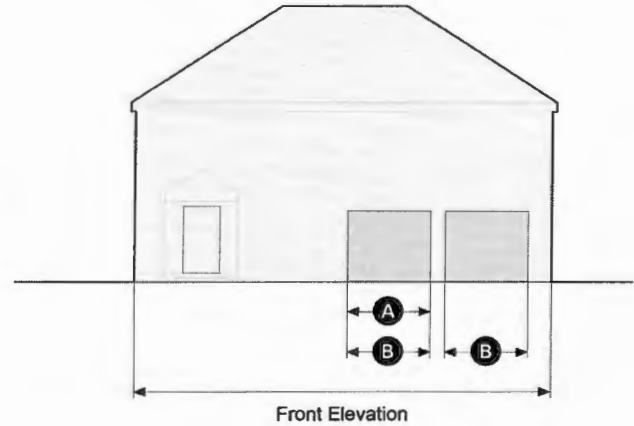
Side-Facing Garage Door Location	min	max
A Angle allowed within (angle from Primary Front Lot Line)	60 degrees	90 degrees

4. **Garage Door.** The door to a Garage that provides access for an automobile. Garage door width is measured from the inside face of the door jambs.
 - a. Single Garage Doors are Garage Doors used for a single automobile to access a Garage.
 - b. Double Garage Doors are Garage Doors used for 2 automobiles to access a Garage side-by-side.
5. **Garage Wall.** Any wall enclosing a Garage including that wall containing the Garage entrance.
6. **Front Elevation.** The exterior wall of a principal building oriented in whole or in part toward the Primary Front Lot Line. The Front Elevation does not include any exterior wall of a building more than 10 feet behind the frontmost exterior wall oriented in whole or in part toward the Primary Front Lot Line.

2. A Single Garage Door may be up to 9 feet wide.
3. A Double Garage Door may be up to 16 feet wide.



Street		min	max
Front Elevation			
A Depth from frontmost exterior wall			10 ft



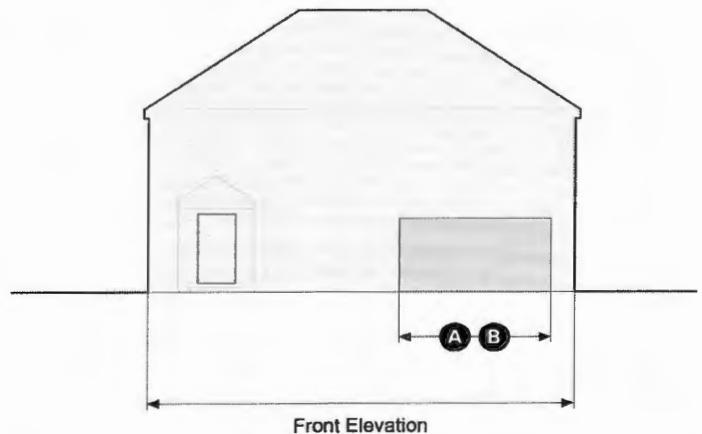
Front-Facing Garage - Single Garage Doors		min	max
A Width of an Individual Single Garage Door			9 ft
B Sum of Width of Single Garage Door(s)			45% of Front Elevation

7. **Primary Front Lot Line.** The lot line abutting a street or right of way. Where there are multiple lot lines abutting streets or rights of way, the Primary Front Lot Line shall be the one the main entrance faces. Where there are multiple lot lines abutting streets or rights of way and the main entrance does not face a street or right of way, the Primary Front Lot Line shall be determined by the Commissioner of Inspectional Services or their designee.

8. **Fenestration.** The openings in a Garage Wall facing the Primary Front Lot Line, including windows and doors. Fenestration is measured from the inside face of the jambs on any window or door trim.

C. Standards for Front Facing Garages

1. The sum of the width of all Garage Doors on a Front Facing Garage may be up to the following:
 - a. 45% of the total width of the Front Elevation, when a Front Facing Garage includes only Single Garage Doors.
 - b. 40% of the total width of the Front Elevation, when a Front Facing Garage includes a Double Garage Door only, or both a Double Garage Door and a Single Garage Door.



Front-Facing Garage - Double Garage Door		min	max
A Width of an Individual Double Garage Door			16 ft
B Sum of Width of Double Garage Door			40% of Front Elevation

D. Standards for Side Facing Garages

- 1. A Side Facing Garage may be located in front of the Front Elevation, but not within the front setback, if it meets the following:
 - a. A minimum of 10% Fenestration on the Garage Wall facing the Primary Front Lot Line as measured from the exterior.
- 2. A Single Garage Door may be up to 9 feet wide.
- 3. A Double Garage Door may be up to 16 feet wide.

E. Standards for Single-Family, Detached residential buildings

- 1. There may be no more than 700 square feet in total Garage area on a lot providing for no more than 3 automobiles. A lot may contain no more than one attached Garage and one detached Garage.

F. Additional Standards for Two-Family, Detached residential buildings

- 1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached.
 - a. For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage, and each Garage shall provide for no more than 2 automobiles.

G. Exemptions

- 1. A detached or attached Front Facing Garage that is set back more than 10 feet from the Front Elevation is exempt from the standards for Front Facing Garages (Sec. 3.4.4.C).
- 2. A detached or attached Side Facing Garage that is set back from the Front Elevation, and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).
- 3. Garages located on Rear Lots are exempt from the standards for Front Facing Garages (Sec. 3.4.4.C) and standards for Side Facing Garages (Sec. 3.4.4.D).

H. By Special Permit

- 1. For Single-Family, Detached residential buildings: a Garage with provision for more than 3 automobiles, or a second attached or detached Garage, or more than 700 square feet in total Garage area on a lot, or more than 2 Garages.
- 2. For residential buildings: the Front Elevation may include those portions of the exterior wall oriented in whole or in part toward the Primary Front Lot Line that are more than 10 feet behind the frontmost exterior wall.

(Ord. No. A-78, 06/20/16; Ord. No. A-84, 06/20/16; Ord. No. A-95, 12/05/16; Ord. No. A-105, 03/06/17; Ord. No. B-6, 03-19-18; Ord. No. B-67, 02-16-21; Ord. No. B-63, 11-09-21)

3.4.5. Accessory Apartments

See Sec. 6.7.1

3.4.6. Temporary Uses Allowed

[reserved]

Zoning Clean Up Items & Incentives for Small Businesses
 Newton Zoning Ordinance, Ch. 30 – Amendments

Attachment A

Formatting / Clarifying (#132-24)

A Correcting “Design Review Team (DRT)” to “Development Review Team (DRT)” (Sec. 9.2.4.B.1.)

- **Issue:** Current language is incorrect
- **Working Proposal:** Correct language

Section	Current Text	Proposed Text
9.2.4.B.1.	A pre-submittal discussion or meeting, known as a Design Review Team (DRT), with the Planning Department, who shall consult with the Inspectional Services Department (ISD), is recommended for all development.	A pre-submittal discussion or meeting, known as a Design Development Review Team (DRT), with the Planning Department, who shall consult with the Inspectional Services Department (ISD), is recommended for all development.

B Clarifying Residential Uses for VC2 and VC3 Developments on Priority Streets (Sec. 9.2.8.C.)

- **Issue:** The use table in Sec. 9.2.8.C currently only states that residential uses are allowed by-right for all VC2 and VC3 properties. The table does not clearly address VC2 and VC3 properties on Priority Streets, which requires active uses along the façade.
- **Working Proposal:** Add an “L” to the use table for residential uses in VC2 and VC3. Add reference to appropriate section within the VCOD where regulations can be found.

Residential Uses	MRT	VC2	VC3	Definition / listed standard
Multi-Family residential use	P	P/L	P/L	Sec.6.2.4 / Sec.9.2.6.B.9
Assisted living, nursing home	SP	SP/L	SP/L	Sec. 6.2.5 / Sec. 9.2.6.B.9
Congregate living facility	SP	P/L	P/L	Sec.6.2.8 / Sec. 9.2.6.B.9
Elderly housing with services	SP	SP/L	SP/L	Sec.6.2.10 / Sec. 9.2.6.B.9
Live/work space	P	P/L	P/L	Sec.6.2.11 / Sec. 9.2.6.B.9
Lodging house	SP	SP/L	SP/L	Sec.7 / Sec. 9.2.6.B.9

C Clarify when a Special Permit is required in the MRT Zone (Sec. 9.2.4.B. and Sec. 9.2.6.B.8.)

- **Issue:** The current language only refers to “multiple buildings on a lot” triggering a Special Permit. This is not the intent, as accessory buildings should be allowed by-right. Instead, it should be clarified that “multiple principal buildings on a lot” requires a Special Permit.
- **Working Proposal:** Add the word “principal” where needed

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Section	Current Text	Proposed Text
9.2.4.B.3.b	The construction of multiple buildings on a lot in the Multi Residence Transit zone (MRT), except as modified through Adaptive Reuse (see Sec. 9.6.2.B.8).	The construction of multiple principal buildings on a lot in the Multi Residence Transit zone (MRT), except as modified through Adaptive Reuse (see Sec. 9.6.2.B.8).
9.2.6.B.8.d.iv	Multiple buildings on a lot are permitted, subject to site plan review in lieu of special permit approval.	Multiple principal buildings on a lot are permitted, subject to site plan review in lieu of special permit approval.

D Further break down the Building Dimensional Standards (Sec. 9.2.5.B.)

- **Issue:** All three VCOD zones (MRT, VC2, and VC3) are cited under Sec. 9.2.5.B. currently. This is confusing for referencing since each one stands on its own.
- **Working Proposal:** Building dimensional standards should be further cited (i.e., VC3 should be 9.2.5.B.1, VC2 should be 9.2.5.B.2, and MRT should be 9.2.5.B.3.)

Section	Current Text	Proposed Text
9.2.5.B.	VC3 Building Dimensional Standards	1. VC3 Building Dimensional Standards
	VC2 Building Dimensional Standards	2. VC2 Building Dimensional Standards
	MRT Building Dimensional Standards	3. MRT Building Dimensional Standards

E Clarify that Accessory Buildings (ex. Detached garages) in the MRT are regulated by existing rules of Sec. 3.4.3. And Sec. 3.4.4. (Sec. 9.2.5.B.)

- **Issue:** Although the MRT zone is defined as a residence district, it is not clear that the accessory building regulations found in Article 3 apply, which is the intent.
- **Working Proposal:** Add an asterisk note under the MRT dimensional table with a reference to the accessory building regulations.

Section	Current Text	Proposed Text
9.2.5.B. (MRT Dimensional Table)	N/A	* Accessory buildings are subject to the standards found in Sec. 3.4.3. Accessory Buildings and Sec. 3.4.4. Garage Design Standards.

F ISD Commissioner discretion on non-listed uses (Sec. 9.2.8.C)

- **Issue:** Standard language that is found at the end of the Use Tables in Sections 3 & 4 giving the ISD Commissioner discretion to determine what to do with a non-listed use is not found in Section 9.
- **Working Proposal:** Add in this language under the Use Table in Section 9 (p. 3-36)

Section	Current Text	Proposed Text
9.2.8.C. (Use Table)	N/A	The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the

Zoning Clean Up Items & Incentives for Small Businesses
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		<u>Commissioner of Inspectional Services may consider the proposed use part of the listed use</u>
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G VCOD Site Plan Review fee reference is incorrect (Sec. 9.2.9.B.7.a.)

- **Issue:** The current text does not refer to the revised ordinances, which is where the fee requirements are located.
- **Working Proposal:** Add language that refers to the appropriate revised ordinances

Section	Current Text	Proposed Text
9.2.9.B.7.a	The Applicant has submitted the required fees and information as set forth in this section	The Applicant has submitted the required <u>information set forth in this section, and fees and information as set forth in this prescribed by Revised Ordinances Chapter 17, Article II, Section 17-3, as amended section</u>

H Zoning Ordinance is no longer aligned with the recently approved Stormwater Ordinance (Sec. 5.3.)

- **Issue:** Section 5.3 does not reference the correct Chapter for the Stormwater Ordinance. In addition, Section 5.3.B refers to the previous stormwater regulations which have been addressed in the amended stormwater ordinance in Chapter 29.
- **Working Proposal:** Update this section with the correct Chapter reference and remove language that is not aligned with the approved Stormwater Ordinance.

Section	Current Text	Proposed Text
5.3.	See also Revised Ordinances Chapter 22, Article II, Section 22-22. A. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. B. Projects increasing impervious surface area by more than the lesser of a) 4 percent of lot size or b) 400 square feet, or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the Commissioner of Inspectional Services and the City Engineer to ensure compliance with this Sec. 5.3. The	See also Revised Ordinances Chapter <u>2229</u> , Article <u>VIII</u> , <u>Section 22-22as amended</u> . A. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. B. Projects increasing impervious surface area <u>by more than the lesser of a) 4 percent of lot size or b) 400 square feet, that are subject to the stormwater ordinance, as regulated in Chapter 29 Article VIII</u> , or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the Commissioner of

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	Commissioner of Inspectional Services and the City Engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil.	Inspectional Services and the City Engineer to ensure compliance with this Sec. 5.3. The Commissioner of Inspectional Services and the City Engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil.
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I Retaining Walls Ordinance should reference the Stormwater Ordinance (Sec.5.4.2.B)

- **Issue:** Regulations for retaining walls should reference the Stormwater Ordinance
- **Working Proposal:** Add in a reference to the stormwater ordinance in new sec.5.4.2.B.1. Note that a separate docket item and amendment proposal is being proposed to require all retaining walls over 4 feet to require a special permit.

Section	Current Text	Proposed Text
5.4.2.B.	B. Standards: The placement of a retaining wall of 4 feet or more within a setback requires a special permit.	B. Standards: 1. The placement of a retaining wall of 4 feet or more within a setback requires a special permit. 2. See also Revised Ordinances Chapter 29, Article VIII as amended.

J Remove outdated tables for breakdown of Inclusionary Units Required (Sec.5.11.4)

- **Issue:** In 2021 the percent of inclusionary units required in a multifamily housing development for rental projects and ownership projects increased per the adopted ordinance. The outdated tables for each are still listed in Sec.5.11.4.
- **Working Proposal:** Remove the outdated tables

Proposed Text

Rental Projects: Number of Inclusionary Units Required		
Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
Total	15%	17.5%

Rental Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021			
Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
Total	15%	17.5%	20%

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Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
Total	15%	15%	17.5%

Ownership Projects: Number of Inclusionary Units Required <u>EFFECTIVE January 1, 2021</u>				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
Total	15%	15%	17.5%	20%

Zoning Clean Up Items & Incentives for Small Businesses
Newton Zoning Ordinance, Ch. 30 – Amendments

Attachment B

Incentivizing Small Business (#133-24)

A **Aligning home business regulations with practice and City intent (Sec. 6.7.3.B)**

- **Issue:** There are two key issues:
 - The zoning states that a home business requires a Special Permit within MR zones, which is not being enforced by ISD in practice. In addition, this is based on the zone not the actual use. This means a two family in an SR zone may have a home business in each dwelling unit by-right, but the same two family in an MR zone may not.
 - Current regulations are out of date with modern day work practice.
- **Additional Background:** In speaking with ISD, the provisions requiring a home business within MR zones to obtain a special permit are not being enforced and have not been enforced. This misalignment with practice warrants this change, which should be viewed as a clean up item.
- **Working Proposal:** Permit home businesses as an accessory use within MR districts the same way they are allowed in SR districts.

Section	Current Text	Proposed Text
6.7.3.B.1	In Single Residence districts, a single home business per dwelling unit is permitted as an accessory use so long as such home business does not violate any of the following conditions	In all residence districts Single Residence districts , a single home business per dwelling unit is permitted as an accessory use so long as such home business does not violate any of the following conditions
6.7.3.B.2	In Multi-Residence Districts. The City Council may grant a special permit for a home business in accordance with standards listed in Sec. 6.7.3	Remove this section

B **Separate small private educational/tutoring/class services (i.e. coding academy, dance studio, etc.) from more general educational uses (Sec. 6.3.14.A. And Sec. 6.4.26.A.)**

- **Issue:** Prior to the 2015 zoning recodification these small private “schools” were categorized under the Personal Service use. After 2015, they were categorized as a School use. This was not intentional.
- **Additional Background:** Prior to 2015, instructional uses such as tutoring or dancing schools were classified as personal service uses. Non-profit schools were shown as allowable uses in all zoning districts {section 30-5(a)(2)} and for-profit schools were allowed by special permit in all districts {per former section 30-5(b)(2)} and were referenced in the definitions section with the same language as is current. After the reformatting of the zoning ordinance, a question about the classification for a driving school made the definition of “School or Other Educational Purposes” seem appropriate and a shift occurred where all instances where an instructor taught a skill to even one

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student were now treated as either a “for profit school’ or “non-profit school.” A non-profit school is a Dover Amendment protected use and is allowed anywhere in the City through the Administrative Site Plan Review process. However, this change to the interpretation now required a special permit for any for profit school. The one benefit to this shift is that these uses were allowed in any zoning district in the City, as long as the special permit was granted.

It should be noted, at the time the previous Commissioner of Inspectional Services determined such uses should be classified as “school or other educational purposes,” that classification was (and still is) under the heading of “Civic/Institutional Uses”, implying the more traditional definition of a school. As these instructional uses are generally small businesses, the more appropriate category would be “Commercial Uses”.

The special permit process generally takes three to four months and can be unnecessarily arduous and time-consuming, especially for small business owners.

- **Working Proposal:** Modify definition of For-Profit School, Personal Service, and create a new use called Personal Instruction. Allow Personal Instruction by-right or by special permit the same way they are allowed now based on how they are being interpreted now, which is either For-Profit School or Personal Service. Note that Personal Instruction would be a new use and all subsequent Commercial Uses will be renumbered accordingly within the use tables and in Article 6.

Section	Current Text	Proposed Text
6.3.14.A	School or Other Educational Purposes Defined: Any building or part of a building used as a public or private educational institution containing 1 or more rooms, with provisions for 2 or more pupils, provided that a school or other use for educational purposes shall not include a correctional facility, and is either a. 1. Non-Profit. A school or other educational use on land owned or leased by a religious sect or denomination, or the Commonwealth of Massachusetts or any agencies, subdivisions or bodies politic, or nonprofit educational corporation; or 2. For-Profit. [reserved]	Any building or part of a building used as a public or private educational institution for pre-school, k-12, or post-secondary education containing 1 or more rooms, with provisions for 2 or more pupils, provided that a school or other use for educational purposes shall not include a correctional facility, and is either a 1. Non-Profit. A school or other educational use on land owned or leased by a religious sect or denomination, or the Commonwealth of Massachusetts or any agencies, subdivisions or bodies politic, or nonprofit educational corporation; or 2. For-Profit. [reserved]
6.4. 2627 .A.	Personal Service Defined. Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and laundry, and/or dry cleaning drop off.	Defined. Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and laundry, and/or dry cleaning drop off. Uses that provide a variety of services

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		associated with personal grooming and the maintenance of health, and well-being.
6.4.27.A.1	N/A	This includes but is not limited to barbershop, salon, tailor, cobbler, laundry, dry cleaning drop off
6.4.26.	N/A	Personal Instruction Defined. Uses that provide a variety of services associated with learning and training.
6.4.26.A.1.	N/A	This includes but is not limited to tutoring, driving instruction, coding instruction, cooking instruction, music lessons, dancing lessons, martial arts lessons, art lessons, and test prep classes. Personal instruction shall not include Educational Uses.

[Sec.3.4.1 Residential Districts Allowed Uses](#)

Commercial uses	SR1	SR2	SR3	MR1	MR2	MR3	MR4	Definition / Listed standards
Personal instruction, up to 5,000 sf	SP	SP	SP	SP	SP	SP	SP	Sec.6.4.26.
Personal instruction, over 5,000 sf	SP	SP	SP	SP	SP	SP	SP	Sec.6.4.26

[Sec.4.4.1. Business, Mixed Use & Manufacturing Districts](#)

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Personal instruction, up to 5,000 sf	P	P	P	P	P	P	P	P	P	SP	P	Sec.6.4.26
Personal instruction, over 5,000 sf	P	P	P	P	P	P	P	SP	SP	SP	P	Sec.6.4.26

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Sec. 9.2.8.C Village Center Overlay Districts

<u>Commercial Uses</u>	<u>MRT</u>	<u>VC2</u>	<u>VC3</u>	<u>Definition / Listed Standard</u>
<u>Personal instruction, up to 5,000 sf</u>	<u>SP</u>	<u>P</u>	<u>P</u>	<u>Sec.6.4.26</u>
<u>Personal instruction, over 5,000 sf</u>	<u>SP</u>	<u>P</u>	<u>P</u>	<u>Sec.6.4.26</u>

C Allowing Retail and Personal Services uses by-right in MU1 and BU5 Districts (Sec.4.4.1)

- Issue: Personal service is not permitted in BU5 or MU1. Retail is not permitted in BU5 and retail less than 5,000 square feet is not permitted in MU1. Retail over 5,000 square feet are allowed by special permit in MU1. There are already many existing nonconforming retail and personal service uses in MU1 and BU5 districts, however the use table allowances do not align with the physical uses on the ground.
- Additional Background: ISD currently permits by-right a new personal service or retail use if there is already one there, even though the use is technically not allowed, however a change of use (i.e. retail to personal service) requires a special permit to extend the nonconforming use. Personal service (under and over 5,000 square feet) as well as retail (under and over 5,000 square feet) are permitted by-right in MU2 districts as well as all of the other business districts. There are no substantive differences between MU1 and MU2 or BU5 and BU1-4.
- Working Proposal: Allow Retail and Personal Services uses by-right in MU1 and BU5 districts.

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Personal service up to 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	P	P	--	P	Sec.6.4.25
Personal service over 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	SP	SP	--	P	Sec.6.4.25
Retail sales, under 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	P	P	--	P	Sec.6.4.30
Retail sales, over 5,000 sf	P	P	P	P	<u>-P</u>	<u>SPP</u>	P	SP	SP	--	P	Sec.6.4.30

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