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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** May 15, 2020

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

**FROM:** Barney Heath, Director, Department of Planning and Development  
Zachery LeMel, Chief of Long Range Planning

**RE:** **#88-20 Discussion and review relative to the draft Zoning Ordinance**  
DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.  
**Other docket items to be taken up within the context of Zoning Redesign include #30-20, #38-20, and #148-20**

**MEETING:** May 19, 2020

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

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At the April 27, 2020 ZAP meeting, the Planning Department held the third *workshop* on Article 3 – Residence Districts, the discussion focused on Garage Design Standards (sec. 3.4.2) and Driveway Access (3.7.1.E). In addition, the second part of the presentation introduced Building Components (sec. 3.3).

Moving forward, staff plan to focus the upcoming ZAP discussion on the revised zoning text for Garage Design Standards and Driveway Access (Attachment A) and how these standards achieve the goals/outcomes discussed at the April 27 meeting. Staff will present case studies and diagrams that visualize these standards. In addition, the Committee should discuss the requirements for taking these sections out separately as amendments to the current Zoning Ordinance to replace the currently deferred garage ordinance that goes into effect July 1, 2020.

Finally, staff plan to focus the second part of the presentation around a deeper dive into Building Components. Specifically, reiterating goals, while diving deeper into the technical elements underlying them.

## Part I – Garage Design Standards and Driveway Access

### *Garage Design Standards (Sec. 3.4.2)*

Utilizing form-based mechanisms the draft zoning language creates standards to achieve the goals outlined in Sec. 3.4.2.A. The draft ordinance breaks down how residential building types can provide garages in a variety of configurations that respond to the variety of Newton's lot sizes and layouts, without compromising on these goals. In this way, the new language greatly increasing both the level of predictability and flexibility for developing garages as part of new construction or an addition. Highlighted below are some of the key mechanisms and standards, which will be covered in more detail through case studies and figures within the presentation.

- A Front-Facing Garage (Sec. 3.4.2.C.1) must be setback from the front elevation by 10 feet, unless certain design requirements are met, and may not exceed 50% of the building front elevation/facade (see fig. 1).
- Garages providing parking for two or more motor vehicles that face the street must be designed with individual doors, each no wider than 9 feet (see Fig. 2).
- Narrow lots may incorporate:
  - A Side-Facing Garage (Sec. 3.4.2.C.2), which can be placed in front of the building front elevation provided certain design requirements are met (see Fig. 3); or
  - A rear garage, attached or detached, accessed from a driveway running along the side of the building (see Fig. 4).

City staff believe that the draft language not only achieves the stated goals, but also encompasses most of Newton's residential properties. A section for exemptions (Sec. 3.4.2.G) has been added to provide relief for the outlier residential properties.

### *Driveway Access (Sec. 3.7.1.E)*

The discussion of garages must include driveway access because the two function together within a property and where that property meets the public realm. The revised language helps achieve many of the stated goals guiding the overall Zoning Redesign effort.

- Sustainability (stormwater management)
  - Sec. 3.7.1.E.1 requires driveways to be paved with pervious materials, unless graded to direct runoff to onsite permeable areas, with ribbon driveways encouraged as another way to reduce impervious area.
  - Sec. 3.7.1.E.5 sets maximum widths of driveways from the lot line for a minimum of 10 feet into the property before widening out to provide necessary space for maneuvering (See Fig. 1).
- Safety
  - 3.7.1.E.6-9 restricts overly large curb cuts and the distance between curb cuts to ensure a more continuous public sidewalk for pedestrians. In addition, a narrower curb cut forces motor vehicles to enter and exit the driveway at slower speeds (See Fig. 2).

- 3.7.1.E.10 reinforces that the sidewalk or public right of way must be maintained clearly so that, although a motor vehicle may cross, the area between the curb cut and driveway remains part of the sidewalk

### *Part I – Looking Ahead*

The currently deferred garage ordinance will go into effect on July 1, 2020 if no action is taken. At the previous ZAP meeting, staff enumerated the flaws within the deferred garage ordinance and recommend the Committee to either repeal or extend deferment. Once repealed or deferred, it is up to the ZAP Committee to decide if they would like to take on the draft zoning provided in this memo as a standalone amendment to the current ordinance or remain part of the overall Zoning Redesign project. Doing so will impact the overall timeline for Zoning Redesign.

The draft zoning provided in this memo is formatted for the new zoning ordinance, not the current ordinance. Taking up the garage ordinance as a standalone item will require either a second version formatted for the current ordinance or require adding/defining new terms to the current ordinance (like Primary Front Lot Line). Second, staff will need to consider if the draft zoning requires changes to other sections of the current zoning ordinance and/or to other City ordinances (ex. Ch. 26 – Streets and Sidewalks) to ensure enforceability and that no conflicts arise. Staff has begun looking into this with Current Planning, ISD, and the City Engineer.

At this time, staff cannot say how long it would take to adopt the draft garage ordinance as a standalone amendment especially as we enter the summer months, which is typically a slower time for the City Council. For reference a comparable amendment, the sustainable zoning amendments focused on sustainable design (#364-19) and building efficiencies (#363-19), passed in December 2019 took four months and were not presented concurrently with Zoning Redesign.

### **Part II – Building Components (Sec. 3.3)**

#### *Goals*

Building Components are accessory features that attach to the building type and increase the habitable square footage or enhance the usefulness of a building (See Fig. 5). In addition, Building Component regulations will enhance predictability of growth for homeowners and neighbors. Finally, these components provide an important means for achieving variety and individuality in design of building facades and are permitted as indicated for each building type.

Building Components should be viewed as a by-right bonus, like the current ordinance De Minimus Relief (Attachment B), with standards that ensure such a bonus does not negatively impact the surrounding neighborhood or public realm. However, the draft language on Building Components and Building Types shared with the City Council previously does not fully achieve these goals.

#### *Issues with Latest Draft Language and High-Level Proposed Changes*

- Problem A - Building Components count towards Building Type footprint (Sec. 2.5.1.B)
  - Outcome – There is no incentive to utilize Building Components in new construction or renovations.
- Solution A – Building Components do not count towards Building Type footprint
  - Outcome - This will promote design individuality and increased habitable space. Components should be regulated by specific standards for each type as well as the

district lot coverage and setback requirements. Doing so ensures proportional Building Components relative to the surrounding neighborhood.

- Problem B – Language to directly implies style
  - Outcome - This regulation of style came up as a primary concern at the Architect Focus Group held on April 24, 2020. Architects felt the language inhibits creativity and is too prescriptive.
- Solution B – Building Components should be named generically
  - Outcome – As a form-based code tool, Building Components should only imply an appropriate volume or massing that designers are free to work within. Building Types accomplishes this through generic naming (House Type A, B, etc.) and this should apply to Building Components to the greatest extent possible. For example, a Turret (Sec. 3.3.2.J) could change to a *Corner Feature*. Additionally, Staff is looking at replacing individual Roof Types (sec. 2.6.3.D) with one set of standards, disconnected from formal roof styles (i.e. gable, hipped, etc.), and will be presented at the upcoming ZAP Meeting.
- Problem C – Building Type footprint increase allowed by Special Permit
  - Outcome – Taken with Building Components, which are allowed by-right, these two mechanisms attempt to allow for the same thing, controlled flexibility. The new ordinance should strive for simplicity, with one regulation solving one issue. Taken together, Building Components and an increase in footprint by Special permit allow for development to increase in size far too greatly.
- Solution C - Remove Building Type footprint increases by Special Permit and add new Building Components that allow for similar flexibility
  - Outcome – Doing so will directly address one of the goals found in the Zoning Reform Group Report, *simplify and streamline the permitting and review process*. Building components, by-right, are a cleaner and simpler mechanism to achieve the flexibility that Special Permits are now used for. This will also ensure that the additional volume created will be proportional to the surrounding neighborhood and configured to not negatively impact the public realm.

### *Part II – Looking Ahead*

Because staff is proposing new Building Components, allowing increased square footage by-right, it is imperative that the standards used for each component is calibrated correctly. Staff is working with local architects to analyze their recent projects where they utilized what can be categorized as Building Components to get a baseline of standard dimensions. Additionally, staff will look to the existing De Minimus Relief rule for further guidance. Lastly, staff will review how the revised Building Components sections works with Building Type footprints, lot coverage, and setbacks. All these standards together will determine a developments overall volume, so changing one standard may warrant updating another. At upcoming meetings, staff will present these revised standards along with the logic behind them and case studies possible implementation.

**Further Reading**

The ZAP Committee should reread Sections 2.1 – 2.7 and Section 3.3, previously shared with the City Council in March 2020. These sections, in addition to the attachments will help guide an informed discussion on the revised garage/driveway language and the new framework developed for Building Components.

**Attachments**

Attachment A Revised draft Garage Design Standards (sec. 3.4.2) and Driveway Access (3.7.1.E).

Attachment B Sec. 7.8.2.B – De Minimus Relief (current ordinance)

Figure 1: Front-Facing Garage

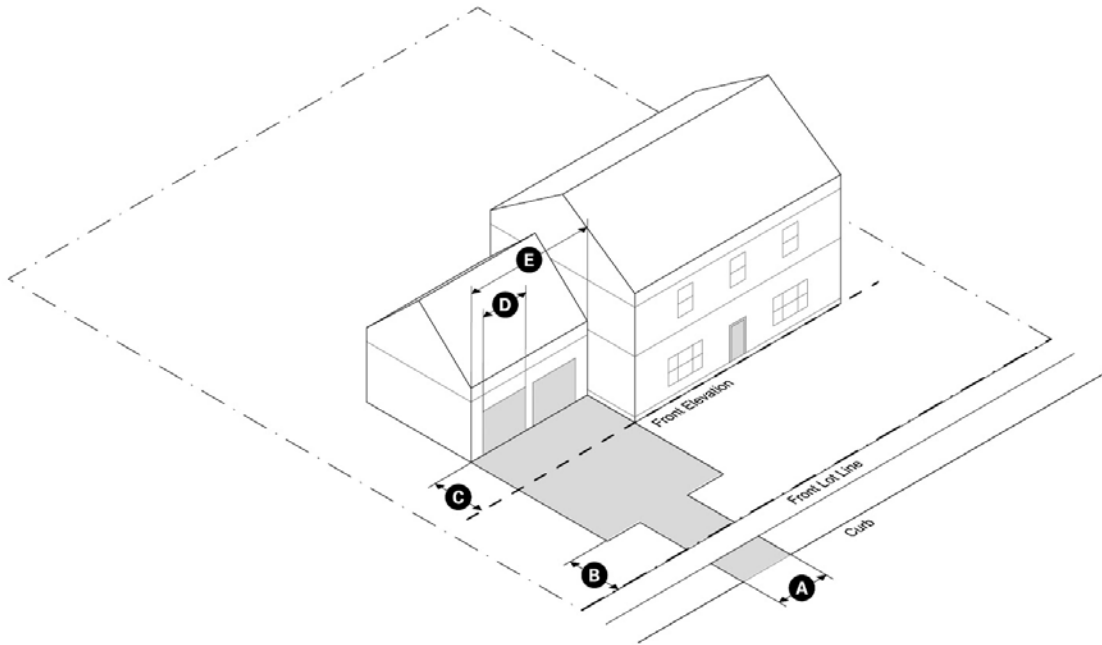


Figure 2: Individual doors for Front-Facing Garages (two-family)

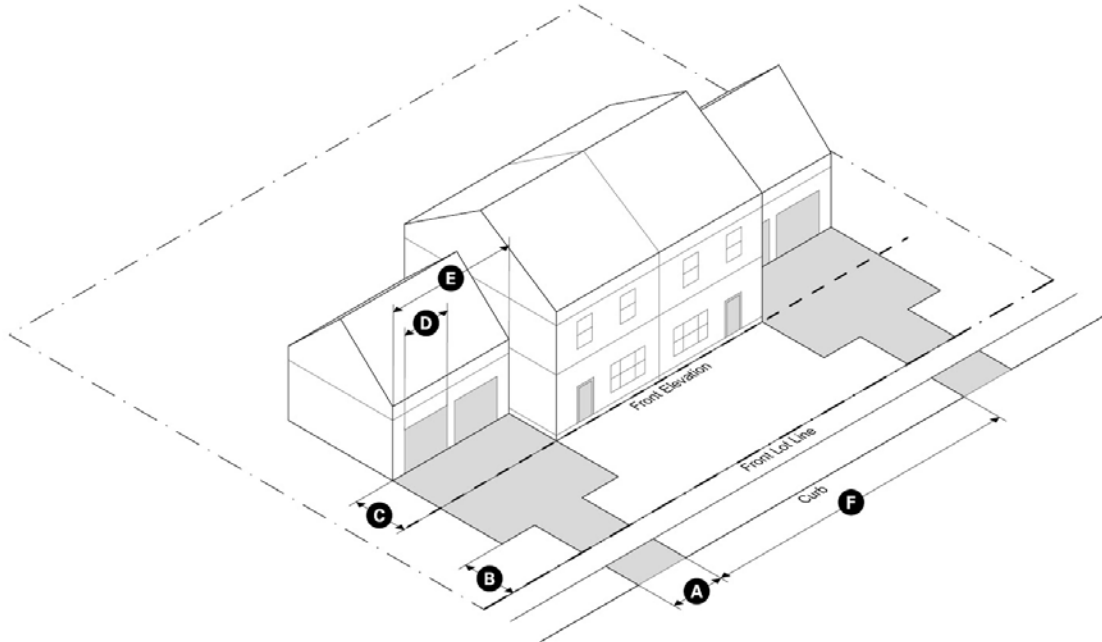


Figure 3: Side-Facing Garage

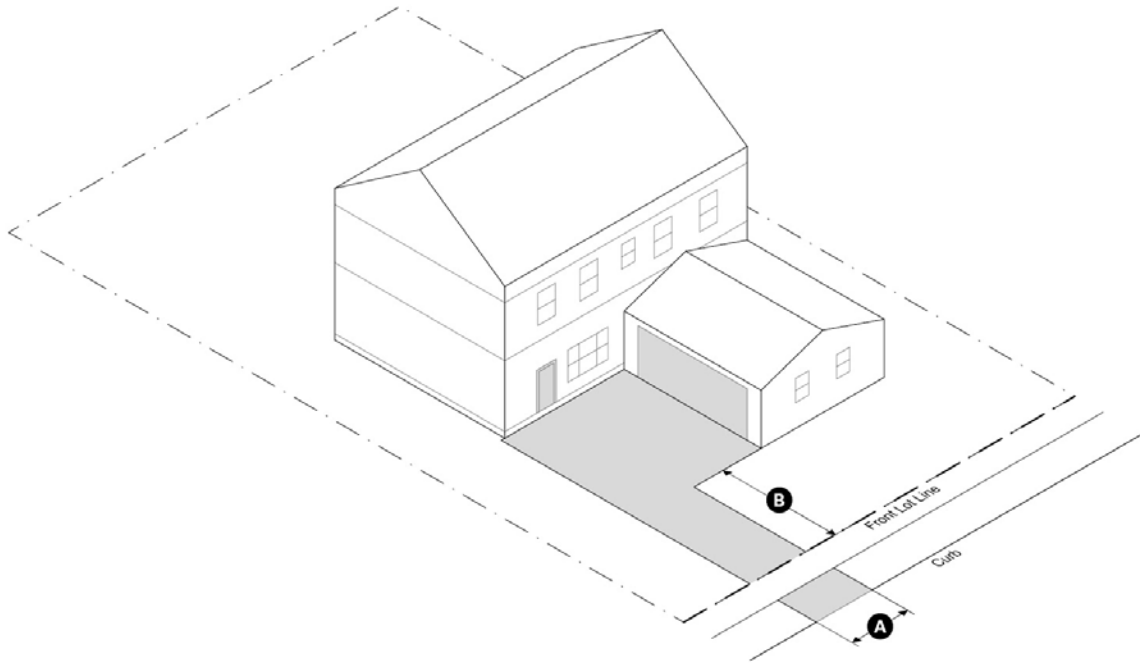


Figure 4: Rear Garage

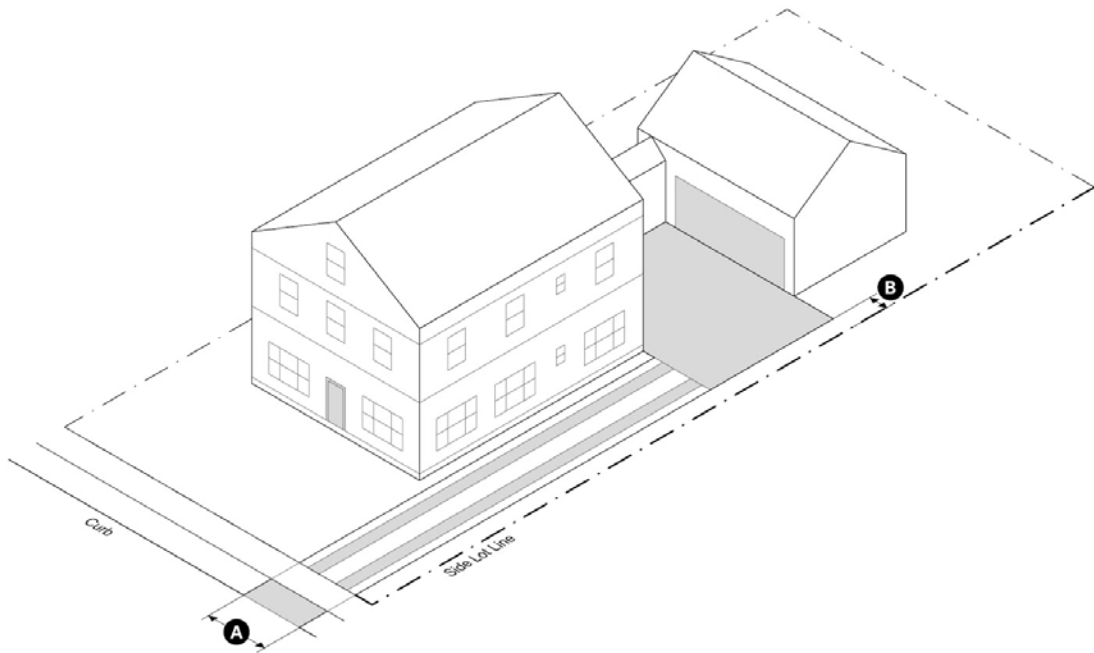
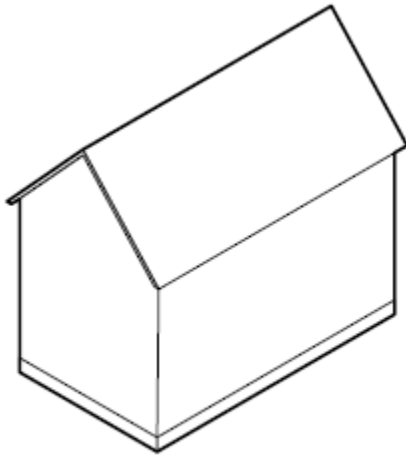
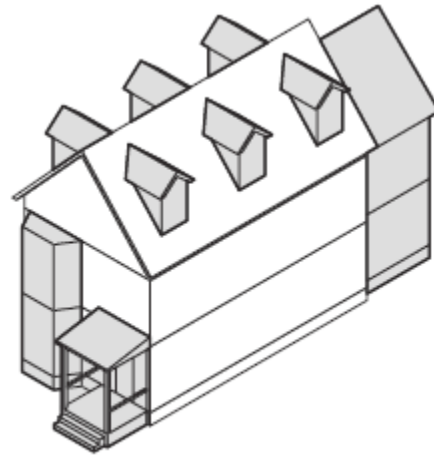


Figure 5: Building Components in Relation to Main Massing of a Building Type



MAIN MASSING of a BUILDING



Additional BUILDING COMPONENTS



### 3.4.2. Garage Design Standards

#### A. Purpose.

1. To prevent garages from obscuring the main entrance from the street and ensure that there is a physical and visual connection between the living area of residential buildings and the street;
2. Ensure that the location and amount of living areas of residential buildings, as seen from the street, are more prominent than structured parking or garages;
3. Ensure that the main entrance for pedestrians, rather than motor vehicles, is the prominent entrance;
4. Provide for a more pleasant pedestrian environment by preventing garages from dominating the views of the neighborhood from the sidewalk; and
5. Enhance public safety by preventing garages from blocking views of the street from inside the residence.

#### B. Applicability.

Garage Design Standards apply in all Residence Districts

#### C. Garage, defined.

An attached or detached structure designed primarily for the storage or parking of one or more automobiles. A detached garage is an accessory building (See Sec. 3.3.4).

1. **Front Facing Garage.** A garage, where the primary door or doors through which automobiles enter the garage faces the Primary Front Lot Line. On corner lots, a Front Facing Garage faces the Primary Front Lot Line.
2. **Side Facing Garage.** A garage, where the primary door or doors through which automobiles enter the garage faces the Primary Front Lot Line at an angle between 45 and 90 degrees.
3. **Garage Wall.** Any wall enclosing a garage including that wall containing the garage entrance.

#### D. General Standards

1. A Front Facing Garage may be no closer to the Primary Front Lot Line than 10 feet behind the Front Elevation of the building, except as follow:
  - a. A garage may be up to 6 feet in front of the Front Elevation if there is a Front Porch at the main entrance, but no closer to the Primary Front Lot Line than the Front Porch, so long as the Front Porch meets the following:
    - i. The Front Porch must be a minimum of 48 square feet in area, with no dimension less than 6 feet;
    - ii. The Front Porch must have a solid roof; and
    - iii. The roof may be no more than 12 feet above the floor of the Front Porch.
2. Garage doors on a Front Facing Garage providing spaces for 2 or more motor vehicles must provide individual doors for each space at a maximum width of 9 feet.
3. A Side Facing Garage may be located in front of the building Front Elevation, but not within the front setback, if it meets the following:

**Sec. 3.4.2 Garage Ordinance**

- a. Fenestrations on the Garage Walll elevation facing the Primary Front Lot Line, 20% minimum, 50% maximum; and
  - b. The garage roof type and roof components, if applicable, match or complement the primary building.
4. Where the building Front Elevation is less than 22 feet long, an attached garage is not allowed as part of that elevation.

**E. Additional Standards for one-unit residential Building Types.**

- 1. There may be no more than 700 square feet in total garage space on a lot providing for no more than 3 motor vehicles, between a maximum of one attached garage and one detached garage.
- 2. The length of an attached garage facing the Primary Front Lot Line may be up to 50% of the width of the Front Elevation or 12 feet, whichever is greater.
  - a. On corner lots, only one street- or right-of-way-facing garage wall must meet the standards of this subsection.

**F. Additional Standards for residential Building Types with two-units or more.**

Parking spaces in garages are counted toward the minimum number of accessory parking spaces required by Sec. 3.7. Garages may be attached or detached.

- 1. **Attached Garages.** The length of an attached garage facing the Primary Front Lot Line may be up to 50% of the total Front Elevation or 24 feet, whichever is greater.
- 2. **Detached Garages.** Centralized and underground garages are encouraged.
  - a. The number of detached garages on a property may not exceed one half of the number of units on the property, rounded down.
  - b. A detached garage of more than 700 square feet and providing for more than 3 vehicles is allowed by right if it meets the setbacks for a principal building.
  - c. By Special Permit, a detached garage of more than 700 square feet may be located within the setback, provided a minimum of 5 feet from the property line is maintained.
  - d. **Review Criteria.** In its discretion to approve or deny a Special Permit authorizing a detached garage in the setback, the Special Permit Granting Authority must find the application meets the following criteria:
    - i. The criteria for all Special Permits specified in Sec. 11.4.3.
    - ii. Design and siting are compatible with the neighborhood and adjacent residential properties.
    - iii. Strategies such as screening, landscaping, and window placement reduce effects on neighboring properties.

**G. Exemptions.**

- 1. In R1 districts where the house is more than 70 feet from the Primary Front Lot Line are exempt from the standards of this section.
- 2. Garages on lots which slope up or down from the Primary Front Lot Line with an average slope of 20% or more are exempt from the standards of this subsection.

### 3.7. Parking Requirements in the Residence Districts.

#### 3.7.1. General Standards.

##### A. Required Accessory Parking Spaces.

Vehicular and bicycle parking must be provided as specified in Sec. 3.7.3, except as follows:

1. 1- and 2-unit residential buildings are exempt from the requirements of Sec. 3.7.3.
2. Ground story non-residential uses with 5,000 square feet or less of gross leasable floor area are exempt from the requirements of Sec. 3.7.3.
3. There are no parking requirements for accessory uses.
4. Parking may be shared between uses on the same lot and buildings within 500 linear feet as measured along the street in accordance with Article 8.
5. One on-street parking space, where permitted, for every 20 feet of lot width may be counted toward any minimum parking requirement for Building Types that do not include residential uses.

##### B. Vehicular Parking Space Types.

Accessory motor vehicle parking spaces may be provided as off-street surface parking spaces, structured parking spaces, and on-street parking spaces.

##### C. Unbundled Market Rate Parking.

1. Off-street motor vehicle parking spaces must be rented, leased, or sold as a separate option rather than a requirement of the rental, lease, or purchase of a residential unit or non-residential floor space.
2. Bicycle parking must be provided at no cost or fee to customers, visitors, employees, tenants, and residents.

##### D. Parking Design.

The design of all parking is subject to Article 8 of this Ordinance.

##### E. Driveway Access.

1. Driveways must be paved with paving stones, grass pavers, pervious concrete, or porous asphalt unless graded to direct runoff onto onsite permeable areas or granted a waiver by the City Engineer to mitigate adverse site conditions.
  - a. Ribbon driveways are highly encouraged
2. Ribbon Driveways must have paved tracks that are at least 2 feet in width and 5 feet on center with an unpaved area that is at least 3 feet in width.
3. Driveways may provide access from a front, side, or rear lot line and may be located within required front or rear setback areas. Driveways may be located within the required side setback area provided the driveways are located at least 3 feet from the side lot line.
4. No parking stall may be located within any required setback area, with the exception that up to 2 parking stalls may be located in a side setback area. No parking stall may be located between the building front elevation and the street.
5. For a minimum of 10 feet measured from the lot line where the driveway is accessed into the lot, driveways may be no wider than 10 feet if providing one-way

access to a parking area for residential Building Types with eight-units or less and no wider than 20 feet if providing two-way access to a parking area for residential Building Types with nine-units or more.

- a. Driveways widths may increase beyond the minimum 10 feet measured from the lot line where the driveway is accessed to allow for motor vehicles to back-in and back-out.
6. Driveways may provide access in whole or in part on or across an abutting lot(s), provided that an access easement exists among all affected property owners.
7. Only one curb cut is permitted per Lot, except;
  - a. A maximum of two curb cuts are permitted on a Lot with a residential Building Type with two-units or more, when a minimum distance of 35 feet between each curb cut is maintained.
  - b. Corner Lots and Through Lots may have a maximum of one curb cut per Front Lot Line.
8. Curb cuts must be located to minimize conflict with pedestrians, bicyclists, and motor vehicles on the thoroughfare they provide access to and from.
  - a. Curb cuts for residential driveways should be at least 20 feet from an unsignalized intersection and at least 40 feet from a signalized intersection.
9. Curb cuts may be no wider than 12 feet if providing one-way access to a parking area for residential Building Types with eight-units or less and no wider than 22 feet if providing two-way access to a parking area for residential Building types with nine-units or more, excluding flares or returned curbs.
10. The grade, cross slope, and clear width of the walkway of a sidewalk must be maintained between the driveway apron and the abutting driveway. The appearance of the walkway (i.e. scoring pattern or paving material) must indicate that, although a vehicle may cross, the area traversed by a vehicle remains part of the sidewalk.

F. Off-site Parking on a Contiguous Lot.

Required accessory vehicular parking spaces, excluding required parking for disabled persons, may be provided on a contiguous lot under the same ownership as the lot that the parking will serve with a Special Permit.

1. The following additional standards apply:
  - a. Pedestrian access to off-site vehicular parking must be via a paved sidewalk or walkway.
  - b. A lease, recorded covenant, or other comparable legal instrument guaranteeing long term use of the site must be provided to the Special Permit Granting Authority or Commissioner of Inspectional Services, as appropriate, and executed and filed with the Registry of Deeds.

## Attachment B

- c. Has on it a single- or two-family dwelling that was constructed in compliance with a building permit and received a certificate of occupancy on or before December 22, 2011.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. 303, 11/20/78; Ord. No. S-275, 02/05/87; Ord. No. T-115, 11/19/90; Ord. No. W-49, 07/09/01; Ord. No. A-24, 06/03/13)

## 7.8.2. Nonconforming Buildings, Structures, or Uses

### A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:
  - a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;
  - b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;
  - c. Additional outdoor sidewalk seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and
  - d. Alteration, reconstruction, extension or structural change to a nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.

- e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.

### B. De Minimis Relief.

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

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

**C. Special Permit Required.**

- 1. A special permit from the City Council shall be required for any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in paragraph A. above.
- 2. A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided that a special permit is obtained. In granting such a permit, the City Council shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this Paragraph, the

word "establishment" shall include buildings, structures and lands.

**D. Standards.**

- 1. **Nonconforming Buildings or Structures.** Whenever nonconforming buildings or structures do not require a special permit, all otherwise applicable regulatory provisions of this Chapter, as amended, specifically including but not limited to Sec. 5.1 shall apply.
- 2. **Minimum Dimensions.** Whenever the operation of this Sec. 7.8.2 would reduce the area available for building a dwelling house upon any lot in a residence district to less than 20 feet in its shortest dimension, or less than 800 square feet in total area, the requirements of this Sec. 7.8.2 shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than 7½ feet, and second, if necessary, from street lines, but to not less than 15 feet.
- 3. **Replacing 3-Story Residential Structures.** Any residential structure that is replacing a previously existing 3-story residential structure shall be allowed 3 stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87; Ord. No. T-115, 11/19/90; Ord. No. T-313, 12/6/93; Ord. No. T-314, 12/6/93; Ord. No. V-113, 04/23/97; Ord. No. W-51, 07/09/01; Ord. No. X-39, 12/02/02; Ord. No. Z-51, 08/10/09; Ord. No. Z-77, 02/22/11; Ord. No. A-13, 03/18/13; Ord. No. A-99, 01/17/17)