



Zoning & Planning Committee

Report

City of Newton In City Council

Monday, August 16, 2021

Present: Councilors Crossley (Chair), Danberg, Albright, Krintzman, Baker, Wright, and Leary

Absent: Councilor Ryan

Also Present: Councilors Laredo, Markiewicz, Kalis, Malakie, and Greenberg

Planning & Development Board: Peter Doeringer (Chair), Kelley Brown, Sudha Maheshwari, Chris Steele, and Lee Breckenridge (alternate)

City Staff: Jen Caira, Deputy Director of Planning & Development; Cat Kemmett, Planning Associate; Marie Lawlor, Assistant City Solicitor; Zach LeMel, Chief of Long-Range Planning; Nathan Giacalone, Committee Clerk

#240-21 Requesting Ordinance Amendments to Chapter 30

DIRECTOR OF PLANNING AND DEVELOPMENT requesting ordinance amendments to the Newton Zoning Ordinance, Chapter 30 in order to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance.

Action: **Zoning & Planning Split Item #240-21 into (1) to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance; and (2) to amend the definition in Section 1.5.1.B Two Family Detached; Public Hearing Closed 6-0 (Councilor Leary not voting)**

Zoning & Planning Approved (1) 6-0 (Councilor Leary not voting)

Zoning & Planning Held (2) 6-0 (Councilor Leary not voting)

P&D Board Public Hearing Closed 5-0

P&D Board Approved (1) 5-0

P&D Board Held (2) 5-0

Notes: The Chair introduced the collection of proposed amendments to Chapter 30, referred to as “clean up” items, as mostly clerical in nature, but that amendments to clarify definitions and aspects of the garage ordinance may require more discussion. The full red-lined text of the proposed amendments is attached. The committee spent an earlier meeting reviewing these items in detail. Before opening the public hearing, Planning Associate Cat Kemmett will briefly present the proposed amendments. Next, Jay Walter will present on behalf of the Building Professionals Group, who have conducted their own independent review, and then collaborated with the Planning Department.

Ms. Kemmett began her presentation (PowerPoint attached), saying that some of the proposed changes are minor edits missed in the 2015 recodification effort while others are policy clarifications. She organized proposed amendments in three sections: 1. Housing Type Definitions, 2. Garage Ordinance, and 3. miscellaneous. Since the committee discussion in July, in further consultation with ISD, three previously proposed amendments were removed: Sec. 1.5.D Lot Coverage, Sec. 6.10.4 Recreational Marijuana Establishments, and Sec. 3.4.3.A.3 Accessory Buildings, special permit requirements.

Section 1: Definitions

Currently, adjacent garages in two-family buildings are not allowed because the definition in the current ordinance, Section 1.5.1.B Two-Family Detached, requires habitable space between the garages. Two-family homes constructed today separating the garages therefore have two-curb cuts, also resulting in additional paving. Ms. Kemmett then described two proposals meant to clarify this language. Both options would allow for more flexibility in garage placement. See attached text and illustrations. Additional minor amendments were proposed to the definitions of single-family detached, single-family attached, and multi-family housing, including using the word “building” in place of “structure”.

Section 2 Garages, Accessory Buildings

Front-facing garages set back over 10 feet are exempt from the maximum door widths. The proposed amendment would also exempt a detached or attached side facing garage behind the front elevation from the maximum door widths, except where the side facing garage is on a corner lot. Ms. Kemmett presented two options for this amendment. Option 1 would specify that a side facing garage must be located 10 feet or more behind the front elevation while Option 2 would not specify a distance. In addition, the special permit allowance for single-family homes would (1) be revised to allow for a second attached or detached garage, which was inadvertently removed and (2) clarify that someone seeking a special permit to exceed the 700 sf of garage space allowed by-right can do so in multiple garages, not just one.

Section 3: Miscellaneous

The proposed amendments in Section 3 comprise miscellaneous clarifications, cross references and scrivener’s errors.

Ms. Kemmett was thanked for her exceptionally well-organized work and clear presentation.

Public Comment

Jay Walter presented (PowerPoint attached) on behalf of the Building Professionals Group (Building Pros), which is a citizen led volunteer group of local building professionals who have been regularly scrutinizing aspects of zoning redesign. They conducted a close examination of the proposed cleanup items. The Building Pros support most of the proposed changes, with some specific recommendations. Mr. Walter said that regarding the definition of “Two-Family Detached”, Option 2 should be adopted as much simpler and clearer to enforce and to enable design flexibility. The Building Pros also recommended that the Multi-Family definition be revised to only specify the number of units and remove any language mentioning the number or configuration of entries. In addition, to commenting on the specific clean up zoning amendments, the Building Pros voiced their support that in the long-

term, zoning redesign should replace the terms “attached and detached” with clearer language, and that the term “dwelling unit” should be used in place of “family” when describing housing, since “family” is not defined in the code.

Architect Mark Sangiolo, a member of the Building Pros, said that imposing a 10-foot setback requirement behind the front elevation for side-facing garages would cause unnecessary design challenges, and that side-facing garages should be encouraged rather than set back from the main façade.

Architect Lisa Monahan a member of the Building Pros, elaborated on the Pros support of Option 2 as it would give the homeowner more options.

No other members of the public asked to speak. The Chair suggested leaving the public hearing open to allow the members of the Building Pros to contribute further to the deliberation as needed.

The Committee began by discussing the proposed revisions in Section 3.

Would the definition (proposed) in 1.5.4.D Basement.2. allow a basement to be six-feet above ground if the basement is 12’ tall, for a one or two-unit house that meets the maximum house height?

Ms. Caira answered that this amendment changes nothing regarding how single family or how grade and grade plane or basements are measured. Right now, there are two different sections relating to basements and grade plane and this proposed amendment will only clarify that one is not for single- and two-family housing.

The apparent change in definition of what constitutes the measurement of an accessory apartment (number 12 in the Section 3 list) is concerning as it could give the impression that more space is available than what is intended. Is there more clarification on this point?

Ms. Kemmett answered that the proposed definition is to clarify that accessory units are only not counted for the purposes of determining the housing type. Mr. LeMel added that the team met with Law, ISD, and Current Planning to confirm that this change would not at all alter how the calculations are made, rather clarify existing practice.

Councilors noted that in Land Use, there have been a number of situations when it has been unclear whether the applicant may calculate the accessory unit as a percentage of the entire building plus the accessory apartment or just the principle building. In addition, it has been unclear in the case of a two-family building, where one accessory unit is allowed, whether the applicant may calculate the size of the accessory unit according to the entire building or the unit to which it applies. Our understanding is the latter, and ISD only takes the principal unit into account and this change from Section 3 is helpful for clarification.

A straw vote on the proposed Section 3 amendments carried 6-0 (Councilor Leary not voting).

Questions and Answers:

It will be good (eventually) to remove the words “attached” and “detached”.

In the definition of two-family detached in 1.5.1.B, we describe one on top of the other or side by side. This does not allow Philadelphia style buildings or houses with small accessory units. Do these definitions prohibit those building types?

Ms. Kemmett said under Section 1 Option 1 this is correct, but Option 2 would allow for more flexibility as it removes the specifics of how to divide the unit.

The Committee then discussed the proposed revisions to Section 2.

Specific to whether there should be an exemption for door width on side-facing garages was whether to require that it (the garage door) be located a certain distance behind the front elevation.

Is this discussion about the width of the garage door? More interesting is what the door is facing, it is not necessary to mandate it to be 10 feet behind the front elevation.

Mr. LeMel answered that Planning did study this through two years of building permits. Single doors were typically 9-10 feet wide while some double doors were up to 18 feet wide. Cost and functionality limit the number of these large doors. The driveway also can have as much of a visual impact as the door.

It will be good if we can have an option for Section 2 that leads to less paving. The expense and oddity of large garage double doors will limit them as well.

It does not help neighbors to require that side-facing garages be 10-feet behind the front elevation.

Mr. Walter said the turning radius to get into side-facing garages can be a real (limiting) issue. He supported that it is not necessary to worry about large doors taking over the sides of buildings.

If Option 2 allows the homeowner to have an 18-foot wide door, does the homeowner still need to meet the 40/45% coverage on the side or can the house only be 20 feet deep and the garage door is most of the side of the house.

Ms. Kemmett explained that the Garage Ordinance, which the Council passed earlier this year, does not have percentage requirements, only door width requirements.

A straw vote in favor of the proposed amendment for Section 2, Option 2 carried 6-0 (Councilor Leary not voting). A straw vote in favor of all amendments in Section 2 carried 6-0 (Councilor Leary not voting)

The Committee then returned to discussing the proposed revisions to Section 1.

1.5.1. Building Types. B. Two-Family Detached

Why was habitable space required between garage units in the first place?

The current definition does not require it above the garages, but between them. At the time, two-family homes were being constructed that were thinly connected and the goal of these standards was to ensure that these homes were truly being built as units within a building.

Option 2 would be better as requiring habitable space above the garage makes the building overwhelming.

The Planning Department should pull the records from deliberations prior to this ordinance being adopted to help inform the specific problem this regulation was attempting to address.

(In the definition in Sec. 1.5.1.C.2. Single Family Attached) what is meant by “principle buildings”? How can they contain more than two dwelling units?

NOTE: This question pertains to the wording of the proposed edit: “A grouping of principal buildings containing more than two units in total.” Single Family, Attached structures may include more than two dwelling units, all of which are attached, or a grouping of three or more units in multiple buildings on a single lot.

Ms. Caira answered that **principle buildings are the primary structures on the site and are not accessory buildings**. Mr. LeMel added that based on the various zoning dimensional requirements for placing a single-family attached building, accessory buildings have different setbacks, and that the table in the Zoning Ordinance differentiates between principle and accessory buildings.

The single family attached definition can be addressed separately from rezoning the city.

The Chair noted that in deliberating the recodification adopted in 2015, it was proposed to use “dwelling unit” in place of “family” throughout the code, in part for clarity. This was rejected by the committee at the time.

Mr. Walter said that it may seem counterintuitive to have separate buildings in single family attached, but it helps reduce mass. He also said that requiring habitable space above garages was intended to limit “dog-bone houses” but (instead) led to more mass.

This section of the item should be held as there needs to be better understanding of the (consequential) differences between Options 1 and 2. Planning should explain in greater detail how it came to this proposal as it appears to be more than a simple ministerial change.

A straw vote to hold this one item as (2) Amend definition Section 1.5.1.B Two Family Detached which carried 6-0 (Councilor Leary not voting).

The Committee held a straw vote to approve the remainder of the proposed amendments in Section 1 which carried 6-0 (Councilor Leary not voting).

The Committee voted 6-0 to close the public hearing.

Councilor Danberg moved Hold (2) Amend definition Section 1.5.1.B Two Family Detached which carried 6-0 (Councilor Leary not voting).

Councilor Danberg moved to approval of all amendments covered by this item except (2) which carried 6-0 (Councilor Leary not voting).

The Planning & Development Board voted 5-0 to close the public hearing.

The Planning & Development Board voted 5-0 to approve the (1) and Hold (2)

Referred to Programs & Services Committees and Zoning & Planning Committees

#77-21

Request for review of Lab, Research and Development permitting process

COUNCILORS MARKIEWICZ, KRINTZMAN, CROSSLEY, LAREDO AND LIPOF requesting a discussion with Planning and Health and Human Services Departments in order to understand the process and controls under Chapter 30 and Chapter 12 of the City of Newton Ordinances, for obtaining Lab, Research and Development facility permits. (Ordinance 30 and Ordinance 12)

Action:

Zoning & Planning NAN 6-0 (Councilor Leary not voting)

Notes:

The Chair introduced the item, saying that it was docketed in order to better understand and illustrate the process and requirements governing laboratory uses, to more easily inform both the Council and the public. Ms. Caira joined the Committee to present on the item (PowerPoint attached).

Ms. Caira began by noting that lab research and development (R&D) is a strong industry in Massachusetts that has recently begun moving facilities out of higher-rent urban areas into more affordable cities and towns such as Newton. Research laboratories are highly regulated at the local, state, and federal levels. She said OSHA and the EPA are both responsible for the regulations to protect the personnel and the environment and MWRA and MassDEP provide additional regulation on the state level as well. In concert with the EDC, Newton's zoning in certain commercial and mixed-use districts was recently updated to remove some inconsistencies so as to accommodate certain modern uses such as laboratories. A special permit is required for new buildings and additions resulting in greater than 20,000 square feet, and the rDNA ordinance provides additional regulation and oversight from the Biosafety Committee. Ms. Caira said that because of the extensive regulations currently in place, no additional amendments or new ordinances are necessary. She said the only recommendation is a clarification that a change in tenancy should not require a new special permit, though the tenant would still need to satisfy all other required permits.

Ms. Caira was thanked for her comprehensive and clear presentation and attached memos on the item.

The Chair first recognized Councilor Markiewicz, lead docketer, who said that this discussion is very useful to help explain the regulations Newton already has in place as it seeks to attract more research laboratories. He said that one of the only remaining questions seems to be on the difference between industrial and commercial uses. He said this is an important question because commercial R&D is only allowed in an MU3 district, the only one of which in Newton, currently is Riverside. For the industrial uses, he said it was permitted in MU1, 2, and 4 without special permit (while still requiring other permits), and he wanted to know the rationale for this. Ms. Caira answered that labs are permitted by right in MU1, MU2, manufacturing, and limited manufacturing districts. These are primarily along the Needham Street corridor. Areas considered appropriate for manufacturing were also considered

appropriate for R&D, but most will likely still require a special permit. She said Newton also qualifies at the Gold level for the Mass Bio Ready designation.

Discussion:

The Land Use Committee has seen similar issues and welcomes the desires to promote this industry and make the process easier. Have R&D personnel provided any input on this?

Ms. Caira answered that yes, Planning spoke with Alexandria and their consultants at Code Red, and they were helpful in explaining their own process which is similar to Newton's. They recommended using Cambridge as a model for lab regulation.

When these requests come to Land Use, specific language in the special permit addressing the transfer ability to a new tenant will be helpful. Hopefully these projects will be simple matters for Land Use going forward and Planning should study how it can streamline the process.

Is the prohibition on Biosafety level 4 facilities provided for in an ordinance?

Ms. Caira said that yes, this is in the rDNA ordinance. Biosafety levels are based on the necessary protective measures, ranging from level 1 to 4 with level 4 addressing the most dangerous substances.

Councilor Krintzman made a motion to vote No Action Necessary which carried 6-0 (Councilor Leary not voting).

Chair's Note:

The Committee discussed scheduling and agenda items for the remainder of the year.

The Chair summarized the Draft calendar through December focusing first on zoning redesign for village centers then a number of other pending items before the committee. There are several nights where the agenda leaves time open to either continue items or possibly introduce new items, but as it is we have a full agenda. There are four meetings, one each month, where all or most of the meeting will focus on Zoning Redesign for village centers. Our consultant Utile will be joining us. In these meetings Utile and staff will bring forward all of the data collected over the summer. This includes both qualitative input from the citizen engagement process organized by Planning staff (which continues through the end of September), and quantitative analyses (Utile and others) on retail/housing mixes within the 'walksheds' for each of Newton's villages, access to the village/ transit options, parking availability/ requirements, etc. By November the committee will seek to reach consensus on policy objectives that may allow specific zoning recommendations to be introduced by the end of the year. Evaluating options would continue into the next term.

Alternate meetings this fall will seek to complete items underway such as the demolition delay ordinance and local preference percentage, advance certain specific proposals such as establishing a municipal housing trust, and proposed amendment to MU4 criteria, and introduce revisions to pressing development standards items like topography, retaining walls and stormwater controls.

Discussion:

One committee member suggested that the Committee should spend less time on issues like local preference and more on issues like the built environment, like tear downs, because these affect more people. Another asked that before the end of the term, could the Committee more specifically address teardowns and evaluate solutions.

Another member noted that the Committee will be pursuing many other non-zoning reform items (such as noted above) but both staff and committee have limited time left in the term so cannot add in too many different things.

The Chair reminded that regulating what may be built in place of homes that are torn down for new builds was the underpinning of work done last year (2020), when we were examining residential districts so as to control the scale of development. The committee unanimously agreed to set this down at the beginning of 2021, and focus on village center issues, as more data analyses/ evaluation of metrics was needed. Our work is now focused on village centers, but the Building Professional group is proceeding to examine and field test rules that could be employed to help better manage the streetscape in residential districts. This topic is broad and needs a comprehensive solution. There is just not enough time left in the term to take on both.

A committee member noted that the earlier mentioned permitting software upgrade will be an important discussion to have as it will be a tremendous improvement to what we currently have in place. This may be scheduled for the Council outside of regular ZAP meetings.

It was agreed that the committee has been talking with the Planning Department for months to make these decisions. While it is frustrating for one person's item or project to not be addressed when they would like, sometimes it works better to wait and address certain items together at a later time.

Scheduling the Committee agenda is an unenviable position as many important items need to be prioritized against each other. It is important to leave some slack in the schedule to allow for unforeseen items, such as the firearms ordinance, which wound up taking two months of the committee's time. Hopefully the Committee will be able to tie up any remaining loose ends on its list of items.

A councilor requested a discussion with the administration soon to hear its clear goals for housing. At this point in the term, if there are specific items that require attention, it would be helpful if the Councilor interested in moving those items came forward with a specific proposal.

(Follow Up: NOTE: A revised calendar will be issued the week after Labor Day)

The Committee adjourned at 10:27pm.

**Respectfully submitted,
Deborah J. Crossley, Chair**

Zoning Ordinance Cleanup Items (Docket #240-21)

ZONING AND PLANNING COMMITTEE
AUGUST 16, 2021
PLANNING & DEVELOPMENT

Summary of Proposed Amendments

- Fix internal inconsistencies, improve clarity, and fix typos or errors
- A few policy changes proposed
- Based on feedback from residents, staff, building professionals, and more

Organization

Section 1: Building Type definitions

- Single-Family, Detached
- Two-Family, Detached
- Single-Family, Attached
- Multi-family

Section 2: Garage Ordinance

- Special permit allowance for 2 attached or detached garages
- Exemption for Side-Facing Garages

Section 3: Other changes

- Language codifying existing practice, clarifying edits, and scriveners' errors, corrections

Removed Since June ZAP Presentation

- An incorrect edit proposed to Sec. 1.5.2.D, Lot Coverage
- Edit striking Sec. 6.10.4, Recreational Marijuana Establishments
- Special permit for Accessory Buildings in Sec. 3.4.3.A.3

Section 1

HOUSING TYPE DEFINITIONS

Existing Two-Family, Detached Definition (Sec. 1.5.1.B)

- **Two-Family, Detached.** A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.

Dwelling Unit Definition

(Sec. 1.5.1.E)

- **Dwelling Unit.** One or more rooms forming a habitable unit for 1 family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation

Currently Not allowed - Adjacent Garages



- Garages not separated by living space
- Each unit has one garage

Two-Family, Detached- Allowed Under Current Interpretation



- Common two-family home being constructed today
- Garages not counted as part of dwelling unit- must be separated completely by living space
- Typically leads to two-curb cuts and additional paving

Proposed Two-Family, Detached Definition, Option 1 (Sec. 1.5.1.B)

Proposed Edits

Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, including garages, and/or is divided horizontally so that one dwelling unit is above another. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.

- Allows garages to touch
- Maintains requirement for complete connection between each unit

Proposed edits Option 1- Garage Ordinance

(Sec. 3.4.4.F)

Proposed Edits

F. Additional Standards for Two-Family, Detached residential buildings

1. 1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached.
 - a) For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage, and each Garage shall provide for no more than 2 automobiles; **and**
 - b) There must be space that meets the requirements to be eligible for Habitable Space above each Garage if the Garages share a Garage Wall; except
 - a) 1 and 1 ½ story buildings are exempt from Section 3.4.4.F.1.2

- Requires habitable space above garages if they touch

Allowed Under Two-Family, Detached Definition, Option 1



- Garages not separated by living space
- Habitable space above each garage required if they share a garage wall
- Full connection for full height between each unit

Proposed Two-Family, Detached Definition, Option 2 (Sec. 1.5.1.B)

Proposed Edits

Two-Family, Detached. A building that contains 2 dwelling units ~~and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.~~ Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section

- Allows for garages to touch
- Allows for flexibility in how the massing and units are arranged

Allowed Under Two-Family, Detached Definition, Option 2



- Separation wall does not extend full height
- Garages not separated by living space
- Allows for shared driveway
- One curb cut

Allowed Under Two-Family, Detached Definition, Option 2



Impact

- Minimal connection between units
- Allows for shared driveway
- Allows for variation, and the break up, of the massing

Two-Family, Detached Options Pros & Cons

	Option 1	Option 2
Pros	<ul style="list-style-type: none"> • Allows for fewer curb cuts & reduced paving • Creates some flexibility for garage placement • Minimizes change to existing regulations 	<ul style="list-style-type: none"> • Allows for fewer curb cuts & reduced paving • Simplifies definition • Creates greater flexibility for garage placement • Potential for greater variation in massing
Cons	<ul style="list-style-type: none"> • Less flexibility • Can result in blocky massing 	<ul style="list-style-type: none"> • Could result in two-families with minimal connection • Less predictable configurations

Single-Family, Detached Definition

(Sec. 1.5.1.A)

Proposed Edits

Single-Family, Detached. A building ~~or structure~~ that contains only one dwelling unit. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.

- Clarify that accessory apartments are not considered as separate dwelling units for the purpose of definition the housing type
- No substantive changes proposed

Single-Family, Attached Definition

(Sec. 1.5.1.C)

Proposed Edits

Single-Family, Attached. A building or structure that either:

1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or
2. A grouping of principal buildings containing more than two units in total. Contains 2 dwelling units and is not a two-family detached dwelling.

- May include more than two dwelling units, all of which are attached, or a grouping of three or more units in multiple buildings on a single lot.
- Clarifies that adding an accessory apartment does not change the housing type

Multi-Family Definition

(Sec. 1.5.1.C)

- Clarify which housing configurations with 3 or more dwelling units fall under the category of a Multi-Family building.

Existing Language	Proposed Edits
Multi-Family. A building or structure containing 3 or more dwelling units.	Multi-Family. A building or structure containing 3 or more dwelling units <u>primarily accessed through a common building entrance.</u>

Section 2

GARAGE ORDINANCE

Add exemption for Side Facing garages 10+ feet back

- Front Facing Garages set back over 10 feet are already exempt from the maximum door widths
- Proposed amendment would exempt a detached or attached Side Facing Garage behind the Front Elevation from the maximum door widths
- Side Facing garages on corner lots would not be eligible for this exemption

Side Facing Garage Exemption Options

(add new section after Sec. 3.4.4.G.1)

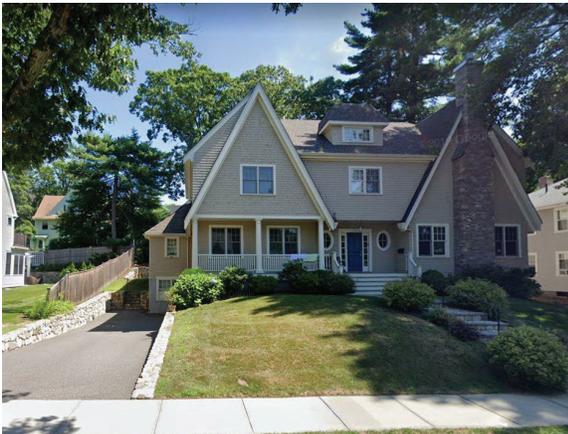
Option 1	Option 2
A detached or attached Side Facing Garage that is located 10 feet or more behind the Front Elevation , and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).	A detached or attached Side Facing Garage that is set back from the Front Elevation , and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).

Side Facing Garage Exemption- Option 1

- Would require garage to be set back 10+ feet from Front Elevation
- Exempts garage from door width maximums
- Same setback amount required for Front Facing Garages

Side Facing Garage Exemption- Option 2

- Less strict setback from Front Elevation required



Side Facing Garage Exemption – Corner Lots (not exempt)



Add Special Permit allowance for garages

(Sec. 3.4.4.H.1)

- Option for two attached or two detached garages inadvertently removed when Garage Ordinance was adopted
- Clarifies that 700 square ft total allowed by-right can be split between 2 separate garages
- Only Single-Family, Detached residences eligible for this special permit

Proposed edits

(Sec. 3.4.4.H.1)

Existing Language	Proposed Edits
<p>H. By Special Permit</p> <p>1. 1. For residential buildings with one unit: a Garage with provision for more than 3 automobiles, or a Garage of more than 700 square feet in area, or more than 2 Garages.</p>	<p>H. By Special Permit</p> <p>1. For <u>Single-Family, Detached</u> residential buildings with one unit: a Garage with provision for more than 3 automobiles, <u>or a second attached or detached Garage</u>, or a Garage of more than 700 square feet in <u>total Garage</u> area <u>on a lot</u>, or more than 2 Garages.</p>

Other changes in Section 2

- Definition of Garage (Sec. 3.4.4.B.1)- remove reference to “structure”
- Standards for one unit and two-unit residential buildings (Sec. 3.4.4.E-F)- Align text with current ordinance language by changing “one unit” and “two unit” to “single-family” and “two-family”

Section 3

OTHER CHANGES

Lot Coverage

(Sec. 1.5.2.D)

- Clarify that decks and other uncovered structures do not count against lot coverage

Setback Averaging

(Sec. 1.5.3)

- Clarify that averaging is only applicable to the principal structure on a lot and cannot be used for accessory structures

Height definition

(Sec. 1.5.4.D.1)

- Clarify that Sec. 1.5.4.D.1 applies only to buildings that are used for any purpose other than single-or two-family residential use

Accessory Apartments

(Sec. 6.7.1.D.2 and Sec. 6.7.1.E.2)

- Clarify that only habitable space in the principal dwelling unit can be used in the calculation of Habitable Space for the purpose of creating accessory apartments.

Other edits

- Add Sec. 5.13 to Table of Contents
- Fix incorrect references in Sec. 5.13
- Update minimum distance between principal dwelling for Detached Accessory Apartments (Sec. 6.7.1.E)
- Add language clarifying ISD's discretion to allow similar uses (Sec. 2.3.1; Sec. 3.4.1; Sec. 4.4.1)
- Codify practice of allowing rendered perspective drawings in Sec. 7.3.1.B

All Proposed Edits

Section 1			Section 3		
1	Single-Family, Detached Definition	Sec. 1.5.1.A	9	Lot Coverage	Sec. 1.5.2.D
2	Two-Family, Detached Definition	Sec. 1.5.1.B	10	Setback Averaging	Sec. 1.5.3
3	Single Family, Attached Definition	Sec. 1.5.1.C	11	Height -basement definition	Sec. 1.5.4.D.1
4	Multi-Family Definition	Sec. 1.5.1.D	12	Special Permit for garages	Sec. 3.4.4.H.1
Section 2			13	Internal Accessory Apartments	Sec. 6.7.1.D.2
5	Definition of Garage	Sec. 3.4.4.B.1	14	Detached Accessory Apartments	Sec. 6.7.1.E.2
6	Standards for one family and two-family residential buildings	Sec. 3.4.4.E-F	15	Table of Contents	
7	Exemption for Side Facing Garages Behind Front Elevation	Sec. 3.4.4.G.1	16	Incorrect references in 5.13	Sec. 5.13
8	Special Permit for garages	Sec. 3.4.4.H.1	17	Use Table Clarifications	Sec. 2.3.1; Sec. 3.4.1; Sec. 4.4.1
			18	3D computer-generated model for special permits	Sec. 7.3.1.B

**Recommendations
for the
Planning Department suggested amendments
to Chapter 30, the Zoning Code**

City of Newton, MA

Zoning and Planning Public Hearing

August 16, 2021

Building Professionals Zoning Redesign Working Group

Russel Feldman Jonathan Kantar Treff LaFleche
Lisa Monahan Kathy Pillsbury Dan Powdermaker
Peter Sachs Mark Sangiolo Jay Walter

**Planning Department suggested amendments
to Chapter 30, July 2021:**

Section 1: Housing Type Definitions

- Single-family, detached definition
- Two-family, detached definition
- Single-family, attached definition
- Multi-family definition

Section 2: Garage Ordinance

- Term “building” rather than “structure”
- Definition of Garage
- Special Permits for Garages

Section 3: Other Changes

- Special Permits for Accessory Buildings
- Decks / lot coverage
- Setback Averaging
- Accessory Uses language clarification
- Minimum distance from Principle Dwelling
- ISD Discretion re: Accessory Use
- 3D Modeling for Special Permit
- Remove Outdated Moratorium

**Building Professionals Working Group
Recommendations and Comments:**

The Planning Department’s proposed corrections, simplifications and clarifications in language make the code simpler, clearer and easier to interpret for ISD and property owners.

Timeline - Summer 2021 Chapter 30 Cleanup

Planning Department suggested amendments to Chapter 30, July 2021:

Section 1: Housing Type Definitions

2. Two-Family, Detached Definition
F. Additional Standards for Two-Family, Detached residential buildings Additional Standards for residential buildings with two-units.

Planning Department Proposal of 2 Options:

Option 1: There must be Habitable Space above each Garage if the Garages share a Garage Wall.

Option 2: Revise definition to read: A building that contains two dwelling units.



Building Professionals Working Group Recommendations and Comments:

We recommend that the Option 2 be adopted.

Requiring habitable space over a garage interferes with building owners' design options. This rule addresses a building aesthetic issue rather than zoning issues.

Timeline - Summer 2021 Chapter 30 Cleanup

Planning Department suggested amendments to Chapter 30, July 2021:

Section 1: Housing Type Definitions

Planning Department Proposed Edits:

Multi-Family. A building ~~or structure~~ containing 3 or more dwelling units, primarily accessed through a common building entrance.



16-unit building with 4 entrances
Newton, MA

Building Professionals Working Group Recommendations and Comments:

Multi-family definition should not involve the configuration of entrances. This proposed edit would interfere with building owners' design options, especially on sites with varied site conditions.

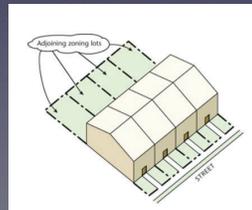
The definition should be revised to read, "A building containing 3 or more dwelling units."

Timeline - Summer 2021 Chapter 30 Cleanup

Planning Department suggested amendments to Chapter 30, July 2021:

Section 1: Housing Type Definitions

- Single-family, Detached
- Two-family, Detached
- Single-family, Attached
- Multi-family



Sample buildings/lots illustration
NY, NY Zoning Code

Building Professionals Working Group Recommendations and Comments:

The terms 'Detached' and 'Attached' are confusing and counter-intuitive.

A different nomenclature is needed here, with accompanying graphics for clarity. We recognize these definitions are used in many zoning codes, they are outdated and perplexing.

This change would make the ordinance simpler and easier to understand.

Timeline - Zoning Redesign effort

Planning Department suggested amendments to Chapter 30, July 2021:

Section 1: Housing Type Definitions

- Single-family, Detached
- Two-family, Detached
- Single-family, Attached
- Multi-family

Building Professionals Working Group Recommendations and Comments:

Housing should be referred to in terms of "dwelling units" rather than "families". This is outdated phrasing that still remains in the code that should be made current throughout the text.

This change would make the ordinance simpler and easier to understand.

Timeline - Zoning Redesign effort

Recommendations
for the
Planning Department suggested amendments
to Chapter 30, the Zoning Code
City of Newton, MA

Thank you for your consideration

Building Professionals Zoning Redesign Working Group

Russel Feldman	Jonathan Kantar	Treff LaFleche
Lisa Monahan	Kathy Pillsbury	Dan Powdermaker
Peter Sachs	Mark Sangiolo	Jay Walter



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: Updated Last: August 13, 2021
Original: July 2, 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: **#240-21 Requesting an amendment to Chapter 30**
DIRECTOR OF PLANNING AND DEVELOPMENT requesting ordinance amendments to the Newton Zoning Ordinance, Chapter 30 in order to clarify definitions, edit missing or incorrectly transcribed provisions and revise inconsistencies in the ordinance.

MEETING: August 16, 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

Overview

In the past, the Planning and Development Department has conducted regular “clean ups” of the zoning ordinance in order to correct internal inconsistencies, improve clarity, and fix typos or errors, in particular those that have been a result of the 2015 recodification of the Zoning Ordinance. In this vein, the Department proposes making several amendments to the Zoning Ordinance based on feedback from residents, staff, building professionals, and others.

This memo provides an overview of the revisions proposed. For each item, staff have provided a brief explanation of the issue followed by the expected impact of proposed changes in an annotated redline, as well as side-by-side comparison of the existing text and suggested revisions (Attachment A). Also provided is the unannotated redlined version of these proposed changes in the Zoning Ordinance (Attachment B).

Organization

The items are classified into three sections. Section 1 (Housing Type Definitions) includes changes to housing type definitions, including a reconfiguring of the definition of Two-Family, Detached buildings to allow for more flexible design for that building type. Section 2 (Garage Ordinance) includes changes to improve the Garage Ordinance based on feedback from ISD and Current Planning now that the ordinance has been in effect for several months. Both of these sections contain minor policy changes that will require discussion in committee.

Section 3 (Other Changes) includes a number of smaller proposed ordinance changes that include corrections, language codifying existing practice, simple clarifying edits, and scrivener's errors. Also, items in this section include errors in transcription from the 2015 recodification.

Changes Made Since Previous ZAP Meeting (July 8, 2021)

Most of the proposed changes in Attachment A are unchanged from what was presented in July. However, several items were removed or revised based on feedback from ZAP, Planning staff, and input from building professionals. These changes include:

Removed:

- A proposed special permit for accessory buildings in Sec. 3.4.3.A.3. staff have confirmed with the Law department that there are already options for applicants to seek special permits for both detached accessory apartments or garages in excess of 700 square feet
- An incorrect edit proposed to Sec. 1.5.2.D, lot coverage.
- A proposed edit striking Sec. 6.10.4, Recreational Marijuana Establishments, the moratorium put into place while the zoning was being developed for recreational marijuana. Zoning ordinance changes passed earlier this year have already removed this language.

Updated:

- Staff have added a second option for proposed language changes to Sec. 1.5.1.b, the definition of Two-Family, Detached. An explanation of the policy implications and considerations for each option proposed can be found in Attachment A.
- The language in Sec. 1.5.1.D, the definition of Multi-Family, has been updated for clarity.
- Staff have added a second option for proposed language changes to Sec. 3.4.4.G.1, an exemption for Side Facing Garages behind the Front Elevation of a home. An explanation of the policy implications and considerations for each option proposed can be found in Attachment A.

Attachment A

Annotated redline

Attachment B

Unannotated redline

Section 1: Housing Type Definitions

1. Single-Family, Detached Definition (Sec. 1.5.1.A, Pg. 1-4)

- **Issue** - Based on current language, a Single-Family, Detached home that has an accessory apartment might be considered a Two-Family, Detached building.
- **Impact of Change** - This amendment will clarify that the presence of an accessory apartment does not mean that a building goes from a Single-Family home to a Two-Family- the type of home will remain the same regardless.

Existing Language	Proposed Edits
<p>A. Single-Family, Detached. A building or structure that contains only one dwelling unit.</p>	<p>A. Single-Family, Detached. A building or structure that contains only one dwelling unit. <u>Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.</u></p>

2. Two-Family, Detached Definition (Sec. 1.5.1.B, Pg. 1-4)

- **Issue** – The Inspectional Services Department has interpreted Sec. 1.5.1.B so that a garage is not considered part of a dwelling unit, because it is not habitable space. Living space (which does not include garages) must be touching living space in the adjacent unit for the full height of the separation. Because of this, having two attached garages touching is not allowed, nor is it allowed to have one garage touching living space of an adjacent unit. This means that homeowners and builders are limited in design, and several desirable configurations are not permitted. It is staff’s understanding that in the past ZAP wanted to restrict the configuration of two-units only connected by the garages, particularly with no living space above.

Additionally, there must be a clear distinction between Two-Family, Detached homes and Single-Family, Attached homes. Either proposed option below, in conjunction with the amendment to the definition for Single-Family, Attached, would do that by clarifying that accessory apartments are not counted in the dwelling unit total for the purposes of these definitions and by clarifying that Single-Family, Attached homes contain a minimum of three units.

- **Impact of Change** – The proposed edits below include two different options, with Option 2 offering more flexibility in garage placement than Option 1. Either amendment option would result in some amount of additional flexibility in configuration for Two-Family, Detached homes with attached garages. In addition to allowing for greater flexibility, having the garages in one location often eliminates the need for two curb cuts and additional paving.

Option 1, the version presented to ZAP in June, minimizes substantive change to the definition of Two-Family, Detached. The changes in Option 1 would allow garages to touch, or for garage space to touch living space in an adjacent unit, by allowing garage to be included in the wall separating two units. This option retains the current requirement for full separation between the two dwelling units, which does still limit flexibility in overall configuration. Based on past feedback from ZAP that two-units only connected by the garages with no living space above is undesirable, this option also includes an amendment to Sec. 3.4.4.F requiring habitable space

above the garages if they share a wall. 1 and 1 ½ story residences would be exempt from this habitable space requirement.

Option 2 offers greater flexibility for Two-Family, Detached residences. This option simplifies the definition by removing altogether the requirement for full separation between two units, which would result in more flexibility than is proposed in Option 1. The changes in Option 2 would also allow garages to touch, or for garage space to touch living space in an adjacent unit. This option does not propose requiring living space to be located above garages that touch.

Option 1 would require the following edits in Sec. 1.5.1.B and in Sec. 3.4.4.F:

Existing Language (Sec. 1.5.1.B)	Proposed Edits- Option 1
<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.</p>	<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, <u>including garages,</u> and/or is divided horizontally so that one dwelling unit is above another. <u>Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.</u></p>
Existing Language (Sec. 3.4.4.F)	Proposed Edits-Option 1
<p>F. Additional Standards for residential buildings with two-units</p> <ol style="list-style-type: none"> 1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached. <ol style="list-style-type: none"> a. For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage, and each Garage shall provide for no more than 2 automobiles. 	<p><u>F. Additional Standards for Two-Family, Detached residential buildings</u> Additional Standards for residential buildings with two-units</p> <ol style="list-style-type: none"> 1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached. <ol style="list-style-type: none"> a. For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage, and each Garage shall provide for no more than 2 automobiles; <u>and-</u> <u>b. There must be space that meets the requirements to be eligible for Habitable Space above each Garage if the Garages share a Garage Wall; except</u> <ol style="list-style-type: none"> a. <u>1 and 1 ½ story buildings are exempt from Section 3.4.4.F.1.b</u>

Option 2 would require the following edits in Sec. 1.5.1.B:

Existing Language (Sec. 1.5.1.B)	Proposed Edits- Option 2
<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.</p>	<p>Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another. <u>Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.</u></p>

3. **Single Family, Attached Definition** (Sec. 1.5.1.C, Pg. 1-4)

- **Issue** - If the definition in 1.5.1.B is changed, 1.5.1.C should be amended to clarify the condition when there are two buildings with two dwelling units each.
- **Impact of change** - This revision should make it clear that Single Family, Attached may include more than two dwelling units, all of which are attached, or a grouping of three or more units in multiple buildings on a single lot.

Existing Language	Proposed Edits
<p>Single-Family, Attached. A building or structure that either:</p> <ol style="list-style-type: none"> 1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or 2. Contains 2 dwelling units and is not a two-family detached dwelling. 	<p>Single-Family, Attached. A building or structure that either:</p> <ol style="list-style-type: none"> 1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or 2. <u>A grouping of principal buildings containing more than two units in total.</u> Contains 2 dwelling units and is not a two-family detached dwelling.

4. **Multi-Family Definition** (Sec. 1.5.1.D, Pg. 1-4)

- **Issue** - If the definition in 1.5.1.C is changed, 1.5.1.D should be amended to clarify what constitutes a multi-family residence
- **Impact of change** - This change is a simple clarification that will ensure different configurations that might have 3 or more dwelling units (for example, a Two-Family, Detached building with an accessory unit or a Single Family, Attached building) does not fall under the category of a Multi-Family building.

Existing Language	Proposed Edits
<p>Multi-Family. A building or structure containing 3 or more dwelling units.</p>	<p>Multi-Family. A building or structure containing 3 or more dwelling units <u>primarily accessed through a common building entrance.</u></p>

Section 2: Garage Ordinance

5. Definition of Garage (Sec. 3.4.4.B.1)

- **Issue** – The current text uses the word “structure” where it should be “building.”
 - *Structure: Any construction, erection, assemblage or other combination of materials at a fixed location upon the land, such as, but not limited to, a building, bridge, trestle, tower, framework, tank, tunnel, tent, stadium, platform, retaining wall or systems of walls whose above-grade height exceeds 4 feet, tennis court or swimming pool. (Sec. 8.3, Page 8-8)*
 - *Building: A structure, including alterations, enlargements, and extensions, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property. (Sec. 8.3, Page 8-3)*
- **Impact of change** - Different rules and regulations apply to structures than to buildings, and the intention here is that garages are buildings. For example, under the current definition carports would be subject to the Garage Ordinance, which is not intended. This revision will ensure that standard garages are subject to the Garage Ordinance, but structures, such as carports, will not.

Existing Language	Proposed Edits
<p>Garage. An attached or detached structure, or portion of a structure, that is able to be accessed by an automobile or is used or intended to be used primarily for the storage or parking of 1 or more automobiles. A detached Garage is an Accessory Building (See Sec. 3.4.3).</p>	<p>Garage. An attached or detached buildingstructure, or portion of a buildingstructure, that is able to be accessed by an automobile or is used or intended to be used primarily for the storage or parking of 1 or more automobiles. A detached Garage is an Accessory Building (See Sec. 3.4.3).</p>

6. Standards for one unit and two-unit residential buildings (Sec. 3.4.4.E-F)

- **Issue** - The Garage Ordinance uses some language that is not defined in the current zoning ordinance. The zoning ordinance does not use the framework of “one unit” and “two unit” buildings. It instead uses “single-family” and “two-family,” etc.
- **Impact of change**- The intent with Zoning Redesign is to move away from referencing “family” when defining building types, and Sec.3.4.4. E-F was based on language from the Zoning Redesign process. However, because of this mismatch with the current ordinance language,

there could be unintended consequences with a two-unit building that adds an accessory apartment. Unless the language is updated, that building would technically have three units and therefore would not need to comply with the Garage Ordinance, which does not regulate multi-family housing residences. By updating the language here to align with the current ordinance, that issue would be resolved.

Existing Language

Proposed Edits

E. Standards for residential buildings with one unit

1. There may be no more than 700 square feet in total Garage area on a lot providing for no more than 3 automobiles. A lot may contain no more than one attached Garage and one detached Garage.

E. Standards for Single-Family, Detached residential buildings ~~Standards for residential buildings with one unit~~

1. There may be no more than 700 square feet in total Garage area on a lot providing for no more than 3 automobiles. A lot may contain no more than one attached Garage and one detached Garage.

F. Additional Standards for residential buildings with two-units

F. Additional Standards for Two-Family, Detached residential buildings ~~Additional Standards for residential buildings with two-units~~

1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached.
2. For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage, and each Garage shall provide for no more than 2 automobiles.

7. Exemption for Side Facing Garages Behind Front Elevation (add new section after Sec. 3.4.4.G.1)

- **Issue** - Sec. 3.4.4.G.1 exempts Front Facing Garages set back over 10 feet from the maximum door widths because at that distance, they are not as visually impactful. This should be true for Side Facing Garages as well.
- **Impact** - The proposed edits below include two different options. Option 1 is more restrictive than Option 2.

Option 1 includes changes that would create parity for the regulation of door widths for Front- and Side- Facing Garages. This proposed edit would allow Side Facing Garages that are set back 10 or more feet from the Front Elevation to be exempt from restrictions on door widths, provided they are not on corner lots.

Option 2 is similar to Option 1, but less restrictive. In Option 2, any Side Facing Garage set back any amount from the Front Elevation of a house that is not on a corner lot would be exempt from the garage door width restrictions.

Existing Language	Proposed Edits -Option 1
N/A	<u>A detached or attached Side Facing Garage that is located 10 feet or more behind the Front Elevation, and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).</u>
Existing Language	Proposed Edits -Option 2
N/A	<u>A detached or attached Side Facing Garage that is set back from the Front Elevation, and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).</u>

8. Special Permit allowance for garages (Sec. 3.4.4.H.1)

- **Issue** - Sec. 3.4.4.E.1 allows for 2 garages, but only 1 attached and 1 detached. Prior to the Garage Ordinance, only one garage (attached or detached) was allowed by-right but a Special Permit could be granted for more than one garage. The garage ordinance allows for one attached and one detached garage by-right and more than two garages by Special Permit but there is no longer an option for two attached or two detached garages.
- **Impact of change** - This amendment will bring the Garage Ordinance into alignment with what was allowed by special permit previously. This will allow for flexibility in garage placement for homes with unique conditions, like those on through lots, to have two attached garages by special permit, which is not currently allowed. This proposed revision also clarifies that Single-Family, Detached residential buildings are eligible for this special permit.

Existing Language	Proposed Edits
H. By Special Permit	H. By Special Permit
1. For residential buildings with one unit: a Garage with provision for more than 3 automobiles, or a Garage of more than 700 square feet in area, or more than 2 Garages.	1. For <u>Single-Family, Detached</u> residential buildings with one unit : a Garage with provision for more than 3 automobiles, <u>or a second attached or detached Garage,</u> or a Garage of more than 700 square feet in <u>total Garage area on a lot,</u> or more than 2 Garages.

Section 3: Other Changes

9. Lot Coverage (Sec. 1.5.2.D, Pg. 1-5)

- **Issue** - It is not clear in the ordinance that decks and other uncovered structures do not count against lot coverage.
- **Impact of change** - This is a clarification in the code intended to make the ordinance more user friendly by stating clearly what kinds of structures are or are not included in lot coverage calculations.

Existing Language	Proposed Edits
<p>Lot Coverage. The percentage of the lot area which is covered by buildings, including accessory buildings, except in the following cases:</p> <ol style="list-style-type: none"> 1. The area covered by roof overhangs of up to 2 feet shall not be included in the calculation of lot coverage; and 2. The lot coverage requirements contained in Sec. 3.1 shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a single- or two-family residence. 	<p>Lot Coverage. The percentage of the lot area which is covered by buildings, including accessory buildings, <u>and structures with roofs,</u> except in the following cases:</p> <ol style="list-style-type: none"> 1. The area covered by roof overhangs of up to 2 feet shall not be included in the calculation of lot coverage; and 2. The lot coverage requirements contained in Sec. 3.1 shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a single- or two-family residence..

10. Setback- averaging (Sec. 1.5.3, Pg. 1-6)

- **Issue** - Averaging is exclusive to the principal structure on the lot- it cannot be used for accessory structures such as detached garages.
- **Impact** - This is a clarification in the code intended to make the ordinance more user friendly by stating clearly when averaging can be used.

Existing Language	Proposed Edits
<p>1.5.3. Setback</p> <p>A. Defined. A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected. In the case of a corner lot, the rear lot line shall be the lot line opposite the street on which the main entrance is located.</p>	<p>1.5.3. Setback</p> <p>A. Defined. A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a <u>principal building structure</u> may be erected. In the case of a corner lot, the rear lot line shall be the lot</p>

B. No building need be set back more than the average of the setbacks of the buildings on the nearest lot on either side, a vacant lot or a lot occupied by a building set back more than the required distance for its district to be counted as though occupied by a building set back such required distance. Averaging applies only to the front setback. In no case shall any part of a building in a residence district extend nearer the street line than 10 feet.

line opposite the street on which the main entrance is located.

B. No building need be set back more than the average of the setbacks of the buildings on the nearest lot on either side, a vacant lot or a lot occupied by a building set back more than the required distance for its district to be counted as though occupied by a building set back such required distance. Averaging applies only to the front setback. In no case shall any part of a building in a residence district extend nearer the street line than 10 feet.

11. Height -basement definition (Sec. 1.5.4.D.1, Pg. 1-8)

- **Issue** - 1.5.4.D.1 does not clearly state the type of building the rules in that section apply to.
- **Impact of change** - This is a clarification in the code intended to make the ordinance more user friendly by stating the types of buildings this section applies to.

Existing Language	Proposed Edits
D. Basement	D. Basement
1. Any story in a building in which 2/3 or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.	1. Any story in a building <u>used for any purpose other than a single-or two-family residential use</u> , in which 2/3 or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

12. Accessory uses language clarification - Internal (Sec. 6.7.1.D.2, Pg. 6-19)

- **Issue** -The calculations for creating internal accessory apartments are ambiguous. It should be clear that the total habitable space includes both the principal unit and the accessory apartment and that uninhabitable space like an attached garage can't be counted, or that in a Two-Family, Attached building, the whole structure is not used in the calculation, only the principal dwelling unit.
- **Impact of change** - This is a clarification in the code intended to make the ordinance more user friendly by clarifying how ISD and Current Planning calculate Habitable Space for the purpose of creating accessory apartments.

Existing Language	Proposed Edits
D. Rules for Internal Accessory Apartments	D. Rules for Internal Accessory Apartments

<ol style="list-style-type: none"> 1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building. 2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling as defined in Sec. 8.3, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40 % of the total Habitable Space, whichever is less. 	<ol style="list-style-type: none"> 1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building. 2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling as defined in Sec. 8.3, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40 % of the total Habitable Space, whichever is less. <ol style="list-style-type: none"> a. <u>The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.</u>
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13. Accessory uses language clarification – Detached (Sec. 6.7.1.E.2, Pg. 6-20)

- **Issue** - The calculations for creating detached accessory apartments are ambiguous. It should be clear that uninhabitable space like an attached garage can't be counted, or that in a Two-Family, Attached building, the whole structure is not used in the calculation, only the principal dwelling unit
- **Impact** - This is a clarification in the code intended to make the ordinance more user friendly by clarifying how ISD and Current Planning calculate Habitable Space for the purpose of creating accessory apartments.

Existing Language	Proposed Edits
<p>E. Rules for Detached Accessory Apartments</p> <ol style="list-style-type: none"> 1. Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single Family, Detached building or a Two-Family, Detached building. 2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet. 	<p>E. Rules for Detached Accessory Apartments</p> <ol style="list-style-type: none"> 1. Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single Family, Detached building or a Two-Family, Detached building. 2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.

a) The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.

14. Minimum distance between principal dwelling for Detached Accessory Apartments (Sec. 6.7.1.E.4, Pg. 6-20)

- **Issue** - The required distance between an accessory building and the principal dwelling unit is now 5 feet, rather than 6, due to changes made in the Accessory Building section.
- **Impact** - This update will align the rules for Detached Accessory Apartments, which are a type of Accessory Building. Any pre-existing buildings will not be impacted by this change.

Existing Language	Proposed Edits
The Detached Accessory Apartment must be at least 6 feet from the principal dwelling unit on the site.	The Detached Accessory Apartment must <u>meet the separation requirements from the principal dwelling unit on the subject lot in compliance with Sec. 3.4.3.A.2.</u> be at least 6 feet from the principal dwelling unit on the site.

15. Table of Contents

- **Issue** - Section 5.13 is missing from table of contents.
- **Proposed edits** - Add 5.13 to table of contents

16. Incorrect references in 5.13

- **Issue** - There are several references in Section 5.13 to Section 5.12 that should refer to Section 5.13.4
- **Proposed edits:** Strike references to Section 5.12 and replace with reference to Section 5.13 in the following sections: Sec. 5.13.2.a, Sec. 5.13.2.c, Sec. 5.13.2.d, Sec. 5.13.3.b, Sec. Sec. 5.13.4. a, Sec. 5.13.4.b, Sec. 5.13.5.a, Sec. 5.13.6.a.5, Sec. 5.13.6.b, Sec. 5.13.6.c, Sec. 5.13.7.

17. Include language that allows the discretion of the Commissioner of ISD for similar and/customarily accessory uses (Sec. 2.3.1; Sec. 3.4.1; Sec. 4.4.1)

- **Issue** - In the pre-2015 zoning ordinance, at the end of each section of allowable uses there was language allowing the ISD commissioner discretion to allow similar accessory uses not explicitly defined in zoning. Similar language to this can be found in the current ordinance in Sec. 6.1.A, but not in the use tables.

- **Impact of change** - This will clarify in the use tables an established practice to make the ordinance more user-friendly.
- **Proposed edits** – Add this language at the end of the tables in Sec. 2.3.1; Sec. 3.4.1; Sec. 4.4.1: “The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the Commissioner of Inspectional Services may consider the proposed use part of the listed use.”

18. 3D computer-generated model for special permits (Sec. 7.3.1.B, Pg. 7-3)

- **Issue** - It is common practice for applicants to send in 3D rendered perspective drawings, but not actual computer models. clarify that 3D rendered drawings are sufficient.
- **Impact of change** - This change will codify practice that is already common and accepted.

Existing Language	Proposed Edits
<p>B. Contents of the Application. Each application for a special permit shall be accompanied by a site plan submission prepared in accordance with the provisions of Sec. 7.4.4.</p> <p>1. The applicant shall also submit a 3D computer-generated model, including such details as necessary to show the relationship of the project to its surroundings. The level of detail included in the model shall be at the discretion of the Director of Planning and Development. The architect of record shall certify that the model is an accurate representation of the proposed design. For any commercial or multi-family development with a gross floor area of 20,000 square feet or more, a model shall be provided as follows:</p> <p>a. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the model shall show the proposed development, all abutting properties and abutters to such abutting properties; for a proposed development containing a gross floor area 50,001 to 100,000 square feet, the model shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater; or</p> <p>b. For a proposed development containing a gross floor area in excess of 100,000 square feet, the model shall show the proposed</p>	<p>B. Contents of the Application. Each application for a special permit shall be accompanied by a site plan submission prepared in accordance with the provisions of Sec. 7.4.4.</p> <p>1. The applicant shall also submit a 3D computer-generated model, <u>or rendered perspective drawings</u> including such details as necessary to show the relationship of the project to its surroundings. The level of detail included in the model <u>or drawings</u> shall be at the discretion of the Director of Planning and Development. The architect of record shall certify that the model <u>or drawings are</u> an accurate representation of the proposed design. For any commercial or multi-family development with a gross floor area of 20,000 square feet or more, a model <u>or drawing</u> shall be provided as follows:</p> <p>a. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the model <u>or drawings</u> shall show the proposed development, all abutting properties and abutters to such abutting properties; for a proposed development containing a gross floor area 50,001 to 100,000 square feet, the model <u>or drawings</u> shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater; or</p>

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

b. For a proposed development containing a gross floor area in excess of 100,000 square feet, the model or drawings shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater. The model or drawings shall be provided to the City in a file format acceptable to the Director of Planning and Development, in consultation with the Clerk of the City Council, ~~the City Solicitor, and the Chief Information Officer.~~

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Table of Contents

Article 1. General Provisions	1-1	Article 6. Use Regulations	6-1
Sec. 1.1. Short Title	1-2	Sec. 6.1. Use Determination.....	6-3
Sec. 1.2. Purpose of Chapter	1-2	Sec. 6.2. Residential Uses.....	6-3
Sec. 1.3. Zoning Districts Established.....	1-2	Sec. 6.3. Civic/Institutional Uses	6-6
Sec. 1.4. Legal Status Provisions	1-3	Sec. 6.4. Commercial Uses	6-10
Sec. 1.5. Rules of Measurement.....	1-4	Sec. 6.5. Industrial Uses.....	6-14
Article 2. Public Use & Open Space Districts	2-1	Sec. 6.6. Open Space Uses	6-16
Sec. 2.1. Zoning District Intent	2-2	Sec. 6.7. Accessory Uses	6-17
Sec. 2.2. District Dimensional Standards	2-2	Sec. 6.8. Temporary Uses	6-22
Sec. 2.3. Allowed Uses.....	2-3	Sec. 6.9. Wireless Communication Equipment	6-24
Article 3. Residence Districts	3-1	Sec. 6.10. Restricted Uses.....	6-30
Sec. 3.1. Single Residence Districts	3-2	Article 7. Administration	7-1
Sec. 3.2. Multi-Residence Districts.....	3-12	Sec. 7.1. Development Review Bodies	7-2
Sec. 3.3. Other Residence Options.....	3-24	Sec. 7.2. Amendments	7-3
Sec. 3.4. Allowed Uses	3-26	Sec. 7.3. Special Permit Review.....	7-3
Article 4. Business, Mixed Use & Manufacturing Districts	4-1	Sec. 7.4. Site Plan Approval.....	7-13
Sec. 4.1. Business Districts	4-2	Sec. 7.5. Administrative Site Plan Review	7-14
Sec. 4.2. Mixed Use Districts	4-10	Sec. 7.6. Variances.....	7-16
Sec. 4.3. Manufacturing Districts	4-16	Sec. 7.7. Appeals	7-18
Sec. 4.4. Allowed Uses.....	4-18	Sec. 7.8. Nonconformities	7-20
Article 5. Development Standards	5-1	Sec. 7.9. Enforcement and Penalties	7-26
Sec. 5.1. Parking and Loading	5-2	Article 8. Definitions	8-1
Sec. 5.2. Signs.....	5-15	Sec. 8.1. In General.....	8-2
Sec. 5.3. Stormwater Management	5-24	Sec. 8.2. Abbreviations	8-2
Sec. 5.4. Fences & Retaining Walls.....	5-24	Sec. 8.3. Defined Terms	8-3
Sec. 5.5. Landscaping	5-24		
Sec. 5.6. Great Ponds	5-24		
Sec. 5.7. Noise	5-24		
Sec. 5.8. Outdoor Lighting	5-24		
Sec. 5.9. Tree Protection.....	5-24		
Sec. 5.10. Floodplain, Watershed Protection	5-25		
Sec. 5.11. Inclusionary Zoning.....	5-25		
Sec. 5.12. Environmental Standards in the Manufacturing District.....	5-31		
<u>Sec. 5.13. Sustainable Development Design.....</u>	<u>5-38</u>		

1.4.4. Validity

Nothing in this Chapter shall be construed as establishing regulations or restrictions which are not uniform for each class or kind of buildings, structures, or land, and for each class or kind of use in each district.

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

1.4.5. Effect of Invalidity

If it is determined by a court of competent jurisdiction that any provision of this Chapter is invalid as applying to any particular land, building or structure by reason of such land, building or structure having been placed in an excessively restrictive district, such land, building or structure shall thereby be zoned in the next least restrictive district created by this Chapter.

(Rev. Ords. 1973 §24-33)

Sec. 1.5. Rules of Measurement

1.5.1. Building Types

A. **Single-Family, Detached.** A building ~~or structure~~ that contains only one dwelling unit. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.

Proposed Edits to Sec. 1.5.1.B - Option 1. See also additional standards proposed in Sec. 3.4.4.F for this option.

B. **Two-Family, Detached.** A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, including garages, and/or is divided horizontally so that one dwelling unit is above another. Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.

Proposed Edits to Sec. 1.5.1.B - Option 2.

B. **Two-Family, Detached.** A building that contains 2 dwelling units ~~and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.~~ Accessory apartments shall not be considered a separate dwelling unit for the purposes of this section.

C. **Single-Family, Attached.** A building or structure that either:

1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or
2. A grouping of principal buildings containing more than two units in total. ~~Contains 2 dwelling units and is not a two-family detached dwelling.~~

D. **Multi-Family.** A building ~~or structure~~ containing 3 or more dwelling units. primarily accessed through a common building entrance.

E. **Dwelling Unit.** One or more rooms forming a habitable unit for 1 family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.

1.5.2. Lot

- A. Lot Line.** A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the Commonwealth used as an aqueduct or land formerly an aqueduct now owned by the City and adjoining land shall not be termed a lot line.
- B. Lot Area.** Lot area is the horizontal area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.
- C. Lot Area Per Unit.** The minimum lot area required for each residential dwelling unit on the lot.
- D. Lot Coverage.** The percentage of the lot area which is covered by buildings, including accessory buildings, and structures with roofs, except in the following cases:
1. The area covered by roof overhangs of up to 2 feet shall not be included in the calculation of lot coverage; and
 2. The lot coverage requirements contained in Sec. 3.1 shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a single- or two-family residence.
- E. Lot Frontage.** The required lot frontage shall be measured on the street line, except in the following cases:
1. In the case of a lot on a street, the line of which has a curve with a radius of less than 200 feet, the required lot frontage shall be measured along the setback line;
 2. In the case of a lot on a street and a public footway, the required lot frontage may be measured along the public footway following approval of a special permit by the City Council; and
 3. In the case of corner lots, the frontage when measured on the street line shall run to the point of intersection of the 2 street lines.
- F. Lot, Corner.** A lot fronting on 2 intersecting streets which form an interior angle of 120 degrees or less; or a lot located on a bend in a street where the street bends so as to form an interior angle of 120 degrees or less; or a lot on a curve in a street or on a curve at the intersection of 2 streets where 2 lines tangent to the street line at the intersection of each side of the lot with the street line form, if prolonged towards the curve, an interior angle of 120 degrees or less. Only that part of a lot contiguous to a corner, bend or curve, and having an area not in excess of 10,000 square feet, and a maximum length on either street, except in case of a bend or curve, of not more than 150 feet, shall be deemed a corner lot. The provisions of this paragraph shall apply to a lot fronting on an open space dedicated to the public use in the same manner as to a lot fronting on a street.

G. Rear Lots.

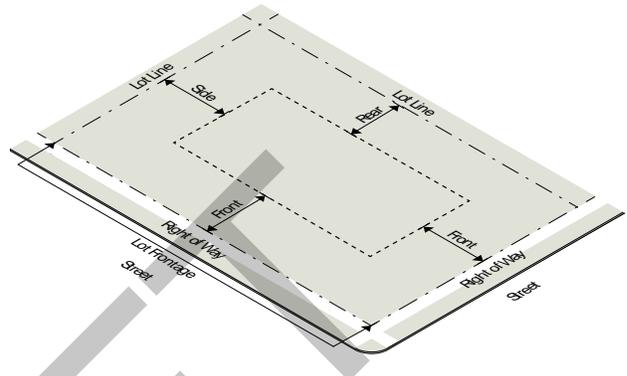
1. A rear lot is defined as a parcel of land not fronting or abutting a street, which does not have the required minimum frontage directly on a street, and which has limited access to a street by either:
 - a. A “flag pole” or “pan-handle” shaped portion of the lot,
 - b. An easement over an adjoining lot possessing frontage directly on the street, or
 - c. A private right-of-way as shown or described in plans or deeds duly recorded with the Registry of Deeds for the Southern District of Middlesex County.

2. Where the City Council issues a special permit, a rear lot may satisfy the minimum frontage requirement for the zoning district in which it is located by measuring lot frontage along the rear line of the lot or lots in front of it.

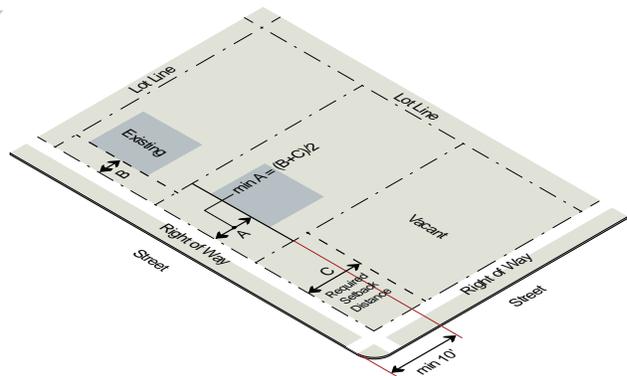
(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/07; Ord. No. T-173, 09/16/91; Ord. No. V-92, 10/21/96; Ord. No. X-123, 12/06/04)

1.5.3. Setback

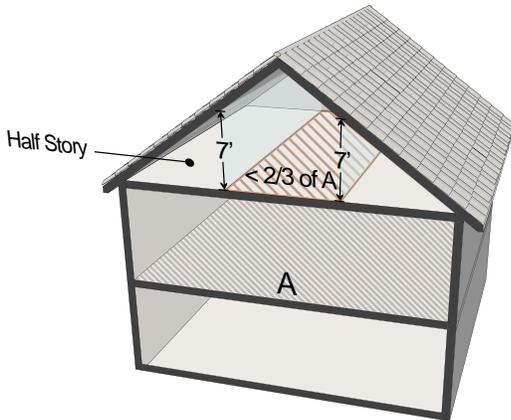
- A. **Defined.** A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a **principal building structure** may be erected. In the case of a corner lot, the rear lot line shall be the lot line opposite the street on which the main entrance is located.



- B. No building need be set back more than the average of the setbacks of the buildings on the nearest lot on either side, a vacant lot or a lot occupied by a building set back more than the required distance for its district to be counted as though occupied by a building set back such required distance. Averaging applies only to the front setback. In no case shall any part of a building in a residence district extend nearer the street line than 10 feet.

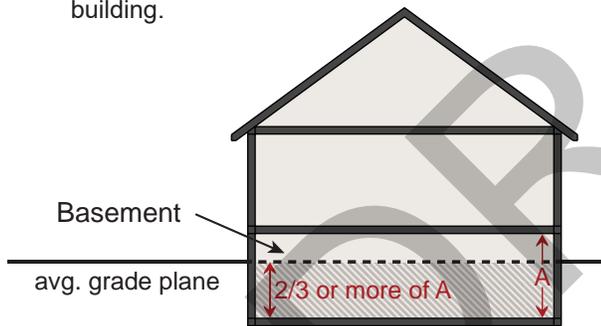


C. **Story, Half.** A story directly under a sloping roof where the area with a ceiling height of 7 feet or greater is less than 2/3 of the area of the story next below.

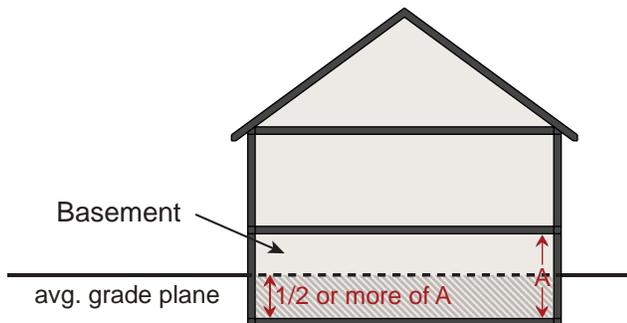


D. **Basement.**

- Any story in a building used for any purpose other than a single- or two-family residential use, in which 2/3 or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.



- In the case of single- and two-family residential uses, any story in a building in which 1/2 or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.



E. **Grade.** In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

F. **Grade Plane Average.** A horizontal reference plane for a building as a whole representing the average of finished grade elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length greater than 6 feet shall be included in segments of consistent grade or slope.

$$\sum = \frac{(e1 + e2) / 2 \times L}{P}$$

Where:

- ∑ sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments.

Sec. 2.3. Allowed Uses

2.3.1. Principal Uses Allowed

Public Use and Open Space/Recreational Districts	PU	OS/R	Definition/ Listed Standards
Residential Uses			
<i>None</i>	--	--	--
Civic/Institutional Uses			
Cemetery, private	SP	P	Sec. 6.3.1
Family child care home, large family child care home, day care center	L	L	Sec. 6.3.4
Library, museum, similar institution	L	--	Sec. 6.3.8
Public use	L	L	Sec. 6.3.10
Religious institution	L	L	Sec. 6.3.12
School or other educational purposes, non-profit	L	L	Sec. 6.3.14
School or other educational purposes, for-profit	SP	SP	Sec. 6.3.14
Scientific research and development activities, accessory	SP	SP	Sec. 6.7.4
Commercial Uses			
Country club facilities	--	SP	Sec. 6.4.10
Indoor recreation facility, private	--	SP	Sec. 6.6.2
Industrial Uses			
<i>Wireless communication equipment</i>	SP	SP	Sec. 6.9
Open Space Uses			
Agriculture, on a parcel of 5 or more acres	P	P	Sec. 6.6.1
Agriculture, on a parcel under 5 acres	SP	P	Sec. 6.6.1
Outdoor recreational activities, private	--	L	Sec. 6.6.3
Resource extraction	SP	SP	Sec. 6.6.4
P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed			

The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the Commissioner of Inspectional Services may consider the proposed use part of the listed use.

Sec. 3.4. Allowed Uses

3.4.1. Residential Districts Allowed Uses

Residential Districts									Definition/ Listed Standards
	SR1	SR2	SR3	MR1	MR2	MR3	MR4		
Residential Uses									
Single-family, detached	P	P	P	P	P	P	P		Sec. 6.2.1
Two-family, detached	--	--	--	P	P	P	P		Sec. 6.2.2
Single-family, attached	SP		Sec. 6.2.3						
Multi-family dwelling	--	--	--	--	SP	SP	SP		Sec. 6.2.4
Association of persons in a common dwelling	SP		Sec. 6.2.6						
Lodging house	--	--	--	SP	SP	SP	SP		Sec. 6.2.7
Congregate living facility	SP		Sec. 6.2.8						
Dormitory (5-20 persons)	SP		Sec. 6.2.9						
Dormitory (20+ persons)	L	L	L	L	L	L	L		Sec. 6.2.9
Cluster development for open space preservation	SP		Sec. 6.2.12						
Residential care facility	--	--	--	--	--	SP	SP		Sec. 6.2.13
Civic/Institutional Uses									
Cemetery, private	SP		Sec. 6.3.1						
Club, clubhouse	SP		Sec. 6.3.2						
Family child care home, large family child care home, day care center	L	L	L	L	L	L	L		Sec. 6.3.4
Hospital	SP		Sec. 6.3.7						
Library, museum or similar institution	SP		Sec. 6.3.8						
Nonprofit institution	--	--	--	SP	SP	SP	SP		Sec. 6.3.9
Public use	L	L	L	L	L	L	L		Sec. 6.2.10
Religious institution	L	L	L	L	L	L	L		Sec. 6.3.12
Sanitarium, convalescent or rest home, other like institution	SP		Sec. 6.3.13						
School or other educational purposes, non-profit	L	L	L	L	L	L	L		Sec. 6.3.14
School or other educational purposes, for-profit	SP		Sec. 6.3.14						
Scientific research and development activities, accessory	SP		Sec. 6.7.4						
Commercial Uses									
Bed & Breakfast	SP	SP	SP	SP	SP	--	--		Sec. 6.4.5
Funeral home	--	--	--	--	SP	SP	--		Sec. 6.4.15
Radio or television transmission station or structure	SP		Sec. 6.4.27						
Industrial Uses									
Wireless communication equipment	P/L/SP		Sec. 6.9						
Open Space Uses									
Agriculture on a parcel of 5 or more acres	P	P	P	P	P	P	P		Sec. 6.6.1
Agriculture on a parcel under 5 acres	SP		Sec. 6.6.1						
Resource extraction	SP		Sec. 6.6.4						
Riding school, stock farm	SP		Sec. 6.6.5						

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed

The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the Commissioner of Inspectional Services may consider the proposed use part of the listed use.

3.4.4. Garage Design Standards

A. Applicability

Garage Design Standards apply in all Residence Districts

B. Definitions

1. **Garage.** An attached or detached **building structure**, or portion of a **building structure**, that is able to be accessed by an automobile or is used or intended to be used primarily for the storage or parking of 1 or more automobiles. A detached Garage is an Accessory Building (See Sec. 3.4.3).
2. **Front Facing Garage.** A Garage with a Garage Door or Doors facing the Primary Front Lot Line at an angle between 0 and 59 degrees perpendicular to the Primary Front Lot Line. The angle shall be measured between the Garage Door or Doors and a line parallel to the Primary Front Lot Line at the midpoint of the Primary Front Lot Line. If there is a curve at the midpoint, the angle shall be measured between the Garage Door or Doors and a line tangent to the curve at the midpoint of the Primary Front Lot Line.
3. **Side Facing Garage.** A Garage with a Garage Door or Doors facing the Primary Front Lot Line at an angle between 60 and 90 degrees. The angle shall be measured between the Garage Door or Doors and a line parallel to the Primary Front Lot Line at the midpoint of the Primary Front Lot Line. If there is a curve at the midpoint, the angle shall be measured between the Garage Door or Doors and a line tangent to the curve at the midpoint of the Primary Front Lot Line
4. **Garage Door.** The door to a Garage that provides access for an automobile. Garage door width is measured from the inside face of the door jambs.
 - a. Single Garage Doors are Garage Doors used for a single automobile to access a Garage.
 - b. Double Garage Doors are Garage Doors used for 2 automobiles to access a Garage side-by-side.

5. **Garage Wall.** Any wall enclosing a Garage including that wall containing the Garage entrance.

6. **Front Elevation.** The exterior wall of a principal building oriented in whole or in part toward the Primary Front Lot Line. The Front Elevation does not include any exterior wall of a building more than 10 feet behind the frontmost exterior wall oriented in whole or in part toward the Primary Front Lot Line.

7. **Primary Front Lot Line.** The lot line abutting a street or right of way. Where there are multiple lot lines abutting streets or rights of way, the Primary Front Lot Line shall be the one the main entrance faces. Where there are multiple lot lines abutting streets or rights of way and the main entrance does not face a street or right of way, the Primary Front Lot Line shall be determined by the Commissioner of Inspectional Services or their designee.

8. **Fenestration.** The openings in a Garage Wall facing the Primary Front Lot Line, including windows and doors. Fenestration is measured from the inside face of the jambs on any window or door trim.

C. Standards for Front Facing Garages

1. The sum of the width of all Garage Doors on a Front Facing Garage may be up to the following:
 - a. 45% of the total width of the Front Elevation, when a Front Facing Garage includes only Single Garage Doors.
 - b. 40% of the total width of the Front Elevation, when a Front Facing Garage includes a Double Garage Door only, or both a Double Garage Door and a Single Garage Door.
2. A Single Garage Door may be up to 9 feet wide.
3. A Double Garage Door may be up to 16 feet wide.

D. Standards for Side Facing Garages

1. A Side Facing Garage may be located in front of the Front Elevation, but not within the front setback, if it meets the following:
 - a. A minimum of 10% Fenestration on the Garage Wall facing the Primary Front Lot Line as measured from the exterior.
2. A Single Garage Door may be up to 9 feet wide.
3. A Double Garage Door may be up to 16 feet wide.

E. Standards for Single-Family, Detached residential buildings ~~with one unit~~

1. There may be no more than 700 square feet in total Garage area on a lot providing for no more than 3 automobiles. A lot may contain no more than one attached Garage and one detached Garage.

F. Additional Standards for Two-Family, Detached residential buildings ~~with two units~~

1. Parking spaces in Garages are counted toward the minimum number of accessory parking spaces required by Sec. 5.1.4. Garages may be attached or detached.
 - a. For each residential unit, there shall be no more than 500 square feet in total Garage area, no more than one Garage and each Garage shall provide for no more than 2 automobiles.;**and**
 - b. There must be space that meets the requirements to be eligible for Habitable Space above each Garage if the Garages share a Garage Wall; except*
 - c. 1 and 1 ½ story buildings are exempt from Section 3.4.4.F.1.2.*

**Note: The proposed edits to Sec. 3.4.4.F.1.b and 3.4.4.F.1.c would only apply if Option 1 for the proposed edits to the definition of "Two-Family, Detached" is approved*

H. By Special Permit

1. For Single-Family, Detached residential buildings ~~with one unit~~: a Garage with provision for more than 3 automobiles, or a second attached or detached Garage, or ~~a Garage of~~ more than 700 square feet in total Garage area on a lot, or more than 2 Garages.
2. For residential buildings: the Front Elevation may include those portions of the exterior wall oriented in whole or in part toward the Primary Front Lot Line that are more than 10 feet behind the frontmost exterior wall.

(Ord. No. A-78, 06/20/16; Ord. No. A-84, 06/20/16; Ord. No. A-95, 12/05/16; Ord. No. A-105, 03/06/17; Ord. No. B-6, 03-19-18)

3.4.5. Accessory Apartments

See Sec. 6.7.1

3.4.6. Temporary Uses Allowed

[reserved]

G. Exemptions

Proposed Edits to Sec. 3.4.4.G - Option 1

1. A detached or attached Front Facing Garage that is set back more than 10 feet from the Front Elevation is exempt from the standards for Front Facing Garages (Sec. 3.4.4.C).
2. A detached or attached Side Facing Garage that is located 10 feet or more behind the Front Elevation and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).
3. Garages located on Rear Lots are exempt from the standards for Front Facing Garages (Sec. 3.4.4.C) and standards for Side Facing Garages (Sec. 3.4.4.D).

Proposed Edits to Sec. 3.4.4.G - Option 2

1. A detached or attached Front Facing Garage that is set back more than 10 feet from the Front Elevation is exempt from the standards for Front Facing Garages (Sec. 3.4.4.C).
2. A detached or attached Side Facing Garage that is set back from the Front Elevation, and is not on a corner lot, is exempt from the standards for Side Facing Garages (Sec. 3.4.4.D).
3. Garages located on Rear Lots are exempt from the standards for Front Facing Garages (Sec. 3.4.4.C) and standards for Side Facing Garages (Sec. 3.4.4.D).

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Telecommunications and data storage facility	--	--	--	--	--	SP	--	--	--	--	SP	Sec. 6.5.15
Trash or yard waste, collection, storage, transfer-haul or composting	--	--	--	--	--	--	--	--	--	--	--	Sec. 6.5.16
Vehicle storage	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.5.17
Wholesale business or storage facility	--	L	--	--	--	SP	--	--	--	L	L	Sec. 6.5.18
Wholesale distribution plant	--	--	--	--	--	--	--	--	--	--	P	Sec. 6.5.19
Wireless communication equipment	P/L/SP	Sec. 6.9										
Manufacturing, uses not allowed by right	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.5.11
Open Space Uses												
Agriculture, on a parcel of 5 or more acres	P	P	P	P	P	P	P	P	P	P	P	Sec. 6.6.1
Agriculture, on a parcel under 5 acres	SP	Sec. 6.6.1										
Resource extraction	SP	Sec. 6.6.4										
Restricted Uses												
Adult business	--	--	--	--	--	SP	--	--	--	--	SP	Sec. 6.10.1
Keno	SP	SP	SP	SP	--	SP	SP	SP	--	--	--	Sec. 6.10.2
Registered marijuana dispensary	--	SP	--	SP	SP	SP	--	--	--	--	--	Sec. 6.10.3
Craft Marijuana Cooperative	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Independent Testing Laboratory	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Cultivator	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Product Manufacturing	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Research Facility	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Retailer	--	SP	--	SP	SP	SP	--	--	--	--	--	Sec. 6.10.3
Marijuana Transporter	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Microbusiness	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed

See [Sec. 7.8.4](#), Substandard Commercial Lots.

(Ord. No A-72, 04/04/16; Ord. No A-73, 04/04/16; Ord. No. A-99, 01/17/17; Ord. No. A-113, 06-19-17; Ord. No. B-5, 03-19-18; Ord. No. B-16, 12-03-18)

The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the Commissioner of Inspectional Services may consider the proposed use part of the listed use.

Article 5. Development Standards

Sec. 5.1. Parking and Loading	5-2	Sec. 5.6. Great Ponds	5-24
5.1.1. Intent and Purpose	5-2	Sec. 5.7. Noise	5-24
5.1.2. Applicability	5-2	Sec. 5.8. Outdoor Lighting	5-24
5.1.3. General Regulations	5-2	Sec. 5.9. Tree Protection	5-24
5.1.4. Number of Parking Stalls	5-4	Sec. 5.10. Floodplain, Watershed Protection...	5-25
5.1.5. Administration.....	5-6	Sec. 5.11. Inclusionary Zoning	5-25
5.1.6. Location of Required Accessory Parking Facilities	5-6	5.11.1. Purposes	5-25
5.1.7. Design of Parking Facilities Containing 5 Stalls or Less	5-7	5.11.2. Definitions	5-25
5.1.8. Design of Parking Facilities Over 5 Stalls.....	5-7	5.11.3. Scope	5-25
5.1.9. Parking Facility Landscaping	5-9	5.11.4. Inclusionary Units	5-25
5.1.10. Lighting, Surfacing, and Maintenance of Parking	5-12	5.11.5. Cash Payment	5-26
Facilities	5-12	5.11.6. Off-Site Development	5-27
5.1.11. Bicycle Parking Facilities.....	5-12	5.11.7. Design and Construction	5-27
5.1.12. Off-Street Loading Requirements	5-13	5.11.8. Habitable Space Requirements	5-28
5.1.13. Exceptions	5-14	5.11.9. Inclusionary Housing Plans and Covenants.....	5-28
Sec. 5.2. Signs	5-15	5.11.10. Public Funding Limitation	5-29
5.2.1. Intent and Purpose	5-15	5.11.11. Elder Housing with Services	5-30
5.2.2. Applicability	5-15	5.11.12. No Segmentation	5-30
5.2.3. Definitions	5-15	5.11.13. No Effect on Prior or Existing Obligations.	5-31
5.2.4. Permit Procedure.....	5-17	5.11.14. No Effect on Accessory Apartments.	5-31
5.2.5. Prohibited Signs	5-18	5.11.15. Incentives	5-31
5.2.6. Signs Allowed By Right	5-18	Sec. 5.12. Environmental Standards in the	Manufacturing Distirt
5.2.7. Signs in Residence Districts	5-20		5-31
5.2.8. Signs in Commercial Districts	5-21	<u>Sec. 5.13. Sustainable Development Design....5-38</u>	
5.2.9. Signs in Open Space/Recreation and Public Use Dis-	5-22	<u>5.13.1. Intent and Purpose</u>	<u>5-38</u>
tricts.....	5-22	<u>5.13.2. Definitions</u>	<u>5-38</u>
5.2.10. Illuminated Signs	5-22	<u>5.13.3. Application of the Sustainable Development</u>	<u>Requirements</u>
5.2.11. Construction and Maintenance	5-22		<u>5-38</u>
5.2.12. Nonconforming Signs	5-22	<u>5.13.4 Sustainable Development Requirements</u>	<u>5-39</u>
5.2.13. Exceptions	5-23	<u>5.13.5 Authorized Green Building Rating</u>	<u>Programs Requirements</u>
5.2.14. Guidelines	5-23		<u>5-39</u>
Sec. 5.3. Stormwater Management	5-24	<u>5.13.6 Sustainable Development Review Procedures</u>	<u>5-39</u>
Sec. 5.4. Fences & Retaining Walls	5-24	<u>5.13.7 Exceptions</u>	<u>5-41</u>
5.4.1. Fences	5-24		
5.4.2. Retaining Walls	5-24		
Sec. 5.5. Landscaping	5-24		

Sec. 5.13. Sustainable Development Design

5.13.1. Intent and Purpose

The intent of this section is to reduce the use of energy, water, and other natural resources in Newton's building stock and minimize adverse environmental impacts from buildings and development in both construction and long-term operation by:

- A. **Increasing the use of renewable energy sources for electricity, transportation, heat/cooling, and hot water**
- B. **Increasing the use of efficient electricity technology for transportation and buildings**
- C. **Increasing the number of buildings built to Passive House, net zero, or similar standards.**
- D. **Minimizing the environmental impacts of construction materials and methods, including waste reduction.**

5.13.2. Definitions

- A. **Green Commissioning.** The process of verifying and documenting that a building and all of its systems and assemblies are installed, tested, operated, and maintained to meet specified levels of environmentally sustainable performance in accordance with the provisions of Section 5.132 of this Zoning Ordinance.
- B. **Green Commissioning Agent.** An entity or person with documented experience on at least 2 building projects with a scope of work similar to the proposed project extending from early design phase through at least 10 months of occupancy.
- C. **Green Building Professional.** A professional who holds a credential from a Green Building Rating Program indicating advanced knowledge and experience in environmentally sustainable development in general as well as specific Green Building Rating Systems or otherwise possesses comparable experience in environmentally sustainable development. In instances where a Green Building Rating Program that does not offer such a credential is being applied to meet the provisions of Section 5.132, the designated Green Building Professional must have demonstrated experience as a project architect or engineer, or

as a consultant providing third-party review, on at least 3 projects that have been certified using the applicable Green Building Rating Program.

- D. **Green Building Project.** Any development project that meets the provisions of Section 5.13.42-3.
- E. **Green Building Rating Program.** A collection of activities and services directed by an organization to promote environmentally sustainable development and to recognize projects that achieve defined environmentally sustainable development objectives, including the establishment and oversight of one or more Green Building Rating Systems.
- F. **Green Building Rating System.** A specific set of design standards for environmentally sustainable performance established under the auspices of a Green Building Rating Program against which a project or building design may be evaluated.

5.13.3. Application of the Sustainable Development Requirements

- A. **These sustainable development requirements apply to any proposed development in any zoning district that includes the construction or substantial reconstruction of one or more buildings totaling 20,000 sf or more of gross floor area that also requires issuance of a special permit under any provision of this Zoning Ordinance.**
- B. **No Segmentation.** The zoning provisions of this Section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.132. Where the City Council determines that this provision has been violated, a special permit will be denied. However, nothing in Section 5.132 prohibits the phased development of a property.

5.13.4. Sustainable Development Requirements

- A. A green building project must be designed to meet the standards of one of the authorized green building rating systems identified in Section 5.132.5 according to the requirements listed below.
1. **LEED Green Building Rating Program.** A green building project being designed according to the LEED Green Building Rating Program must be designed to achieve a minimum 'Silver' level standard. Projects of greater than 50,000 sf of gross floor area must be designed to meet a minimum 'Gold' level standard. Certification by the LEED Green Building Rating Program is not required.
 2. **Passive House Green Building Rating Program.** A green building project being designed according to the Passive House Green Building Rating program must be designed to achieve certification. Certification by the Passive House Green Building Rating Program is required.
 3. **Enterprise Green Communities Green Building Rating System.** A green building project being designed according to the Enterprise Green Communities Green Building Rating program must be designed to achieve the minimum criteria for certification. Certification by the Enterprise Green Communities Green Building Rating Program is not required.
- B. **Electric Vehicle Charging Stations.** A green building project must provide that a minimum of 10% of parking spaces have access to electric vehicle charging stations up to a maximum of 40 spaces. An additional 10% of parking spaces must be electric vehicle charging station ready, meaning that electrical systems and conduit are prepared to expand the number of charging stations as demand increases. This Section 5.132.4.B only applies to new or rebuilt parking facilities; those projects using existing parking lots are exempt.
- C. **Solar Panels.** [reserved]
- D. **Embodied Carbon** [reserved]

- E. Electrification of heating/cooling and residential cooking, domestic water heating, and laundry [reserved]

5.13.5. Authorized Green Building Rating Programs

- A. Any of the following green building rating programs may be used to meet the requirements of this Section 5.132.
1. The Leadership in Energy and Environmental Design ("LEED") Green Building Rating Program developed and overseen by the United States Green Building Council;
 2. The Passive House Green Building Rating Program developed and overseen by either Passive House Institute US, Inc. or the Passive House Institute; or
 3. The Enterprise Green Communities Green Building Rating Program developed and overseen by Enterprise Community Partners, Inc.
- B. **Applicability of Rating Systems.**
1. If a green building rating program offers different green building rating systems, a green building project must use the system that is most directly applicable to the project or building type, as determined by the Planning Director.
 2. The green building rating system must address the design and construction of buildings, not building operations or neighborhood development.
 3. A green building project must use the most current version of the applicable green building rating system at the time of the special permit application.
 4. The green building rating system, including the applicable version, must be specified at the time of special permit application.

5.13.6. Sustainable Development Review Procedures

- A. **Special Permit Submittal Requirements.** The following must be submitted with the special permit application:

1. **Rating System Checklist.** A document enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the green building project.
 2. **Rating System Narrative.** A written description of the technical and design elements of the green building project that will be utilized to achieve compliance with the applicable green building rating system.
 3. **Energy Narrative.** A written description of the energy efficiency, renewable energy, and other technical and design elements of the green building project that serve to minimize energy use, make use of renewable energy sources, and otherwise demonstrate how close the project is to achieving net zero energy use status. This narrative should include descriptions of building envelope performance, anticipated energy loads, site planning, mechanical systems and on-site and off-site renewable energy systems. The narrative must also describe how the building could be made to achieve net zero status in the future.
 4. **Credentials.** A document demonstrating the credentials of the green building project's designated green building professional, which must include a credential from the green building rating program indicating advanced knowledge in the specific green building rating system being applied to the green building project.
 5. **Affidavit.** An affidavit signed by the green building professional stating that he/she has reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the green building project is being designed to achieve the requirements of this Section 5.132.
- B. Building Permit Submittal Requirements.** When applying for a building permit for a Green Building Project, the documentation listed in Section 5.12.6.A above, updated from any previous version to reflect the current Green Building Project design, and the additional documentation listed below must be submitted to the Department of Planning and Development.
1. **Credentials of the Green Building Project's Green Commissioning Agent.**
 2. **For a Green Building Project using the Passive House Green Building Rating Program, the following set of documents is required:**
 - a. Credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating he/she has been hired to complete the on-site verification process;
 - b. Credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services;
- C. Certificate of Occupancy Submittal Requirements.** When applying for a temporary certificate of occupancy for a Green Building Project, the documentation listed in Sections 5.12.6.A and 5.12.6.B above, updated from any previous version to reflect the current Green Building Project design, must be submitted to the Department of Planning and Development. The additional documentation listed below must be submitted prior to issuance of a final certificate of occupancy.
1. **An affidavit signed by the Green Commissioning Agent, certifying that the pre-construction commissioning process requirements of the applicable Green Building Rating Program have been met and that the post-construction commissioning process requirements of this Section were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.**
 2. **For Green Building Projects using the Passive House Green Building Rating Program, the final testing and verification report completed by the Passive House rater/verifier.**
 3. **Credentials of the Green Building Project's accredited Green Building Professional and an affidavit signed by that professional stating that he/she has reviewed all relevant documents and that to the best of his/her knowledge, the**

documents provided indicate that the Green Building Project was built to achieve the requirements of Section 5.12.

5.13.7. Exceptions

A special permit may be granted to allow for exceptions to this Section 5.13~~2~~ if an applicant can demonstrate that the same or better environmental outcomes can be achieved through a different approach or project design. An exception may also be granted where literal compliance is impracticable due to the nature of the use or that such exceptions would be in the public interest.

(Ord. No. B-49, 12-02-19)

DRAFT

a master list of accessory apartments shall be kept, and with the Assessing Department;

9. When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Section 6.7.1 and with 780 CMR; and
10. The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this Section 6.7.1 and all applicable public safety codes. Such certification shall be filed annually on the first business day of January or upon transfer to a new owner as provided above, and the property may be subject to inspection.

D. Rules for Internal Accessory Apartments

1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building.
2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling, as defined in Sec. 8.3, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40 % of the total Habitable Space, whichever is less.
 - a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.
3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure, and the look, character and scale of the surrounding neighborhood as viewed from the street, including, but not limited to, the following considerations:
 - a. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;

- b. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
- c. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
- d. Windows should be consistent with those of the remainder of the building in proportion and orientation;
- e. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
- f. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above criteria. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.

4. Only one entrance may be located on the facade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created, except by special permit.

E. Rules for Detached Accessory Apartments.

1. Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single Family, Detached building or a Two-Family, Detached building.

2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.

a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.

3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the principal dwelling on the lot and the residential character of the neighborhood. The exterior finish material should be the same or visually compatible in type, size, and placement, as the exterior finish material of the principal dwelling unit on the site. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)

(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.

4. The Detached Accessory Apartment must meet the separation requirements from the principal dwelling unit on the subject lot in compliance with Sec. 3.4.3.A.2, be at least 6 feet from the principal dwelling unit on the site.

5. The Detached Accessory Apartment must meet the setback requirements of the principal dwelling unit, as well as floor area and other applicable dimensional controls, except by special permit.

6. Except as required above, a Detached Accessory Apartment is subject to the dimensional requirements of Section 3.4.3,

Accessory Buildings. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

7. Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in an historic accessory building located outside of an historic district, may be allowed by right without requiring a special permit, and only subject to the rules in this subsection E.7.

- a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must qualify and be deemed as "historically significant" under Section 22-50 of the City of Newton Ordinances, The Demolition Review Ordinance, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission;
- b. The proposed Detached Accessory Apartment will be greater than 15 feet from an existing residential dwelling on an abutting property, except by special permit; and
- c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission.

F. **Invalidity Clause.** If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.

(Ord. No. T-114, 11/19/90; Ord. No. T-247, 10/05/92; Ord. No. T-306, 11/01/93; Ord. No. Z-95, 10/03/11; Ord. No. A-43, 06/02/14; Ord. No. A-55, 01/20/15; Ord. No. A-106, 04/03/17)

when called in such other manner as the Zoning Board of Appeals shall determine in its rules. Such Chairman, or in the Chairman's absence the Acting Chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the Zoning Board of Appeals shall be open to the public.

(Rev. Ords. 1973 §24-30; Ord. No. 284, 06/19/78; Ord. No. T-8, 01/17/89; Ord. No. T-116, 12/03/90)

Sec. 7.2. Amendments

- A. The City Council may, from time to time, change this Chapter by amendment, addition or repeal, but only in the manner provided in M.G.L. Chapter 40A, Section 5 as of the time in effect. Under the provisions of M.G.L. Chapter 40A, Section 5, the Zoning and Planning Committee is hereby designated a committee for the purpose of holding public hearings on the matter of repealing or modifying provisions of this Chapter in the absence of a contrary designation by the City Council.
- B. Any person making application to the City Council for a change in this Chapter shall pay to the City Clerk at the time of filing such application fee prescribed by Revised Ordinances Chapter 17, Article II, Section 17-3, as amended.

(Rev. Ords. 1973 §24-31; Ord. No. 284, 06/19/78)

Sec. 7.3. Special Permit Review

7.3.1. Application

- A. Whenever a special permit is required under the provisions of this Chapter a written application for a special permit, on forms provided by the City Clerk and accompanied by plans prepared as provided in Sec. 7.4.3 shall be submitted in accordance with the procedures of this Sec. 7.3 and the Rules and Orders of the City Council pertaining to special permit and site plan approval applications to the City Clerk, who shall transmit such application to the City Council and the Department of Planning and Development. Whenever an application for a special permit is required under the provisions of this Chapter, site plan approval in accordance with Sec. 7.4 shall also be required and an application for such approval shall be filed concurrently with the application for special permit.
- B. Contents of the Application. Each application for a special permit shall be accompanied by a site plan submission prepared in accordance with the provisions of Sec. 7.4.4.
 1. The applicant shall also submit a 3D computer-generated model; or rendered perspective drawings including such details as necessary to show the relationship of the project to its surroundings. The level of detail included in the model or drawings shall be at the discretion of the Director of Planning and Development. The architect of record shall certify that the model or drawings are is an accurate representation of the proposed design. For any commercial or multi-family development with a gross floor area of 20,000 square feet or more, a model or drawings shall be provided as follows:
 - a. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the model or drawings shall show the proposed development, all abutting properties and abutters to such abutting properties; for a proposed development containing a gross floor area 50,001 to 100,000 square feet, the model or drawings shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater; or
 - b. For a proposed development containing a gross floor area in excess of 100,000 square

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

- C. As part of an application for special permit, an applicant must comply with the Rules and Orders of the City Council pertaining to special permit and site plan approval.

(Ord. No. S-260, 08/03/87; Ord. No. A-6, 10/01/12; Or. No. A-73, 04/04/16)

7.3.2. Review

- A. The City Council or a committee of the City Council shall hold a public hearing within 65 days of the filing of an application for special permit.
- B. Notice of such public hearing shall be provided as required by M.G.L. Chapter 40A, Section 11.
- C. The City Council shall act upon any application for special permit not later than 90 days following the the public hearing.
- D. The application for special permit shall be deemed approved if the City Council fails to act upon the application not later than 90 days following the public hearing.
- E. Any approval of an application for special permit shall lapse not later than 1 year from the grant of such approval unless a substantial use of such special permit or construction required by such special permit has begun. The City Council may extend the period of time granted under this Paragraph for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon, unless the City Council or its Committee on Land Use shall vote to require a public hearing. Notwithstanding the above, no extensions shall be granted which shall extend the time for substantial exercise of the special permit for more than 3 years from the date of the grant of the special permit.
- F. The Newton Biosafety Committee shall serve as an advisory body to the City Council with regard to any

application for a special permit for a research and development facility.

(Ord. No. S-260, 08/03/87; Ord. No. V-9, 02/21/95; Ord. No. A-6, 10/01/12; Ord. No. A-99, 01/17/17; Ord. No. A-109, 05/15/17; Ord. No. A-113, 06-19-17)

7.3.3. Grant of Permit

- A. A special permit from the City Council for any purpose for which a permit is required under this Chapter shall be granted only by 2/3 vote of all the City Council.
- B. The City Council may grant a special permit when, in its judgment, the public convenience and welfare will be served, and subject to such conditions, safeguards and limitations as it may impose.
- C. The City Council shall not approve any application for a special permit unless it finds, in its judgment, that the use of the site will be in harmony with the conditions, safeguards and limitations of this Sec. 7.3, and that the application meets all the following criteria:
 - 1. The specific site is an appropriate location for such use, structure;
 - 2. The use as developed and operated will not adversely affect the neighborhood;
 - 3. There will be no nuisance or serious hazard to vehicles or pedestrians;
 - 4. Access to the site over streets is appropriate for the types and numbers of vehicles involved; and
 - 5. In cases involving construction of building or structures or additions to existing buildings or structures, if those proposed buildings or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.
- D. The City Council shall not approve any application for a special permit unless it finds that said application complies in all respects with the requirements of this Chapter. In approving a special permit, the City Council may attach such conditions, limitations, and safeguards as it deems necessary to protect or benefit the neighborhood, the zoning

Lab and R&D Process

#77- 21
Zoning and Planning Committee
August 16, 2021
Department of Planning and Development



Laboratory and R&D

Biotech and R&D jobs are increasing in Massachusetts

New opportunities in places like Newton as companies leave higher cost urban areas

Consistent with economic goals to increase the commercial tax base and capitalize on highly skilled Newton workforce

Recent zoning updates, in partnership with EDC, have clarified and modernized R&D use definition and have allowed flexibility in building floor to floor heights

The use is highly regulated at the federal, state, and local level



Federal Regulations

OSHA and the EPA are the primary federal regulatory agencies for labs. EPA requires registration and OSHA is notified if there is an incident or complaint. OSHA compliance is also typically a requirement in lease agreements and for federal funding.

EPA:

- Resource Conservation and Recovery Act (RCRA) (40 CFR parts 239-282) - must register with EPA when generating hazardous waste and must collect in approved containers and dispose by an approved waste hauler



Federal Regulations

OSHA:

- Lab Standard: Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450)
- Hazard Communication (29 CFR 1910.1200)
- Bloodborne Pathogens (29 CFR 1910.1030)
- PPE - General Requirements (29 CFR 1910.132); Eye and face protection (29 CFR 1910.133); Respiratory protection (29 CFR 1910.134)
- Other standards depending upon the nature of the work



State Regulations

State oversight happens through the MA sanitary and plumbing codes, the Massachusetts Water Resources Authority (MWRA), and the Massachusetts Department of Environmental Protection (MassDEP)

MA Sanitary Code

- Minimum Requirement for the Management of Medical or Biological Waste (105 CMR 480) - regulations for the disposal and tracking of biomedical waste. State may do pop inspections.

MA Plumbing Code

- Sections related to laboratories (248 CMR 10) - linked to MWRA, regulates the piping for lab waste.



State Regulations

MWRA

- Sewer use (360 CMR 10) - requires a permit from MWRA. Initial inspection plus pop inspections and MWRA may conduct periodic water sampling.

MassDEP

- MA Hazardous Waste Regulations (310 CMR 30) - must register with EPA and MassDEP to dispose hazardous waste. Both agencies perform pop inspections.
- Air Pollution Control (310 CMR 7) - regulates emissions. Permits required at certain thresholds. MassDEP performs inspections.



Newton Regulations

Local regulations include zoning, rDNA ordinance, building code and fire code

Zoning Ordinance

- Laboratory, Research and Development (Section 6.5.9) allowed in all business, mixed use, and manufacturing zones either by-right or special permit. Ancillary manufacturing allowed per definition in Section 6.5.11
- Special permit required for additions or new buildings greater than 20,000 sf



Newton Regulations

rDNA Ordinance

- rDNA research and technology is regulated under Sections 12-21 - 12-30 of the Revised Ordinances of the City of Newton and NIH Guidelines
- rDNA is molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or molecules that result from the replication of those described above
- rDNA must be reviewed and approved by the BioSafety Committee, which is comprised of nine members and must approve an rDNA research or technology. HHS issues a permit, which must be renewed annually



Newton Regulations

BioSafety Committee cont.

- Institutional Biosafety Committee (IBC) is established for each institution conducting rDNA research or technology. IBC includes Commissioner of HHS, two community reps with expertise in rDNA and/or safety issues, and three members of institution, including the safety officer
- IBC performs an initial inspection plus annual inspections and must meet at least once a year to enforce rDNA regulations
- rDNA requiring physical containment greater than biosafety level 3 is not permitted in Newton

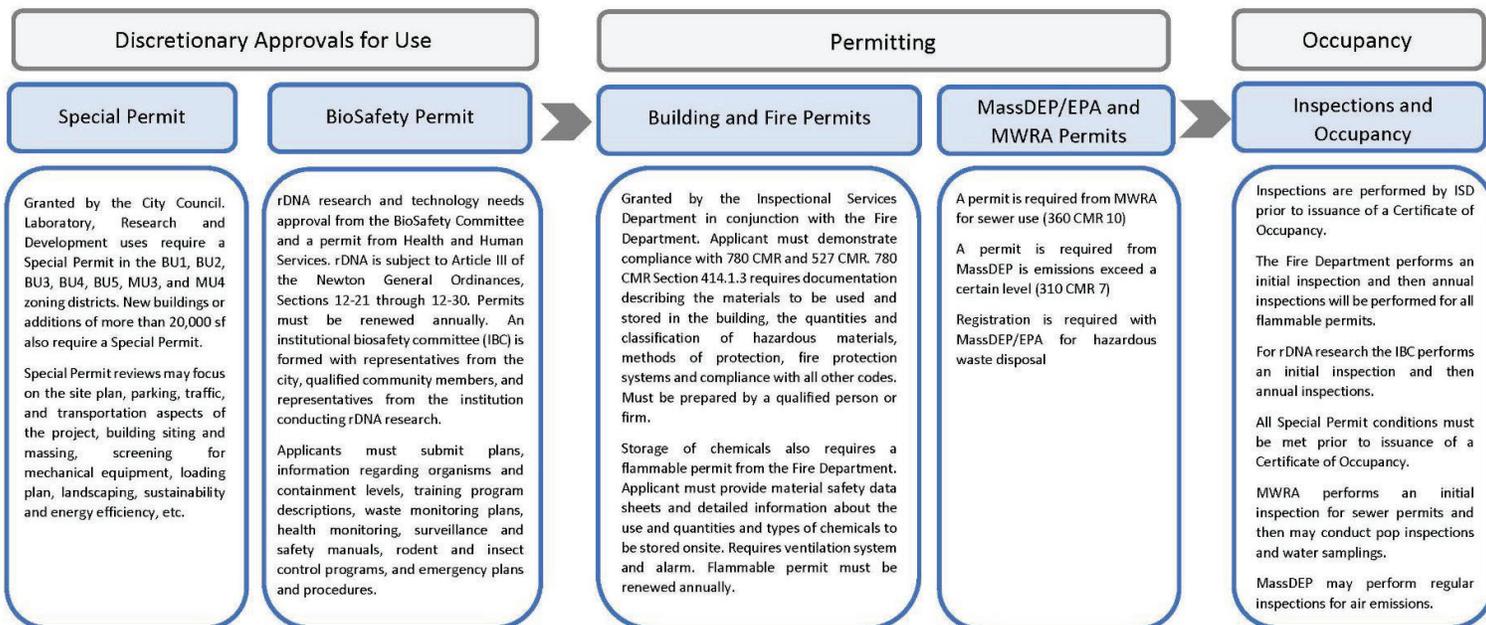


Newton Regulations

Building and Fire Codes

- Buildings with hazardous materials regulated by 780 CMR Section 414 (hazardous materials) and 527 CMR (fire safety code)
- Each tenant working with or storing chemicals must get a flammable permit from the fire department. Permits must be renewed annually. Fire Department does an initial inspection and will be training officers and doing annual inspections of all labs.
- Emergency Action or Contingency Plan required per OSHA 29 CFR 1910.38 & 157, MA Fire Safety Code 527 CMR 1.0, and MassDEP 310 CMR 30.
- Fire Department reviews fire protection system and special hazard protection. Detailed information on the use and material safety data sheets for all chemicals must be provided.
- In the case of a hazmat spill the MetroWest hazmat team may be activated

Permitting Process



Recommendations

No ordinance amendments necessary. Planning recommends new standard Special Permit conditions to allow flexibility for changes in tenants while reinforcing the requirement for all tenants to obtain the proper permits.

- Lab, Research and Development uses shall comply with all local, state, and federal regulations and guidelines, including *Biosafety in Microbiological and Biomedical Laboratories* and *NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules*. All tenants shall adhere to any current or future licensing, rules, or regulations required by the City.
- rDNA research and technology shall not be permitted without approval from the BioSafety Committee and a permit from the Department of Health and Human Services.



Recommendations

Special Permit conditions continued...

- All tenants and sublessors must obtain all necessary permits, including building permits and flammable permits. Permits are not transferable.
- Each laboratory, research and development tenant must provide and implement an environmental health and safety program through the designation of an onsite safety representative or consultant. Each tenant shall provide detailed information about the proposed use and the contact information for the safety representative to the Planning and Development Department, Inspectional Services Department, and Newton Fire Department.