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Barney Heath
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MEMORANDUM

DATE: November 8, 2024

TO: Councilor 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: **#385-24 Requesting amendment to Section 9.1 of Chapter 30, Zoning**
HER HONOR THE MAYOR requesting a minor technical amendment to the opt-in requirements for Village Center Overlay Districts in Section 9.1 of Chapter 30, Zoning.

MEETING: November 14, 2024

CC: Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani, City Solicitor
Planning Board

The State Executive Office of Housing and Livable Communities (EOHLC) has officially notified us that Newton's Village Center Overlay District (VCOD) zoning, adopted last December, is conditionally compliant with the MBTA Communities law. Click [here](#) to read the letter from EOHLC. EOHLC flagged two aspects of Newton's zoning that require amendment because they could prevent by-right multi-family housing. One is to allow retaining walls greater than four feet by-right (see docket item #317-24). The other is to clarify the intent of language allowing for existing non-conforming buildings to opt in to the VCOD zoning.

Section 9.1.1.A of Newton's Zoning Ordinance regulates when and how a property may opt-in to an overlay district, such as VCOD. Section 9.1.1.A.2 relates to properties opting in with existing buildings or structures. The intent was to allow existing buildings that do not fully comply with the dimensional requirements of the overlay district to still opt in. Any existing non-conforming aspects of the building would require a special permit to extend the non-conformity per Section 7.8, however any new uses or construction that fully complies with the overlay district would still be by-right. For example, if an existing building exceeded the height allowance it could still opt-in to the overlay district. If the height were to be further increased a special permit would be required, however an addition that met the

overlay height limit could be added by-right as long as it complied with all other applicable aspects of the zoning.

In their read of the language EOHLIC thought this intent was not entirely clear and that the provision could be interpreted to mean that any existing building opting in to the overlay district would be considered nonconforming, regardless of whether it complied with the overlay district zoning or not and would therefore require a special permit. The attached amendment clarifying this provision has been reviewed by staff at EOHLIC and found acceptable.

Attachment A: Section 9.1.1 redline

9.1.1 General

- A. As set forth herein, the provisions of Article 9 shall apply to all real property within a defined Overlay District as shown on the Newton Zoning Map. The provisions of the Overlay District will modify the form, location, and use of buildings by applying special dimensional, use, and other standards in a variety of areas in the City tailored to those specific areas and relevant policy objectives. Compliance with the Overlay District provisions may be voluntary or required based on the following criteria:
1. The owner of a site may opt-in to an Overlay District by obtaining and exercising a building and/or zoning permit for development of the site, or any portion thereof, under the provisions and standards of the Overlay District. Until a site has opted-in to an Overlay District, future development on the site, or any portion thereof, shall be in accordance with the underlying zoning district. When a site, or any portion thereof, opts-in to an Overlay District, the site shall be deemed to be zoned in the Overlay District and the provisions of Article 9 shall apply to and control any future development on the site.
 2. Buildings or structures that lawfully exist pursuant to the underlying zoning district at the time a site opts-in to an Overlay District, but do not fully comply with the dimensional standards contained in the Overlay District, shall be deemed a nonconforming building or structure and shall be subject to the provisions of Section 7.8. Sites with uses that are not permitted in an Overlay District may not opt-in to the Overlay District.