

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY FEBRUARY 28, 2011

7:45pm Room 202

**ITEMS SCHEDULED FOR DISCUSSION:**

- #154-10      ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #217-00      ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more, containing one or more residential units in any residential district.
- #17-11      TERRENCE P. MORRIS, JOSEPH PORTER, BRUCE BRADFORD, GEORGE COLLINS, VERNE T. PORTER, JR., MICHAEL PEIRCE proposing an amendment to the zoning ordinance for the purpose of changing the definition of “Grade Plane” and adding a new definition for “Average Grade”. [12-28-10 @ 10:22AM]

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

- #235-10      ALD. BAKER & YATES on behalf of the Newton Historical Commission requesting updates to §22-50, **Demolition of historically significant buildings or structures.**, to minimize inconveniences to homeowners proposing modest changes and to enhance protections for historic structures proposed for demolition, with specific amendments designed to (B) establish a minimum period of delay for full demolition if the structure is found to be preferably preserved; and (C) extend the existing period of delay, as has occurred in other communities, for structures proposed for full demolition if the structure is found to be preferably preserved. [8/30/10 @3:19PM]

**ACTION:**      **SECTION (B), APPROVED 7-0-1 (Lennon abstaining)**  
**SECTION (C), APPROVED 6-2 (Lennon and Lappin opposed)**  
**RECOMMITTED ON 2/22/11**

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at KCahill@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

- #122-09 ALD. SANGIOLO on behalf of Armando Rossi requesting a discussion of the proliferation of signage in the city.
- #26-11 HIS HONOR THE MAYOR submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to include a Mixed-Use Centers Element [01-07-11 @ 4:20 PM]  
**REFERRED TO PLANNING AND DEVELOPMENT BOARD (to be reported back on April 1, 2011)**
- #150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #311-10 HIS HONOR THE MAYOR submitting the FY’ 12-FY’ 16 Capital Improvement Program, totaling \$174,246,135 pursuant to section 5-3 of the Newton City Charter and the FY’ 11 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/18/10 @5:24PM]
- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #30-10(2) POST AUDIT & OVERSIGHT COMMITTEE requesting a discussion with the Planning & Development Department relative to the governance process of the Newton Community Development Authority (NCDA), including recommendations and potential changes to the NCDA. [01/26/09 @ 9:00 PM]

- #294-03 ALD. BAKER, YATES, JOHNSON AND MANSFIELD requesting analysis and discussion of possible remedies for demolition of modest housing and replacement with oversized structures out of character with the surrounding neighborhood, including examining the experience of other communities, including those out of state, who have worked to address this problem. **(Recommended by Full Board 8-14-06)**
- # 7-99 ALD. PARKER requesting discussion of possible zoning amendments to create additional residential districts with different FAR and lot size requirements.
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

**REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES**

- #391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.
- #207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must

be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM]

#61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

**REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES**

#48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

#60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]

#475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]

#288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2, 3 and 4 districts.

#133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.

#365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.

- #114-10      ALD. YATES AND RICE requesting reports from the Conservation Commission and Board of Survey on compliance with condition of permits given to allow the development of the Laura Road subdivision. [04/07/10 @ 10:59 PM]
- #440-04      ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #20-99        ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.

Respectfully Submitted,

Marcia Johnson, Chairman

## WORKING MEMORANDUM

TO: ZONING AND PLANNING COMMITTEE OF THE BOARD OF ALDERMEN

FROM: CANDACE HAVENS, INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT  
JURIS ALKSNITIS, INTERIM ZONING ADMINISTRATOR

RE: PETITION #154-10 PERTAINING TO DEFINITIONS FOR "LOT AREA" AND  
"SETBACK LINE"

DATE: JULY 9, 2010

CC: JOHN LOJEK, COMMISSIONER OF INSPECTIONAL SERVICES

10 JUL -9 PM 2:53  
CITY CLERK  
NEWTON, MA 02159

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**BACKGROUND**

Arising from discussions within the Newton Housing Partnership, a collaborative initiative took shape in 2008-2009 involving housing advocates and providers, City of Newton staff, boards, and commissions, and civic groups. Called the Newton Housing Action Plan Initiative (HAPI), its actions and observations are summarized in the report "HAPI: An Overview", December 29, 2009. HAPI issued a draft report on "Mixed-Use Friendly Zoning" dated August 19, 2009, last revised October 22, 2009. The report identifies a number of barriers within the Newton Zoning Ordinances creating obstacles to mixed-use business and housing development in village centers and along commercial corridors. In particular, this report outlines six regulatory problem areas within the Zoning Ordinances, and provides suggestions for amending the Zoning Ordinances to remedy these problems. Several of the less complex problems are now being brought forward for discussion. Petitions #153-10 and #183-10, respectively, pertaining to Mixed Use items have been docketed for discussion, with the goal of enacting the necessary amendments in the near future. Discussions regarding petition #154-10 pertaining to clarifying selected definitions are also being initiated. The following information is provided for use by the Zoning and Planning Committee at its working session on July 13, 2010.

**PETITION #154-10**, proposing to amend Section 30-1, Definitions, by adding a definition for "lot area" and also revising the existing definition for "setback line"

**Lot area**

At present the Zoning Ordinance contains no formal definition of "lot area", and the meaning of this term is generally inferred from the contexts in which it appears. Section 30-1, Definitions, provides definitions for "Lot, corner," "Lot coverage," and "Lot, interior" but not for a typical lot. Section 30-15, Density/dimensional requirements, describes "Lot frontage", defines "Rear lot", and refers to area of lots in multiple provisions within this section. *Table 1-Density and Dimensional Controls in Residence Districts and for Residential Use* enumerates the standard controls such as "minimum required lot area", "lot area per unit", while Floor Area Ratio (FAR), maximum lot coverage, and minimum open space are all based on lot area. Similarly, lot area is a key factor applicable to institutional as well as commercial uses. As a result, any new definition of "lot area" needs to be considered carefully, recognizing that such a definition has the potential for affecting many controls governing development.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that the following new definition be inserted in Section 30-1, Definitions:

"Lot Area: the horizontal area of a lot exclusive of any area in a street or recorded way open to public use."

Review of some typical definitions of "lot area" contained in the publication A Planners Dictionary, by the American Planning Association Planning Advisory Service indicates simple to more complex approaches such as:

"The computed area contained within the lot lines." (Wood River, Ill.)

"The total horizontal area within the lot lines of a lot, but not including the private driveway area of a flag lot." (Multnomah County, Ore.)

"The horizontal area within the exterior lines of the lot, exclusive of any area in a public or private way open to public uses." (Quincy, Mass.)

"The area within a lot, including land over which easements have been granted, but not including any land within the limits of a street upon which the lot abuts, even if fee to such street is held by the owner of the lot." (Maynard, Mass.)

Issues in Newton which merit further exploration include the following:

- Whether "lot area" should be based on legal ownership of land, regardless of whether such land falls within private or public ways.
- Whether "lot area" should reflect legal rulings pertaining to multiple lots which are deemed to have common metes and bounds and may be considered "one" lot.

In addition, it is noted that the Section 30-1 definition of "Lot line" includes a special exception whereby a lot line dividing an aqueduct from an abutting property "shall not be termed a lot line." This creates a number of anomalies in the calculation and application of various dimensional controls, and implies the need for further definition of what may constitute a lot line for the purposes of defining "lot area".

Setback line

Section 30-1, Definitions provides the following definition:

*"Setback line: A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected. "*

In addition, Section 30-15(e), *Setback Line*, articulates details concerning the method of measurement from lot lines to a structure, vestibule, or porch, and establishes exceptions for certain elements which may project into setback.

Possible Zoning Ordinance text change:

The subject petition draws on the HAPI report on "Mixed-Use Friendly Zoning", which proposes that the current definition of "Setback line" within Section 30-1, Definitions be altered as indicated in bold:

"Setback line: A line equidistant from the lot, **street or public way** line which establishes the nearest point to **that [the lot]\*** line at which the nearest point of a structure may be erected. "

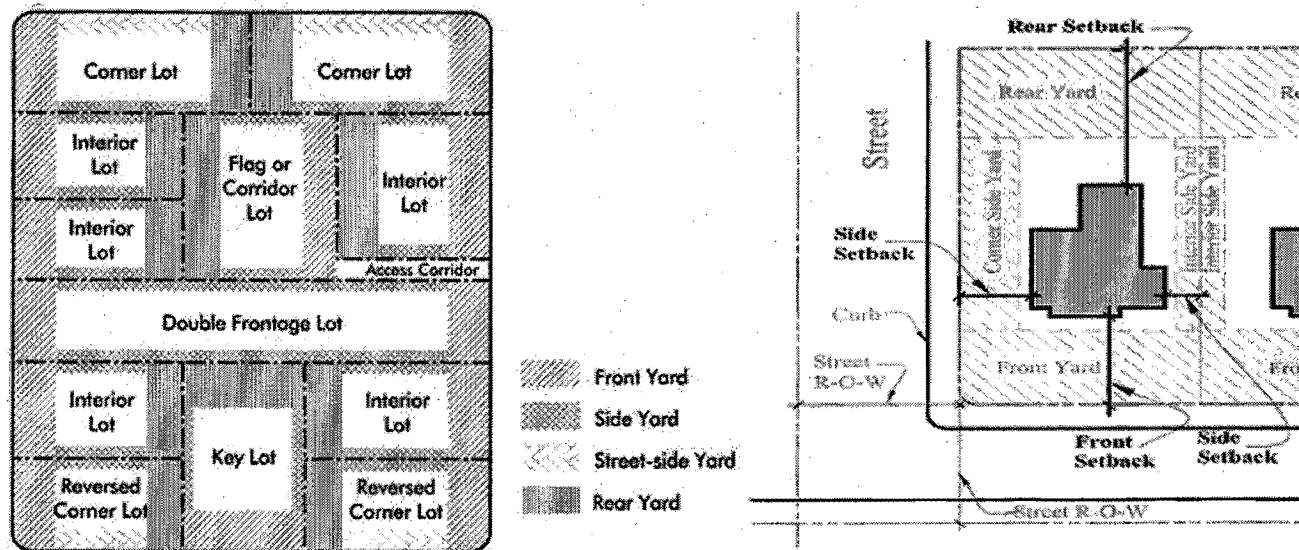
\*Deleted text

The above revision seeks to correlate the definition of "setback line" with the proposed new definition for "lot area" discussed above.



# Petition #154-10: Defining “lot area” and “setbacks”

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Working Session – Sept 27, 2010  
Zoning and Planning Committee  
Newton, MA

# Regulating lot area and setbacks

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- Lot area and setbacks are some of the oldest zoning tools
  - Included in the 1927 standard enabling act
- Used to regulate:
  - Density (size and number of buildings)
  - Intensity (impacts on neighbors)
  - Building relationships (fire protection, beauty, etc.)
- In Newton:
  - *Lot area* is used to calculate minimum lot size, lot area/dwelling unit, FAR, open space, and lot coverage
  - *Setbacks* set a minimum the distance between structures and lot lines

# Existing Definitions: “lot area”

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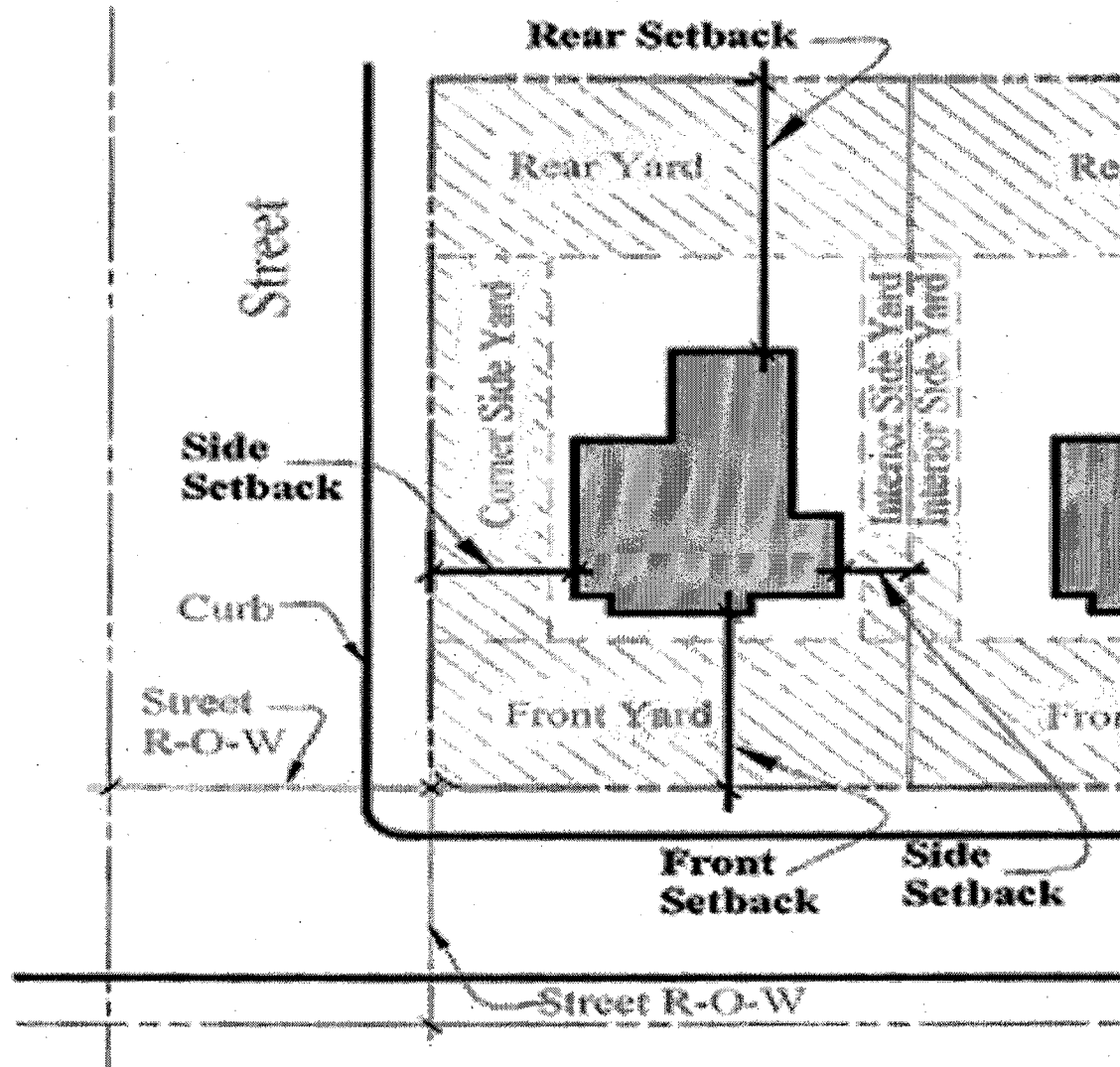
- No existing definition
- Interpreted as horizontal area between “lot lines”
  - “lot lines” is in defined §30-1 as:
    - “A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as a aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.”
  - Interpreted as the “meets and bounds” described on the deed for the property

# Existing Definitions “set backs”

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- No definition of “setbacks”
- “Setback line” is defined in §30-1 as:
  - “A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of the structure may be erected
- “Setback line” is also, separately defined in §30-15
  - Subsection §30-1(e), along with definitions of rear and side yard set backs in subsections (d) and (f)
    - “Distances shall be measured from the lot lines to the nearest portion of the structure...” (including porches, not including stairs, bulkheads, eaves less than two feet, etc.)

# Set Back Example



<http://modcoach.blogspot.com/2009/07/when-is-setback-line-not-set-back-line.html>

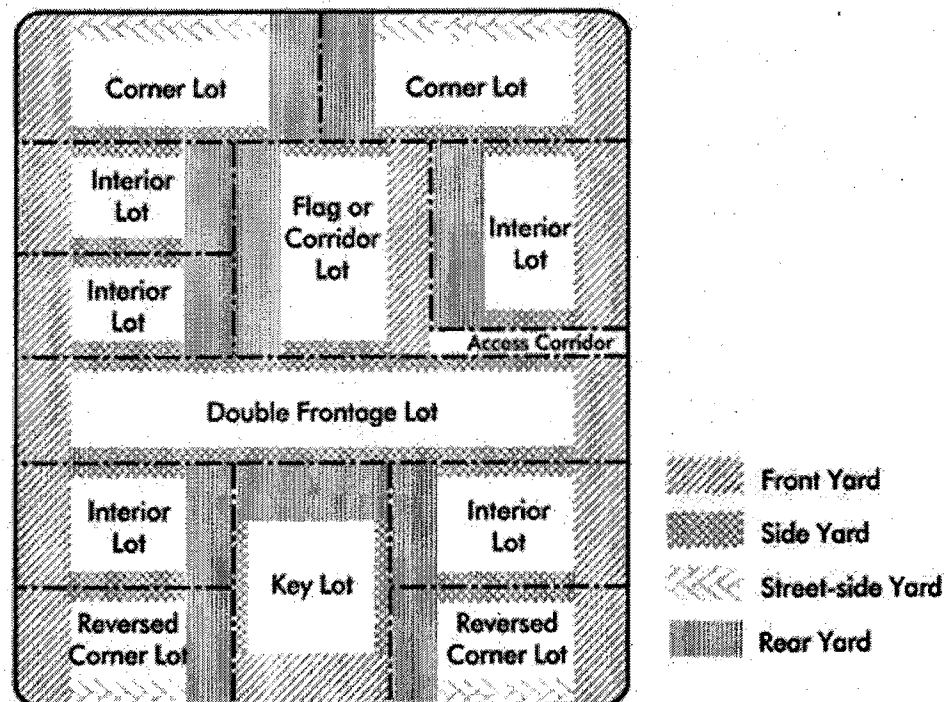
# Other Definitions:

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- Type of Lot:
  - Corner (§30-1)
  - Interior (§30-1)
  - Rear (§30-15)
- Lot Frontage (§30-15)
- The column headings for density tables (in §30-15)
  - FAR, minimum required lot area, lot area per unit, maximum lot coverage, minimum open space,

# Setbacks, lot lines, and lot types

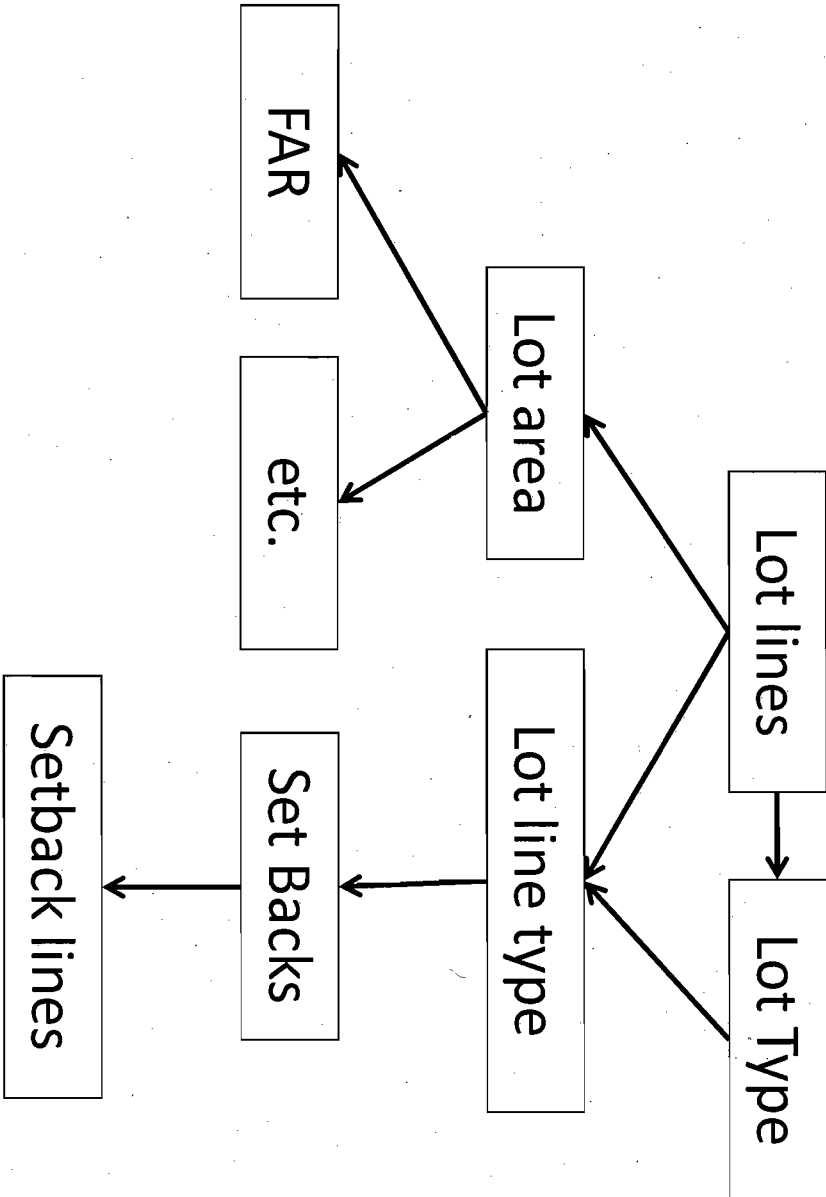
- There are many kinds of lots
- There are different types of *lot lines* (front, side, rear) determined by the lot configuration
- Which *set back* (front, side, rear) you use is determined by the type of *lot line*



<http://www.codepublishing.com/CA/elkgrove/html/elkgrove23/ElkGrove2364.html>

# Summary

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# Particular Conditions in Newton

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- “Paper streets” – created by subdivision plans, but never constructed, and will not be
- Public ways on private land, deed restricted
- Easements for driveway access to rear lots
- Private streets where deeds describe lot lines going out to the middle of the road
- Aqueduct land, some public, some private, does not count as “lot line” (meaning no setbacks)
- Lot Assemblages – no setbacks from interior lot lines

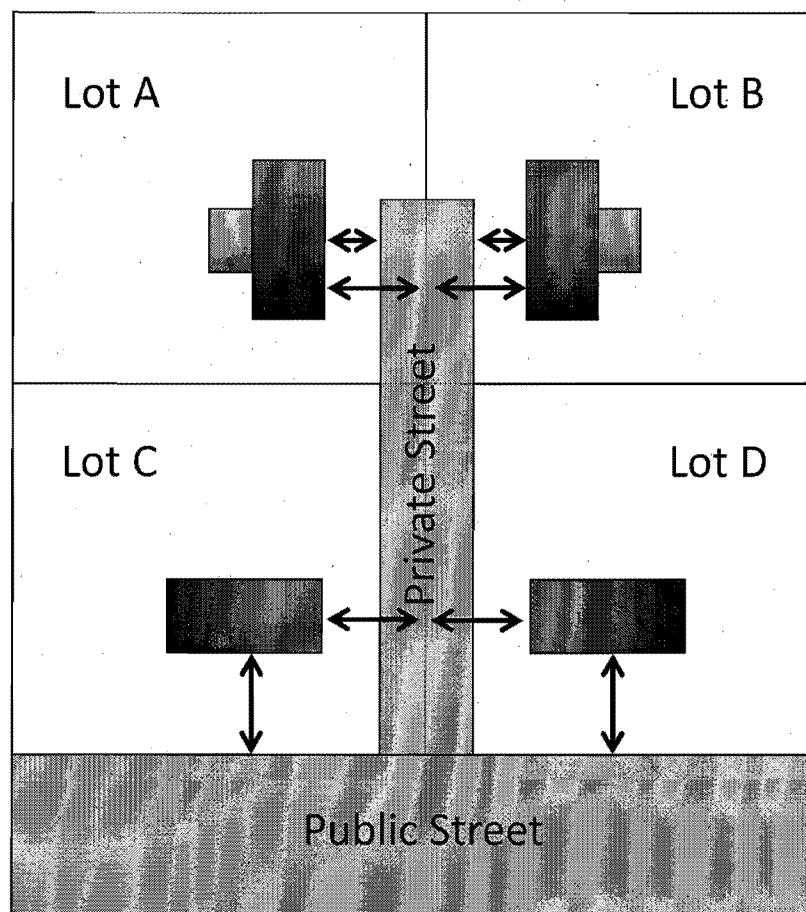
## Particular Conditions: “lot area”

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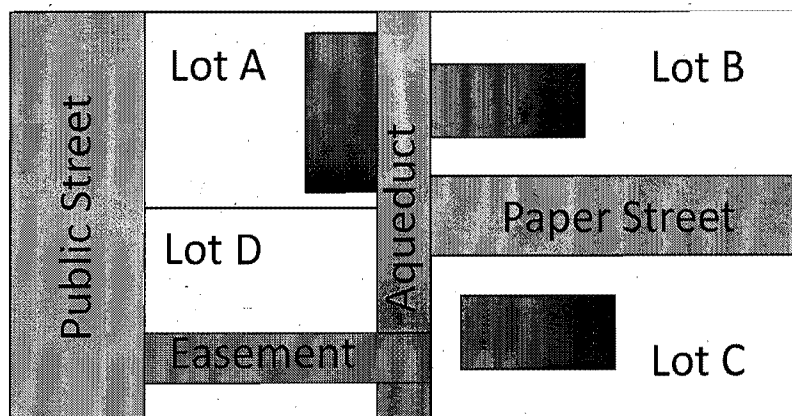
- Lot area is significant in Newton for regulating FAR, minimum lot size, and lot area per dwelling unit, etc.
- If easements or public rights-of-way on the property owner’s land can not count for lot area, then they lose development potential.
  - Potentially creating new non-conformities

# Particular Conditions: Graphics

Public Ways and Private Ways



Paper Streets and Aqueducts



# Particular Conditions “setbacks”

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- Currently setbacks go from property line
- In the case of private streets where the properties extend to the road center or public rights-of-way extend over private property, a building might be set closer to the road than normal, we interpret from layout lines
- Set backs include structures, but not egress stairs, bulkheads, eaves and gutters, and accessory structures
- No set backs adjacent to aqueduct land

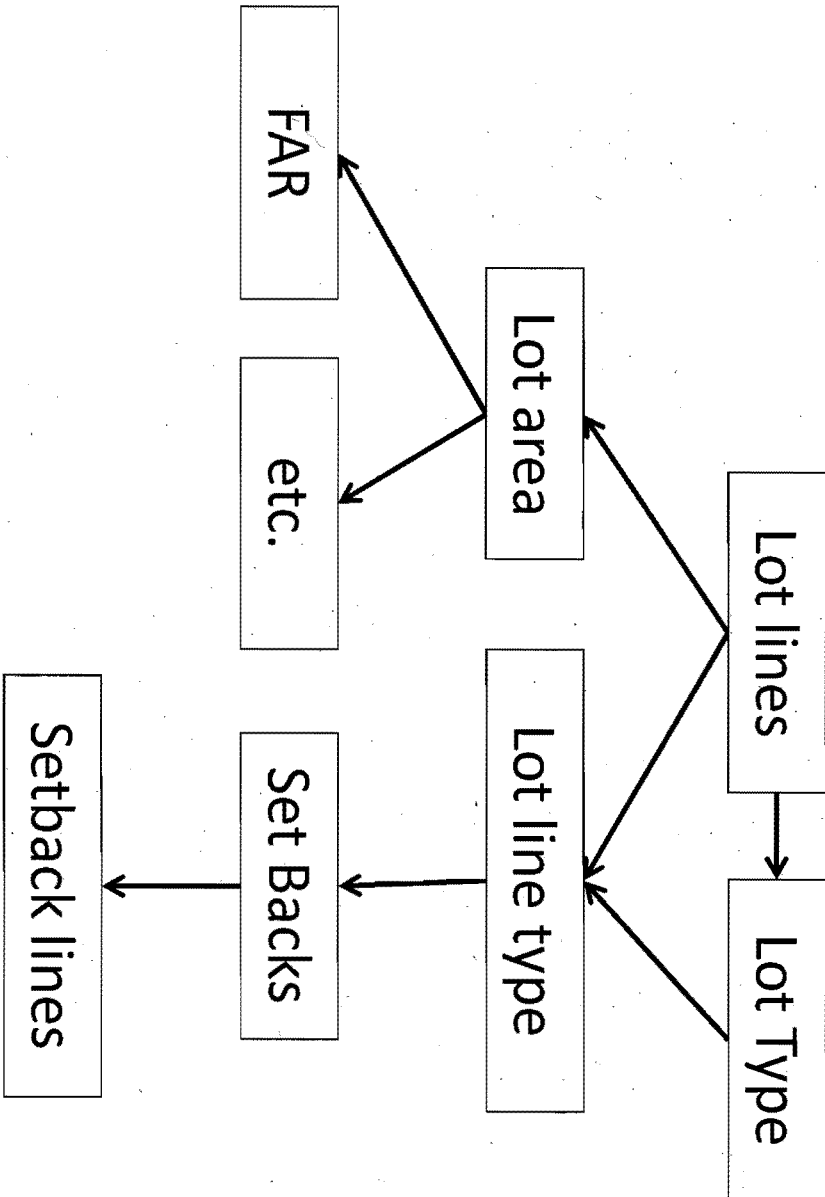
# Goals

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- Clarify and consolidate definitions
  - Comprehensible by citizens, officials, and staff
- Reduce number of nonconforming properties
- Create framework that eases later revisions
- Balance complexity and public objectives
  - Even some good rules take more energy to enforce than they create in benefits

# Model

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# Summary

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- Redefine “lot lines”
  - Based on meetings and bounds or engineering plan
  - Define lot line types (front, side, rear)
  - Eliminate aqueduct exception (or move to “set backs”)
- Create definition of “lot area”
  - Horizontal area between lot lines
  - Include whole area of property, with exception for public or private ways
  - Add special cases to a solid underlying definition

# Summary, Continued

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- Replace definitions of “setback lines” in §30-1 and §30-15 with a new “setback” definition
- “Setback lines” are a design envelope that emerges from set back distances
- Potential text example:
  - “Set back: the minimum (or maximum) distance that a structure is required to be built from the property line. Required set backs are determined by the property line type (front, side, rear) and are measured perpendicularly from the property line, or as a radius at interior corners.”
  - Include exceptions for stairs, bulkheads, etc. and aqueducts as bullet points below, allowing for easy identification and revision



# Outstanding questions

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- What counts toward lot area and set backs and what doesn't?
  - Private streets?
  - Public ways?
- Currently set backs also allow an “average of neighboring set back” exception – do we keep it?
- Which are “density” standards which may not be waived, vs. “dimensional standards which may be?



David B. Cohen  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
Michael J. Kruse, Director

217-00  
Telephone  
(617) 552-7135  
Telefax  
(617) 965-6620  
E-mail  
mkruse@ci.newton.ma.us

Public Hearing Date: May 31, 2000  
Zap Action Date: June 26, 2000  
Board of Aldermen Action Date: July 10, 2000  
90-Day Expiration Date: August 26, 2000

2000 MAY 26 PM 4:00  
CITY CLERK  
NEWTON, MA. 02459

TO: Mayor David B. Cohen  
Board of Aldermen  
Planning & Development Board

FROM: Michael Kruse, Director of Planning and Development  
Lara Kritzer, Preservation Planner

SUBJECT: Petition #217-00 of ALD YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more containing one or more residential units in any residential district.

The purpose of this memorandum is to provide the Mayor, Board of Aldermen and the public with technical information and planning analysis which may be useful in the decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing which the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. ANALYSIS

In terms of historic preservation legislation, this ordinance does not appear to have any precedents. Chris Skelly, Director of Local Government Programs for the Massachusetts Historical Commission, reports that there is no such ordinance in effect anywhere within the Commonwealth. However, Chris suggested that the City might want to pursue options such as forming Conservation Districts, which offer another option for protection of neighborhood character. An example of this type of district can be seen in Cambridge.

Claudia Wu, a member of the Newton Historical Commission who works with the National Trust for Historic Preservation, was contacted for information on other such ordinances in New England, but did not know of any. Additionally, Frank Gilbert, Senior Field Representative with the National Trust in Washington, DC, was contacted. Frank did not know of any similar legislation in the country. He noted that this type of legislation would be very similar to that found in a local historic district, such as Newton's own Chestnut Hill and Upper Falls. Frank also compared this idea to a case in Kentucky where city officials were working towards a review of all demolition prior to permitting. Their goal was to be able to have measured drawings, etc. done on important houses before they were demolished. This type of delay for further review is very similar to Newton's existing demolition review ordinance. Frank mentioned that the City might want to look at the standards of "reasonable beneficial use" set out in the Supreme Court decision -- Pennsylvania Central Transportation Company vs. City of New York.

The City's existing landmark ordinance requires findings specific to the historic nature or quality of the property. It is unclear in this petition as to how certain standards would be applied in a special permit granting process for demolition of a structure over 100 years old. This petition also raises the possibility that demolition would be impossible if the special permit were denied.

## II. CONCLUSION

Newton's existing Demolition Review Ordinance is a general ordinance not a Zoning Ordinance. Further legal review may be necessary to determine the appropriateness of this item as an amendment to the City's Zoning Ordinance. In addition, the experts consulted suggested other options to consider. These alternatives should be fully explored and compared with the proposed ordinance in terms of effectiveness and applicability to the issue at hand.

217-00



David B. Cohen  
Mayor

**CITY OF NEWTON, MASSACHUSETTS**

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1000 Commonwealth Avenue  
Newton, MA 02459  
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Telecopier 617-552-5526

Building/Zoning Division  
617-552-7016  
Electrical Division  
617-552-7019  
Plumbing and Gas Division  
617-552-7020  
Weights & Measures Division  
617-552-7094  
www.ci.newton.ma.us

**Inspectional Services Department**  
Joseph P. Latronica, CBO, Commissioner

**MEMORANDUM**

TO: Zoning and Planning Committee  
FROM: Commissioner Joseph P. Latronica  
DATE: June 1, 2000  
SUBJECT: Petition #217-00

2000 JUN -2 PM 3:49  
CITY CLERK  
NEWTON, MA 02459

I agree with the comments and recommendations submitted to you by the Planning and Development Department.

I would like to add an additional comment. Preservation of historically significant buildings is an issue that should be addressed in a separate Ordinance, implemented and enforced by those City officials who have the mandate, expertise, and resources to do so properly. This issue should not be addressed in the Zoning Ordinance, which is enforced by this Department.

cc: Mayor David B. Cohen  
Michael Kruse, Director of Planning and Development  
Louis Mercuri, Principle Planner  
Planning & Development Board

JPL/PRB

*Strict code enforcement makes the city safer  
Before buying, renting, leasing check zoning*

277-00



City of Newton, Massachusetts  
Department of Planning and Development  
Michael J. Kruse, Director

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(617) 552-7135  
Telefax  
(617) 965-6620  
E-mail  
mkruse@ci.newton.ma.us

David B. Cohen  
Mayor

June 9, 2000  
2000 JUN -9 PM 3:57  
CITY CLERK  
NEWTON, MA 02459

Brooke Lipsitt, President  
Newton Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear President Lipsitt,

The following is a report with recommendations of the Planning and Development Board, regarding proposed zoning amendments for which a public hearing was held on Wednesday, May 31<sup>st</sup>, 2000. Present were David Banash, Chairman, Prof. Ernest Siciliano, Carol Beard, Janelle Tiernan, and Louis Mercuri (Department of Planning and Development, not voting)

After the public hearing the Planning Board met to take the following actions:

#130-00 ALD. YATES proposing that the definition of "structure" in Sec. 30-1 be amended.

**Voted 4-0 in favor of including "Tennis Courts" within the definition of "Structure". The Board also recommended that further study of the applicability of Basketball Courts, Boci Courts and similar items of like effect be considered for future inclusion within the definition of Structure.**

#457-99(2) ALD. BAKER & SANGIOLO requesting amendment to Section 30-15, Table 1 of the Zoning Ordinances so that under the Multi-Residence 3 category the height of "Multi-Family Dwelling" (amended by Ordinance. V-241) and "Residential Care Facility (30-9(e))" shall be up to 60 feet and up to six stories and under the "Multi-Residence 4" category the height of "Residential Care Facility" shall be up to 60 feet and six stories, or such lower number in both cases as the Board may determine.

#457-99 LAND USE COMMITTEE requesting an amendment to Section 30-15, Table 1, of the Zoning Ordinances, so that under the Multi-Residence 3 category the height of "More than Two Dwelling Units on a Lot" and "Residential Care Facility (30-9(e))" shall be 60 feet, 6 stories and under the Multi-Residence 4 category the height of "Residence Care Facility" shall be 60 feet, 6 stories. REFERENCE: Ordinance V-111, dated April 23, 1997.

**Voted 4-0 to support the Boards previous recommendation on February 28, 2000 of a three-story, 36 foot height limitation for "Multi-Family Dwellings" in the Multi-Residence 3 Districts. In consideration of this vote, the Board is willing to consider or reconsider this**

action based on additional information provided by the Planning Department in its study of the matter during the summer months of 2000.

#290-95(2) ALD. YATES requesting that Chapter 30 of the City of Newton Ordinances be amended to allow one or two-family homes by right in Business, Manufacturing, or Mixed Use Districts on lots abutting lots where such uses are allowed by right.

**Voted 4-0 to deny this request. However, if the Board of Aldermen choose to support this petition, then three (3) conditions ought to be considered as part of the request to narrow its applicability as follows:**

1. It would only apply to residential uses in effect on a certain date;
2. It would only apply to Business Districts;
3. It would only apply to properties abutted on two sides by residential uses.

The consensus of the Board was that these edge parcels in Business Districts are best handled through a rezoning to a residential use consistent with the adjoining zoning districts in the area. The Board supports a zoning map change rather than a city wide amendment to change the allowed uses in certain districts.

#169-00 ALD. YATES proposing an amendment to Chapter 30 to prohibit granting permits for telecommunications and antennae to providers which hold more than 1,000 unused telephone numbers or which have not filed a binding agreement to not seek more than 1,000 numbers at a time in the future.

**Voted 4-0 in favor to support this concept if it is deemed legally defensible.**

#216-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit to demolish an existing single-family dwelling on a pre-1953 lot that does not meet the current dimensional requirements for a lot in a Multi-Residence District and replace it with a two-family dwelling.

**Voted 4-0 to deny the request. Instead, the Board supported the two positions outlined in the Planning Department memorandum as follows:**

1. To review and where appropriate modify Section 30-15 and Table 1 (in 30-15) to reflect consistency between what constitutes an undersized lot and what the minimum lot area per unit should be and;
2. To consider downsizing from MR-1 to SR-3 (for example) where the issue of new two-family homes being built on small lots where previously modest single-family homes existed.

In its discussion the Board noted the greatest stated concern resulted from an increase in density in an area rather than from the actual proposed demolition itself. It was noted that the most effective way to prevent these situations from occurring is to look at the lot area per unit requirements for

each of the affected zoning districts. Changes to density within an area is the most effective and appropriate tool of addressing the concerns.

#217-00

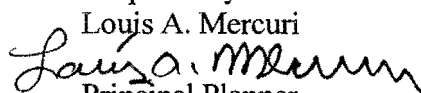
ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more containing one or more residential units in any residential district.

**Voted 4-0 to deny the amendment as presented, however, the Board could support a 2-step demolition process as follows for properties over 100 years of age:**

- 1. Review of such demolition proposals would first be reviewed by the Historical Commission as to whether the structure is "preferably preserved".**
- 2. If it is deemed preferably preserved, then the applicant would apply to the Board of Aldermen for a special permit to seek approval to demolish the structure. If such request is denied, the applicant could reapply to the Special Permit Granting Authority a minimum of two years after filing of the initial petition.**

Respectfully submitted

Louis A. Mercuri



Laura A. Mercuri

Principal Planner

cc. Planning Board Members  
Mayor David B. Cohen  
Michael Baseman, Asst. City Solicitor  
Joseph Latronica, Comm. of Inspectional Services

DRAFT  
# -11CITY OF NEWTONIN BOARD OF ALDERMEN

PROPOSED ORDINANCE NO. \_\_\_\_\_

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2009, as amended, be and are hereby further amended with respect to Chapter 30, Zoning, as follows:

1. By deleting from Section 30-1 **Definitions**, the definition of *Grade Plane*, and inserting in its place the following language:

*Grade Plane*: A horizontal reference plane for a building as a whole, passing through the elevation of the finished Average Grade around the perimeter of a building, from which building height is determined.

2. By adding to Section 30-1 **Definitions**, the following new definition:

*Average Grade*: The average of the grade elevations around the perimeter of a building, as determined by the following length-weighted mean formula:  $\sum[(e1 + e2) / 2 \times L] / P$ , where S is a segment of the building perimeter; e1 and e2 are the grades at the respective ends of the segment; L is the corresponding length of the segment; and P is the length of the total building perimeter. In calculating said average, the elevation of each point used to define each segment shall be determined by using the lowest elevation of finished ground level between the building and a distance of six (6) feet from the building, as illustrated in the diagrams below.

Approved as to legal form and character:

\_\_\_\_\_  
City Solicitor



# City of Newton

## GRADE PLANE REQUIREMENTS

Effective 12/01/10. All plans submitted to the Inspectional Services Department; including plot, drainage and as-built plans will have the following items on the plans:

(including but not limited to)

all structures,  
metes and bounds,  
lot area,  
lot coverage,  
open space,  
and stamps from the design professional and signatures for each of the stamps.

If required; contour lines at a minimum of 2' intervals.

When submitted if larger than 11X17 and more than 3 pages; there shall be one hard copy and two CD's in PDF format. If the plans are 11X17 or smaller and 3 pages or less; 3 copies on paper will be acceptable.

All plans shall also comply with the City of Newton's Revised Ordinances and the State of Massachusetts Building Code.

### Grade Plane:

A reference plane for a building or structure as a whole, representing the average of finished ground level adjoining the building or structure at all exterior walls. In calculating said reference plane, the elevation of each point used to calculate said average shall be determined by using the lowest elevation of finished ground level within the area immediately adjoining the building or structure and either the lot line or a point six (6) feet from the building or structure, whichever is closer to the building or structure.

All site and as-built plans must show the average grade plane and heights of buildings based on the following:

- 1) Plans are to show two grade points on "each" exterior foundation wall. Such points shall be measured at the lowest point immediately adjoining each wall and a point perpendicular to the first point 6' from the building or structure. If the lot line is less than 6' the second point shall be at the lot line.
- 2) The average grade plane shall be the average of all walls. Eight points for a four sided building; twelve points for a six sided building; etc....
- 3) "Exterior wall" in this context shall mean a wall with a length of six feet or greater.
- 4) 30-5 (c)1 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. Projects increasing impervious surface area by more than the lesser of a) four (4.0) percent of lot size or b) four hundred (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 section. 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.

### GRADE PLANE 7<sup>th</sup> Edition of the Building Code

**5401.3 Drainage.** Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection so as to not create a hazard. Lots shall be graded so as to drain surface water away from foundation walls. The grade away from foundation walls shall fall a minimum of six inches (152 mm) within the first ten feet (3048 mm).

*Temporary and finished grading shall be such that surface water runoff, either during or after completion of construction, shall not be directed to, nor create flooding or damage to adjacent property.*

**Exception:** Where lot lines, walls, slopes or other physical barriers prohibit six inches (152 mm) of fall within ten feet (3048 mm), drains or swales shall be provided to ensure drainage away from the structure.

