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James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

DATE: March 11, 2016

TO: Councilor Ted Hess-Mahan, Chairman
Members of the Zoning and Planning Committee

FROM: James Freas, Acting Director of Planning and Development

RE: #53-16: ACTING DIRECTOR OF PLANNING requesting technical amendments to the recently adopted reformatted Newton Zoning Ordinance to address edits related to missing or incorrectly transcribed ordinance provisions.

MEETING DATE: March 14, 2016

CC: City Council
Planning and Development Board
Donnalyn Kahn, City Solicitor

Since the adoption of the reformatted Zoning Ordinance, a number of missing sections or incorrect sections have been identified. This docket item corrects these errors. Attached are redline versions of each correction.

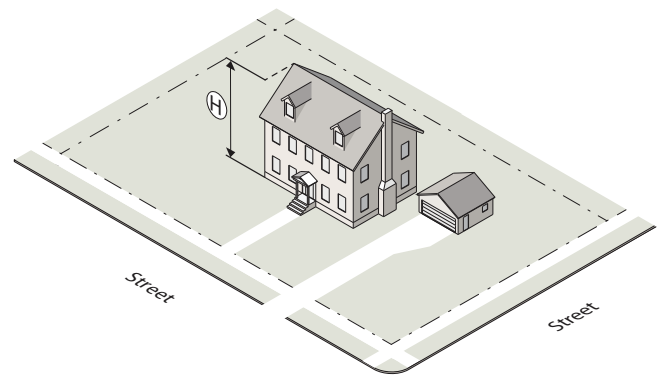
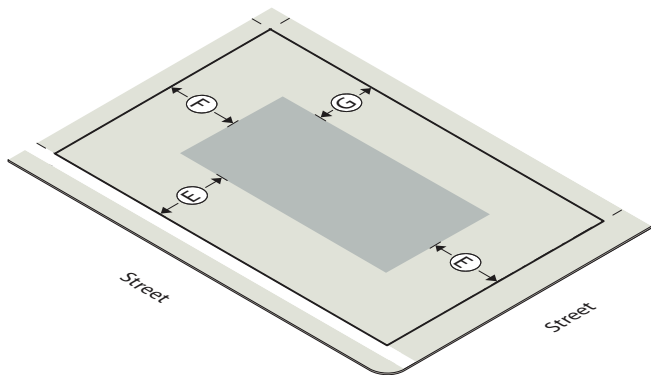
RECOMMENDATION AND NEXT STEPS

The Planning Department recommends that docket item # 53-16 be approved and forwarded to the City Council for consideration.

Attachments:

Section 3.1, Ordinance page 3-3
Section 4.2.2, Ordinance page 4-10
Section 4.4, Ordinance page 4-19
Section 5.2.8, Ordinance page 5-21

Section 6.3.4.B.3, Ordinance page 6-7
Section 6.4.29.C, Ordinance page 6-13
Section 7.3.1.C, Ordinance page 7-4



	SR1	SR2	SR3
Principal Building Setbacks (On or After 12/7/1953)			
Ⓔ Front (min)*	40'	30'	30'
Ⓕ Side (min)	20'	15'	10'
Ⓖ Rear (min)	25'	15'	15'
Principal Building Setbacks (Before 12/7/1953)			
Ⓔ Front (min)*	25'	25'	25'
Ⓕ Side (min)	12.5'	7.5'	7.5'
Ⓖ Rear (min)	25'	15'	15'

* See [Sec. 1.5.3](#) for setback averaging requirement.

	SR1	SR2	SR3
Principal Building Height			
Sloped Roof (max)	36'	36'	36'
Flat Roof (max)	30'	30'	30'
Ⓗ Stories (max)	2.5	2.5	2.5
Ⓗ <u>Stories by special permit (max)</u>	<u>3</u>	<u>3</u>	<u>3</u>
Floor Area Ratio			
All Lot Sizes	see Sec. 3.1.9		

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

Sec. 4.2. Mixed Use Districts

4.2.1. District Intent

- A. **Mixed Use 1 and 2 District.** [Reserved]
- B. **Mixed Use 3/Transit-Oriented Development.** The purpose of the Mixed-Use 3/Transit-Oriented district is to allow the development of a mixed-use center on a parcel of no less than 9 acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's Comprehensive Plan, particularly the mixed-use centers and economic development elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.
- C. **Mixed Use 4 District.** The purposes of the Mixed Use 4 district are to:
 1. Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's Comprehensive Plan.
 2. Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.
 3. Allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community.
 4. Expand the diversity of housing options available in the City.
 5. Promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community.

(Ord. No. Z-108, 04/17/12; Ord. No. A-4, 10/01/12; Ord. No. A-6, 10/01/12)

4.2.2. Dimensional Standards

- A. **Applicability.**

1. The density and dimensional controls in [Sec. 4.2.2](#) and [Sec. 4.2.3](#) apply to all buildings, structures and uses in each of the listed districts.
2. Where more than one dwelling unit is provided on a lot in certain Mixed Use districts, the following residential density control shall apply:

Mixed Use District	MU1	MU2	MU3/TOD	MU4
Lot Area Per Unit (min)	10,000 sf	10,000 sf	1,200 sf	1,000 sf

3. Where a density or dimensional control is not set forth in the following tables for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the Board of Aldermen.

B. Approval Process.

1. **Special Permit Required.** A special permit is required for any development in a mixed use district of 20,000 square feet or more.
2. **Site Plan Review Required.** A site plan is required for any development in a mixed use district that ranges from 10,000 to 19,999 square feet of new gross floor area. After August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure is not subject to site plan approval. All buildings, structures and additions shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.
3. **Stories.** A special permit is required based on stories according to the following table:

Stories	MU1	MU2	MU3/TOD	MU4
2 stories	P	P	P	P
3 stories	P	SP	SP	--
3 stories, mixed use residential	--	--	SP	P
4 stories or more	SP	SP	SP	--
5 stories, mixed use residential	--	--	SP	SP

P = Allowed by Right

SP = Special Permit by Board of Alderman Required

-- Not Allowed

(Ord. No S-260, 08/03/87)

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Bank	P	P	P	P	--	SP	P	--	--	--	P	Sec. 6.4.4
Bowling alley	--	P	--	--	--	--	--	--	--	--	P	Sec. 6.4.5
Business incubator	--	--	--	--	--	--	--	P	--	--	--	Sec. 6.4.6
Business services	--	--	--	--	--	SP	P	--	--	--	--	Sec. 6.4.7
Car-sharing service, car rental, bike rental, electric car-charging station	--	--	--	--	--	--	--	P	P	--	--	Sec. 6.4.8
Car wash	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.4.9
Drive-in business	SP	SP	SP	SP	--	--	--	--	--	--	SP	Sec. 6.4.11
Dry cleaning or laundry, retail	P	P	P	P	--	SP	P	P	P	--	--	Sec. 6.4.12
Fast food establishment	--	SP	--	--	--	--	--	--	--	--	SP	Sec. 6.4.13
Fuel establishment	--	SP	--	--	--	SP	SP	--	--	SP	SP	Sec. 6.4.14
Funeral home	SP	SP	SP	SP	--	--	SP	--	--	--	--	Sec. 6.4.15
Health club, above or below ground floor	--	--	--	--	--	--	--	P	SP	--	--	Sec. 6.4.16
Health club, ground floor	--	--	--	--	--	--	--	SP	SP	--	--	Sec. 6.4.16
Hotel or lodging establishment	SP	SP	SP	SP	SP	--	SP	SP	SP	--	--	Sec. 6.4.17
Job printing, up to 3,000 square feet (area used for work and storage)	P	P	P	P	--	--	P	--	--	P	--	Sec. 6.4.18
Job printing, over 3,000 square feet (area used for work and storage)	SP	SP	SP	SP	--	--	SP	--	--	P	--	Sec. 6.4.18
Kennel	--	--	--	--	--	--	--	--	--	X P	P	Sec. 6.4.19
Office	P	P	P	P	P	P	P	L	P	P	P	Sec. 6.4.20
Office of a contractor, builder, electrician or plumber or similar enterprises	--	L	--	--	--	--	--	--	--	--	L	Sec. 6.4.21
Open-air business	SP	SP	SP	SP	--	--	--	--	SP	--	SP	Sec. 6.4.22
Outdoor storage	--	SP	--	--	--	--	--	--	--	--	--	Sec. 6.4.23
Parking facility, accessory, single level	P	P	P	P	--	--	P	--	P	P	P/SP	Sec. 6.4.24
Parking facility, non-accessory, single level	SP	SP	SP	SP	--	--	SP	--	SP	SP	SP	Sec. 6.4.24
Parking facility, accessory, multi-level	SP	SP	SP	SP	--	--	--	--	P	SP	SP	Sec. 6.4.24
Parking facility, non-accessory, multi-level	SP	SP	SP	SP	--	--	--	--	SP	SP	SP	Sec. 6.4.24
Parking facility, public	--	--	--	--	--	--	--	P	P	--	SP	Sec. 6.4.24
Personal service, up to 5,000 square feet	P	P	P	P	--	--	P	P	P	--	P	Sec. 6.4.25
Personal service, over 5,000 square feet	P	P	P	P	--	--	P	SP	SP	--	P	Sec. 6.4.25
Place of amusement, indoor or outdoor	--	SP	--	--	--	--	--	SP	SP	--	SP	Sec. 6.4.26

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by Board of Aldermen Required -- Not Allowed

5.2.8. Signs in Commercial Districts

No sign shall be erected or maintained in a business, limited manufacturing, manufacturing, and mixed use district, except as provided in [Sec. 5.2.6](#) and this [Sec. 5.2.8](#):

Type	Number <i>per business establishment</i>	Area per Sign (max)	Notes
Principal sign	1 total	3 sf per linear foot of building wall frontage OR 100 sf, whichever is less	In particular instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign.
Principal sign: Business on a corner lot	2 total	3 sf per linear foot of building wall OR 100 sf, whichever is less	Frontage on the second street must be at least 75 percent of frontage on first street
Secondary sign	1 per building, entrance or frontage on a street or parking area; 2 max	1 sf per linear foot of building wall OR 50 sf, whichever is less	May not be erected on the same wall as a principal sign.
Directory sign	1 total	1 sf per occupant or tenant	Indicating the occupants or tenants of the building to which the sign is affixed
Directory sign: building with 2nd entrance	1 per entrance	1 sf per occupant or tenant	The second entrance must have frontage on a street or parking lot. Such signs shall not be deemed nonaccessory directory signs.
Marquee sign	1 per theater		
Awning sign	--	Up to 20% of awning area	
Window sign	--	Up to 25% of window area through which they are visible	
Gas station sign	1 consolidated display	20 sf (aggregate)	Product identification signs (tires, oil...)
Directional sign		3 sf	For the direction of persons or vehicles, indicating "entrance," "exit," "parking," or the like

-- Not Applicable

temporary custody and care not more than 6 children at a time.

- 2. **Large Family Child Care Home.** As defined and licensed under M.G.L. Chapter 15D, Section 1A, a private residence which on a regular basis receives for temporary custody and care up to and including 10 children at a time.
- 3. **Day Care Center.** As defined and licensed under M.G.L. Chapter 15D, Section 1A, a facility which on a regular basis receives for temporary custody and care more than 10 children at a time.

B. Standards.

- 1. **Purpose.** The purpose of this Sec. 6.3.4 is to accommodate child care needs of the general public in all areas of the city, to distinguish between family child care homes and day care centers which are more intensely used, to encourage larger facilities to co-locate within other existing large institutions, to encourage safe access and egress, and to minimize potential congestion at drop-off and pick-up times.
- 2. **Family Child Care Homes, Large Family Child Care Homes.** Minimum lot size shall be 5,000 square feet.
- 3. **Day Care Center.** Day care centers which are accessory to religious and non-profit educational institutions, shall follow the parking requirements of Sec 5.1, and the institution in which they are located shall follow the dimensional requirements for religious and non-profit educational institutions. procedures and criteria for review for the institution, and meet the provisions and standards set forth below: Day care centers which are not accessory to religious or non-profit educational institutions are subject to the Administrative Site Plan review procedure in Sec. 7.2, must meet the dimensional requirements for lots created after December 7, 1953 in the applicable zoning district, and must meet the provisions and standards set forth below:
 - a. **Landscaping:** A dense year-round vegetative buffer at least 4 feet wide and 6 feet high shall be provided along the perimeter of any outdoor play area. Any fence required by the Office for Child Care Services shall be located inside the required vegetative buffer. All landscaping that is required under this provision shall be maintained in good condition and, if diseased or dying, shall be replaced by the operator of the facility with new plant material of a similar size.
 - b. **Parking.** Day care centers shall comply with the parking requirements of Sec. 5.1, except that in residence district, there shall be provided

a dense year-round vegetative buffer with dimensions as described in Landscaping above. Day care centers shall comply with the provisions of Sec. 5.1.9 relating to the screening of parking areas, excepting the dimensions for the vegetative buffer.

- c. **Drop-off.** In addition to complying with the parking requirements of Sec. 5.1, there shall be provided for drop-off and pick-up at least 1 on-site parking space for each 5 children or fraction thereof. Such parking spaces shall comply with the applicable parking setback requirements and parking dimensional and design standards of Sec. 5.1.7 or Sec. 5.1.8.
- d. **Parking Management and Compliance Plan.** The operator of a day care center shall submit to the Director of Planning and Development a parking and drop-off management plan which shall outline where and when staff shall park as well as the alleviation of potential congestion during peak drop-off and pick-up times as required herein. Said plan shall be reviewed by the City Traffic Engineer, and the Engineer's recommendations shall be sent to the Director of Planning and Development. Upon completion of said review process, the Director of Planning and Development shall indicate, in writing, to the Commissioner of Inspectional Services whether there has been compliance by the operator with the procedural requirements stated herein, and whether, in his opinion, the owner has complied with this Chapter. This statement shall be made within 60 days after receipt of the parking management and compliance plan.
- e. **Trash Location and Screening Plan:** The operator of a day care center shall also submit to the Director of Planning and Development a trash location and screening plan which shall provide the precise means and location of trash collection and removal as well as screening therefor to alleviate health and aesthetic concerns.
- f. **Compliance with Office for Child Care Services Regulations.** Until the operator of a day care center provides to the Director of Planning and Development evidence of current valid

- 1. In the Business 1 through 4, Mixed Use 2 and 4 districts, restaurants having not more than 50 seats.
- 2. In the Mixed Use 3 district, restaurants having not more than 5,000 square feet of gross floor area.
- 3. In all districts, outdoor sidewalk seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

C. Standards for Special Permit Uses

- 1. In the Business 1 through 4 districts, restaurants having over 50 seats which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation shall not apply to a hotel or motel restaurant.
 - 2. In a Limited Manufacturing district, restaurant, pastry shop, coffee shop, fast food establishment, drive-in food service establishment, or other such establishment when such establishment dispenses food products between 10:30 p.m. and 6:00 a.m., but not including in this paragraph any such business operated as part of a hotel or motel.
 - 3. In a Mixed Use 1 district, restaurants and businesses which hold a Common Victualler-All Alcoholic, or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area.
 - 4. In a Mixed Use 2 district, restaurants over 50 seats, and such businesses which hold a Common Victualler – All Alcoholic or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City.
 - 5. In the Mixed Use 3 district, restaurants with more than 5,000 square feet of gross floor area.
 - 6. **In the Mixed Use 4 district, restaurants having more than 50 seats and extended hours of operation.**
- 7.6.** In all districts, outdoor sidewalk seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. X-20, 05/06/02; Ord. No. A-13, 03/18/13)

6.4.30. Retail Sales

- A. **Defined.** Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise.
- B. **Standards.**
 - 1. In a Mixed Use 1 district, a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area.

(Ord. No. Z-108, 04/17/12)

6.4.31. Service Establishment

- A. **Defined.** Business service establishments, including but not limited to copying and printing establishments and shipping services.

(Ord. No. Z-108, 04/17/12)

6.4.32. Stable

- A. **Defined.**
 - 1. **Private.** A building or part of a building in which 1 or more horses are kept and used in connection with the business of the owner or tenant for other purposes than sale, rent or hire.
 - 2. **Public.** A building or part of a building in which horses are kept for compensation.

(Rev. Ords. 1973 §24-1)

6.4.33. Taxidermist

- A. **Defined.** [reserved]

6.4.34. Vehicle Repair Shop

- A. **Defined.** A building or part of a building in which repairs are made to motor vehicles, or a repair shop in a garage or other building in which heavy machinery is used. An automobile school shall be regarded as a vehicle repair shop.
 - 1. **Minor.** A part of a garage where minor structural repairs are made to motor vehicles for profit, by means of lathes, vises and other appliances, but not by means of heavy machinery.
 - 2. **Major.** [reserved]

model shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater. The model shall be provided to the City in a file format acceptable to the Director of Planning and Development, in consultation with the Clerk of the Board of Aldermen, the City Solicitor, and the Chief Information Officer.

~~C. The applicant shall also submit 1 massing model, prepared as appropriate by an architect, professional engineer or land surveyor, for any commercial or multi-family development with a gross floor area of 20,000 square feet or more as follows:~~

- ~~1. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the massing model shall show the proposed development, all abutting properties and abutters to such abutting properties;~~
- ~~2. For a proposed development containing a gross floor area 50,001 to 100,000 square feet, the massing model shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater;~~
- ~~3. For a proposed development containing a gross floor area in excess of 100,000 square feet, the massing model shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater.~~

~~C.D.~~ As part of an application for special permit, an applicant must comply with the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval.

(Ord. No. S-260, 08/03/87; Ord. No. A-6, 10/01/12)

7.3.2. Review

- A. The Board of Aldermen or a committee of the Board of Aldermen shall hold a public hearing within 65 days of the filing of an application for special permit.

- B. Notice of such public hearing shall be provided as required by M.G.L. Chapter 40A, Section 11.
- C. The Board of Aldermen shall act upon any application for special permit not later than 90 days following the the public hearing.
- D. The application for special permit shall be deemed approved if the Board of Aldermen fails to act upon the application not later than 90 days following the public hearing.
- E. Any approval of an application for special permit shall lapse not later than 1 year from the grant of such approval unless a substantial use of such special permit or construction required by such special permit has begun. The Board of Aldermen may extend the period of time granted under this Paragraph for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon, unless the Board of Aldermen or its Committee on Land Use shall vote to require a public hearing. Notwithstanding the above, no extensions shall be granted which shall extend the time for substantial exercise of the special permit for more then 2 years from the date of the grant of the special permit.
- F. The Newton Biosafety Committee shall serve as an advisory body to the Board of Aldermen with regard to any application for a special permit. The Newton Biosafety Committee shall be consulted by the Board of Aldermen for its recommendations on the siting of any institution intending to conduct recombinant DNA research or technology, which recommendations shall be in writing and shall be submitted within such time as the Board of Aldermen shall specify to assure said board's ability to act within the time periods set forth in this Sec. 7.3.

(Ord. No. S-260, 08/03/87; Ord. No. V-9, 02/21/95; Ord. No. A-6, 10/01/12)

7.3.3. Grant of Permit

- A. A special permit from the Board of Aldermen for any purpose for which a permit is required under this Chapter shall be granted only by 2/3 vote of all the Board of Aldermen.
- B. The Board of Aldermen may grant a special permit when, in its judgment, the public convenience and welfare will be served, and subject to such conditions, safeguards and limitations as it may impose.