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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** Updated Last: June 25, 2021  
Original: May 7, 2021

**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:** **#150-21 Requesting an amendment to Chapter 30**  
DIRECTOR OF PLANNING & DEVELOPMENT requesting an amendment to Chapter 30 to allow for flexibility in building story heights without exceeding maximum building heights in business, mixed use and manufacturing districts and to clarify the maximum FAR in business and manufacturing districts where none is currently specified.

**HEARING DATE:** June 28, 2021

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

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**Overview**

The Planning and Development Department proposes amending provisions of the Zoning Ordinance pertaining to building and story heights in Sec. 1.5 (Rules of Measurement) and Article 4 (Business, Mixed use & Manufacturing Districts). This memo provides an overview of the revisions proposed to allow for flexibility in building story heights without exceeding maximum building heights in business, mixed use, and manufacturing districts.

**Background**

Working closely with the Economic Development Commission (EDC), the Planning Department recommends amending the zoning code to better reflect current trends and needs in manufacturing and Research & Development uses, as well as general office and retail space, in order to diversify Newton's

economic base and maintain commercial tax revenue. To that end, the City Council passed [revisions to the zoning code](#) clarifying R&D uses this February.

The Newton Zoning Ordinance provides for maximum building heights in tables that tie building height directly to the number of stories. Generally, a floor to floor height of 12 feet is assumed and each additional story corresponds to an additional 12 feet of allowable height. Recently, developers interested in building lab space have commented on how the current limit on story heights in business, mixed use, and manufacturing districts is a barrier to R&D uses, as well as some ground floor retail businesses. R&D uses require a minimum of 14-foot floor to floor heights and some general office uses also require additional height. New commercial buildings may also be looking for higher floor to floor heights to accommodate additional HVAC equipment in response to COVID-19. In collaboration with the EDC, the Planning Department has identified changes in the Zoning Ordinance to dimensional standards in these districts that can help create needed flexibility in the interior of buildings, while retaining the same maximum building height currently allowed.

### Current Zoning

The Zoning Ordinance establishes dimensional standards for business (Sec. 4.1), mixed use (Sec. 4.2) and manufacturing (Sec. 4.3) districts, with a maximum overall height for buildings in that district as well as a maximum number of stories. An example of the pairing of those two units of measurement can be seen in the table below, excerpted from Sec. 4.1.3. This linking of building height and number of stories has led to some unintended consequences.

Height (max)	BU1	BU2	BU3	BU4	BU5
2 stories	24'	24'	36'	36'	36'
3 stories	36'	36'	36'	36'	36'
4 stories	--	48'	48'	48'	48'

For example, in BU4 a 3-story building may be up to 36 feet tall by-right, and a 4-story building may be up to 48 feet by Special Permit. But it is not clear in the table that a 3-story building in BU4 could be up to 48 feet tall by Special Permit as well. ISD and Current Planning interpret this to mean the building would need to be 4 stories tall in order to reach the maximum allowed height of 48 feet.

Because of the link established in these tables, in effect the ordinance assumes an average story height of 12 feet and does not allow for variability in story height. Limiting story heights in this way serves as an impediment to uses like R&D, which typically requires floor-to-floor height between 14 and 16 feet for increased airflow. The ability to have flexibility in story heights would also allow mixed use buildings to provide taller ground floors to differentiate retail and commercial use from residential or office spaces on the upper floors.

This pairing together of building height and story height does not exist in residential dimensional standards (Sec. 3.1). Residential uses simply have a maximum height and a maximum number of stories and may not exceed either one.

At the May 10, 2021 Zoning and Planning meeting, it was asked why the ordinance uses this method of regulating commercial building heights and if there are any downsides to consider regarding these proposed changes. Staff reviewed the pre-2015 version of the zoning ordinance to see if this framework was inadvertently changed in the recodification process, but this pairing together of building and story height predates the conversion in 2015. Though the rationale for why this framework was adopted in the past is not clear, the Planning department reviewed these changes with the chief zoning official and the heads of the inspection services department, and they anticipate no significant issues with separating the two measurements. Because the proposed changes will address the known need for flexibility in commercial buildings while still retaining the existing limit on maximum height and a maximum number of stories, the potential for negative unintended consequences is minor.

In reviewing these dimensional standards, staff have also identified several unclear or misleading aspects of the tables that this amendment would clarify. For example, the dimensional tables for business and manufacturing districts are missing the floor area ratio (FAR) in some districts for two- or three-story buildings. In Sec. 4.1.3, the FAR shows as “Not Allowed” for buildings up to 2 stories in BU3, BU4, and BU5, which is misleading. The amendment also proposes cleaning up and clarifying some of the language in the tables regarding the MU3/TOD district and Limited Manufacturing (LM) district. The MU3 district is the only non-residential district where stories and height are not linked. Therefore, it is not necessary to make any changes to the MU3 district, only to clarify that Section 4.2.4 contains the height, FAR and other regulations for the MU3 district.

## **Proposed Zoning**

### Changes to Definition in 1.5.4

- Amend definition of “Story” to clarify that a building may not exceed either the maximum number of stories or the maximum allowed overall building height

### Changes to Sec. 4.1

- Decouple stories and heights in the tables in section 4.1 by reformatting tables. The maximum allowed height and maximum allowed number of stories by-right and by Special Permit will remain the same.
- Revise Sec. 4.1.3 to clarify that the maximum FAR allowed in the first row applies to both 1 and 2 story buildings
- Adding in the missing FAR maximums for 1 and 2 story tall buildings in BU3, BU4, and BU5 that were left out after the 2015 recodification

### Changes to Sec. 4.2

- Decouple stories and heights in the tables in section 4.2 by reformatting tables. The maximum allowed height and maximum allowed number of stories by-right and by Special Permit will remain the same.
- Revise the MU3/TOD column in 4.2.2 to clarify that 3 stories are allowed in that district by right, and for guidance on what would be allowed subject to a Special Permit to refer to Sec. 4.2.4.
- Revise 4.2.3 to refer to Sec. 4.2.4 for maximum height by Special Permit and for FAR allowed in buildings 4 stories and above

Changes to Sec. 4.3

- Decouple stories and heights in the tables in sections 4.3 by reformatting tables. The maximum allowed height and maximum allowed number of stories by-right and by Special Permit will remain the same.
- Strike dashes in Sec. 4.3.3 and replace with asterisks and a footnote referring to the Wells Avenue deed restriction and amendments for FAR in LM districts

**Summary**

The proposed amendments do not change the maximum by-right or Special Permit building heights in any zoning district. The amendments only allow for buildings to be built to that same height, but with less density (fewer stories). This flexibility is critical in allowing for new buildings to be constructed for lab or R&D uses. Changes to the FAR tables are a cleanup item leftover from the 2015 recodification.

**Attachment A:** Draft ordinance revisions (redline)

## Attachment A

### Sec. 1.5. Rules of Measurement

#### 1.5.4. Height

##### A. Defined:

1. The vertical distance between the elevations of the average grade plane and the highest point of the roof. Not included in such measurements are:
  1. Cornices which do not extend more than 5 feet above the roof line;
  2. Chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed 15 feet in height above the roof line;
  3. Enclosures for tanks which do not exceed 20 feet in height above the roof line and do not exceed in aggregate area 10 percent of the area of the roof; and
  4. Solar panels which do not extend more than 1 foot above the ridgeline or in the case of a flat roof, no more than 4 feet above the parapet, unless greater extensions are allowed by special permit; and
  5. Towers, spires, domes and ornamental features.
2. No space above the maximum height shall be habitable.

**B. Story.** That portion of a building, any part of which is above the ground elevation, excluding basements, contained between any floor and the floor or roof next above it. **No portion of a building shall be erected which exceeds the allowed maximum number of stories or exceeds the allowed maximum height, as indicated, except as set forth in Section 1.5.4.A.1. above.**

## Sec. 4.1. Business Districts

### 4.1.1. District Intent

[Reserved]

### 4.1.2. Dimensional Standards

#### A. Applicability.

1. The density and dimensional controls in Sec. 4.1.2 and Sec. 4.1.3 apply to all buildings, structures and uses in each of the listed districts.
2. Where more than one dwelling unit is provided on a lot in certain Business districts, the following residential density control shall apply:

Business District	BU1	BU2	BU3	BU4
Lot Area Per Unit (min)	1,200 sf	1,200 sf	1,200 sf	1,200 sf

3. Where a density or dimensional control is not set forth in the following tables for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the City Council.
4. Where a lot does not meet these standards it is nonconforming (see Sec. Sec. 7.8 ).

#### B. Approval Process.

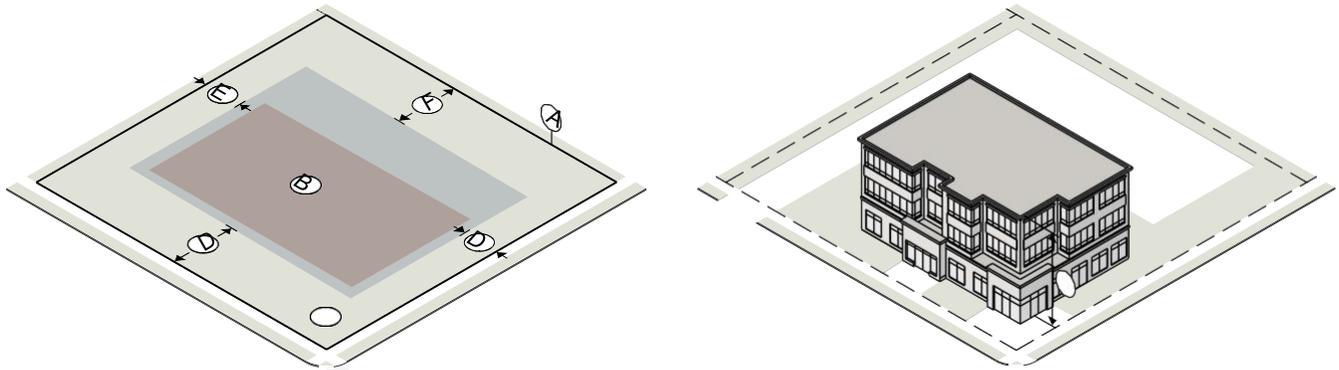
1. **Special Permit Required.** A special permit is required for any development in the business districts of 20,000 square feet or more of new gross floor area.
2. **Site Plan Review Required.** A site plan is required for any development in the business districts that ranges from 10,000 to 19,999 square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

3. **Stories.** A special permit is required based on stories according to the following table:

Stories	BU1	BU2	BU3	BU4	BU5
<u>Stories(max) – by right<sup>2</sup> stories</u>	<u>2P</u>	<u>2P</u>	<u>3P</u>	<u>3P</u>	<u>3P</u>
<u>Stories(max) – by Special Permit<sup>3</sup> stories</u>	<u>3SP</u>	<u>4SP</u>	<u>4P</u>	<u>8P</u>	<u>4P</u>
<u>4 stories or more</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>

P = Allowed by Right  
 SP = Special Permit by City Council Required  
 -- Not Allowed

### 4.1.3 All Building Types in Business Districts



Business Districts	BU1	BU2	BU3	BU4	BU 5
<b>Lot Dimensions</b>					
<b>A</b> Lot Area (min)					
2 stories or less	10,000 sf	10,000 sf	10,000 sf	10,000 sf	0 sf
3 stories	10,000 sf	10,000 sf	10,000 sf	10,000 sf	0 sf
4 stories	--	10,000 sf	10,000 sf	10,000 sf	0 sf
5 stories	--	--	--	25,000 sf	--
6 stories	--	--	--	30,000 sf	--
7 stories	--	--	--	35,000 sf	--
8 stories	--	--	--	40,000 sf	--
<b>B</b> Lot Coverage (max)	--	--	--	--	0.25
<b>C</b> Beneficial Open Space	--	--	--	--	--
<b>Setbacks</b>					
<b>D</b> Front (min)					
2 or 3 stories	Average*	Average*	Average*	Average*	15'
4 or more stories	--	Lesser of ½ bldg ht or Average*	Lesser of ½ bldg ht or Average*	Lesser of ½ bldg ht or Average*	15'
<b>E</b> Side (min)	½ bldg ht or equal to abutting side yard setback; abutting residential district: greater of ½ bldg ht or 15'				10'; 20' abutting residential district
<b>F</b> Rear (min)	Abutting residential or Public Use district Not abutting residential or Public Use district				Greater of ½ bldg ht or 15' 0' 20' 15'; 20' abutting residential district
<b>Height</b>					
<b>G</b> Height (max)					
2 stories	24'	24'	36'	36'	36'
3 stories	36'	36'	36'	36'	36'
4 stories	--	48'	48'	48'	48'
5 stories	--	--	--	60'	--
6 stories	--	--	--	72'	--
7 stories	--	--	--	84'	--
8 stories	--	--	--	96'	--
<b>G</b> Stories (max) see also Sec. 4.1.2.B.3.	3	4	4	8	4
<b>Height (max)</b>					
Height – by Right	24'	24'	36'	36'	36'
Height- by Special Permit	36'	48'	48'	96'	48'
<b>Floor Area Ratio</b>					
Floor Area Ratio (max)					
Up to 2 stories	1.00	1.00	1.50	1.50	1.50
3 stories	1.50	1.50	1.50	1.50	1.00
4 stories	--	2.00	2.00	2.00	1.50
5 stories	--	--	--	2.25	--
6 stories	--	--	--	2.50	--
7 stories	--	--	--	2.75	--
8 stories	--	--	--	3.00	--

\* Average setback is described in Sec. 1.5.3 In a Business 1, 2, 3 and 4 district, a vacant lot or a lot where a building is set back more than 10 feet is counted as though occupied by a building set back 10 feet.

-- Not Allowed

## Sec. 4.2. Mixed Use Districts

### 421. District Intent

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

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

### 421. Dimensional Standards

A. Applicability

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

Mixed Use District	MU1	MU2	MU3/TOD	MU4
Lot Area Per Unit (min)	10,000 sf	10,000 sf	800 sf	1,000 sf

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

B. Approval Process.

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

Stories	MU1	MU2	MU3/TOD	MU4
<del>Stories (max) - by right 2-stories</del>	<del>3P</del>	<del>2P</del>	<del>3NA</del>	<del>3P</del>
<del>Stories (max) - by Special Permit. See also Sec. 4.2.3-stories, mixed-use-residential</del>	<del>4NA</del>	<del>5NA</del>	<del>Refer to Sec. 4.2.4NA</del>	<del>4NA</del>
<del>4-stories</del>	<del>SP</del>	<del>SP</del>	<del>NA</del>	<del>SP</del>

~~5 stories, mixed use residential~~      ~~NA~~      ~~NA~~      ~~NA~~      ~~SP~~

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P = Allowed by Right

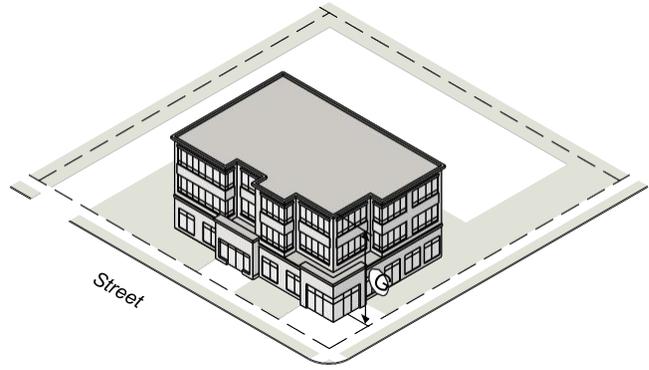
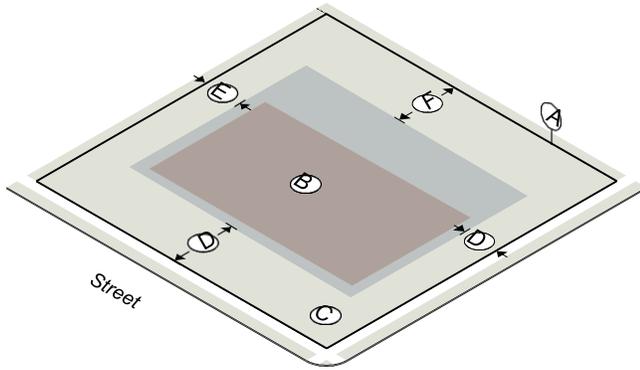
SP = Special Permit by City Council Required

NA=Not Applicable, -- Not Allowed

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(Ord. No S-260, 08/03/87; Ord. No. A-73, 04/04/16; Ord. No. A-99, 01/17/17)

422 All Building Types in Mixed Use



Districts

Mixed Use Districts	MU1	MU2	MU3	MU4
<b>Lot Dimensions</b>				
(A) Lot Area (min)				
2 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
3 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
4 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
5 stories	--	--	9 ac	10,000 sf
(B) Lot Coverage (max)	--	--	--	--
(C) Beneficial Open Space	--	--	n/a by right; 15% by special permit	See <a href="#">Sec. 4.2.5</a>
<b>Building Setbacks</b>				
D Front (min)				
1 story	15'	15'	See <a href="#">Sec. 4.2.4</a>	See <a href="#">Sec. 4.2.5</a>
2 or more stories	total ht of bldg	total ht of bldg		
Parking Setback	20'	15'		
E Side (min)				
Abutting residential or Public Use district	Greater of 1/2 bldg ht or 20'	Greater of 1/2 bldg ht or 20'	See <a href="#">Sec. 4.2.4</a>	See <a href="#">Sec. 4.2.5</a>
Not abutting residential or Public Use district	7.5'	7.5'		
Parking setback	5'	5'		
F Rear (min)				
Abutting residential or Public Use district	Greater of 1/2 bldg ht or 20'	Greater of 1/2 bldg ht or 20'	See <a href="#">Sec. 4.2.4</a>	See <a href="#">Sec. 4.2.5</a>
Not abutting residential or Public Use district	7.5'	0'		
Parking setback	5'	5'		
<b>Building and Structure Height</b>				
(G) <del>Height (max)</del>				
<del>2 stories</del>	<del>36'</del>	<del>24'</del>	<del>36' by right;</del>	<del>24'</del>
<del>3 stories</del>	<del>36'</del>	<del>36'</del>	<del>135' by</del>	<del>36'</del>
<del>4 stories</del>	<del>48'</del>	<del>48'</del>	<del>special permit</del>	<del>48'</del>
<del>5 stories</del>	--	--		<del>60'</del>
(G) <del>Stories (max) see also <a href="#">Sec. 4.2.2</a></del>	<del>3</del>	<del>4</del>	<del>4</del>	<del>8</del>

<b>Height (max)</b>				
Height – by Right	24'	24'	36'	36'
Height- by Special Permit	36'	48'	48'	96'

Floor Area Ratio

<u>Up to 2 stories</u>	1.50	1.00	<del>1.0 up to 36'</del> 1.0	1.00
3 stories	1.50	1.50	<del>1.0 up to 135'</del> =	1.50
4 stories	2.00	2.00	<u>Refer to Sec. 4.2.4</u>	2.00
5 stories	--	--	<u>Refer to Sec. 4.2.4</u>	2.50
<u>6 stories and above</u>	--	--	<u>Refer to Sec. 4.2.4</u>	--

4.2.4 Additional Standards in MU 3/TOD

Any development permitted by special permit must meet the following requirements and the requirements of Sec. 4.2.3. The City Council may grant a special permit to allow exceptions to the by-right dimensional standards of the MU 3/TOD, provided that the requirements of this Sec. 4.2.4. are met and no dimension exceeds those allowed in Sec. 4.2.3 for the mixed-use development special permit.

- A. **Setbacks.** Any structure or building must be set back a distance equal to at least half the height of that structure or building from any lot line, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a Commonwealth of Massachusetts instrumentality, the setback may be 0 feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks. In accordance with the procedures provided in Sec. 7.3, the City Council may grant a spe

cial permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

## Sec. 4.3. Manufacturing Districts

### 4.3.1. District Intent

[Reserved]

### 4.3.2. Dimensional Standards

#### A. Applicability.

1. The density and dimensional controls in Sec. 4.3.2 and Sec. 4.3.3 apply to all buildings, structures and uses in each of the listed districts.
2. Where a density or dimensional control is not set forth in the following tables for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the City Council.
3. Where a lot does not meet these standards it is nonconforming (see Sec. 7.8).

#### B. Approval Process.

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

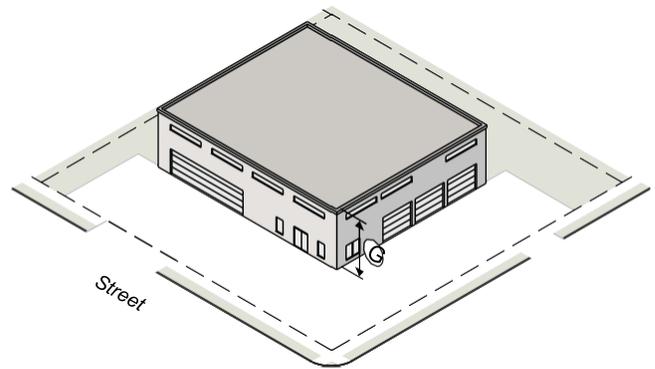
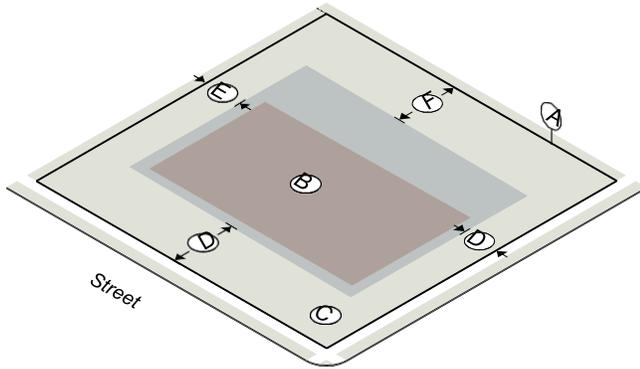
3. **Stories.** A special permit is required based on stories according to the following table:

Stories	LM	M
<del>Stories (max) -by right 2-stories</del>	<del>3<sup>P</sup></del>	<del>2<sup>P</sup></del>
<del>Height – by Special Permit 3-stories</del>	<del>3<sup>P</sup></del>	<del>3<sup>SP</sup></del>

~~P = Allowed by Right  
SP = Special Permit by City Council Required~~

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

### 433 All Building Types in Manufacturing Districts



Manufacturing Districts		LM	M
<b>Lot Dimensions</b>			
A	Lot Area (min)		
	2 stories	0	10,000 sf
	3 stories	0	10,000 sf
B	Lot Coverage (max)	0.25	--
C	Beneficial Open Space	--	--
<b>Building Setbacks</b>			
D	Front (min)	25'	Greater of 15' or ½ bldg ht or Average*
E	Side (min)		
	Abutting residential or public use district	40' abutting residential district	Greater of ½ bldg ht or 20' abutting residential or public use district
	Not abutting residential district	20'	½ bldg ht
	Parking setback	5'	5'; None for landscaping
F	Rear (min)		
	Abutting residential or public use district	40' abutting residential district	Greater of ½ bldg ht or 20' abutting residential or public use district
	Not abutting residential or public use district	20'	½ bldg ht
	Parking setback	5'	5'; None for landscaping
<b>Building and Structure Height</b>			
G	Height (max)		
	<del>Height – by right</del> 2-stories	<del>36'</del> 24'	24'
	Height- by special permit 3-stories	36'	36'
	<del>Stories (max) see also Sec. 4.3.2.B.3.</del>	<del>3</del>	3
<b>Floor Area Ratio</b>			
	Floor Area Ratio (max)		
	Up to 2 stories	**	1.00
	3 stories	**	1.50

-- Not Allowed

\* Average setback is described in [Sec. 1.5.3.](#)

\*\* [Refer to Wells Avenue deed restrictions and amendments](#)