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Director

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**PUBLIC HEARING MEMORANDUM**

**DATE:** November 8, 2024

**TO:** R. Lisle Baker, Chair, Zoning & Planning Committee  
Members of the Zoning & Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director, Department of Planning and Development  
Zachery LeMel, Chief of Long Range Planning  
Nora Masler, Planning Associate

**RE:** **#317-24 Requesting discussion and possible amendments to Section 5.4.2**  
HER HONOR THE MAYOR requesting a discussion and possible amendments to retaining wall regulations for Multi-Family/Commercial/Industrial/Civic Buildings in Section 5.4.2 of Chapter 30 Zoning.

**MEETING:** November 14, 2024

**CC:** City Council  
Planning Board  
Anthony Ciccariello, Commissioner of Inspectional Services  
Jonathan Yeo, Chief Operating Officer  
Alissa O. Giuliani, City Solicitor

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**Overview**

In April 2024, the City Council approved a zoning amendment to Sec. 5.4.2. Retaining Walls, that sets a special permit requirement for any retaining wall over four feet in height in all zoning districts and for all building types. The Village Center Overlay District (VCOD), adopted last December, contains a similar provision. Previously, only retaining walls over four feet within the setback required a special permit while retaining walls outside of the setback areas had not required a special permit.

The Council introduced these retaining wall amendments primarily to address grade and wall concerns, particularly for single- and two-family developments. These homes have often utilized retaining walls to increase the grade of the site for a number of reasons including: creating a basement that does not count towards stories or FAR, presence of high groundwater, creating a flat site, and/or locating stormwater systems. The City Council has also adopted changes to the way

height is measured for all building types. Beginning in 2025, height will be measured from original grade, prior to any grading changes on the site, further reducing the incentive or ability to significantly alter the grade.

The special permit requirement for all retaining walls over four feet in height helps address long standing issues with grade manipulation primarily in residential neighborhoods. However, it has the unintended consequence of limiting the ability to provide access to parking garages in multi-family and mixed-use buildings. It is typically preferred that parking be provided within the building in multi-family buildings, and often the parking is located at least partially underground. This creates the need for retaining walls along the driveway to access the parking garage entrance.

This special permit requirement is particularly an issue in the VCOD, where state law requires that we allow for multi-family housing to be built fully by-right. This particular provision was flagged by the state Executive Office of Housing and Livable Communities (EOHLC) during their review of the VCOD for compliance with the MBTA Communities law. An amendment to this provision will be necessary for Newton to obtain full compliance with the law. Specifically, the letter stated: "Section 9.2.6.A.7 requires a special permit for any retaining wall over 4 feet high. This requirement could require a special permit for many development proposals, as retaining walls are often part of routine site work for multi-family housing. This requirement must be removed in order for the zoning to allow multi-family housing as of right." Click [here](#) to read the full letter from EOHLC.

### **Proposed Amendment**

Planning staff initially recommended exempting all multi-family, commercial, and industrial buildings from the requirement for a special permit for all walls over four feet in height. In response to concerns regarding a broad exemption raised by members of the Zoning and Planning (ZAP) Committee at their meeting on September 23, 2024, staff have narrowed the recommendation. The proposed exemption would now only apply to buildings in the VCOD and would be limited to retaining walls that enable access to parking or loading (see **Attachment A**). Staff from EOHLC would like to see a broader exemption in the VCOD, however they have indicated that allowing walls below four feet in height across the site and greater than four feet when related to parking and loading access should be acceptable, as long as there is not evidence in the future that this is preventing new multi-family housing development.

The proposed amendment does not specifically require that the retaining wall be enabling only underground parking as this was seen as too narrow for EOHLC staff and when reviewing existing multi-family building examples staff found that often the parking is not fully submerged, depending on the site topography. The proposed amendment also retains additional safeguards against excessive retaining wall height. Specifically:

1. Revised Definition of Height: Height is now measured from the original grade, which removes the incentive to artificially manipulate grade to maximize building height. This change ensures that retaining walls align more naturally with the existing landscape and discourages unnecessary height increases.

2. VCOD Exemption from Floor Area Requirements: In the Village Center Overlay District (VCOD), there is no floor area requirement, so developers lack incentive to manipulate grade to create basement spaces that would be exempt from Floor Area Ratio (FAR) calculations. This helps prevent any strategic grading for additional exempt space, promoting a more consistent and predictable use of retaining walls across projects.

### Multi-family/Mixed-Use and Commercial Retaining Wall Examples

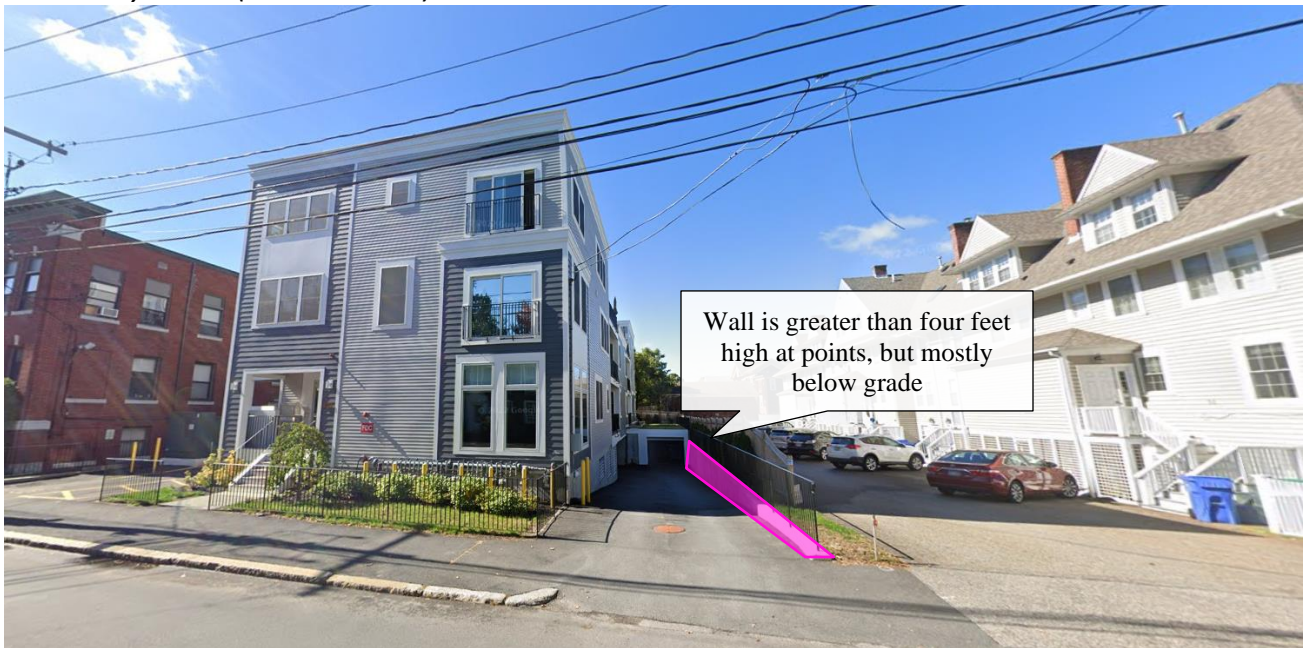
Below are examples of multi-family/mixed-use and commercial projects that now require a special permit where a retaining wall is beneficial, and unobtrusive, and could be allowed by-right.

*935 Washington Street (corner of Washington and Lowell) – 18 units*





429 Cherry Street (West Newton) – 19 units

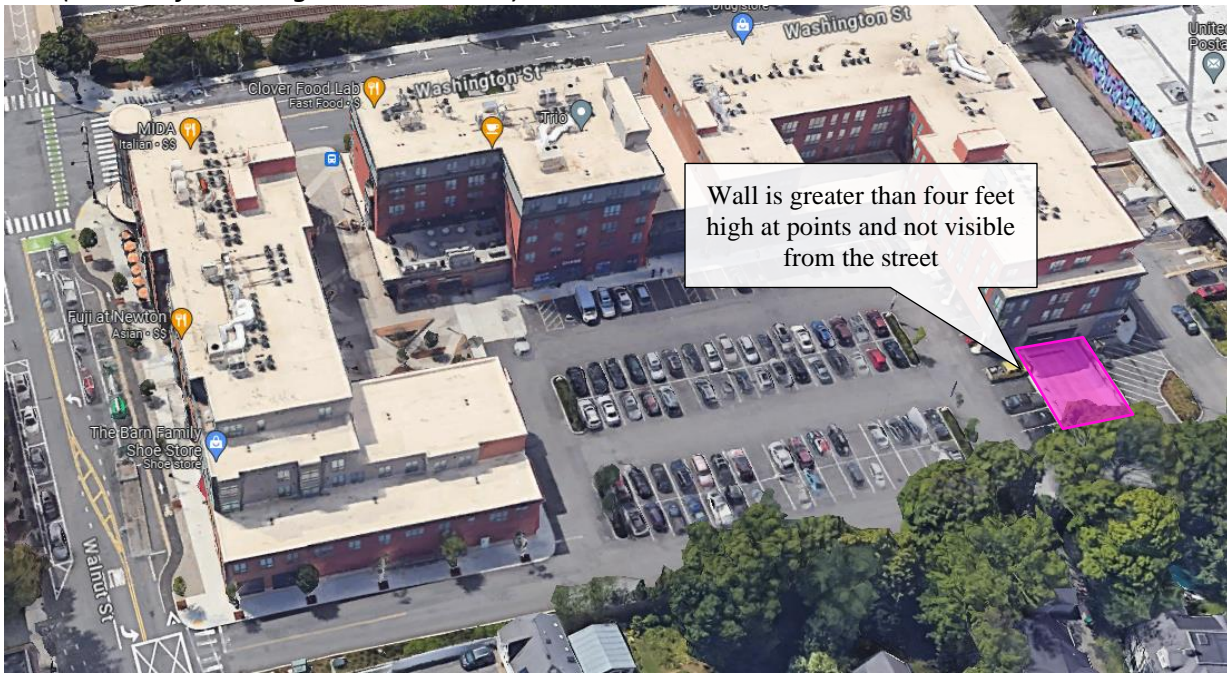


109 Needham Street (Multifamily)



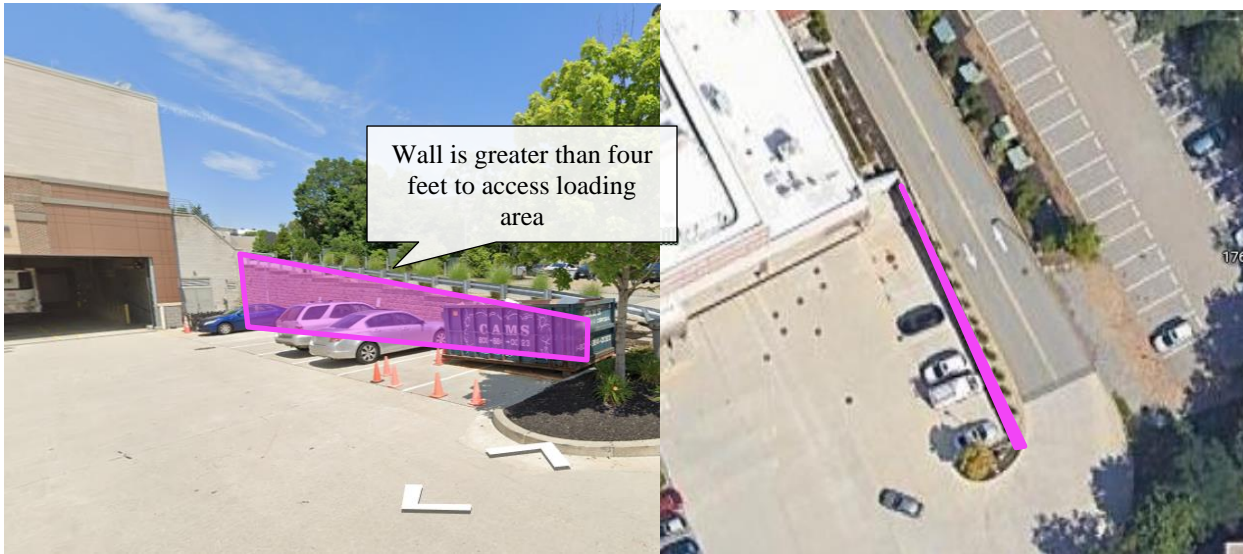


*Trio (corner of Washington and Walnut) – Mixed-Use*



Fully below grade driveway and retaining wall leads to parking beneath the building

*Wegman's/Equinox*



**Next Steps**

Staff look forward to the Zoning and Planning Committee and Planning and Development Board discussion and possible vote regarding this item at the upcoming public hearing.

## 9.2.6 Development and Design Standards

### A. Site Design Standards

This section provides the design standards for lot improvements within the VCOD zones, defines how to measure certain standards, and provides other requirements and information.

#### 7. Retaining Walls

- a. The placement of a retaining wall of four (4) feet or more anywhere on a lot requires a special permit. When a combination of retaining walls are within 25 feet of each other (measured from front-face of wall to front-face of wall), height is measured from the foot of the lowest wall to the top of the highest wall.
- b. Walls, or combinations of walls, may exceed four (4) feet without a special permit when the wall(s) are enabling access to parking or loading facilities.