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Barney S. Heath
Director

MEMORANDUM

DATE: October 9, 2020

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

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

RE: **#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.
Other docket items to be taken up within the context of Zoning Redesign include #30-20, #38-20, and #148-20

MEETING: October 15, 2020

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Neill Cronin, Chief of Current Planning
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

Recap of Previous ZAP Meeting

At the October 1, 2020 ZAP meeting, the Planning Department presented on the updated mechanisms and standards within the revised draft of Article 3 – Residence Districts for Garage Design Standards (Sec. 3.4) and Driveway Access (Sec. 3.7.1.E). There appeared to be clear support that the recommendations were going in the right direction to achieve the established goals (limiting visual impact/dominance of garages, promoting walkability/public safety, and enhancing sustainability). Where possible, staff have responded to questions and comments from this meeting and others received by written submission in this memo (Attachment A). Other items require more analysis, which will be presented in Committee at a later date.

In tandem, the Committee decided to defer the effective date of the Garage Ordinance within the current code to April 1, 2021. With this new deferral date, the Committee has decided to take up the Garage Ordinance as a standalone item and instructed City staff to develop a revised proposal for adoption prior to the April deferral date. The Committee acknowledged that this sets back the overall

Zoning Redesign timeline presented last month. Staff is working internally, and closely with the Committee Chair, to develop a revised timeline for Zoning Redesign and a workplan leading to adoption of a revised Garage Ordinance prior to the deferral date. Staff plan to present this revised calendar for Committee review at the upcoming meeting.

Introduction to Upcoming ZAP Meeting

Per the Article 3 – Residence Districts calendar, shared in the September 9, 2020 memo, the upcoming meeting will focus on Alternate Lot and Building Configurations (Sec. 3.5). Specifically, staff plan to discuss Rear Lots (Sec. 3.5.1) and Courtyard Clusters (Sec. 3.5.3). In addition, staff plan to present on Parking Requirements (Sec. 3.7), originally scheduled for the previous meeting.

This memo will go into these three elements by stating the areas of consensus achieved in previous ZAP meetings, highlight key changes in the latest draft (if any), outline possible alternatives (if applicable), and lay out specific questions the Planning Department needs feedback from the Committee on to move forward. In addition, staff have provided answers to Councilor questions and comments previously received relevant to the above items (Attachment B).

Alternative Lot and Building Configurations (Sec. 3.5)

Rear Lots (Sec. 3.5.1)

Previous Committee meetings have focused on rear lots less than other Alternative Lot and Building Configurations because the proposal draws heavily from the current ordinance. That said, in Committee and from the public generally, staff have heard the need for updates to further control the size of development on any given rear lot. To accomplish this, the proposal only allows a House Type C, the smallest house type (maximum 1,200 sf footprint and 1.5 stories) on a rear lot. This Building Type requirement, in addition to the lot standard requirements, should ensure that any residential unit created through a rear lot is subordinate to the principal building on the front lot. The side-by-side tables below show how the proposal reduces the development size of a rear lot as compared to the current ordinance.

	Current Ordinance			Proposed Ordinance
	<i>SR1</i>	<i>SR2</i>	<i>SR3</i>	<i>All Residence Districts</i>
Minimum Lot Size	25,000 sf	15,000 sf	10,000 sf	N/A
Building Height (max) Sloped Roof	36 ft	36 ft	36 ft	18 ft
# of Stories (max)	2.5 / 3 SP	2.5 / 3 SP	2.5 / 3 SP	1.5 stories
FAR (max)	0.12	0.20	0.24	
Total Square Feet*	3,000 sf	3,000 sf	2,400 sf	1,800 sf

*Based on FAR (max) for current and building footprint/# of stories (max) for proposed

Since releasing the latest draft in August, staff have worked with our design and planning consultant on minor changes to further simplify the draft zoning and better achieve the Committee intent (Attachment C). These include:

- Establishing that the front lot line of a rear lot is the rear lot line of the adjoining lot fronting the street (Sec. 3.5.1.C.3). The previous version allowed different options for determining the front lot line that was determined to be confusing and did not lead to a better design outcome.
- A building on a rear lot can be placed anywhere on the lot within the required setbacks. Previous versions required at least 50% of the building on a rear lot to be visible from the street. This standard would have forced the building on the rear lot to be significantly more visible and run contrary to the general intent that the building be subordinate.

To help facilitate a productive discussion in Committee and build consensus around the proposed draft, staff are providing the following questions:

- Should a House C, developed as a rear lot, be allowed to increase the building footprint by 25% utilizing Building Components?
- If the proposal achieves the City Council intent, and address community concerns, should rear lot development be allowed by-right? If not, are there any circumstances where a rear lot development should be allowed by-right?
- To further simplify the code, should there be separate setbacks specifically for rear lots?

Courtyard Cluster (Sec. 3.5.3)

The Committee previously discussed Courtyard Clusters at multiple ZAP meetings earlier this year (March 9 and April 13). Staff presented case studies at these meetings highlighting the limited applicability of Courtyard Cluster development throughout Newton, given lot size requirements and other constraints. Though when possible, Courtyard Clusters allow for smaller than typical residences that not only provide underrepresented housing options to a range of growing demographics (seniors, individuals living alone, empty nesters, etc.), but also a non-subsidized form of housing that is generally less expensive. Following the feedback received at these meetings, and from the community during other engagement events and via email, staff recommended in the latest draft to further limit Courtyard Clusters to the R4 and N districts, which are proposed to be adjacent to amenities and resources found in village centers and public transit hubs

Since releasing the latest draft in August, staff have worked with our design and planning consultant on additional recommendation changes to further simplify the draft zoning and further ensure that Courtyard Clusters appropriately fit within Newton’s neighborhoods (Attachment C). These include:

- Developing a standalone Courtyard Cluster Building Type (Attachment D). The draft Courtyard Cluster Building Type standards for review are:

	Building Footprint	# of Stories	Story Height	# of Units
Building Dimensions (max)	1,200 sf	2.5	12 ft	2

Previous versions utilized the proposed Housing Types with a reduced footprint. Staff believe this is overly complicated and would have allowed for development that did not align with the Committee's intent for Courtyard Clusters (i.e. 3-story, 3-unit buildings). Staff is working to refine this Building Type and are seeking guidance from the Committee, see questions below.

- Establishing a minimum distance between each building of 15 feet (Sec. 3.5.3.C.4) Previous versions had no required minimum distance. Rather than rely on the building code, which requires a variety of distances based on multiple factors (construction type, occupancy, fire-resistance rating, etc.), we have worked with our consultant to determine an appropriate distance that not only satisfies the building code, but also the neighborhood context.

To help facilitate a productive discussion in Committee and build consensus around the proposed draft, staff are providing the following questions:

- Does the new proposed Building Type better facilitate development in scale and proportion with the intent and definition of Courtyard Clusters?
- Should the parking requirements be reduced since Courtyard Clusters are limited to areas walkable to public transit and village centers?
- Almost all standards for Courtyard Clusters are specific to this development type (i.e. Lot Frontage, Lot Coverage, and Building Type), with setbacks as the exceptions (set by the district). To further simplify the code, should there be separate setbacks specifically for Courtyard Clusters, no matter which district?

Parking Requirements (Sec. 3.7)

Due to timing, the Committee was unable to take up Parking Requirements as part of the previous ZAP meeting. The materials prepared for this topic can be found within the ZAP memo for October 1, linked here:

<http://www.newtonma.gov/civicax/filebank/blobdload.aspx?t=62031.45&BlobID=106720>

Looking Ahead

Staff, and the Committee Chair, are coordinating with the Building Professional Working Groups to present at multiple ZAP meetings this fall. Additional meetings are being explored. These meetings should focus on elements of Article 3 – Residence Districts and the Garage Ordinance.

This past spring Planning staff convened an Architects Focus Group, comprised of local members of the architecture and building communities, which met five times throughout the spring and summer. Members of this group presented at two ZAP meetings in July. Since the last formal meeting of this group at the end of July the Planning Department is aware of at least two groups of building professionals who have been reviewing the draft ordinance to provide feedback. Feedback from these groups will be important throughout the process but is critical at this stage as we try to finalize dimensional standards for the districts, building types and components. In addition to speaking at upcoming ZAP meetings, the Planning Department is always available to meet with these professional groups to hear specific feedback and review cases studies to determine where the ordinance requires clarity or refinement.

In addition, staff plan to present an updated community engagement schedule through the end of the year, along with an outline for a broader and comprehensive engagement strategy for 2021.

Attachments

Attachment A Responses to Councilor questions and comments from the 10/1 meeting

Attachment B Responses to Councilor questions and comments for the 10/15 meeting

Attachment C Draft zoning for Rear Lots and Courtyard Cluster

Attachment D Draft zoning diagrams and tables

Attachment A

Q: Why can a front facing garage be built up to 50% of the front elevation?

A: In a previous version of this ordinance, front facing garages could be no more than 40% of the total front elevation. However, this was determined to be too restrictive, and changed to 50%. Staff is working with our consultant and building professional groups to further refine this standard.

Q: What happens to properties with nonconforming garages?

A: Properties made nonconforming under the proposed ordinance would become legally nonconforming, just as many homes and garages are today. Nonconformities are granted certain protections under Mass. General Law Ch. 40A, Section 6. A legally nonconforming garage could remain as is in perpetuity with no need for a Special Permit or other discretionary approval. If a property owner wished to alter or extend the garage in a way that increased the nonconformity (for example, widen a garage that already exceeded the maximum length allowed), the owner could seek relief under 40A, Section 6. Such relief is currently granted by the City Council through a Special Permit, and Section 7.8.2.C of the current zoning ordinance requires the City Council make a finding that “such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury.”

Q: Setting the maximum width for driveways at 10 feet makes sense in some neighborhoods, but in others it could be very difficult. Would it make more sense to set the maximum width to 12 feet everywhere instead?

A: Planning staff agree that 12 feet is an appropriate maximum driveway width for one-way traffic. Staff will work with ISD, DPW, and the Fire Department to make a final revised recommendation.

Q: Should we allow front facing garages that are equal in frontage to the porch?

A: There was no consensus from the Committee that this should be included in the ordinance, but staff can look more into this issue if there is interest in pursuing this option.

Q: Would new 3-car garages be allowed? If the ordinance is changed to have a maximum of two parking stalls per dwelling unit, it might not make sense to have 3-car garages.

A: This is something the Planning Department will need to discuss with ISD to make sure this ordinance does not conflict with their regulations in the draft.

Q: Are the required bike parking spots meant to go outside or inside? Can we also require bike parking for structures with two dwelling units?

A: Bicycle Parking is defined in Article 8, Sec. 8.1.3. The draft of Article 8, released in October 2018, can be found at this link: <http://www.newtonma.gov/civicax/filebank/documents/94718>. Article 8 will be discussed at ZAP as part of the Article-by-Article review process. The latest proposal requires 0.5 bicycle parking spaces per dwelling unit (see Sec. 3.7.3). Meaning, a two-unit development requires a minimum of 1 bicycle parking space.

Q: How are ribbon driveways counted against lot coverage?

Attachment A

A: It is possible that just the paved part of a ribbon driveway would count towards lot coverage, but this still needs to be clarified. The Zoning Redesign team is discussing this topic with Current Planning, and other departments, to better understand how ribbon driveways should be measured.

Q: Are you saying I can't park in my setback under this proposed ordinance?

A: Yes, and in fact that is also the case under the current rules, you can only have a certain number of stalls within a setback. It's not clear how and when this rule is enforced though, so planning staff can discuss this with ISD.

Q: Do we have a way to handle slopes, retaining walls, etc. for driveways?

A: Anything existing can be maintained as a legally nonconforming structure. There is an exemption for land that has an extreme slope, but staff will need to work with ISD to determine if that exemption is an appropriate solution on its own or if this ordinance needs to address these issues specifically. Extreme examples of topography may also qualify for a variance.

Q: People like circular driveways. Rather than requiring a Special Permit for a second curb, should we just say that you can only have two curb cuts if you have a certain size lot?

A: Staff can explore this option and work to develop an appropriate recommendation.

Q: Are there any other ways we can discourage black asphalt?

A: The draft ordinance discourages black asphalt by including it within the Lot Coverage definition.

Q: It seems to make sense to allow driveways to be allowed within the side setback so long as a minimum of 3 feet is maintained from the property line, but what about narrow lots?

A: Staff will explore this concern. One option could be to require a 3 ft buffer in residence districts with larger lots (R1 and R2) and not require a buffer in Residence Districts with smaller/narrower lots (R3, R4, and N).

Q: How could the unbundled market rate parking described in section 3.7.1.c be accomplished? Aren't parking spaces by definition often sold with the home?

A: Staff will look into clarifying this regulation. It may be appropriate to only apply this regulation to developments over a certain number of units.

Q: How will someone parking illegally be enforced under this proposed draft?

A: Staff will continue to work with ISD and other departments to understand how and when these rules will be enforced if they are adopted.

Attachment B

Q: Are the minimum depths laid out in 3.5.1.c.4 reasonable amounts for rear lots?

A: Staff believes that the minimum depths (100 feet for the R1 and N districts, 75 feet for R2, R3, and R4) are reasonable depths, but if it is the sentiment of the Committee that these are not sufficient, they can be reevaluated.

Q: How was lot coverage determined for Courtyard Clusters?

A: Lot coverage for Courtyard Clusters was determined through reviewing case studies. Lot coverage, along with the other standards (frontage, setbacks, etc.) regulate to ensure that any possible development is in scale and proportion with the neighborhood. The case study for 473 Waltham (<http://www.newtonma.gov/civicax/filebank/documents/105285>) illustrates this.

Q: Are there other examples of cluster housing developments in Massachusetts or the Northeast beyond one mentioned in Concord that would match the conditions in Newton?

A: Yes, there are other examples of such housing developments. One example is [Cornerstone Village](#) in Cambridge, MA. It is true that there are many other examples in other parts of the country, particularly the Northwest.

Q: What is the lot size needed to apply for a cluster housing special permit?

A: Courtyard Clusters are allowed in the R4 and N districts and require three quarters of an acre.

Q: Section 3.5.3.C.1 lists 50 feet as the frontage required for a Courtyard Cluster, this seems very small. Is this the correct number?

A: Yes, this is the correct number.

Q: If it is decided that 1- and 2-unit buildings don't require any parking, will parking be required for Courtyard Clusters? Is there a minimum?

A: ZAP will need to have an in-depth discussion regarding parking minimums, but in the draft as written, Courtyard Clusters would be subject to the same parking restrictions as other residential structures.

Q: Will Courtyard Clusters allow for too much density? It appears that they will incentivize developers to combine lots and tear down existing structures

A: It is important to note that Courtyard Clusters would only be allowed in R4 and N districts, and still need to comply with all setback requirements, lot coverage maximums, and other controls which will limit their size. Looking at current lots in the proposed R4 and N districts, only 50 exceed the lot size requirement. For reference, there are over 22,000 residential lots throughout Newton.

Q: What is the difference between a Multi Building Assemblage and a Courtyard Cluster?

A: Courtyard Cluster development is a residential building form that promotes community interaction through compact living clustered around a semi-private shared open space. Multi-building assemblages are allowed only in the Neighborhood General (N) district and may contain a mix of residential and commercial uses. Multi-Building assemblages can be attached or detached and are meant to serve as a transition between areas that are predominantly residential and village centers.

3.5. Alternate Lot/Building Configurations

3.5.1. Rear Lots

A. Purpose. The intent of this section is to diversify housing choices in the city while respecting the residential character and scale of existing neighborhoods. Rear Lot development allows for particularly deep residential lots to create an additional residential unit that is subordinate to the principal building.

A.B. Defined. A lot that has no or substandard frontage on a street, which has access to a street by either:

1. A “flag pole” or “pan-handle” shaped portion of the lot that is narrower than the minimum lot width and has street frontage, or
2. An easement over an adjoining lot that has street frontage.

B.C. Standards.

1. A rear lot may only be created from an interior lot.
2. A rear lot must meet the ~~lot frontage, lot depth,~~ setback, and lot coverage standards of the existing interior lot and the proposed rear lot.
3. The front lot line of a rear lot is the rear lot line of the adjoining lot fronting the street. may be either:
 - ~~a.~~ ~~The rear lot line of the adjoining lot fronting the street; or~~
 - ~~b.~~ ~~A lot line parallel to the driveway and perpendicular to the street as designated by the property owner at the time of the special permit application.~~
 - a. Minimum lot frontage is measured along this line.
4. No newly-created rear lot may create a non-conformity on the front lot. If the front lot does not have an existing principal building or is proposed for development/ redevelopment at the same time as the creation of the rear lot, the following minimum depth for the front lot is required in each district:

a. Residence 1:	100 ft
b. Residence 2:	75 ft
<u>c.</u> Residence 3:	75 ft
<u>e-d.</u> Residence 4:	<u>75 ft</u>
d-e. Neighborhood General:	100 ft
- ~~5.~~ ~~A building type placed on a rear lot configured according to 3.6.1.B.3.a must be placed such that no more than 50% of the building width is behind the building on the lot fronting the street, as viewed in a direct line from the existing interior lot and the proposed rear lot.~~

~~6-5.~~ Only a House C building type may be placed on a rear lot.

G.D. Review Criteria. The creation of a rear lot requires a special permit from the Planning Board designated Special Permit Granting Authority in accordance with the procedures described in Article 11. In its discretion to approve or deny a special permit authorizing the creation of a rear lot, the Special Permit Granting Authority must find that the application meets the following criteria:

1. The criteria for all Special Permits specified in Sec. 11.4.3.

2. Design and landscaping are compatible with the neighborhood and adjacent properties.
3. Landscaping and other screening strategies serve to clearly delineate the private yards of the proposed dwelling on the rear lot and that of buildings on abutting lots.
4. Access to the rear lot is sufficient to accommodate public safety needs.

3.5.3. Courtyard Cluster

A. Purpose. The intent of this section is to provide an alternative housing option that promotes community interaction through compact living clustered around a semi-private shared open space. Because of the smaller than typical residential building types, Courtyard Cluster development is meant to provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings. Courtyard Clusters can provide flexibility for families as their needs change over time and, in particular, provide options for seniors looking to downsize.

A.B. Defined. A series of smaller than typical residential building types surrounding a shared courtyard green space. The Courtyard Cluster is scaled to fit within neighborhoods of residential building types and provide units that are smaller than average for the area in a setting where some features, like parking and outdoor amenity spaces, are located in common facilities.

B.C. Standards.

1. Lot Standards.

District	Lot Size	Lot Frontage	Lot Coverage
	Min	Min	Max
R1	1 ac	50 ft	30%
R2	1 ac	50 ft	40%
R3	.75 ac	50 ft	50%
R4	.75 ac	50 ft	50%
N	.75 ac	50 ft	60%

2. Building Types and Additional Standards. The following building types may be used in a courtyard cluster. Unless varied by the standards listed here, all other standards for each building type apply.

District	Building Types	Footprint Limits
		Max.
Residence 1	House C	1200 sf
	House D	1400 sf
Residence 2	House C House B	1200 sf
Residence 3	House C House B Two-Unit Residence	1200 sf
Residence 4	Courtyard Cluster Building Type House C House B Duplex Two-Unit Residence	1200 sf
Neighborhood General	Courtyard Cluster Building Type House B House C Duplex Two-Unit Residence Triplex 3-Unit Building	1200 sf House B; House C, and Duplex: 1200 sf Triplex: 1400 sf

3. Buildings must front the courtyard or the public street. No building may orient a rear wall to the courtyard or street.

~~3.4.~~ Buildings must be separated by a minimum distance of 15 feet.

4.5. Courtyard Requirements.

- a. A minimum of 400 square feet per unit of courtyard is required with a minimum width and depth of 20 feet.
- b. At least 50% of the buildings must abut the courtyard.
- c. All buildings must be within 60 feet of the courtyard as measured from the front door to the edge of the courtyard.
- d. The courtyard must have buildings abutting at least two sides.

~~5.6.~~ Courtyard clusters may not contain streets.

~~6.7.~~ Driveways may not be located between any building and the court.

7.8. Parking.

- a. Parking may be located in or under a building, in a surface lot, or in detached garages, provided that parking is screened from view from adjoining properties and the street.
- b. Parking may be located between any two buildings and a rear or side lot line.

~~8.9.~~ An existing House A, House B, House C, House D, ~~Duplex Two-Unit Residence, 3-Unit Building Triplex,~~ or Shop House which may be non-conforming with respect to the standards of this section, shall be permitted to remain, but the extent of the non-conformity with the courtyard cluster requirements may not be increased.

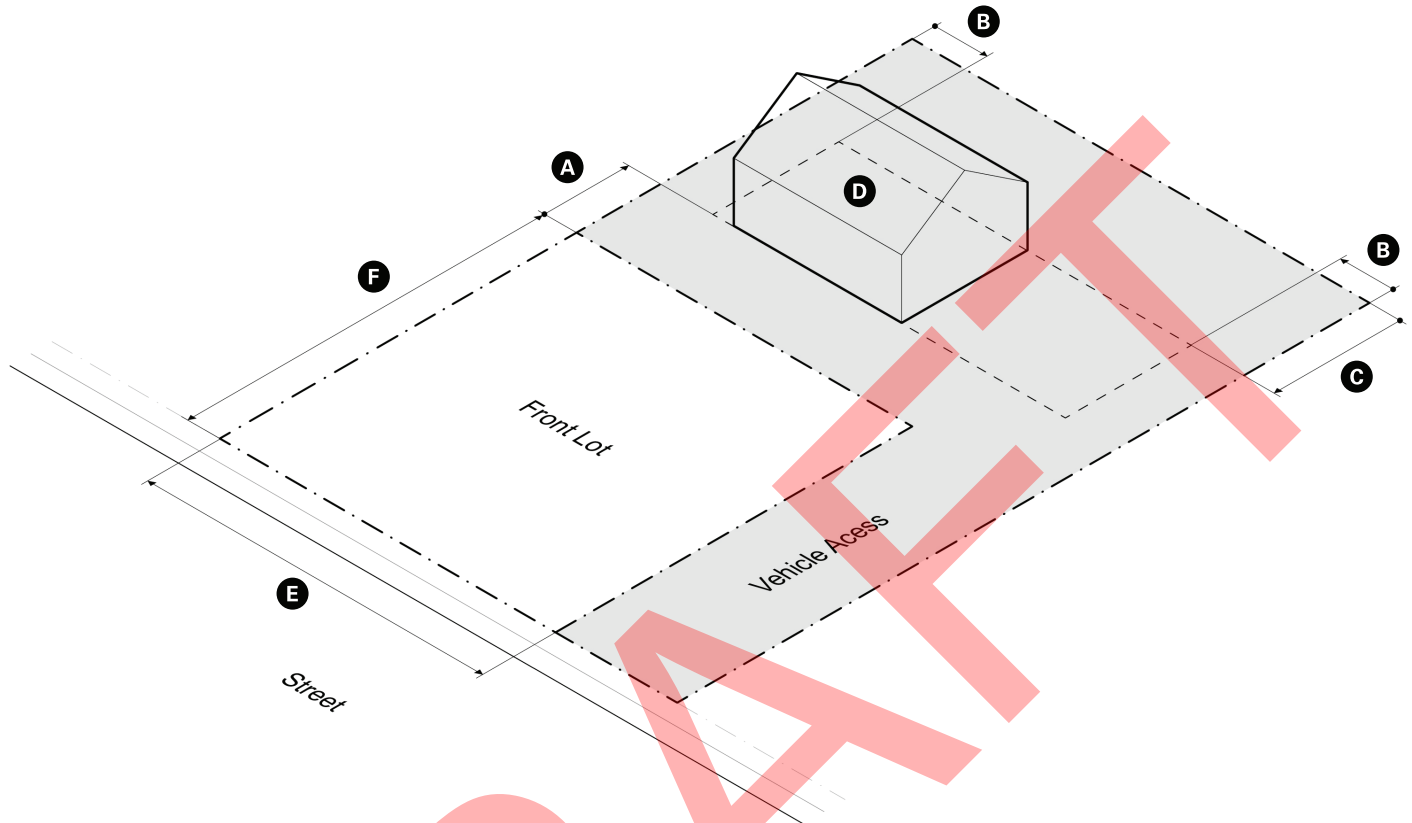
G.D. Review Criteria. A Courtyard Cluster requires a Special Permit in accordance with the procedures described in Article 11. In its discretion to approve or deny a special permit authorizing a courtyard cluster, the Special Permit Granting Authority must find that the application meets the following criteria:

1. The criteria for all Special Permits specified in Sec. 11.4.3.
2. Design and landscaping are compatible with the neighborhood and adjacent properties.
3. The landscaped areas and trees are preserved and/or enhanced, especially to serve as a buffer to neighboring lots.
4. ~~On and Off-street~~ parking available provides an adequate supply of parking (~~drawing guidance from existing standards in the Newton Zoning Ordinance Sec. 3.7~~) while also minimizing the presence of large parking areas and extensive areas of pavement.

ATTACHMENT D

3.5.1 Rear Lots

**Flag-pole / Pan-handle or
Easement over Adjoining Lot**

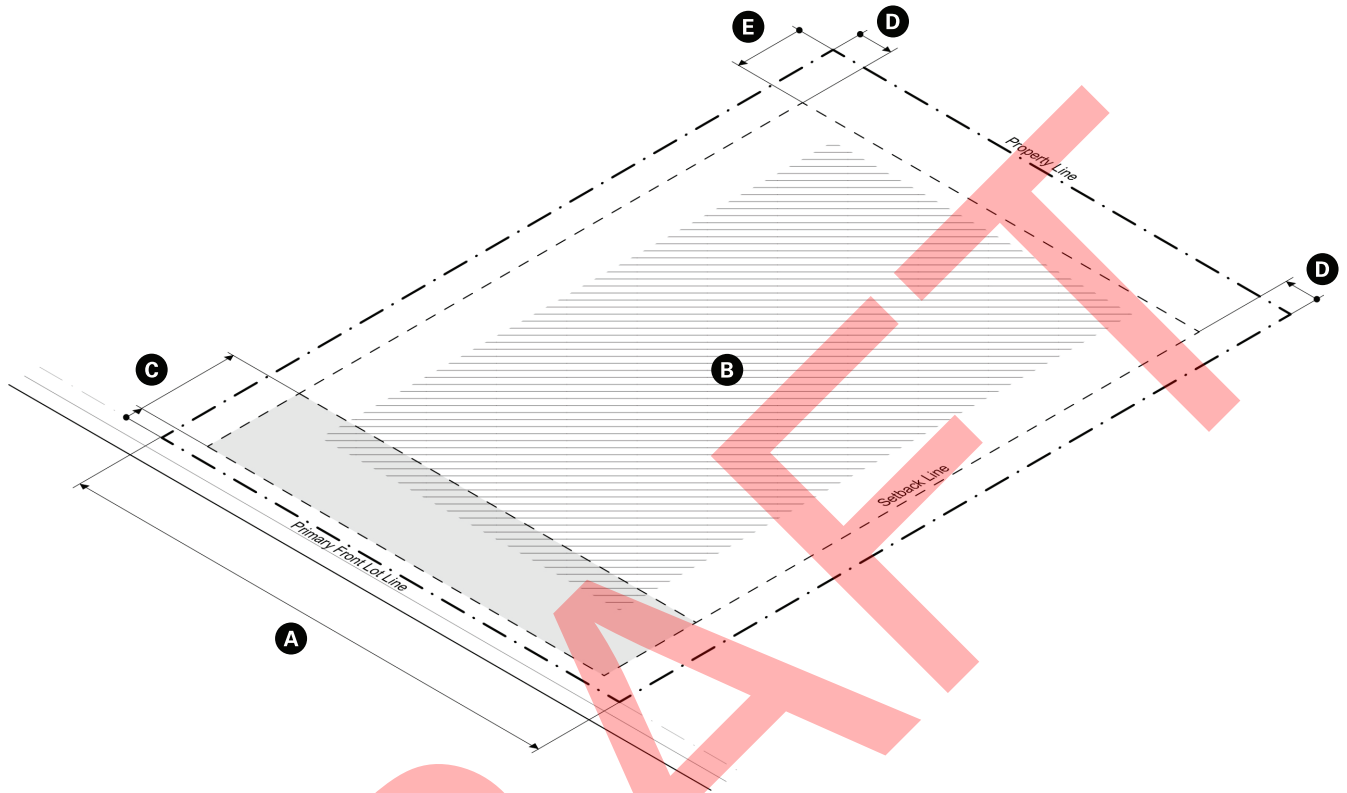


Rear Lot	
Lot Characteristics	
Lot Coverage	set by district
Setbacks	
A Front	set by district
B Side	set by district
C Rear	set by district
Building Type	
D House	Type C

Front Lot		
Lot Characteristics	min	max
E Lot Frontage	set by district	
Lot Coverage	set by district	
Lot Setbacks	set by district	
F Lot Depth if the lot does not have an existing principal building or is proposed for development/ redevelopment at the same time as the creation of the rear lot		
R1	100 ft	--
R2	75 ft	--
R3	75 ft	--
R4	75 ft	--
N	100 ft	--

ATTACHMENT D
 3.5.3 Courtyard Cluster

Lot Standards

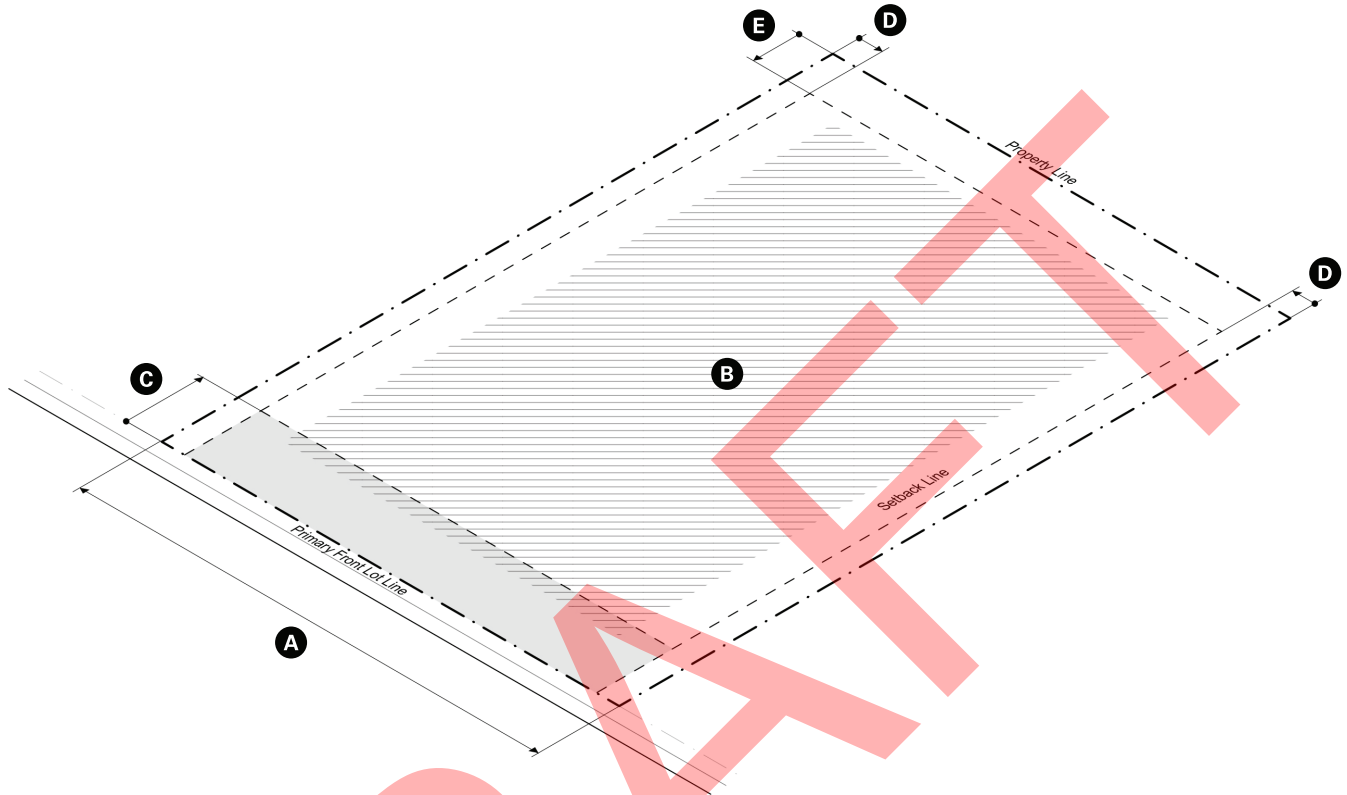


R4 - Courtyard Cluster

Lot Characteristics	min	max
Lot Size	0.75 ac	--
A Frontage	50 ft	--
B Lot Coverage	--	50%
Lot Setbacks	min	max
C Front	5 ft	35 ft
D Side	10 ft	--
E Rear	20 ft	--

ATTACHMENT D
 3.5.3 Courtyard Cluster

Lot Standards

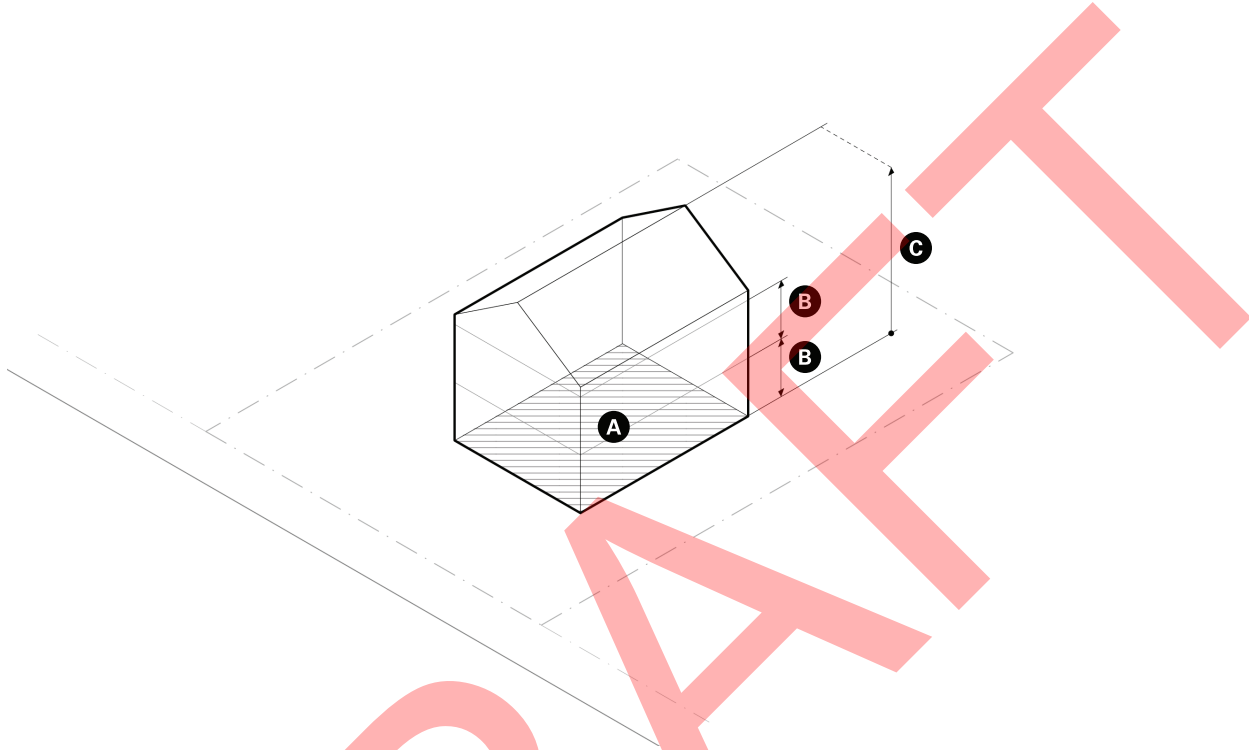


N - Courtyard Cluster

Lot Characteristics	min	max
Lot Size	0.75 ac	--
A Frontage	50 ft	--
B Lot Coverage	--	60%
Lot Setbacks	min	max
C Front	0 ft	25 ft
D Side	7.5 ft	--
E Rear	15 ft	--

ATTACHMENT D

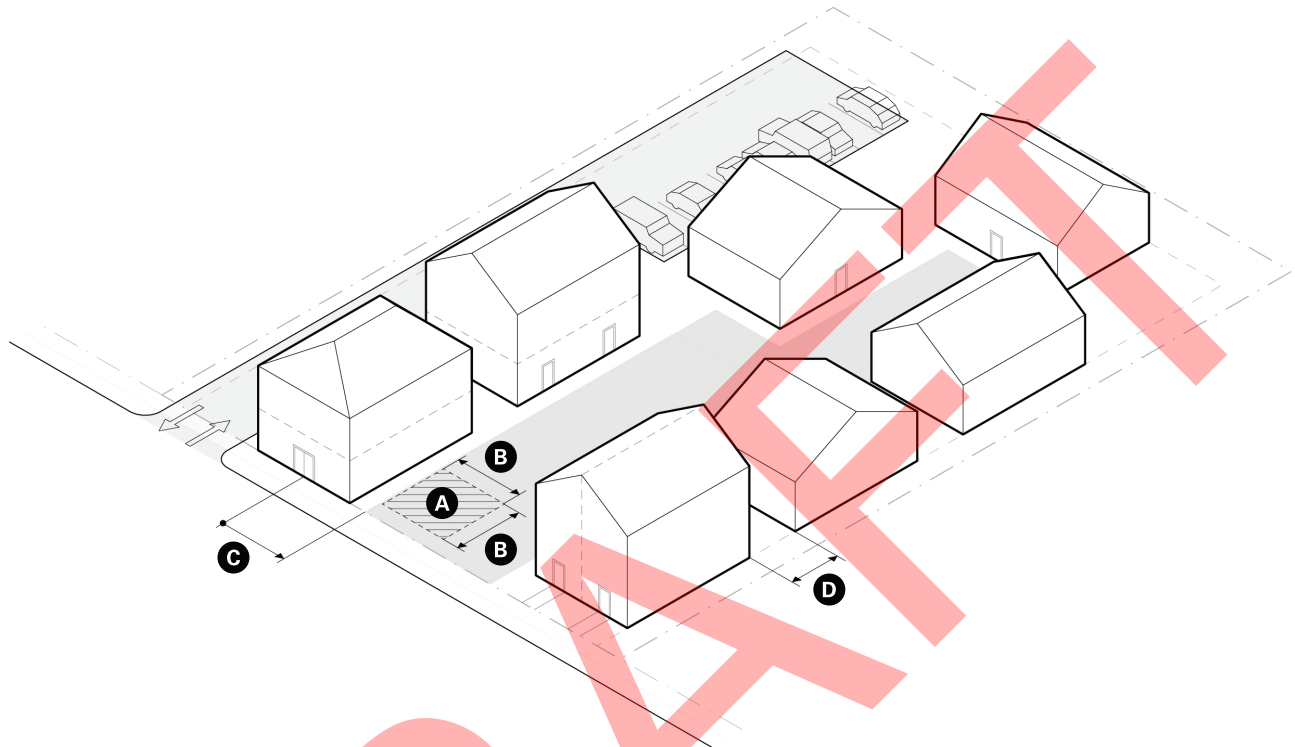
3.2.x. Courtyard Cluster House



Building Dimensions	min	max
A Building Footprint	--	1,200 sf.
B Story Heights	--	12 ft
C Number of Stories	--	2.5 stories

ATTACHMENT D
 3.5.3 Courtyard Cluster

Courtyard Requirements and Parking
Illustration shows N District



Courtyard Requirements	min	max
A Area of courtyard per unit	400 sf	--
B Width and depth of courtyard per unit	20 ft	--
C Distance from building front door to the edge of the courtyard	--	60 ft
D Distance between buildings	15ft	--