



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Tuesday, May 19, 2020

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Wright, Ryan, Krintzman, and Baker
Also Present: Councilors Kelley, Markiewicz, Kelley, Bowman, Laredo, Greenberg, Downs, Gentile, Malakie, and Humphrey

Planning Board: Peter Doeringer (Chair), Jennifer Molinsky, Sonia Parisca, Sudha Maheshwari, Kevin McCormick, and Kelley Brown

City Staff: Jennifer Steel, Senior Environmental Planner; John Lojek, Inspectional Service Commissioner; Barney Heath, Director of Planning and Development; Gabriel Holbrow, Community Engagement Specialist; Zachery LeMel, Chief of Long Range Planning; Claire Rundelli, Assistant Environmental Planner; Jini Fairley, ADA Coordinator; Andrew Lee, Assistant City Solicitor; Luis Perez Demorizi, Open Space Coordinator; Katy Hax Holmes, Chief Preservation Officer; Nathan Giacalone, Committee Clerk

#178-20

Discussion of Implementation of the Open Space and Recreation Plan Update

DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

The Zoning & Planning Committee split item #178-20 into three parts:

- 1. Send a letter to the State that it has reviewed the Open Space and Recreation Plan, Approved 8-0**
- 2. Adopt the Open Space and Recreation Plan as an amendment to the 2007 Comprehensive Plan, Held 8-0**
- 3. Further discussion on implementation for the 2020-2027 Open Space and Recreation Plan, Held 8-0**

Notes: Chair Crossley introduced the item, saying that the Zoning and Planning Committee has been asked to submit a letter saying that they reviewed the Open Space and Recreation Plan (OSRP), the only step the state requires of the Committee. She recommended that this would be voted on as #178-20(1). She further recommended that adoption of the OSRP as an amendment to the City's 2007 Comprehensive Plan be voted on as #178-20(2). The Council's decision is not related to grant funding eligibility from the state.

Ms. Steel clarified that the state does not require a letter of approval from City Council in order to conduct its review of Newton's OSRP. The state requires letters of review from the Mayor, the Metropolitan Area Planning Council, and the Planning & Development Board (P&D Board). A letter of support from the full Council would be helpful but is not required in order to receive state approval. The Zoning and Planning Committee may recommend to the full Council a letter from the Council stating that it has reviewed the OSRP and recommends the state approve it. State approval is necessary to make the city eligible for grant funding. Ms. Steel further explained that once the state approves the plan, it is not involved in any way in the implementation of the OSRP.

In response to comments received, Ms. Steel explained that the OSRP is designed to be a "living document" and that implementation will need to adapt to meet Newton's changing open space needs. The present draft includes stronger language linking open space to public health. Another stated priority is that the OSRP works in conjunction with goals set forth in other City plans such as the Climate Action Plan (CAP) and the Climate Vulnerability Plan. Public comments received have ranged from an emphasis on improving maintenance and field upkeep, an expanded role for Friends' groups, and suggestions for additional projects. Ms. Steel said that all public comments have been reviewed and will be acknowledged within the plan but emphasized that the implementation phase is where priorities will be set and implementation strategies formed.

A summary of public comments received as detailed in Ms. Steel's memo is attached to this report.

Ms. Steel's memo also addresses how the final OSRP will address three issues raised at the previous ZAP meeting, which she also summarized as follows:

Implementation Team:

Ms. Steel said that Newton has adopted many Open Space Plans over decades but has never had a team dedicated to their implementation. The CAP's Implementation team has proven successful in transforming its goals into results. The CAP implementation is led by city staff members who are responsible for ensuring that the CAP goals are being met. The CAP implementation team is composed of city staff who create working groups with stakeholders from the community to undertake individual efforts. The OSRP Implementation Team will imitate this model.

Prioritization:

Ms. Steel said that prioritization of individual actions, will be determined through the strategic implementation process. She explained that under normal circumstances, looking ahead seven years is challenging and that the COVID-19 pandemic has added extra uncertainty to which the Implementation Team will have to adapt.

Efficient Management:

Ms. Steel said that she has been studying the issue of coordination between the Conservation Commission and Parks, Recreation and Culture (PRC) which has been raised over the years and appears in past OSRPs. Rather than having a planned outcome, Ms. Steel said the OSRP notes that periodic

conversations between Conservation and the PRC are needed to ensure that the most efficient management structures and practices are being followed.

Committee member and Councilor questions, answers, and comments are as follows:

Q: When will the OSRP be submitted the state?

A: Conservation and PRC are going to meet on May 22nd and May 29th (if needed) to finish reviewing public comment and coordinate final edits to the current version of the OSRP. Once the OSRP maps are completed (with an estimated date on those for May 29th), the draft will be ready to be submitted to the state.

Q: What is the best way to design the Implementation Group?

A: Based on prior conversations in Committee, public comment, and input from the Mayor's Office, the best approach has been determined to be a staff-based team.

C: The OSRP can be a significant benefit for Newton. This was demonstrated recently as the then-current OSRP was used to help justify acquisition of the Webster Woods parcel and other trail maintenance expenses.

Q: As the P&D Board has discussed the OSRP, it has further questions on the role of neighborhood groups and more aggressive strategies to expand open space. What is the best way and time schedule and time frame for the P&D Board to get its comments on the OSRP to the drafting committee?

A: If Councilors or P&D Board members still have comments, they can email them as soon as possible to either Ms. Steel or Ms. Rundelli. The public comment period is closed as staff members need time to incorporate the changes. The P&D Board can share these comments with Ms. Rundelli as they move to the Zoom breakout room later in this meeting.

Q: With the current OSRP expiring at the end of May, is there any way to extend the existing plan to cover any gap in funding eligibility?

A: No, the current plan cannot be extended. However, the next grant deadline is not until July. Provided there is swift conditional approval from the state this will not impact Newton's grant eligibility.

Q: Are there any pending applications for private conservation grants?

A: No

Q: How does the OSRP address public/private partnerships?

A: It supports expansion of such partnerships.

C: The extent of invasive species present in Newton's open spaces, as well as stormwater management, are two worrying issues that should be addressed.

A: The Conservation Office and PRC are aware of this. There are efforts underway to address both. More education on invasive species will help support greater removal of them. Invasive species

education is not specifically addressed in the OSRP, but ecological health and trail maintenance are addressed, and so invasive species removal will be addressed.

The Committee divided item #178-20 into subsections: 1) Recommending the City Council send a letter to the state stating that it has reviewed the OSRP; 2) to consider adoption of the OSRP as an amendment to the 2007 Comprehensive Plan, and 3) to discuss how to structure the implementation team.

Note: The P&D Board voted 6-0 in favor to submit a letter of review and support for the OSRP to the state. Their letter is attached to this report.

The Zoning and Planning Committee voted 8-0 to approve #178-20(1) and 8-0 to hold items #178-20(2) and #178-20(3)

#29-20 **Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON
requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76 that relate to demolition delays, historic designation, and landmarking.

Action: **Zoning & Planning Approved as Amended 7-0-1 (Councilor Krintzman abstained)**

Notes: The Chair introduced the item, noting that the working group has completed its review and provided a proposed draft ordinance to the Committee, highlighting issues that had not yet been resolved in Committee.

Mr. Heath, Andrew Lee, and Katy Hax Holmes joined the Committee to present on this item. Atty. Lee began the presentation from where the previous discussion ended at the May 7th meeting, emphasizing the remaining items to be resolved: who may nominate, Administrative and Judicial Appeal options, and whether to include paint color as an architectural feature that would require NHC review. His PowerPoint presentation is attached to this report.

Nominations

The working group did not come to a consensus on who may nominate a property for landmarking. As noted as well at the previous ZAP Committee meeting, there were two matters to decide:

1. Should it be required that at least one of the nominating Councilors be a resident of the ward in which the property exists?
2. Should two members of the NHC alone be able to nominate a property?

Regarding Councilor nominations, Atty. Lee noted that notification of the ward resident councilors could be required in lieu of requiring that the nominating Councilor be a resident of the ward. Regarding NHC nominations, it was pointed out that the concern here has been that since the draft revised ordinance has the NHC as the final deciding authority, NHC should not also be the only nominators. An NHC member is required to second all other nominations, unless the property is nominated by its owner.

The Committee took straw votes on each item

1. Regarding whether a Councilor from the ward of the property in question must be one of the nominators, the Committee straw vote was 3-4-1. The item failed.
2. Regarding whether two NHC members alone may nominate a property for landmarking the Committee straw vote was 3-5. The item failed.

Atty. Lee said that the working group was unable to come to a consensus on the issue of nominations. Specifically, he referred to two points. The first was whether or not to require that when two Councilors are nominating a property, at least one should reside in the ward in which the property is located. The second was whether or not to allow two Newton Historical Commission members to nominate a property or two require that an NHC member must be joined by a different individual empowered to nominate properties.

Administrative and Judicial Review Options:

The working group recommends forming a local appeals option for persons aggrieved by an NHC decision to landmark their property, for a flat fee of \$500. (versus the MAPC fee of \$1500.). The aggrieved may choose instead to go directly to superior court. The legal standard of “arbitrary and capricious” would govern the appellate decision. This is modeled on how the MAPC conducted appeals (who have declined to continue offering this service), and is the same standard used by the judiciary.

The Committee straw vote was unanimous in favor of this option.

The local appeals option would be convened at the time of the appeal, as per the draft proposed text Sec. 22-70.

The Committee straw vote was unanimous in favor of this structure.

Paint and Color:

The working group proposed that if the paint color of a landmarked property holds no historical or cultural significance, the property owner may change the paint color without needing to obtain a certificate of appropriateness, non-applicability or hardship. If paint color is found by the NHC to be a significant condition, it would be so noted in their findings. The recommendation is therefore to remove paint color from the ‘architectural features’ list.

The Committee straw vote was unanimous in favor of this option.

Effective Date

The working group proposed that the revised ordinance would go into effect immediately upon approval by the Council. Any property currently under NHC consideration to be landmarked, will be continued according to the provisions of the revised ordinance, from the point in the process that is comparable in the new ordinance.

The Committee straw vote was unanimous in favor of this option.

The Chair suggested that Committee members focus their comments primarily on matters not yet resolved, and that preceding a final vote on the main item, straw votes would be taken until each item is settled. Committee member and Councilor questions, answers, and comments are as follows:

Multiple Councilors thanked Atty. Lee, Ms. Holmes and the working group for their efforts revising the landmark ordinance.

Q: In Sec. 22-62(1), what does it mean when it says a property is eligible for nomination if it “is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on the National Register”?

A: “Formally listed as eligible for listing” is now a defined term under 22-61 Definitions. It is defined as “a determination has been made by the keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.” This refers to a list of properties eligible to be on the National Register but are not currently on the National Register.

Q: Is the local Administrative Body the first step for an aggrieved property owner before a Judicial Review or may they choose to go to a Judicial Review first?

A: The Administrative Review is optional, and the property owner can choose to go straight to a Judicial Review.

Q: The qualifications listed out in Sec. 22-64(b-1) for Designation, including significant “architectural type, style or design” is listed as a qualification for Designation. This seems like a broad category and while it may be appropriate for the nomination process, this should not be enough for designation. This line should be removed.

A: The process now uses these criteria as a basis for nomination, though they would not have been tested. The claim of significance will then be researched and vetted. By the time the landmarking process arrives at the Designation stage, the claims that would be used under Sec. 22-64(b-1) would have been thoroughly vetted.

Q: Additionally, councilors from the ward in which the property exists have been the nominators and a councilor from any other ward would notify a councilor from within the ward.

A: This has been a matter of best practice and consideration, but it has not been formally codified.

C: (In the case of two members of the NHC alone also nominators) It seems odd to limit the ability of the NHC to nominate. Though the two members would represent half of the minimum required votes that would be deciding on the landmark designation, some of their responsibilities involve identifying appropriate buildings for nomination.

Q: What would be the effective date of this ordinance?

A: The ordinance would be effective as soon as it is passed by the full Council. The working group decided that any nominations currently ongoing will be carried over to a comparable stage under the proposed ordinance.

Q: Important architectural style alone should not be enough for landmark designation. It seems a higher degree of historic importance should be included.

A: It was pointed out where language addressing this exists in the proposed ordinance.

C: One who can nominate a property for landmark designation should not also be able to sit on the administrative review board.

C: The criteria (legal standards) used in the Administrative Review and Judicial Review should be identical.

Q: Are architecture and other experts involved in the landmarking process at all?

A: Yes, there are two professional staff members with historic preservation masters degrees who are involved in the research and verification steps, and architects and real estate professionals appointed to the NHC.

There was a motion to add text in Section 22-63(2) requiring that Councilors from within the ward be notified immediately once a property is nominated:

The motion carried 8-0.

Councilor Baker motioned to strike the language “elected from the ward in which the property is situated” from Sec. 22-63(a-2), so that any Councilor would be able to nominate a property regardless of the ward they are from, as long as they are joined by a member of the NHC. The motion carried 6-1-1 (Councilor Albright opposed, Councilor Krintzman abstained).

Councilor Krintzman moved to strike Sec. 22-63(4) in its entirety, so that two members of the NHC alone would not be able to nominate. The Motion failed 3-5 (Councilors Albright, Baker, Leary, Wright, and Danberg opposed)

Councilor Baker moved approval of #29-20 as drafted and as amended which carried 7-0-1 (Councilor Krintzman abstained).

#88-20 Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Action: Zoning and Planning Held 8-0

Notes: The Chair introduced the item, noting that the focus of the meeting’s Zoning Redesign presentation would be on the associated items #30-20 and #148-20, garages, driveway access, and parking.

Zachery LeMel presented a PowerPoint to continue the discussion from the last meeting on Sec. 3.4.2 and Sec. 3.7.1.E, using case studies to illustrate the proposed garage design standards and driveway access regulations. He reviewed the flaws in the deferred garage ordinance as having no statement of

intent, too many restrictions, and broad exemptions. Since 2017, the ordinance has been deferred five times. The current deferral will expire on July 1, 2020 and the Council has until then to either repeal or extend the deferral. There is not enough time to amend the deferred ordinance before this date.

Mr. LeMel again noted the key objectives that proposed revisions to garages and driveway locations are intended to address, and how they would be inserted into the proposed new draft zoning ordinance (redlined attachment included in report).

The objectives of the revision are to prevent garages from obscuring the main entrance of the building, ensure that the main house and its primary entrance are the prominent features from the street, ensure that garages do not dominate neighborhood views, and enhance public safety by protecting the public way for pedestrians.

Mr. LeMel then used case studies of existing conditions to show how the proposed ordinance would require modifications to bring the properties into compliance. In many instances, Mr. LeMel stated that the modifications required under the proposed draft zoning language would be minimal.

1603 Commonwealth Ave

Currently zoned as SR1, under the proposed zoning the property would be an R1 single-family house. The existing 28-foot curb cut would be non-compliant under the new ordinance, which would require a maximum 10-foot curb cut with a depth of 10 feet before expansion. The garage is set in front of the main door which would be non-compliant. To be compliant, the garage would simply have to be pushed behind the pedestrian façade of the house. At a minimum of ten feet (sec. 3.4.1.D.1) or be in line with a front porch designed to certain standards (sec. 3.4.1.D.1.a).

6-8 Salisbury Road

Currently zoned as MR1, under the proposed ordinance the property would be zoned R3 Two-family house. The driveway curb cuts are currently 20 feet and would have to be shrunk to 10 feet to comply. The apron offset from the front would also have to be increased to 10 feet along with a two-foot increase to the distance between the curb cuts. The garages would need to be pushed back to be in line with the front porch at a minimum. The example provided showed the garages pushed back to be in-line with the front façade which is also allowed under the draft language.

9 Wyoming Road

Currently zoned as SR3, this property would be classified an R2 single family house. The property features a prominent front facing garage. To comply under the proposed ordinance, the garage could be developed as a side-facing garage, which requires the street facing façade to include certain design features, like windows, that make the garage appear to be a living space.

878-880 Chestnut Street

Currently zoned MR1, under the proposed ordinance the property would be classified an R3 two-family house. The property does not have any garages, but if they were to be added, this property could support rear-garages. Ribbon driveways are encouraged to reduce pavement in front of the house. The

example results in parking in the rear, or within a rear garage, would remove parking in front of the front façade and place the home forward on the lot to be in line with the homes on either side of the property.

Mr. LeMel said the work done to date assumes these changes would be integrated with new definitions and to meet the broader goals of the proposed revised ordinance, such as improving pedestrian safety, protecting the streetscape, reducing impervious surface and lot coverage.

He said that additional effort would be required to first amend the existing ordinance to repair its flaws and meet expanded objectives, which may as well require new definitions - and would take time away from pursuing more comprehensive zoning redesign and/or require additional meetings.

Mr. LeMel said that the proposed revisions to the garage ordinance would enhance pedestrian safety, promote sustainability, incentivize a reduction of auto-dependency, and promote community focused design,

Mr. LeMel said that given the time constraints on changing the deferred ordinance, the Committee had two options. Its first option is to take it up as part of Zoning Redesign and adopt it with full adoption of a new comprehensively revised ordinance by the end of 2021. A second option would be to take it up as an amendment to the current zoning ordinance. However, the timeframe on passing an amendment could exceed four months, by which time it would have gone into effect. If the second option is pursued, Council would still need to defer or repeal the existing ordinance section. Mr. LeMel concluded his presentation.

Committee member and Councilor questions, answers, and comments followed:

It was stated by several members that section 3.4.4 should not go into effect as drafted, as flaws in the ordinance were revealed when unwelcome unintended consequences occurred when first passed. For example, certain well-designed projects in the queue became suddenly non-compliant, and certain traditional building types non-conforming. In his presentation, Mr. LeMel noted several corrections that were. Instead the ordinance has been deferred.

Proponents of incorporating the objectives of limiting garage placement, driveway access and impervious surfaces into the proposed ordinance, stated the need to move ahead to address the larger goals more comprehensively. Some noted that the amount of changes that need to be made exceed what will be able to be done before Section 3.4.4 is scheduled to take effect (July 1, 2020). It was also noted that in order to fix Section 3.4.4 before its implementation, staff resources would have to be diverted, putting Zoning Redesign off schedule.

One Councilor noted that Mr. LeMel's presentation clearly pointed out the flaws in the garage ordinance. Only minor changes to the language are needed to fix these flaws. This is an opportunity for the Committee to have an "interim win." There is also no guarantee that Zoning Redesign will pass. If there is so much work involved with just the garage ordinance, then it is worth considering that Zoning Redesign will take much longer than December 2021. The ordinance may not be perfect, but it could help prevent teardowns.

If the deferred ordinance was fixed, would the problems cited in Mr. LeMel's presentation be fixed?

A: Some would be fixed, but in an overly restrictive way. Mr. LeMel referred back to the many restrictions to which the deferred ordinance offered no alternatives.

Councilor Albright moved to amend the effective date of the garage ordinance 3.4.4 January 31, 2022, which was approved as amended 6-2 (Councilors Baker and Wright opposed).

Given the late hour, it was decided to postpone the presentation of building components and hold further discussion of accessory structures, garages and driveways, and calendar planning, to the next meeting. In addition, the Chair suggested taking up calendar planning at the start of the next meeting.

Councilor Crossley requested a motion to hold which carried 8-0.

#30-20 **Ordinance amendment to repeal Zoning Ordinance 3.4.4 Garages**
COUNCILOR ALBRIGHT requesting amendment to Chapter 30 of Newton's Zoning Ordinance, section 3.4.4 on garages (delayed implementation until ~~July 1~~ January 31, 2022). This ordinance has been delayed five times.

Action: **Zoning and Planning Approved as Amended 6-2 (Councilors Baker and Wright opposed)**

Notes: Item #30-20 was discussed and voted on with item #88-20.

Councilor Albright moved to amend the effective date of the garage ordinance 3.4.4 January 31, 2022, which was approved as amended 6-2 (Councilors Baker and Wright opposed).

#38-20 **Request for discussion relative to single-family attached dwellings**
COUNCILOR LAREDO requesting a review of the zoning requirements for single-family attached dwelling units.

Action: **Zoning and Planning Held 8-0**

Notes: Items #38-20 and #148-20 were discussed and voted on simultaneously with item #88-20.

#148-20 **Request to amend Chapter 30 to eliminate parking minimums**
COUNCILORS ALBRIGHT, AUCHINCLOSS, BOWMAN, CROSSLEY, DANBERG, DOWNS,
GENTILE, GREENBERG, KALIS, KELLEY, LIPOF, MARKIEWICZ, NOEL, KRINTZMAN, AND RYAN
seeking amendments to Chapter of the Revised City of Newton Ordinances to eliminate mandated parking minimums to improve vitality of local businesses, reduce the cost of housing, and support the climate action goals.

Action: **Zoning and Planning Held 8-0**

Notes: Items #38-20 and #148-20 were discussed and voted on simultaneously with item #88-20.

The meeting adjourned at 10:40 pm.

Respectfully Submitted,

Deborah J. Crossley, Chair



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 15, 2020

TO: Councilor Crossley, Chair of the Zoning and Planning Committee
Members of the Zoning and Planning Committee
Peter Doeringer, Chair of the Planning and Development Board
Members of the Planning and Development Board

FROM: Barney Heath, Director of Planning and Development
Jennifer Steel, Chief Environmental Planner

RE: **#178-20 Adoption of the Open Space and Recreation Plan Update**
DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

MEETING DATE: May 14, 2020

CC: Luis Perez-Demorizi, Open Space Coordinator
Nicole Banks, Commissioner of Parks, Recreation, and Culture
Jonathan Yeo, Chief Operating Officer
Gabriel Holbrow, Community Planner

Thank you all for your contributions at the May 7th joint ZAP/P&D public hearing/public meeting. There were a few issues raised at the meeting that are being addressed and will be reflected in the next draft.

Strategic Implementation Team

Crafting this update of the Open Space and Recreation Plan (OSRP) has been a huge task as the team worked to develop a clear picture of the City's open space resources and a clear vision for the future.

An OSRP lays a foundation for implementation and provides general guidance for the City and it satisfies a state requirement for future grant funding; an OSRP is not intended to be a detailed implementation plan. This OSRP update follows the outline required by the state. It provides baseline information and databases; it spells out broad visions; and it identifies goals, objectives, and actions desired or intended to be undertaken over the next seven or more years. The OSRP is not intended to be a detailed implementation plan for individual actions or projects. The details of implementation will require in-

depth analyses of priorities and budget capabilities, metrics of priority and success, careful prioritization, the detail action plans, community engagement, and partnerships. Implementation will, therefore, require lots more input from City staff, engaged citizens, and area experts.

The concept of the OSRP implementation management team was intended to mimic the highly effective Climate Action Plan (CAP) implementation management team: a team of City staff most intimately involved with implementation, who collectively have been tasked with helping to ensure that the CAP gets implemented. Members of that team meet regularly as group, have each taken the lead on individual aspects of the CAP, and have created working groups on individual efforts that involve citizens and experts, as needed. This team is charged with reporting progress to the Mayor and to City Council on a regular basis. The CAP implementation team efforts have been evolving as dedicated staff and engaged citizens work together to determine the most effective ways to accomplish the goals and objectives of the CAP. The crafters of the OSRP anticipate a similar genesis, and evolution, as the OSRP strategic implementation team gets established and develops pathways forward. The language of the OSRP will be edited to reflect this.

Prioritization of Actions

As noted above, this OSRP update is not intended to establish distinct priorities for all 117 proposed actions. Decisions about the timing and funding of individual actions/projects will be made with the help of the implementation team and the City departments/commissions that will be responsible for funding and overseeing those actions/projects. This OSRP update will serve as guidance to many more detailed discussions and deliberations in the future.

The language of the OSRP will be edited to appropriately reflect the current uncertainty of the timing of individual projects.

Efficient Management of Open Space Resources

The OSRP tried to reflect the interest of City staff, the OSRP Advisory Committee, and members of the public who noted that there may be opportunities to improve efficiencies in the land management and maintenance responsibilities of Conservation and Parks, Recreation & Culture (PRC). It was felt that the City should always strive to evaluate its operations and seek improvements in efficiency through open-minded, forward-looking discussions including evaluations of needs, capabilities, bidding, contracting and oversight. There is no assumption that current land management responsibilities be changed.

The language of the OSRP will be edited to remove specific suggestions for consideration and will simply note the interest in ensuring that such conversations about coordination and efficiency are held.

Public Comment

Below, as requested, are summaries of the comments from the public received to date:

- Provide permanent protection for Cold Spring Park and other city parks (this same comment was received from a number of residents)
- Complete the stone dust renovation of the Cold Spring Park Life Course trail (this same comment was received from a number of residents)
- Develop and implement priority plans to greatly reduce invasive species
- Elevate the desire for legal protections for parks
- Elevate the importance of investment in the improvement, maintenance and protection of recreation, green and open spaces, including but not limited to] natural areas, athletic fields, parks,

[the city's outdoor pool,] water resources, and the urban tree canopy. Athletic fields were top-ranked as a concern and yet aren't discussed in detail.

- Elevate the fact that nearly 70% of respondents said that the quality of parks were poor
- Eliminate the idea of transferring management of Bullough's Pond away from the PRC.
- Establish a coalition of "Friends" groups to work together and seek multiple sources of funding.
- Ensure that all laws and plans address the need for trees, habitats and an end to fossil fuel consumption
- Consider the possibility of converting Landfill area on Pine Street to a recreational area
- Consider Pine St lot, next to the Burr School, for cleanup and conversion to park, playing field, etc.
- Provide protected bike lanes on south-to-north routes in the city
- Connect Memorial Spaulding Sch. to Kennard Park via a multi-use shared path along to Dudley Rd
- Provide a sidewalk on Nahanton Street (with Nahanton Park and Heyn Conservation area and Cutler Park on the other)
- Quinnoque Road needs safer access
- Provide a sidewalk along Vine Street for safe access to Kessler Woods from Oak Hill neighborhood
- Provide a pedestrian crossing on the Sudbury Aqueduct over the T tracks next to the Eliot T station
- Lobby the golf courses for PILOT payments and suggest voluntary donation of CRs on portions of the golf courses
- Acknowledge Newton's Age Friendly designation

Please note that at the request of the public and City Councilors, the public comment period will remain open until May 18th.

We look forward to the discussion on May 19th.

Electronic Link: City of Newton Open Space and Recreation Plan 2020-2027, dated 4/30/20

<http://www.newtonma.gov/gov/planning/lrplan/os/default.asp>

June 8, 2020

Melissa Cryan
Division of Conservation Services
Commonwealth of Massachusetts
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: City of Newton 2020-2027 Open Space and Recreation Plan

Dear Ms. Cryan:

I am pleased to report that the City of Newton Zoning and Planning Committee has completed its review of Newton's proposed Open Space and Recreation Plan (OSRP) on June 8, 2020. This update of the City's OSRP provides a thorough documentation of Newton's open spaces, trails, waterways, and recreational lands and it recommends an ambitious set of goals for strengthening the City's stewardship of these resources.

Please feel free to contact me if you need additional information about the Zoning and Planning Committee's review.

Sincerely,

Deborah Crossley
Newton City Councilor at Large, Ward 5
Chair of the Zoning and Planning Committee

City of Newton Landmark Ordinance

5/7/2020 – Working Group
Proposed Amendments

Eligibility for nomination -current

- Properties individually listed on the National Register
- Properties listed on the National Register as part of an historic district, but not individually
- Properties that are certified by the Massachusetts Historical Commission as eligible for listing on the National Register, either individually or as part of a district

Eligibility for nomination - proposed

- Properties individually listed on the National Register
- Properties listed on the National Register as part of an historic district, but not individually
- Properties determined to be historically significant after a finding that the property is
 - importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America Historically or architecturally important by reason of period, style, method of construction or associated with a particular architect or builder;
 - historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

Who may nominate

Current

- Members of the City Council
- The Mayor
- The Director of Planning and Development
- The Commissioner of Inspectional Services
- Members of the Newton Historical Commission (NHC)

Proposed

- Owners of the Property
- Members of the City Council elected from the ward in which the property is situated and a member of the NHC
- The Mayor and a member of the NHC
- The Director of Planning and Development and a member of the NHC
- The Commissioner of Inspectional Services and a member of the NHC
- At least two members of the NHC

Notice of nomination

Current

- To the owner of the nominated property
- Upon the NHC's receipt of the written nomination
- No particular method of notice is prescribed

Proposed

- To the owner of the nominated property and to the immediate abutters
- Within 14 days after the NHC receives the petition for nomination
- By certified mail to the owner and regular mail to the immediate abutters
- Notice must include the petition and date of the commission meeting to review the nomination

Acceptance or rejection of nomination - current

- The NHC may only reject the nomination of a property that is listed on the National Register as part of an historic district, but not individually.
- Nominations of properties that are listed on the National Register may not be rejected and no additional investigation and report on the property shall be required.

Acceptance or rejection of nomination - proposed

- The NHC may vote to reject or accept any nomination. The NHC may accept a nomination upon an initial determination that the property may meet one or more of the following criteria:
 - the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.

Current

- The current ordinance does not require that a meeting be held to review the nomination.
- The NHC's practice is to hold a meeting to review the nomination of a property that is listed on the National Register as part of an historic district, but not individually.

Proposed

- The NHC must hold a meeting to consider any petition for nomination.
- The meeting must be held within 45 to 90 days from the date of the NHC's receipt of the petition.
- The owner and immediate abutters will have a minimum of 31 days notice of this meeting.
- At or after the meeting, the NHC must vote on whether to reject the nomination or accept the nomination and conduct further study of the nominated property.

NHC meeting to review nomination

Designation – public hearing notice - Current

- The NHC must hold a public hearing prior to any designation of landmarks.
- Minimum of 14 days notice of public hearing
- Notice by publication and mailing to the owner and every property owner abutting (immediate abutters) the nominated property
- Notice must also be given to the Mayor, the Planning Board and the City Clerk

Designation – public hearing notice - proposed

- The NHC must hold a public hearing prior to any designation of landmarks.
- The meeting must be held within 30 to 90 days from the date of the NHC's vote to accept the nomination.
- The public hearing will be held within 75 to 180 days from the date the NHC received the petition for nomination.
- Minimum of 14 days notice of public hearing
- Notice by publication and certified mail to the owner and regular mail to abutters (within 300 feet of the nominated property).
- Notice must also be given to the Mayor, the Planning Board and the City Clerk

Current

- The NHC must transmit the agenda for the public hearing to the Planning Board
- The Planning Board may make a recommendation to the NHC

Other boards/commissions

Proposed

- The NHC must notify the Planning and Development Board upon the acceptance of a nomination
- The Planning and Development Board may make a recommendation to the NHC
- The recommendation must evaluate the proposed designation in relation to the City's adopted policies and plans
- The recommendation may be made any time prior to the public hearing

Designation – Criteria - current

- The NHC may designate a property which it determines to be either:
 - importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth; or
 - historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made.
- The criteria for designation is almost identical to the definition of “historically significant” in the demolition delay ordinance

- The NHC may designate a property which it determines to meet one or more of the following criteria:
 - the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the city of Newton, Commonwealth of Massachusetts, or the United States of America;
 - the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the city of Newton, Commonwealth of Massachusetts or the United States of America; or
 - historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the city of Newton, Commonwealth of Massachusetts or the United States of America.

Designation – Criteria - proposed

Vote for designation

Current

- The NHC by a 3/4 vote of those members present may designate a property as a landmark

Proposed

- The NHC by a 3/4 vote of those members present, but in no instance less than 4 votes in the affirmative, may designate a property as a landmark

Designation – other considerations

Current

- that the location and setting is compatible with future preservation and use;
- that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
- that the existing or proposed use is compatible with the preservation and maintenance of the site.

Proposed

- that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
- that the property, location and setting is compatible with future preservation and maintenance; and
- the property's context in relation to the City's policies and adopted plans and the property's surrounding area.

Amendment and Rescission

Current

- Designation of a landmark or amendment or rescission of a previous designation is authorized.

Proposed

- Amendment and rescission of any designation may only be made by those persons authorized to nominate a property
- Petitions for amendment or rescission must follow the same procedural requirements for petitions for designation of a property

Administrative Review - Current

There shall be a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC).

The finding of the person or persons making such review shall be filed with the city clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided herein. (Ord. No. T-288, 9-9-93)

Sec.22-69

Judicial Review -Current

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County.

Sec. 22-70

Proposals

- Remove Administrative Review and leave Judicial Review and the appeal option
- Create a local Administrative Review body

Local Administrative Review Body - Proposed

- Closely follows the Metropolitan Area Planning Council's review procedure for appeals from local historic district commission decisions.
- The review body comprised of three members:
 - The chair of the urban design commission or their designee;
 - The chair of zoning board of appeals or their designee;
 - A chair of a historic district commission or their designee.
- Require a public hearing.
- The Working Group is finalizing their proposed draft for this section.

Demolition by neglect

Current

- Section 22-51. Demolition by Neglect is contained in Division 2. Demolition Delay of the City's ordinances. Demolition by Neglect only applies to landmarked properties.

Proposed

- The proposed draft changes Demolition by Neglect to Section 22-75 and moves it to Division 3. Landmarks.

City of Newton Landmark Ordinance

5/19/2020 – Working Group
Proposed Amendments

Administrative Review - Current

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Local Administrative Review Body - Proposed

- Closely follows the Metropolitan Area Planning Council's review procedure for appeals from local historic district commission decisions.
- The review body comprised of three members:
 - The chair of the urban design commission or their designee;
 - The chair of zoning board of appeals or their designee;
 - A chair of a historic district commission or their designee.
- A person aggrieved has 20 days to file a request for review.
- Requires a public hearing
- The review body must submit its findings within 45 days.
- The review body shall uphold the NHC decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

Paint and Color

Current

- A change in paint or color of an exterior architectural feature of a landmark requires the owner to seek a certificate of appropriateness, non-applicability or hardship from the NHC

Proposed

- A change in paint or color of a landmarked property requires a certificate of appropriateness, non-applicability or hardship from the NHC only if the color was specifically identified for preservation in the designation

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the ~~Commonwealth of Massachusetts and the City of Newton and through the maintenance and improvement of settings for such buildings, structures, landscapes, and places and through the encouragement of compatible development and the discouragement of destruction of or damage to such resources~~ City of Newton, Commonwealth of Massachusetts and the United States of America; (Ord. T-288, 9-9-93)
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this ~~section~~ Division 3. Landmarks, the following words shall be defined as follows:

Altered: ~~changed in exterior color, otherwise~~ changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, ~~color,~~ and texture of exterior building materials, ~~the color of paint or other materials applied to exterior surfaces~~ and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Formally listed as eligible for listing: a determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in

accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance in accordance with Section 22-64.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: ~~the applicant~~ all record owners of the subject property, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred (100) feet of the property lines of the subject property ~~subject to the application~~, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for designation nomination.

(a) All buildings, structures, landscapes and places ~~currently~~ are eligible to be nominated for landmark designation if such property:

(1) ~~is individually listed on the National Register of Historic Places as individual sites, or otherwise formally listed as eligible for listing on said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites.~~ individually;

(2) ~~Buildings, structures, landscapes, and places~~ is listed on the National Register of Historic Places as part of an historic district, but not individually, or ~~which are formally listed as eligible for listing on said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the ; or~~

(3) ~~has been determined by the commission determines or its designee to be historically significant after a finding that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses it is:~~

i. ~~importantly associated with one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape historic persons or place if it determines that such property lacks sufficient historical events, or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually with the architectural, cultural, political, economic or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register as certified by the social history of the City of Newton, the Commonwealth of Massachusetts Historic Commission or the United States of America; or~~

ii. historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

(b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for

landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.

(c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections ~~22-6566~~ and ~~22-6667~~ as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Nomination ~~Designation~~.

(a) ~~(a) Members~~ Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by any of the following:

- (1) all record owners of the nominated property;
- (2) a member of the city council, provided that at least one (1) member of the commission must co-petition the nomination;
- (3) the mayor, the director of planning and development, or the commissioner of inspectional services may, in addition to the commission, nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to, provided that at least one (1) member of the commission. ~~The~~ must co-petition the nomination; or
- (4) any two (2) members of the commission.

(b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the city clerk and to each councilor for the ward in which the nominated property is located, record owner(s) of the property by certified mail, and a notice to the immediate abutters by regular mail. The notice shall include the petition for nomination and the date of the commission meeting.

(c) At this or a subsequent meeting, the commission shall determine whether to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:

- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
- (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;
- (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or
- (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of

(d) Upon an initial determination to accept the nomination, the commission shall notify the owner of the property upon receipt of the written nomination. ~~planning and development board of such acceptance.~~

Sec. 22-64. Designation. ~~(b) The commission~~

(a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than ninety (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.

(b) At or after the public hearing, the commission by three-quarters (3/4) vote may, after public hearing, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to be either (1) importantly associated with meet one or more historic persons of the following criteria:

(1) the property significantly represents an architectural type, style or events design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;

(2) the property is meaningfully associated with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made. Designation of a landmark or amendment or rescission of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein; a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;

(3) ~~(e) The~~ the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or

(4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America.

(c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:

(1) that the location and setting is compatible with future preservation and use;

(1) ~~(2)~~ that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;

(2) ~~(3)~~ that the ~~existing or proposed use~~property, location and setting is compatible with ~~the future~~preservation and maintenance of the site; and

~~(d) The commission shall hold a public hearing prior to any designation of landmarks. The commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the assessing department); and to the mayor, the planning board, and the city clerk.~~

~~Prior to the public hearing, the commission shall transmit copies of the agenda to the planning board for its consideration and recommendation.~~

(3) ~~(e)~~ the property’s context in relation to the City’s policies and adopted plans and the property’s surrounding area.

(d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the City’s adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.

(e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.

(f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).

(g) The Newton Landmark Preservation Sites shall be recorded as follows:

(1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the ~~board~~commission, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission ~~or board~~ deems appropriate.

(2) Newton Landmark Preservation records.

a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.

b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)-)

Sec. 22-6465. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

- (a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.
- (b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.
- (c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-6566. Review authority.

- (a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof. Alterations to the color or paint on exterior surfaces of a building, structure, or exterior architectural feature of a landmark shall require a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, only if such color or paint to be altered is identified for preservation by the commission's designation of the landmark.
- (b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.
- (c) The commission shall issue a certificate of appropriateness to the applicant:
 - (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
 - (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.
- (d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that

an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark; or
- (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in

accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark’s general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-667. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, and material, ~~and color~~ of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-~~67~~68. Determination.

The commission shall determine promptly, and in all events within forty-five (45) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty (60) days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-~~68~~69. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance

thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-~~69~~70. Administrative review.

- (a) There shall be a landmark review procedure whereby commission to review final determinations of the Newton historical commission at the request of any person aggrieved by asuch determination of the.
- (b) The landmark review commission shall consist of three (3) members as follows:
 - (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the Newton historic commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC); the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The finding of the person or persons making such landmark review commission shall be filed with the city clerk hold a public hearing prior to rendering a finding on the written request for administrative review. The landmark review commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the subject property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (e) After the public hearing and within forty-five (45) days after the request, and was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the applicant requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor. (Ord. No. T-288, 9-9-93)

(f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

Sec. ~~22-70~~71. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty (20) days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission ~~if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds~~, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. ~~22-71~~72. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. ~~22-72~~73. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to

sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-7374.
Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Sec. 22-74—22-75. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;

(10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;

(11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-65(a); or

(12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-72.

(e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.

(2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-64(a). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (g) herein, the Commission may vote to:

a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;

b) secure the building or structure against further deterioration or other loss;

c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-72; and

e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

(3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject

such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however, that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-66(e); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.

- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. ~~Reserved~~X-179, 12-19-2006)

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

- (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the City of Newton, Commonwealth of Massachusetts and the United States of America;
- (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
- (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this Division 3. Landmarks, the following words shall be defined as follows:

Altered: changed, rebuilt, reconstructed, restored, removed, or remodeled.

Building: a combination of materials forming a shelter for persons, animals, or property.

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Formally listed as eligible for listing: a determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance in accordance with Section 22-64.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: all record owners of the subject property, an owner of adjoining property, an owner of property

within the same historic district or of property within one hundred (100) feet of the property lines of the subject property, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for nomination.

- (a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:
- (1) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;
 - (2) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or
 - (3) has been determined by the commission or its designee to be historically significant after a finding that it is:
 - i. importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; or
 - ii. historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.
- (b) Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.
- (c) Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-66 and 22-67 as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord. No. U-25, 9-7-94; Ord. No. X-159, 07-11-05; Ord. No. X-240, 11-6-06)

Sec. 22-63. Nomination

- (a) Petitions for nomination of buildings, structures, landscapes and places for consideration of designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by any of the following:
- (1) all record owners of the nominated property;

- (2) a member of the city council, provided that at least one (1) member of the commission must co-petition the nomination;
 - (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
 - (4) any two (2) members of the commission.
- (b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the city clerk and to each councilor for the ward in which the nominated property is located, record owner(s) of the property by certified mail, and a notice to the immediate abutters by regular mail. The notice shall include the petition for nomination and the date of the commission meeting.
- (c) At this or a subsequent meeting, the commission shall determine whether to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America.
- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning and development board of such acceptance.

Sec. 22-64. Designation.

- (a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than ninety (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the

planning and development board, and the city clerk.

- (b) At or after the public hearing, the commission by three-quarters (3/4) vote, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America.
- (c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:
- (1) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;
 - (2) that the property, location and setting is compatible with future preservation and maintenance; and
 - (3) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.
- (d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the City's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.
- (e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.
- (f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).
- (g) The Newton Landmark Preservation Sites shall be recorded as follows:

(1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the commission, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission deems appropriate.

(2) Newton Landmark Preservation records.

a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.

b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)

Sec. 22-65. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

(a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.

(b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.

(c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-66. Review authority.

(a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof. Alterations to the color or paint on exterior surfaces of a building, structure, or exterior architectural feature of a landmark shall require a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, only if such color or paint to be altered is identified for preservation by the commission's designation of the landmark.

(b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.

(c) The commission shall issue a certificate of appropriateness to the applicant:

- (1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or
- (2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.

(d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

- (1) does not involve any exterior architectural feature or landscape of a landmark; or
- (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

- (1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark's general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;
- (2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and
- (3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-67. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general:*

- (1) the historical and architectural value, and significance of the building, structure, landscape, or place;
- (2) the general design, arrangement, texture, and material of the features involved; and
- (3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

- (1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;
- (2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;
- (3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-68. Determination.

The commission shall determine promptly, and in all events within forty-five (45) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place, and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and shall give notice by mailing, postage prepaid, a copy of said notice to: (a) the applicant, (b) the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors; (c) the planning board; (d) any person filing a written request for notice of hearings, such request to be renewed yearly in December, and (e) such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty (60) days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-69. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-70. Administrative review.

- (a) There shall be a landmark review commission to review final determinations of the Newton historical commission at the request of any person aggrieved by such determination.
- (b) The landmark review commission shall consist of three (3) members as follows:
 - (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the Newton historic commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The landmark review commission shall hold a public hearing prior to rendering a finding on the written request for administrative review. The landmark review commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the subject property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property. The commission shall also give not less than

fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.

- (e) After the public hearing and within forty-five (45) days after the request was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor.
- (f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

Sec. 22-71. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty (20) days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-72. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the city council or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars (\$300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. 22-73. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-74. Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and

Sec. 22-75. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

“Demolition by neglect” shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner’s Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

- (1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;
- (3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;
- (4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;
- (6) Deterioration of exterior chimney or chimney support system;
- (7) Deterioration of external plaster, stucco, masonry or mortar;
- (8) Deterioration of rainwater drainage systems whether interior or exterior;
- (9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;
- (10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;
- (11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-65(a); or
- (12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the

building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-72.

- (e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.
- (2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-64(a). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (g) herein, the Commission may vote to:
- a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;
 - b) secure the building or structure against further deterioration or other loss;
 - c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-65, and require the owner to undertake such plan according to a timeline set by the commission;
 - d) assess penalties as set forth in section 22-72; and
 - e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

- (3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however, that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

- (1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in

Section 22-66(e); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.

- (2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

DRAFT

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

, 2020

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON **That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to Article III of Chapter 22 HISTORICAL PROVISIONS as follows:**

- I. RENUMBER **Sec. 22-51. Demolition by Neglect** to **Sec. 22-75. Demolition by Neglect**
- II. DELETE the second sentence of **Sec. 22-60. Landmark Preservation – enactment and purpose.** and insert in place thereof the following language:

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through:

 - (a) the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the City of Newton, Commonwealth of Massachusetts and the United States of America;
 - (b) the maintenance and improvement of settings for such buildings, structures, landscapes, and places; and
 - (c) the discouragement of destruction of or damage to such resources and the encouragement of compatible development. (Ord. T-288, 9-9-93)
- III. DELETE the word “section” where it occurs in the first sentence of **Sec. 22-61. Definitions.** and insert in place thereof “Division 3. Landmarks”.
- IV. DELETE the words “changed in exterior color, otherwise” where they occur in the definition of *Altered* in **Sec. 22-61. Definitions.**
- V. DELETE the word “color” and the words “the color of paint or other materials applied to exterior surfaces” where they occur in the definition of *Exterior architectural feature* in **Sec. 22-61. Definitions.**
- VI. INSERT after the definition of *Exterior architectural feature* in **Sec. 22-61. Definitions.** as follows:

Formally listed as eligible for listing: a determination has been made by the Keeper of the National Register of Historic Places that the property is eligible for listing on the National Register.

VII. INSERT in the end of the definition of *Landmark* in **Sec. 22-61. Definitions.** as follows:

“in accordance with Section 22-64.”

VIII. DELETE the definition of *Person Aggrieved* in **Sec. 22-61. Definitions.** in its entirety and insert in place thereof the following language:

Person aggrieved: all record owners of the subject property, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred (100) feet of the property lines of the subject property, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

IX. DELETE the word “designation” from the title of **Sec. 22-62. Eligibility for designation** and insert in place thereof “nomination”.

X. DELETE the first and second paragraph of **Sec. 22-62. Eligibility for designation.** in their entirety and insert in place thereof the following language:

(a) All buildings, structures, landscapes and places are eligible to be nominated for landmark designation if such property:

(1) is individually listed on the National Register of Historic Places, or formally listed as eligible for listing on said National Register, individually;

(2) is listed on the National Register of Historic Places as part of an historic district, but not individually, or formally listed as eligible for listing on said National Register as part of an historic district, but not individually; or

(3) has been determined by the commission or its designee to be historically significant after a finding that it is:

i. importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; or

ii. historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

XI. DELETE the words “sections 22-65 and 22-66” where they occur in the fourth paragraph of **Sec. 22-62. Eligibility for designation.** and insert in place thereof “Sections 22-66 and 22-67”.

XII. NUMBER the third and fourth paragraph of **Sec. 22-62. Eligibility for designation.** “(b)” and “(c)”, respectively.

XIII. DELETE **Sec. 22-63. Designation.** in its entirety and insert in place thereof the following language:

Sec. 22-63. Nomination

(a) Petitions for nomination of buildings, structures, landscapes and places for consideration of

designation as a landmark shall only be submitted to the commission, on a form provided by the department of planning and development, by any of the following:

- (1) all record owners of the nominated property;
 - (2) a member of the city council, provided that at least one (1) member of the commission must co-petition the nomination;
 - (3) the mayor, the director of planning and development, or the commissioner of inspectional services, provided that at least one (1) member of the commission must co-petition the nomination; or
 - (4) any two (2) members of the commission.
- (b) Upon receipt of a petition for nomination, the commission shall schedule a meeting to consider the nomination, which meeting shall be held not less than forty-five (45) days nor more than ninety (90) days from the date of the commission's receipt of the petition. Within fourteen (14) days after the receipt of a petition for nomination, the commission shall send a notice to the city clerk and to each councilor for the ward in which the nominated property is located, record owner(s) of the property by certified mail, and a notice to the immediate abutters by regular mail. The notice shall include the petition for nomination and the date of the commission meeting.
- (c) At this or a subsequent meeting, the commission shall determine whether to accept the nomination and conduct further study of the nominated property. The commission may accept the nomination of buildings, structures, landscapes and places upon an initial determination that such property may meet one or more of the following criteria:
- (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America.
- (d) Upon an initial determination to accept the nomination, the commission shall notify the planning

and development board of such acceptance.

XIV. INSERT after **Sec. 22-63. Designation.** a new **Sec. 22-64. Designation** as follows:

Sec. 22-64. Designation.

- (a) If the commission determines to accept the nomination of a property, the commission shall hold a public hearing prior to a vote on whether to designate the property as a landmark. The public hearing shall be held not less than thirty (30) days and not more than ninety (90) days from the date of the commission's determination to accept the nomination. The commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the nominated property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.
- (b) At or after the public hearing, the commission by three-quarters (3/4) vote, but in no instance less than four (4) votes in the affirmative, may designate as a landmark any property within the city being or containing a building, structure or landscape which it determines to meet one or more of the following criteria:
 - (1) the property significantly represents an architectural type, style or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detailing, materials or craftsmanship;
 - (2) the property is meaningfully associated with a person or persons who significantly contributed to the cultural, historic, architectural or archeological aspect of the development of the City of Newton, Commonwealth of Massachusetts, or the United States of America;
 - (3) the property's identification as a notable work of an architect, designer, engineer or builder whose work is significant in the history or development of the City of Newton, Commonwealth of Massachusetts or the United States of America; or
 - (4) historic events or activities occurred at the property that have made an outstanding contribution to, or which best represent some important aspect of, the history of the City of Newton, Commonwealth of Massachusetts or the United States of America.
- (c) In determining whether to designate a property as a landmark, the commission shall also consider the following conditions:
 - (1) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;

- (2) that the property, location and setting is compatible with future preservation and maintenance; and
 - (3) the property's context in relation to the City's policies and adopted plans and the property's surrounding area.
- (d) The planning and development board may make a recommendation which evaluates the relationship of the proposed designation to the City's adopted policies and plans and the effect of the proposed designation on the surrounding area. The planning and development board shall also make recommendations regarding any other planning considerations relevant to the proposed designation. The planning and development board may make recommendations to the commission any time prior to the public hearing.
- (e) Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate a property for landmark designation and shall follow the procedures set forth in Sections 22-63 and 22-64. If a request for amendment or rescission of a designation is acted upon unfavorably, no new request for amendment or rescission shall be submitted for the identical property or area for a period of one (1) year from the date of such unfavorable action, except upon a showing of substantial and material newly discovered information.
- (f) Designation of a landmark or amendment or rescission of a previous designation shall include a statement of the reasons for such designation, amendment or rescission relevant to the criteria and conditions set forth in Sections 22-64(b) and (c).
- (g) The Newton Landmark Preservation Sites shall be recorded as follows:
- (1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the commission, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission deems appropriate.
 - (2) Newton Landmark Preservation records.
 - a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or city council deems appropriate.
 - b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-06)

AND RENUMBER **Sec. 22-64** to **Sec. 22-74** accordingly.

XV. INSERT in the end of subparagraph (a) of **Sec. 22-65. Review Authority.** as follows:

Alterations to the color or paint on exterior surfaces of a building, structure, or exterior architectural feature of a landmark shall require a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, only if such color or paint to be altered is identified for preservation by the commission's designation of the landmark.

- XVI. DELETE the words "material, and color" where they occur in subparagraph (a)(2) of **Sec. 22-66. Factors to be considered by the commission.** and insert in place thereof "and material".
- XVII. INSERT after the word "fourteen" in the second paragraph of **Sec. 22-68. Determination.** the number "(14)".
- XVIII. INSERT after the word "sixty" in the third paragraph of **Sec. 22-68. Determination.** the number "(60)".
- XIX. DELETE **Sec. 22-69. Administrative Review.** in its entirety and insert in place thereof the following language:

Sec.22-70. Administrative review.

- (a) There shall be a landmark review commission to review final determinations of the Newton historical commission at the request of any person aggrieved by such determination.
- (b) The landmark review commission shall consist of three (3) members as follows:
 - (1) The current chair of the urban design commission, or their designee selected from the current members of the urban design commission;
 - (2) The current chair of the zoning board of appeals, or their designee selected from the current members of the zoning board of appeals; and
 - (3) A current chair of a historic district commission, or their designee selected from the current members of their respective historic district commission.
 - i. The member from a historic district commission shall serve for a single administrative review under this Section 22-70.
 - ii. The historic district commission from which a member shall be selected shall alternate in the following order: Newton Upper Falls historic district commission; Chestnut Hill historic district commission; Newtonville historic district commission; and Auburndale historic district commission.
- (c) A person aggrieved by a final determination of the Newton historic commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by the landmark review commission. The review fee of \$500.00 must be paid with the filing of the written request.
- (d) The landmark review commission shall hold a public hearing prior to rendering a finding on the

written request for administrative review. The landmark review commission shall give not less than fourteen (14) days' notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice to the record owner(s) of the subject property by certified mail and notice to abutters by regular mail. The term abutters as used in this paragraph shall mean the record owners (each such owner to be determined from the then current records of the assessing department) of those properties within three hundred (300) feet of the property line of the subject property. The commission shall also give not less than fourteen (14) days' notice of such public hearing to the mayor, the planning and development board, and the city clerk.

- (e) After the public hearing and within forty-five (45) days after the request was filed, the landmark review commission shall file with the city clerk its finding, which shall be binding on the requestor of the administrative appeal and the commission, unless a further appeal is sought in the superior court as provided herein. The forty-five (45) day deadline may be extended by written agreement between the Newton historic commission, the landmark review commission and the requestor.
- (f) The landmark review commission shall hear all pertinent evidence and shall uphold the Newton historic commission's decision unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds.

XX. INSERT after the word "twenty" in **Sec. 22-70. Judicial review.** the number "(20)".

XXI. DELETE the words "if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission" where they occur in **Sec. 22-70. Judicial Review.** and insert in place thereof as follows:

"unless it finds the action to be arbitrary, capricious, or based on legally untenable grounds"

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that properties nominated for landmark status prior to June 30, 2020 that have not yet been designated shall be subject to and comply with the landmark designation procedures and requirements set forth in **Sec. 22-64. Designations.** as amended by this Order.

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON

(SGD) RUTHANNE FULLER

City Clerk

Mayor

DRAFT



Workshop Four – Garages, Driveways, and Building Components

Article 3

05.19.20 – ZAP Committee

Presentation Tonight

- **Part I: Review revised Garage Design Standards and Driveway Access**
 - Goals
 - Outcomes (case studies)
 - Looking Ahead/Discussion
- **Part II: Deep dive into Building Components**
 - Goals
 - Comparison to De Minimus
 - Issues/Solutions to Current Draft
 - Discussion



Part I: Garage Design Standards & Driveway Access

Background & Context

- **Deferred Garage Ordinance (July 2020) has:**
 - **No clear goals**
 - **Too many restrictions**
 - **Broad exemptions**

Background & Context

- **Garage Design Standards (sec. 3.4.2) from the Oct. 2018 draft Zoning Ordinance is incomplete**

Goals (sec. 3.4.2.A)

#88-20

- **To prevent garages from obscuring the main entrance from the street and ensure that there is a physical and visual connection between the living area of residential buildings and the street**



Goals (sec. 3.4.2.A)

#88-20



- **Ensure that the location and amount of living areas of residential buildings, as seen from the street, are more prominent than structured parking or garages**

Goals (sec. 3.4.2.A)

#88-20



- **Ensure that the main entrance for pedestrians, rather than motor vehicles, is the prominent entrance**

Goals (sec. 3.4.2.A)

#88-20



- **Provide for a more pleasant pedestrian environment by preventing garages from dominating the views of the neighborhood from the sidewalk**

Goals (sec. 3.4.2.A)

#88-20

- Enhance public safety by preventing garages from blocking views of the street from inside the residence



Case Studies: Garage Standards and Driveway Access

1603 Commonwealth Ave

#88-20
Single-Family Front-Facing Garage

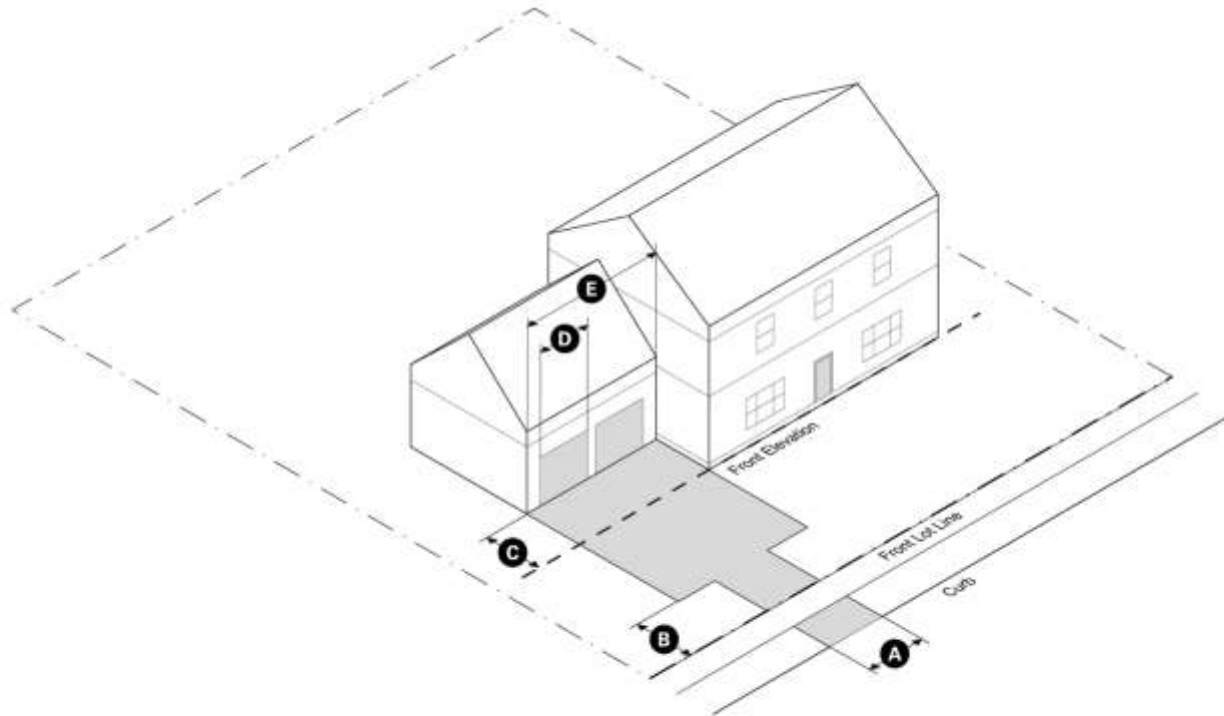
Current Zoning: SR1 Existing

Proposed Zoning: R1 Single-Family House



Garage Standards Proposals

Front Facing Garage (sec. 3.4.2.D.1 & 3.7.1.E.5)



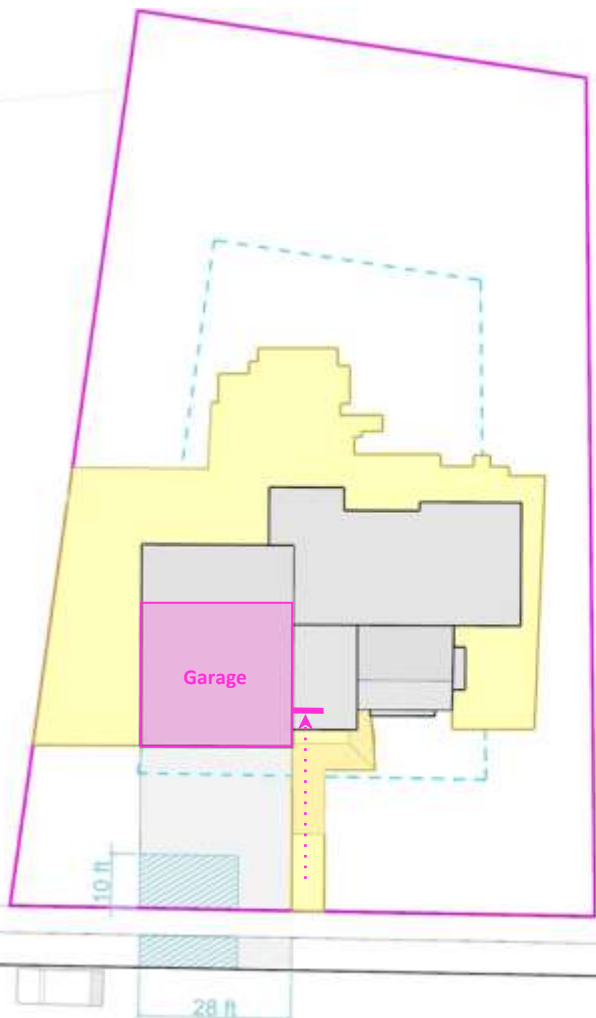
Single-Family Front-Facing Garage		
A	Width (max)	10 ft
B	Distance (min)	10 ft
C	Distance (min)	10 ft
D	Width (max)	9 ft
E	Width (max)	50% of total front facade
<p>Design Standards</p> <p>The curb cut is limited in width and the driveway apron must be set back from the front of the lot.</p> <p>The face of the garage must be set back from the front elevation and garage doors must be separate and not exceed a certain width.</p>		

1603 Commonwealth Ave

Current Zoning: SR1 Existing

Proposed Zoning: R1 Single-Family House

	Draft Zoning	Existing
DRIVEWAY Curb cut width	10 ft max	28 ft
Apron offset from front	10 ft min	0 ft

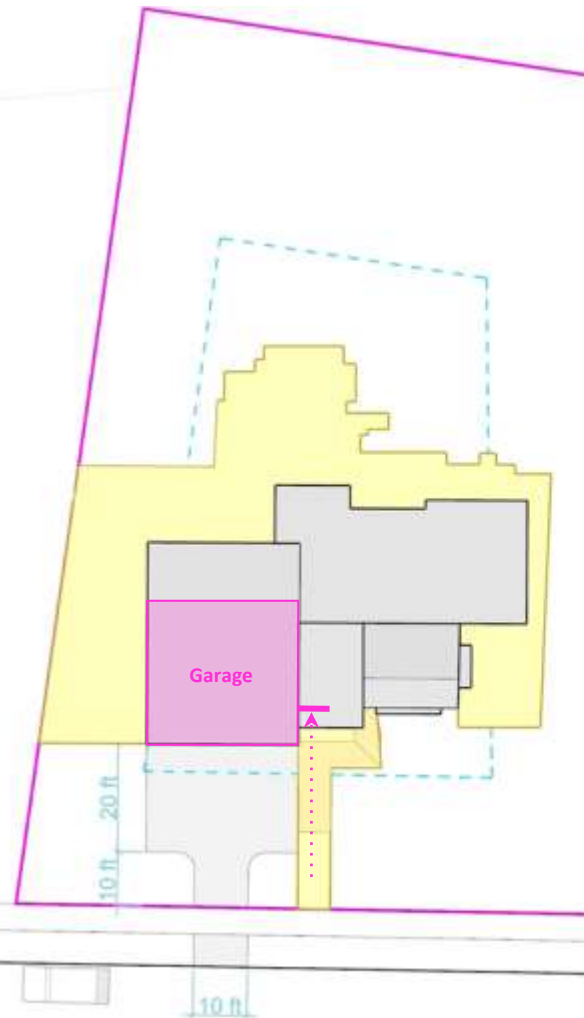


1603 Commonwealth Ave

Current Zoning: SR1 **Modified Driveway**

Proposed Zoning: R1 **Single Family House**

	Draft Zoning	Modified
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	10 ft

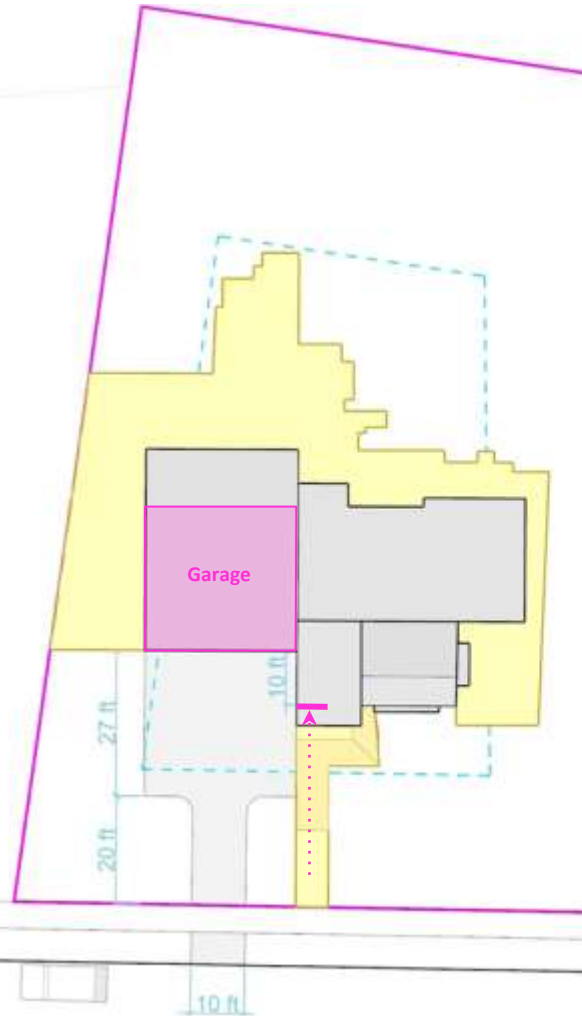


1603 Commonwealth Ave

Current Zoning: SR1 **Modified Garage Position**

Proposed Zoning: R1 **Single Family House**

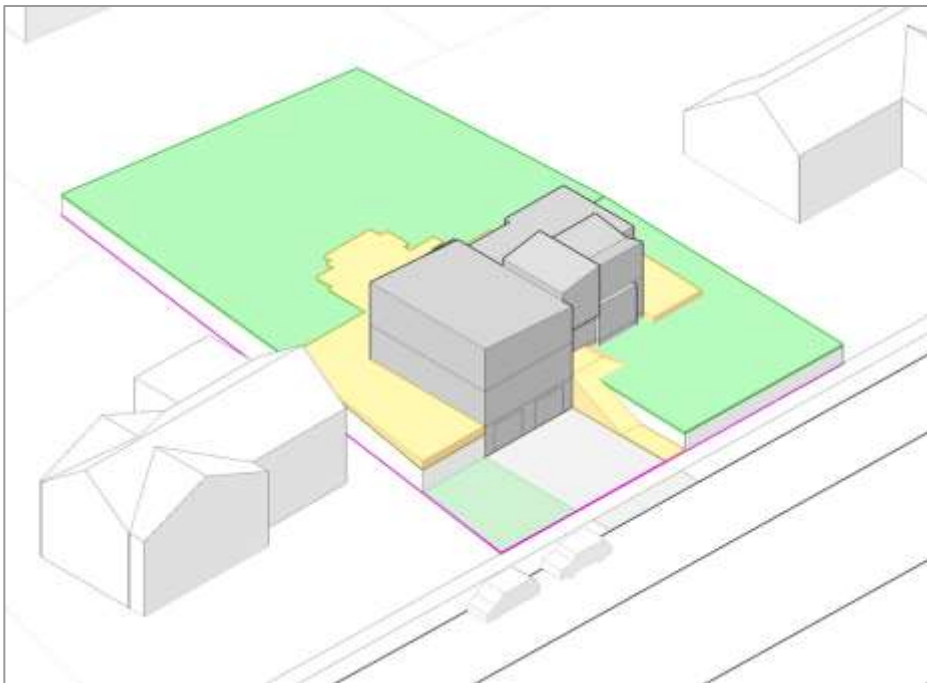
	Draft Zoning	Modified
GARAGE LOCATION Setback from front elevation	10 ft min	10 ft
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	20 ft



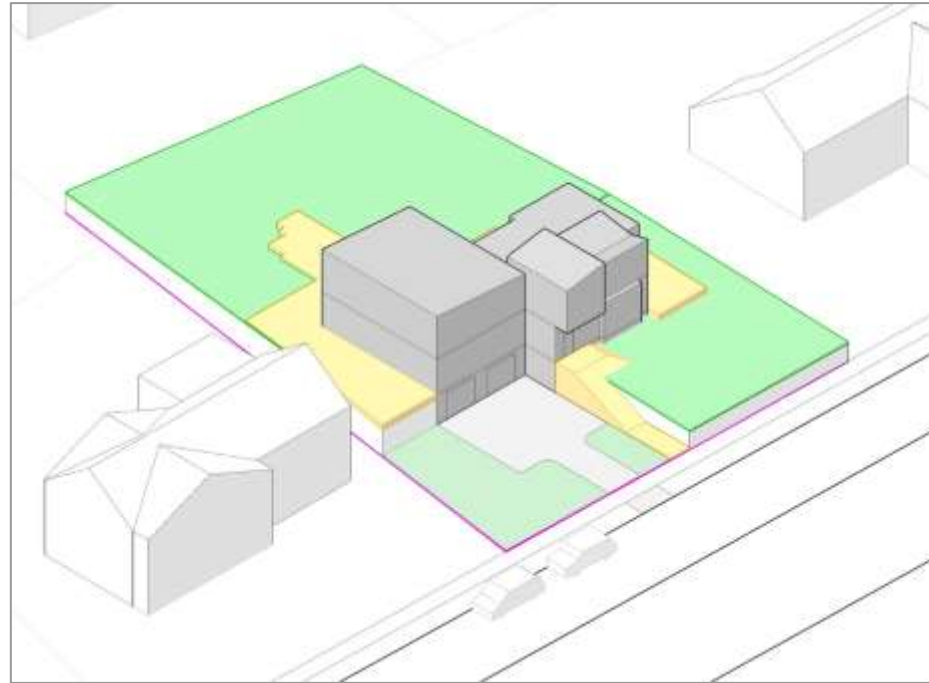
1603 Commonwealth Ave

Current Zoning: SR1 **Garage and Driveway Regulations**

Proposed Zoning: R1 **Single Family House**



Existing



Draft Garage and Driveway Regulations

6-8 Salisbury Rd

Current Zoning: MR1 **Existing**

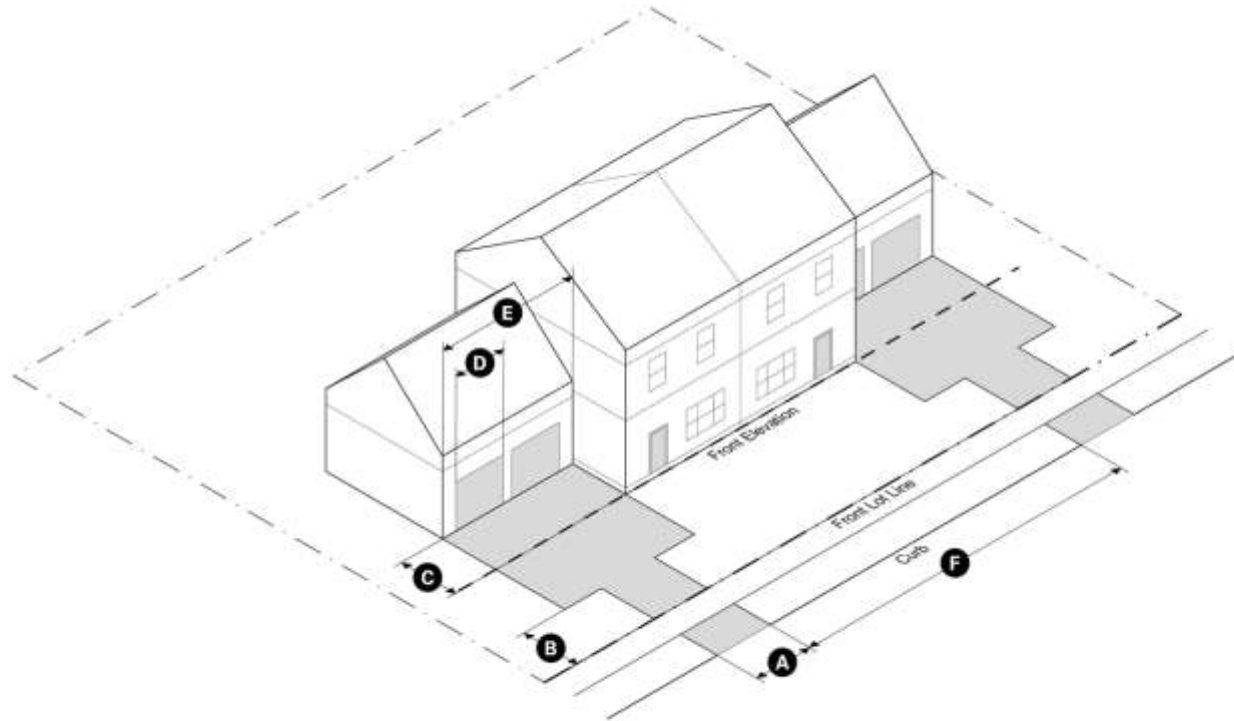
Proposed Zoning: R3 **Two-Family House**

#88-20
Two-Family Front-Facing Garage



Garage Standards Proposals

Two-Family Front-Facing Garage (sec. 3.4.2.E.2 & sec. 3.7.1.E.7.a)



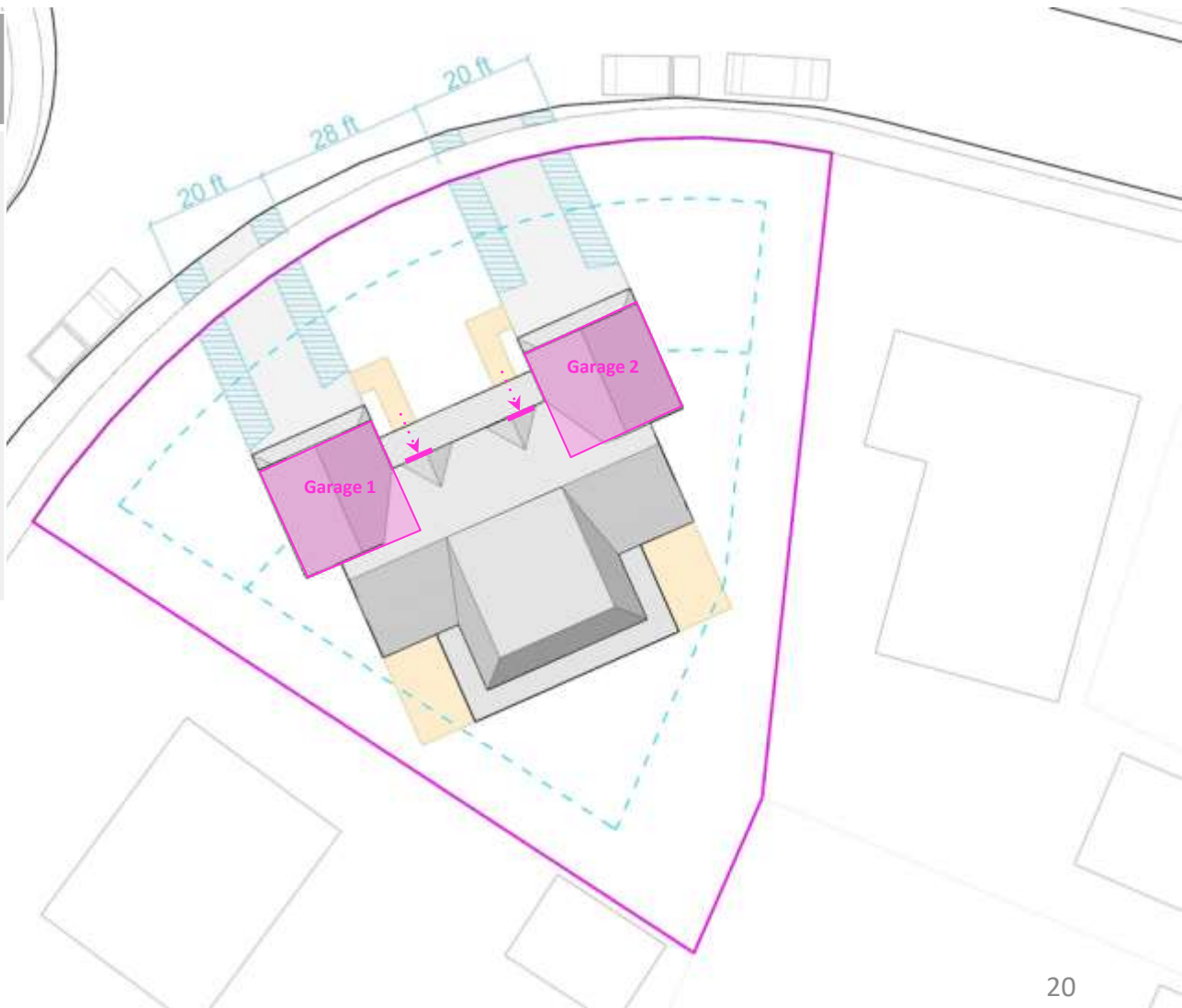
Two-Family Front-Facing Garage		
A	Width (max)	10 ft
B	Distance (min)	10 ft
C	Distance (min)	10 ft
D	Width (max)	9 ft
E	Width (max)	50% of total front facade
F	Distance (min)	30 ft
<p>Design Standards</p> <p>The curb cut is limited in width and two curb cuts must be separated by a minimum distance.</p> <p>The face of the garage must be set back from the front elevation and garage doors must be separate and not exceed a certain width.</p>		

6-8 Salisbury Rd

Current Zoning: MR1 **Existing**

Proposed Zoning: R3 **Two-Family House**

	Draft Zoning	Existing
DRIVEWAY		
Curb cut width	10 ft max	20 ft
Apron offset from front	10 ft min	0 ft
Distance between curb cuts	30 ft min	28 ft

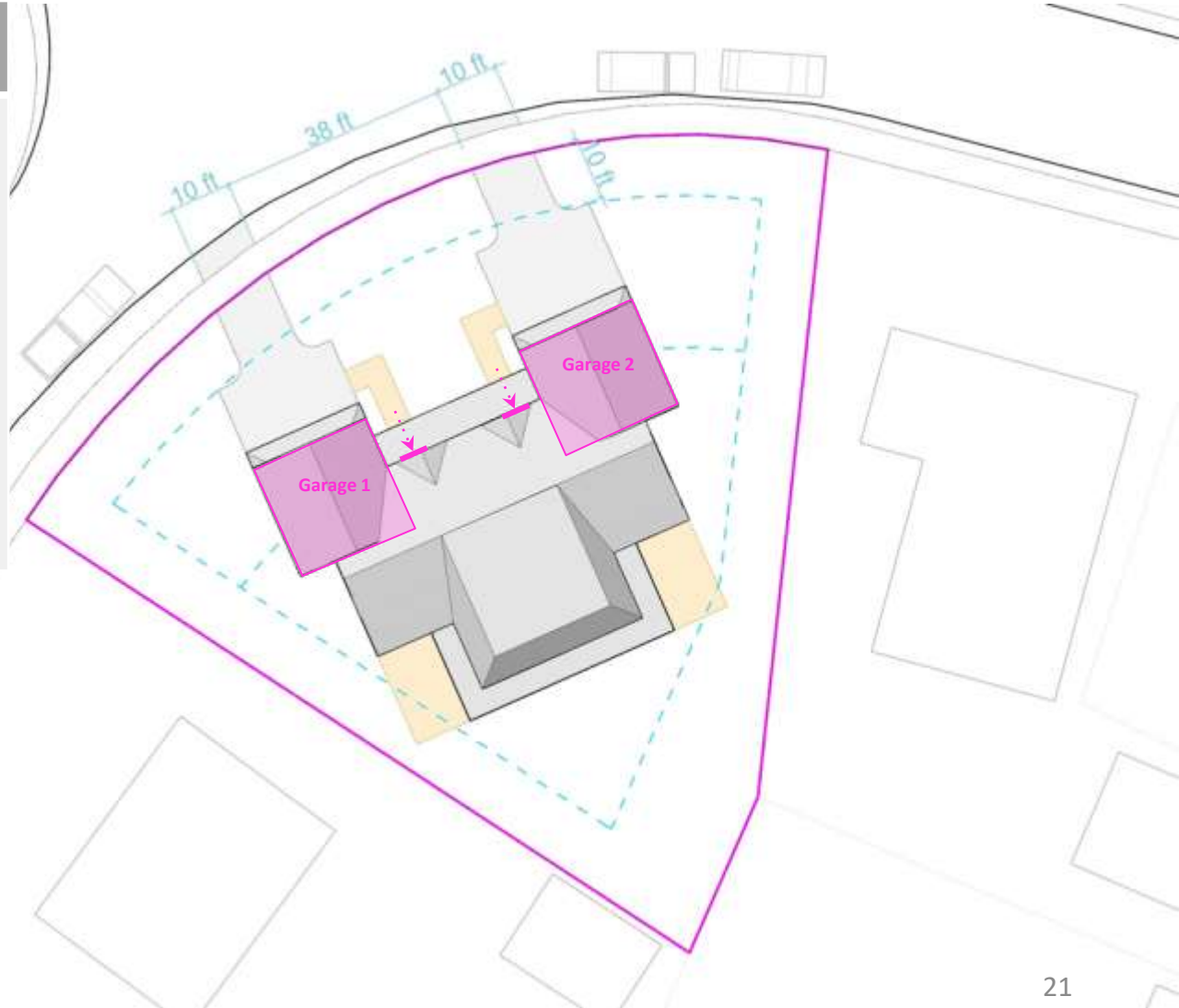


6-8 Salisbury Rd

Current Zoning: MR1 **Modified Driveway**

Proposed Zoning: R3 **Two Family House**

	Draft Zoning	Modified
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	10 ft
Distance between curb cuts	30 ft min	38 ft

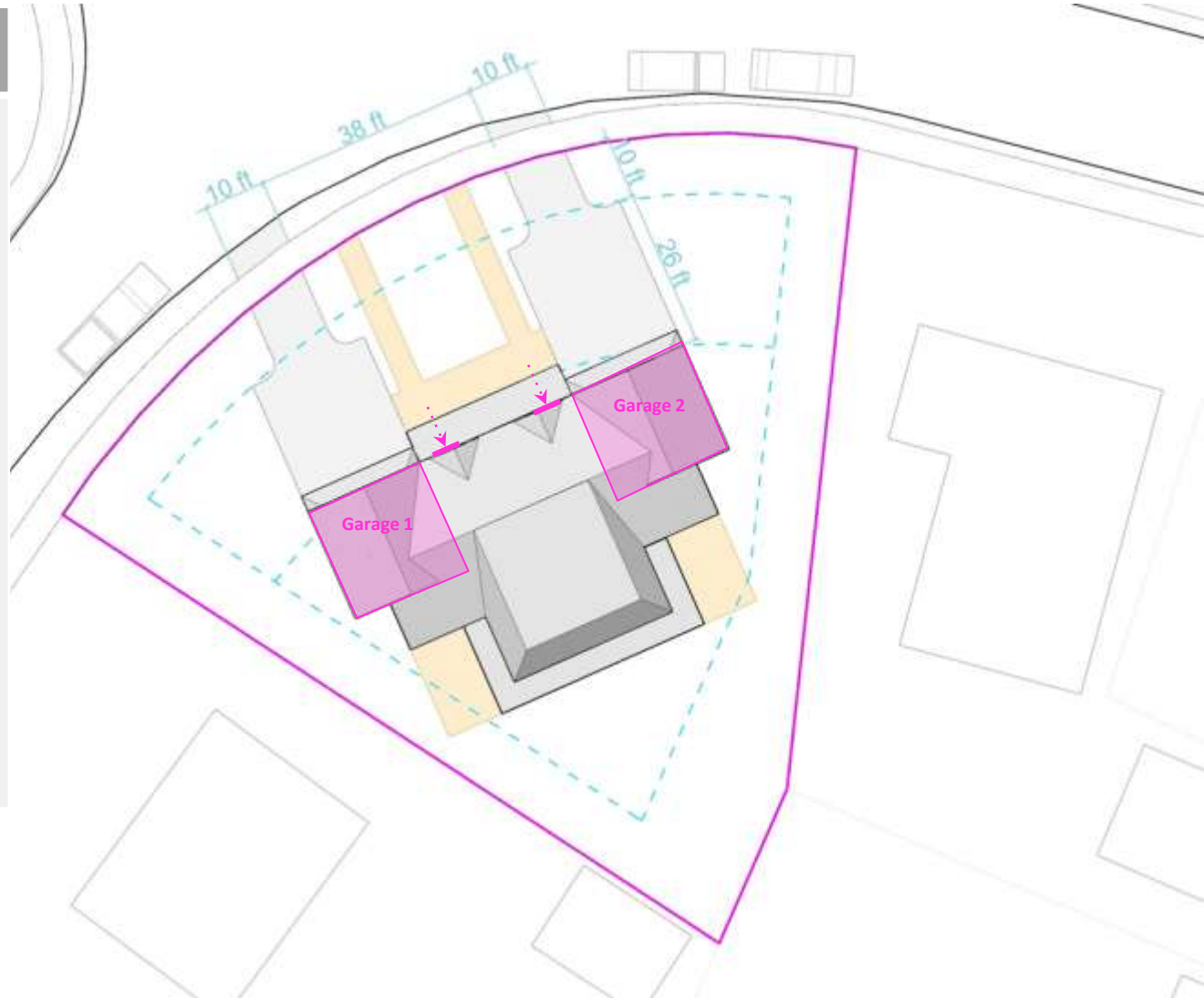


6-8 Salisbury Rd

Current Zoning: MR1 **Modified Garage Position**

Proposed Zoning: R3 **Two Family House**

	Draft Zoning	Modified
GARAGE LOCATION Setback from front elevation	10 ft min	0 ft with projecting porch
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	10 ft
Distance between curb cuts	30 ft min	38 ft



6-8 Salisbury Rd

Current Zoning: MR1 **Garage and Driveway Regulations**

Proposed Zoning: R3 **Two-Family House**



Existing



Draft Garage and Driveway Regulations

9 Wyoming Rd

Current Zoning: SR3

Proposed Zoning: R2

Existing

Single Family House

#88-20

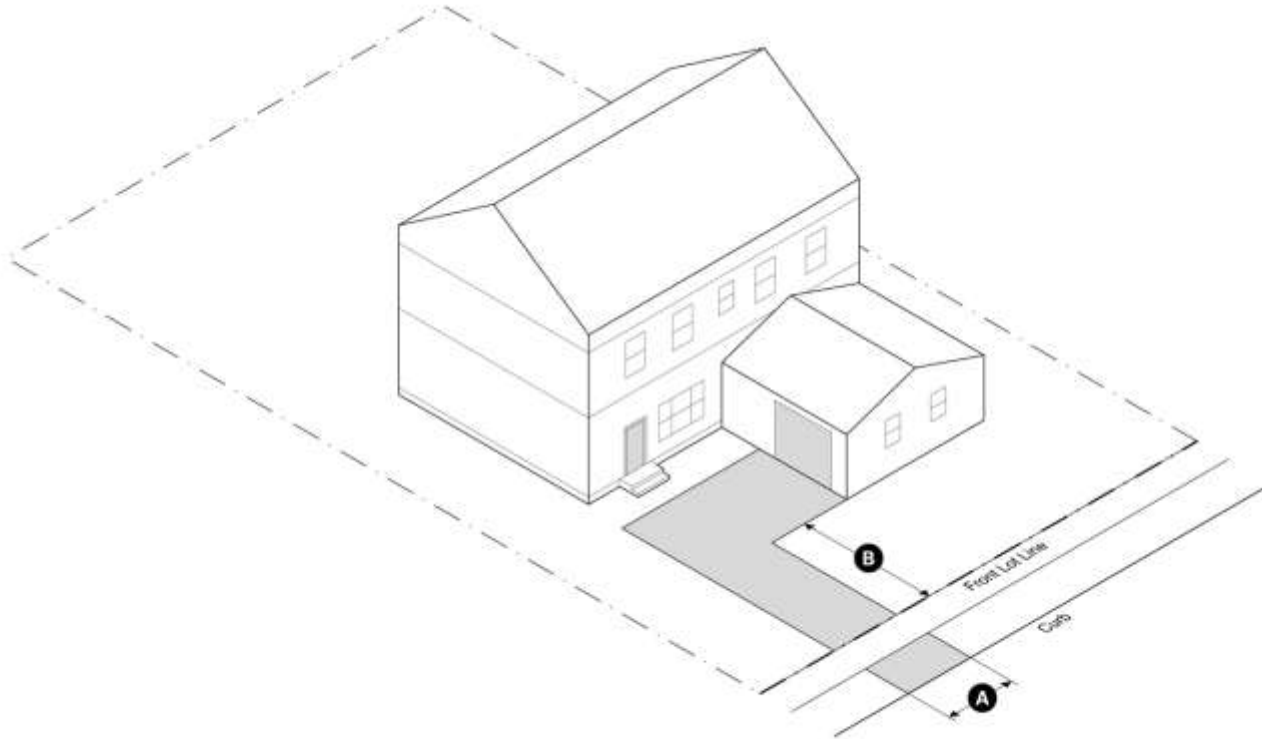
Single Family Side-Facing Garage



01/30/2017²⁴

Garage Standards Proposals

Side-Facing Garage (sec. 3.4.2.D.3)

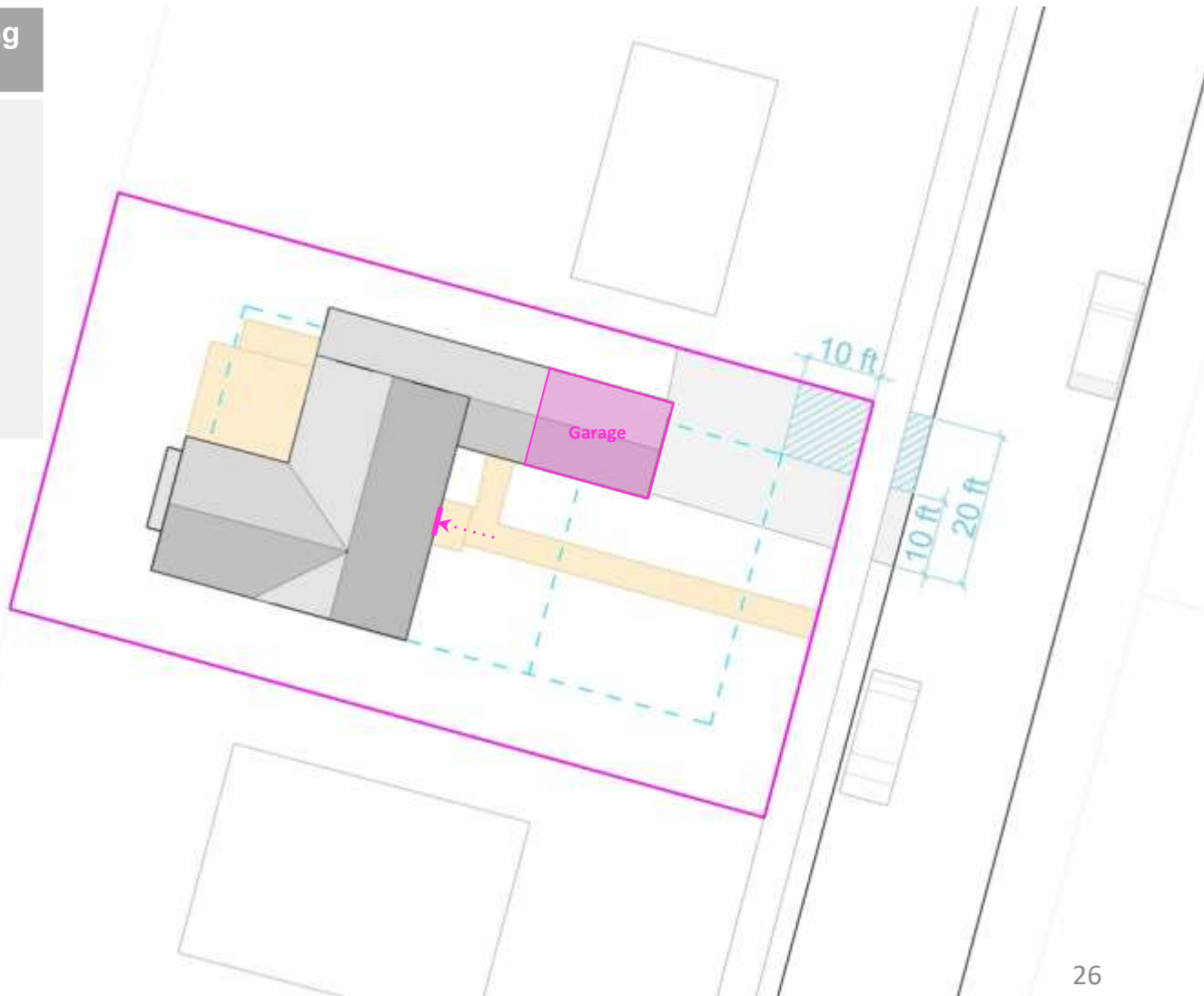


Single-Family Side-Facing Garage		
A	Width (max)	10 ft
B	Distance (min)	10 ft
Design Standards The curb cut is limited in width and the driveway apron must be set back from the front of the lot. Side-facing garages must fenestration facing the street lot line or right of way, 20% minimum and 50% maximum		

9 Wyoming Rd

Current Zoning: SR3 **Existing**
Proposed Zoning: R2 **Single Family House**

	Draft Zoning	Existing
DRIVEWAY Curb cut width	10 ft max	20 ft
Apron offset from front	10 ft min	0 ft



9 Wyoming Rd

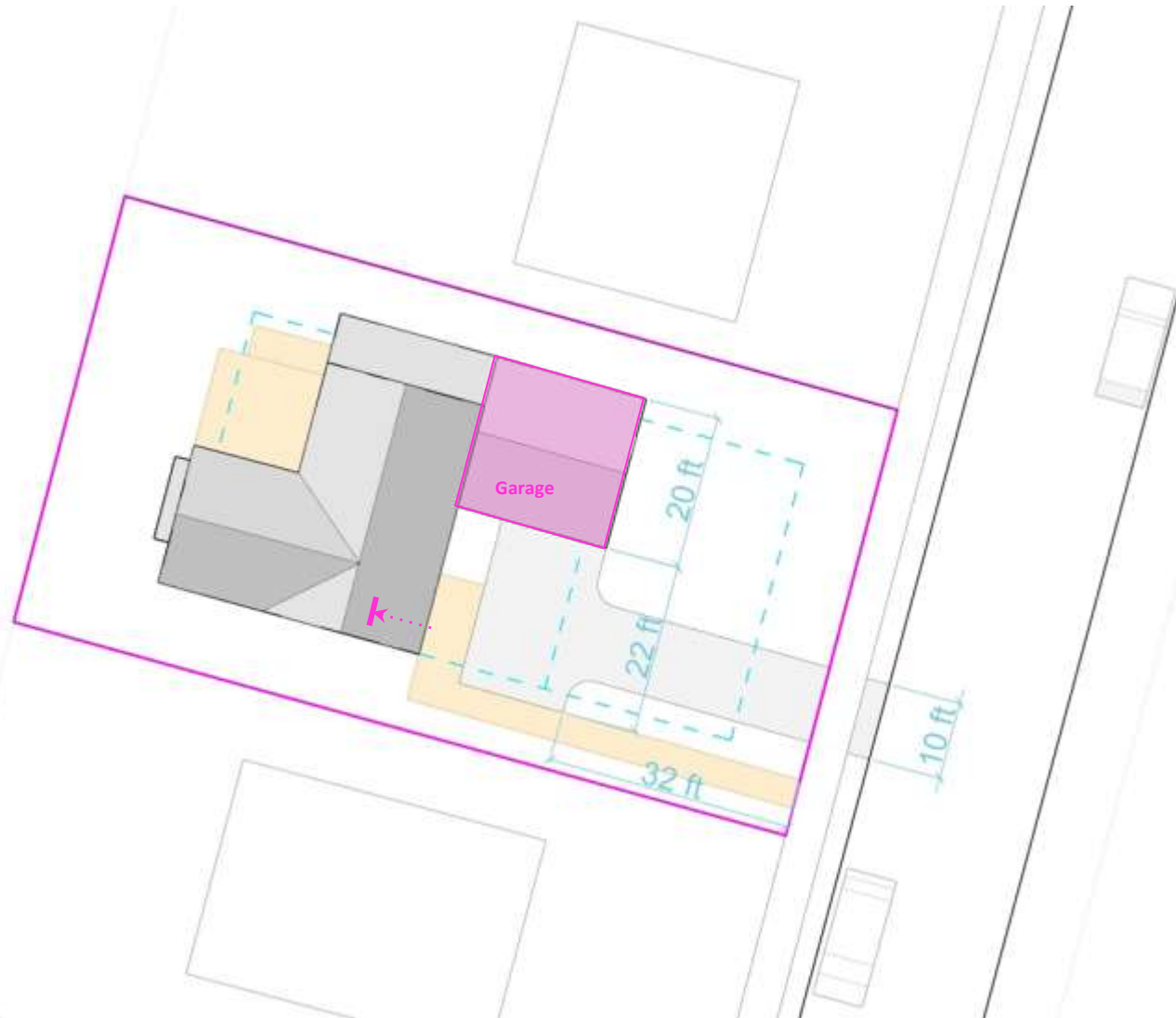
Current Zoning: SR3

Modified Driveway and Garage

Proposed Zoning: R2

Single Family House

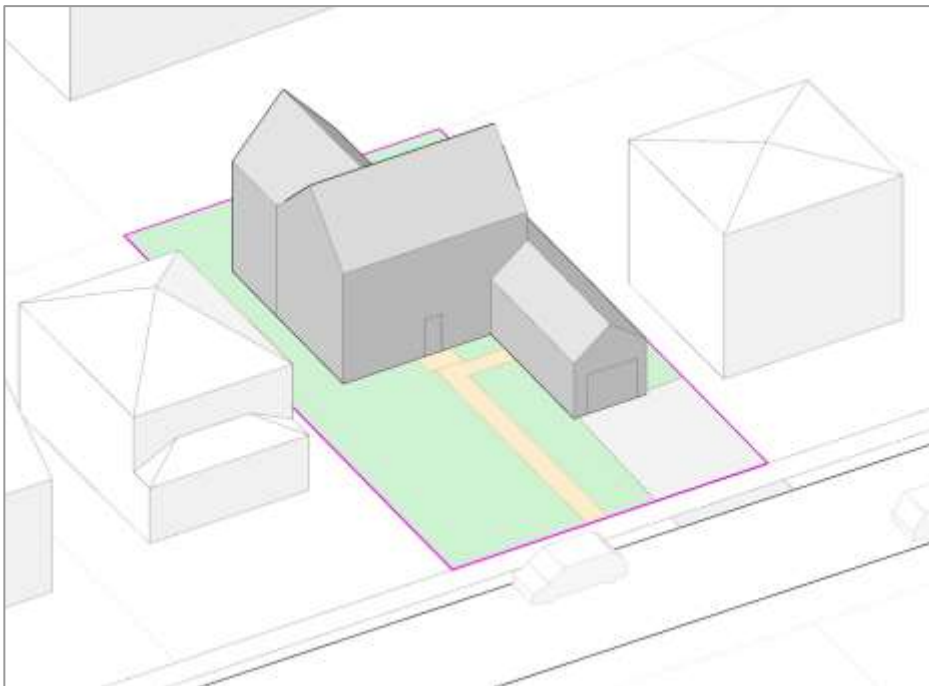
	Draft Zoning	Modified
GARAGE LOCATION Side-Facing Garage setback from front elevation	N/A	N/A
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	26 ft



9 Wyoming Rd

Current Zoning: SR3 **Garage and Driveway Regulations**

Proposed Zoning: R2 **Single Family House**



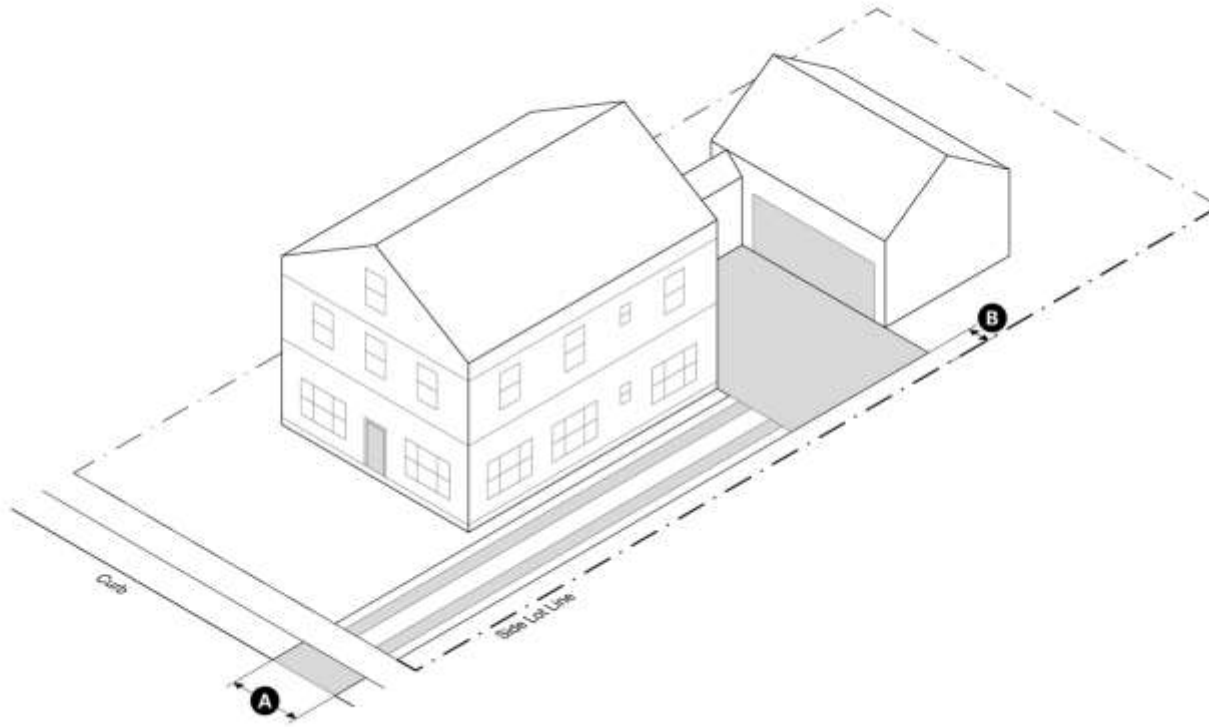
Existing



Draft Garage and Driveway Regulations

Garage Standards Proposals

Rear Garage Alternative



Single-Family Rear Garage		
A	Width (max)	10 ft
B	Distance (min)	3 ft
Design Standards The curb cut is limited in width. A buffer space between driveways and adjacent lots must be provided.		

878-880 Chestnut

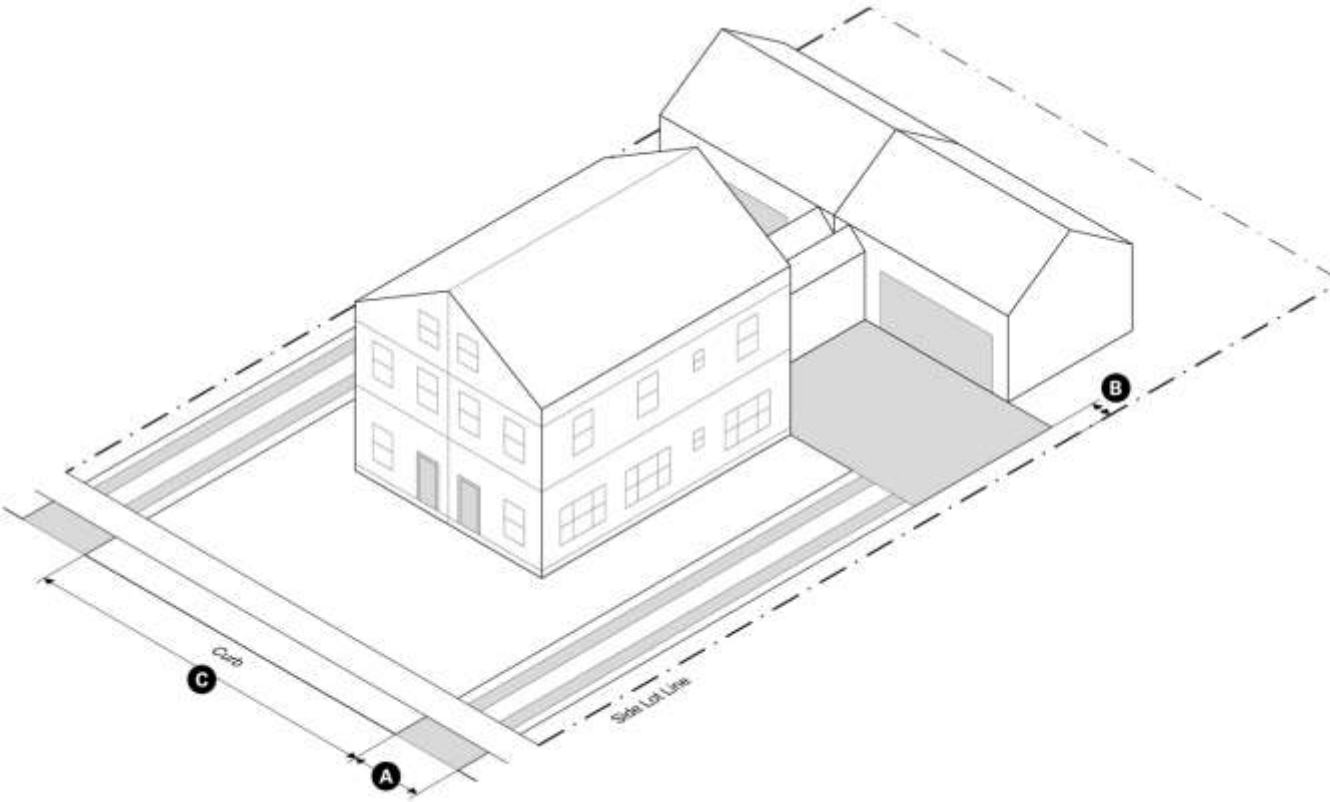
Two-Family Narrow Lot (Rear Parking/Garage) **#88-20**

Current Zoning: **MR1 Existing**
Proposed Zoning: **R3 Two-Family House**



Garage Standards Proposals

Possible Rear Garage Configurations



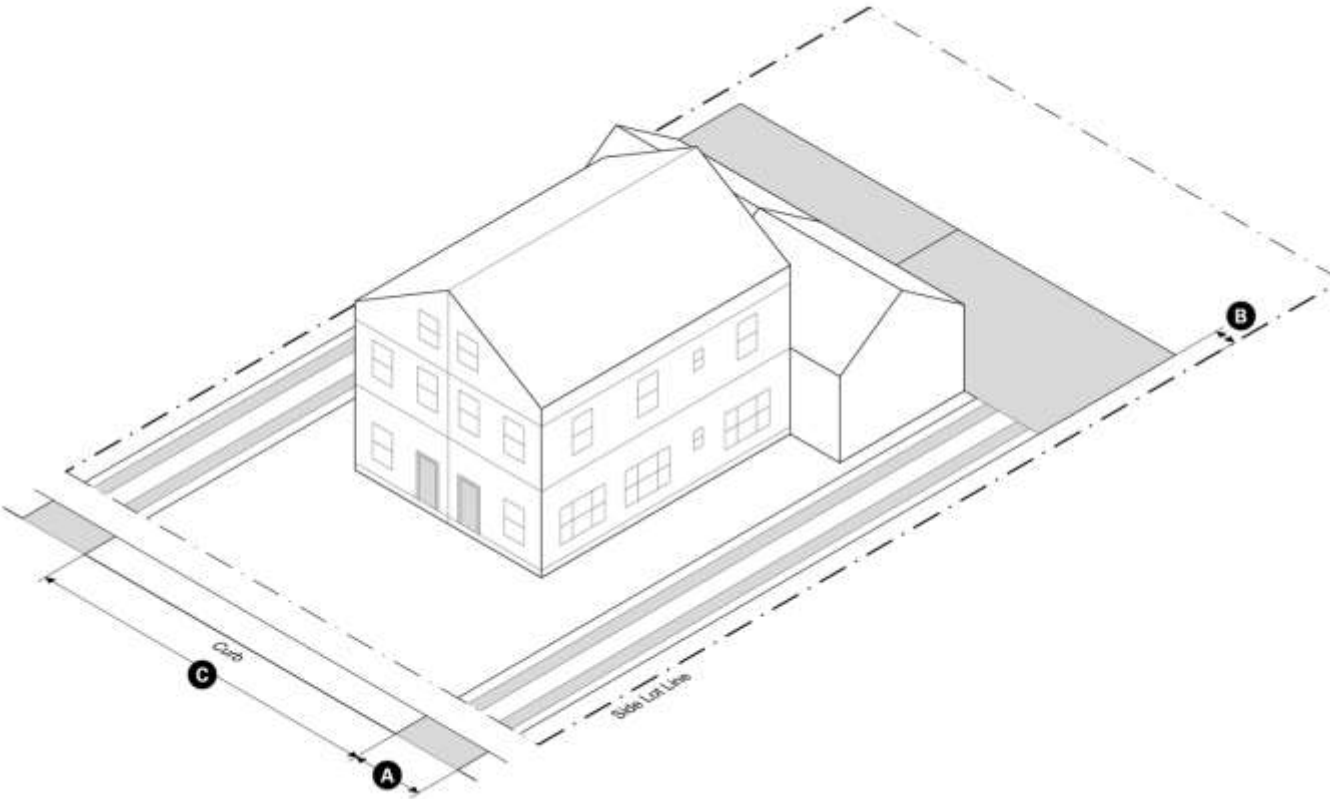
Two-Family Rear Garage		
A	Width (max)	10 ft
B	Distance (min)	3 ft
C	Distance (min)	30 ft

Design Standards

The curb cut is limited in width and two curb cuts must be separated by a minimum distance. A buffer space between driveways and adjacent lots must be provided.

Garage Standards Proposals

Possible Rear Garage Configurations



Two-Family Rear Garage		
A	Width (max)	10 ft
B	Distance (min)	3 ft
C	Distance (min)	30 ft

Design Standards

The curb cut is limited in width and two curb cuts must be separated by a minimum distance. A buffer space between driveways and adjacent lots must be provided.

878-880 Chestnut

Current Zoning: **MR1 Existing**

Proposed Zoning: **R3 Two-Family House**

	Draft Zoning	Existing
DRIVEWAY Curb cut width	10 ft max	12 ft
Apron offset from front	10 ft min	5 ft



878-880 Chestnut

Current Zoning: MR1 **Modified Driveway**

Proposed Zoning: R3 **Two-Family House**

	Draft Zoning	Modified
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	10 ft



878-880 Chestnut

Current Zoning: MR1 **Modified Garage Position**

Proposed Zoning: R3 **Two-Family House**

	Draft Zoning	Modified
DRIVEWAY Curb cut width	10 ft max	10 ft
Apron offset from front	10 ft min	62 ft



878-880 Chestnut

Current Zoning: MR1 **Modified to Garage and Driveway**

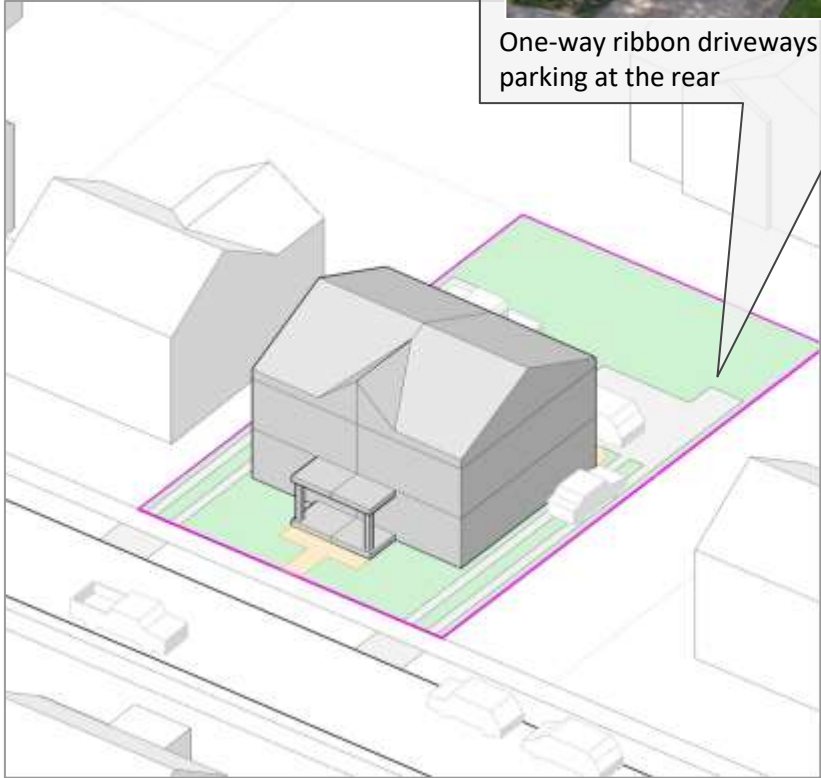
Proposed Zoning: R3 **Regulations**
Two-Family House



One-way ribbon driveways to parking at the rear



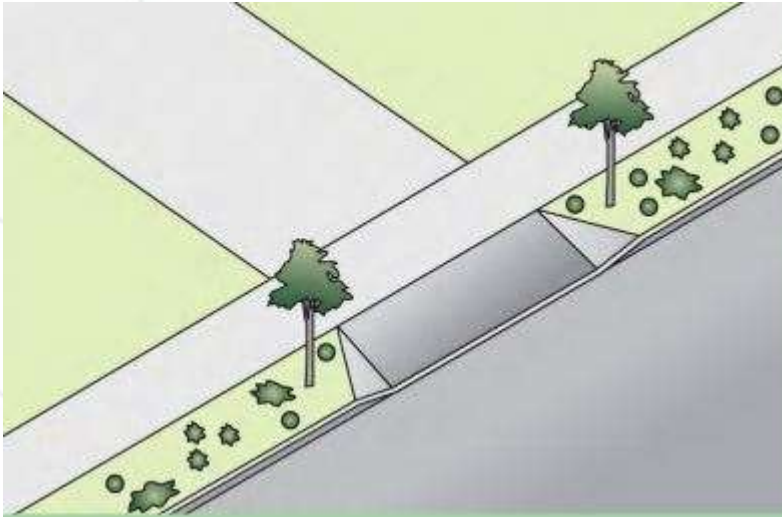
Existing



Draft Garage and Driveway Regulations

Summary:
Garage Standards and
Driveway Access

Safety



- Incidents between motor vehicles and pedestrians are most likely to occur at driveways

Sustainability



- **Minimizing driveway size means less impervious surfaces**

Sustainability

- ***Nudge*** to reduce auto-dependency



Design

- **Good design creates can create stronger neighborhoods and community**



Looking Ahead: Garage Standards and Driveway Access

Next Steps

- **Not enough time to change the deferred garage ordinance before the July 1**
- **ZAP Committee may decide to repeal or defer**

Path Forward – Zoning Redesign

- **Take-up as part of Zoning Redesign (Article 3 and Article 8)**
 - **Fits into current schedule**
 - **Adoption occurs at full adoption of new Zoning Ordinance (End of 2021)**

Path Forward - Standalone

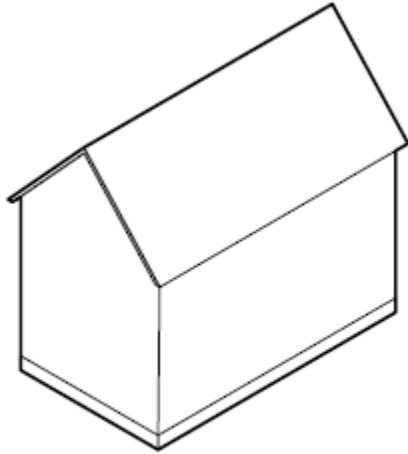
- **Take-up as an amendment to the current Zoning Ordinance**
 - **Format is different**
 - **Recent amendments (Sustainability Zoning), with some similarities, took roughly 4 months**

Discussion:
Garage Standards and
Driveway Access

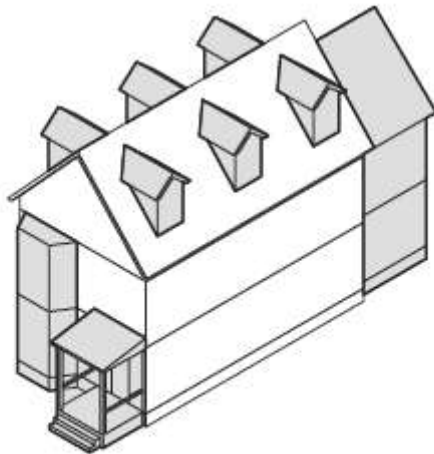


Part II: Building Components

Goals



MAIN MASSING of a BUILDING



Additional BUILDING COMPONENTS

- **Predictable growth for homeowners and neighbors**
- **Better process for allowing increase in habitable space**
- **Achieve variety and individuality in design**

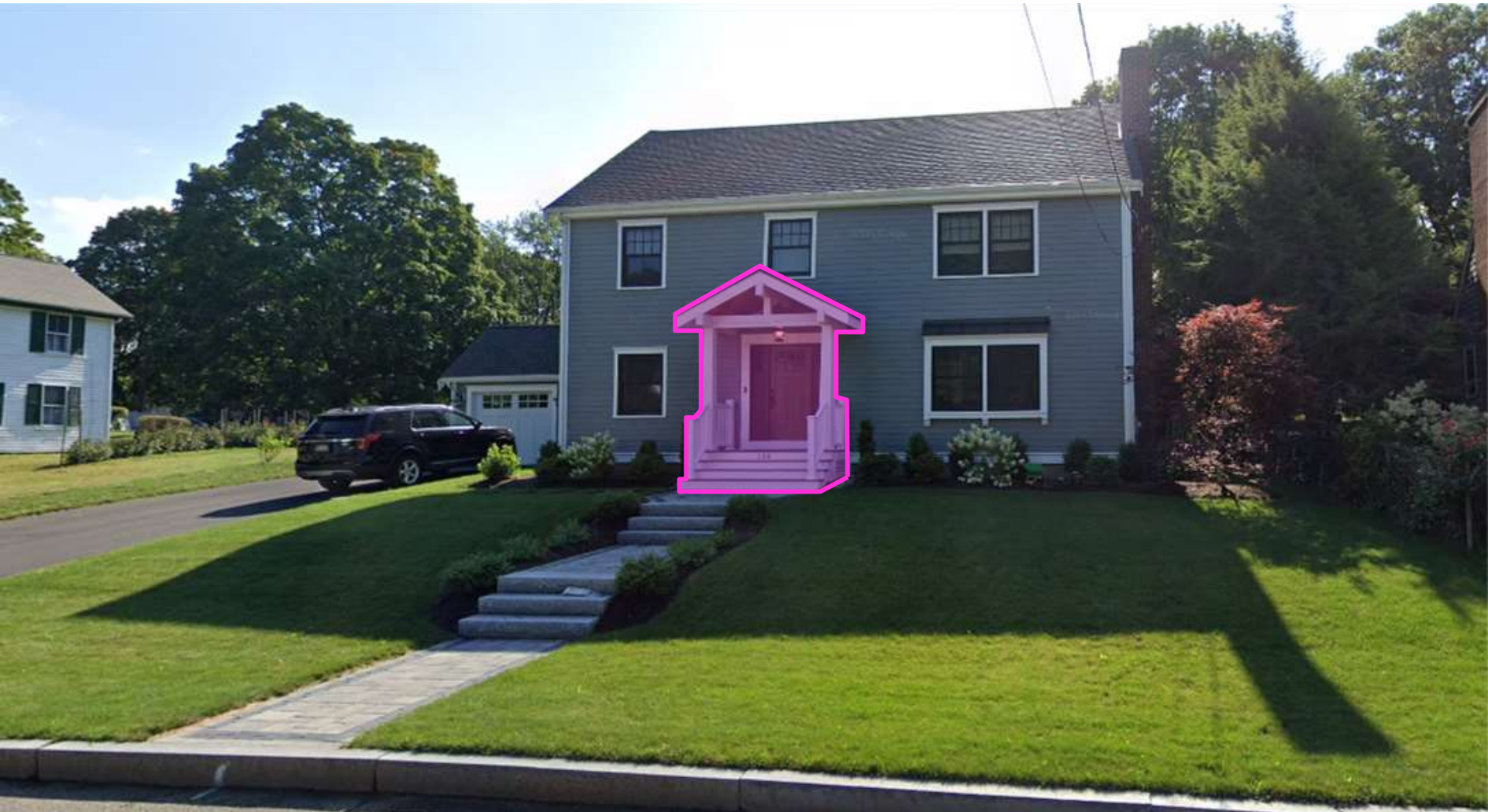
Goals of Building Components

Reduce Oversized, Boxy rebuilds



Building Components in Newton

Projecting Front Entry



Building Components in Newton Bay

#88-20



Building Components in Newton Balcony



Building Components in Newton

Front Porch



Building Components in Newton

Turret/Corner Feature



Building Components in Newton Dormer



Building Components in Newton Cross Gable

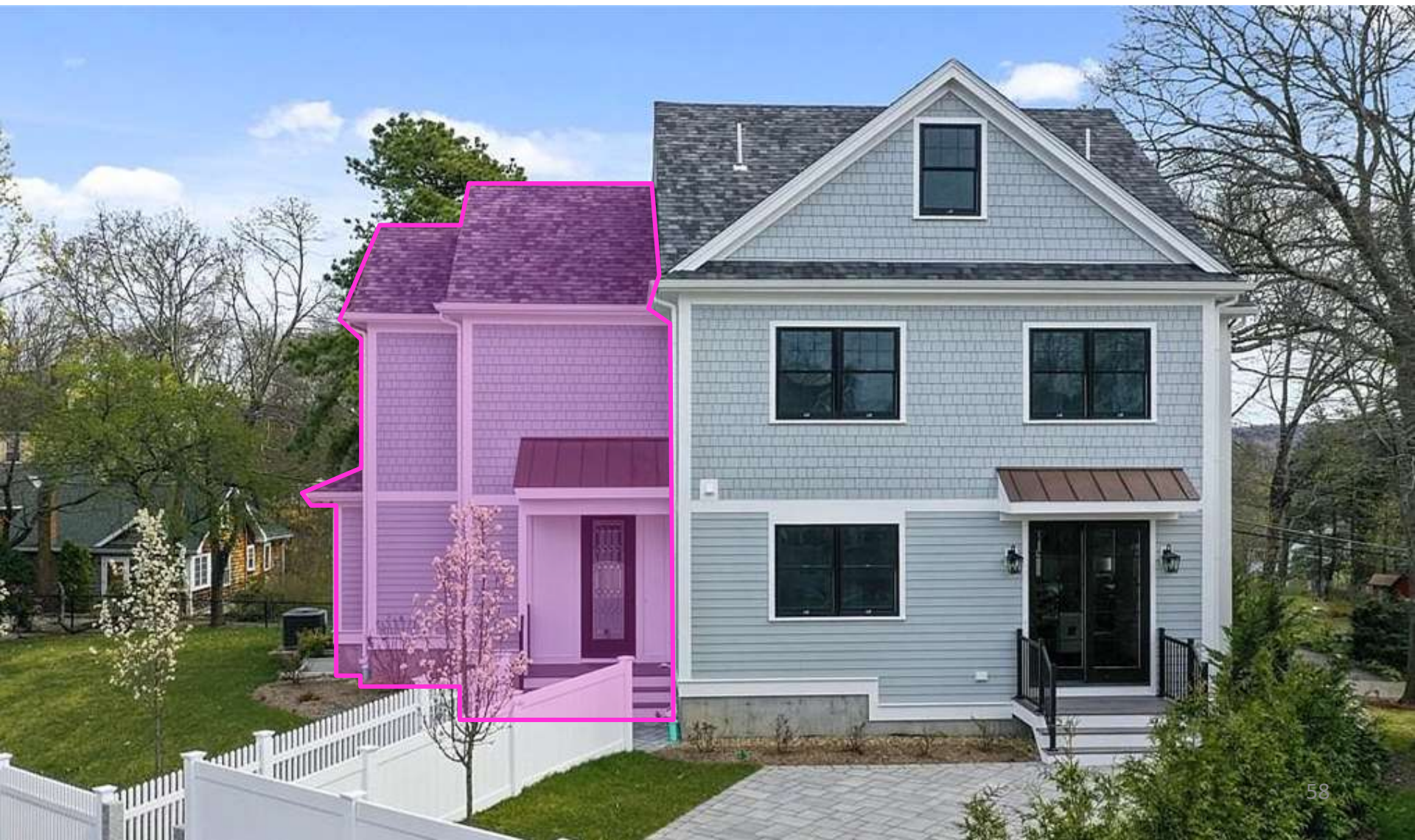


Building Components in Newton

Roof Deck



Building Components in Newton Side and Rear Additions



Building Components: A Refinement to De Minimus

Building Components as by-right bonus

Current Code: De Minimis Relief

B. De Minimis Relief.

1. Regardless of whether there are increases in the nonconforming nature of a structure, the City Council deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to M.G.L. Chapter 40A, Section 6. The following alterations, enlargements, reconstruction or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below, provided that:
 - a. Relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming;
 - b. The resulting changes on the nonconforming side will be no closer than 5 feet to the side or rear property line;
 - c. The resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the 2 adjacent lots;
 - d. The resulting construction will meet all building and fire safety codes; and
 - e. The *de minimis* relief provided in this paragraph shall not apply to buildings in which the nonconformity is due solely to FAR requirements, nor shall it be used to increase the FAR beyond that shown in Sec. 3.1.
2. *In accordance with Sec. 7.8.2.B.1, the following de minimus alterations are allowed:*
 - a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;
 - b. Decks or deck additions or porches less than 200 square feet in size;

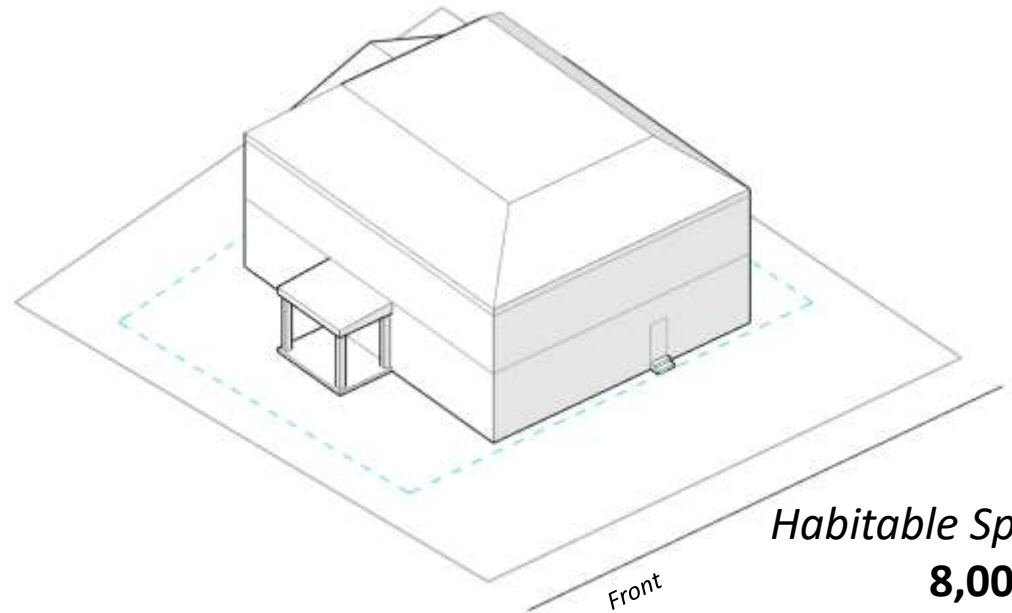
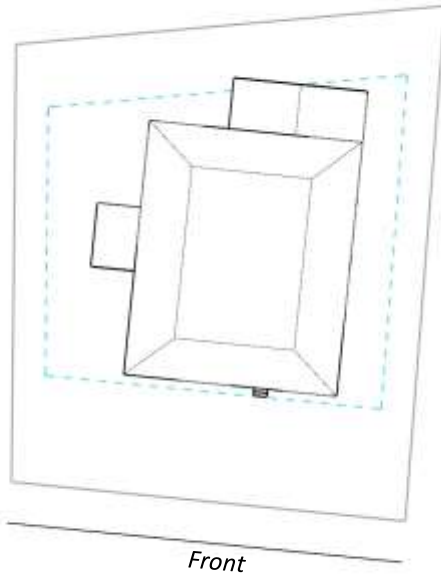
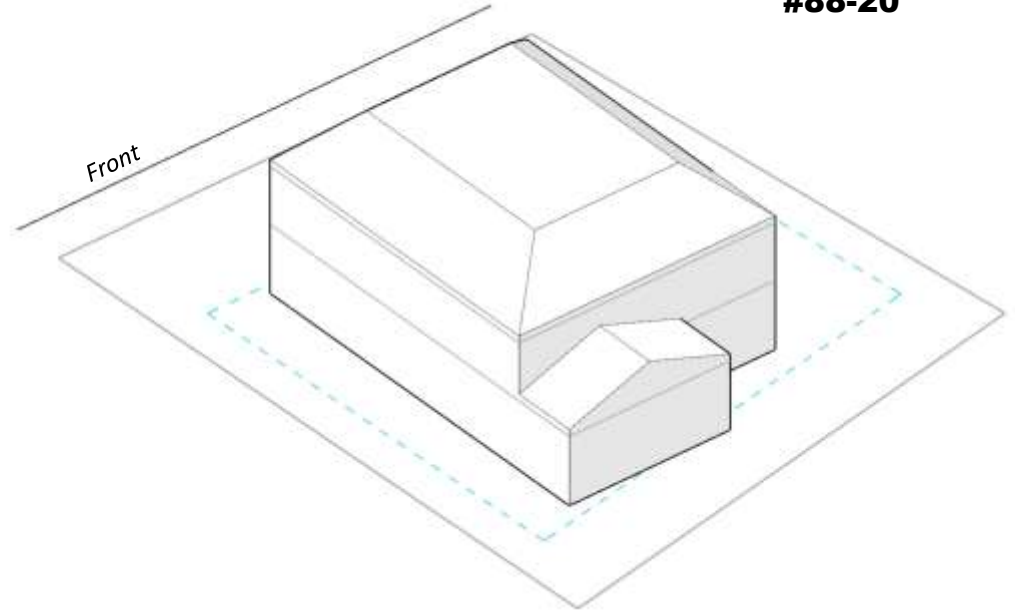
- c. First floor additions in the side and rear setbacks which do not total more than 200 square feet in size;
- d. Second floor additions which do not total more than 400 square feet in size;
- e. Enclosing an existing porch of any size;
- f. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;
- g. Bay windows which protrude no more than 3 feet into the front setback and are no less than 5 feet from the alteration to the lot line;
- h. Alterations to the front of the structure if within the existing footprint; and
- i. Alterations and additions to the front of a structure of not more than 75 square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

D. Standards.

2. **Minimum Dimensions.** Whenever the operation of this Sec. 7.8.2 would reduce the area available for building a dwelling house upon any lot in a residence district to less than 20 feet in its shortest dimension, or less than 800 square feet in total area, the requirements of this Sec. 7.8.2 shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than 7½ feet, and second, if necessary, from street lines, but to not less than 15 feet.

Current Code: De Minimis Relief Existing Non-Conforming Building

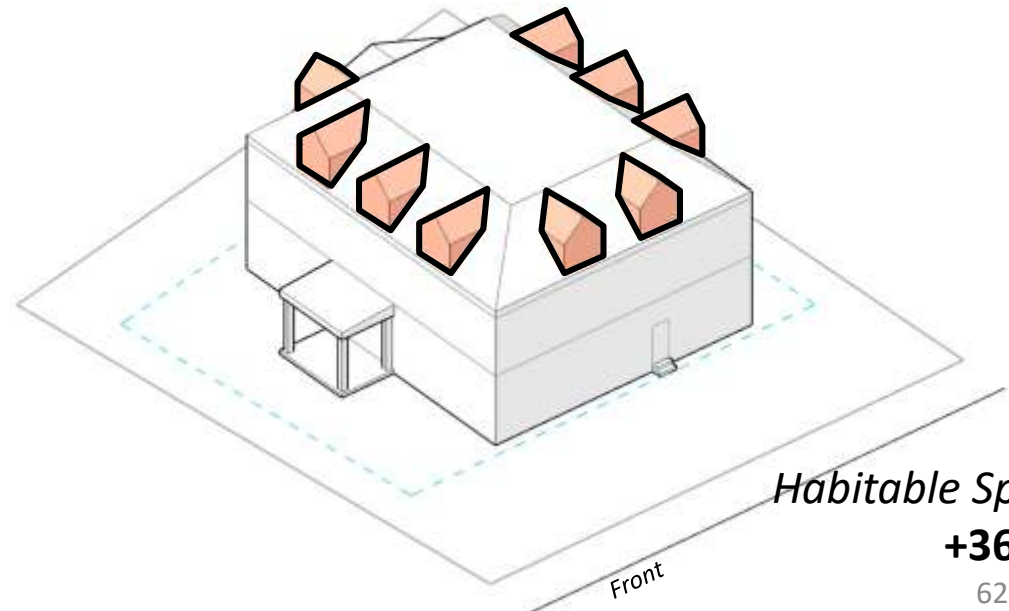
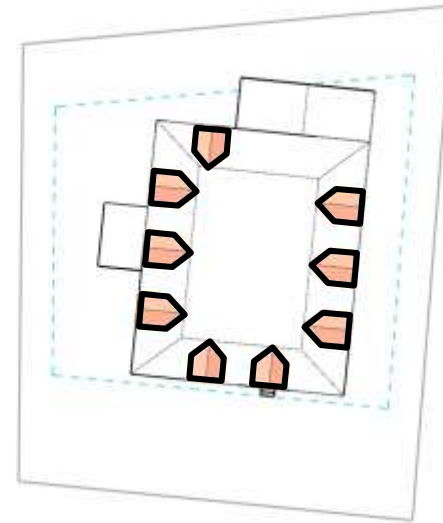
- SR2
- Over maximum lot coverage of 30%
- Over rear setback



Habitable Space
8,000 sf

Current Code: De Minimis Relief Dormers

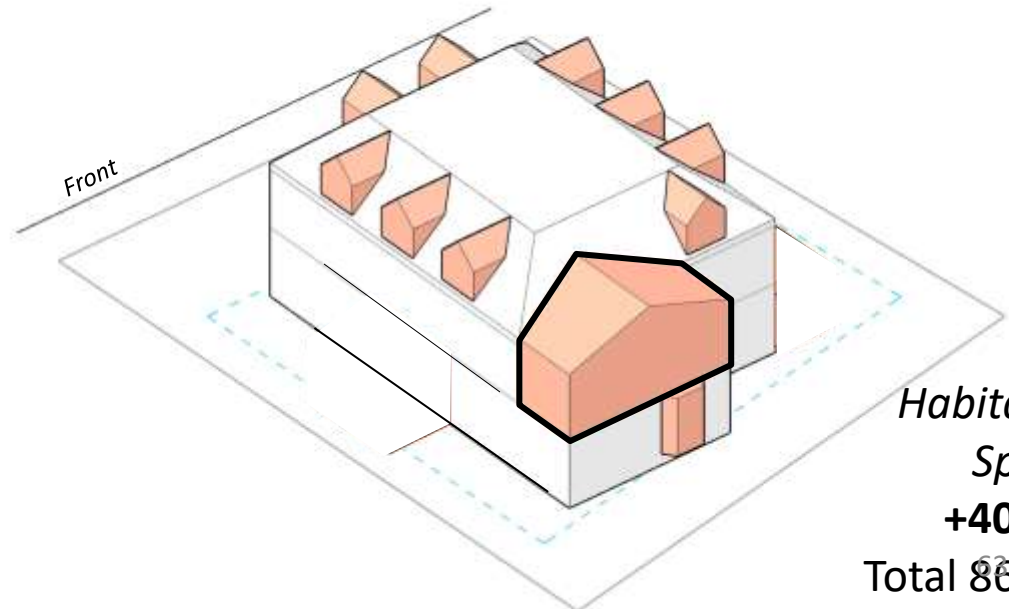
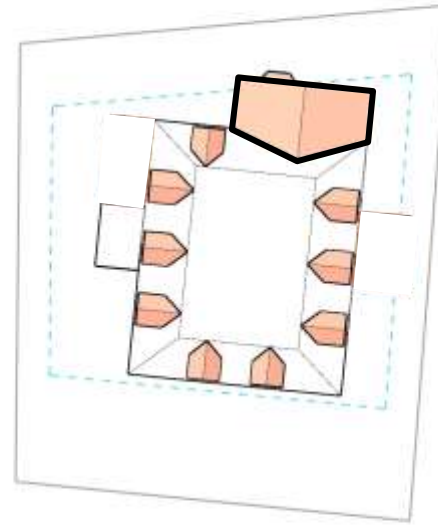
2. *In accordance with Sec. 7.8.2.B.1, the following de minimus alterations are allowed:*
 - a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;



Habitable Space
+360 sf

Current Code: De Minimis Relief Second Floor Additions

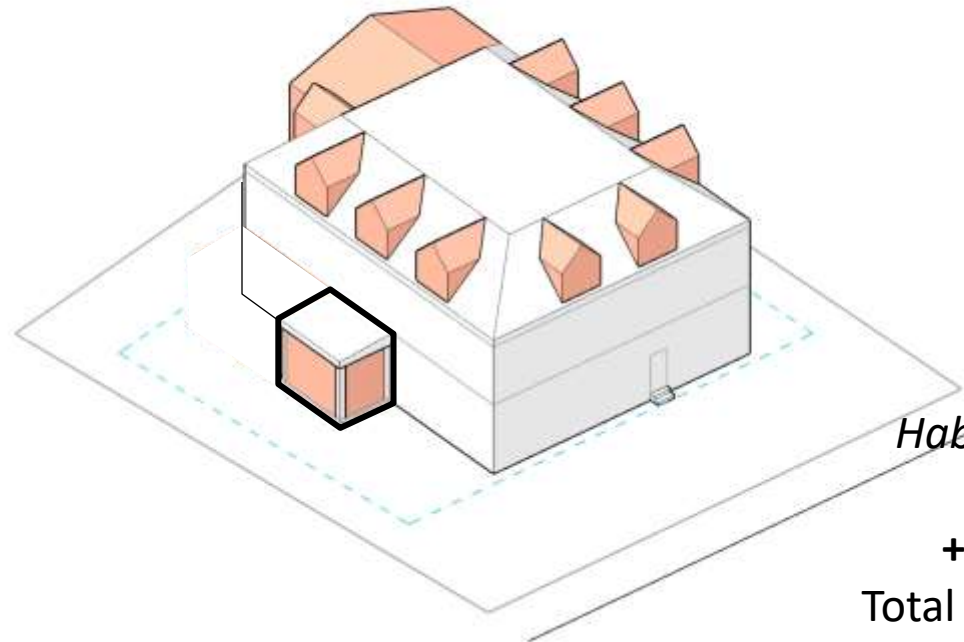
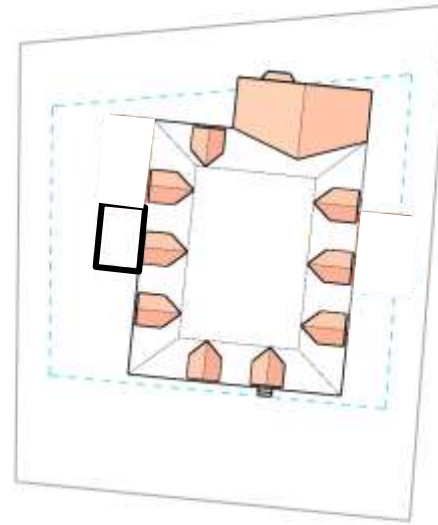
- d. Second floor additions which do not total more than 400 square feet in size;



*Habitable
Space*
+400 sf
Total 860 sf

Current Code: De Minimis Relief Enclosing an Existing Porch

- e. Enclosing an existing porch of any size;

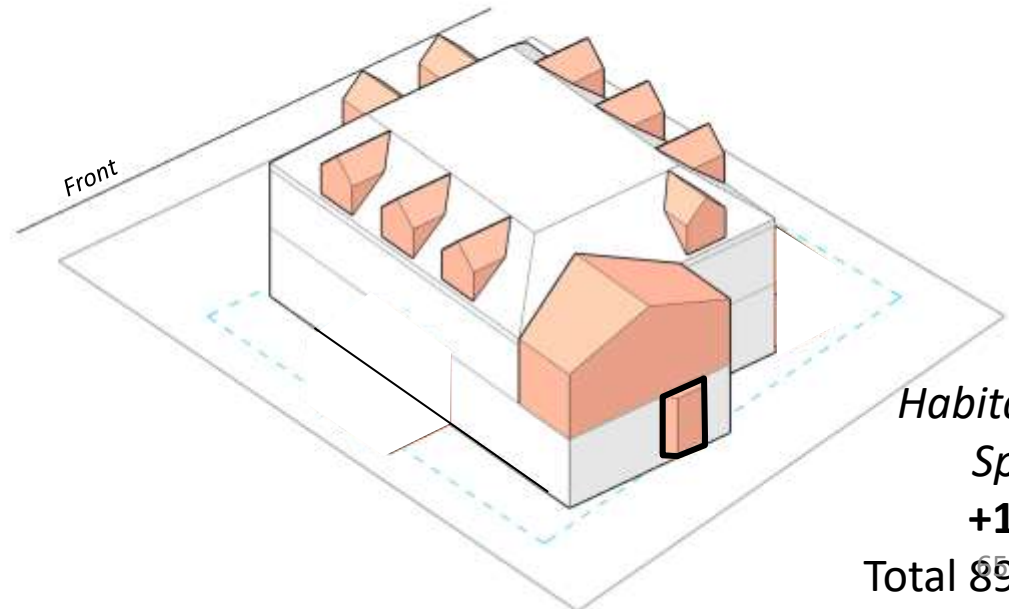
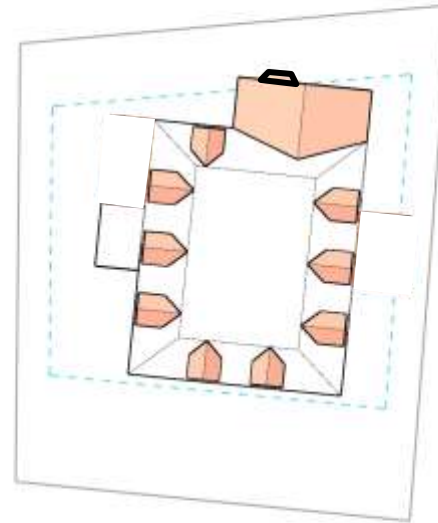


*Habitable
Space*
+145 sf
Total 875 sf

Current Code: De Minimis Relief

Bay windows in Side/Rear Setbacks

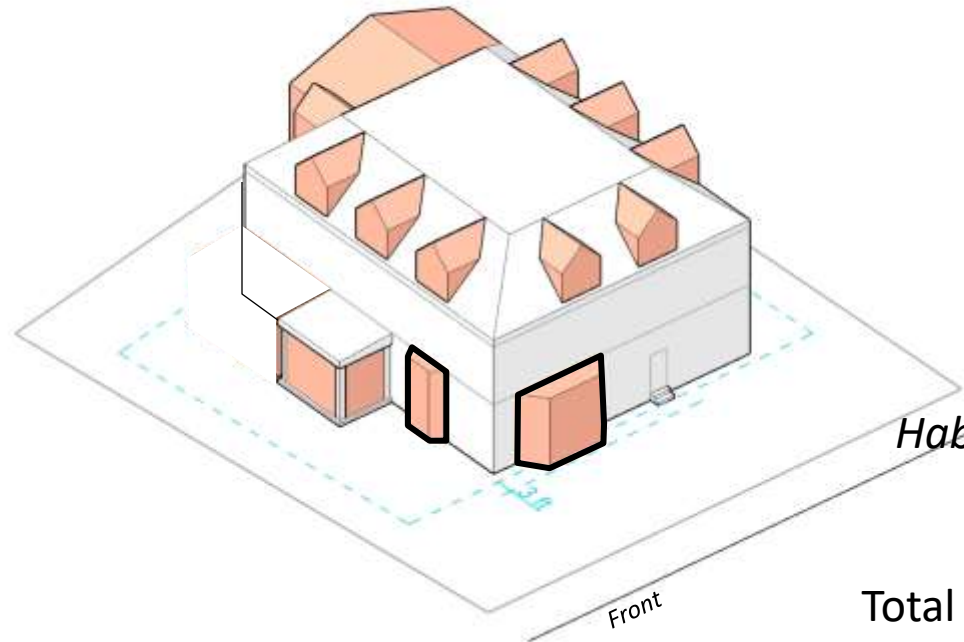
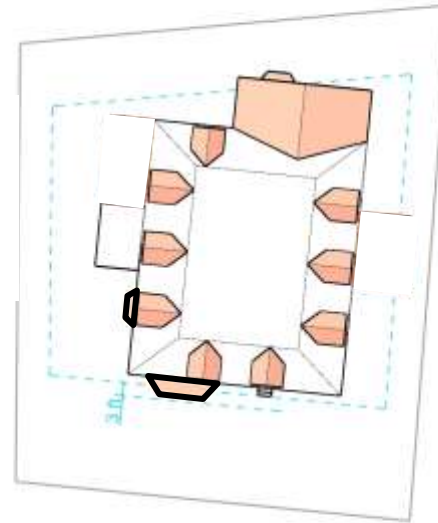
- f. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;



*Habitable
Space
+15 sf
Total 890 sf*

Current Code: De Minimis Relief Bay Windows in Front Setback

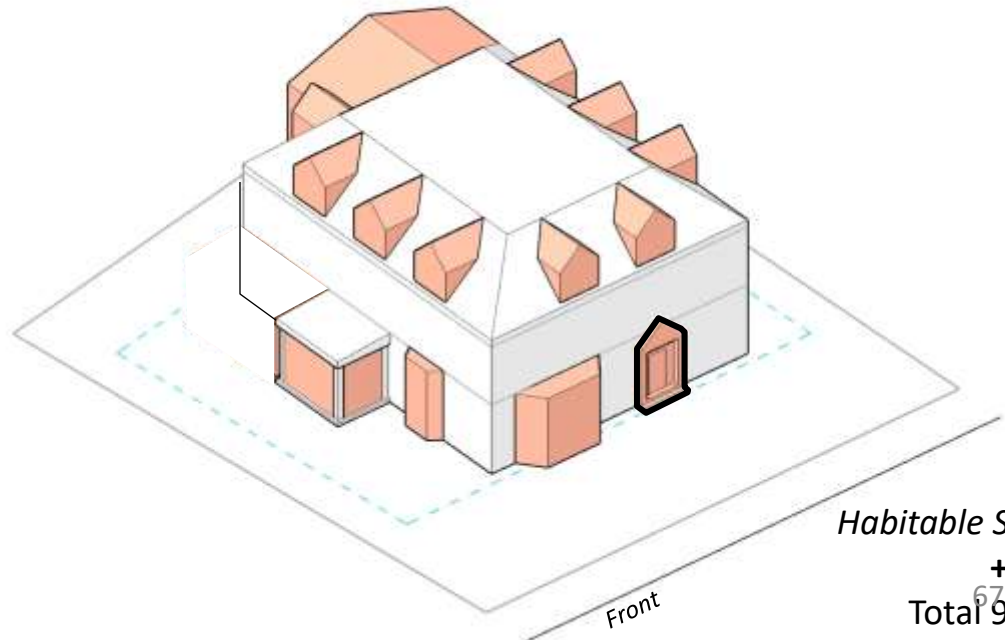
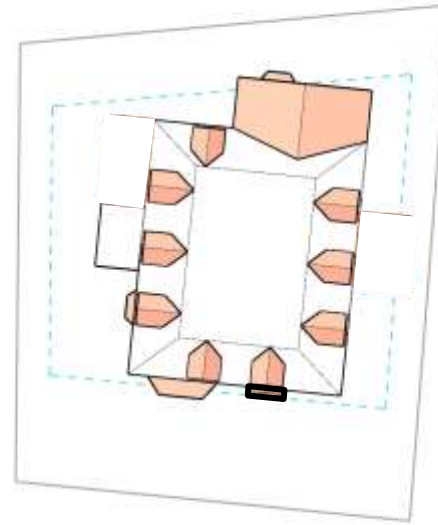
- g. Bay windows which protrude no more than 3 feet into the front setback and are no less than 5 feet from the alteration to the lot line;



*Habitable
Space
+65 sf
Total 955 sf*

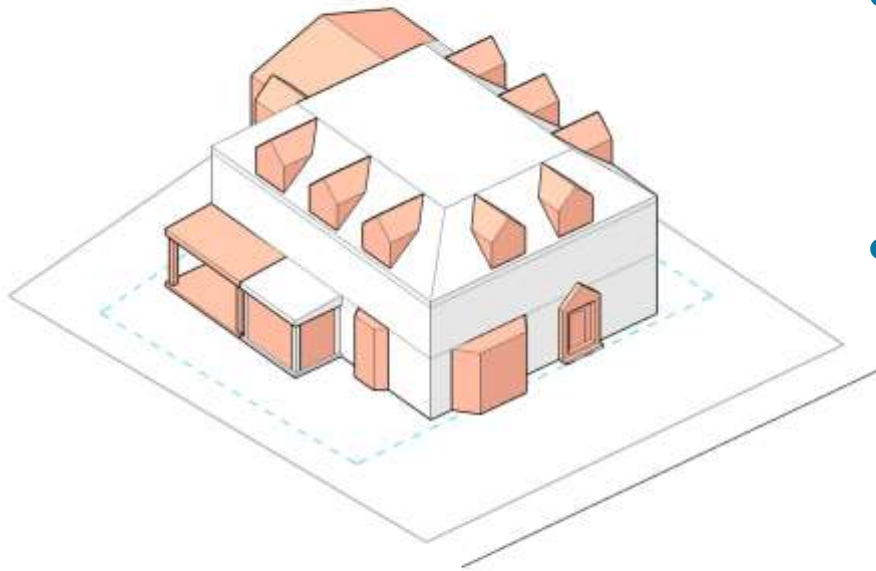
Current Code: De Minimis Relief Additions to the Front of a Structure

- h. Alterations to the front of the structure if within the existing footprint; and
- i. Alterations and additions to the front of a structure of not more than 75 square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.



Habitable Space
+15 sf
Total 970⁶⁷ sf

Draft Code: Building Components Follow Logic of De Minimis Relief



- **Build from the idea of the De Minimis Relief.**
- **Allow by-right renovations/additions in a regulated and predictable manner.**

Issues with Draft Language
&
Proposed Changes

Problem A

Building Components Count towards Building Type Footprint

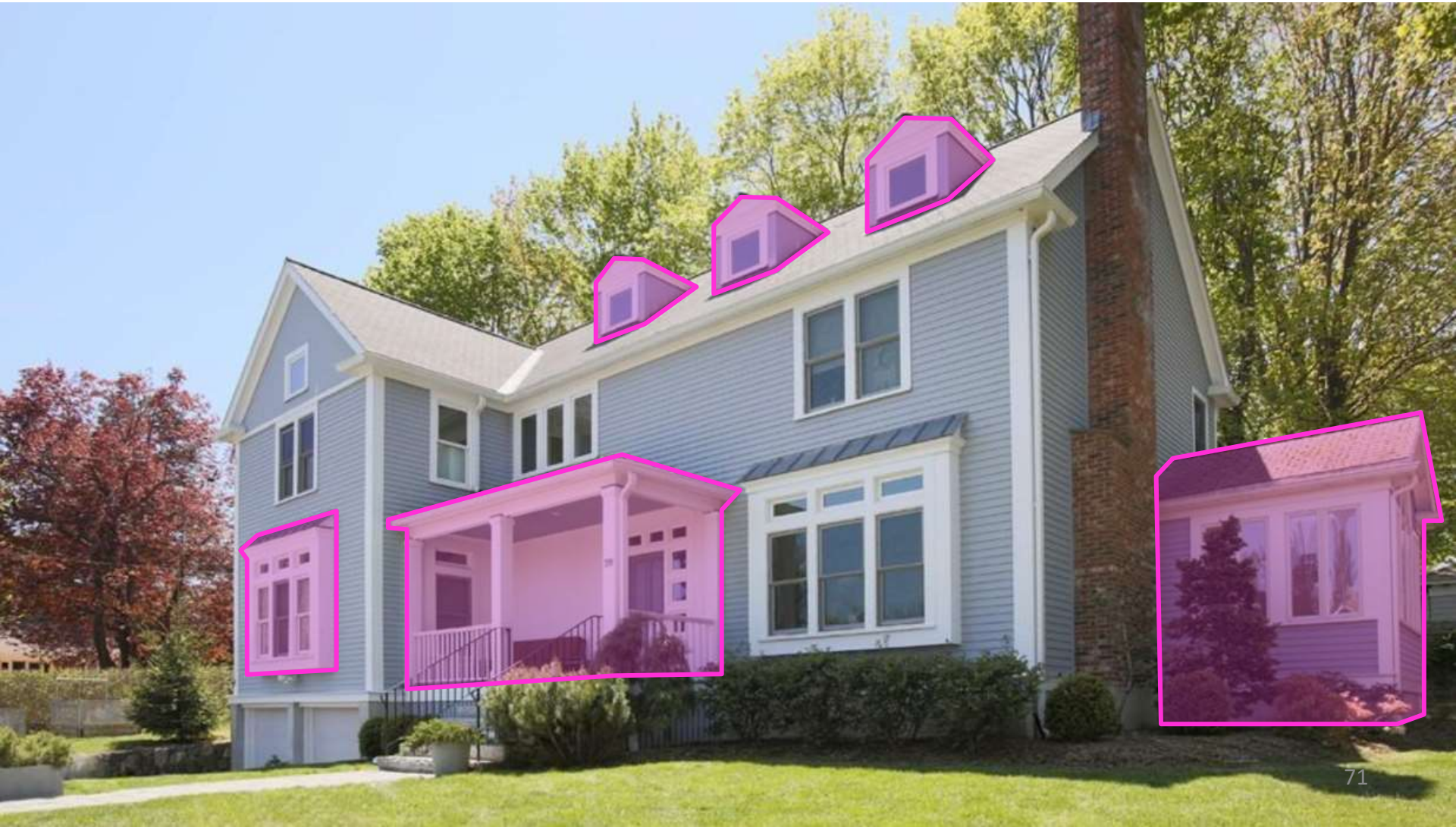
Less Incentive to use building components



Solution A

Building Components do not count towards Building Type Footprint

More Incentive to use building components



Problem B

Language too directly implies style

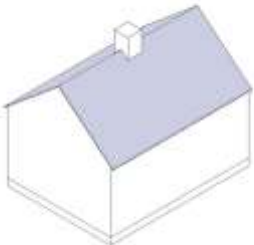
“We don’t want to impose an absolute style”

“Architects need to create vitality and individual expression of unique buildings”

“How do we allow for innovation?”

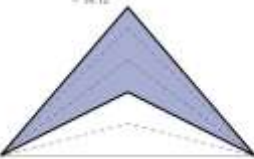
b. Gable Roof Type

- Description: A pitched roof with two sides meeting at a single ridge beam.



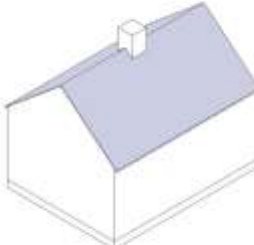
6. Story Equivalent: 0.5 story

7. Roof Pitch: Min pitch = 6:12, Max pitch = 14:12




c. Low Gable Roof Type

- Description: A pitched roof with two sides meeting at a single ridge beam.



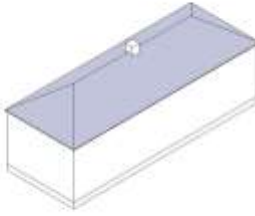
4. Story Equivalent: 0 story

8. Roof Pitch: Min pitch = 5:12, Max pitch = 6:12



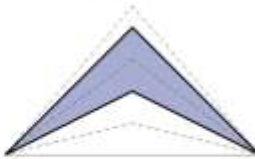
d. Hipped Roof Type

- Description: A roof that is pitched on all sides meeting in a single point or ridge beam.




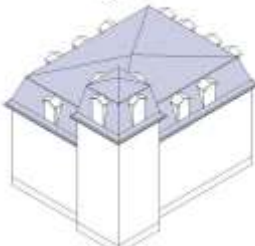
5. Story Equivalent: 0.5 story

9. Roof Pitch: Min pitch = 6:12, Max pitch = 12:12




e. Two-Stage Roof Type

- Description: A complex pitched roof consisting of a shallow sloped upper portion and a steeper sloped lower portion, meeting either in a single ridge beam (like a gambrel roof) or a single point (like a streambed roof).

f. Story Equivalent: 1 story

10. Roof Pitch: Upper slope min pitch = 1.5:12, Max pitch = 5:12, lower slope: Min pitch = 8:12, Max pitch = 10:12



11. The vertical at which slope changes must be at least 6 ft but no more than 10 ft higher than the building eaves.

12. Vault Roof Type


- Description: A roof formed by an arch, series of arches, or domes.

3. Story Equivalent: 1 story

13. The vertical at the apex of the roof may be no more than 8 ft higher than the building eaves.

14. Flat Roof Type

- Description: A roof with almost no pitch and no central ridge.



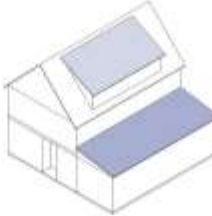
2. Story Equivalent: 0.5 story

15. The vertical at the apex of the roof may be no more than 6 ft higher than the building eaves.

16. Hooded Metal Roofs


The following 6 Hood Metal Roofs are exempt up to a level of 2 feet. It is attached to the building or supported by a ground stake or similar support extending from the side of the street.

- Roof covered with solar, radii, and other translucent equipment.



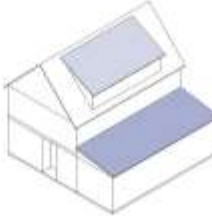
7. Story Equivalent: 0 story

17. Flat Pitch: Min pitch = 5:12, Max pitch = 5:12



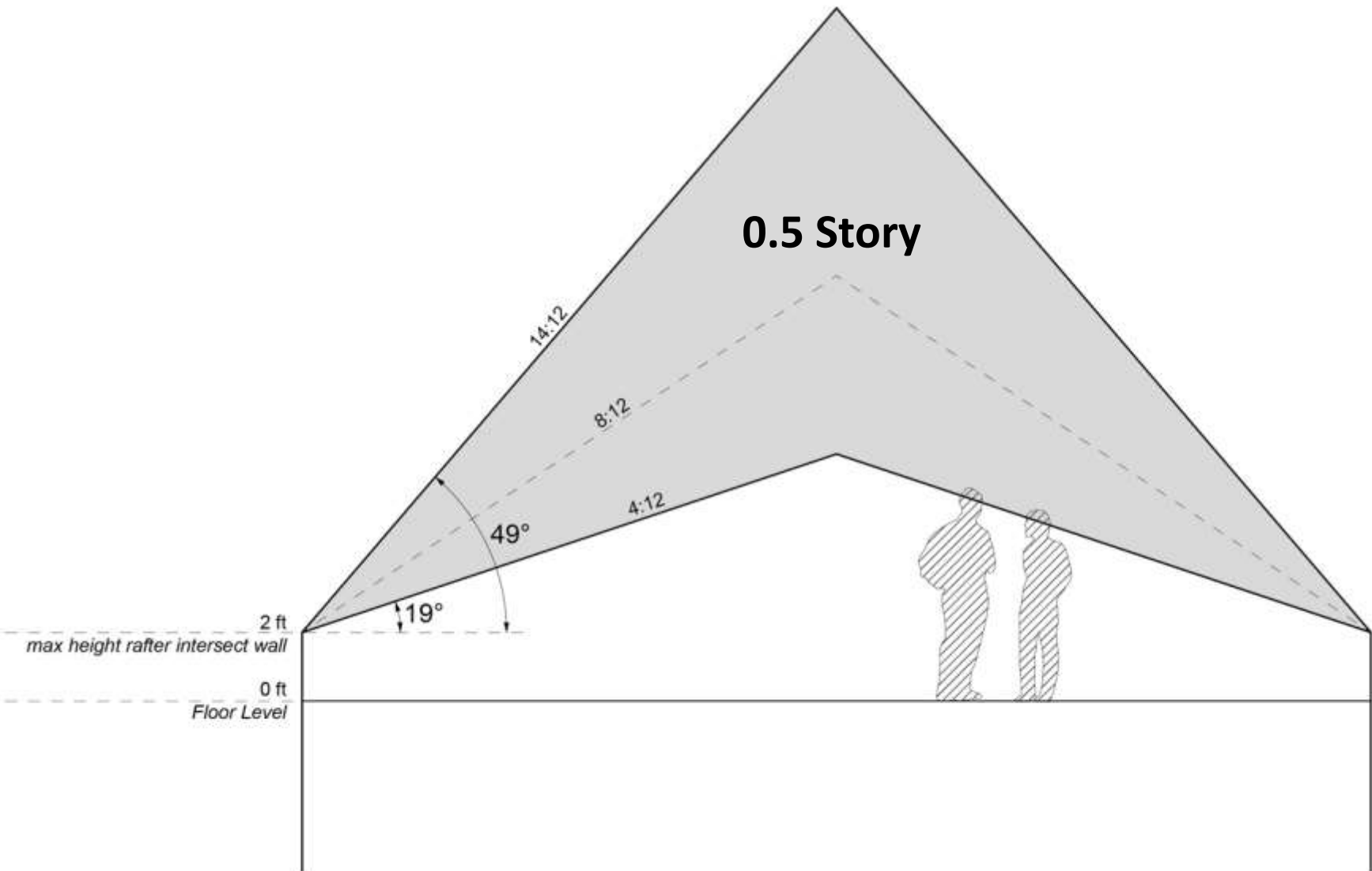
1. Shed Roof Type

- Description: A pitched roof sloping in one direction from a single high ridge beam to a single low ridge beam.



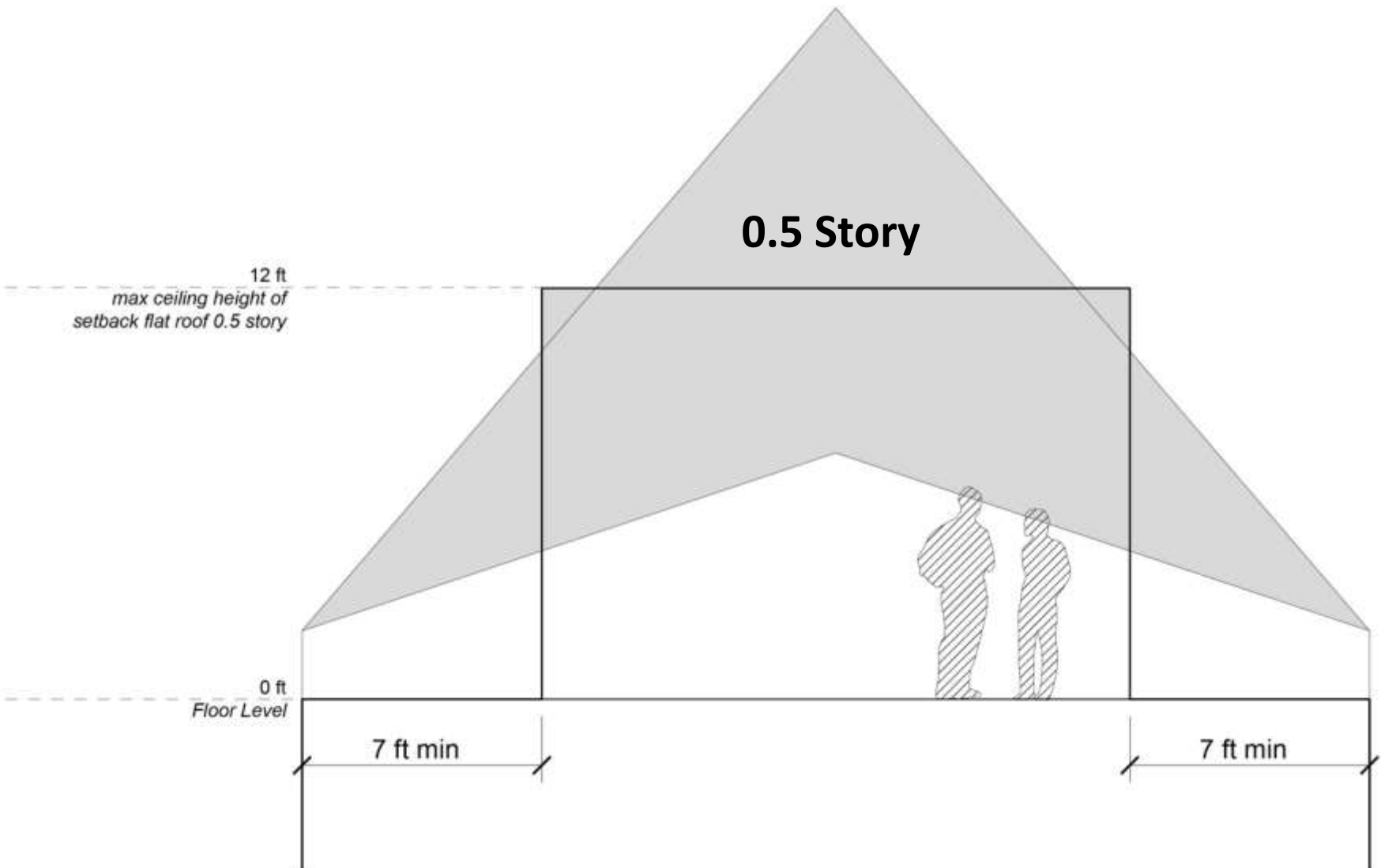
Solution B

Modify regulations so that they allow for a variety of design styles



Solution B

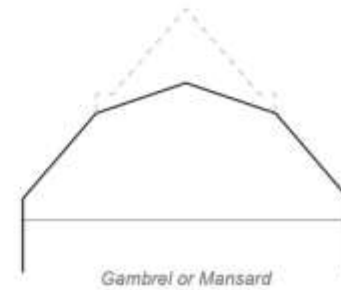
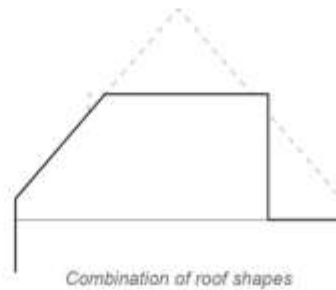
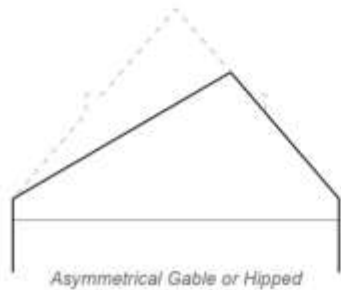
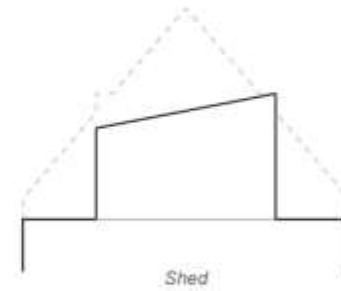
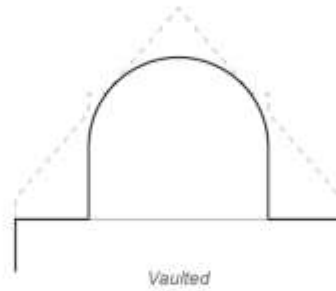
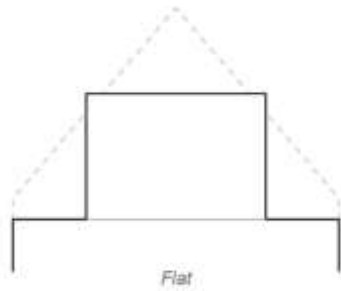
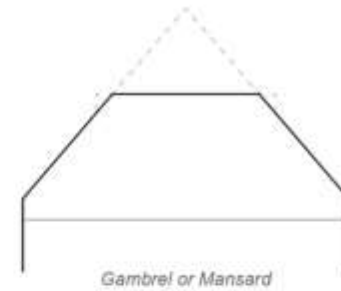
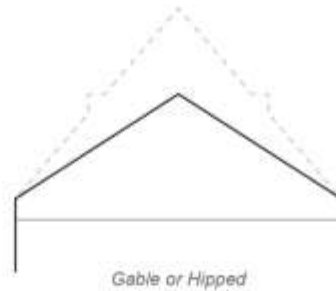
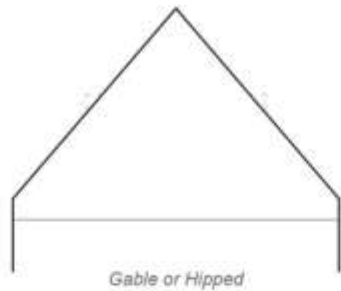
Modify regulations so that they allow for a variety of design styles



Solution B

Modify regulations so that they allow for a variety of design styles

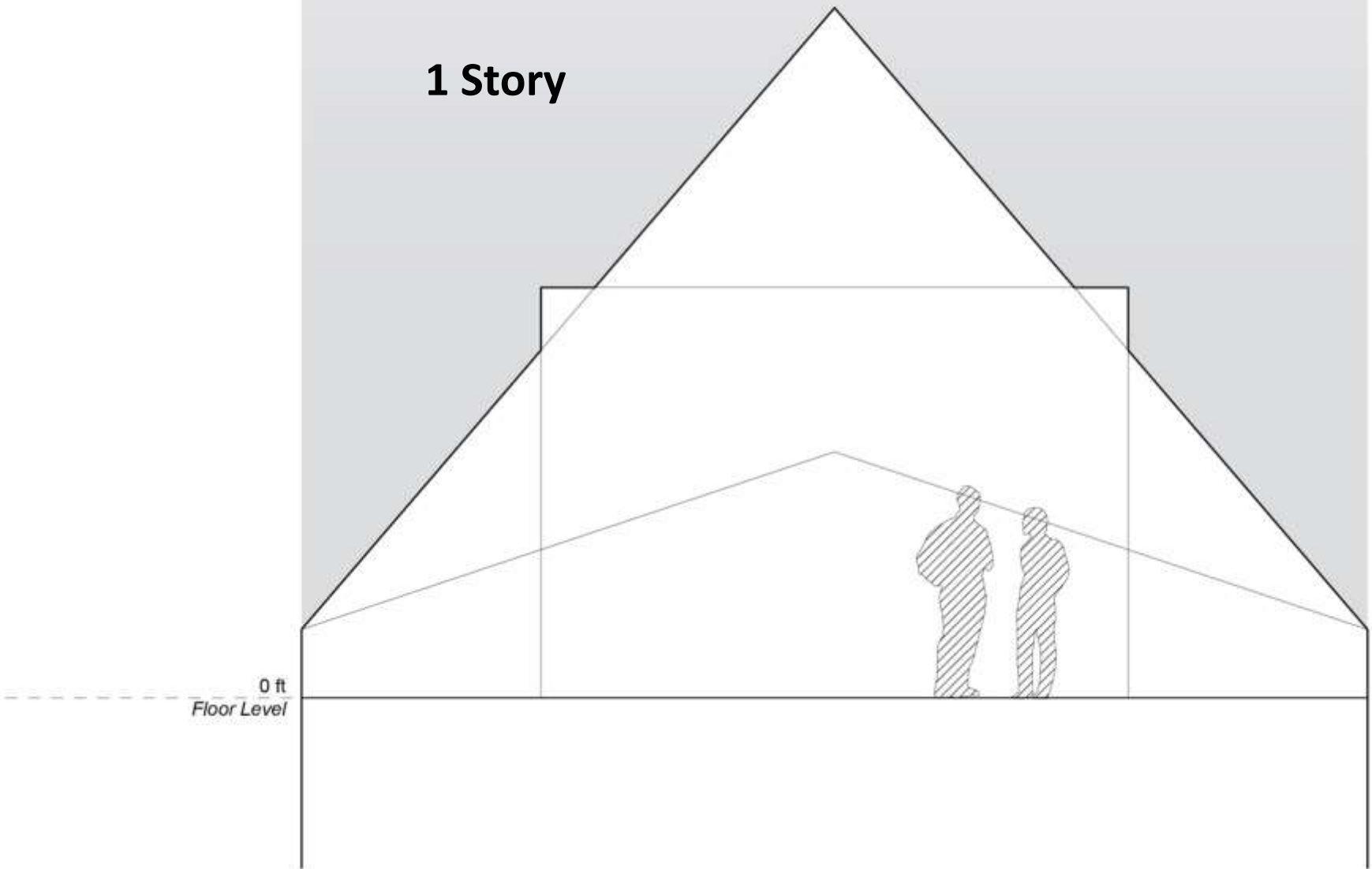
A few design options for 0.5 story:



Solution B

Modify regulations so that they allow for a variety of design styles

1 Story



Solution B
Building Components should be named generically

Turret →
Corner Bay
Window



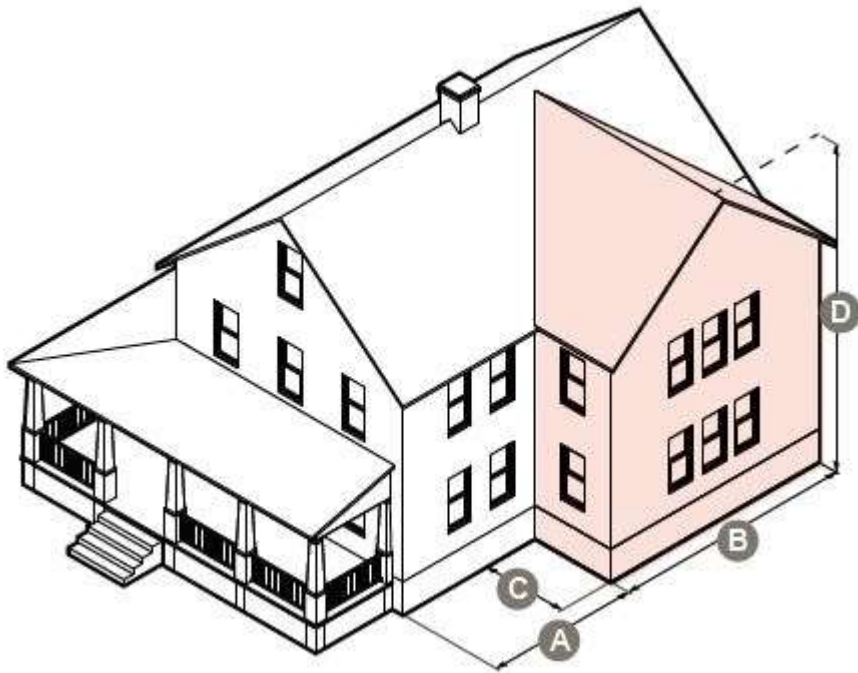
Problem C

Building Type footprint increase allowed by special permit

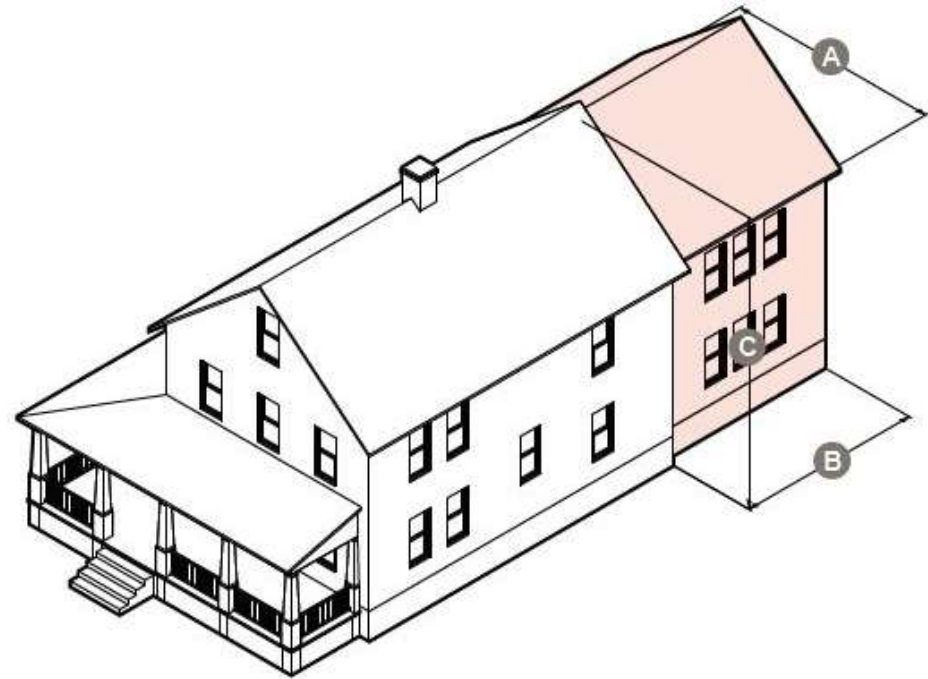
Building Type	By-Right Building Footprint Max. Square Feet	Special Permit Building Footprint Max. Square Feet
A	2,400	3,000
B	1,400	2,000
C	1,200	1,800
D	3,500	4,000
Two-unit	2,000	2,200
3-Unit	1,600	1,800
Townhouse Section	1,500	1,800
4-8 Unit	2,500	N/A

Solution C

Remove Building Type footprint increases by Special Permit and add new Building Components that allow for similar flexibility



Side Wing



Rear Addition

Discussion: Building Components

Next Steps & Schedule

Next Steps

5/27 - Office Hours

6/1 at ZAP - Building Component Standards & Case Studies

6/8 at ZAP - Office Hours

Homework

Will be provided in the next ZAP memo

Thank You!

