#376-14 DRAFT

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

October 5, 2015

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 30 Zoning as follows:

1. Effective November 1, 2015, delete CHAPTER 30 Zoning in its entirety and insert in its place the new CHAPTER 30 ZONING attached hereto.

Approved as to legal form and character:

Donnalyn B. Lynch Kahn

DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved

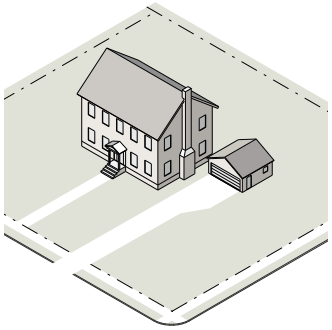
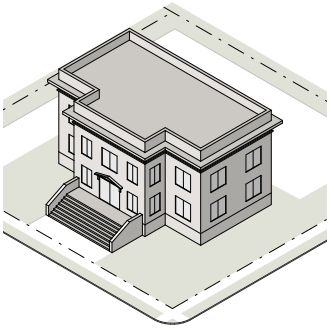
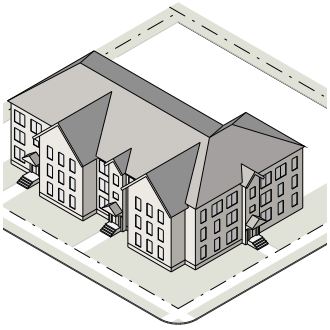
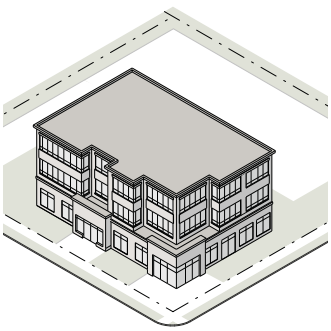
(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Newton, Massachusetts

# Chapter 30: Zoning Ordinance

FINAL DRAFT September 16, 2015

# Table of Contents


## Article 1. General Provisions ..... 1-1

Sec. 1.1. Short Title ..... 1-2
Sec. 1.2. Purpose of Chapter ..... 1-2
Sec. 1.3. Zoning Districts Established ..... 1-2
Sec. 1.4. Legal Status Provisions ..... 1-3
Sec. 1.5. Rules of Measurement ..... 1-4

## Article 2. Public Use & Open Space Districts ..... 2-1

Sec. 2.1. Zoning District Intent ..... 2-2
Sec. 2.2. District Dimensional Standards ..... 2-2
Sec. 2.3. Allowed Uses ..... 2-3

## Article 3. Residence Districts ..... 3-1

Sec. 3.1. Single Residence Districts ..... 3-2
Sec. 3.2. Multi-Residence Districts ..... 3-12
Sec. 3.3. Other Residence Options ..... 3-24
Sec. 3.4. Allowed Uses ..... 3-26

## Article 4. Business, Mixed Use & Manufacturing Districts ..... 4-1

Sec. 4.1. Business Districts ..... 4-2
Sec. 4.2. Mixed Use Districts ..... 4-10
Sec. 4.3. Manufacturing Districts ..... 4-16
Sec. 4.4. Allowed Uses ..... 4-18

## Article 5. Development Standards ..... 5-1

Sec. 5.1. Parking and Loading ..... 5-2
Sec. 5.2. Signs ..... 5-15
Sec. 5.3. Stormwater Management ..... 5-24
Sec. 5.4. Fences & Retaining Walls ..... 5-24
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 Distirct ..... 5-31

## Article 6. Use Regulations ..... 6-1

Sec. 6.1. Use Determination ..... 6-3
Sec. 6.2. Residential Uses ..... 6-3
Sec. 6.3. Civic/Institutional Uses ..... 6-6
Sec. 6.4. Commercial Uses ..... 6-10
Sec. 6.5. Industrial Uses ..... 6-14
Sec. 6.6. Open Space Uses ..... 6-16
Sec. 6.7. Accessory Uses ..... 6-17
Sec. 6.8. Temporary Uses ..... 6-22
Sec. 6.9. Wireless Communication Equipment ..... 6-23
Sec. 6.10. Restricted Uses ..... 6-30

## Article 7. Administration ..... 7-1

Sec. 7.1. Development Review Bodies ..... 7-2
Sec. 7.2. Amendments ..... 7-3
Sec. 7.3. Special Permit Review ..... 7-3
Sec. 7.4. Site Plan Approval ..... 7-13
Sec. 7.5. Administrative Site Plan Review ..... 7-14
Sec. 7.6. Variances ..... 7-16
Sec. 7.7. Appeals ..... 7-18
Sec. 7.8. Nonconformities ..... 7-20
Sec. 7.9. Enforcement and Penalties ..... 7-26

## Article 8. Definitions ..... 8-1

Sec. 8.1. In General ..... 8-2
Sec. 8.2. Abbreviations ..... 8-2
Sec. 8.3. Defined Terms ..... 8-3

PAGE INTENTIONALLY LEFT BLANK

# Article 1. General Provisions


Sec. 1.1. Short Title ..... 1-2

Sec. 1.2. Purpose of Chapter ..... 1-2

Sec. 1.3. Zoning Districts Established ..... 1-2

1.3.1. Establishment ..... 1-2

1.3.2. Official Zoning Map ..... 1-2

1.3.3. Interpretation of District Boundaries ..... 1-3

Sec. 1.4. Legal Status Provisions ..... 1-3

1.4.1. Effective Date ..... 1-3

1.4.2. Applicability to Public Service Corporations ..... 1-3

1.4.3. Conflicting Provisions ..... 1-3

1.4.4. Validity ..... 1-4

1.4.5. Effect of Invalidity ..... 1-4

Sec. 1.5. Rules of Measurement ..... 1-4

1.5.1. Building Types ..... 1-4

1.5.2. Lot ..... 1-5

1.5.3. Setback ..... 1-6

1.5.4. Height ..... 1-7

1.5.5. Floor Area ..... 1-10

1.5.6. Build Factor ..... 1-12

## Sec. 1.1. Short Title

This ordinance may be cited as the "City of Newton Zoning Ordinance."

## Sec. 1.2. Purpose of Chapter

The provisions of this Chapter are ordained by the City for the purpose of promoting the health, safety, convenience and welfare of its inhabitants by:

A. Encouraging the most appropriate use of land, including the consideration of the comprehensive plan adopted by the Planning Board and the Board of Aldermen;

B. Preventing overcrowding of land and undue concentration of population;

C. Conserving the value of land and buildings, including the conserving of natural resources and the preventing of blight and pollution of the environment;

D. Efficiently using and conserving of natural resources and energy;

E. Lessening the congestion of traffic;

F. Assisting in the adequate provision of transportation, water, sewerage, schools, parks, open spaces and other public facilities;

G. Preserving and increasing the amenities and aesthetic qualities of the City;

H. Encouraging housing for persons of all income levels;

I. Reducing hazards from fire and other dangers; and

J. Providing for adequate light and air.

(Rev. Ords. 1973 §24-2; Ord. No. 284, 06/19/78; Ord. No. Y-17, 05/21/07)

## Sec. 1.3. Zoning Districts Established

### 1.3.1. Establishment

The City is hereby divided into districts, to be known respectively as follows:

| |
|---|
| **Public Use and Open Space Districts** |
| Public Use District |
| Open Space/Recreation District |
| **Residence Districts** |
| Single Residence 1 District |
| Single Residence 2 District |
| Single Residence 3 District |
| Multi-Residence 1 District |
| Multi-Residence 2 District |
| Multi-Residence 3 District |
| Multi-Residence 4 District |
| **Business, Manufacturing & Mixed Use Districts** |
| Business 1 District |
| Business 2 District |
| Business 3 District |
| Business 4 District |
| Business 5 District |
| Manufacturing District |
| Limited Manufacturing District |
| Mixed Use 1 District |
| Mixed Use 2 District |
| Mixed Use 3/Transit-Oriented District |
| Mixed Use 4 District |
| **Overlay Districts** |
| Accessory Apartment Overlay District A |
| Accessory Apartment Overlay District B |
| Accessory Apartment Overlay District C |
| Accessory Apartment Overlay District D |

Historic districts (which are not a part of zoning) may apply to property in addition to the regulations in this Chapter 30. See Revised Ordinances, Chapter 22, Article III.

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

### 1.3.2. Official Zoning Map

A. The districts are indicated on the plans entitled "City of Newton, Massachusetts, Amendments to Zoning Plans," adopted July 21, 1951, as amended from time to time, and these plans and all explanatory matter on the plans

are hereby made a part of this Chapter. All amendments of zoning plans adopted since July 21, 1951, however styled, shall be deemed to be amendments of such 1951 plans.

B. The location and boundaries of zoning districts established by this Chapter are also shown and maintained as part of the City's Geographic Information System (GIS).

C. The zoning districts in the GIS constitute the City of Newton's Official Zoning Map and are part of this Chapter. All notations, references and other information shown shall have the same force and effect as if fully set forth or described in this Chapter.

D. Upon amendment by the Board of Aldermen per Sec. 7.2., the Director of Planning and Development is authorized to revise the Official Zoning Map. No unauthorized person may alter or modify the Official Zoning Map.

E. The City Clerk maintains printed copies of the Official Zoning Map and records of superseded official maps. All changes to the Official Zoning Map shall be identified by updating the original computer digital data of each change, together with the date of the change.

F. A hard copy of the data and changes to the data will be kept by the Engineering Division of Public Works; all revisions to hard copies will be numbered, dated and signed by the Director of Planning and Development.

(Rev. Ords. 1989 §30-4; Ord. No. A-5, 10/01/12; Ord. No. A-48, 11/17/14; Ord. No. A-57, 02/17/15; Ord. No. A-27, 10/07/13; Ord. No. A-28, 10/07/13)

### 1.3.3. Interpretation of District Boundaries

A. The boundaries of the districts are the streets, property or lot lines, or other lines shown on the zoning plans adopted by Sec. 1.3.1. Where boundaries are indicated as property or lot lines and the exact position of such lines are not defined by measurements, the true locations of the property or lot lines shall be taken as the boundary lines. Where boundary lines are fixed by distances from street, property or lot lines, such measurements shall control.

B. Whenever any uncertainty exists as to the exact location of a boundary line, the location shall be determined by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development; provided, that any person affected by the decision may appeal to the Zoning Board of Appeals in the manner provided in Sec. 7.1.6.

(Rev. Ords. 1973 §24-3; Ord. No. 190, 12/20/76)

## Sec. 1.4. Legal Status Provisions

### 1.4.1. Effective Date

The effective date of this Chapter shall be November 1, 2015.

### 1.4.2. Applicability to Public Service Corporations

This Chapter shall not apply in particular respects to any buildings, structures or lands used or to be used by a public service corporation if, upon petition of the corporation, the Commonwealth of Massachusetts Department of Public Utilities shall, after notice given pursuant to M.G.L. Chapter 40A, Section 11, and public hearing in the City, determine the exemptions required and find that the present or proposed use of the buildings, structures or lands is reasonably necessary for the convenience or welfare of the public.

(Rev. Ords. 1973 §24-27; Ord. No. 284, 06/19/78; State Law Reference: exemptions for public service corporations, G. L. c. 40A, §3)

### 1.4.3. Conflicting Provisions

A. Other Regulations. Nothing contained in this Chapter shall be construed so as to repeal or nullify any existing ordinance or regulation of the City, but shall be in addition thereto. Where the subject matter herein contained is elsewhere regulated, the more stringent provision shall prevail.

B. Limitations. This Chapter shall not be deemed to effect, in any matter whatsoever, any easements, covenants or other agreements between parties; provided that where this Chapter imposes a greater restriction upon the use of buildings or land or upon the erection, construction, enlargement of buildings than is imposed by other provisions of the City's ordinances, rules, regulations, certificates or other authorizations or by easements, covenants or agreements, the provisions of this Chapter shall prevail.

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

### 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.

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 height of one or both units, or is divided horizontally so that one dwelling unit is above another.

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. 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.

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.

(Ord. No. X-38, 12/02/02)

## 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 a aqueduct or land formerly an aqueduct now owned by the City and adjoining land shall not be termed a lot line.

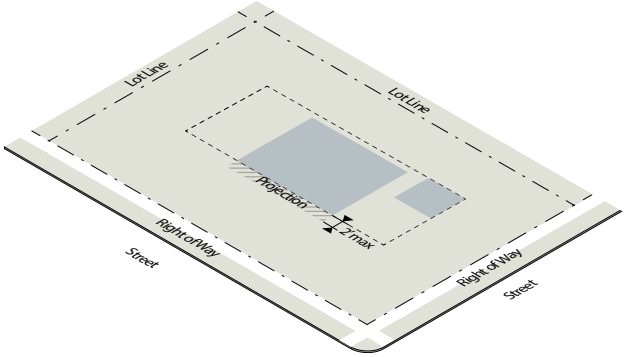
B. Lot Area. Lot area is the horizontal area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.

C. Lot Area Per Unit. The minimum lot area required for each residential dwellling unit on the lot.

D. Lot Coverage. The percentage of the lot area which is covered by buildings, including accessory buildings, 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.



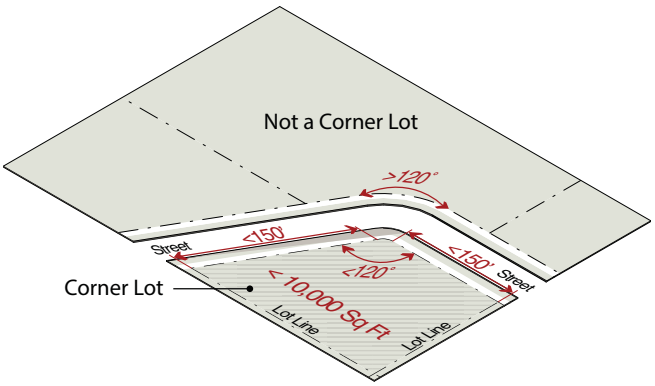

E. Lot Frontage. The required lot frontage shall be measured on the street line, except in the following cases.

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 Board of Aldermen; 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

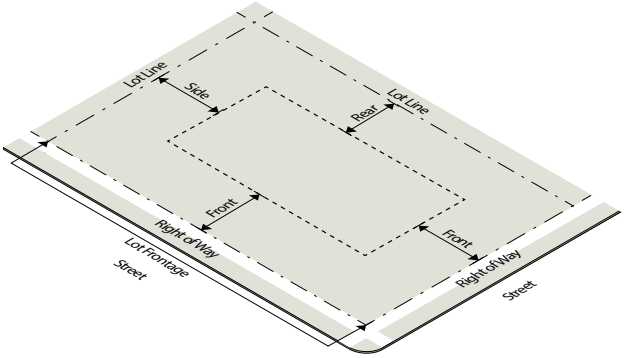
   c. A private right-of-way as shown or described in plans or deeds duly recorded with the Registry of Deeds for the Southern District of Middlesex County.

2. Where the Board of Aldermen 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.

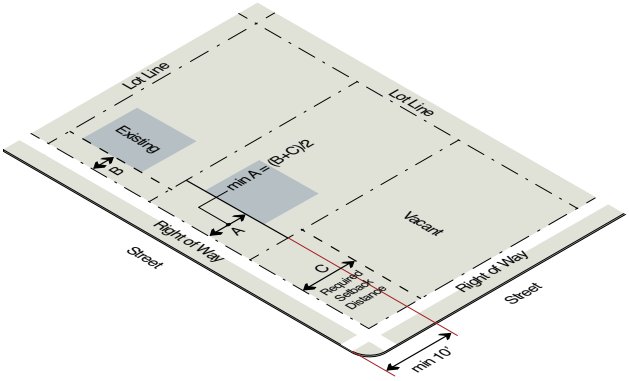
(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/07; Ord. No. T-173, 09/16/91; Ord. No. V-92, 10/21/96; Ord. No. X-123, 12/06/04)

## 1.5.3. Setback

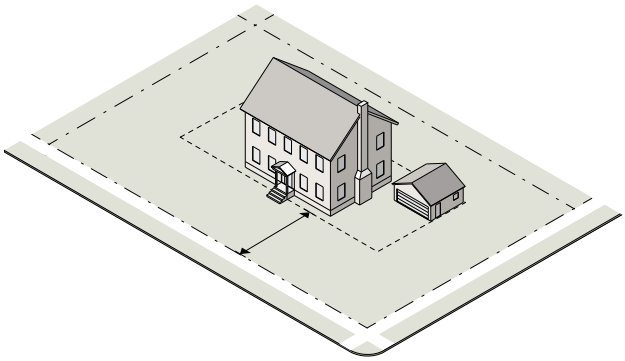
A. Defined. A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected. In the case of a corner lot, the rear lot line shall be the lot line opposite the street on which the main entrance is located.




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.

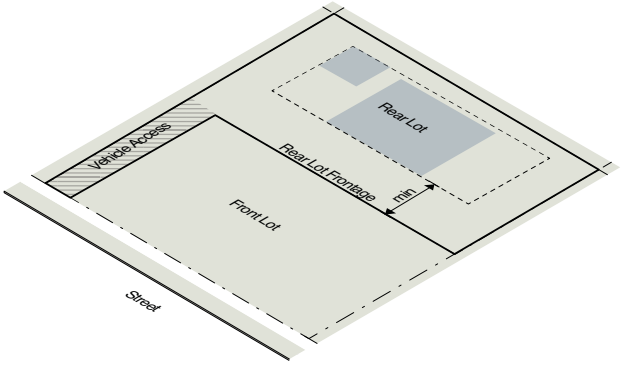


C. Distances shall be measured from the lot lines to the nearest portion of the structure, including outside vestibule or porch.



D. Steps, landings and bulkheads may project into the setback. Gutters, cornices, projecting eaves and ornamental features may project up to 2 feet into the setback.

E. In the case of rear lots, the setback requirements shall be measured from the rear line of the lot in front. See also the rear lot requirements in Sec. 3.1.5 and 3.2.5.




F. Underground structures including, but not limited to, basements or parking facilities, may be located within the applicable setback distance, provided that any portion of the underground structure which is visible above ground must conform to the applicable setback distance.

G. In no district shall any obstruction to the view which constitutes a traffic hazard be allowed within the required setback lines. Upon complaint by the City Traffic Engineer, the Board of Aldermen, after public hearing, may order the removal at the owner's expense of any such obstruction.

(Rev. Ords. 1973 § 24-13; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/07; Ord. No. T-174, 09/16/91)

## 1.5.4. Height

A. Defined:

1. The vertical distance between the elevations of the average grade plane and the highest point of the roof. Not included in such measurements are:

   a. Cornices which do not extend more than 5 feet above the roof line;

   b. Chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed 15 feet in height above the roof line;

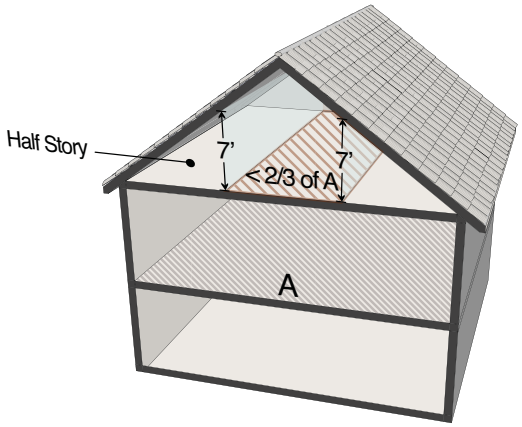
   c. Enclosures for tanks which do not exceed 20 feet in height above the roof line and do not exceed in aggregate area 10 percent of the area of the roof; and

   d. Towers, spires, domes and ornamental features.

2. No space above the maximum height shall be habitable.

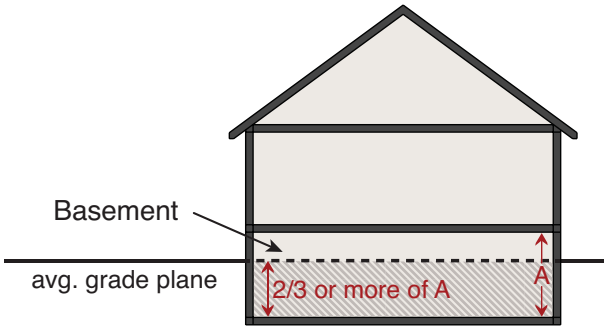
B. Story. That portion of a building, any part of which is above the ground elevation, excluding basements, contained between any floor and the floor or roof next above it.

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 ⅔ of the area of the story next below.

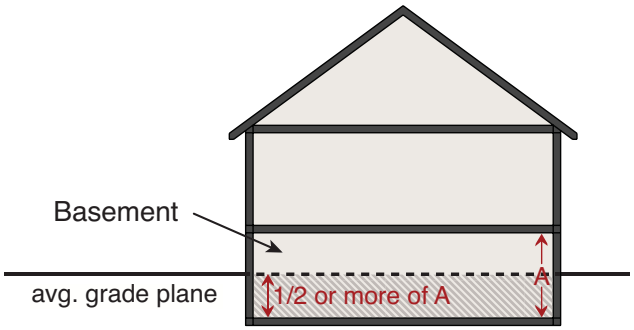


D. Basement.

1. Any story in a building in which ⅔ or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.




2. In the case of single- and two-family residential uses, any story in a building in which ½ or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.



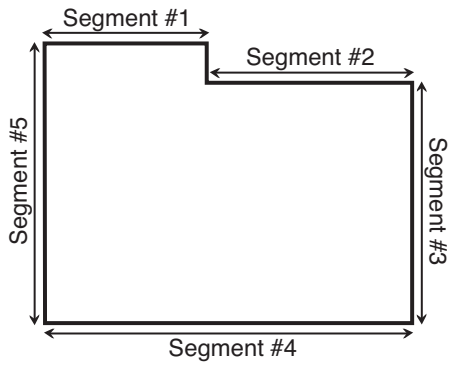

E. Grade. In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

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:

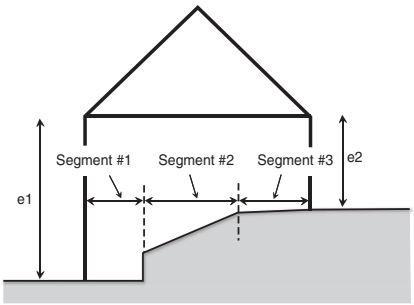
- ∑ sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet 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.




Determining Segments

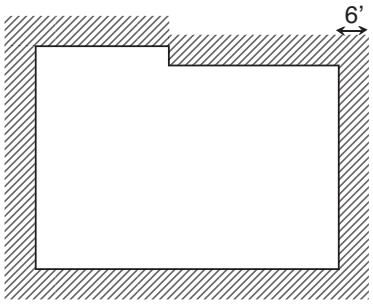
Plan View

walls less than 6' in length are not included as separate segments



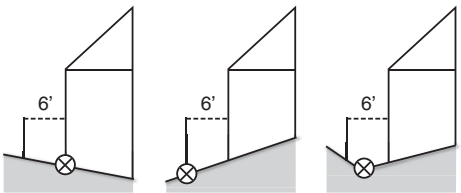

Segments of constant grade or slope

Section View




Segment ends use lowest elevation within 6' of the building

Plan View




Segment ends use lowest elevation within 6' of the building

View along segment

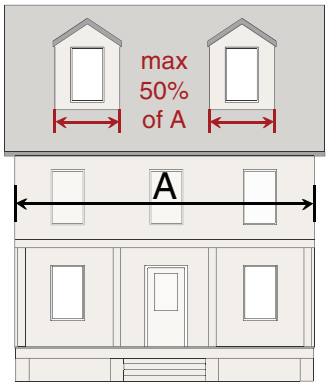
G. Dormers.

1. Defined. A projection built out from a sloping roof, usually containing a window or vent.

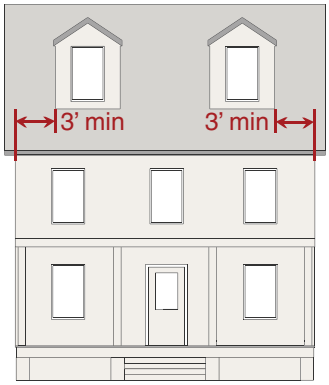
2. Except as may be allowed by special permit in accordance with Sec. 7.3., the following restrictions apply to dormers above the second story in single- and two-family dwellings and to dormers in accessory structures.

   a. A roof line overhang shall be continued between the dormer and the story next below so as to avoid the appearance of an uninterrupted wall plane extending beyond two stories.

   b. A dormer may be no wider than 50 percent of the length of the exterior wall of the story next below. Where more than one dormer is located on the same side of the roof, the width of all dormers combined may not exceed 50 percent of the length of the exterior wall next below.



c. The vertical plane of the side wall of any dormer shall not be closer than 3 feet from the vertical plane of the intersection of the roof and the main building end wall nearest the dormer.




d. No dormer may project above the main ridgeline of the single- or two-family dwelling or the accessory structure.

(Rev. Ords. 1973; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. V-111, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-247, 06/07/99; Ord. No. V-253, 07/12/99; Ord. No. Z-16, 12/17/07; Ord. No. Z-20, 04/07/08; Ord. No. Z-34, 11/03/08; Ord. No. Z-90, 06/06/11)

## 1.5.5. Floor Area

A. Floor Area Ratio.

1. The gross floor area of all buildings on the lot divided by the total lot area.

2. FAR tables can be found in Sec. 3.1.9. and Sec. 3.2.11.

B. Floor Area, Gross.

1. Residential Districts. The sum of the floor area of all principal and accesory buildings whether or not habitable shall be taken from the exterior face of the exterior walls of each building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this Sec. 1.5.5, as defined below:

a. Gross floor area shall include:

i. First and second stories;

ii. Any floor area above the second story, whether finished or unfinished, that meets all of the following criteria:

a) It lies below the area of a horizontal plane that is 5 feet above it and which touches the side walls and/or the underside of the roof rafters;

b) Is at least 7 feet in any horizontal dimension, as measured within the area having a wall height of 5 feet or more;

c) Has a minimum ceiling height of 7 feet on at least 50 percent of its required floor area; and

d) Has a floor area of not less than 70 square feet as measured within the area having a wall height of 5 feet or more;

iii. Atria, open wells, and other vertical open spaces, where floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by 10;

iv. Enclosed porches;

v. Attached garages;

vi. Detached garages and any space above the first story of a detached garage that has a ceiling height of 7 feet or greater;

vii. Other detached accessory buildings, such as sheds or cabanas, except as exempted in paragraph b. below;

viii. A portion of mass below the first story, to be calculated using the formula in paragraph D. below; and

b. Gross floor area shall not include:

i. Unenclosed porches;

ii. Carports; and

iii. 1 detached accessory building equal to or less than 120 square feet in size.

2. All Other Districts. The sum of the floor area of all principal and accesory buildings whether or not habitable shall be taken from the exterior face of the exterior walls of each building without deduction for hallways, stairs, closets, thickness of walls, columns or other features, except as excluded below:

a. Gross floor area shall not include any portion of a basement used for storage, parking, or building mechanicals.

C. Floor Area, Ground. The gross floor area enclosed by the perimeter of the lower-most story of a building above the average grade plane.

D. Mass Below First Story. For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. Standards. The lesser of 50 percent of the floor area of mass below first story OR:

X/Y = floor area of mass below first story

Where:

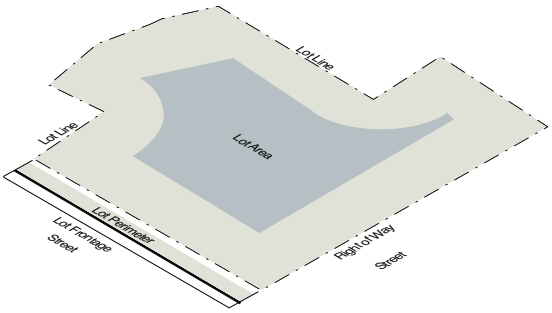
- X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet as measured from existing or proposed grade, whichever is lower, to the top of the subfloor of the first story.
- Y = Perimeter of exterior walls below first story.

(Ord. No. S-260, 08/03/87; Ord. No. V-112, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-35, 11/03/08; Ord. No. Z-77, 02/22/11)

## 1.5.6. Build Factor

A. Applicability. Lots on plans recorded with the Registry of Deeds for the Southern District of Middlesex County or endorsed by the Planning Board acting as a Board of Survey after September 16, 1996 shall be subject to a maximum build factor. The following formula shall apply whether lots are created as a subdivision or as an Approval Not Required (ANR) plan under M.G.L. Chapter 41, Section 81P.

B. Formula. In order to limit the degree to which a lot may have an irregular shape, the following build factor formula shall be used:




$$\frac{\text{Lot perimeter squared}}{\text{Lot Area}} \div \frac{\text{Lot Area}}{\text{Required Lot Area}} = \text{Build Factor}$$

| Build Factor (max) | |
|---|---|
| Single Residence 1 District | 30 |
| Single Residence 2 District | 25 |
| Single Residence 3 District | 20 |
| All Multi-Residence Districts | 20 |

C. Special Permit. The Board of Aldermen may grant a special permit for the creation of a lot with a build factor in excess of the maximum set out above.

(Ord. No. V-91, 09/16/96; Ord. No. V-102, 01/06/97)

# Article 2. Public Use & Open Space Districts


Sec. 2.1. Zoning District Intent.....2-2

2.1.1. Public Use District .....2-2

2.1.2. Open Space/Recreation District.....2-2

Sec. 2.2. District Dimensional Standards.....2-2

2.2.1. Public Use District .....2-2

Sec. 2.3. Allowed Uses.....2-3

2.3.1. Principal Uses Allowed .....2-3

2.3.2. Accessory Uses Allowed.....2-4

2.3.3. Temporary Licenses Allowed.....2-4

# Sec. 2.1. Zoning District Intent

## 2.1.1. Public Use District

[reserved]

## 2.1.2. Open Space/Recreation District

It is the intent of these provisions:

A. To protect and preserve open space;

B. To preserve the natural resources of land suitable for agriculture, horticulture and floriculture;

C. To preserve land for outdoor recreational use, scenic/aesthetic enjoyment, and urban amenity;

D. To preserve and protect the aquifers and existing and potential ground and surface water supplies;

E. To provide buffers to reduce storm runoff, noise, odors, and air pollution, as well as to separate and screen incompatible uses; and

F. To protect and promote the general health, safety, and welfare.

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

# Sec. 2.2. District Dimensional Standards

## 2.2.1. Public Use District

A. Public uses are allowed; provided that such uses shall be subject to site plan review and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement.

B. Religious and non-profit educational uses are allowed; provided that such uses shall be subject to administrative site plan review and are subject to the dimensional controls in Sec. 3.1. or Sec. 3.2., as appropriate.

(Ord. No. S-322, 07/11/88; Ord. No. Z-108, 04/17/12)

# 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** | | | |
| None | -- | -- | -- |
| **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** | | | |
| Wireless communication equipment | 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 Board of Aldermen Required -- Not Allowed

## 2.3.2. Accessory Uses Allowed

### A. Open Space/Recreational District.

1. Such accessory uses as are proper and usual with the following uses, whether permitted by right or allowed by special permit, provided that buildings or structures in the Open Space/Recreation district do not exceed 700 square feet in gross floor area or provide seating facilities, whether permanent or temporary, in excess of 20 seats:

    a. Agriculture, forestry, horticulture, floriculture, and viticulture;

    b. Conservation of flora, fauna or natural conditions;

    c. Control of erosion, sedimentation and storm runoff affecting the lot;

    d. Privately owned cemeteries; and

    e. Active and passive outdoor recreational activities.

2. No more than 200 person maximum occupancy facilities are allowed by special permit.

3. The construction or use of a roadway, parking lot or accessory building or structure used in connection with the purposes and functions allowed in this Article which are not authorized under the provisions of paragraph A. above are permitted, provided that site plan approval is obtained. Accessory buildings or structures which may be permitted subject to site plan approval shall include:

    a. Erosion, sedimentation or flood control structures;

    b. Golf and/or tennis pro shops or golf cart storage facilities;

    c. Outdoor swimming pools, outdoor tennis courts or similar outdoor recreational facilities;

    d. Garages, greenhouses or maintenance or storage facilities;

    e. Refreshment stands, boathouses, bathhouses or recreational shelters; and

    f. Above-ground telephone, telegraph, power or gas transmission lines serving the recreational facilities, where no technically or economically feasible alternative exists to such above-ground installation.

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

## 2.3.3. Temporary Licenses Allowed

The Board of Aldermen, acting through its Land Use Committee, may vote to approve requests for temporary licenses to use the land and to erect temporary structures in conjunction with such use of the land for the purposes of farmers' markets, fairs, festivals, weddings, sports tournaments and competitions, and other like uses, whether profit or non-profit in nature, upon the request of the owner of such land, without complying with the provisions of Sec. 7.4., except as to a community farm, conservation areas, land, structures or buildings subject to control of the School Committee, and land, structures or buildings subject to control of the Parks and Recreation Department, where such approval shall be by the Farm Commission, the Conservation Commission, School Committee, or Parks and Recreation Department, respectively.

(Ord. No. S-260, 08/03/87; Ord. No. S-305, 03/21/88; Ord. No. X-208, 04/18/06)

# Article 3. Residence Districts


## Sec. 3.1. Single Residence Districts ..... 3-2

3.1.1. District Intent ..... 3-2
3.1.2. Dimensional Standards ..... 3-2
3.1.3. Single-Family Detached ..... 3-2
3.1.4. Single-Family Attached Dwelling ..... 3-4
3.1.5. Single-Family Detached: Rear Lot ..... 3-5
3.1.6. Single-Use Institution ..... 3-6
3.1.7. Multi-Use Institution: With or Without Dormitory ..... 3-7
3.1.8. Dormitory: On Own Lot ..... 3-8
3.1.9. Floor Area Ratios ..... 3-9
3.1.10. Rear Lots ..... 3-10
3.1.11. Conversion of a Structure ..... 3-11
3.1.12. Common Property Line Setback Reduction for Institutional Uses ..... 3-11
3.1.13. Exception to Dimensional Standards ..... 3-11

## Sec. 3.2. Multi-Residence Districts ..... 3-12

3.2.1. District Intent ..... 3-12
3.2.2. Dimensional Standards ..... 3-12
3.2.3. Single-Family Detached or Two-Family Detached ..... 3-12
3.2.4. Single-Family Attached Dwelling ..... 3-14
3.2.5. Two-Family Detached Rear Lot ..... 3-15
3.2.6. Multi-Family Dwelling ..... 3-16
3.2.7. Residential Care Facility ..... 3-17
3.2.8. Single-Use Institution ..... 3-18
3.2.9. Multi-Use Institution: With or Without Dormitory ..... 3-19
3.2.10. Dormitory: On Own Lot ..... 3-20
3.2.11. Floor Area Ratios ..... 3-21
3.2.12. Rear Lots ..... 3-22
3.2.13. Conversion of a Structure ..... 3-23

## Sec. 3.3. Other Residence Options ..... 3-24

3.3.1. Cluster Development for Open Space Preservation ..... 3-24

## Sec. 3.4. Allowed Uses ..... 3-26

3.4.1. Residential Districts Allowed Uses ..... 3-26
3.4.2. Accessory Uses Allowed ..... 3-27
3.4.3. Accessory Buildings ..... 3-27
3.4.4. Accessory Apartments ..... 3-28
3.4.5. Temporary Uses Allowed ..... 3-28

# Sec. 3.1. Single Residence Districts

## 3.1.1. District Intent

[reserved]

## 3.1.2. Dimensional Standards

### A. Applicability.

1. The density and dimensional controls in Sec. 3.1 apply to all buildings, structures and uses in each of the listed districts.

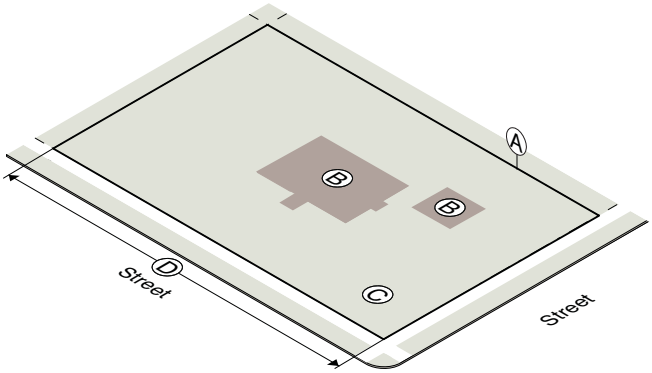
2. Lots created before December 7, 1953 (referred to as 'Before 12/7/1953') use a different set of density and dimensional standards than lots created on or after December 7, 1953 (referred to as 'On or After 12/7/1953'), as shown in the tables in Sec. 3.1.3.

3. Where a density or dimensional control is not set forth in this Sec. 3.1. for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the Board of Aldermen.

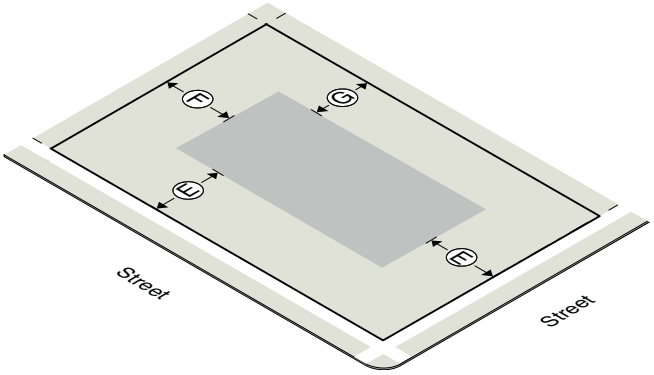
4. Where a lot does not meet these standards it is nonconforming (see Sec. 7.8.).

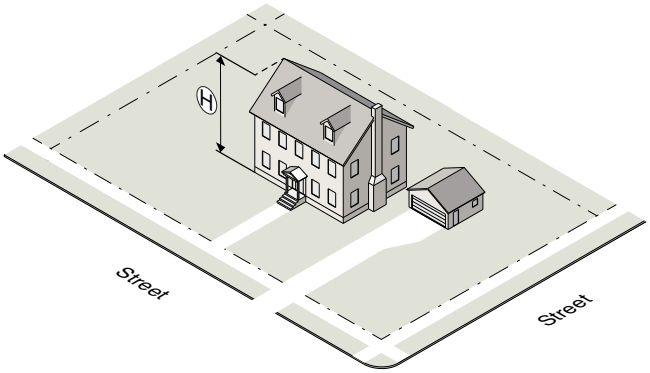
(Ord. No. S-260, 08/03/87)

## 3.1.3. Single-Family Detached




| | | SR1 | SR2 | SR3 |
|---|---|---|---|---|
| Lot Dimensions (On or After 12/7/1953) | | | | |
| A | Lot Area (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| | Lot Area Per Unit (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| B | Lot Coverage (max) | 15% | 20% | 30% |
| C | Open Space (min) | 70% | 65% | 50% |
| D | Lot Frontage (min) | 140' | 100' | 80' |
| | Build Factor (max) | 30 | 25 | 20 |
| Lot Dimensions (Before 12/7/1953) | | | | |
| A | Lot Area (min) | 15,000 sf | 10,000 sf | 7,000 sf |
| | Lot Area Per Unit (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| B | Lot Coverage (max) | 20% | 30% | 30% |
| C | Open Space (min) | 65% | 50% | 50% |
| D | Lot Frontage (min) | 100' | 80' | 70' |



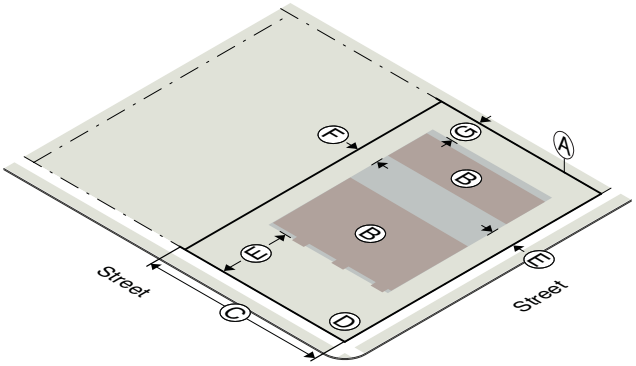

| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Principal Building Setbacks (On or After 12/7/1953)** | | | |
| Ⓔ Front (min)* | 40′ | 30′ | 30′ |
| Ⓕ Side (min) | 20′ | 15′ | 10′ |
| Ⓖ Rear (min) | 25′ | 15′ | 15′ |
| **Principal Building Setbacks (Before 12/7/1953)** | | | |
| Ⓔ Front (min)* | 25′ | 25′ | 25′ |
| Ⓕ Side (min) | 12.5′ | 7.5′ | 7.5′ |
| Ⓖ Rear (min) | 25′ | 15′ | 15′ |

* See Sec. 1.5.3.B. for setback averaging requirement.

| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Principal Building Height** | | | |
| Sloped Roof (max) | 36′ | 36′ | 36′ |
| Flat Roof (max) | 30′ | 30′ | 30′ |
| Ⓗ Stories (max) | 2.5 | 2.5 | 2.5 |
| **Floor Area Ratio** | | | |
| All Lot Sizes | see Sec. 3.1.9. | | |

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.4. Single-Family Attached Dwelling



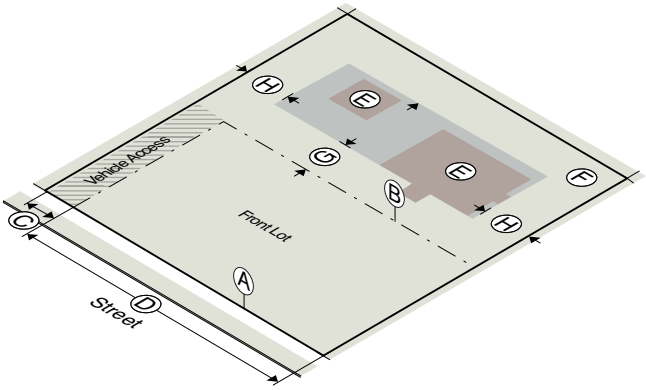
| | | SR1 | SR2 | SR3 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ | Lot Area (min) | 3 ac | 2 ac | 1 ac |
| | Lot Area Per Unit (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| Ⓑ | Lot Coverage (max) | 15% | 20% | 30% |
| Ⓒ | Lot Frontage | 140′ | 100′ | 80′ |
| Ⓓ | Open Space (min) | 70% | 65% | 50% |
| **Principal Building Setbacks** | | | | |
| Ⓔ | Front (min) * | 40′ | 30′ | 30′ |
| Ⓕ | Side (min) | 25′ | 25′ | 25′ |
| Ⓖ | Rear (min) | 25′ | 25′ | 25′ |

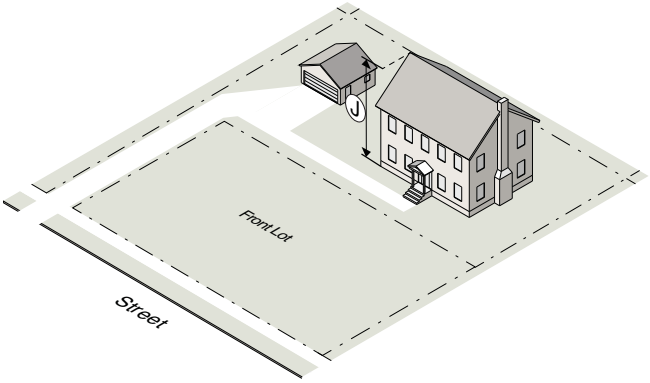
*See Sec. 1.5.3.B. for setback averaging requirement.

| | | SR1 | SR2 | SR3 |
|---|---|---|---|---|
| **Building Height** | | | | |
| | Sloped Roof (max) | 36′ | 36′ | 36′ |
| | Flat Roof (max) | 30′ | 30′ | 30′ |
| Ⓗ | Stories (max) | 2.5 | 2.5 | 2.5 |
| Ⓗ | Stories by special permit (max) | 3 | 3 | 3 |

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.5. Single-Family Detached: Rear Lot



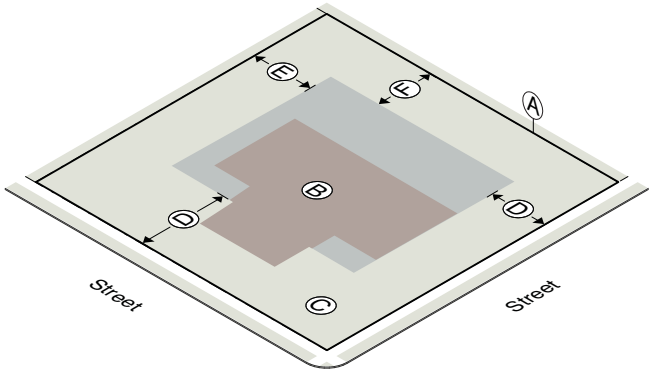

| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Lot Dimensions** | | | |
| Ⓐ Lot Area, Front Lot plus Rear Lot (min) | 55,000 sf | 33,000 sf | 22,000 sf |
| Ⓑ Lot Area (min) | 30,000 sf | 18,000 sf | 12,000 sf |
| Ⓒ Vehicle Access (min) | 20′ | 20′ | 20′ |
| Ⓓ Frontage (min) | 140′ | 100′ | 80′ |
| Ⓔ Lot Coverage (max) | 13% | 17% | 25% |
| Ⓕ Open Space (min) | 70% | 65% | 50% |
| **Principal Building Setbacks** | | | |
| Ⓖ Front (min) | 40′ | 30′ | 30′ |
| Ⓗ Side (min) | 30′ | 23′ | 15′ |
| Ⓘ Rear (min) | 38′ | 23′ | 23′ |
| **Alternate Side Building Separation** | | | |
| Side Separation (min) | 60′ | 46′ | 30′ |
| Distance to Side Lot Line (min) | 20′ | 15′ | 10′ |
| Rear Separation (min) | 76′ | 46′ | 46′ |
| Distance to Rear Lot Line (min) | 25′ | 15′ | 15′ |

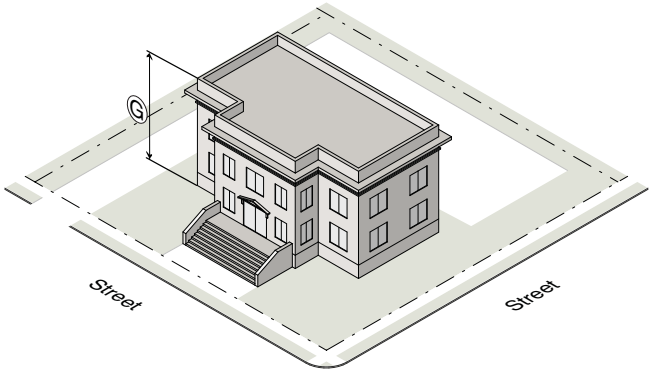
| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Building Height** | | | |
| Sloped Roof (max) | 36′ | 36′ | 36′ |
| Flat Roof (max) | 30′ | 30′ | 30′ |
| Ⓙ Stories (max) | 2.5 | 2.5 | 2.5 |
| Ⓙ Stories by special permit | 3 | 3 | 3 |
| **Floor Area Ratio** | | | |
| Floor Area Ratio (max) | 0.12 | 0.20 | 0.24 |

For additional requirements, see Sec. 3.1.10.

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.6. Single-Use Institution




| | | SR1 | SR2 | SR3 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ | Lot Area (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| Ⓑ | Lot Coverage (max) | 30% | 30% | 30% |
| Ⓒ | Open Space (min) | 50% | 50% | 50% |
| **Principal Building Setbacks** | | | | |
| Ⓓ | Front (min)* | 40′ | 30′ | 30′ |
| Ⓔ | Side (min) | 20′ | 15′ | 10′ |
| Ⓕ | Rear (min) | 25′ | 15′ | 15′ |

* See Sec. 1.5.3.B. for setback averaging requirement.

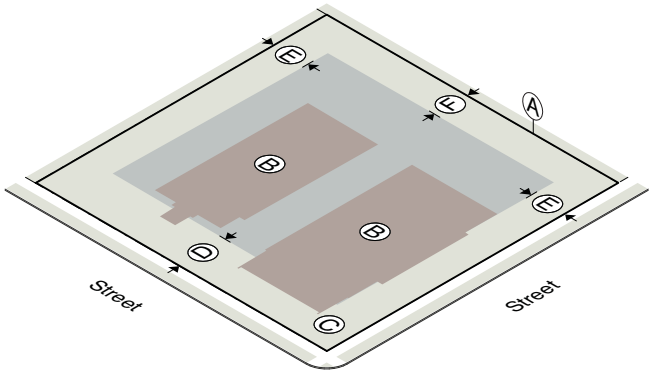
| | | SR1 | SR2 | SR3 |
|---|---|---|---|---|
| **Building Height*** | | | | |
| | Flat/Sloped Roof (max) | 36′ | 36′ | 36′ |
| Ⓖ | Stories (max) | 3 | 3 | 3 |
| **Floor Area Ratio**** | | | | |
| | Floor Area Ratio (max) | 0.2 | 0.33 | 0.5 |

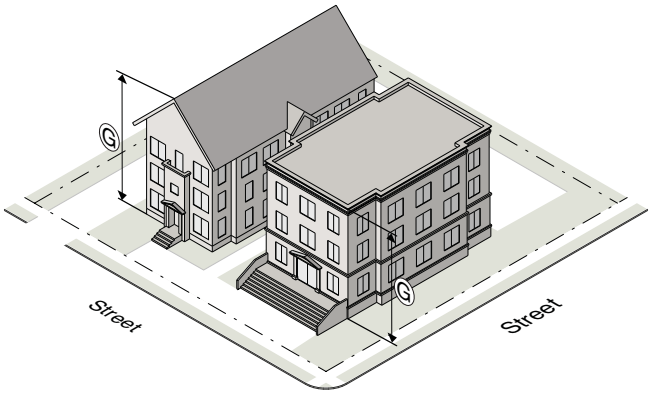
* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.7. Multi-Use Institution: With or Without Dormitory




| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Lot Dimensions** | | | |
| Ⓐ Lot Area (min) | 50,000 sf | 30,000 sf | 20,000 sf |
| Ⓑ Lot Coverage (max) | 30% | 30% | 30% |
| Ⓒ Open Space (min) | 30% | 30% | 30% |
| **Principal Building Setbacks** | | | |
| Ⓓ Front (min)* | 60′ | 50′ | 40′ |
| Ⓔ Side (min) | 40′ | 30′ | 30′** |
| Ⓕ Rear (min) | 40′ | 30′ | 30′** |
| OR | | | |
| Where greater: (bldg ht + bldg length + bldg width)/3 | | | |

* See Sec. 1.5.3.B. for setback averaging requirement.

** See Sec. 3.1.12.

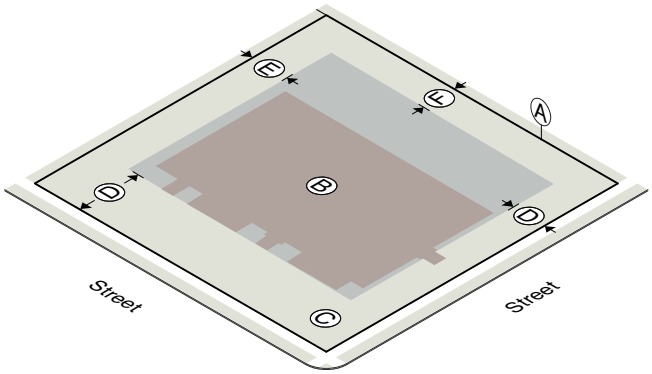
| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Building Height*** | | | |
| Flat/Sloped Roof (max) | 36′ | 36′ | 36′ |
| Ⓖ Stories (max) | 3 | 3 | 3 |
| **Floor Area Ratio**** | | | |
| Floor Area Ratio (max) | 0.2 | 0.5 | 0.5 |

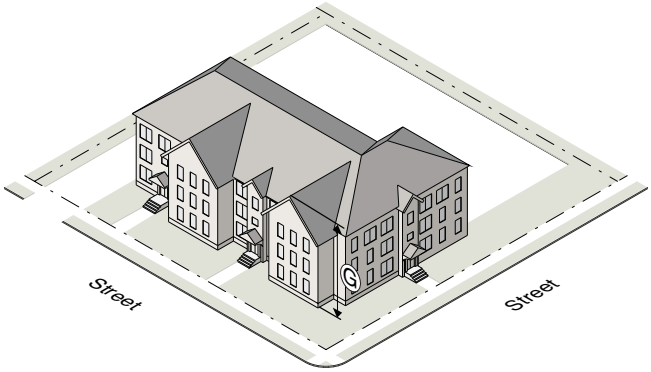
* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.8. Dormitory: On Own Lot




| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Lot Dimensions** | | | |
| Ⓐ Lot Area (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| Ⓑ Lot Coverage (max) ** | 18% | 18% | 18% |
| Ⓒ Open Space (min) ** | 50% | 50% | 50% |
| **Principal Building Setbacks** | | | |
| Ⓓ Front (min)* | 60′ | 50′ | 40′ |
| Ⓔ Side (min) | 40′ | 30′ | 30′ |
| Ⓕ Rear (min) | 40′ | 30′ | 30′ |
| OR | | | |
| Where greater: (bldg ht + bldg length + bldg width)/3 | | | |

* See Sec. 1.5.3.B. for setback averaging requirement.

** When a dormitory is developed in conjunction with a non-profit use the lot coverage and open space requirements of Sec. 3.1.7. shall apply.

| | SR1 | SR2 | SR3 |
|---|---|---|---|
| **Building Height*** | | | |
| Flat/Sloped Roof (max) | 36′ | 36′ | 36′ |
| Ⓖ Stories (max) | 3 | 3 | 3 |
| **Floor Area Ratio**** | | | |
| Floor Area Ratio (max) | 0.2 | 0.5 | 0.5 |

* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.1.9. Floor Area Ratios

A. Floor area ratio (FAR) shall apply to all single- and two-family structures, whether new or existing, except on rear lots (see Sec. 3.1.10.), according to the FAR limits contained in the Table below. See Sec. 1.5.5. for rules regarding FAR measurement. The following exceptions shall apply:

1. For construction on lots created before 12/7/1953, an additional increase in FAR of 0.02 above the amount shown in the table below shall be allowed, provided that new construction proposed using additional FAR granted under this paragraph shall comply with setback requirements for post-1953 lots. Any increase in FAR granted through this paragraph may not create or increase nonconformities with respect to lot coverage or open space and may not be used in conjunction with Sec. 7.8.2.A.2.a. and Sec. 7.8.2.A.2.b.

2. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

| | Lot Size (sf) | Equation for Determining Maximum FAR | Maximum FAR Range |
|---|---|---|---|
| SR 1 | 4,999 sf or less | -- | 0.46 |
| | 5,000 to 6,999 sf | 0.46 - (0.000015 (lot size - 5,000)) | 0.46 to 0.43 |
| | 7,000 to 9,999 sf | 0.43 - (0.000033 (lot size - 7,000)) | 0.43 to 0.33 |
| | 10,000 to 14,999 sf | 0.33 - (0.000004 (lot size - 10,000)) | 0.33 to 0.31 |
| | 15,000 to 19,999 sf | 0.31 - (0.000006 (lot size - 15,000)) | 0.31 to 0.28 |
| | 20,000 to 24,999 sf | 0.28 - (0.000004 (lot size - 20,000)) | 0.28 to 0.26 |
| | 25,000 sf or more | -- | 0.26 |
| SR 2 | 4,999 sf or less | -- | 0.46 |
| | 5,000 to 6,999 sf | 0.46 - (0.000015 (lot size - 5,000)) | 0.46 to 0.43 |
| | 7,000 to 9,999 sf | 0.43 - (0.000017 (lot size - 7,000)) | 0.43 to 0.38 |
| | 10,000 to 14,999 sf | 0.38 - (0.000010 (lot size - 10,000)) | 0.38 to 0.33 |
| | 15,000 sf or more | -- | 0.33 |
| SR 3 | 4,999 sf or less | -- | 0.48 |
| | 5,000 to 6,999 sf | -- | 0.48 |
| | 7,000 to 9,999 sf | 0.48 - (0.000023 (lot size - 7,000)) | 0.48 to 0.41 |
| | 10,000 to 14,999 sf | 0.41 - (0.000006 (lot size - 10,000)) | 0.41 to 0.38 |
| | 15,000 to 19,999 sf | -- | 0.38 |
| | 20,000 to 24,999 sf | 0.38 - (0.000004 (lot size - 20,000)) | 0.38 to 0.36 |
| | 25,000 sf or more | -- | 0.36 |

-- Not Applicable

(Ord. No. Z-51, 08/10/09; Ord. No. Z-69, 07/12/10; Ord. No. Z-72, 11/15/10; Ord. No. Z-75, 2/7/11; Ord. No. Z-77, 02/22/11; Ord. No. Z-101, 12/05/11)

## 3.1.10. Rear Lots

A. Special Permit Required. The Board of Aldermen may grant a special permit for a rear lot that satisfies the minimum frontage requirement by measuring lot frontage along the rear line of the lot or lots in front of it.

B. Dimensional Standards:

1. Vehicular Access. May be provided in fee as part of the lot with street frontage 20 feet wide, as a legal easement or right-of-way 20 feet wide. If provided in fee, the area utilized for vehicular access (lot stem portion) may not be counted as more than 20 percent of the minimum lot area requirement.

2. Lot Frontage. Required for street lot. Also required for rear lot, but measured along the rear lot line of the lot in front.

3. Setbacks.

a. Subject to a special permit, a building on a rear lot may be located no closer than 25 feet from the rear line of the lot in front.

b. Alternate side building separation standard (measured across lot line, building to building) may be utilized in place of required side yard. Note minimum distance to lot line.

c. Alternate rear building separation standard (measured across lot line, building to building) may be utilized in place of required rear yard. Note minimum distance to lot line.

4. Height. Allow three stories by special permit where the proposed structure is consistent with and not in derogation of the size, scale and design of other structures.

C. Exceptions. The rear lot development density and dimensional controls in Sec. 3.1.5. shall apply to the proposed rear lots and the remainder of the original lot shall be subject to the density and dimensional controls in Sec. 3.1.3, for lots created after December 7, 1953, unless the existence of one or more of the conditions enumerated below justifies a waiver by the Board of Aldermen of one or more such controls:

1. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood, and eliminates or mitigates against development impacts on adjacent residential uses and neighborhoods.

2. If the proposed rear lot development will create, in either an existing building or in a building to be constructed, at least 1 new dwelling unit that satisfies the requirements for the provision of an affordable housing "inclusionary unit" as set out in Sec. 5.11., the Board of Aldermen may grant a waiver permitting the new rear lot to utilize dimensional controls set out in Section 1.5.3 and Section 3.1.3 for lots created after December 7, 1953.

3. Where an existing building or structure listed on the State or National Register of Historic Places, or designated as a Newton Landmark Preservation Site, does not meet the applicable dimensional controls for a rear lot development established in Sec. 3.1.5., but is a valid nonconforming building or structure solely due to a substandard front or side setbacks or both, the Board of Aldermen may waive the applicable front or side setback requirements, or both, provided that the required setback shall not be reduced to less than the actual existing setback distance.

(Ord. No. X-123, 12/06/04; Ord. No. Z-101, 12/05/11)

## 3.1.11. Conversion of a Structure

A. Single Residence Districts. The conversion of a structure in a Single Residence 1, 2, or 3 district in existence on December 2, 1974, to occupancy by more than one family, is allowed by special permit, provided that there shall be no exterior alterations of the structure, other than those necessary to comply with applicable Health, Building and Fire codes, and subject to the following conditions:

1. Minimum lot area per unit and lot frontage:

| | SR1 | SR2 | SR3 |
|---|---|---|---|
| Lot Dimensions | | | |
| Lot Area per Unit (min) | 25,000 sf | 15,000 sf | 10,000 sf |
| Lot Frontage (min) | 140′ | 100′ | 80′ |

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

## 3.1.12. Common Property Line Setback Reduction for Institutional Uses

In the event that 2 or more religious or non-profit educational institutions own abutting properties at least 5 acres each in size in the Single Residence 3 district which they will use as a shared campus or facility, the Board of Aldermen may, upon application of all the affected abutting religious or non-profit educational institutions, grant a special permit to reduce the required side and/or rear setbacks provided in Sec. 3.1.7 along their common property lines to accommodate the shared use of all such properties.

A. The Board of Aldermen may grant a special permit only upon making a specific finding that such a grant will serve the purposes of this Chapter including, but not limited to those purposes set out in Sec. 1.2. and the preservation of usable open space through appropriate and sufficient increases in compensating front or side yard setbacks and that the lesser setback along the common property lines granted by special permit is in the public interest.

B. The increase in the compensating front or side yard setbacks shall be at least equal to the reduction of the side or rear yard along the common property lines provided, however, that the Board of Aldermen may give permission for a further reduction of minimum side or rear setbacks along the common property lines if it finds that such reductions are consistent with the purposes of this Chapter and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants, walls, fencing and areas of aesthetic or ecological interest.

C. The increased setbacks shall be set aside as permanent open space and shall be restricted by either recorded deed or conservation restriction. The Board of Aldermen may designate that the public shall have permanent public access to the land set aside or any part of that land.

(Ord. No. V-165, 04/06/98)

## 3.1.13. Exception to Dimensional Standards

Whenever the operation of this Chapter would reduce the area available for building a dwelling unit 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 Chapter 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.

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

# Sec. 3.2. Multi-Residence Districts

## 3.2.1. District Intent

[reserved]

## 3.2.2. Dimensional Standards

### A. Applicability.

1. The density and dimensional controls in Sec. 3.2. apply to all buildings, structures and uses in each of the listed districts.

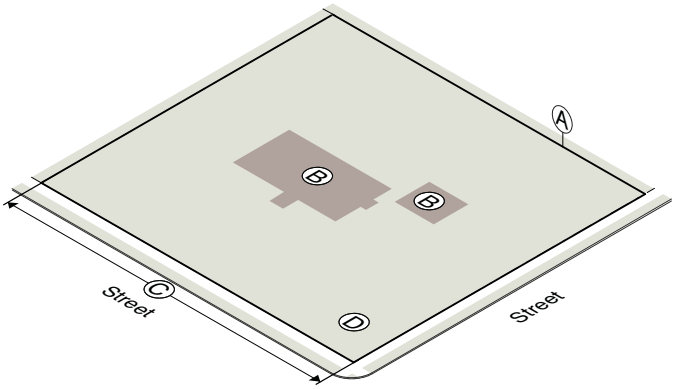
2. Lots created before December 7, 1953 (referred to as 'Before 12/7/1953') use a different set of density and dimensional standards than lots created on or after December 7, 1953 (referred to as 'On or After 12/7/1953'), as shown in the tables in Sec. 3.2.3.

3. Where a density or dimensional control is not set forth in this Sec. 3.2. for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the Board of Aldermen.

4. Where a lot does not meet these standards it is nonconforming (see Sec. 7.8.).

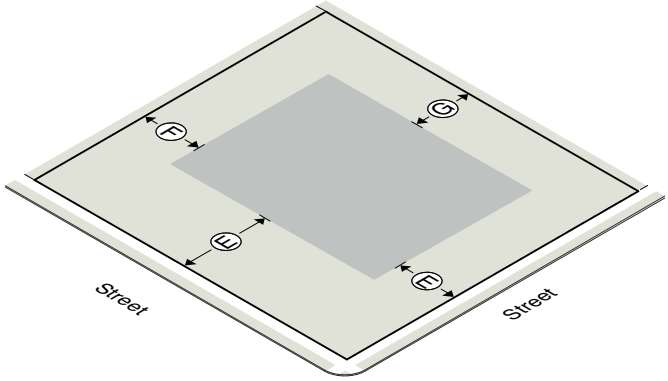
(Ord. No. S-260, 08/03/87)

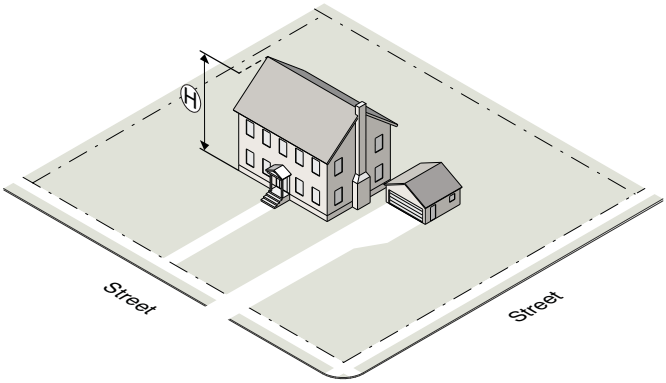
## 3.2.3. Single-Family Detached or Two-Family Detached




| | | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|---|
| Lot Dimensions (On or After 12/7/1953) | | | | | |
| A | Lot Area (min) | 10,000 sf | 10,000 sf | 10,000 sf | 10,000 sf |
| | Lot Area Per Unit (min) | 5,000 sf | 5,000 sf | 5,000 sf | 5,000 sf |
| B | Lot Coverage (max) | 30% | 30% | 30% | 30% |
| C | Frontage (min) | 80' | 80' | 80' | 80' |
| D | Open Space (min) | 50% | 50% | 50% | 50% |
| Lot Dimensions (Before 12/7/1953) | | | | | |
| A | Lot Area (min) | 7,000 sf | 7,000 sf | 7,000 sf | -- |
| | Lot Area Per Unit (min) | 3,500 sf | 3,500 sf | 3,500 sf | -- |
| B | Lot Coverage (max) | 30% | 30% | 30% | -- |
| C | Frontage (min) | 70' | 70' | 70' | -- |
| D | Open Space (min) | 50% | 50% | 50% | -- |

-- Not Applicable




| | | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|---|
| Principal Building Setbacks (On or After 12/7/1953) | | | | | |
| Ⓔ | Front (min)* | 30′ | 25′ | 15′ | 15′ |
| Ⓕ | Side (min) | 10′ | 10′ | 7.5′ | 10′ |
| Ⓖ | Rear (min) | 15′ | 15′ | 15′ | 15′ |
| Principal Building Setbacks (Before 12/7/1953) | | | | | |
| Ⓔ | Front (min)* | 25′ | 25′ | 15′ | -- |
| Ⓕ | Side (min) | 7.5′ | 7.5′ | 7.5′ | -- |
| Ⓖ | Rear (min) | 15′ | 15′ | 15′ | -- |

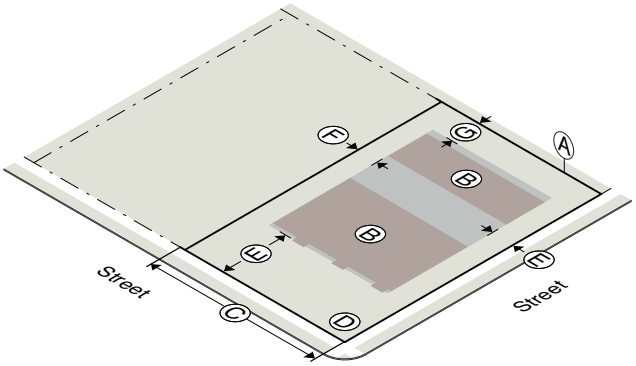
-- Not Applicable

* See Sec. 1.5.3.B. for setback averaging requirement.

| | | MR1, 2, 3, 4 |
|---|---|---|
| Building Height | | |
| | Sloped Roof (max) | 36′ |
| | Flat Roof (max) | 30′ |
| Ⓗ | Stories (max) | 2.5 |
| Ⓗ | Stories by special permit (max) | 3 |
| Floor Area Ratio | | |
| | All Lot Sizes | see Sec. 3.2.11. |

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.4. Single-Family Attached Dwelling



| | | MR1, 2 | MR3 |
|---|---|---|---|
| **Site Dimensions *** | | | |
| Ⓐ | Lot Area (min) | 15,000 sf | 15,000 sf |
| | Lot Area Per Unit (min) | 4,000 sf | 4,000 sf |
| Ⓑ | Lot Coverage (max) | 25% | 25% |
| Ⓒ | Frontage (min) | 80′ | 80′ |
| Ⓓ | Open Space (min) | 50% | 50% |
| **Principal Building Setbacks *** | | | |
| Ⓔ | Front (min)** | 25′ | 25′ |
| Ⓕ | Side (min) | 25′ | 10′ |
| Ⓖ | Rear (min) | 25′ | 15′ |

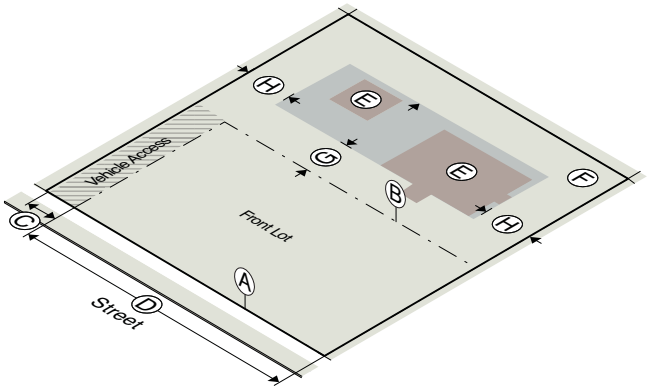
| | | MR1, 2 | MR3 |
|---|---|---|---|
| **Principal Building Height** | | | |
| | Sloped Roof (max) | 36′ | 36′ |
| | Flat Roof (max) | 30′ | 30′ |
| Ⓗ | Stories (max) | 2.5 | 2.5 |
| Ⓗ | Stories by special permit (max) | 3 | 3 |

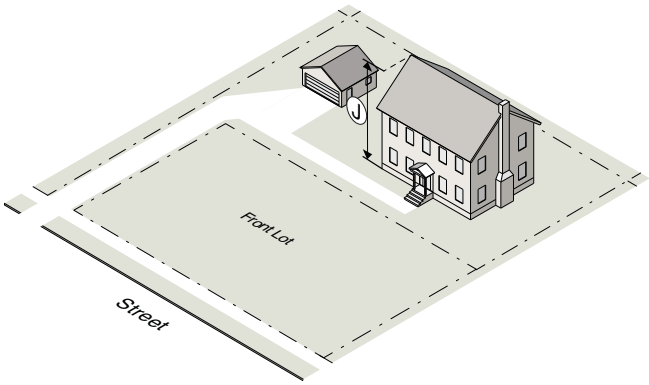
(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

* In particular instances, the Board of Aldermen may grant exceptions to the dimensional standards of this Sec. 3.2.4 if it is determined that literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features.

** See Sec. 1.5.3.B. for setback averaging requirement.

## 3.2.5. Two-Family Detached Rear Lot



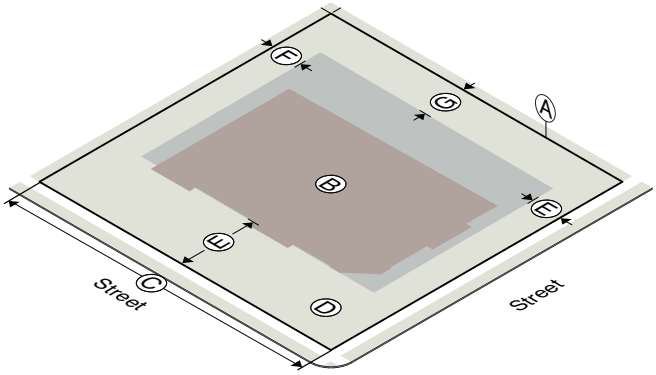

| | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ Lot Area, Front Lot plus Rear Lot (min) | 22,000 sf | 22,000 sf | 22,000 sf | 22,000 sf |
| Ⓑ Lot Area (min) | 12,000 sf | 12,000 sf | 12,000 sf | 12,000 sf |
| Ⓒ Vehicle Access (min) | 20′ | 20′ | 20′ | 20′ |
| Ⓓ Frontage (min) | 80′ | 80′ | 80′ | 80′ |
| Ⓔ Lot Coverage (max) | 25% | 25% | 25% | 25% |
| Ⓕ Open Space (min) | 50% | 50% | 50% | 50% |
| **Principal Building Setbacks** | | | | |
| Ⓖ Front (min) | 30′ | 25′ | 25′ | 25′ |
| Ⓗ Side (min) | 15′ | 15′ | 12′ | 15′ |
| Ⓘ Rear (min) | 23′ | 23′ | 23′ | 23′ |
| **Alternate Side Building Separation** | | | | |
| Side Separation (min) | 30′ | 30′ | 24′ | 30′ |
| Distance to Side Lot Line (min) | 10′ | 10′ | 8′ | 10′ |
| Rear Separation (min) | 46′ | 46′ | 46′ | 46′ |
| Distance to Rear Lot Line (min) | 15′ | 15′ | 15′ | 15′ |

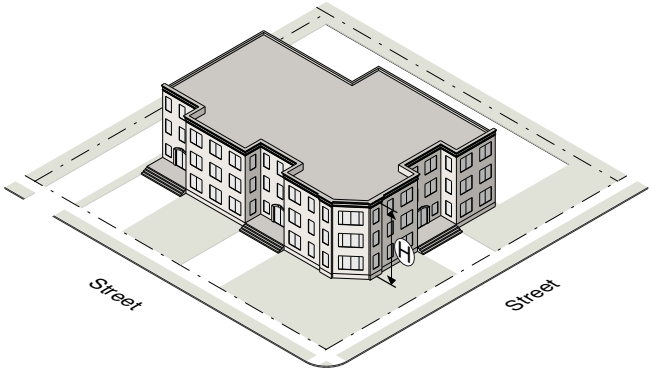
| | MR1 | MR2 | MR3 | MR3 |
|---|---|---|---|---|
| **Building Height** | | | | |
| Sloped Roof (max) | 36′ | 36′ | 36′ | 36′ |
| Flat Roof (max) | 30′ | 30′ | 30′ | 30′ |
| Ⓙ Stories (max) | 2.5 | 2.5 | 2.5 | 2.5′ |
| **Floor Area Ratio** | | | | |
| Floor Area Ratio (max) | 0.28 | 0.28 | 0.28 | 0.28 |

For additional requirements, see Sec. 3.2.12.

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.6. Multi-Family Dwelling




| | | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ | Lot Area (min) | 10,000 sf | 10,000 sf | 3 ac |
| | Lot Area Per Unit (min) | 3,000 sf | 1,200 sf | 1,000 sf |
| Ⓑ | Lot Coverage (max) | 30% | 45% | 20% |
| Ⓒ | Frontage (min) | 80′ | 80′ | -- |
| Ⓓ | Open Space (min) | 50% | 30% | 30% |
| **Principal Building Setbacks** | | | | |
| Ⓔ | Front (min)* | 25′ | 15′ | 50′ |
| Ⓕ | Side (min) | 7.5′ | ⅓ bldg ht | 50′ |
| Ⓖ | Rear (min) | 15′ | ½ bldg ht | 50′ |

-- Not Applicable

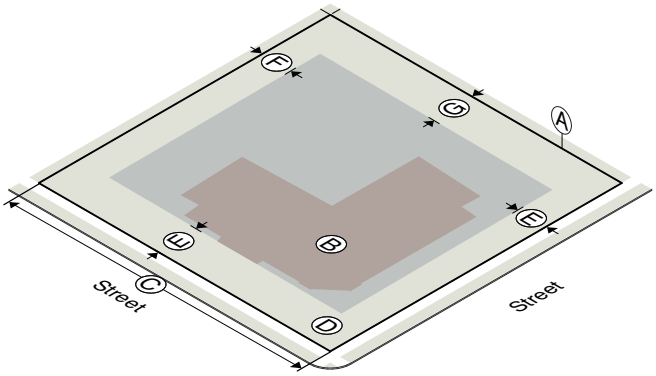
* See Sec. 1.5.3.B. for setback averaging requirement.

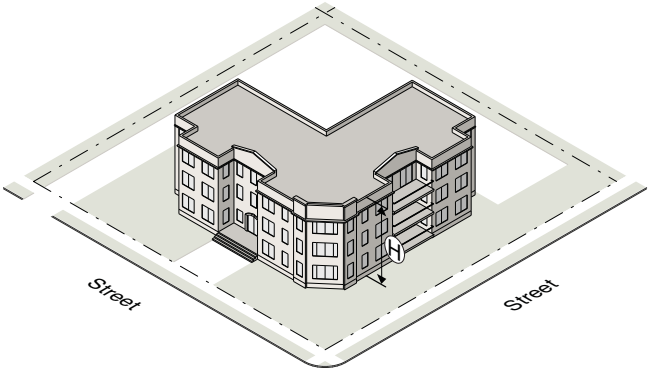
| | | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Building Height** | | | | |
| | Sloped Roof (max) | 36′ | 42′* | -- |
| | Flat Roof (max) | 30′ | 36′* | -- |
| Ⓗ | Stories (max) | 3 | 3 | 3 |

* Allow by special permit in the Multi-Residence 3 district, a maximum building height of 48 feet and a maximum number of 4 stories, provided that there is a minimum lot size of 10 acres; the distance from any streets abutting the lot to such multi-family dwelling structure is no less than 150 feet, and the distance between such structure and abutting properties is no less than 75 feet; and the front, side, and rear setbacks for the lot are 50 feet from the lot line.

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.7. Residential Care Facility




| | | MR3 | MR4 |
|---|---|---|---|
| **Lot Dimensions** | | | |
| Ⓐ | Lot Area (min) | 10,000 sf | 3 ac |
| | Lot Area Per Unit (min) | 1,200 sf | 1,200 sf |
| Ⓑ | Lot Coverage (max) | 45% | 45% |
| Ⓒ | Frontage (min) | 80′ | -- |
| Ⓓ | Open Space (min) | 30% | 30% |
| **Principal Building Setbacks** | | | |
| Ⓔ | Front (min)* | 15′ | 15′ |
| Ⓕ | Side (min) | ⅓ bldg ht | ⅓ bldg ht |
| Ⓖ | Rear (min) | ½ bldg ht | ½ bldg ht |

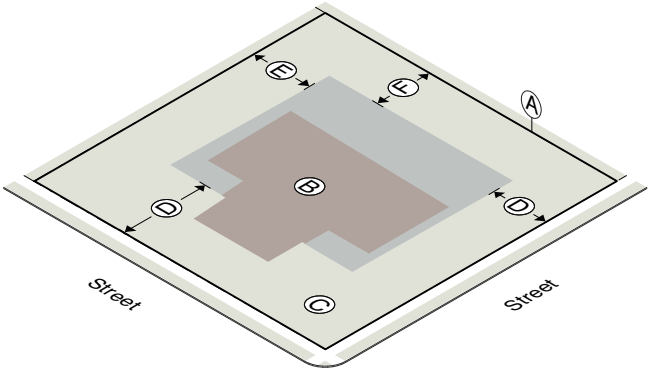
-- Not Applicable

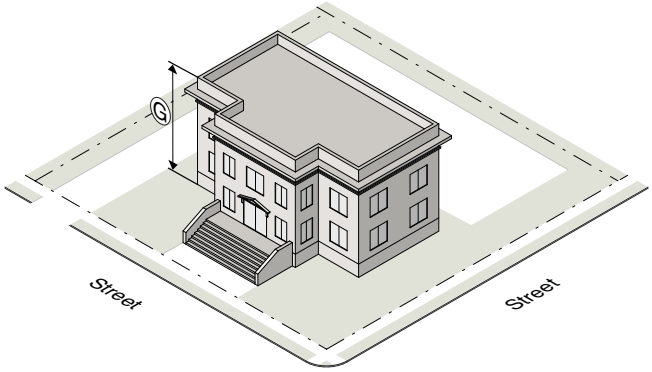
* See Sec. 1.5.3.B. for setback averaging requirement.

| | | MR3 | MR4 |
|---|---|---|---|
| **Building Height** | | | |
| | Sloped Roof (max) | 42′ | 42′ |
| | Flat Roof (max) | 36′ | 36′ |
| Ⓗ | Stories (max) | 3 | 3 |

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.8. Single-Use Institution




| | MR1 | MR2 | MR3, 4 |
|---|---|---|---|
| **Lot Dimensions** | | | |
| Ⓐ Lot Area (min) | 10,000 sf | 10,000 sf | 10,000 sf |
| Ⓑ Lot Coverage (max) | 30% | 30% | 30% |
| Ⓒ Open Space (min) | 50% | 50% | 50% |
| **Principal Building Setbacks** | | | |
| Ⓓ Front (min)* | 30′ | 25′ | 15′ |
| Ⓔ Side (min) | 10′ | 10′ | 7.5′ |
| Ⓕ Rear (min) | 15′ | 15′ | 15′ |

* See Sec. 1.5.3.B. for setback averaging requirement.

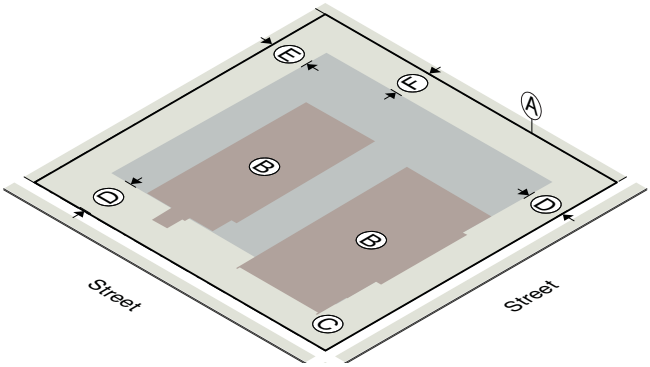
| | MR1 | MR2 | MR3, 4 |
|---|---|---|---|
| **Building Height*** | | | |
| Flat/Sloped Roof (max) | 36′ | 36′ | 36′ |
| Ⓖ Stories (max) | 3 | 3 | 3 |
| **Floor Area Ratio**** | | | |
| Floor Area Ratio (max) | 0.5 | 0.75 | 1.0 |

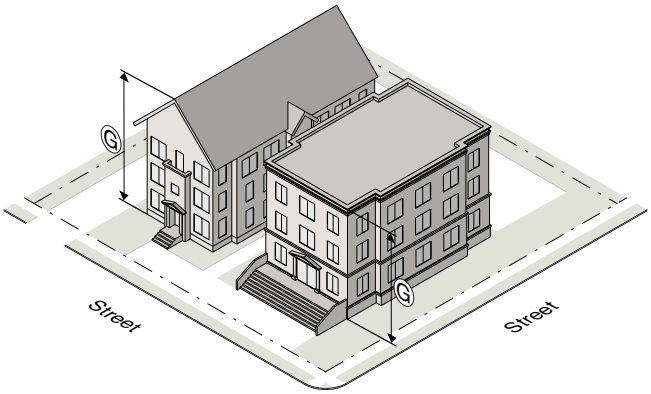
* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.9. Multi-Use Institution: With or Without Dormitory




| | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ Lot Area (min) | 20,000 sf | 20,000 sf | 20,000 sf | 20,000 sf |
| Ⓑ Lot Coverage (max) | 30% | 30% | 30% | 45% |
| Ⓒ Open Space (min) | 30% | 30% | 30% | 30% |
| **Principal Building Setbacks** | | | | |
| Ⓓ Front (min)* | 40′ | 30′ | 25′ | 25′ |
| Ⓔ Side (min) | 30′ | 25′ | 25′ | 25′ |
| Ⓕ Rear (min) | 30′ | 25′ | 25′ | 25′ |

* See Sec. 1.5.3.B. for setback averaging requirement.

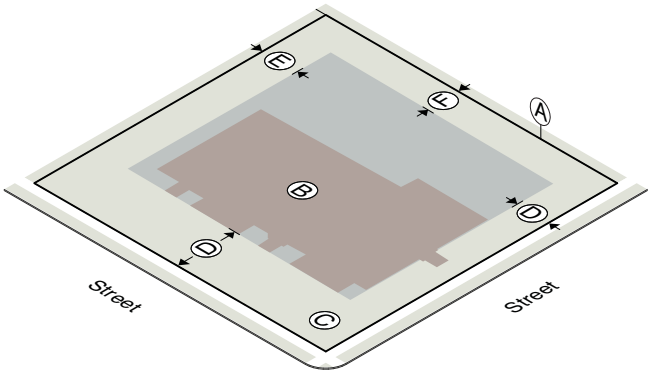
| | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Building Height *** | | | | |
| Flat/Sloped Roof (max) | 36′ | 36′ | 36′ | 36′ |
| Ⓖ Stories (max) | 3 | 3 | 3 | 3 |
| **Floor Area Ratio **** | | | | |
| Floor Area Ratio (max) | 0.5 | 0.75 | 1.0 | 1.0 |

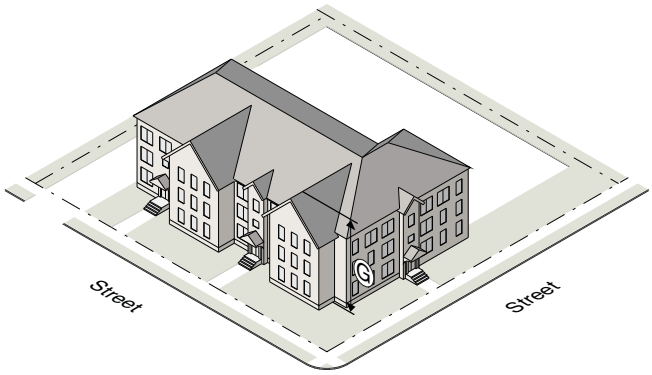
* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.10. Dormitory: On Own Lot




| | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ Lot Area (min) | 10,000 sf | 10,000 sf | 10,000 sf | 10,000 sf |
| Ⓑ Lot Coverage (max) | 18% | 25% | 30% | 30% |
| Ⓒ Open Space (min) | 45% | 40% | 40% | 40% |
| **Principal Building Setbacks** | | | | |
| Ⓓ Front (min)* | 40′ | 40′ | 25′ | 25′ |
| Ⓔ Side (min) | 30′ | 25′ | 25′ | 25′ |
| Ⓕ Rear (min) | 30′ | 25′ | 25′ | 25′ |

* See Sec. 1.5.3.B. for setback averaging requirement.

| | MR1 | MR2 | MR3 | MR4 |
|---|---|---|---|---|
| **Building Height*** | | | | |
| Flat/Sloped Roof (max) | 36′ | 36′ | 36′ | 36′ |
| Ⓖ Stories (max) | 3 | 3 | 3 | 3 |
| **Floor Area Ratio**** | | | | |
| Floor Area Ratio (max) | 0.5 | 0.75 | 1.0 | 1.0 |

* Building and structure height may be increased by one story for every 150 feet of distance from streets and abutting properties, but not to exceed 6 stories or 60 feet.

** Floor area ratio may be increased by 0.1 for each additional 10 percent of the lot area that is devoted to usable open space up to a maximum floor area ratio of 1.0.

(Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## 3.2.11. Floor Area Ratios

A. Applicability. Floor area ratio (FAR) shall apply to all single- and two-family structures, whether new or existing, except on rear lots (see Sec. 3.2.12.), according to the FAR limits contained in the Table below. See Sec. 1.5.5. for rules regarding FAR measurement. The following exceptions shall apply:

1. For construction on lots created before 12/7/1953, an additional increase in FAR of.02 above the amount shown in Table A shall be allowed, provided that new construction proposed using additional FAR granted under this paragraph shall comply with setback requirements for post-1953 lots. Any increase in FAR granted through this paragraph may not create or increase nonconformities with respect to lot coverage or open space and may not be used in conjunction with Sec. 7.8.2.A.2.a. and Sec. 7.8.2.A.2.b.

2. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

| | Lot Size (sf) | Equation for Determining Maximum FAR | Maximum FAR Range |
|---|---|---|---|
| MR 1 | 4,999 sf or less | -- | 0.58 |
| | 5,000 to 6,999 sf | 0.58 – (0.000025 (lot size - 5,000)) | 0.58 to 0.53 |
| | 7,000 to 9,999 sf | 0.53 – (0.000017 (lot size - 7,000)) | 0.53 to 0.48 |
| | 10,000 to 14,999 sf | -- | 0.48 |
| | 15,000 to 19,999 sf | 0.48 – (0.000010 (lot size - 15,000)) | 0.48 to 0.43 |
| | 20,000 to 24,999 sf | 0.43 – (0.000010 (lot size - 20,000)) | 0.43 to 0.38 |
| | 25,000 sf or more | -- | 0.38 |

| | | | |
|---|---|---|---|
| MR 2, MR 3 | 4,999 sf or less | -- | 0.58 |
| | 5,000 to 6,999 sf | 0.58 – (0.000025 (lot size - 5,000)) | 0.58 to 0.53 |
| | 7,000 to 9,999 sf | -- | 0.53 |
| | 10,000 to 14,999 sf | 0.53 – (0.000020 (lot size - 10,000)) | 0.53 to 0.43 |
| | 15,000 to 19,999 sf | 0.43 – (0.000010 (lot size - 15,000)) | 0.43 to 0.38 |
| | 20,000 to 24,999 sf | -- | 0.38 |
| | 25,000 sf or more | -- | 0.38 |

-- Not Applicable

(Ord. No. Z-51, 08/10/09; Ord. No. Z-69, 07/12/10; Ord. No. Z-72, 11/15/10; Ord. No. Z-75, 2/7/11; Ord. No. Z-77, 02/22/11; Ord. No. Z-101, 12/05/11)

## 3.2.12. Rear Lots

A. Special Permit Required. The Board of Aldermen may grant a special permit for a rear lot that satisfies the minimum frontage requirement by measuring lot frontage along the rear line of the lot or lots in front of it.

B. Dimensional Standards:

1. Vehicular Access. May be provided in fee as part of the lot with street frontage 20 feet wide, as a legal easement or right-of-way 20 feet wide. If provided in fee, the area utilized for vehicular access (lot stem portion) may not be counted as more than 20 percent of the minimum lot area requirement.

2. Lot Frontage. Required for street lot. Also required for rear lot, but measured along the rear lot line of the lot in front.

3. Setbacks.

a. Subject to a special permit, a building on a rear lot may be located no closer than 25 feet from the rear line of the lot in front.

b. Alternate side building separation standard (measured across lot line, building to building) may be utilized in place of required side yard. Note minimum distance to lot line.

c. Alternate rear building separation standard (measured across lot line, building to building) may be utilized in place of required rear yard. Note minimum distance to lot line.

4. Height. Allow three stories by special permit where if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures.

C. Exceptions. The rear lot development density and dimensional controls in Sec. 3.2.5. shall apply to the proposed rear lots and the remainder of the original lot shall be subject to the density and dimensional controls in Sec. 3.2.3, for lots created after December 7, 1953, unless the existence of one or more of the conditions enumerated below justifies a waiver by the Board of Aldermen of one or more such controls:

1. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood, and eliminates or mitigates against development impacts on adjacent residential uses and neighborhoods.

2. If the proposed rear lot development will create, in either an existing building or in a building to be constructed, at least 1 new dwelling unit that satisfies the requirements for the provision of an affordable housing "inclusionary unit" as set out in Sec. 5.11., the Board of Aldermen may grant a waiver permitting the new rear lot to utilize dimensional controls set out in Sec. 1.5.3 and Sec. 3.2.3 for lots created after December 7, 1953.

3. Where an existing building or structure listed on the State or National Register of Historic Places, or designated as a Newton Landmark Preservation Site, does not meet the applicable dimensional controls for a rear lot development established in this Sec. 3.2.5., but is a valid nonconforming building or structure solely due to a substandard front or side setbacks or both, the Board of Aldermen may waive the applicable front or side setback requirements, or both, provided that the required setback shall not be reduced to less than the actual existing setback distance.

(Ord. No. X-123, 12/06/04; Ord. No. Z-101, 12/05/11)

### 3.2.13. Conversion of a Structure

A. Multi-Residence 1 Districts. The conversion of a structure in a Multi-Residence 1 district in existence on May 7, 1979, to more than two families, is allowed by special permit by the Board of Aldermen, provided that there shall be no exterior alterations of the structure, other than those necessary to comply with applicable Health, Building and Fire codes, and subject to the following condition:

1. Minimum lot area of 5,000 square feet per family.

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

# Sec. 3.3. Other Residence Options

## 3.3.1. Cluster Development for Open Space Preservation

The Board of Aldermen may give site plan approval and grant a special permit (see Sec. 7.3.) for the reduction of the minimum lot area, the minimum lot frontage, minimum setback lines, the minimum side lot line and the minimum rear lot line required for each single- or two-family dwelling, subject to the following:

### A. Dimensional Standards:

| | SR1 | SR2 | SR3 | MR1, 2, 3 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Site Area (min) | | | | |
| Single-family, detached | 5 ac | 5 ac | 5 ac | 5 ac |
| Single-family/two-family | --- | --- | --- | 5 ac |
| Site Area (max) | 35 ac | 35 ac | 35 ac | 35 ac |
| Lot Area per Dwelling Unit (min) | | | | |
| Single-family, detached | 15,000 sf | 10,000 sf | 7,000 sf | 7,000 sf |
| Single-family/two-family | --- | --- | --- | 7,000 sf |
| Lot Coverage (max) | | | | |
| Single-family, detached | 20% | 30% | 30% | 30% |
| Single-family/two-family | --- | --- | --- | 30% |
| Lot Frontage (min) | 50′ | 50′ | 50′ | 50′ |
| Floor Area Ratio (max) | 0.5 | 0.5 | 0.5 | 0.5 |
| Open Space (min) | 50% | 50% | 50% | 50% |
| Single-family, detached | 65% | 50% | 50% | 50% |
| Single-family/two-family | --- | --- | --- | 50% |
| **Principal and Accessory Building Setbacks** | | | | |
| Front (min) | 15′ | 15′ | 15′ | 15′ |
| Side (min) | 7.5′ | 7.5′ | 7.5′ | 7.5′ |
| Rear (min) | 15′ | 15′ | 15′ | 15′ |
| **Principal and Accessory Building Height** | | | | |
| Sloped Roof (max) | 36′ | 36′ | 36′ | 36′ |
| Flat Roof (max) | 30′ | 30′ | 30′ | 30′ |
| Stories (max) | 2.5 | 2.5 | 2.5 | 2.5 |

-- Not Applicable

B. Further Reduction Allowed. Notwithstanding the above, the Board of Aldermen may give permission for further reductions in or the waiver of minimum lot frontage, setbacks and side and rear yards where it finds that such reductions are consistent with the purposes of this Chapter and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants and areas of aesthetic or ecological interest; provided that such reductions shall not permit the construction of single-family attached dwellings within single residence districts.

C. Additional Height Allowed. Notwithstanding the above, the Board of Aldermen may give permission for 3 stories in height, if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

D. Open Space Required. For each dwelling unit, an area equal to the differential between the minimum lot area requirement established in Sec. 3.1.3 for Single Residence districts and Sec. 3.2.3 for Multi Residence districts, the reduced minimum lot area permitted in this Sec. 3.3.1.A shall be set aside within the development as permanent open space, provided, however, that no more than 25 percent of the area set aside in fulfillment of this requirement shall be within an area delineated by Revised Ordinances Chapter 22, Section 22-22, as amended. The Board of Aldermen, in designating such open space, shall exercise special concern with regard to the preservation of natural features, including, but not limited to, hills, ponds, watercourses, wetlands, trees, tree groves, wooded areas, rock outcrops, native plant and wildlife habitats and areas of aesthetic or ecological interest. Such land shall be of such size, shape, dimension, character and location as to assure its utility for park, conservation or recreation purposes.

E. Use of Open Space. The use of the land set aside as permanent open space shall be limited to recreation and open space uses, and no building, structures, driveways or parking areas, other than buildings or structures or recreational and maintenance equipment used in connection with such land, shall be erected or placed on the open space. Said buildings or structures shall have an aggregate floor area of less than 0.5 percent of the area of such designated open space.

F. Open Space Ownership.

1. The land set aside as permanent open space shall be held and maintained by the developer until it is conveyed to, accepted by, and owned by one or more of the following:

   a. The City of Newton;

   b. The Newton Conservation Commission;

   c. An association, trust or corporation of all owners of lots within the development; or

   d. A nonprofit trust or corporation having as its primary purpose the maintenance of open space.

2. In granting a special permit in accordance with this Sec. 3.3.1. , the Board of Aldermen may designate one of the ownership options specified above, which shall be used and may designate that the public shall have a right of access to the open space or any part of the open space.

G. Conveyance Required. No building permit shall be issued in accordance with this Sec. 3.3.1. until the designated open space has been conveyed to and accepted by one or more of the above, and in the event that the open space shall not have been conveyed to the City or the Newton Conservation Commission, a restriction, enforceable by the City, ensuring the permanent maintenance of the land as open space, must be recorded.

(Ord. No. 272, 05/15/78; Ord. No. S-260. 08/03/87; Ord. No. T-173, 09/16/91; Ord. No. U-28, 09/07/94; Ord. No. V-113, 04/23/97)

# Sec. 3.4. Allowed Uses

## 3.4.1. Residential Districts Allowed Uses

| Residential Districts | SR1 | SR2 | SR3 | MR1 | MR2 | MR3 | MR4 | Definition/ Listed Standards |
|---|---|---|---|---|---|---|---|---|
| **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 | SP | SP | SP | SP | SP | SP | Sec. 6.2.3. |
| Multi-family dwelling | -- | -- | -- | -- | SP | SP | SP | Sec. 6.2.4. |
| Association of persons in a common dwelling | SP | SP | SP | SP | SP | SP | SP | Sec. 6.2.6. |
| Boarding house | -- | -- | -- | SP | SP | SP | SP | Sec. 6.2.7. |
| Congregate living facility | SP | SP | SP | SP | SP | SP | SP | Sec. 6.2.8. |
| Dormitory (5-20 persons) | SP | SP | SP | SP | SP | SP | 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 | SP | SP | SP | SP | SP | SP | Sec. 6.2.12. |
| Residential care facility | -- | -- | -- | -- | -- | SP | SP | Sec. 6.2.13. |
| **Civic/Institutional Uses** | | | | | | | | |
| Cemetery, private | SP | SP | SP | SP | SP | SP | SP | Sec. 6.3.1. |
| Club, clubhouse | SP | SP | SP | SP | SP | SP | 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 | SP | SP | SP | SP | SP | SP | Sec. 6.3.7. |
| Library, museum or similar institution | SP | SP | SP | SP | SP | SP | 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. 6.3.10. |
| Religious institution | L | L | L | L | L | L | L | Sec. 6.3.12. |
| Sanitarium, convalescent or rest home, other like institution | SP | SP | SP | SP | SP | SP | 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 | SP | SP | SP | SP | SP | SP | Sec. 6.3.14. |
| Scientific research and development activities, accessory | SP | SP | SP | SP | SP | SP | SP | Sec. 6.7.4. |
| **Commercial Uses** | | | | | | | | |
| Funeral home | -- | -- | -- | -- | SP | SP | -- | Sec. 6.4.15. |
| Radio or television transmission station or structure | SP | SP | SP | SP | SP | SP | SP | Sec. 6.27. |
| **Industrial Uses** | | | | | | | | |
| Wireless communication equipment | P/L/SP | P/L/SP | P/L/SP | P/L/SP | P/L/SP | P/L/SP | 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 | SP | SP | SP | SP | SP | SP | Sec. 6.6.1. |
| Resource extraction | SP | SP | SP | SP | SP | SP | SP | Sec. 6.6.4. |
| Riding school, stock farm | SP | SP | SP | SP | SP | SP | SP | Sec. 6.6.5. |

P = Allowed by Right  L = Allowed Subject to Listed Standards  SP = Special Permit by Board of Aldermen Required  -- Not Allowed

## 3.4.2. Accessory Uses Allowed

A. By Right in All Single Residence Districts. Such accessory purposes as are proper and usual with detached single-family dwellings, including but not limited to:

1. Housing of resident domestic employees;
2. Renting of rooms for not more than 3 lodgers;
3. Parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed 7 days;
4. Parking or storing of not more than 1 commercial vehicle per lot, subject to Sec. 6.7.3;
5. Home businesses subject to Sec. 6.7.3.; and
6. Internal accessory apartments in single residence districts, subject to Sec. 6.7.1.

B. By Right in All Multi-Residence Districts. Such accessory purposes as are proper and usual with detached two-family dwellings.

C. By Special Permit in All Residence Districts.

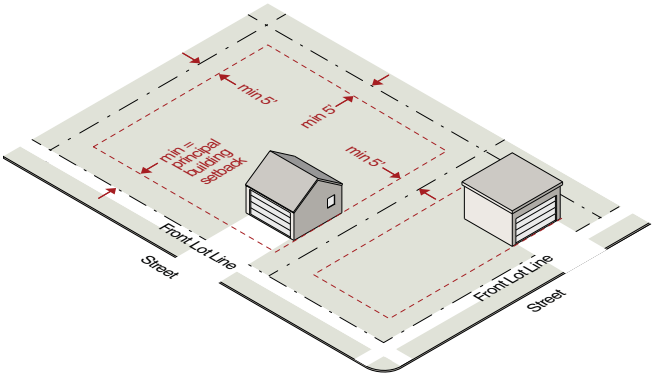
1. A private garage with provision for more than 3 automobiles, or a private garage of more than 700 square feet in area, or more than 1 private garage per single-family dwelling;
2. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1.;
3. Home businesses subject to the provisions of Sec. 6.7.3.; and
4. Accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences.

(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99)

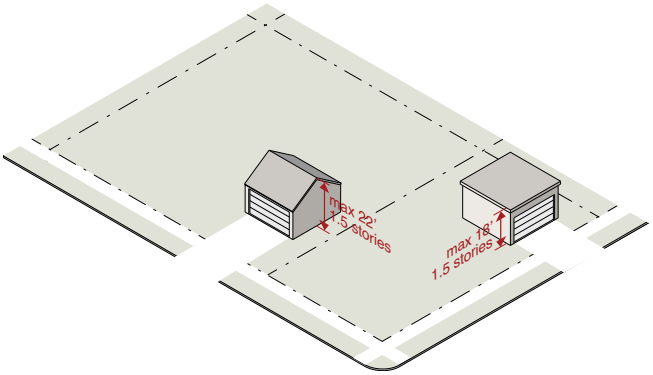
## 3.4.3. Accessory Buildings

A. Except as provided in Sec. 6.9. , accessory buildings shall conform to the following requirements:

1. An accessory building shall be no nearer to any side or rear lot line than 5 feet, and no nearer to any front lot line than the distance prescribed for the principal building.




2. An accessory building with a sloping roof shall have a maximum height of 22 feet. An accessory building with a flat roof shall have a maximum height of 18 feet. An accessory building shall have no more than 1½ stories.




3. The ground floor area of an accessory building shall not exceed 700 square feet.
4. If the accessory building is a garage, unless a special permit is granted, for each dwelling unit there shall be:
   a. No more than 1 garage, whether or not it is located in an accessory building;
   b. A garage shall provide for not more than 3 automobiles; and

c. The ground floor area of a garage shall not exceed 700 square feet.

B. Accessory structures other than accessory buildings referenced above must conform to the applicable setback requirements for the principal building.

(Ord. No. V-273, 12/06/99; Ord. No. Z-91, 06/06/11)

## 3.4.4. Accessory Apartments

See Sec. 6.7.1.

## 3.4.5. Temporary Uses Allowed

[reserved]

# Article 4. Business, Mixed Use & Manufacturing Districts


Sec. 4.1. Business Districts ..... 4-2

4.1.1. District Intent ..... 4-2

4.1.2. Dimensional Standards ..... 4-2

4.1.3. All Building Types in Business Districts ..... 4-3

4.1.4. Planned Multi-Use Business Development ..... 4-4

Sec. 4.2. Mixed Use Districts ..... 4-10

4.2.1. District Intent ..... 4-10

4.2.2. Dimensional Standards ..... 4-10

4.2.3. All Building Types in Mixed Use Districts ..... 4-11

4.2.4. Additional Standards in Mixed Used 3/Transit Oriented Development ..... 4-12

4.2.5. Additional Standards in Mixed Use 4 ..... 4-13

Sec. 4.3. Manufacturing Districts ..... 4-16

4.3.1. District Intent ..... 4-16

4.3.2. Dimensional Standards ..... 4-16

4.3.3. All Building Types in Manufacturing Districts ..... 4-17

Sec. 4.4. Allowed Uses ..... 4-18

4.4.1. Business, Mixed Use & Manufacturing Districts ..... 4-18

# Sec. 4.1. Business Districts

## 4.1.1. District Intent

[Reserved]

## 4.1.2. Dimensional Standards

A. Applicability.

1. The density and dimensional controls in Sec. 4.1.2 and Sec. 4.1.3 apply to all buildings, structures and uses in each of the listed districts.

2. Where more than one dwelling unit is provided on a lot in certain Business districts, the following residential density control shall apply:

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

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

4. Where a lot does not meet these standards it is nonconforming (see Sec. 7.8.).

B. Approval Process.

1. Special Permit Required. A special permit is required for any development in the business districts of 20,000 square feet or more of new gross floor area.

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

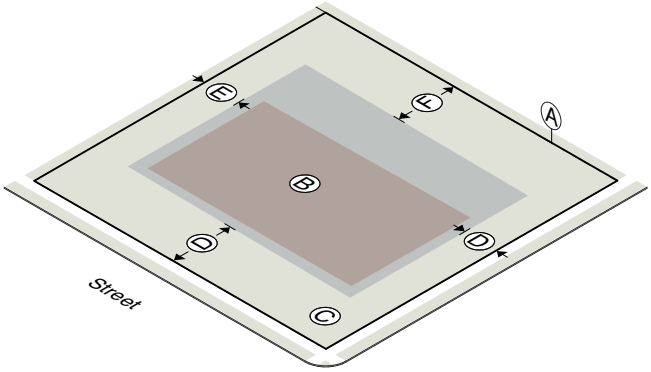
3. Stories. A special permit is required based on stories according to the following table:

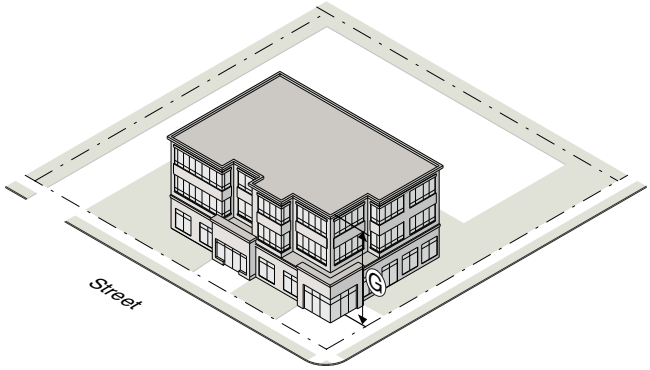
| Stories | BU1 | BU2 | BU3 | BU4 | BU5 |
|---|---|---|---|---|---|
| 2 stories | P | P | P | P | P |
| 3 stories | SP | SP | P | P | P |
| 4 stories or more | -- | SP | SP | SP | SP |

P = Allowed by Right
SP = Special Permit by Board of Alderman Required
-- Not Allowed

(Rev. Ords. 1973 § 24-9; Ord. No. 295, 10/03/78; Ord. No. S-260, 08/03/87)

## 4.1.3. All Building Types in Business Districts




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

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

-- Not Allowed

## 4.1.4. Planned Multi-Use Business Development

In any Business 4 district, the Board of Aldermen may grant a special permit, for the applicable density and dimensional controls set out in Sec. 4.1.3. subject to the criteria for a Planned Multi-Use Business Development (PMBD) and further subject to the criteria and conditions set out below.

A. Purpose. A PMBD is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the City's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application.

B. Minimum Criteria for PMBD. In order to be eligible for any approval under this Sec. 4.1.4., a PMBD must meet the following threshold criteria:

1. The development parcel must be located in a Business 4 district, and have frontage on a major arterial, as classified by the City;

2. The PMBD must comply with the applicable minimum and maximum density and dimensional controls set out in Sec. 4.1.4.M., rather than to those of Sec. 4.1.3.;

3. The PMBD must include a mix of compatible and complementary commercial and residential uses and comply with the provisions set forth in Sec. 6.10.;

4. If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of Sec. 5.1.4. apply, except that in no event shall the required parking for residential units be less than 1¼ spaces per dwelling unit; and

5. Off-street parking shall not be provided in the front setback of retail, office or commercial buildings.

C. Additional Special Permit Criteria for a Planned Multi-Use Business Development. In order to make the findings set forth in Sec. 7.3.3 , and in addition to those criteria set forth in Sec. 7.4. and in Sec. 7.3., the Board of Aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:

1. Adequacy of Public Facilities. Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy must include use of the traffic analysis required by Sec. 4.1.4.J.6.;

2. Mitigation of Neighborhood Impacts. Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes;

3. Housing, Public Transportation and Parking Improvements, and Utility Infrastructure Enhancements. The PMBD offers long-term public benefits to the City and nearby areas such as:

   a. Improved access and enhancements to public transportation;

   b. Enhancements to parking, traffic, and roadways;

   c. On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;

   d. Public safety improvements;

   e. On-site affordable housing opportunities except where allowed in Sec. 5.11.6.; and

   f. Water and sewer infrastructure enhancements.

4. Compatibility and Integration with its Surroundings. The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-

level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;

5. Not Inconsistent with Applicable Local Plans or General Laws. The PMBD is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application, and applicable general laws relating to zoning and land use;

6. Improved Access Nearby. Pedestrian and vehicular access routes and driveway widths, which must be determined by the Board of Aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;

7. Enhanced Open Space. Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement inSec. 4.1.4.M.;

8. Excellence in Place-Making. The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;

9. Comprehensive Signage Program. All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, which will control for all purposes and must not be inconsistent with the architectural quality of the PMBD or character of the streetscape;

10. Pedestrian Scale. The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the development parcel;

11. Public Space. The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;

12. Sustainable Design. The PMBD will at least meet the energy and sustainability provisions of Sec. 7.3.3.C.5. and Sec. 7.4.5.B.8.;

13. Pedestrian and Neighborhood Considerations. If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:

    a. Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;

    b. Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;

    c. Traffic signal additions or alterations; and

    d. Relocation or alterations to public transport access points;

D. Lots. In the application of the requirements of this Sec. 4.1.4. the same will not be applied to the individual lots or ownership units comprising a development parcel, but must be applied as if the development parcel were a single conforming lot, whether or not the development parcel is in single- or multiple-ownership; provided, however, that violation of this Sec. 4.1.4. by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in paragraph E below.

E. Organization of Owners. Prior to exercise of a special permit granted under this Sec. 4.1.4., there shall be formed an organization of all owners of land within

the development with the authority and obligation to act on their behalf in contact with the City or its representatives. Such organization shall serve as the liaison between the City and any lot owner, lessee, or licensee within the PMBD which may be in violation of the City's ordinance and shall be the primary contact for the City in connection with any dispute regarding violations of this Sec. 4.1.4. and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this Sec. 4.1.4. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.

F. Phasing. Any development within a PMBD may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD must be as set forth in the special permit.

G. Post-Construction Traffic Study. A PMBD special permit granted must provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the City Traffic Engineer and Director of Planning and Development, in an amount approved by the Board of Aldermen in acting on the special permit, to secure performance as specified below:

1. Monitoring of vehicle trips for this purpose must begin not earlier than 12 months following the granting of the final certificate of occupancy, and shall continue periodically over the following 12 months. Measurements shall be made at all driveway accesses to the PMBD.

2. The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the City and paid for the applicant or successor in interest.

3. If the actually experienced total number of vehicle trips to and from the PMBD measured per paragraph G.2. above summed over all points of access exceeds the weekday evening adjusted volume projected per Sec. 4.1.4.J.6.c. by more than 10 percent, mitigation measures are required. Within 6 months of notification to do so, the then owner of the PMBD site must begin mitigation measures in order to reduce the trip generation to 110 percent or less of the adjusted volume, such reduction to be achieved within 12 months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the City Traffic Engineer and the Director of Planning and Development. Upon failure by the owner to achieve the required reduction within 1 year after notification, the bond or other security cited above may be forfeited and proceeds used by the City for traffic mitigation.

H. Modifications. Any material modification to a PMBD requires an amendment to the site plan or special permit. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:

1. A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total gross floor area within the PMBD devoted to such use would be increased by more than 5 percent in the aggregate;

2. A change of use that results in a net increase in required parking for the PMBD;

3. A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;

4. Except as provided above, any reduction in beneficial open space; and

5. Modification governed by any condition identified by the Board of Aldermen in the special permit

as not subject to modification without additional approval.

I. Applicability. Buildings, structures, lots and uses within or associated with a PMBD are governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this Sec. 4.1.4. Where provisions of this Sec. 4.1.4. conflict or are inconsistent with other provisions of this Chapter, the provisions of this Sec. 4.1.4. shall govern.

J. Additional Filing Requirements for PMBDs. In addition to the provisions of Sec. 7.3. and Sec. 7.4., applicants for a grant of special permit for a PMBD shall submit:

1. A 3D computer-generated model consistent with Sec. 7.3.1.B.1.

2. Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this Sec. 4.1.4.;

3. Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;

4. Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this Sec. 4.1.4.;

5. Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes of calculating a height bonus;

6. A roadway and transportation plan reflecting the "EOEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the City Traffic Engineer, Director of Planning and Development, and peer review consultants. The plan should include the following:

a. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;

b. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;

c. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:

i. The projected base volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the City Traffic Engineer and Director of Planning and Development;

ii. The projected adjusted volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the PMBD guideline of adjusted volume being at least 10 percent below the base volume on weekday evening peak hours;

iii. The means of making mitigations if it is found pursuant to the monitoring under Sec. 4.1.4.G. that the trips counted exceed the projected adjusted volume by 10 percent or more; and

iv. The projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.

d. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;

e. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

f. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;

7. Proposed phasing schedule, including infrastructure improvements; and

8. Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.

K. Electronic Submission and Posting of Application Materials. Applicants must submit in electronic form all documents required and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the Board of Aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The Director of Planning and Development will arrange to have electronically submitted documents posted on the City's website within a reasonable time after receipt.

L. Height, Contextual. The vertical distance between the elevations of the Newton Base Elevation utilized by the City as implemented by the Engineering Division of the Department of Public Works and the highest point of the roof, as applied in the PMBD district. Not included in such measurements are:

1. Cornices which do not extend more than 5 feet above the roof line;

2. Chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed 15 feet in height above the roof line;

3. Enclosures for tanks which do not exceed 20 feet in height above the roof line and do not exceed in aggregate area 10 percent of the area of the roof; and

4. Towers, spires, domes and ornamental features.

## M. Density and Dimensional Requirements.

The following, rather than the provisions of Sec. 4.1.3., apply to development under a PMBD special permit. As noted at Sec. 4.1.4.D., these requirements apply to the development parcel as a whole rather than to any individual lots within it.

| Area, Frontage and Bulk | PMBD |
|---|---|
| Lot area (min) | 10 ac |
| Lot frontage (min) | 100′ |
| Total floor area ratio (max) | 3.0 |
| Lot area per unit (min) | 1,200 sf |
| Lot coverage (max) | n/a |
| Beneficial open space (min) | 20% |

| Height and Setbacks [8] | Streetside Facade | Interior Development | High Rise Development |
|---|---|---|---|
| Height (feet/stories) | 36′ / 4 | 96′ / 8 | 96′ [2],[3] / 8 [1] |
| Front setback [7] | Lesser of 15′ or ½ bldg ht [4] | Greater of 50′ or ½ bldg ht | 100′ |
| Side setback [7] | Greater of 15′ or ½ bldg ht [5] | Greater of 15′ or ½ bldg ht [5] | 50′ [6] |
| Rear setback [7] | Greater of 15′ or ½ bldg ht [5] | Greater of 15′ or ½ bldg ht [5] | 100′ [6] |

NOTES:

(1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the Board of Aldermen and subject to such height and setback limits as established in footnotes 2 and 3.

(2) The Board of Aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 feet, excluding customary rooftop elements, provided the building is placed a minimum of 100 feet from the front and rear lot lines and provided that the building does not exceed 1 foot of excess building height for each 1½ feet of separation measured from the front lot line or the rear lot line, whichever is less.

(3) Any increase in building height requested pursuant to footnote (2) may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 feet of the development parcel as of December 17, 2007.

(4) The Board of Aldermen may grant a special permit to allow the front setback to be decreased from 15 feet to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the development parcel. A vacant lot shall be counted as though occupied by a building set back 15 feet from the front setback.

(5) Side and/or rear setbacks shall be a minimum of 20 feet or ½ building height if larger when such setback abuts any single residence district or multi-residence district or Public Use district.

(6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 feet when such setback abuts any single residence district or multi-residence district or Public Use district.

(7) The front, side, and rear setback requirements for parking facility shall not be less than 5 feet, or shall not be less than 15 feet when such setback abuts a single residence district or multi-residence district or Public Use district.

(8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the facade of an adjoining lower building element at least 20 feet, and (c) for which there is a change in height of at least 1 story. Setbacks for non-building structures shall be determined by the Board of Aldermen.

(Ord. No. Z-16, 12/17/07; Ord. No. A-6, 10/01/12)

# Sec. 4.2. Mixed Use Districts

## 4.2.1. District Intent

A. Mixed Use 1 and 2 District. [Reserved]

B. Mixed Use 3/Transit-Oriented Development. The purpose of the Mixed-Use 3/Transit-Oriented district is to allow the development of a mixed-use center on a parcel of no less than 9 acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's Comprehensive Plan, particularly the mixed-use centers and economic development elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.

C. Mixed Use 4 District. The purposes of the Mixed Use 4 district are to:

1. Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's Comprehensive Plan.

2. Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.

3. Allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community.

4. Expand the diversity of housing options available in the City.

5. Promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community.

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

## 4.2.2. Dimensional Standards

A. Applicability.

1. The density and dimensional controls in Sec. 4.2.2 and Sec. 4.2.3 apply to all buildings, structures and uses in each of the listed districts.

2. Where more than one dwelling unit is provided on a lot in certain Mixed Use districts, the following residential density control shall apply:

| Mixed Use District | MU1 | MU2 | MU3/TOD |
|---|---|---|---|
| Lot Area Per Unit (min) | 10,000 sf | 10,000 sf | 1,200 sf |

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

B. Approval Process.

1. Special Permit Required. A special permit is required for any development in a mixed use district of 20,000 square feet or more.

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

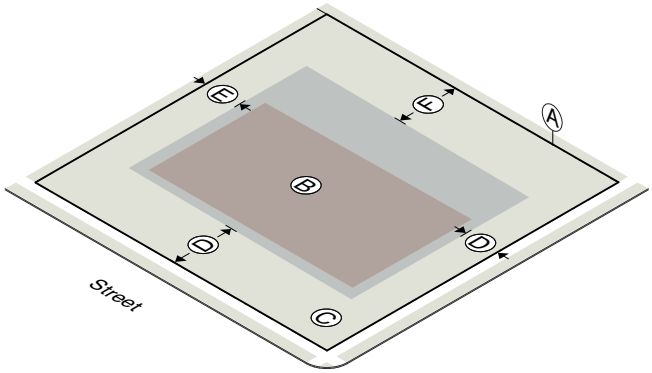
3. Stories. A special permit is required based on stories according to the following table:

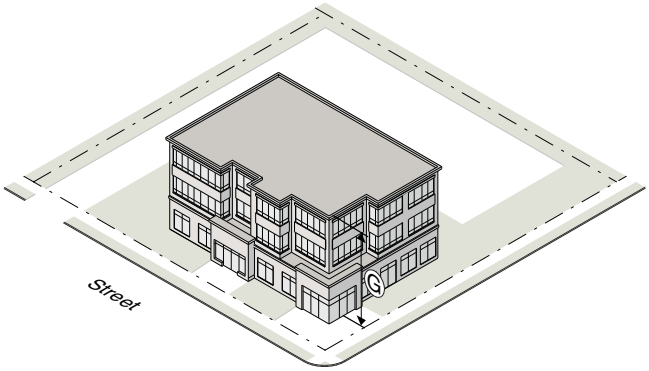
| Stories | MU1 | MU2 | MU3/TOD | MU4 |
|---|---|---|---|---|
| 2 stories | P | P | P | P |
| 3 stories | P | SP | SP | -- |
| 3 stories, mixed use residential | -- | -- | SP | P |
| 4 stories or more | SP | SP | SP | -- |
| 5 stories, mixed use residential | -- | -- | SP | SP |

P = Allowed by Right
SP = Special Permit by Board of Alderman Required
-- Not Allowed

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

## 4.2.3. All Building Types in Mixed Use Districts




| Mixed Use Districts | MU1 | MU2 | MU3 | MU4 |
|---|---|---|---|---|
| **Lot Dimensions** | | | | |
| Ⓐ Lot Area (min) | | | | |
| 2 stories | 40,000 sf | 10,000 sf | 9 ac | 10,000 sf |
| 3 stories | 40,000 sf | 10,000 sf | 9 ac | 10,000 sf |
| 4 stories | 40,000 sf | 10,000 sf | 9 ac | 10,000 sf |
| 5 stories | -- | -- | 9 ac | 10,000 sf |
| Ⓑ Lot Coverage (max) | -- | -- | -- | -- |
| Ⓒ Beneficial Open Space | -- | -- | n/a by right; 15% by special permit | See Sec. 4.2.5.A.8. |
| **Building Setbacks** | | | | |
| Ⓓ Front (min) | | | | |
| 1 story | 15′ | 15′ | See Sec. 4.2.4.A. | See Sec. 4.2.5.A.4. |
| 2 or more stories | total ht of bldg | total ht of bldg | | |
| Parking Setback | 20′ | 15′ | | |
| Ⓔ Side (min) | | | | |
| Abutting residential or Public Use district | Greater of ½ bldg ht or 20′ | Greater of ½ bldg ht or 20′ | See Sec. 4.2.4.A. | See Sec. 4.2.5.A.4. |
| Not abutting residential or Public Use district | 7.5′ | 7.5′ | | |
| Parking setback | 5′ | 5′ | | |
| Ⓕ Rear (min) | | | | |
| Abutting residential or Public Use district | Greater of ½ bldg ht or 20′ | Greater of ½ bldg ht or 20′ | See Sec. Sec. 4.2.4.A. | See Sec. 4.2.5.A.4. |
| Not abutting residential or Public Use district | 7.5′ | 0′ | | |
| Parking setback | 5′ | 5′ | | |
| **Building and Structure Height** | | | | |
| Ⓖ Height (max) | | | | |
| 2 stories | 36′ | 24′ | 36′ by right; 135′ by special permit | 24′ |
| 3 stories | 36′ | 36′ | | 36′ |
| 4 stories | 48′ | 48′ | | 48′ |
| 5 stories | -- | -- | | 60′ |
| Ⓖ Stories (max) see also Sec. 4.2.2.B.3. | 3 | 4 | 4 | 8 |
| **Floor Area Ratio** | | | | |
| Floor Area Ratio (max) | | | | |
| 2 stories | 1.50 | 1.00 | up to 36′ = 1.0 | 1.00 |
| 3 stories | 1.50 | 1.50 | up to 135′ = 2.4 | 1.50 |
| 4 stories | 2.00 | 2.00 | | 2.00 |
| 5 stories | -- | -- | | 2.50 |

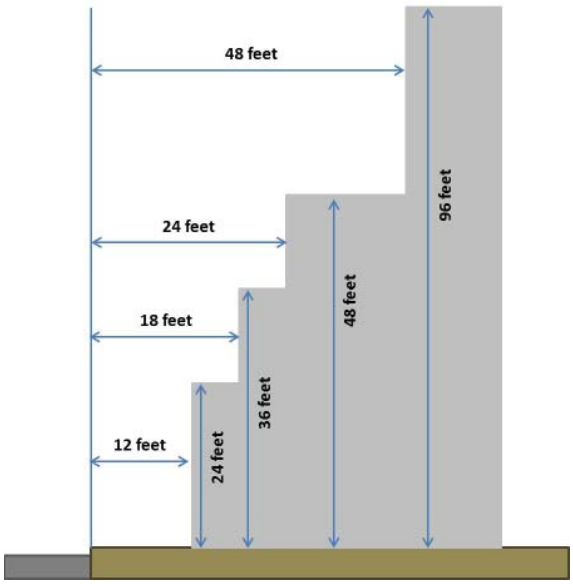
* Average setback is described in Sec. 1.5.3.B.

-- Not Allowed

## 4.2.4. Additional Standards in MU 3/TOD

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

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




B. Beneficial Open Space. At least 50 percent of the beneficial open space required by Sec. 4.2.3. for a mixed-use development must be freely open to the public.

C. Exclusion of Public Structures from Zoning Requirements. Any portion of a development parcel for the proposed development owned by a Commonwealth of Massachusetts instrumentality and devoted to a governmental function from which the general public is excluded (including, but not limited to a rail yard, maintenance facility, or railroad right-of-way) and any portion of a building or structure dedicated for public use by a State instrumentality (such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority) shall not be included in the calculation of:

1. The quantity of beneficial open space required;
2. Minimum lot area; or
3. Floor area ratio.

D. Impacts of Takings by or Conveyances to a Public Entity. The provisions of Sec. 7.8.5. shall apply to any taking by or conveyance of land within the development parcel to a public entity or to any land otherwise dedicated and accepted as a public way.

E. Establishment of a Development Parcel. The area developed under a special permit must be organized into a development parcel as defined in Article 8. The development parcel may contain more than 1 lot or a portion of a lot, together with any easement areas located on adjacent parcels of land. The provisions of this Chapter shall apply to the development parcel as it exists on the date that the special permit is granted as if the development parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships. After the grant of a special permit, the ownership may be further divided (subject to the establishment of an organization of owners defined below) and any interior lot lines shall be disregarded for zoning purposes. The development parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the resulting development parcel is not less than 9 acres in size and does not create or expand any nonconformities.

F. Intensity of development.

1. The development must have at least one use from each of the three categories (A, B, and C) plus a community use space.

a. Category A: Office (including research and development, business incubator, medical office, and other similar uses);

b. Category B: Retail sales, personal services, restaurants, banking, health club, place of entertainment and assembly, theater, lodging, hotel, motel; and

c. Category C: Multi-family, live/work space, single room occupancy, single person occupancy, assisted living nursing home.

2. Notwithstanding paragraph G. below, any development that proposes an aggregate gross floor area of 20,000 or more square feet among all buildings within the development parcel shall require a special permit for a mixed-use development.

G. The square footage in each category shall not exceed the maximums listed below, except, where approved by special permit, the maximums may be adjusted by up to 10 percent in each category, so long as the total gross floor area of all uses, excluding accessory parking, does not exceed 580,000 square feet:

1. Category A shall not exceed 225,000 square feet (excluding offices incidental to residential, retail or community uses), the majority of which must be contained within one structure;

2. Category B shall not exceed 20,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the Commissioner of Inspectional Services;

3. Category C shall not exceed 335,000 square feet not to exceed 290 dwelling units.

H. Organization of Owners. Prior to exercise of a special permit, an organization of all owners of land within the development parcel, except for owners of land subject to easements benefiting the mixed-use development, shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the City or its representatives regarding compliance with this Chapter. The organization shall serve as the liaison between the City and any owner, lessee, or licensee within the development parcel governed by a special permit. Such organization shall be the primary contact for the City in connection with any dispute regarding violations of this Chapter and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the development parcel with the terms of the special permit for a mixed-use development, site plan approval, and other applicable provisions of this Chapter. In addition, any special permit shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and the organization of owners to assure continued compatibility of the uses and activities within the development parcel and its neighbors during and after construction. Membership of this advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

(Ord. No. Z-108, 04/17/12)

## 4.2.5. Additional Standards in MU4

A. Design Standards for the Mixed Use 4 District. Notwithstanding any provisions of this Article to the contrary, buildings and structures in the Mixed Use 4 district shall conform to the following standards:

1. Height. Buildings in the Mixed Use 4 district shall be a minimum of 2 stories and shall conform to the limits for building height and stories established in Sec. 4.2.3. The Board of Aldermen may grant a special permit to allow up to 4 stories and 48 feet of building height by finding that the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of this district.

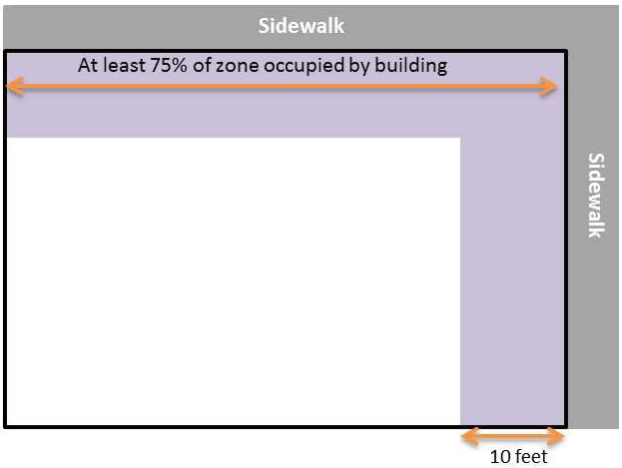
2. Mixed-Use Residential Incentive. Buildings that meet the definition of mixed-use residential buildings shall conform to the specific limits for building height and stories established in Sec. 4.2.3. The Board of Aldermen may grant a special permit to allow up to 5 stories and 60 feet of building height by finding that the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of this district.

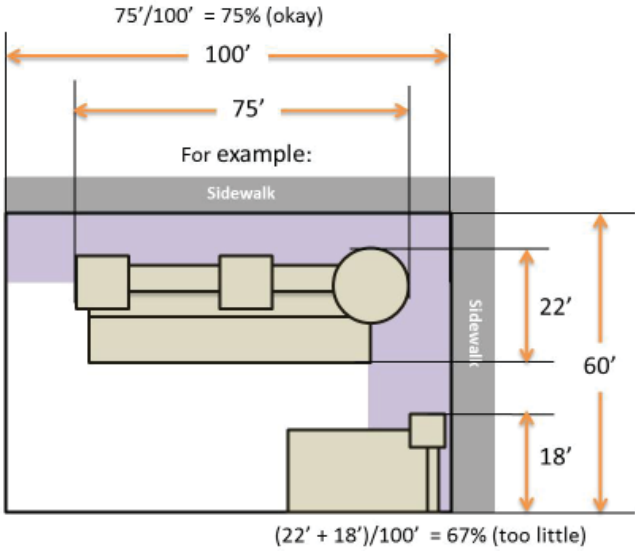
3. Residential Density. The Board of Aldermen may grant a special permit to waive the lot area per

dwelling unit requirement of Sec. 4.2.3. by finding that the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of this district than strict compliance with these standards.

4. Setbacks. The Board of Aldermen may grant a special permit to waive the following setback requirements by finding the proposed plan can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of this district than strict compliance with the following standards:

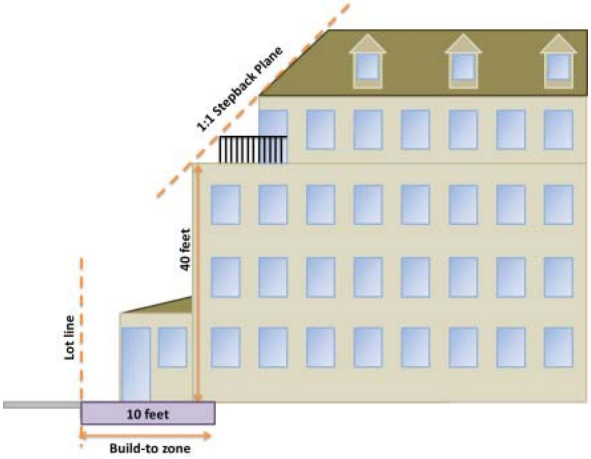
   a. A minimum of 75 percent of the frontage of the lot facing a public way shall contain a building or buildings, the first floor facade of which is setback between 0 and 10 feet from lot line.




   b. No side or rear setbacks are required, except, where abutting a residential district, the required side and rear setbacks shall be no less than 20 feet.

   c. Any portion of a building greater than 40 feet in height must be setback 1 foot from the adjacent lot line for each additional foot of height.




5. Accessibility. The design of the buildings and the site plan shall comply with the Americans with Disabilities Act and the rules and regulations of the Massachusetts Architectural Access Board.

6. Transparency and Entrances. Commercial uses in a Mixed Use 4 district must meet the following requirement. The Board of Aldermen may grant a special permit to waive these requirements by finding the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of this district than strict compliance with the following standards:

   a. There shall be at least one entrance every 50 feet of building frontage facing a public way.

   b. A minimum of 60 percent of the street-facing building facade between 2 feet and 8 feet in height above the street-level floor must consist of clear windows that allow views of indoor space or display areas.

   c. Display windows used to satisfy these requirements shall be changed and maintained to create an active window display; any

illumination of the display shall be internal to the facade of the building.

7. Lobbies for Low-Activity Uses. This district permits office uses at street level by special permit only. Entryways and lobbies at street level are allowed for office uses occurring above or below street level subject to the following requirements:

   a. Any dedicated entranceway and lobby space for such uses may not exceed a total of 15 linear feet of an exterior building wall and 400 square feet of gross floor area.

8. Open Space. Parcels greater than 1 acre in area shall provide beneficial open space totaling no less than 5 percent of the total lot area. Parcels smaller than 1 acre in area are encouraged to provide and maintain attractive landscaping where it enhances the public realm, environmental sustainability, and/or the appearance of the site.

B. Special Permit. In granting a special permit for a use allowed in this district, the Board of Aldermen shall make a finding that the proposed use will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed use fills a demonstrated need for the use within the vicinity, and that the proposed use is not inconsistent with the purposes of the Mixed Use 4 district or the City's Comprehensive Plan.

(Ord. No. A-4, 10/01/12; Ord. No. A-6, 10/01/12)

# Sec. 4.3. Manufacturing Districts

## 4.3.1. District Intent

[Reserved]

## 4.3.2. Dimensional Standards

A. Applicability.

1. The density and dimensional controls in Sec. 4.3.2 and Sec. 4.3.3 apply to all buildings, structures and uses in each of the listed districts.

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

3. Where a lot does not meet these standards it is nonconforming (see Sec. 7.8.).

B. Approval Process.

1. Special Permit Required. A special permit is required for any development in the manufacturing districts of 20,000 square feet or more of new gross floor area.

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

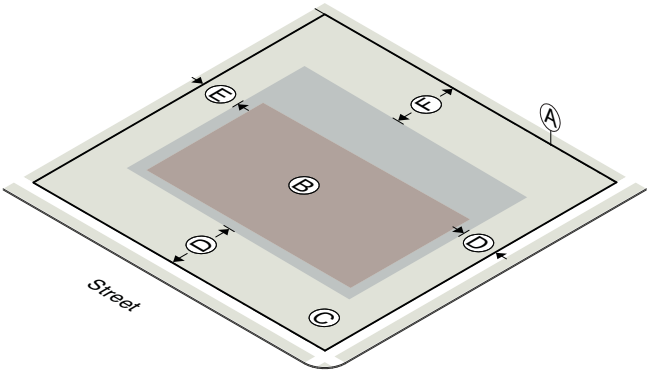
3. Stories. A special permit is required based on stories according to the following table:

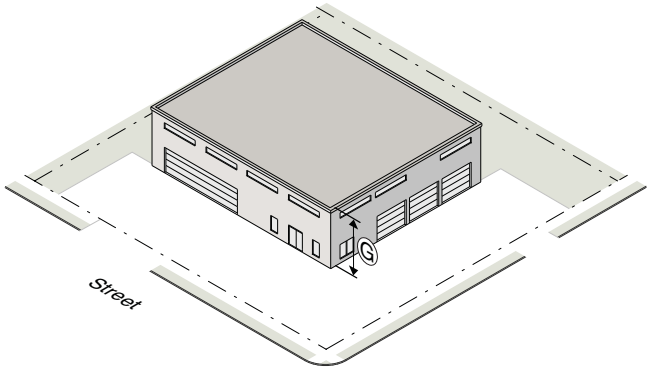
| Stories | LM | M |
|---|---|---|
| 2 stories | P | P |
| 3 stories | P | SP |

P = Allowed by Right
SP = Special Permit by Board of Alderman Required

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

## 4.3.3. All Building Types in Manufacturing Districts




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

-- Not Allowed

* Average setback is described in Sec. 1.5.3.B.

# Sec. 4.4. Allowed Uses

## 4.4.1. Business, Mixed Use & Manufacturing Districts

| Business, Mixed Use & Manufacturing Districts | BU1 | BU2 | BU3 | BU4 | BU5 | MU1 | MU2 | MU3 | MU4 | M | LM | Definition/ Listed Standard |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Residential Uses | | | | | | | | | | | | |
| Single-Family, detached | L | L | L | L | -- | -- | -- | -- | -- | -- | -- | Sec. 6.2.1. |
| Two-Family, detached | L | L | L | L | -- | -- | -- | -- | -- | -- | -- | Sec. 6.2.2. |
| Residential use, above ground floor | L | L | L | L | -- | SP | L/SP | P | P | -- | -- | Sec. 6.2.4. |
| Residential use, ground floor | SP | SP | SP | SP | -- | SP | SP | P | SP | -- | -- | Sec. 6.2.4. |
| Assisted living, nursing home | -- | -- | -- | -- | -- | -- | -- | SP | SP | -- | -- | Sec. 6.2.5. |
| Elderly housing with services | SP | SP | SP | SP | -- | -- | -- | -- | -- | -- | -- | Sec. 6.2.10. |
| Live/work space | -- | -- | -- | -- | -- | -- | -- | P | P | -- | -- | Sec. 6.2.11. |
| Single-room occupancy dwelling, single-person occupancy dwelling | -- | -- | -- | -- | -- | -- | -- | SP | -- | -- | -- | Sec. 6.2.14. |
| Civic/Institutional Uses | | | | | | | | | | | | |
| Cemetery, private | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | Sec. 6.3.1. |
| Club, clubhouse | P | P | P | P | -- | -- | P | -- | SP | -- | P | Sec. 6.3.2. |
| Community use space | -- | -- | -- | -- | -- | -- | -- | P | P | -- | -- | Sec. 6.3.3. |
| Family child care home, large family child care home, day care center | L | L | L | L | L | L | L | L | L | L | L | Sec. 6.3.4. |
| Government offices or services | -- | -- | -- | -- | -- | -- | -- | P | P | -- | -- | Sec. 6.3.5. |
| Heliport | -- | -- | -- | -- | SP | -- | -- | -- | -- | SP | SP | Sec. 6.3.6. |
| Hospital | SP | SP | SP | SP | SP | -- | -- | -- | -- | -- | -- | Sec. 6.3.7. |
| Library, museum or similar institution | P | P | P | P | SP | -- | P | P | P | -- | P | Sec. 6.3.8. |
| Public use | L | L | L | L | L | L | L | L | L | L | L | Sec. 6.3.10. |
| Rail/bus station | -- | -- | -- | -- | -- | -- | -- | P | -- | -- | -- | Sec. 6.3.11. |
| Religious institution | L | L | L | L | L | L | L | L | L | L | L | Sec. 6.3.12. |
| Sanitarium, convalescent or rest home, other like institution | SP | SP | SP | SP | SP | -- | SP | -- | -- | -- | -- | Sec. 6.3.13. |
| School or other educational purposes, non-profit | L | L | L | L | L | L | L | L | L | L | L | Sec. 6.3.14. |
| School or other educational purposes, for-profit | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | Sec. 6.3.14. |
| Theatre, hall | P | P | P | P | -- | -- | P | SP | SP | -- | P | Sec. 6.3.15. |
| Commercial Uses | | | | | | | | | | | | |
| Animal service, excluding overnight boarding | -- | -- | -- | -- | -- | SP | SP | -- | SP | -- | -- | Sec. 6.4.1. |
| ATM, standalone | SP | SP | SP | SP | SP | SP | SP | P | SP | SP | SP | Sec. 6.4.2. |

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by Board of Aldermen Required -- Not Allowed

| Business, Mixed Use & Manufacturing Districts | BU1 | BU2 | BU3 | BU4 | BU5 | MU1 | MU2 | MU3 | MU4 | M | LM | Definition/ Listed Standard |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Bank | P | P | P | P | -- | SP | P | -- | -- | -- | P | Sec. 6.4.4. |
| Bowling alley | -- | P | -- | -- | -- | -- | -- | -- | -- | -- | P | Sec. 6.4.5. |
| Business incubator | | | | | | | | P | | | | Sec. 6.4.6. |
| Business services | -- | -- | -- | -- | -- | SP | P | -- | -- | -- | -- | Sec. 6.4.7. |
| Car-sharing service, car rental, bike rental, electric car-charging station | -- | -- | -- | -- | -- | -- | -- | P | P | -- | -- | Sec. 6.4.8. |
| Car wash | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | -- | Sec. 6.4.9. |
| Drive-in business | SP | SP | SP | SP | -- | -- | -- | -- | -- | -- | SP | Sec. 6.4.11. |
| Dry cleaning or laundry, retail | P | P | P | P | -- | SP | P | P | P | -- | -- | Sec. 6.4.12. |
| Fast food establishment | -- | SP | -- | -- | -- | -- | -- | -- | -- | -- | SP | Sec. 6.4.13. |
| Fuel establishment | -- | SP | -- | -- | -- | SP | SP | -- | -- | SP | SP | Sec. 6.4.14. |
| Funeral home | SP | SP | SP | SP | -- | -- | SP | -- | -- | -- | -- | Sec. 6.4.15. |
| Health club, above or below ground floor | -- | -- | -- | -- | -- | -- | -- | P | SP | -- | -- | Sec. 6.4.16. |
| Health club, ground floor | -- | -- | -- | -- | -- | -- | -- | SP | SP | -- | -- | Sec. 6.4.16. |
| Hotel or lodging establishment | SP | SP | SP | SP | SP | -- | SP | SP | SP | -- | -- | Sec. 6.4.17. |
| Job printing, up to 3,000 square feet (area used for work and storage) | P | P | P | P | -- | -- | P | -- | -- | P | -- | Sec. 6.4.18 |
| Job printing, over 3,000 square feet (area used for work and storage) | SP | SP | SP | SP | -- | -- | SP | -- | -- | P | -- | Sec. 6.4.18 |
| Kennel | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | Sec. 6.4.19. |
| Office | P | P | P | P | P | P | P | L | P | P | P | Sec. 6.4.20. |
| Office of a contractor, builder, electrician or plumber or similar enterprises | -- | L | -- | -- | -- | -- | -- | -- | -- | -- | L | Sec. 6.4.21. |
| Open-air business | SP | SP | SP | SP | -- | -- | -- | -- | SP | -- | SP | Sec. 6.4.22 |
| Outdoor storage | -- | SP | -- | -- | -- | -- | -- | -- | -- | -- | -- | Sec. 6.4.23. |
| Parking facility, accessory, single level | P | P | P | P | -- | -- | P | -- | P | P | P/SP | Sec. 6.4.24. |
| Parking facility, non-accessory, single level | SP | SP | SP | SP | -- | -- | SP | -- | SP | SP | SP | Sec. 6.4.24. |
| Parking facility, accessory, multi-level | SP | SP | SP | SP | -- | -- | -- | -- | P | SP | SP | Sec. 6.4.24. |
| Parking facility, non-accessory, multi-level | SP | SP | SP | SP | -- | -- | -- | -- | SP | SP | SP | Sec. 6.4.24. |
| Parking facility, public | -- | -- | -- | -- | -- | -- | -- | P | P | -- | SP | Sec. 6.4.24. |
| Personal service, up to 5,000 square feet | P | P | P | P | -- | -- | P | P | P | -- | P | Sec. 6.4.25. |
| Personal service, over 5,000 square feet | P | P | P | P | -- | -- | P | SP | SP | -- | P | Sec. 6.4.25. |
| Place of amusement, indoor or outdoor | -- | SP | -- | -- | -- | -- | -- | SP | SP | -- | SP | Sec. 6.4.26. |

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by Board of Aldermen Required -- Not Allowed

| Business, Mixed Use & Manufacturing Districts | BU1 | BU2 | BU3 | BU4 | BU5 | MU1 | MU2 | MU3 | MU4 | M | LM | Definition/ Listed Standard |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Radio or television broadcasting studio | SP | SP | SP | SP | SP | -- | SP | -- | -- | L | -- | Sec. 6.4.27. |
| Radio, or television transmission station | -- | -- | -- | -- | SP | SP | -- | -- | -- | SP | -- | Sec. 6.4.27. |
| Research and development | -- | -- | -- | -- | -- | -- | -- | P | -- | -- | -- | Sec. 6.4.28. |
| Restaurant | L/SP | L/SP | L/SP | L/SP | -- | SP | P/SP | P/SP | P/SP | -- | L/SP | Sec. 6.4.29. |
| Retail sales, under 5,000 square feet | P | P | P | P | -- | -- | P | P | P | -- | P | Sec. 6.4.30. |
| Retail sales, over 5,000 square feet | P | P | P | P | -- | SP | P | SP | SP | -- | P | Sec. 6.4.30. |
| Service establishment, up to 5,000 square feet | -- | -- | -- | -- | -- | SP | P | -- | P | -- | -- | Sec. 6.4.31. |
| Service establishment, over 5,000 square feet | -- | -- | -- | -- | -- | SP | P | -- | SP | -- | -- | Sec. 6.4.31. |
| Stable, public | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | Sec. 6.4.32. |
| Taxidermist | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | Sec. 6.4.33. |
| Vehicle repair shop, minor | -- | SP | -- | -- | -- | SP | SP | -- | -- | SP | SP | Sec. 6.4.34. |
| Vehicle repair shop, major | -- | SP | -- | -- | -- | SP | SP | -- | -- | SP | SP | Sec. 6.4.34. |
| Vehicles sales and service facility, indoor | -- | SP | -- | -- | -- | SP | SP | -- | -- | SP | -- | Sec. 6.4.35. |
| Vehicles sales and service facility, outdoor | -- | SP | -- | -- | -- | SP | -- | -- | -- | SP | -- | Sec. 6.4.35. |
| Veterinary hospital | -- | SP | -- | -- | -- | SP | SP | -- | SP | P | P | Sec. 6.4.36. |
| Industrial Uses | | | | | | | | | | | | |
| Assembly or fabrication of materials manufactured off premise | -- | -- | -- | -- | -- | P | SP | -- | -- | P | -- | Sec. 6.5.1. |
| Bakery, wholesale | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | P | Sec. 6.5.2. |
| Boat building, storage and repair | -- | -- | -- | -- | -- | -- | -- | -- | -- | L | P | Sec. 6.5.3. |
| Bottling works (except for alcoholic beverages) | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.4. |
| Building materials sales yard and storage building | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | P | Sec. 6.5.5. |
| Contractor's yard | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | -- | Sec. 6.5.6. |
| Feed and seed store | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | P | Sec. 6.5.7. |
| Food processing, wholesale | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.8. |
| Laboratory and research facility, no recombinant DNA | SP | SP | SP | SP | SP | P | P | SP | P | P | P | Sec. 6.5.9. |
| Laboratory and research facility, recombinant DNA | -- | -- | -- | -- | -- | SP | SP | -- | -- | SP | SP | Sec. 6.5.9. |
| Laundry, cleaning and dyeing establishment | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.10. |
| Manufacturing | -- | -- | -- | -- | -- | L | -- | -- | -- | P | P | Sec. 6.5.11. |
| Manufacturing, molding, shaping or assembly from prepared materials (including repairs) | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.11. |
| Paint store | -- | -- | -- | -- | -- | -- | -- | -- | -- | SP | P | Sec. 6.5.12. |

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by Board of Aldermen Required -- Not Allowed

| Business, Mixed Use & Manufacturing Districts | BU1 | BU2 | BU3 | BU4 | BU5 | MU1 | MU2 | MU3 | MU4 | M | LM | Definition/ Listed Standard |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Printing, publishing and reproduction establishment | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.13. |
| Sign painting shop | -- | -- | -- | -- | -- | -- | -- | -- | -- | P | P | Sec. 6.5.14. |
| 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 | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | P/L/ SP | 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 | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | Sec. 6.6.1. |
| Resource extraction | SP | SP | SP | SP | SP | SP | SP | SP | SP | SP | 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 | -- | -- | -- | -- | -- | Sec. 6.10.3. |

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by Board of Aldermen Required -- Not Allowed

See Sec. 7.8.4., Substandard Commercial Lots.

PAGE INTENTIONALLY LEFT BLANK

# Article 5. Development Standards


Sec. 5.1. Parking and Loading ..... 5-2

5.1.1. Intent and Purpose ..... 5-2

5.1.2. Applicability ..... 5-2

5.1.3. General Regulations ..... 5-2

5.1.4. Number of Parking Stalls ..... 5-4

5.1.5. Administration ..... 5-6

5.1.6. Location of Required Accessory Parking Facilities ..... 5-6

5.1.7. Design of Parking Facilities Containing 5 Stalls or Less ..... 5-7

5.1.8. Design of Parking Facilities Over 5 Stalls ..... 5-7

5.1.9. Parking Facility Landscaping ..... 5-9

5.1.10. Lighting, Surfacing, and Maintenance of Parking Facilities ..... 5-12

5.1.11. Bicycle Parking Facilities ..... 5-12

5.1.12. Off-Street Loading Requirements ..... 5-13

5.1.13. Exceptions ..... 5-14

Sec. 5.2. Signs ..... 5-15

5.2.1. Intent and Purpose ..... 5-15

5.2.2. Applicability ..... 5-15

5.2.3. Definitions ..... 5-15

5.2.4. Permit Procedure ..... 5-17

5.2.5. Prohibited Signs ..... 5-18

5.2.6. Signs Allowed By Right ..... 5-18

5.2.7. Signs in Residence Districts ..... 5-20

5.2.8. Signs in Commercial Districts ..... 5-21

5.2.9. Signs in Open Space/Recreation and Public Use Districts ..... 5-22

5.2.10. Illuminated Signs ..... 5-22

5.2.11. Construction and Maintenance ..... 5-22

5.2.12. Nonconforming Signs ..... 5-22

5.2.13. Exceptions ..... 5-23

5.2.14. Guidelines ..... 5-23

Sec. 5.3. Stormwater Management ..... 5-24

Sec. 5.4. Fences & Retaining Walls ..... 5-24

5.4.1. Fences ..... 5-24

5.4.2. Retaining Walls ..... 5-24

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

5.11.1. Purposes ..... 5-25

5.11.2. Definitions ..... 5-25

5.11.3. Scope ..... 5-25

5.11.4. Inclusionary Units ..... 5-25

5.11.5. Cash Payment ..... 5-26

5.11.6. Off-Site Development ..... 5-27

5.11.7. Design and Construction ..... 5-27

5.11.8. Habitable Space Requirements ..... 5-28

5.11.9. Inclusionary Housing Plans and Covenants ..... 5-28

5.11.10. Public Funding Limitation ..... 5-29

5.11.11. Elder Housing with Services ..... 5-30

5.11.12. No Segmentation ..... 5-30

5.11.13. No Effect on Prior or Existing Obligations. ..... 5-31

5.11.14. No Effect on Accessory Apartments. ..... 5-31

5.11.15. Incentives ..... 5-31

Sec. 5.12. Environmental Standards in the Manufacturing Distirct ..... 5-31

# Sec. 5.1. Parking and Loading

## 5.1.1. Intent and Purpose

The intent of these provisions is that any use of land involving parking or storage of vehicles be designed and operated to:

A. Reduce hazards to pedestrians upon the public sidewalks;

B. Protect the use of adjacent property from nuisance caused by noise, fumes, and glare of headlights;

C. Enhance and protect the visual quality of the City; and

D. Reduce congestion in the streets and contribute to traffic safety by assuring adequate and well-designed areas for off-street parking, loading, unloading, and maneuvering of vehicles.

(Ord. No. 202, 03/21/77)

## 5.1.2. Applicability

A. No land shall be used and no building shall be erected, enlarged, or used in any district in the City, except as provided in this Sec. 5.1., unless off-street parking and loading facilities are provided in accordance with the requirements of this Sec. 5.1.

B. The regulations of this Sec. 5.1. do not apply to parking or loading facilities in existence or for which building permits have been issued prior to the date of adoption of this Sec. 5.1., provided the parking or loading facilities conformed to all applicable regulations in effect when established.

C. Where parking or loading facilities are increased in capacity after the adoption of this Sec. 5.1., the expanded portion shall be constructed in accordance with this Sec. 5.1.

(Ord. No. 202, 03/21/77)

## 5.1.3. General Regulations

A. No reduction in the number of off-street parking stalls required by this Sec. 5.1. shall be allowed and no existing off-street parking stalls shall be eliminated unless replaced by an equal number of off-street parking stalls designed in accordance with this Sec. 5.1. This paragraph shall not prevent the elimination of existing parking stalls which are in excess of the number required by this Sec. 5.1..

B. When an enlargement or extension of the gross floor area in a building or structure or a change in use from one type of use to another; increases the parking requirements for such building or structure, the provisions of this Sec. 5.1. shall be complied with in accordance with the following formula:

1. A - B + C = required number of parking stalls, provided that this number shall not exceed "A".

2. "A" being the number of off-street parking stalls required under this Sec. 5.1.;

3. "B" being the number of off-street parking stalls which would have been required under this Sec. 5.1. prior to the date of the enlargement, extension or change of use; and

4. "C" being the number of off-street parking stalls located on the premises or adjacent premises of the owner, or located off-site with the permission of the Board of Aldermen, prior to the date of the enlargement, extension or change of use.

C. In the case of a change in use of churches, synagogues, theaters, halls, clubs, funeral homes, restaurants, other places serving food and other places of amusement or assembly, the number of off-street parking stalls required for the new use or uses shall be determined by the existing floor area of the existing structure and not the seating capacity. When such building or structure is located in a business, manufacturing or mixed use district, the number of off-street parking stalls which would have been required for such building or structure prior to the date of the enlargement, extension or change of use ("B" of the formula set forth above), shall be calculated for the proposed use, according to Sec. 6.1.

D. The Board of Aldermen may grant a special permit to reduce or waive the requirement that parking be provided as would be required by paragraph B. in conjunction with the enlargement, extension or change in use of a building or structure, provided that this reduction or waiver shall not be applicable to any increase in gross floor area.

E. All required parking facilities shall be provided and maintained so long as the use exists which the facilities were required to serve. Reasonable precautions shall be taken by the owner or operator of particular facilities to assure the availability of required facilities for the employees or other persons whom the facilities are

designed to serve. Required parking stalls shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve.

F. Municipal parking lots shall not be used to meet the parking requirements of this Sec. 5.1.

(Ord. No. 202, 03/21/77; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87)

## 5.1.4. Number of Parking Stalls

A. The minimum number of parking stalls to be supplied for each type of building or land use shall be in accordance with the following requirements. Where the computation results in a fractional number, the fraction shall be counted as one stall.

| Use | Parking Stalls Required | Allowed by Special Permit |
|---|---|---|
| **Residential** | | |
| Single-family dwelling, Two-family dwelling | 2 per unit | |
| Accessory apartment | 1 per unit | |
| Association of persons | 1 per adult occupant in unit | |
| Single-family attached dwelling, Multi-family dwelling | 2 per unit | 1.25 per unit, except multi-family housing for low-income or elderly persons built under state or federal housing programs: 1 per 2 units in a low income unit plus 1 per 4 elderly units |
| Boarding house, rooming house, lodging house, tourist house, congregate living facility | 1 per sleeping room plus 1 per 3 employees | |
| Convalescent or rest home or other institution devoted to the board, care or treatment of humans | 1 per every 4 beds plus 1 per every 3 employees | |
| Elderly housing with services facility, residential care facility, elderly congregate living facility | 1 per every 2 dwelling units 1 per every 4 nursing beds plus 1 per 3 employees | .25 per dwelling unit where adequate transportation services are available |
| **Civic/Institutional** | | |
| Dormitory | 1 per 5 occupants | |
| Religious Institutions | 1 per 3 seats, permanent or otherwise; 1 per 3 employees; plus 1 per 45 sf used for meeting function purposes when such space is customarily used concurrently with the seating space | |
| School serving children under 14 years of age | 1 per employee not residing on premises | |
| **Commercial** | | |
| Bank | 1 per 300 sf plus 1 per every 3 employees | |
| Family child care home, large family child care home, day care center | 1 per employee not residing on premises plus 1 per every 5 children | |
| Funeral home | 1 per 40 sf; 30 spaces min. | |
| Health club, similar establishment | 1 per 150 sf plus 1 per every 3 employees | |
| Hospital, sanitarium | 1 per every 3 beds plus 1 per every 3 employees | |
| Hotel, motel | 1 per sleeping room plus 1 per every 3 employees | |
| Medical office on or abutting hospital property | 1 per 400 sf plus 1 per every 3 employees in any lab or pharmacy in bldg | |

| Use | Parking Stalls Required | Allowed by Special Permit |
|---|---|---|
| Medical office, not on or abutting hospital property | 1 per 200 sf plus<br>1 per 3 every employees in any lab or pharmacy in bldg | |
| Office, professional building | 1 per 250 sf up to 20,000 sf;<br>1 per 333 sf over 20,000 sf | |
| Outdoor or open-air sales space, drive-in establishments, open-air retail business, amusements and other similar uses | 1 per 600 sf | |
| Post Office | 1 per 300 sf plus<br>1 per 3 every employees | |
| Radio or television transmission station | 1 per 2,500 sf plus<br>1 per every 4 employees | |
| Restaurant, food or beverage establishment (for sidewalk cafe, see 12-70) | 1 per 3 patron seats, permanent or otherwise plus<br>1 per 3 employees | |
| Restaurant, food or beverage establishment in a hotel, motel | 1 per 90 sf plus 1 per every 6 employees | |
| Retail store, showroom | 1 per 300 sf plus<br>1 per 3 employees | |
| Service establishment | 1 per 300 sf plus<br>1 per 3 employees | |
| Theaters, halls, clubs, auditoriums and other places of amusement or assembly, not in a hotel, motel | 1 per 3 seats, permanent or otherwise plus<br>1 per every 3 employees plus<br>1 per 45 sf used for meeting functions | |
| Theaters, halls, clubs, auditoriums and other places of amusement or assembly in a hotel, motel | 1 per 12 seats plus<br>1 per every 3 employees plus<br>.25 per 45 sf used for meeting functions | |
| Industrial | | |
| Manufacturing | 1 per 1,000 sf plus<br>1 per 4 employees | |
| Research, laboratory | 1 per 1,000 sf plus<br>1 per 4 employees | |
| Storage warehouse or business | 1 per 2,500 sf plus<br>1 per 4 employees | |
| Telecommunications and data storage facility | 1 per 2,500 sf plus<br>1 per 4 employees | |
| Wholesale business | 1 per 1,000 sf plus<br>1 per 4 employees | |

B. In the case of measurement by employee, the largest shift shall be used.

C. In the case of a combination, in a single integrated development, of 3 or more uses listed in the table above, the Board of Aldermen may grant a special permit, to reduce the sum total of stalls required for each of the uses involved, but in no case may such reduction exceed 1/3 of such total.

D. For single- and two-family dwellings, 2 tandem parking spaces are permitted within the side yard setback.

E. The parking requirement for a mixed-use development approved under Sec. 7.3.6. shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the Director of Planning and Development and peer reviewed at the applicant's expense, if requested by the Director of Planning and Development. Following the grant of a special permit under this Sec. 5.1., no material change in the combination of uses, shall be authorized until the applicant submits a revised analysis demonstrating to the satisfaction of the Director of Planning and Development that sufficient parking exists to accommodate the new combination of uses, or requests and receives a modification of the special permit to authorize a change in the number of stalls provided.

(Ord. No. 202, 03/21/77; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87; Ord. No. T-57, 11/20/89; Ord. No. T-114, 11/19/90; Ord. No. V-173, 05/18/98; Ord. No. W-34, 03/05/01; Ord. No. X-9, 03/04/02; Ord. No. Z-108, 04/17/12; Ord. No. A-13, 03/18/13; Ord. No. A-53, 01/05/15)

## 5.1.5. Administration

A. Any parking facility containing more than 5 stalls and any loading facility shall not be constructed, altered or enlarged until an application on appropriate forms supplied by the Commissioner of Inspectional Services with an accompanying off-street parking or loading plan and such other information as the Commissioner of Inspectional Services may reasonably require shall have been filed with the Commissioner of Inspectional Services and a permit for such construction, alteration, or enlargement is issued by the Commissioner of Inspectional Services.

B. The off-street parking or loading plan shall be a drawing at a scale of 1 inch equals 20 feet or 1 inch equals 40 feet, shall be prepared, stamped and signed, as appropriate, by a registered engineer or land surveyor, and shall include:

1. The location of all buildings, lot lines, easements and rights of way on the subject lot and abutting lots;

2. The location and dimensions of all driveways, maneuvering aisles and spaces, parking spaces, storage areas, bicycle parking facilities, and loading facilities; and

3. The location, size and type of materials for surface paving, curbing, wheel stops, landscaping materials, fencing, surface drainage, and lighting.

C. Upon receipt of an application for a parking or loading facility permit, the Commissioner of Inspectional Services shall transmit a copy of the off-street parking or loading plan to the Director of Planning and Development. The Director of Planning and Development shall submit an advisory report to the Commissioner of Inspectional Services within 3 weeks of the application filing date. The Commissioner of Inspectional Services shall not issue a permit until the advisory report of the Director of Planning and Development has been received or 3 weeks have elapsed without receipt of such report.

(Ord. No. 202, 03/21/77)

## 5.1.6. Location of Required Accessory Parking Facilities

A. Required off-street parking facilities shall be provided on the same lot or premises with the principal use served.

B. Where the requirements in paragraph A. above cannot be met, the Board of Aldermen may, subject to such bond, long-term lease, easement or other assurance of permanence as it may deem adequate, grant a special permit to allow the required parking facility to be located on another lot which is within a district in which the use to be served by the parking facility would be permitted and which is within 500 feet of the lot on which the principal use served is located.

C. In all residence districts, the Board of Aldermen may grant a special permit for the construction and operation of parking facilities accessory to a use in a business or manufacturing district; provided that no part of such parking facility is further than 150 feet from the boundary line of a business or manufacturing district

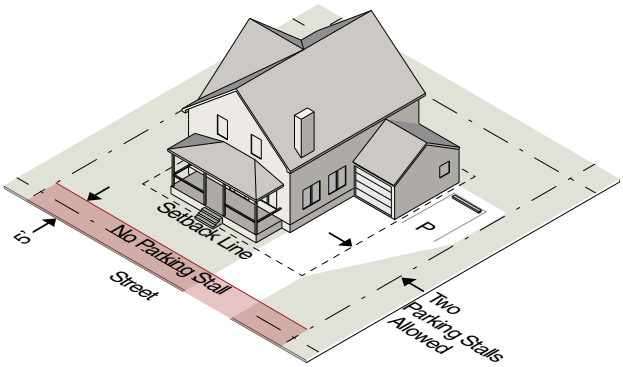
and provided that the parking facility is within 500 feet of the lot on which the principal use is located. Such permission shall be given only if the facility for which a permit is requested is to be used solely for the parking of passenger vehicles accessory to a use lawfully established in said business or manufacturing district. Such parking facilities are not to be used for sales, repair work or servicing of any kind, and no advertising sign or material is to be located on such lots.

(Ord. No. 202, 03/21/77; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87)

## 5.1.7. Design of Parking Facilities Containing 5 Stalls or Less

A parking facility containing 5 stalls or less shall comply with the following requirements:

A. No parking stall shall be located within any required setback distances from a street and side lot lines, except that, in conjunction with a single- or two-family dwelling, 2 parking stalls per dwelling unit may be located within required setback and sideline distances. However, in no case shall a parking stall be set back less than 5 feet from the street.




B. The minimum dimensions of a parking stall shall be as follows:

1. Stall width shall be at least 9 feet; and

2. Stall depth shall be at least 19 feet for all angle parking, and 21 feet for parallel parking.

C. The entrance and exit drives shall be a minimum of 12 feet wide and a maximum of 20 feet wide.

D. An outdoor parking facility shall be graded and surfaced to accommodate motor vehicles during all weather conditions.

(Ord. No. 202, 03/21/77; Ord. No. S-260, 08/03/87)

## 5.1.8. Design of Parking Facilities Over 5 Stalls

The layout and design of parking stalls, maneuvering aisles, and driveways within parking facilities containing more than 5 stalls shall conform to the following requirements:

A. Setback Distances:

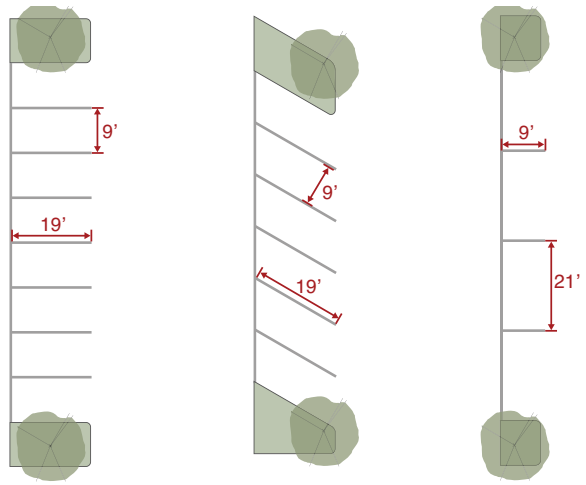
1. No parking stall shall be located within any required setback distances from a street and side lot lines, and shall, in any case be set back a minimum of 5 feet from the street.

2. No outdoor parking shall be located within 5 feet of a building or structure containing dwelling units.

B. Minimum Dimensions:

1. Stall widths shall be at least 9 feet.

2. Stall depth shall be at least 19 feet for all angle parking and 21 feet for parallel parking.

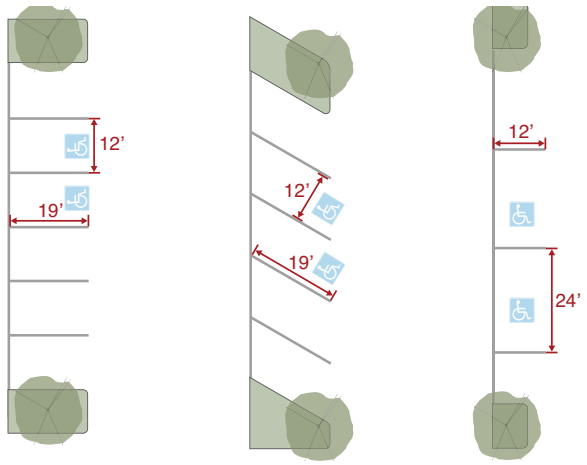



3. Parking facilities shall provide specially designated parking stalls for the physically handicapped as follows:

| Total Stalls | Handicapped |
|---|---|
| 6-25 | 1 stall |
| 26-40 | 2 stalls |
| 41-100 | 4% but not less than 3 stalls |
| 101-300 | 3% but not less than 4 stalls |
| 301-800 | 2% but not less than 9 stalls |
| 801+ | 1% but not less than 16 stalls |

4. Handicapped stalls shall be clearly identified by a sign that states that these stalls are reserved for

physically handicapped persons. Such stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Handicapped stalls shall have a minimum stall width of at least 12 feet and a minimum stall depth of at least 19 feet for all angle parking and 24 feet for all parallel parking.




5. Where stalls head into a curb which bumpers can overhang, the length of the stall may be reduced by 2 feet from the required stall depth dimensions; provided such bumper overhang distance shall not be used to meet the screening requirement of Sec. 5.1.9.

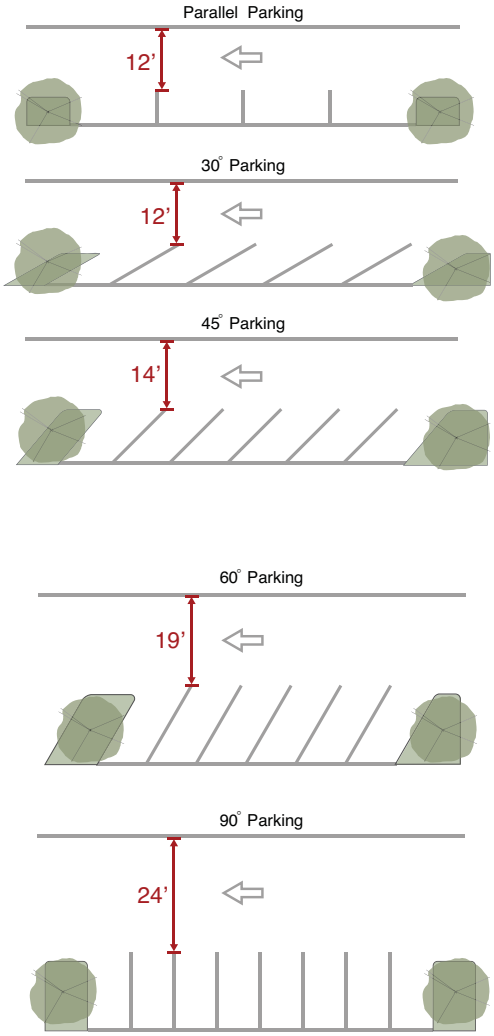
6. End stalls restricted on one or both sides by curbs, walls, fences, or other obstructions shall have maneuvering space at the aisle end of at least 5 feet in depth and 9 feet in width.

7. Stalls for the parking of noncommercial vans, buses, or other vehicles exceeding 7½ feet by 18 feet in size shall be specifically identified on the off-street parking or loading plan and shall be of such dimensions as to accommodate the specified type of vehicle. Such vehicles shall be permitted to park only in the stalls so identified and approved by the Commissioner of Inspectional Services.

C. Minimum Width of Maneuvering Aisles.

1. Minimum width of aisles providing access to stalls for one-way traffic shall be the following:

| Angle of Parking Stall | Min. Maneuvering Aisle Width |
|---|---|
| Parallel | 12′ |
| 30 degree | 12′ |
| 45 degree | 14′ |
| 60 degree | 19′ |
| 90 degree | 24′ |




2. Minimum width of maneuvering aisles providing access to stalls for two-way traffic shall be 20 feet or the width required above, whichever is greater.

D. Entrance and Exit Driveways.

1. Entrance and exit driveways shall be a minimum of 12 feet wide for one-way use only and a minimum of 20 feet wide for two-way use.

2. The maximum width of entrance and exit driveways shall be 25 feet, except in conjunction with loading facilities.

3. Driveways shall be located so as to minimize conflict with traffic on public streets and where good visibility and sight distances are available to observe approaching pedestrian and vehicular traffic.

E. Design of Stall Layout.

1. Parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle.

2. The dimensional and stall layout requirements of this paragraph E may be modified by the Board of Aldermen through the special permit process, where a parking facility or portion of the facility is under full-time attendant supervision.

(Ord. No. 202, 03/21/77; Ord. No. S-260, 08/03/87)

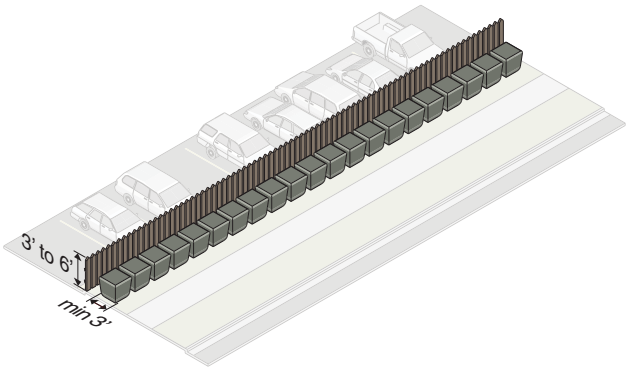
## 5.1.9. Parking Facility Landscaping

A. Screening. Outdoor parking facilities containing more than 5 stalls shall be screened from abutting streets and properties.

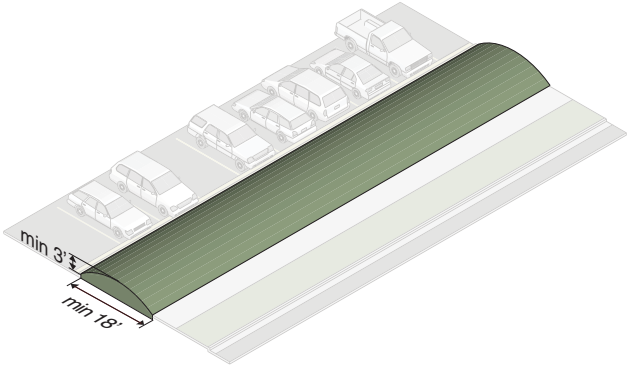
1. Screening materials shall be located along the perimeter of the parking facility abutting a street or properties other than the use or uses served by the parking facility. Screening shall consist of one or a combination of the following:

i. A strip of at least 5 feet in width of densely planted shrubs or trees which are at least 3½ feet high at the time of planting and are of a type that may be expected to form a year-round screen;

ii. A wall, barrier, or fence of uniform appearance. Such wall, barrier, or fence may be opaque or perforated provided that not more than 50 percent of the face is open. There shall be a landscaped strip with a minimum width of 3 feet between the base of the wall, barrier, or fence and any street or abutting property. The wall, barrier, or fence shall be at least 3 feet and not more than 6 feet in height;

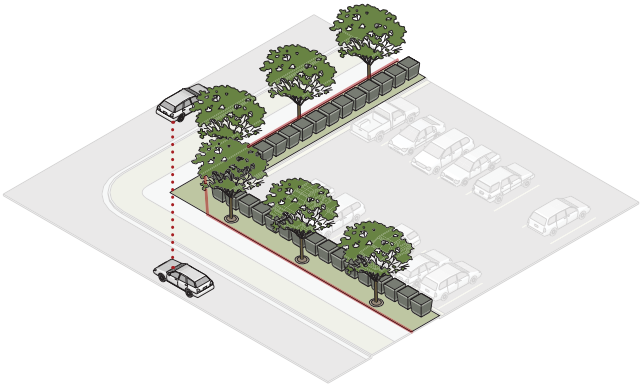


iii. A landscaped earth berm at least 3 feet in height and 18 feet in width.




2. Every effort shall be made to retain existing trees.

3. The required screening shall be located so as not to conflict with any corner visibility requirements or any other City ordinances. Such screening may be interrupted by entrances or exits.



B. Interior Landscaping. Outdoor parking facilities containing 20 stalls or more shall contain interior landscaping in accordance with the following requirements. See Chapter 21, Parks and Recreation, Public Ground and Trees.

1. An area equivalent to at least 5 percent of the area of a parking facility with 20 stalls or more shall be landscaped and continuously maintained. Planting along the perimeter of a parking area, whether for required screening or general beautification, shall not be considered as part of the 5 percent interior landscaping.

2. An interior planting area shall consist of at least 25 square feet with no dimension less than 5 feet. At least 1 tree shall be planted in each such planting area and there shall be at least 1 tree for every 10 parking stalls. The interior landscaping shall be distributed within the parking facility.

3. Trees required by the provisions of this Sec. 5.1.9. shall be at least 3 inches in caliper at the time of planting and shall be species characterized by rapid growth and by suitability and hardiness for location in a parking lot.

4. Bumper overhang areas shall be landscaped with stone, woodchips, low plantings or other materials that will not be damaged as a result of bumper and oil drippings.

(Ord. No. 202, 03/21/77)

## 5.1.10. Lighting, Surfacing, and Maintenance of Parking Facilities

Outdoor parking facilities containing more than 5 stalls shall be lighted, surfaced, and maintained in accordance with the following requirements:

A. Lighting.

1. All parking facilities which are used at night shall have security lighting. Lighting shall be so designed as to maintain a minimum intensity of 1-foot candle on the entire surface of the parking facility.

2. All artificial lighting shall be arranged and shielded so as to prevent glare from the light source onto adjacent streets and properties.

B. Surfacing and Curbing.

1. Parking facilities shall be surfaced, graded and drained to the satisfaction of the City Engineer.

2. Parking facilities shall be surfaced with asphalt, concrete, or other durable material, except that less durable surfacing materials may be permitted on emergency access driveways and portions of the parking facility designated for infrequent overflow parking.

3. Paved surfaces shall be marked with 4 inch painted lines or some other permanent curb or marking system so as to clearly indicate the stall to be occupied by each motor vehicle, in accordance with the dimensions specified in this Sec. 5.1., which dimensions shall be measured perpendicular to the curb or marking system.

4. Parking facilities shall be drained so that surface water shall not drain onto public ways or abutting properties.

5. Curbing, wheel stops, guard rails, or bollards shall be placed at the edges of surfaced areas, except driveways, in order to protect landscaped areas.

6. Curb ramps with a minimum width of 3 feet shall be provided to accommodate the movement of handicapped individuals.

C. Maintenance. Parking facilities shall be kept clean, plowed, and free from rubbish, debris, and snow. All plant materials shall be maintained in a healthy condition and whenever necessary shall be replaced with new plant materials to insure continued compliance with screening and interior landscaping requirements. All fences, barriers, and walls shall be maintained in good repair and whenever necessary shall be replaced. Whenever necessary, the surfacing, lighting, and markings shall be repaired or replaced.

(Ord. No. 202, 03/21/77)

## 5.1.11. Bicycle Parking Facilities

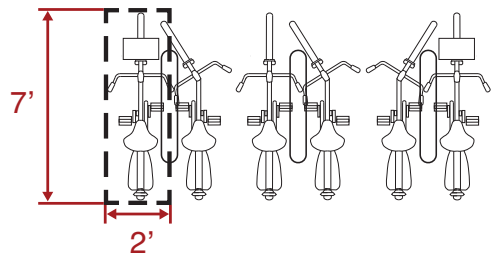
In the design and construction of parking facilities containing 20 stalls or more, space shall be allocated exclusively for bicycle parking.

A. Bicycle parking shall be provided in the amount of 1 bicycle space per 10 parking stalls or fraction thereof, except that no more than 30 such bicycle parking spaces shall be required.

B. Where the computation of required bicycle parking results in a fractional number, only the fraction of ½ or more shall be counted as one.

C. Bicycle parking spaces shall be located near the entrance to the use or structure which the parking facility serves and shall, if possible, be within view of pedestrian traffic, without impeding pedestrian flow, so as to minimize the risk of theft.

D. Each bicycle parking space shall be sufficient to accommodate bicycles of at least 7 feet in length and 2 feet wide, and shall be provided with some form of steel frame permanently anchored to a foundation, to which a bicycle frame and at least 1 wheel may be conveniently secured using a chain and padlock or other bicycle lock in common usage The separation of the bicycle parking spaces and the amount of corridor space associated with each space shall be adequate for convenient access to every bicycle space when the parking facility is full.




(Ord. No. 202, 03/21/77)

## 5.1.12. Off-Street Loading Requirements

A. Defined. A truck loading or unloading area accessory to the principal use of the lot.

B. Applicability.

1. No application for a permit for the erection of a new building, or the development of land shall be approved, unless it includes a plan for off-street loading facilities required to comply with this Sec. 5.1.12.

2. Where a building existing on the date of adoption of this Sec. 5.1.12. is altered or expanded in such a way as to increase the gross floor area by 5,000 square feet or more, only the additional gross floor area shall be counted in computing the off-street loading requirements. Alterations or expansions aggregating less than 5,000 square feet subsequent to the date of adoption of this Sec. 5.1.12. do not require such provision of loading space.

3. Where retail or other stores are designed or constructed as a group or as a unified building, the aggregate of individual stores shall be treated as one building for the purpose of calculating off-street loading facilities.

4. Where mixed uses occur, off-street loading acilities shall be the sum of the requirements for the several individual uses computed separately, except that such facilities may be reduced by special permit if it can be demonstrated that such individual uses are not in operation at the same time.

C. Off-street loading facilities shall be provided as follows:

1. Where the computation of required loading bays results in a fractional number, only the fraction of ½ or more shall be counted as one.

2. Loading facilities shall not be reduced in total extent or usability after their installation, except when such reduction is in conformance with the requirements of this Sec. 5.1.12.

D. Off-street loading facilities shall be located and designed as follows:

1. Each required loading bay shall not be less than 10 feet in width, 35 feet in length, and 12 feet in height, exclusive of driveways. Maneuvering space shall be located entirely on the lot with immediate and direct ingress to the building intended to be served. All such facilities shall be designed with appropriate means of vehicular access to a street or alley as well as maneuvering area, and no driveways or curb cuts providing access to such loading facilities shall exceed 30 feet in width.

2. Off-street loading bays may be enclosed in a structure and must be so enclosed if the use involves regular night operation, such as that of a bakery, restaurant, hotel, bottling plant or similar uses and if the lot is located within 100 feet of a residence district.

3. All driveways and loading areas shall be graded, surfaced and suitably maintained to the satisfaction of the City Engineer and to the extent necessary to avoid nuisances of dust, erosion, or excessive water flow across public ways.

Table of Off-Street Loading Requirements

Number of bays required for new or expanded uses by gross floor area of structure or land use (in sf)

| Uses | Under 5,000 sf | 5,000-50,999 sf | 51,000-100,999 sf | 101,000-150,999 sf | 151,000-300,000 sf | Over 300,000 sf |
|---|---|---|---|---|---|---|
| Retail Trade, Wholesale and Storage Transportation Terminal, Manufacturing, and Public Utility | 0 | 1 | 2 | 3 | 4 | 1 for each additional 150,000 sf |
| Business Services, Office Building, Hotel, Motel & Dormitory, and Research Laboratory | 0 | 1 | 1 | 2 | 3 | 1 for each additional 150,000 sf |
| Recreation, and Institution | 0 | 0 | 1 | 1 | 2 | 1 for each additional 150,000 sf |

4. Any lighting shall be arranged and shielded so as to prevent direct glare from the light source onto adjacent streets and properties.

5. Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance or hazard or unreasonable impediment to traffic.

(Ord. No. 202, 03/21/77; Ord. No. 284, 06/19/78)

## 5.1.13. Exceptions

In particular instances, a special permit may be granted to allow for exceptions to this Sec. 5.1. if it is determined that literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features.

(Ord. No. 202, 03/21/77; Ord. No. 284, 06/19/78)

# Sec. 5.2. Signs

## 5.2.1. Intent and Purpose

A. It is recognized that signs perform important functions in the City, which are essential for the public safety and general welfare, such as communicating messages, providing information about goods and services available, and providing orientation. It is further recognized that because of their potential detrimental impact on the visual and perceptual environment, signs must be regulated in order to:

1. Prevent hazards to vehicular and pedestrian traffic;
2. Prevent conditions which have a blighting influence and contribute to declining property values;
3. Provide for easy recognition and legibility of all permitted signs and other uses in the immediate vicinity; and
4. Preserve the amenities and visual quality of the City and curb the deterioration of the village commercial areas.

B. It is the intent of these provisions to protect property values, create a more attractive business climate, enhance and protect the physical appearance of the City, provide a more enjoyable and pleasing environment and to encourage the most appropriate use of land.

(Ord. No. 158, 10/18/76)

## 5.2.2. Applicability

All signs shall comply with the regulations for the erection and construction of signs contained in the 780 CMR and applicable City ordinances. No sign shall be erected, displayed, or maintained within the City, except those specifically provided for in this Sec. 5.2. or in other chapters of the Revised Ordinances. Signs allowed by this Sec. 5.2. shall be either accessory signs or non-accessory directory signs and shall comply with all dimensional and other applicable regulations in this Sec. 5.2.

(Ord. No. 196, 2/22/77)

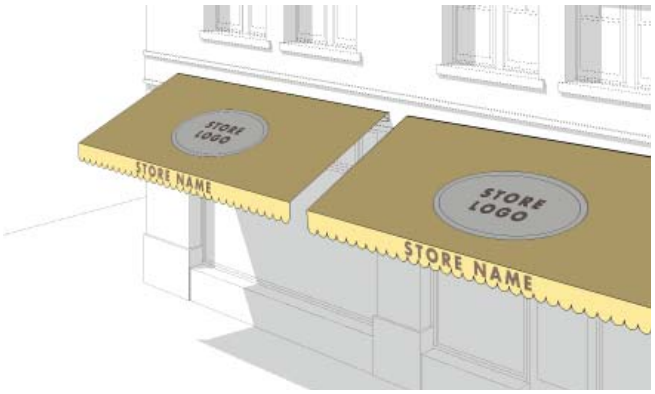
## 5.2.3. Definitions

Sign. A permanent or temporary structure, device, letter, word, 2D or 3D model, insignia, banner, streamer, display, emblem, or representation which is an advertisement, announcement or direction, or which is designed to attract attention.

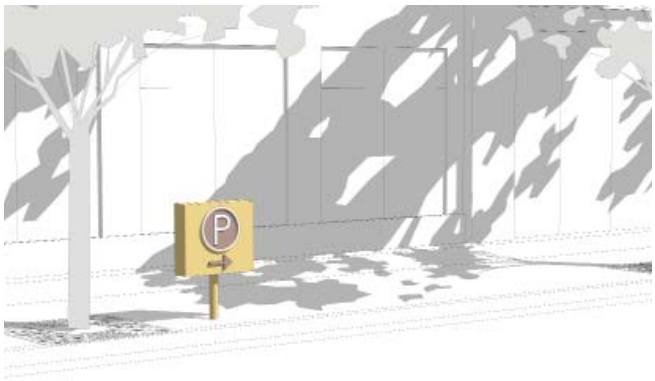
Sign, Accessory. A sign that, with respect to the premises on which it is erected, advertises or indicates one or more of the following: the address and/or occupant of the premises, the business transacted on the premises, the year the business was established, a slogan, directional or parking instructions, or the sale or letting of the premises or any part thereof.

Sign, Area. The entire area within a single continuous perimeter, and a single plane, which encloses the extreme limits of the advertising message or announcement or wording together with any frame, background, trim, or other integral part of the display excluding the necessary supports or uprights on which the sign is placed. Sign area of a free-standing sign or a perpendicular wall sign is the entire area of one side of such sign such that two faces which are back to back are counted only once.

Sign, Awning. A sign on or attached to a temporary retractable shelter which is supported entirely from the exterior wall of a building.



Sign, Directional. Signs indicating "Entrance," "Exit," "Parking," or the like, erected on a premises for the direction of persons or vehicles.

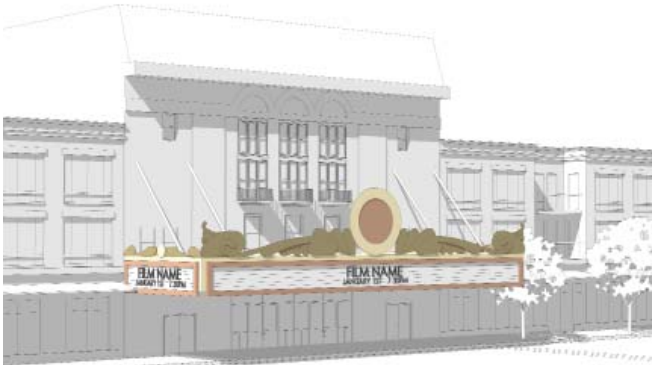


Sign, Election. A sign specifically supporting or opposing the election of a candidate for office in an election to be held in the City within a year, or supporting or opposing a ballot question which shall appear on a ballot in the City within a year.

Sign, Free-Standing. A sign erected on or affixed to the land by post, pole, pylon or any framing or supporting device or stand which is not affixed to a building, and may inlcude kiosks or public information bulletin boards.

Sign, Frontage. The length in feet of the building wall parallel or substantially parallel to a street that is occupied by an individual business establishment.

Sign, Marquee. A sign on or attached to a permanent overhanging shelter which projects from the face of a building, is entirely supported by said building, and may have a changeable letter panel.




Sign, Non-Accessory. A billboard, sign or other advertising device which does not come within the foregoing definitions of an accessory sign or of a non-accessory directory sign.

Sign, Non-Accessory Directory. A sign that, with respect to the premises on which it is erected and/or an adjacent premises for which the sign is a single common identifier, or with respect to a single integrated development consisting of two or more lots, advertises or indicates one or more of the following: the address and/or occupant of the premises, the business transacted on the premises, the year the business was established, a slogan, directional or parking instructions, or the sale or letting of the premises or any part thereof.

Sign, Principal. The principal sign on a lot. Where permission is granted for a free-standing sign, the free-standing sign shall be considered the principal sign.

Sign, Secondary. A wall sign located on a wall other than that occupied by the principal sign.

Sign, Wall. A sign affixed either parallel or perpendicular to the wall of a building and not extending above the roof plate or parapet line.

A. Wall signs shall be affixed either parallel or perpendicular to a wall of a building. Where a building or structure to which a parallel wall sign is to be affixed has an identifiable sign band, as determined by the Director of Planning and Development in consultation with the Urban Design Commission, or is part of a block of commercial establishments which, except for the petitioned property, is the subject of uniform signage, the parallel wall sign shall be located within the identifiable sign band or shall be consistent with any uniform signage.

B. A parallel wall sign shall project no more than 12 inches from the building surface and shall not extend above the roof line or beyond the sides of the building.

C. A perpendicular wall sign shall be attached at a right angle to the wall of a building; it shall have no more than 2 faces; and it shall not project in any linear dimension more than 6 feet, subject to the provisions of Revised Ordinances Chapter 26, Sections 26-1 to 26-6. When a projecting sign is closer than 12 feet to the corner of a building, its projection shall be no more than a distance equal to 1/2 the horizontal distance from the sign to that building corner.

Sign, Window. A sign affixed to the interior or exterior surface of a window or displayed behind a window so as to attract attention from the outside. A sign shall be deemed a window sign if it is within 6 inches of the inside surface of a window through which it is intended to be viewed and is not merchandise on display.

(Ord. No. 158, 10/18/76; Ord. No. V-7, 03/20/95)

## 5.2.4. Permit Procedure

A. No sign shall be erected on the exterior of any building or on any land, and no such sign shall be enlarged or altered, with the exception of copy changes on changeable letter panels, clocks, or thermometers, until an application on appropriate forms supplied by the Commissioner of Inspectional Services with such information including plans, drawings, and photographs as the Commissioner of Inspectional Services may require, shall have been filed with the Commissioner of Inspectional Services, and a permit for such erection, alteration or enlargement has been issued by the Commissioner of Inspectional Services.

B. All non-accessory directory signs shall obtain an outdoor advertising permit from the Commonwealth of Massachusetts' Office of Outdoor Advertising.

C. Upon receipt of an application for a sign permit, the Commissioner of Inspectional Services shall notify the Urban Design Commission and the Director of Planning and Development regarding said application within 2 weeks of the date of filing, if they deem it necessary. The Director of Planning and Development shall submit an advisory report, including any recommendation of the Urban Design Commission, to the Commissioner of Inspectional Services within 3 weeks of the application filing date.

D. The fees for sign permits shall be established from time to time by the Board of Aldermen.

E. Within 2 months after the erection, alteration or enlargement of any sign, the owner or operator of said sign shall file two 8 inch by 10 inch photographs, taken after intallation.

(Ord. No. 158, 10/18/76)

## 5.2.5. Prohibited Signs

The following signs shall not be permitted, constructed, erected, or maintained:

A. Non-accessory signs;

B. Signs constructed, erected, or maintained on the roof of a building or which extend above the roof plate line;

C. Portable signs not permanently affixed, anchored, or secured to the ground or a structure on the lot it occupies, including trailer signs and signs affixed to or painted on a vehicle permanently parked on the premises so as to serve as a sign, but excluding signs affixed to or painted on a vehicle temporarily parked on the premises;

D. Window signs which cover more than 25 percent of the area of the window;

E. Any sign which advertises or calls attention to any products, businesses, or activities which are no longer sold or carried on at any particular premises; or

F. String lights used in connection with commercial premises with the exception of temporary lighting for holiday decoration.

(Ord. No. 158, 10/18/76)

## 5.2.6. Signs Allowed By Right

A. Permanent Signs. The following signs shall be allowed by right without the necessity of sign review, but may require a building permit:

1. Signs erected by or on the order of a governmental agency when limited to governmental purposes, and excluding any advertising, except in the Open Space/Recreation and Public Use districts (see Sec. 6.2.9.);

2. Names of buildings, date of erection, monumental citations and commemorative tablets, when made a permanent and integral part of a building, not to exceed 10 square feet;

3. Banners or flags emblematic of or issued by national, state, or local governments;

4. Signs indicating the name and address of the occupant of a dwelling, not to exceed 1 square foot. Where a permitted accessory home business exists, such sign shall not exceed 2 square feet;

5. Awning signs in business, mixed use, limited manufacturing and manufacturing districts;

6. Window signs, in nonresidential buildings, not to exceed 25 percent of the area of the window;

7. Customary signs on gasoline pumps indicating in usual size and form the name, type and price of gasoline;

8. Clocks and thermometers displaying no information other than the time and temperature;

9. Holiday decorations and lights when in season; and

10. Signs not to exceed 2 square feet which indicate warnings, hazards, or public conveniences such as "trespass," "beware of dog," or rest room signs.

B. Temporary Signs. Temporary signs shall not be illuminated and shall comply with the provisions of this Sec. 5.2., but may require a building permit:

1. Short-Term Event Sign. The Commissioner of Inspectional Services may permit an establishment to display on its premises 1 non-illuminated sign announcing a special event of limited duration to take place on the premises. Such sign may be displayed for a period not to exceed 72 hours, including time required for installation and removal. The Commissioner of Inspectional Services shall issue such a permit to the same establishment no more than twice per calendar year. Applications for such permits shall be submitted in accordance with Sec. 5.2.4., but shall be submitted no later than 1 week prior to the proposed date of installation. Applications for such permits shall not be subject to notice to and review by the Urban Design Commission and the Director of Planning and Development.

2. Temporary Identification Sign Procedure. One temporary identification sign to identify a property or use during the period from the submission of a sign application to the Commissioner of

Inspectional Services or during the special permit procedure to 30 days after the decision, may be erected, provided that in the event of an unfavorable decision such temporary sign shall be removed immediately, and provided that the temporary sign conforms with all applicable dimensional regulations of this Sec. 5.2., that it is, in fact, a temporary sign not involving any substantial expense, and that it is displayed in a manner which will not deface the building facade or otherwise impinge upon the review of the proposed sign.

3. Construction Signs. One or more signs during the construction or alteration of a building identifying the building, owner, contractor, architects and engineers and whether any business is or is not to be conducted there may be erected. Such signs shall not exceed in the aggregate 32 square feet and shall be removed within 48 hours after completion of the construction or alteration.

4. Real Estate Signs. One unlighted sign, not exceeding 12 square feet in residential districts and 32 square feet in commercial districts, advertising the sale, rental or lease of the premises or part of the premises or the willingness to build on the premises on which the sign is displayed may be erected. Such signs shall be removed within 48 hours after the sale, rental or lease of the premises.

5. Event Signs. Signs not exceeding 30 square feet, announcing a fundraising drive or event of a civic, philanthropic, educational or religious organization, displayed on the lot of the event or the property of the sponsoring agency and limited to 1 per lot, except that if a lot has frontage on more than one street, there may be a free-standing sign for each street frontage. Such signs shall not be erected before 14 days preceding the event and shall be removed within 48 hours after the event.

6. Yard or Garage Sale Signs. Signs, not exceeding 5 square feet, announcing a yard or garage sale, which are displayed on private property and limited to 1 per premises, may be erected. Such signs shall not be erected before 3 days preceding the sale and shall be removed within 24 hours after the sale.

7. Election Signs. Election signs shall be allowed in all zoning districts, except as otherwise provided in this Chapter, and shall conform to the following:

   a. The face of the sign shall be no higher than and no wider than 3 feet;

   b. The total area of all signs on a single lot shall not exceed 32 square feet;

   c. Signs may be located anywhere on a lot, but shall not create a traffic safety hazard by blocking visibility of traffic on a public street from a driveway. Signs shall not overhang a public sidewalk; however, where there is no sidewalk, no part of the sign shall be closer than 8 feet to the edge of the paved portion of the public way;

   d. Signs shall not include any names or logos advertising goods, services, or businesses or otherwise constituting commercial speech;

   e. Signs shall not use obscene language in violation of established community standards;

   f. Signs shall not be artificially illuminated except as permitted by Sec. 5.2.10.;

   g. Election signs may be erected no earlier than 45 days before an election and shall be removed within 7 days after the election; and

   h. No more than 1 election sign per candidate or per ballot issue shall be erected on a single lot.

(Ord. No. 158, 10/18/76; Ord. No. T-64, 12/18/89; Ord. No. V-7, 03/20/95; Ord. No. Z-27, 05/19/08; Ord. No. A-29, 10/07/13)

## 5.2.7. Signs in Residence Districts

No sign shall be erected or maintained in a residence district, except as provided in Sec. 5.2.6. and this Sec. 5.2.7.:

| Use | Number | Type | Area per Sign (max) | Notes |
|---|---|---|---|---|
| Residential: single- or two-family | 1 per unit | Wall sign | 1 sf | Name of occupant, address of premises |
| Residential: single- or two-family with permitted accessory use or occupation | 1 per unit | Wall sign | 2 sf | Name of occupant(s), address of premises |
| Residential: building with more than 2 families or group of buildings forming a single housing development | 1 total | Principal wall sign OR Free-standing sign | 15 sf OR 10 sf | |
| Residential: Each building in a group of buildings forming a single housing development | 1 per building in group | Secondary wall sign | 2 sf | |
| Churches, schools, other institution or group of buildings forming a complex or campus | 2 per street frontage | Free-standing sign AND principal wall sign | 1 @ 20 sf 1 @ 10 Ssf | 1 Free-standing sign per frontage; for notices and announcements of services and events |
| Churches, schools, or other institutions: Each building in a group of buildings forming a single complex or campus | 1 per building in group | Free-standing sign AND principal wall sign | 10 sf | |
| Nonresidential use, permitted or nonconforming | 1 total | Principal wall sign | 20 sf | |
| | 1 total | Free-standing sign | 15 sf | The Board of Aldermen may grant a special permit for a free-standing sign |
| Any use | -- | Directional sign | 3 sf | For the direction of Persons or vehicles, indicating "entrance,""exit,""parking," or the like |

-- Not Applicable

## 5.2.8. Signs in Commercial Districts

No sign shall be erected or maintained in a business, limited manufacturing, manufacturing, and mixed use district, except as provided in Sec. 5.2.6. and this Sec. 5.2.8.:

| Type | Number | Area per Sign (max) | Notes |
|---|---|---|---|
| Principal sign | 1 total | 3 sf per linear foot of building wall frontage OR 100 sf, whichever is less | In particular instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign. |
| Principal sign: Business on a corner lot | 2 total | 3 sf per linear foot of building wall OR 100 sf, whichever is less | Frontage on the second street must be at least 75 percent of frontage on first street |
| Secondary sign | 1 per building, entrance or frontage on a street or parking area; 2 max | 1 sf per linear foot of building wall OR 50 sf, whichever is less | May not be erected on the same wall as a principal sign. |
| Directory sign | 1 total | 1 sf per occupant or tenant | Indicating the occupants or tenants of the building to which the sign is affixed |
| Directory sign: building with 2nd entrance | 1 per entrance | 1 sf per occupant or tenant | The second entrance must have frontage on a street or parking lot. Such signs shall not be deemed nonaccessory directory signs. |
| Marquee sign | 1 per theater | | |
| Awning sign | -- | Up to 20% of awning area | |
| Window sign | -- | Up to 25% of window area through which they are visible | |
| Gas station sign | 1 consolidated display | 20 sf (aggregate) | Product identification signs (tires, oil...) |
| Directional sign | | 3 sf | For the direction of persons or vehicles, indicating "entrance," "exit," "parking," or the like |

-- Not Applicable

## 5.2.9. Signs in Open Space/Recreation and Public Use Districts

In Open Space/Recreation and Public Use districts, no sign shall be erected, displayed or maintained except as provided below:

A. Those signs specifically exempt from prohibition, including the display of placards for the expression of political, religious, or public service ideas, so long as the placards remain in the physical possession of a person.

B. Regulatory signs as may be erected by the City, county, state, or their agencies.

C. Signs for the identification of public buildings or public premises, or allowed uses in open space/recreation and public use districts, or valid nonconforming uses existing in open space/recreation and public use districts. These identification signs shall not exceed 20 square feet in area.

D. The Board of Aldermen may permit free-standing signs, public information bulletin boards and exceptions to the maximum area requirement of 20 square feet for signs set out above, as provided for in Sec. 5.2.13. In no event shall any free-standing sign exceed 35 square feet in area in an Open Space/Recreation or Public Use district.

(Ord. No. 51, 02/03/75; Ord. No. 158, 10/18/76; Ord. No. V-90, 09/03/96)

## 5.2.10. Illuminated Signs

A. No sign shall contain any moving parts or flashing or blinking lights so as to create an animated effect, except such portions of a sign which consist solely of indicators of time and temperature.

B. No red or green lights or any lighting effect utilizing such colors shall be used on any sign if, in the opinion of the Chief of Police, such light or lighting effect would create a hazard to the operation of motor vehicles.

C. Any lighting of a sign shall be continuous and shall be either interior, non-exposed or exterior illumination. All illumination shall be of reasonable intensity and shielded in such a manner that all direct light falls on the sign or the wall to which it is affixed and does not shine onto any street or nearby property.

D. No sign shall be lighted between the hours of 11:00 p.m. and 7:00 a.m., except those signs identifying police or fire stations, a residential building, or in the case of a commercial establishment, signs which may be lighted during a period extending from 30 minutes before opening for business and to 30 minutes after closing.

E. The Board of Aldermen may grant a special permit for the illumination of other signs if the Board of Aldermen finds that such illumination is in the public interest.

(Ord. No. 89, 10/06/75; Ord. No. 158, 10/18/76)

## 5.2.11. Construction and Maintenance

A. The construction, alteration, repair and maintenance of all signs, together with their appurtenant and auxiliary devices in respect to structural and fire safety, shall be governed by the provisions of the 780 CMR. Where provisions of this Sec. 5.2. are more restrictive with respect to location, use, size or height of signs and other applicable regulations, this Sec. 5.2.11. shall take precedence.

B. No sign shall be erected so as to obstruct any door, window or fire escape on a building.

C. Any sign which advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at any particular premises shall be removed by the occupant or owner of the premises within 30 days. If any such sign is not removed within 30 days, the Commissioner of Inspectional Services shall give written notification, in hand or by certified mail, return receipt requested, to the owner or occupant of the premises that the Commissioner of Inspectional Services will have such sign removed and assess any costs of the removal to the owner or occupant. If within 30 days from the date of receipt of the notification the sign has not been removed by the owner or occupant, then the Commissioner of Inspectional Services shall remove said sign and assess any costs of the removal to the owner or occupant.

(Ord. No. 158, 10/18/76; Ord. No. R-273, 11/15/82)

## 5.2.12. Nonconforming Signs

A. Any nonconforming sign legally erected prior to the adoption of this Sec. 5.2., or any amendment of this Sec. 5.2., may be continued to be maintained but shall not be enlarged, reworded, redesigned or altered in any way unless it conforms with the provisions contained of this Sec. 5.2.

B. The exemption granted in paragraph A. above shall not apply to any non-accessory sign or to any sign which has been illegally erected, has been abandoned, or has not been repaired or properly maintained.

C. Any sign which has been destroyed or damaged to the extent that the cost of repair or restoration will exceed one-third of the replacement value as of the date of destruction shall not be repaired, rebuilt, restored or changed unless it conforms with this Sec. 5.2.

(Ord. No. 158, 10/18/76)

## 5.2.13. Exceptions

A. In particular instances, the Board of Aldermen may grant a special permit to allow free-standing signs and exceptions to the limitations imposed by this Sec. 5.2. on the number, size, location and height of signs where it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street is such that free-standing signs or exceptions should be permitted in the public interest.

B. In granting such a permit, the Board of Aldermen shall specify the size, type and location and shall impose such other terms and restrictions as it may deem to be in the public interest and in accordance with the 780 CMR. All free-standing signs shall not exceed 35 square feet in area, or 10 feet in any linear dimension, or 16 feet in height from the ground, except as further described in Sec. 5.2.7.

C. Where a single lot is occupied by more than 1 establishment, whether in the same structure or not, there shall not be more than one free-standing sign for each street frontage. In granting such a permit, the Board of Aldermen shall specify the size, type and location of any such sign and shall impose such other forms and restrictions as it may deem to be in the public interest, and in accordance with the 780 CMR.

(Ord. No. 158, 10/18/76)

## 5.2.14. Guidelines

The Director of Planning and Development may from time to time prepare and issue guidelines to clarify the provisions of this Sec. 5.2.

(Ord. No. 158, 10/18/76)

## Sec. 5.3. Stormwater Management

See also Revised Ordinances Chapter 22, Article II, Section 22-22.

A. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped.

B. Projects increasing impervious surface area by more than the lesser of a) 4 percent of lot size or b) 400 square feet, or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the Commissioner of Inspectional Services and the City Engineer to ensure compliance with this Sec. 5.3. The Commissioner of Inspectional Services and the City Engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil.

C. Alteration of attached garage where below required height above grade. In all residential districts, no garage first erected after March 16, 1953, which is an integral part of a dwelling shall be constructed, altered, enlarged, extended or reconstructed where the entrance to such garage is less than 6 inches above the grade established by the City Engineer for the highest point of the back edge of any sidewalk upon which the lot abuts, unless either the Commissioner of Inspectional Services and the City Engineer shall both certify that in their opinion the surface drainage conditions at the location are such as to minimize the danger of flooding of such garage and dwelling. The certificate of opinion required by this Sec. 5.3. may be given either by separate certificate or by endorsement upon the building permit, and shall not be withheld if in fact surface drainage at the location is adequate for the purposes above specified. No certificate of opinion given pursuant to this Sec. 5.3. shall be deemed to be a representation to any person of the accuracy of that opinion nor shall any such certificate involve the City or any officer or employee of the City in any liability to any person.

(Rev. Ords. 1973 §24-19; Ord. No. 190; Ord. No. S-260, 08/03/87; Ord. No. Z-45, 03/16/09)

## Sec. 5.4. Fences & Retaining Walls

### 5.4.1. Fences

Fences are regulated in Revised Ordinances Chapter 5, Article III, Fences.

### 5.4.2. Retaining Walls

A. Defined. A wall or terraced combination of walls, 4 feet in height or greater, to hold a mass of earth material at a higher position. When a combination of walls is placed within a setback, height is measured from the foot of the lowest wall to the top of the highest wall. For the purposes of this Sec. 5.4., a berm with a slope of 1:1 or greater is to be considered a retaining wall.

B. Standards: The placement of a retaining wall of 4 feet or more within a setback requires a special permit.

(Ord. No. Z-45, 03/16/09)

## Sec. 5.5. Landscaping

[Reserved]

## Sec. 5.6. Great Ponds

In all business districts, no building, structure or alteration, enlargement or extension located within 300 feet of a great pond as defined under M.G.L. Chapter 131, Section 1 shall be permitted other than under the procedure in Sec. 7.4., with particular concern to the preservation of public view, enjoyment and access to the great pond.

## Sec. 5.7. Noise

Noise is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 20, Article II, Noise.

## Sec. 5.8. Outdoor Lighting

Outdoor lighting is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 20, Article IV, Light Trespass.

## Sec. 5.9. Tree Protection

Tree protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 21, Article III, Div. 3, Tree Preservation.

# Sec. 5.10. Floodplain, Watershed Protection

Floodplain and watershed protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 22, Article II, Sec. 22-22 et. seq.

# Sec. 5.11. Inclusionary Zoning

## 5.11.1. Purposes

The purposes of this Sec. 5.11. are to:

A. Promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City;

B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity;

C. Mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households;

D. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City;

E. Provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and

F. Establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; A-33, 11/18/13)

## 5.11.2. Definitions

A. "Household Income Limit" shall mean at any given percentage of the area median income (AMI) shall be defined as being the income limit adjusted by household size at that percentage as published by the U.S. Department of Housing and Urban Development (HUD) for the designtated statistical area that includes the City of Newton or, for precentage levels not published by HUD, as calculated by the City based on the HUD AMI calculation.

B. "Inclusionary Unit(s)" shall mean any finished dwelling unit that meets the provisions of Sec. 5.11.4.

C. "Area Median Income ('AMI')" shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the HUD.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)

## 5.11.3. Scope

A. These inclusionary zoning provisions apply to development as follows:

1. Residential development requiring a special permit;

2. Business or mixed-use development requiring a special permit that includes residential development beyond that allowable as of right;

3. Development requiring a special permit where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure; and

4. Open space preservation development requiring a special permit.

B. This Sec. 5.11. does not apply to accessory units or to a conventional subdivision of land under M.G.L. Chapter 41, Sections 81K et. seq. other than a cluster development for open space preservation development.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.4. Inclusionary Units

A. Number Required. Where a special permit is required for development as described in Sec. 5.11.3., inclusionary units shall be provided equaling no fewer that 15 percent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be required. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of ½ or greater shall be deemed to constitute a whole unit. Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental at each point in the marketing of the development.

B. Rent and Sale Price Limits. Rent and sale price limits for inclusionary units shall be set based on the assumption that household size equals the number of bedrooms plus, regardless of the actual number of persons occupying the units, as may be further specificed in guidelines provided by the City in its then-current affordable rent or sales quidelines or, if not specified there, as specified by Massachusetts Department of Housing and Community Development (DHCD) in its Local Initiative Guidelines for 'Maximum Sales and Rents,' as most recently revised at the time of marketing.

1. Sales unit price limit. Inclusionary units for sale shall be priced to be affordable to a household having an income 10 percentage points lower than household income limit for that unit as provided in subparagraphs below and the assumed household size based in paragraph B. above. The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private motgage insurance, property taxes, condominimium and/or homewoner's association fees, hazard insurance, and 1 parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38 percent of their income.

2. Purchase income eligibility limit: fewer than 3 for-sale units. Where fewer than 3 inclusionary units are provided in a development under Sec. 5.11.3., the household income limit for those units shall be 80 percent of the AMI and the inclusionary units shall be priced for affordability to households having incomes of not more than 70 percent of AMI at the time of marketing of the inclusionary units in questions.

3. Rental unit price limt. Inclusionary rental units are to be priced to be affordable to a household having an income at the household income limit for that unit as provided in subparagraphs 4 and 5. For inclusionary units, the monthly rent payment, including 1 parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the inclusionary unit, adjusted downward for any of those services not included. For a hosuehold with a Section 8 voucher, the rent and income are to be as established by the Newton Housing Authority with the approval of HUD.

4. Renter income eligible limit: 2 or more rental units. Where 2 or more inclusionary units are provided for rental in a development under Sec. 5.11.3., the percentage of AMI used for establishing rent and income limits for all inclusionary units in the development shall average no more than 65 percent of the AMI. Alternatively, where 2 or more inclusionary units are provided for rental in a development under Sec 5.11.3., they may be provided such that at least 50 percent of such units are priced for households having incomes at 50 percent of the AMI, and all other remaining inclusionary units are priced for households having incomes at 80 percent of the AMI.

5. Renter income eligibility limit: 1 rental unit. Where only 1 inclusionary unit is provided in a development under Sec. 5.11.3., the inclusionary unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.

C. Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Sec. VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:

1. The Household income limit for the unit exceeds 80 percent of the AMI; or

2. The unit is exempted from this requirement by another provision of this Sec. 5.11.; or

3. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)

## 5.11.5. Cash Payment

A. Eligibility. The inclusionary unit requirements of Sec. 5.11.4. may, if proposed by the applicant in a special permit application, alternatively be met through payment of a fee in lieu of providing those inclusionary units. Such request shall be approved only if the

development (a) contains no more than 6 dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development, makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a fee rather than inclusionary units. The findings shall include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the receipts reserved for appropriation fund.

B. Fee Amount. The first 2 units in a development granted a certificate of occupancy shall require no fee in lieu. For each remaining unit in the development the fee in lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the Planning and Development Department or if rental housing the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the City Assessor.

C. Fee recipient. The fee payment shall be made to a receipts reserved for appropriation fund established by the Board of Aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the Planning and Development Department and shall be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the purposes of this Sec. 5.11. and without undue concentration of units. The Newton Housing Authority and the Department of Planning and Development shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the Board of Aldermen on the use of the proceeds for the purposes stated in this Sec. 5.11.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.6. Off-Site Development

A. Where an applicant has entered into a development agreement with a non-profit housing development organization, inclusionary units otherwise required to be constructed on-site and within the development may be constructed or rehabilitated off site.

B. The applicant and the non-profit housing development organization must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the Board of Aldermen. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.

C. As a condition of granting a special permit for the applicant's development, the Board of Aldermen shall require that off-site inclusionary units shall be completed no later than completion of the applicant's market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of market rate units equal to the number of off-site inclusionary units which have not been completed. Where the Board of Aldermen determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of the applicant and non-profit housing developer, the Board of Aldermen may, in its discretion, permit the applicant to post a monetary bond and release one or more market rate units. The amount of the bond shall be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.7. Design and Construction

In all cases, inclusionary units shall be fully built out and finished dwelling units. Inclusionary units provided on site must be dispersed throughout the development and must be sited in no less desirable locations than the market rate units and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of market rate units in the development, and satisfy the following conditions:

A. Inclusionary units shall have habitable space of not less than 650 square feet for a 1-bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the market rate units with the same number of bedrooms, whichever is greater; provided that inclusionary units shall not exceed 2,000 square feet of habitable space;

B. The bedroom mix of inclusionary units shall be equal to the bedroom mix of the market rate units in the development. In the event that market rate units are not

finished with defined bedrooms, all inclusionary units shall have 3 bedrooms; and

C. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, shall be equal to that of the market rate units in the development, as reviewed by the Planning and Development Department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for inclusionary units.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.8. Habitable Space Requirements

The total habitable space of inclusionary units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all market rate units and all inclusionary units in the proposed development. As part of the application for a special permit under this Sec. 5.11., the applicant shall submit a proposal including the calculation of habitable space for all market rate and inclusionary units to the Planning and Development Department for its review and certification of compliance with this Sec. 5.11. as a condition to the grant of a special permit.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.9. Inclusionary Housing Plans and Covenants

As part of the application for a special permit under this Sec. 5.11., the applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the Planning and Development Department and certified as compliant by the Planning and Development Department. The plan shall include the following provisions:

A. A description of the inclusionary units including at a minimum, floor plans indicating the location of the inclusionary units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the applicant.

B. A marketing and resident selection plan which shall:

1. Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by the City's Human Rights Ordinance in Revised Ordinances, Chapter 12, Article V and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs;

2. Include an affirmative fair housing marketing and tenant selection plan for the inclusionary units based upon the procedures established by the DHCD for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines, Section III, in effect June 1, 2009;

3. Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists; and

4. Provide for local selection preferences for up to 70 percent of the inclusionary units, or such lower share as may be required by other applicable authorities.

C. Preference shall be given for qualified applicants in the following order:

1. Where a development results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference shall be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project.

2. Following that, preference shall be given to any other qualified applicants who fall within any of the following equally weighted categories:

a. Individuals or families who live in the City;

b. Households with a family member who works in the City, has been hired to work in the City, or has a bona fide offer of employment in the City; and

c. Households with a family member who attends public school in the City.

D. Preferences for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall be given to qualified applicants in the following order:

1. First preference for initial occupancy shall be given to applicants who are displaced as a result of the project and who need the features of the unit;

2. To households that include a family member needing the features of the unit and having preference under one or more of the three categories listed in Sec. 5.11.9.B.7.b.;

3. To households that include a family member needing the features of the unit but that do not have a preference under one of the three categories listed in Sec. 5.11.9.B.7.b.; and

4. To households having preference under one or more of the three categories listed in Sec. 5.11.9.B.7.b.

E. Agreement by the applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of eligible households in accordance with the approved marketing and resident selection plan; provided that the listing of eligible households for inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the Planning and Development Department; and provided further that the applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of eligible households.

F. Agreement by the applicant to develop, advertise, and provide a supplemental listing of eligible households to be used to the extent that inclusionary units are not fully subscribed from the Newton Housing Authority or the Planning and Development Department listings of eligible households.

G. Agreement that any special permit issued under this Sec. 5.11. shall require the applicant to execute and record a covenant in the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each inclusionary unit and enduring for the life of the residential development, as follows:

1. For purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit initial sale and subsequent re-sales of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Planning and Development Department which incorporate Sec. 5.11.2.B.2., Sec. 5.11.9.B., Sec. 5.11.9.C., Sec. 5.11.9.D., and Sec. 5.11.9.E.; and

2. For rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit rental of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate Sec. 5.11.2.B.1., Sec. 5.11.9.B., Sec. 5.11.9.C., Sec. 5.11.9.D., and Sec. 5.11.9.E.

H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor, to convey rental units to the Newton Housing Authority for sale or rental to eligible households.

I. In the case of rental housing, an agreement to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this Sec. 5.11.; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-34, 11/18/13)

## 5.11.10. Public Funding Limitation

An applicant shall not use public development funds to construct inclusionary units required under Sec. 5.11. Public development funds shall mean funds for housing construction or rehabilitation if provided throught a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing. However, the applicant may use public development funds to construct those inclusionary units that are found by the Director of Planning and Development to be consistent with the following:

A. Those that represent a greater number of affordable units than are otherwise required by this subsection;

B. Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least 10 percentage points below that stipulated in Sec 5.11.2.; and

C. Those that exceed regulatory requirements in providing for persons having disabilities.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 23/17/14)

## 5.11.11. Elder Housing with Services

In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an applicant seeks a special permit for housing with services designed primarily for elders such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This Sec. 5.11.11. shall not apply to a nursing facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

A. Maximum Contribution. The applicant shall contribute 2½ percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the Director of Planning and Development, based on analysis of verified financial statements and associated data provided by the applicant as well as other data the Director of Planning and Development may deem relevant.

B. Determination. The Board of Aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the Director of Planning and Development. In considering the number of units or beds, the Director of Planning and Development may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The applicant shall provide financial information requested by the Director of Planning and Development if the applicant is making a cash contribution, the contribution shall be deposited in accordance with Sec. 5.11.5.

C. Contributed Units or Beds. Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.

D. Selection. The applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the applicant or manager shall recruit eligible persons and households through an outreach program approved by the Director of Planning and Development. The applicant or manager shall certify its compliance with this Sec. 5.11.10. annually in a form and with such information as is required by the Director of Planning and Development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.

E. Residential Cash Balances. If, after calculation of the number of units or beds to be contributed under this Sec. 5.11.11., there remains an annual cash balance to be contributed, that amount shall be contributed as set out in paragraph B. above. Any such contribution shall not reduce the contribution required in future years.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## 5.11.12. No Segmentation

An applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Sec. 5.11. Where the Board of Aldermen determines that this provision has been violated, a special permit will be denied. However, nothing in Sec. 5.11 prohibits phased development of a property.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.13. No Effect on Prior or Existing Obligations.

The requirements of Sec. 5.11. shall have no effect on any prior or currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under Sec. 5.11 applied for or granted prior to the effective date of this amendment.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.14. No Effect on Accessory Apartments.

The requirements of Sec. 5.11. shall not apply to accessory apartments.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.15. Incentives

A. Density. A density bonus may be granted equal to 1 unit for each additional inclusionary unit provided above the number required by Sec. 5.11.4., up to a limit where lot area per dwelling unit is decreased by up to 25 percent as set forth in Sec. 3.1. or Sec. 3.2., the "Lot area per unit" column, provided that the proposed project, including bonus units, is consistent with the special permit requirements. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 25 percent in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25 percent in minimum amount of open space may be allowed per the requirements of Sec. 3.1. or Sec. 3.2.

B. Expedited Review. Developments in which the percentage of inclusionary units to be provided exceeds 30 percent of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

## Sec. 5.12. Environmental Standards in the Manufacturing Distirct

All uses in a Manufacturing district shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)

PAGE INTENTIONALLY LEFT BLANK

# Article 6. Use Regulations


Sec. 6.1. Use Determination ..... 6-3

Sec. 6.2. Residential Uses ..... 6-3

6.2.1. Single-Family Detached ..... 6-3
6.2.2. Two-Family Detached ..... 6-3
6.2.3. Single-Family Attached ..... 6-3
6.2.4. Multi-Family ..... 6-4
6.2.5. Assisted Living, Nursing Home ..... 6-4
6.2.6. Association of Persons in a Common Dwelling ..... 6-4
6.2.7. Boarding House, Rooming House, Lodging House ..... 6-4
6.2.8. Congregate Living Facility ..... 6-4
6.2.9. Dormitory ..... 6-5
6.2.10. Elderly Housing with Services ..... 6-5
6.2.11. Live/Work Space ..... 6-5
6.2.12. Cluster Development for Open Space Preservation ..... 6-5
6.2.13. Residential Care Facility ..... 6-5
6.2.14. Single-Room Occupancy Dwelling, Single-Person Occupancy Dwelling ..... 6-6

Sec. 6.3. Civic/Institutional Uses ..... 6-6

6.3.1. Cemetery ..... 6-6
6.3.2. Club, Clubhouse ..... 6-6
6.3.3. Community Use Space ..... 6-6
6.3.4. Family Child Care Home, Large Family Child Care Home, Day Care Center ..... 6-6
6.3.5. Government Offices or Services ..... 6-8
6.3.6. Heliport ..... 6-8
6.3.7. Hospital ..... 6-8
6.3.8. Library, Museum or Similar Institution ..... 6-9
6.3.9. Nonprofit Institution ..... 6-9
6.3.10. Public Use ..... 6-9
6.3.11. Rail/Bus Station ..... 6-9
6.3.12. Religious Institution ..... 6-9
6.3.13. Sanitarium, Convalescent or Rest Home, Other Like Institution ..... 6-9
6.3.14. School or Other Educational Purposes ..... 6-10
6.3.15. Theatre, Hall ..... 6-10

Sec. 6.4. Commercial Uses ..... 6-10

6.4.1. Animal Service ..... 6-10
6.4.2. ATM, Standalone ..... 6-10
6.4.3. Bakery, Retail ..... 6-10
6.4.4. Bank ..... 6-10
6.4.5. Bowling Alley ..... 6-10
6.4.6. Business Incubator ..... 6-10
6.4.7. Business Services ..... 6-10
6.4.8. Car-Sharing Service, Car Rental, Bike Rental, Electric Car-Charging Station ..... 6-11
6.4.9. Car Wash ..... 6-11
6.4.10. Country Club Facilities ..... 6-11
6.4.11. Drive-In Business ..... 6-11
6.4.12. Dry Cleaning or Laundry, Retail ..... 6-11
6.4.13. Fast Food Establishment ..... 6-11
6.4.14. Fuel Establishment ..... 6-11
6.4.15. Funeral Home ..... 6-11
6.4.16. Health Club ..... 6-12
6.4.17. Hotel or Lodging Establishment ..... 6-12
6.4.18. Job Printing ..... 6-12
6.4.19. Kennel ..... 6-12
6.4.20. Office ..... 6-12
6.4.21. Office of a Contractor, Builder, Electrician, Plumber or Similar Enterprises ..... 6-12
6.4.22. Open-Air Business ..... 6-12
6.4.23. Outdoor Storage ..... 6-12
6.4.24. Parking Facility ..... 6-12
6.4.25. Personal Service ..... 6-12
6.4.26. Place of Amusement, Indoor and Outdoor ..... 6-12
6.4.27. Radio or Television Transmission Station ..... 6-12
6.4.28. Research and Development ..... 6-12
6.4.29. Restaurant ..... 6-13
6.4.30. Retail Sales ..... 6-13
6.4.31. Service Establishment ..... 6-13
6.4.32. Stable ..... 6-13
6.4.33. Taxidermist ..... 6-13
6.4.34. Vehicle Repair Shop ..... 6-13
6.4.35. Vehicle Sales and Service Facility ..... 6-14
6.4.36. Veterinary Hospital ..... 6-14

Sec. 6.5. Industrial Uses ..... 6-14

6.5.1. Assembly or Fabrication of Materials Manufactured Off Premise ..... 6-14
6.5.2. Bakery, Wholesale ..... 6-14
6.5.3. Boat Building, Storage and Repair ..... 6-14
6.5.4. Bottling Works ..... 6-14
6.5.5. Building Materials Sales Yard and Storage Building ..... 6-14
6.5.6. Contractor's Yard ..... 6-14
6.5.7. Feed and Seed Store ..... 6-14
6.5.8. Food Processing, Wholesale ..... 6-14
6.5.9. Laboratory and Research Facility ..... 6-14
6.5.10. Laundry, Cleaning and Dyeing Establishment ..... 6-15
6.5.11. Manufacturing ..... 6-15
6.5.12. Paint Store ..... 6-15
6.5.13. Printing, Publishing and Reproduction Establishments ..... 6-15
6.5.14. Sign Painting Shop ..... 6-15
6.5.15. Telecommunications and Data Storage Facility ..... 6-15
6.5.16. Trash or Yard Waste, Collection, Storage, Transfer-Haul or Composting ..... 6-15
6.5.17. Vehicle Storage ..... 6-15
6.5.18. Wholesale Business or Storage Facility ..... 6-16
6.5.19. Wholesale Distribution Plant ..... 6-16

Sec. 6.6. Open Space Uses ..... 6-16
6.6.1. Agriculture ..... 6-16
6.6.2. Indoor Recreation Facility ..... 6-16
6.6.3. Outdoor Recreational Activities, Private ..... 6-16
6.6.4. Resource Extraction ..... 6-16
6.6.5. Riding School, Stock Farm ..... 6-16

Sec. 6.7. Accessory Uses ..... 6-17
6.7.1. Accessory Apartments ..... 6-17
6.7.2. Commercial Vehicle Parking ..... 6-20
6.7.3. Home Business ..... 6-20
6.7.4. Scientific Research and Development Activities ..... 6-22
6.7.5. Watchman or Caretaker ..... 6-22

Sec. 6.8. Temporary Uses ..... 6-22

Sec. 6.9. Wireless Communication Equipment ..... 6-23
6.9.1. Purpose ..... 6-23
6.9.2. Definitions ..... 6-23
6.9.3. Design and Operating Criteria ..... 6-23
6.9.4. Wireless Communication Equipment Allowed As-of-Right ..... 6-24
6.9.5. Wireless Communication Equipment Allowed by Special Permit ..... 6-25
6.9.6. Special Permit Procedure ..... 6-27
6.9.7. Wireless Mesh Networks Allowed by Permit with a Majority Vote of the Board of Aldermen ..... 6-27
6.9.8. Administrative Site Plan Review for Wireless Communication Equipment ..... 6-29
6.9.9. Exceptions ..... 6-29

Sec. 6.10. Restricted Uses ..... 6-30
6.10.1. Adult Entertainment Uses ..... 6-30
6.10.2. Keno ..... 6-32
6.10.3. Registered Marijuana Dispensaries ..... 6-33

## Sec. 6.1. Use Determination

A. Interpretations by the Commissioner of Inspectional Services. 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. When determining whether a proposed use is similar to a listed use, the Commissioner of Inspectional Services will consider the following criteria:

1. The actual or projected characteristics of the proposed use;
2. The relative amount of lot area or floor area and equipment devoted to the proposed use;
3. Relative amounts of sales;
4. The customer type;
5. The relative number of employees;
6. Hours of operation;
7. Building and lot arrangement;
8. Types of vehicles used and their parking requirements;
9. The number of vehicle trips generated;
10. Signs;
11. How the proposed use is advertised;
12. The likely impact on surrounding properties; and
13. Whether the activity is likely to be found independent of the other activities on the lot.

B. Uses Not Specifically Listed. A use not specifically listed is prohibited unless the Commissioner of Inspectional Services determines the use to be part of a listed use as described in paragraph A. above.

C. Commissioner of Inspectional Services Action. Following a determination by the Commissioner of Inspectional Services, a written record shall be kept by the Planning and Development Department.

## Sec. 6.2. Residential Uses

### 6.2.1. Single-Family Detached

A. Defined. See Sec. 1.5.1.

B. Standards. In the Business 1, Business 2, Business 3 and Business 4 districts, a single dwelling unit in existence as of January 1, 2000, is allowed to continue, but only on a lot abutted on 2 or more sides by lots in residence districts and subject to the density and dimensional controls for the abutting residentially-zoned lots.

### 6.2.2. Two-Family Detached

A. Defined. See Sec. 1.5.1.

B. Standards. In the Business 1, Business 2, Business 3 and Business 4 districts, a dwelling with 2 units in existence as of January 1, 2000, is allowed to continue, but only on a lot abutted on 2 or more sides by lots in residence districts and subject to the density and dimensional controls for the abutting residentially-zoned lots.

### 6.2.3. Single-Family Attached

A. Defined. See Sec. 1.5.1.

B. Standards.

1. Single Residence Districts. No building may be located within 25 feet of any property boundary line.
2. Multi-Residence Districts. No parking space shall be located within 20 feet of a boundary line and no driveway shall be located within 10 feet of a side or rear lot line.

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

## 6.2.4. Multi-Family

A. Defined.

1. Multi-Family. See Sec. 1.5.1.

2. Residential Use, Above Ground Floor [reserved]

3. Residential Use, Ground Floor [reserved]

B. Standards.

1. In the Business 1 through Business 4, Mixed Use 2, and Mixed Use 4 Districts. Multi-family residential is an allowed use in upper stories of a building containing allowed commercial uses on the ground floor.

2. In the Multi-Residence 4 District. A special permit is required, subject to the following conditions:

a. Business Services. Where deemed necessary by the Board of Aldermen because of the number of residents to be accommodated on the lot or tract, business facilities for the individual convenience of the residents, such as barbershops, beauty parlors, tailors, shoe repair shops and similar personal services, newsstands, drugstores, food shops, dining rooms and similar retail uses, medical and related professional services, gasoline selling and service stations and parking lots and similar services may be conducted within a multi-family dwelling except that dining rooms with related facilities may be conducted within a building attached to and made an integral part of a multi-family dwelling but shall not exceed 2 percent of the gross floor area of all buildings containing dwelling units; provided, that there shall be no entrance to such a place of business except from the inside of the building, except for gasoline selling and service stations and parking lots; there shall be no signs or advertising matter pertaining to such business services outside of any building and no illuminated signs in the windows of the business facilities, and the gross floor area of the business services including dining rooms and related facilities shall not exceed 5 percent of the gross floor area of all buildings containing dwelling units;

b. No building shall be closer to any other building on the lot or tract than a distance equal to the sum of their heights nor in any case closer than 50 feet. The Board of Aldermen may permit buildings to be erected closer to each other in cases where by reason of the location or size of the buildings on such lot or tract and the relationship of one building to another, there is assurance of adequate light, air and privacy, and the approval of the site plans by the Board of Aldermen shall constitute the granting of such permission.

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

## 6.2.5. Assisted Living, Nursing Home

A. Defined. [reserved]

## 6.2.6. Association of Persons in a Common Dwelling

A. Defined. A group of 5 or more persons 18 years of age or older, who are unrelated by blood, marriage or adoption living together in a common dwelling.

(Ord. No. T-57, 11/20/89)

## 6.2.7. Boarding House, Rooming House, Lodging House

A. Defined. Any dwelling designed, occupied or intended for occupancy by 4 or more lodgers (defined as a person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals; and who is not a member of the housekeeping unit). Includes rooming house, lodging house.

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

## 6.2.8. Congregate Living Facility

A. Defined. An association of persons living together in a shared living environment which integrates shelter and service needs of elderly, functionally impaired or functionally isolated persons who are otherwise in good health and can maintain a semi-independent lifestyle and who do not require constant supervision or intensive health care as provided by an institution. Each resident may have a separate bedroom, living room, kitchen, dining area or bathroom, or may share living, dining, and bathroom facilities with other persons. Such

facility shall be deemed an association of persons living together in a single dwelling and not a lodging house.

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

## 6.2.9. Dormitory

A. Defined. A building owned or controlled directly or indirectly by a religious or educational non-profit institution (excepting a nonprofit hospital) providing sleeping quarters for 5 or more unrelated persons.

B. Standards. In all residence districts, the construction, alteration, enlargement, extension or reconstruction of a building or structure as, and the use of a building, structure or land for, a dormitory providing sleeping quarters for 20 or more persons must meet the following conditions:

1. Building location. A dormitory shall not be closer to any other building on the same lot than 50 feet.

2. Courts.

a. An inner court shall have a minimum dimension at least equal to twice the average height of the surrounding walls and shall have an opening at ground level with a minimum height of 18 feet and a minimum width of 18 feet to permit access to service and emergency vehicles.

b. An outer court shall be open to the full extent of its width at least equal to 1.5 times the average height of the surrounding walls and a depth no greater than its width.

c. The area of any court which exceeds 15 percent of the "Minimum Open Area" required shall not be included in the calculation of that minimum open area.

C. Site Plan Review. Dormitories are subject to the Site Plan Review procedures in Sec. 7.4.

(Rev. Ords. 1973 §24-18; Ord. No. S-260, 08/03/87; Ord. No. S-322, 07/11/88)

## 6.2.10. Elderly Housing with Services

A. Defined. Elderly housing with services, including residential care facilities, assisted living facilities and congregate care facilities.

B. Standards. In the business districts, the Board of Aldermen may grant a special permit for elderly housing with services with a lot area of no less than 400 square feet per dwelling unit.

(Ord. No. T-183, 11/04/91)

## 6.2.11. Live/Work Space

A. Defined. [reserved]

## 6.2.12. Cluster Development for Open Space Preservation

A. Defined. [reserved]

B. Standards. See Sec. 3.3.3.

## 6.2.13. Residential Care Facility

A. Defined. A residential care facility shall consist in part of independent dwelling units, and shall contain a combination of central cooking and dining facilities, recreation facilities and shall provide to all its residents, specified medical services, which medical services shall include, but are not limited to, nursing and dietary assistance, together with the availability on the premises of full-time nursing care in a licensed care facility, provided that at least 1 occupant of each dwelling unit shall be at least 65 years of age or older.

B. Standards.

1. In the Multi-Residence 3 District. A special permit is required, subject to the following conditions:

a. The ratio of gross floor area devoted to residential purposes to lot area shall not exceed 0.67. Such gross residential floor area shall include hallways, stairwells, utility rooms and other similar areas which are directly accessory to independent dwelling units. Such gross residential floor area shall not include garage, library, activity, office, medical care, eating, assembly or other special supportive areas;

b. The Board of Aldermen may establish a limitation upon the maximum number of persons to be permitted per dwelling unit; and the Board of Aldermen may establish a minimum staff requirement for the residential care facility, provided, however, that the Board of Aldermen may, if circumstances warrant, grant a special permit, for construction of a residential care facility with a lesser lot area

per dwelling unit, a lesser number of parking spaces per dwelling unit, a greater gross floor area or a greater gross residential floor area ratio, but in no case:

i. With less than 850 square feet of lot area per dwelling unit;

ii. With a gross floor area ratio of more than 2.0;

iii. With a gross residential floor area ratio of more than 1.34;

iv. With less than 0.25 parking spaces per dwelling unit.

(Ord. No. 31, 12/02/74; Ord. No. R-14, 07/09/79; Ord. No. V-307, 06/19/00)

### 6.2.14. Single-Room Occupancy Dwelling, Single-Person Occupancy Dwelling

A. Defined. [reserved]

## Sec. 6.3. Civic/Institutional Uses

### 6.3.1. Cemetery

A. Defined. A burial ground or graveyard. Cemetery includes:

1. Chapel or crematorium situated on the grounds of and operated in connection with a cemetery; and

2. Service buildings and greenhouses in cemeteries, provided these are used entirely for the private purposes of the cemetery and not for business purposes.

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

### 6.3.2. Club, Clubhouse

A. Defined.

1. Club. Any organization of persons having a common purpose, provided that said purpose is not a profit venture.

2. Clubhouse. Any building or structure used, in whole or in part, by a club.

B. Standards. In residence districts, a clubhouse shall maintain the appearance of a residential building or structure of type and character similarly located within such zone and further provided that the lot area covered by such building, structure, driveways and required parking shall not exceed 50 percent.

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

### 6.3.3. Community Use Space

A. Defined. Space that is open to the public and used for, but not limited to, ball courts, gymnasium, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.

(Ord. No. T-264, 03/01/93; Ord. No. Z-108, 04/17/12)

### 6.3.4. Family Child Care Home, Large Family Child Care Home, Day Care Center

A. Defined.

1. Family Child Care Home. As defined and licensed under M.G.L. Chapter 15D, Section 1A, a private residence which on a regular basis receives for

temporary custody and care not more than 6 children at a time.

2. Large Family Child Care Home. As defined and licensed under M.G.L. Chapter 15D, Section 1A, a private residence which on a regular basis receives for temporary custody and care up to and including 10 children at a time.

3. Day Care Center. As defined and licensed under M.G.L. Chapter 15D, Section 1A, a facility which on a regular basis receives for temporary custody and care more than 10 children at a time.

B. Standards.

1. Purpose. The purpose of this Sec. 6.3.4. is to accommodate child care needs of the general public in all areas of the city, to distinguish between family child care homes and day care centers which are more intensely used, to encourage larger facilities to co-locate within other existing large institutions, to encourage safe access and egress, and to minimize potential congestion at drop-off and pick-up times.

2. Family Child Care Homes, Large Family Child Care Homes. Minimum lot size shall be 5,000 square feet.

3. Day Care Center. Day care centers which are accessory to religious and non-profit educational institutions, shall follow the procedures and criteria for review for the institution, and meet the provisions and standards set forth below: Day care centers which are not accessory to religious or non-profit institutions must meet the provisions and standards set forth below.

a. Landscaping: A dense year-round vegetative buffer at least 4 feet wide and 6 feet high shall be provided along the perimeter of any outdoor play area. Any fence required by the Office for Child Care Services shall be located inside the required vegetative buffer. All landscaping that is required under this provision shall be maintained in good condition and, if diseased or dying, shall be replaced by the operator of the facility with new plant material of a similar size.

b. Parking. Day care centers shall comply with the parking requirements of Sec. 5.1., except that in residence district, there shall be provided a dense year-round vegetative buffer with dimensions as described in Landscaping above. Day care centers shall comply with the provisions of Sec. 5.1.9 relating to the screening of parking areas, excepting the dimensions for the vegetative buffer.

c. Drop-off. In addition to complying with the parking requirements of Sec. 5.1., there shall be provided for drop-off and pick-up at least 1 on-site parking space for each 5 children or fraction thereof. Such parking spaces shall comply with the applicable parking setback requirements and parking dimensional and design standards of Sec. 5.1.7. or Sec. 5.1.8.

d. Parking Management and Compliance Plan. The operator of a day care center shall submit to the Director of Planning and Development a parking and drop-off management plan which shall outline where and when staff shall park as well as the alleviation of potential congestion during peak drop-off and pick-up times as required herein. Said plan shall be reviewed by the City Traffic Engineer, and the Engineer's recommendations shall be sent to the Director of Planning and Development. Upon completion of said review process, the Director of Planning and Development shall indicate, in writing, to the Commissioner of Inspectional Services whether there has been compliance by the operator with the procedural requirements stated herein, and whether, in his opinion, the owner has complied with this Chapter. This statement shall be made within 60 days after receipt of the parking management and compliance plan.

e. Trash Location and Screening Plan: The operator of a day care center shall also submit to the Director of Planning and Development a trash location and screening plan which shall provide the precise means and location of trash collection and removal as well as screening therefor to alleviate health and aesthetic concerns.

f. Compliance with Office for Child Care Services Regulations. Until the operator of a day care center provides to the Director of Planning and Development evidence of current valid licensure by the Office for Child Care Services, the day care center shall not be eligible for issuance of a Certificate of Occupancy, but shall be eligible for issuance of a temporary Certificate of Occupancy if the Commissioner of Inspectional Services upon review certifies that the day care center is in compliance with all other applicable requirements.

(Ord. No. V-173, 05/18/98)

## 6.3.5. Government Offices or Services

A. Defined. [reserved]

## 6.3.6. Heliport

A. Defined. An area used by helicopters or other steep-gradient aircraft for the purpose of picking up or discharging passengers or cargo, but not including facilities for helicopter fuel, service, maintenance or overhaul, or sale of products.

B. Standards. In the Business 1, Business 5, Limited Manufacturing and Manufacturing districts, the Board of Aldermen may give site plan approval and grant a special permit for the location, operation and utilization of heliports subject to the following conditions:

1. In addition to the information required in Article 7., there shall be submitted with each request for permission to construct, operate or utilize a heliport, a site plan showing the direction of the prevailing winds, the approach-departure pattern, including the horizontal plan and elevation profile of the flight paths to be used, and distances to surrounding residential areas or residential zoning districts. There shall be submitted an approach-departure profile which shall show it clear of all obstructions and in conformity with Federal Aviation Agency and Massachusetts Aeronautics Commission regulations and recommendations.

2. The flight plan and approach-departure pattern may be modified at any time by the Board of Aldermen upon its own motion or upon petition by any interested City board or official or other interested person in accordance Article 7, provided, such modifications are not inconsistent with the requirements of any federal or state regulatory authority having jurisdiction.

3. No portion of a heliport shall be nearer than 200 feet to a residence district. A heliport shall not be used for sales, repairs or servicing of any kind, and no advertising sign or material shall be located on the heliport or on the structures or fences thereon. No helicraft shall operate from a heliport between the hours of 11:00 p.m. and 6:00 a.m.

4. Heliport landing areas shall have a minimum area 100 feet by 100 feet which shall be completely paved and shall be kept free from loose material. The land area shall be completely and permanently enclosed by a fence at least 4 feet in height, which fence shall be a wind deflection fence if the landing area is constructed on a building or other elevated place.

5. Heliport landing areas shall be provided with means for the safe collection and disposition af fuel spilled in an emergency. Adequate fire protection and fire-fighting equipment shall be provided in accordance with federal, state and local requirements, and shall be regularly inspected and tested.

6. Heliport landing areas shall be provided with marking, lighting and wind direction indications in conformity with Federal Aviation Agency and Massachusetts Aeronautics Commission regulations and recommendations.

7. The Board of Aldermen may require evidence of certification and approval by the Massachusetts Aeronautics Commission, the Federal Aviation Agency, Civil Aeronautics Board or other appropriate agencies prior to the granting of a special permit for a heliport.

8. A special permit granted under this Sec. 6.3.6. shall expire 1 year after approval and subsequent annual renewals may be granted by the Board of Aldermen without public hearing unless the Board of Aldermen shall vote to require such a public hearing.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87)

## 6.3.7. Hospital

A. Defined. [reserved]

## 6.3.8. Library, Museum or Similar Institution

A. Defined. [reserved]

## 6.3.9. Nonprofit Institution

A. Defined. An institution or organization organized and operated for welfare and philanthropic purposes and serving the general welfare of the City.

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

## 6.3.10. Public Use

A. Defined. Land, structures and buildings used or designed, arranged or constructed for 1 or more of the following purposes:

1. Public streets and highways;
2. Commons;
3. Public gardens;
4. Parks and conservation areas;
5. Playgrounds;
6. Public parking lots;
7. Railroads;
8. Waterworks reservations;
9. Public purposes;
10. Publicly-owned cemeteries;
11. Other uses similar or accessory to those listed above.

B. Standards.

1. Public uses shall be subject only to site plan review and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement. Where the City of Newton is the owner, the building must be constructed in accordance with Revised Ordinances, Chapter 5, Section 5-58.
2. In Open Space Districts, recreational uses shall not permit the operation of motorized recreational vehicles (other than golf carts) such as automobiles used for races of any sort, dirt bikes, motorcycles, snowmobiles, dune buggies or motor boats, nor shall sports stadiums be permitted as either a principal or accessory use. Includes accessory purposes as are proper and usual, provided that buildings or structures do not exceed 700 square feet in gross floor area or provided seating facilities, whether permanent or temporary, are not in excess of 20 seats.

(Ord. No. Z-108, 04/17/12)

## 6.3.11. Rail/Bus Station

A. Defined. [reserved]

## 6.3.12. Religious Institution

A. Defined. A church, synagogue, house of worship, or other uses for religious purposes, or a non-profit educational corporation, and such accessory uses that are proper and usual, on land owned or leased by a religious sect or denomination.

B. Standards.

1. Administrative Site Plan Review. In all districts, the construction, alteration, enlargement, reconstruction, use or change of use for a religious institution shall be subject to the dimensional regulations of the respective zoning district and the parking regulations of Sec. 5, and is subject to the Administrative Site Plan Review procedure in Sec. 7.2. For purposes of this section "Alteration" shall mean those modifications which produce an increased parking demand pursuant to the requirements in Sec. 5.
2. Special Permit Required.
   a. A special permit is required for the construction, alteration, enlargement, reconstruction, use or change of use for a religious institution that cannot meet the parking regulations in Sec. 5.
   b. Any accessory use not considered a proper and usual accessory to a religious institution requires a special permit.

(Ord. No. S-287, 12/07/87)

## 6.3.13. Sanitarium, Convalescent or Rest Home, Other Like Institution

A. Defined. [reserved]

### 6.3.14. School or Other Educational Purposes

A. Defined. Any building or part of a building used as a public or private educational institution containing 1 or more rooms, with provisions for 2 or more pupils, provided that a school or other use for educational purposes shall not include a correctional facility, and is either a.

1. Non-Profit. A school or other educational use on land owned or leased by a religious sect or denomination, or the Commonwealth of Massachusetts or any agencies, subdivisions or bodies politic, or nonprofit educational corporation; or

2. For-Profit. [reserved]

B. Standards.

1. Non-Profit. A non-profit school or other educational use is subject to the standards of Sec. 7.5.2.

a. Administrative Site Plan Review. In all districts, the construction, alteration, enlargement, reconstruction, use or change of use for a School or Other Educational Purpose shall be subject to the dimensional regulations of the respective zoning district and the parking regulations of Sec. 5. For purposes of this section "Alteration" shall mean those modifications which produce an increased parking demand pursuant to the requirements in Sec. 5.

b. Special Permit Required. The construction, alteration, enlargement, reconstruction, use or change of use for a School or Other Educational Purpose that cannot meet the parking regulations in Sec. 5..

2. For-Profit. A for-profit school or other education use requires a special permit.

3. Vegetative Buffer Required. In Single Residence 1 and 2 districts where a multi-use institution and dormitories with more than 3 acres of land abuts single residence uses or is separated from such uses by an adjacent street, a 60 foot vegetative buffer shall be maintained from all property lines of the institutional use and for those exceeding 10 acres of land, the vegetative buffer shall be a minimum of 100 feet, and for those exceeding 20 acres of land, the vegetative buffer shall be a minimum of 150 feet.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87)

### 6.3.15. Theatre, Hall

A. Defined. [reserved]

## Sec. 6.4. Commercial Uses

### 6.4.1. Animal Service

A. Defined. Animal Services, including but not limited to sales and grooming and veterinary services; excluding overnight boarding.

(Ord. No. A-4, 10/01/12)

### 6.4.2. ATM, Standalone

A. Defined. A standalone automated teller machine (ATM) not located on the same lot as a bank, trust company or other banking institution.

### 6.4.3. Bakery, Retail

A. Defined. A bakery selling products at retail and only on premise.

### 6.4.4. Bank

A. Defined. Bank, trust company or other banking institution.

B. Standards.

1. Drive-in facilities are prohibited in the Business 1 through 4, Mixed Use 1 and 2, and Limited Manufacturing districts.

(Ord. No. S-260, 08/03/87; Ord. No. T-12, 03/20/89; Ord. No. T-75, 03/05/90)

### 6.4.5. Bowling Alley

A. Defined. [reserved]

### 6.4.6. Business Incubator

A. Defined. [reserved]

### 6.4.7. Business Services

A. Defined. [reserved]

### 6.4.8. Car-Sharing Service, Car Rental, Bike Rental, Electric Car-Charging Station

A. Defined. [reserved]

### 6.4.9. Car Wash

A. Defined. An establishment for washing automobiles where 3 or more vehicles may be washed simultaneously.

(Rev. Ords. 1973 §24-1)

### 6.4.10. Country Club Facilities

A. Defined. Dining rooms, conference or meeting facilities and clubhouses associated with a country club or golf course.

### 6.4.11. Drive-In Business

A. Defined. A retail or consumer use of land or a building in which all or part of the business transacted is conducted by a customer from within a motor vehicle. Includes drive-in food establishments.

(Ord. No. 312, 02/05/79)

### 6.4.12. Dry Cleaning or Laundry, Retail

A. Defined. [reserved]

### 6.4.13. Fast Food Establishment

A. Defined.

1. Fast Food Establishment. An establishment whose primary business is the sale of food for consumption on or off the premises which is:

   a. Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;

   b. Available upon a short waiting time; and

   c. Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

(Ord. No. 22, 10/07/74)

### 6.4.14. Fuel Establishment

A. Defined.

1. Fuel Establishment. Any business, including a gasoline service station, which for wholesale or retail sales or any combination thereof, expands an existing capacity or introduces on-site fuel, petroleum products, gas, LNG, or propane for residential, commercial, industrial or motor vehicle use or sales, in an amount in excess of 5,000 gallons. Excluded are residential properties storing 5,000 gallons of fuel oil or less.

2. Gasoline Service Station. A building or structure or part of a building or structure used in connection with tanks, pumps and other appliances for supplying motor vehicles with gasoline, compressed air, oil, water and similar supplies, and accessories and/or used in connection with making minor repairs and adjustments on motor vehicles, other than structural repairs.

3. Fuel Oil Distributor. Any business which stores fuel oil above or underground for the purposes of direct resale to retail customers of the fuel oil distributor or to other fuel oil distributors.

B. Standards. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities.

(Rev. Ords. 1973 §24-1; Ord. No. 301, 11/06/78; Ord. No. S-260, 08/03/87)

### 6.4.15. Funeral Home

A. Defined. [reserved]

B. Standards. In the mulit-residence districts:

1. No portion of the lot or tract shall be further than 500 feet from a business district;

2. The proprietor, manager or a person in charge shall maintain a permanent residence in the funeral home; and

3. Hearses used by the funeral home and stored on the premises shall be garaged under cover.

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

## 6.4.16. Health Club

A. Defined. A commercial establishment which as its primary purpose provides facilities for individual physical health activities, such as aerobic exercise, running and jogging, use of exercise equipment, saunas, showers, massage rooms and lockers. Such establishments are operated as a business even if open only to members and their guests on a membership basis and not to the public at large paying a daily admission fee.

(Ord. No. X-10, 03/18/02)

## 6.4.17. Hotel or Lodging Establishment

A. Defined. A building or several buildings containing 6 or more sleeping rooms for guests, other than a dormitory, lodging house or apartment house.

B. Standards.

1. In a Business 5 district, in addition to the density and dimensional controls set forth in Sec. 4.1.3., the lot or tract of land shall have a minimum area of 2 acres and 25 percent of the lot or tract of land shall be in landscaped area.

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

## 6.4.18. Job Printing

A. Defined. [reserved]

## 6.4.19. Kennel

A. Defined. [reserved]

## 6.4.20. Office

A. Defined. Offices for professional, business, or medical purposes, excluding the retail sale of tangible personal property from a stock of goods on the premises.

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

## 6.4.21. Office of a Contractor, Builder, Electrician, Plumber or Similar Enterprises

A. Defined. Office of a contractor, builder, electrician, plumber or similar enterprises, together with such storage buildings as are necessarily appurtenant thereto.

B. Standards. No outside storage is permitted and no more than 40 percent of the total gross floor area may be used for storage.

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

## 6.4.22. Open-Air Business

A. Defined. A business conducted outdoors, without any primary structures.

## 6.4.23. Outdoor Storage

A. Defined. Areas for outside storage, display and sale of goods and materials.

B. Standards. No lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting as the Board of Aldermen shall approve by special permit.

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

## 6.4.24. Parking Facility

A. Defined.

1. Single Level [reserved]
2. Multi-Level [reserved]
3. Accessory [reserved]
4. Non-Accessory [reserved]
5. Public [reserved]

## 6.4.25. Personal Service

A. Defined. Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop off.

(Ord. No. Z-108, 04/17/12)

## 6.4.26. Place of Amusement, Indoor and Outdoor

A. Defined. [reserved]

## 6.4.27. Radio or Television Transmission Station

A. Defined. [reserved]

B. Standards. Wireless communication equipment shall be subject to Sec. 6.9.

## 6.4.28. Research and Development

A. Defined. [reserved]

## 6.4.29. Restaurant

A. Defined. An establishment where the principal activity is the service or sale of food or drink for on-premises consumption.

B. Standards for Allowed Uses

1. In the Business 1 through 4, Mixed Use 2 and 4 districts, restaurants having not more than 50 seats.

2. In the Mixed Use 3 district, restaurants having not more than 5,000 square feet of gross floor area.

3. In all districts, outdoor sidewalk seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

C. Standards for Special Permit Uses

1. In the Business 1 through 4 districts, restaurants having over 50 seats which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation shall not apply to a hotel or motel restaurant.

2. In a Limited Manufacturing district, restaurant, pastry shop, coffee shop, fast food establishment, drive-in food service establishment, or other such establishment when such establishment dispenses food products between 10:30 p.m. and 6:00 a.m., but not including in this paragraph any such business operated as part of a hotel or motel.

3. In a Mixed Use 1 district, restaurants and businesses which hold a Common Victualler-All Alcoholic, or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area.

4. In a Mixed Use 2 district, restaurants over 50 seats, and such businesses which hold a Common Victualler – All Alcoholic or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City.

5. In the Mixed Use 3 district, restaurants with more than 5,000 square feet of gross floor area.

6. In all districts, outdoor sidewalk seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. X-20, 05/06/02; Ord. No. A-13, 03/18/13)

## 6.4.30. Retail Sales

A. Defined. Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise.

B. Standards.

1. In a Mixed Use 1 district, a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area.

(Ord. No. Z-108, 04/17/12)

## 6.4.31. Service Establishment

A. Defined. Business service establishments, including but not limited to copying and printing establishments and shipping services.

(Ord. No. Z-108, 04/17/12)

## 6.4.32. Stable

A. Defined.

1. Private. A building or part of a building in which 1 or more horses are kept and used in connection with the business of the owner or tenant for other purposes than sale, rent or hire.

2. Public. A building or part of a building in which horses are kept for compensation.

(Rev. Ords. 1973 §24-1)

## 6.4.33. Taxidermist

A. Defined. [reserved]

## 6.4.34. Vehicle Repair Shop

A. Defined. A building or part of a building in which repairs are made to motor vehicles, or a repair shop in a garage or other building in which heavy machinery is used. An

automobile school shall be regarded as a vehicle repair shop.

1. Minor. A part of a garage where minor structural repairs are made to motor vehicles for profit, by means of lathes, vises and other appliances, but not by means of heavy machinery.

2. Major. [reserved]

(Rev. Ords. 1973 §24-1)

### 6.4.35. Vehicle Sales and Service Facility

A. Defined. The display, sales, storage and service of motor vehicles and the repair of motor vehicles performed in connection with said sales.

B. Standards. In the Business 2 and Mixed Use 1 districts, no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of the vehicles as the Board of Aldermen shall approve.

(Ord. No. S-260, 08/03/87; Ord. No. V-44, 11/20/95)

### 6.4.36. Veterinary Hospital

A. Defined. [reserved]

B. Standards. In the Mixed Use 4 district, a veterinary hospital is allowed by special permit, but may not have overnight boarding not related to medical care.

(Ord. No. V-87, 07/06/96)

## Sec. 6.5. Industrial Uses

### 6.5.1. Assembly or Fabrication of Materials Manufactured Off Premise

A. Defined. [reserved]

B. Standards. In a Mized Use 2 district, no building associated with assembly or fabrication of materials may be larger than 10,000 square feet.

### 6.5.2. Bakery, Wholesale

A. Defined. A bakery selling products at wholesale and not on premise.

### 6.5.3. Boat Building, Storage and Repair

A. Defined. Shipbuilding, small boat building, yards for storage and repair.

B. Standards. In the manufacturing districts, No ships or boats are located within 100 feet of a residence district.

(Ord. No. S-260, 08/03/87; T-65, 12/18/89)

### 6.5.4. Bottling Works

A. Defined. [reserved]

B. Standards. No bottling of alcoholic beverages allowed.

### 6.5.5. Building Materials Sales Yard and Storage Building

A. Defined. [reserved]

### 6.5.6. Contractor's Yard

A. Defined. Office and storage of vehicles and materials for a contractor or builder.

### 6.5.7. Feed and Seed Store

A. Defined. [reserved]

### 6.5.8. Food Processing, Wholesale

A. Defined. [reserved]

B. Standards. No meat, fish, vinegar, yeast or fat processing.

### 6.5.9. Laboratory and Research Facility

A. With No Recombinant DNA

1. Defined. Research and development facility, laboratory or research facility with no recombinant DNA research or technology, as defined in Revised Ordinances Chapter 12, Sections 12-20 et. seq.

2. Standards.

   a. No recombinant DNA research or technology is involved.

   b. In the Business 5 district, the facility is exclusively for research purposes with no manufacturing on the premises.

B. With Recombinant DNA. Research and development facility, laboratory or research facility that includes recombinant DNA research or technology, as defined in Revised Ordinances Chapter 12, Sections 12-20 et. seq.

(Ord. No. S-260, 08/03/87; Ord. No. T-319, 12/20/93)

## 6.5.10. Laundry, Cleaning and Dyeing Establishment

A. Defined. [reserved]

## 6.5.11. Manufacturing

A. Defined. Manufacturing includes:

1. Canvas products, fabrication and sales;

2. Glass fabrication or installation;

3. Ice manufacturing or storage;

4. Light metal fabrication such as sheet metal, ducts, gutters and leaders;

5. Lightweight and nonferrous metal casting (no noxious fumes);

6. Machine shop (excluding presses over 10 tons), plumbing shop, blacksmith shop;

7. Molding, shaping or assembly from prepared materials (including repairs) of boxes, staging, toys, stationery, novelties, paper boxes, toilet preparations, drugs, perfumes, flavoring extracts, medical and hygienic appliances, clothing, textiles, hats, leather and sporting goods, mattresses, store, house, office, theater, playground equipment, signs, musical instruments, art goods, industrial models, tools, appliances or electrical goods;

8. Optical, scientific instrument and jewelry manufacturing;

9. Wearing apparel fabrication and processing; and

10. Other similar manufacturing uses.

B. Standards. Such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)

## 6.5.12. Paint Store

A. Defined. [reserved]

## 6.5.13. Printing, Publishing and Reproduction Establishments

A. Defined. [reserved]

## 6.5.14. Sign Painting Shop

A. Defined. [reserved]

## 6.5.15. Telecommunications and Data Storage Facility

A. Defined. A facility for the operation, monitoring and maintenance of telecommunications switching equipment, data storage computers, internet connectivity routers, and ancillary equipment.

(Ord. No. W-34, 03/05/01)

## 6.5.16. Trash or Yard Waste, Collection, Storage, Transfer-Haul or Composting

A. Defined. On-site collection or storage for wholesale sale of trash or yard waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials.

(Ord. No. W-33, 03/05/01)

## 6.5.17. Vehicle Storage

A. Defined. Motor vehicle storage, including outside storage of an automobile dealer's inventory of motor vehicles

B. Standards. No vehicles are located within 100 feet of a residential district and no automotive sales or repairs are

conducted. No lighting shall be allowed except such as is necessary for the safety and protection of the public.

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

### 6.5.18. Wholesale Business or Storage Facility

A. Defined. [reserved]

B. Standards.

1. In the Limited Manufacturing and Business 2 Districts. No outside storage.

2. In the Manufacturing District. No on-site collection or storage for wholesale sale of trash or yard waste of any sort (including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials).

(Ord. No. W-33, 03/05/01)

### 6.5.19. Wholesale Distribution Plant

A. Defined. [reserved]

## Sec. 6.6. Open Space Uses

### 6.6.1. Agriculture

A. Defined. Includes horticulture, silviculture, floriculture and viticulture.

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

### 6.6.2. Indoor Recreation Facility

A. Defined. Indoor swimming pools, indoor tennis courts, or similar indoor recreational activities.

### 6.6.3. Outdoor Recreational Activities, Private

A. Defined. Includes, but is not limited to, golf courses, boating, play areas, nature studies and walks.

B. Standards. Shall not permit the operation of motorized recreational vehicles (other than golf carts) such as automobiles used for races of any sort, dirt bikes, motorcycles, snowmobiles, dune buggies or motor boats, nor shall sports stadiums be permitted as either a principal or accessory use.

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

### 6.6.4. Resource Extraction

A. Defined. The removal of resources such as sod, loam, subsoil, sand or gravel from the premises for the purpose of sale.

B. Standards. Resource extraction requires a special permit.

### 6.6.5. Riding School, Stock Farm

A. Defined. [reserved]

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

# Sec. 6.7. Accessory Uses

## 6.7.1. Accessory Apartments

A. Accessory Apartment Defined. A separate dwelling unit located in a single- or two-family dwelling or in a detached building located on the same lot as a single- or two-family dwelling, as an accessory and subordinate use to the residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.

1. Internal. An accessory apartment located within a single- or two-family dwelling and the owner of the dwelling occupies either the principal dwelling unit or the accessory apartment;

2. Detached. An accessory apartment not located within a dwelling unit but is located in a separate detached accessory structure, and the owner of the dwelling unit occupies either the principal dwelling unit or the detached accessory apartment.

B. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;

2. The dwelling unit must have been constructed 10 or more years prior to the date of application for permit to construct an accessory apartment under this Sec. 6.7.1., as evidenced by a certificate of occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing dwelling on or before a date at least 10 years prior to the date of application;

3. The property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;

4. When ownership of the property changes, the new owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with the decision, this Chapter and the 780 CMR; and

5. The owner of the subject property shall file with the Commissioner of Inspectional Services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

C. Accessory Apartments Allowed By Right

1. Standards. An internal accessory apartment is allowed by right as a use accessory to an owner-occupied single-family dwelling, subject to Sec. 6.7.1.F, provided that:

a. The accessory apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total building size in the dwelling, whichever is less;*

b. There shall be no more than 2 exterior landings which may be covered which do not exceed 50 square feet in area, and are not within the setback area;*

c. Stairs shall not be located within the setback;*

d. Additions and exterior alterations to the structure made within 4 years prior to application may not be applied towards meeting the requirements of Sec. 6.7.1.F.,*

e. No more than 1 accessory apartment shall be allowed per lot;

f. There shall be no lodgers in either the original dwelling unit or the accessory apartment;

g. Parking shall comply with Sec. 5.1; and

h. There shall be screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination.

* Requirements marked with an asterisk may be altered by special permit.

D. Accessory Apartments Allowed by Special Permit.

1. By Special Permit. The Board of Aldermen may grant a special permit for an accessory apartment as a use accessory to an owner-occupied single-family dwelling in a single residence district, a nonconforming two-family dwelling in a single residence district, or a single- or two-family dwelling in a Multi-Residence 1 or 2 district, or a detached structure, provided that the building and lot size provisions of Sec. 6.7.1.F. are met, except as amended below.

   a. In a single residence district the accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, or 33 percent of the total building size of the dwelling, whichever is more;

   b. In a Multi-Residence 1 and 2 district the accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet;

   c. Exterior alterations required to meet applicable Building, Fire or Health codes are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood.

   d. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single-family dwelling or a nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of the accessory apartment as provided in this Sec. 6.7.1., whichever is greater.

   e. No additions or exterior alterations beyond those in the final grant of a application may be proposed to enlarge the accessory apartment within 2 years of receipt of a special permit hereunder this subsection from the Board of Aldermen.

E. Accessory Apartment Overlay Districts

1. An accessory apartment is allowed in an Overlay District according to the provisions of this Sec. 6.7.1. and Sec. 6.7.1.F.

2. District Boundaries. The following land, as noted on the Official Zoning Map , is placed in an Accessory Apartment Overlay District as specified:

   a. Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.

   b. Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.

   c. Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.

   d. Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

F. Lot Size and Building Size

| Accessory Apartment | Lot Size (Min sf) | Building Size (Min sf) |
|---|---|---|
| SR1 | | |
| By Right | 25,000 | 4,000 |
| Special Permit | 15,000* | 3,200 |
| SR2 | | |
| By Right | 15,000 | 3,100 |
| Special Permit | 10,000* | 2,600 |
| SR3 | | |
| By Right | 10,000 | 2,500 |
| Special Permit | 7,000* | 1,800 |
| Nonconforming two-family dwelling in SR1, SR2, SR3 | | |
| Special Permit | 25,000* | 2,600 |
| MR1, MR2 | | |
| Special Permit | 8,000 | 2,600 |
| Overlay District A | | |
| By Right | 43,500 | 4,400 |
| Special Permit | 15,000* | 3,200 |
| Overlay District B | | |
| By Right | 16,000 | 3,600 |
| Special Permit | 10,000* | 2,600 |
| Overlay District C | | |
| By Right | 10,000 | 3,100 |
| Special Permit | 7,000* | 1,800 |
| Overlay District D | | |
| By Right | 30,000 | 4,000 |
| Special Permit | 15,000* | 3,200 |

* If constructed on lot created prior to 12/7/1953

G. Building Size

In determining the building size with regard to ccessory apartments, the building size shall be determined as follows:

1. Gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the Assessing Department unless otherwise indicated on floor plans prepared by a registered professional architect;

2. Existing unfinished space in basements and attics which would be finished for use as an accessory apartment shall be considered in the building size;

3. Existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment on the porch;

4. Existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment in the detached structure; and

5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet 780 CMR requirements for floor to ceiling height as specified in Section R305.

H. Pre-Existing Units. A pre-existing accessory apartment in a single- or two-family dwelling unit or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional standards above provided the following criteria are fulfilled:

1. Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described here shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1999 and ongoing from that date forward by submission of probative documentary evidence to the Commissioner of Inspectional Services. Records including, but not limited to the following, may be submitted:

   a. A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or

   b. Assessing Department records for the premises indicating the existence of the second dwelling unit; or

   c. Records of Internal Revenue Service tax returns for the owners of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income,

deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or

d. Permits from the Department of Inspectional Services, other than the actual building alteration permit which provided for construction of the dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the second dwelling unit; or

e. Sworn affidavits by former or present tenants of the second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or

f. Any other documentary evidence which is material and relevant and demonstrates the existence of the second dwelling unit as of December 31, 1999 and forward.

2. Standard of Proof.

a. Conflicting Evidence. If the documentary evidence available is conflicting, the Commissioner of Inspectional Services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1999 and forward from that date is supported by a preponderance of evidence.

b. If no Department of Inspectional Services records or Assessing Department records are available for a given premises, then sworn, notarized affidavits as provided above shall be presumed to be reliable, unless there is substantial evidence to the contrary.

3. Requirements. The requirements of Sec. 6.7.1. C.1.a., b., c., d., e., f., g., and h. must be satisfied.

I. 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))

## 6.7.2. Commercial Vehicle Parking

A. Defined: The parking of any vehicle, conveyance or piece of mechanized equipment in a residence district which is used to further any business, trade, profession or employment, and which meets any 1 or more of the following criteria:

1. There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment;

2. It is used to store in a manner or place that is visible from outside of the vehicles any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment;

3. It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge;

4. Its length is more than 18 feet;

5. Its width is more than 7 feet;

6. It has a mechanized dumping capability;

7. It has a plow blade or plow blade frame or other device attached, or a plow blade or other device is stored on the premises.

B. Standards: In a residence district commercial vehicles shall not:

1. Exceed 18 feet in length or 7 feet in width;

2. Contain more than 4 square feet of advertising on any one side; and

3. Be stored between any front line of the principal building and the street line, or in the side or rear setback unless stored within a garage or other enclosure.

Ord. No. V-288, 03/20/00)

## 6.7.3. Home Business

A. Defined. Any commercial activity conducted within a dwelling unit by the residents thereof as an accessory use to the residential use of the dwelling unit, provided that no sale of merchandise, whether retail or wholesale, takes place on the premises, except as expressly

permitted by the provisions of Sec. 6.7.3.B.1.e. The term home business shall include, but is not limited to:

1. The studio of an artist, musician, photographer or writer;
2. Small group or individual instruction or tutoring;
3. Tailoring;
4. Millinery;
5. Crafts;
6. Word processing;
7. Computer software development;
8. Telephone solicitation;
9. A manicurist;
10. An office of a sales or manufacturer representative; and
11. An office of a physician, dentist, lawyer, architect, registered engineer, accountant, psychologist, social worker or other professional.

The term "home business" shall not include the following:

1. A clothing rental business;
2. A barber shop;
3. A hairdresser;
4. A restaurant;
5. A repair shop, whether for small appliances or otherwise;
6. A real estate broker;
7. An orchestra or instrumental music group;
8. An antique shop;
9. An animal hospital; or
10. Businesses similar to those enumerated.

B. Standards.

1. In Single Residence districts, a single home business per dwelling unit is permitted as an accessory use so long as such home business does not violate any of the following conditions:

a. The home business shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit, and shall not change the residential character of the dwelling;

b. Irrespective of the location of the home business within the dwelling unit, the total area of the dwelling unit utilized for the home business shall not exceed 30 percent of the ground floor area of the dwelling unit or 30 percent of the gross floor area of an individual apartment if the dwelling unit is located in a multifamily dwelling;

c. Not more than 1 nonresident shall be employed in a secretarial or like position in a home business, except that a physician or dentist may employ 1 technician in a capacity supportive of the practice of the resident professional in addition to 1 secretary;

d. Not more than 3 customers, pupils or patients for business or instruction shall be present at any one time;

e. There shall be no on-premises storage of merchandise for sale in any instance where the home business is primarily a direct mail-order or telephone-order business, except in instances where the merchandise for sale is produced entirely on the premises;

f. There shall be no exterior display or exterior storage of merchandise, and no exterior indication of the home business other than 1 non-illuminated identification sign not to exceed 1 square foot in area;

g. There shall be no retail or wholesale sale of merchandise on the premises;

h. The home business shall not produce noise, vibration, glare, fumes, odors, electrical interference or traffic congestion beyond that which normally occurs in the immediate residential area, nor shall the home business result in the repeated disruption of the

peace, tranquility, or safety of the immediate residential neighborhood;

i. In addition to the parking required by Sec. 5.1.4. for residential use of the dwelling unit, off-street parking designed in compliance with the requirements of Sec. 5.1.4. shall be provided as follows:

i. 1 parking stall for each 200 square feet, or fraction thereof, of floor area used for the home business.

ii. If more than 1 parking stall is required for the home business, the total number of parking stalls required shall be reduced by 1 stall;

j. In any dwelling which has an accessory apartment, there shall be no more than 1 home business which shall be located in the principal dwelling unit; and

k. The Board of Aldermen may grant a special permit for a home business involving any or all of the following:

i. A number of nonresident employees greater than that permitted under Sec. 6.7.5.B.;

ii. The utilization for the purpose of the home business of more than 30 percent of the ground floor area of the dwelling unit;

iii. The presence of more than 3 customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the associated activity;

iv. The use of a detached accessory building, exterior structure, or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of Sec. Sec. 6.7.1.C. or Sec. 6.7.1.D.; and

v. The waiver of the off-street parking requirement.

2. In Multi-Residence Districts. The Board of Aldermen may grant a special permit for a home business in accordance with standards listed in 6.7.3.B.1.

(Ord. No. 191, 01/17/77; Ord. No. S-260, 08/03/87; Ord. No. T-264, 03/01/93)

### 6.7.4. Scientific Research and Development Activities

A. Defined. Activities necessary in connection with scientific research or scientific development or related production, accessory to activities permitted as a matter of right, so long as it is found that the proposed accessory use does not substantially derogate from the public good.

B. Standards. Notwithstanding anything in this Sec. 6.7.4., no recombinant DNA research shall be permitted as an accessory use.

(Ord. No. R-238, 03/15/82)

### 6.7.5. Watchman or Caretaker

A. Defined. [reserved]

## Sec. 6.8. Temporary Uses

[reserved]

# Sec. 6.9. Wireless Communication Equipment

## 6.9.1. Purpose

The purpose of this Sec. 6.9. is to accommodate the communications needs of the general public in the City while protecting the public safety, and general welfare of the community by minimizing the adverse visual effects of wireless communication equipment towers, facilities and devices, by providing safeguards for the general public, by avoiding potential damage to adjacent properties, and by maximizing the use of existing towers and buildings, by concealing new equipment within or on existing towers or buildings, and by encouraging co- location of equipment to accommodate the needs of wireless communication in order to reduce the number of towers needed to serve the community.

(Ord. No. V-156, 01/05/98)

## 6.9.2. Definitions

These definitions are to be used for purposes of this Sec. 6.9.

Wireless communication equipment. Any device or other apparatus, fixed at a location, for transmission and reception of telecommunication that performs the function of antennas, together with any supporting structures, equipment and facilities ancillary and/or accessory thereto, including, but not limited to, panel antennas, whip antennas, free-standing monopoles (not lattice shaped towers except as allowed in Sec. 6.9.4.B. below), dish and cone shaped antennas, satellite earth station antennas, personal wireless communication systems facilities, paging service facilities, cellular telephone service facilities, mobile radio service facilities and related equipment boxes.

Wireless Mesh Network. A comprehensive wireless communication network comprised of wireless communication equipment consisting of multiple peer radio access points or repeaters small enough to be mounted on the arm of existing municipal light or power poles, as allowed by the review process under Sec. 6.9.7.

Antenna. A device, usually a metal rod, dish or panel, for receiving and transmitting electromagnetic signals, including, but not limited to radio, video, telephone or data transmissions.

Building-mounted wireless communication equipment. Is comprised of roof-mounted and facade-mounted wireless communication equipment.

Facade-mounted wireless communication equipment. Wireless communication equipment attached to a vertical wall, exterior surface or ornamental feature other than the roof of a building or structure.

Interior-mounted wireless communication equipment. Wireless communication equipment that is wholly within a building or structure, including such equipment within a mechanical penthouse, steeples, bell towers, cupolas or other architectural features which are not completely enclosed.

Roof-mounted wireless communication equipment. Wireless communication equipment attached to the primary roof of the building.

Satellite earth station antenna. An antenna intended for transmission or reception of communications to or from 1 or more other satellite earth stations by means of 1 or more reflecting satellites.

(Ord. No. V-156, 01/05/98; Ord. No. Z-26, 05/19/08)

## 6.9.3. Design and Operating Criteria

All wireless communication equipment, except that described in Sec. 6.9.4.A. and Sec. 6.9.4.H., must satisfy the following criteria and the applicable procedures of Sec. 6.9.6. or Sec. 6.9.7.:

A. Wireless communication equipment shall be installed, erected, maintained and used in compliance with all applicable federal and state laws and regulations, including, but not limited to, radio frequency emissions regulations issued pursuant to the Telecommunications Act of 1996 including all successors to such laws and regulations. An applicant seeking to construct or install wireless communication equipment shall submit a report from a qualified engineer or other appropriate professional certifying that the proposed equipment meets the requirements of these regulations. This report shall be submitted prior to any administrative review, site plan approval or special permit application or at the time of a building permit application if there is no such review.

B. Wireless communication equipment must at all times be maintained in good and safe condition and comply with all applicable FCC standards and shall be removed within 30 days of the date when all use of

such equipment ceases. This provision shall apply to all wireless communication equipment and structures in support of that equipment, including such equipment and structures existing on the effective date of this Sec. 6.9. Continued compliance with these conditions shall be maintained by the operator of the equipment and the owner of the structure. Failure to comply with these conditions shall constitute a zoning violation.

C. All wireless communication equipment shall be sited, screened and/or painted or otherwise colored or finished to blend in with the building or structure on which it is mounted or in a manner which aesthetically minimizes the visibility of the devices in the surrounding landscape or on the building or structure to which they are attached. In certain circumstances, additional architectural features or changes to the facade may be necessary to maintain the balance and integrity of the design of the building or structure with building-mounted wireless communication equipment.

D. Any fencing used to control access to wireless communication equipment shall be compatible with the visual character of the structures in the surrounding neighborhood to the extent possible.

E. Equipment boxes for building-mounted wireless communication equipment must be either interior to the building on which it is located, completely camouflaged, and/or completely screened from view from the public way.

F. All free-standing wireless communication equipment must meet any setback requirements for the district in which it is located and, to the greatest extent possible, shall be screened from the public way by fencing and/or landscaping. Such equipment shall be located in the rear yard of the lot on which it is located.

G. No part of any building-mounted wireless communication equipment shall be located over a public way.

H. The construction of wireless communication equipment shall avoid major topographic changes and shall minimize the removal of trees and soil in order for any topographic changes to be in keeping with the appearance of neighboring properties.

I. The installation of wireless communication equipment shall avoid the removal or disruption of historic resources on and off-site. Historic resources shall include designated historic structures or sites, historical architectural elements or archaeological sites and shall comply with the requirements of the historic district and the landmark preservation ordinances.

J. There shall be no illumination of the wireless communication equipment except as required by state and federal law.

K. Equipment owned and operated by an amateur radio operator shall be constructed at the minimum height necessary to effectively accommodate amateur radio communications in order to minimize the aesthetic impact. The relative safety and aesthetic impact of different style towers or antennas shall be taken into consideration during the administrative site plan review process outlined in Sec. 6.9.8.

L. Wireless communication equipment must at all times be maintained and operated in a way which meets the standards of any ordinance of the City pertaining to noise ("Noise Ordinance"). An applicant seeking to construct or install any external noise producing equipment ancillary to antennas shall use best efforts to minimize noise emanating from such equipment by the use of air-tight seals and noise absorbing materials on the walls and ducts of such equipment. The applicant shall also submit a report from a qualified acoustical engineer or other appropriate professional certifying that the proposed equipment meets the requirements of the Noise Ordinance. This provision shall apply to all wireless communication equipment and structures existing on the effective date of this Sec. 6.9. Failure to comply with any such ordinance shall constitute a zoning violation.

(Ord. No. V-156, 01/05/98)

## 6.9.4. Wireless Communication Equipment Allowed As-of-Right

The following wireless communication equipment is allowed as-of-right, subject to the design and operating criteria of Sec. 6.9.3. and the review process in Sec. 6.9.7., if applicable:

A. Equipment used solely for receiving or transmitting wireless communication customary for private residential use, even if such equipment is used in conjunction with non-residential structures, including but not limited to, a conventional television or radio antenna, fixed wireless personal communication system, direct broadcast satellite antenna 1 meter or less in

diameter, and multipoint distribution service antenna or home satellite dish of not more than 2 meters in diameter or measured diagonally.

B. Equipment owned and operated by an amateur radio operator licensed by the FCC, which device shall be installed at the minimum height necessary for the functioning of amateur radio communication in accordance with the licensing requirements for that location. Such equipment, which may include a ground-mounted lattice style tower, shall be allowed in accordance with the setback requirements for primary structures in the district in which it is located and the administrative site plan review process outlined in Sec. 6.9.7. below. No commercial use of equipment or supporting structures which were installed for amateur radio operation is permitted.

C. All interior-mounted wireless communication equipment is allowed in business, manufacturing and mixed-use districts. In residence districts interior-mounted wireless communication equipment shall be permitted in existing steeples, bell towers, cupolas and spires of non-residential buildings or structures existing on January 5, 1998.

D. Roof-mounted wireless communication equipment is allowed in business, manufacturing and mixed use districts if it meets the following conditions:

| Height of building | Maximum height of equipment above the highest point of the roof | Required setback from edge of roof or building |
|---|---|---|
| More than 36′ | 12′ above roof or 20% of building height, whichever is greater | ½ foot for every foot of equipment height, including antenna |
| 10-36′ | 10′ | 1′ for every foot of equipment height, including antenna |

E. If there is a parapet on any building or structure which does not exceed 36 feet in height and if the roof-mounted wireless communication equipment will be transmitting or receiving in the direction of that parapet, the required setback from the edge or edges of the roof of the building at or beyond the parapet shall be reduced by the height of such parapet. The height of a parapet shall not be used to calculate the permissible maximum height of roof-mounted wireless communication equipment. For the purposes of this Sec. 6.9., a parapet is that part of any wall entirely above the roof line.

F. Facade-mounted equipment located in the Business, Manufacturing and Mixed Use districts:

1. Which does not extend above the face of any wall or exterior surface in the case of structures that do not have walls;

2. Which does not extend by more than 18 inches out from the face of the building or structure to which it is attached; and

3. Which does not obscure any window or other architectural feature.

G. Interior-mounted wireless communication equipment in the cupolas, spires or towers of buildings in a Public Use district.

H. Satellite earth station antennas not otherwise exempt in Sec. 6.9.4.A., which do not exceed 2 meters in diameter and which are located in Business, Manufacturing and Mixed Use districts.

I. With prior notice to the Clerk of the Board of Aldermen, exterior-mounted antennas, with a power source, not to exceed 10 feet in height as measured from the lowest point of attachment, screened from view in some manner and solely for municipal use on existing municipal structures in Public Use districts.

(Ord. No. V-156, 01/05/98; Ord. No. Z-26, 05/19/08)

## 6.9.5. Wireless Communication Equipment Allowed by Special Permit

The following wireless communication equipment is allowed by special permit, pursuant to the procedures outlined in Sec. 6.9.6.:

A. Any interior-mounted wireless communication equipment in non-residential buildings or structures not otherwise allowed in Sec. 6.9.4.C.

B. Any roof-mounted wireless communication equipment which does not meet the requirements of Sec. 6.9.4.D. on a non-residential building in any district.

C. Facade-mounted wireless communication equipment which does not meet the requirements of Sec. 6.9.4.F.

D. Building-mounted or interior-mounted wireless communication equipment not otherwise permitted under Sec. 6.9.4.G. located in a public use district.

E. Satellite earth station antennas not otherwise allowed as-of-right in Sec. 6.9.4.A. and Sec. 6.9.4.H.

F. Any building-mounted wireless communication equipment on multi-family structures in residence districts not otherwise allowed as-of-right.

G. Free-standing monopoles meeting the following criteria:

1. Free-standing monopoles shall be no higher than 100 feet.

2. The setback for a free-standing monopole shall be at least 125 feet from the property line.

3. The setback for a free-standing monopole shall also be at least 4 feet for every 1 foot of antenna height from the nearest residential structure and/or public right of way and 2 feet for every 1 foot of antenna height from the nearest non-residential structure.

4. Co-location of wireless communication equipment on existing towers and buildings is encouraged. The applicant for a wireless communication monopole shall demonstrate that the communication equipment planned for the proposed structure cannot be accommodated on an existing or approved tower, structure or building within a one-half mile search radius of a proposed monopole for 1 or more structural, technical, economic or other reasons as documented by a qualified engineer or other qualified professional including, but not limited to the following:

a. No such tower, structure or building exists.

b. The structural capacity of the existing tower, structure or building is inadequate and cannot be modified at a reasonable cost, the proposed equipment will interfere with the usability of existing equipment.

c. The owner of an appropriate tower, structure or building has effectively denied permission to co-locate by unreasonable delay or commercially unreasonable terms or conditions.

d. The height of an existing tower, structure or building is not adequate to permit the proposed equipment to function.

5. Every special permit issued by the Board of Aldermen for a new monopole or tower shall be automatically subject to the condition that the permit holder must allow co-location upon the structure by other wireless communication providers upon commercially reasonable terms and conditions and without unreasonable delay, if such co-location is technically feasible. It is expressly provided that any requirement imposed by a permit holder which requires the payment of rent in excess of industry standards or which allows the co-location only if the requesting party provides comparable space on 1 of its structures to the permit holder shall be deemed to be commercially unreasonable.

H. Modification or addition of wireless communication equipment on or to existing free-standing monopoles or towers, except those monopoles and towers constructed for the purposes allowed in Sec. 6.9.4.B.

I. In a public use district wireless communication equipment attached to existing light or power poles, provided that the total height from the ground to the top of the antenna does not exceed 60 feet and provided that all control and operating equipment associated with the antenna can be mounted on the same pole at a height no less than 20 feet above the ground or camouflaged or completely screened from view in some other manner.

J. Any equipment ancillary to antennas otherwise allowed under Sec. 6.9.3. and Sec. 6.9.4., which cannot be located in the rear yard or does not meet the setback requirements for the district in which it is located. An applicant may apply for a special permit allowing an alternate location by showing that such equipment:

1. Is required for successful transmission or reception or is otherwise required by the FCC;

2. Cannot due to its size or other health or safety reasons be located within the building; and

3. Cannot be located in the rear yard or within applicable setbacks for 1 or more of the following reasons:

a. The size of the equipment;

b. The size of the rear, front or side yards;

c. The location within the rear yard or applicable setbacks would result in the removal of required parking; and

d. The aesthetic purposes of the ordinance would be better served by such alternate location.

(Ord. No. V-156, 01/05/98)

## 6.9.6. Special Permit Procedure

Where a special permit is required for wireless communication equipment, a written application for a special permit shall be submitted in accordance with Sec. 7.3. Whenever an application for a special permit is required for wireless communication equipment, site plan approval in accordance with the provisions of Sec. 7.4., except Sec. 7.4.5.B., shall also be required and an application for such approval shall be filed concurrently with the application for special permit. The procedures for special permit set forth in Sec. 7.3.2., except for Sec. 7.3.2.F., shall apply. The Board of Aldermen may grant a special permit subject to conditions, safeguards and limitations set forth here, when, in its judgment, the purposes stated in this Sec. 6.9. and the applicable design and operating criteria have been satisfied.

(Ord. No. V-156, 01/05/98)

## 6.9.7. Wireless Mesh Networks Allowed by Permit with a Majority Vote of the Board of Aldermen

A. Purpose. In a Public Use district, wireless communication equipment consisting of radio access points or repeaters for wireless mesh networks may be installed on the bracket arms of existing municipal light or power poles by majority vote of the full Board of Aldermen, acting on the advice and after hearing by the committee having jurisdiction over grants of location for utility poles, so long as the Board of Aldermen finds that:

1. The purposes of this Sec. 6.9. are met;

2. The design and operating criteria of Sec. 6.9.3. are met;

3. The total height from the ground to the top of any antenna involved in such equipment does not exceed 60 feet and provided that all control and operating equipment associated with any access point can be mounted on the same bracket arm at a height no less than 20 feet above the ground or colored or finished to blend in with the bracket arm on which it is mounted to be as visually unobtrusive as reasonably as possible; and

4. The applicant has demonstrated not only substantial public but also a municipal benefit from the installation and operation of such a network.

B. Review. Applications for construction, expansion, addition to, rebuilding or conversion of wireless mesh networks shall be reviewed by the Board of Aldermen. Review by the Board of Aldermen shall not be required where network work involves maintenance, repair or replacement of existing access points. De minimis modifications to the network, including an increase in number of devices limited to 10 percent above the number of access points approved by the Board of Aldermen or the location of an access point nearer than 200 feet to the next nearest access point may be approved by the Director of Planning and Development, after notice to the Clerk of the Board and the Commissioner of Public Works.

C. Applications. A written application for review of a wireless mesh network, on forms to be provided by the Department of Planning and Development, shall be submitted by delivery or registered mail, return receipt requested, to the Clerk of the Board of Aldermen, who shall transmit such application to the Board of Aldermen and the Department of Planning and Development.

D. Notification. The applicant shall notify immediate abutters to the network pathways where access points are to be installed and make the same notice by publication for two consecutive weeks in a newspaper of general circulation, and shall provide certification of such notification to the Clerk of the Board. The Board of Aldermen, acting by and through its committee with jurisdiction over the filing of applications for public utility easements and poles, shall hold a public hearing on such application within 65 days of the application being filed with the Clerk of the Board, and certified as complete by the Director of Planning and Development as if the subject of a special permit under this Sec. 6.9.

E. Expiration. Any approval of an application for a wireless mesh network shall lapse not later than 1 year from the grant of such approval unless construction required

by such site plan approval has begun. The Board of Aldermen 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, unless the Board of Aldermen or its committee with jurisdiction over the original application 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 approval for more than 2 years from the date of the grant of the requested relief.

F. Ongoing Commitment. The applicant shall submit to and maintain with the Department of Planning and Development current as-built drawings for the locations of all devices to be installed as part of the mesh network.

G. Contents of the Application. A completed application shall include:

1. A forecast of network access point locations. Such forecast shall include a system map or maps depicting the geographic extent of the network pathways;
2. The expected distance between access points, including a total number of access points to be installed, and any impact on tree cover;
3. Photographs showing a representative access point as it would be mounted on each type of existing light or power pole;
4. Drawings, dimensioned and to scale, of the proposed access point as installed on each type of existing light or power pole, as well as a sample device to be made available for inspection;
5. Structural analysis certifying that the access point may be safely installed on each type of existing light or power pole;
6. Equipment specifications and radio frequency emissions calculations for a typical access point; and
7. A demonstration of substantial municipal and public benefit.

H. Criteria for any Wireless Mesh Network. In order to be eligible for any approval under this Sec. 6.9.7., a wireless mesh network must meet the following criteria in addition to those findings specified above:

1. Only 1 access point may be installed on the bracket arm of any existing municipal light or power pole.
2. The installation shall be made to be as visually unobtrusive as possible.
3. All equipment must be low-powered and in compliance with FCC regulations.
4. The access point equipment shall be as small as possible and shall not exceed 14 inches in any dimension, exclusive of any antennas, so long as the antennas are no longer than 30 inches.
5. No installation shall extend more than 5 feet above or 2 feet below the height of any existing municipal light or power pole to which it is attached.
6. No commercial signage or advertising may be affixed to any network component.
7. Existing trees and vegetation shall be protected as much as possible.

I. Repair and Upkeep of any Wireless Mesh Network. All wireless mesh network devices shall be maintained in good order and repair. Paint finishes shall be maintained and repaired when blemishes are visible from the public way. The applicant shall provide an inspection schedule, and shall file copies of inspections with the Director of Planning and Development.

J. Insurance. The applicant shall continuously insure its wireless mesh network components against damages to persons or property in an amount established by the Commissioner of Public Works based upon the nature and extent of the proposed network. On an annual basis, the applicant shall provide a Certificate of Insurance, in which the City shall be specifically listed as an additional insured, to the Commissioner of Public Works.

K. Bond or Other Financial Surety. All unused access points or parts thereof shall be removed within 1 year of the cessation of use at the owner's expense. The applicant shall post and submit a bond or other financial surety acceptable to the Commissioner of Public Works in an amount sufficient to cover the cost of dismantling and removing the access points in the event the Commissioner of Inspectional Services deems it to have been abandoned for more than 1 year. The amount shall be certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts.

(Ord. No. V-156, 01/05/98; Ord. No. Z-26, 05/19/08)

## 6.9.8. Administrative Site Plan Review for Wireless Communication Equipment

A. Application. Except for wireless communication equipment described in Sec. 6.9.4.A. or Sec. 6.9.4.H., no wireless communication equipment shall be constructed or installed until an application has been submitted to the Commissioner of Inspectional Services with 2 copies of an accompanying site plan showing the location of the device along with any buildings, lot lines, easements and rights of way and also an elevation showing details of the device. The applicant shall simultaneously send a copy of the application and 5 copies of the plans to the Director of Planning and Development. The applicant shall also notify in writing immediate abutters and the Aldermen of the Ward in which the device is to be erected, installed or used of such application.

B. Report. The Director of Planning and Development shall submit an advisory report to the Commissioner of Inspectional Services within 3 weeks of the application filing date. In making the advisory report, the Director of Planning and Development shall evaluate the application based on the requirements of Sec. 6.9.3. and may seek input from relevant City agencies including, but not limited to the Urban Design Commission, Newton Historical Commission, Historic District Commission or any other City agency. The Commissioner shall not approve a permit for wireless communication equipment until the advisory report of the Director of Planning and Development has been received or 3 weeks have elapsed without receipt of such report, and until all required agency approvals have been issued. The Commissioner of Inspectional Services has the authority to deny any building permit application which the Commissioner determines does not comply with the requirements of Sec. 6.9.3.

(Ord. No. V-156, 01/05/98)

## 6.9.9. Exceptions

In extraordinary instances, the Board of Aldermen may grant a special permit to allow for exceptions to the provisions of this Sec. 6.9. if the Board of Aldermen makes a determination that the applicant has shown that literal compliance would result in unreasonable discrimination among providers of functionally equivalent services or would have the effect of prohibiting the provision of personal wireless communication services as defined in Section 704 of the Telecommunications Act of 1996. Such exceptions may be conditioned to the extent possible to further the purposes set forth in this Sec. 6.9.

(Ord. No. V-156, 01/05/98)

# Sec. 6.10. Restricted Uses

## 6.10.1. Adult Entertainment Uses

A. Purpose. The purpose of this Sec. 6.10.1. is to address and mitigate the secondary effects of adult entertainment uses that are referenced and defined herein. Secondary effects have been shown to include urban blight, increased crime, adverse impacts on the business climate of a city, adverse impacts on property values, adverse impacts on the tax base and adverse impacts on the quality of life in a city. All of said secondary impacts are adverse to the health, safety, and general welfare of the City and its inhabitants.

B. Intent. The provisions of this Sec. 6.10.1. have neither the purpose nor the intent of imposing a limitation on the content of any communicative matter or materials, including sexually-oriented matter or materials. Similarly, it is not the purpose or intent of this ordinance to restrict or deny access by adults to adult entertainment establishments or to sexually-oriented matter or materials that are protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights of distributors or exhibitors of such matter or materials. Neither is it the purpose or intent of this ordinance to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

C. Definitions. Adult Entertainment Uses shall include the following:

1. Adult Bookstore. As defined by M.G.L. Chapter 40A, Section 9A is an establishment having at least 15 percent percent of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.

2. Adult Motion Picture Theatre. As defined by M.G.L. Chapter 40A, Section 9A, is an enclosed building used for presenting motion pictures, slides, photo displays, videos, or other material for viewing, distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement.

3. Adult Paraphernalia Store. As defined by M.G.L. Chapter 40A, Section 9A, is an establishment having at least 15 percent percent of its stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity.

4. Adult Video Store. As defined by M.G.L. Chapter 40A, Section 9A, is an establishment having at least 15 percent percent of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.

5. Adult Night Club. Any establishment which provides the display of live nudity for its patrons. For the purposes of this section, "nudity," "sexual conduct," "sexual excitement," and "sexual activity" are as defined by M.G.L. Chapter 272, Section 31.

D. Design and Operating Criteria. Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this ordinance and may be permitted only upon the grant of a special permit. Such special permit shall not be granted unless each of the following standards has been met:

1. An adult entertainment use shall not be located within:

   a. 500 feet from the nearest religious use, school, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river;

   b. 1,000 feet from any nearest adult entertainment use as defined herein whether within or without the City's boundaries, nor within 1,000 feet of an existing adult entertainment use in an adjacent municipality, nor within 1,000 feet of a zoning district allowing an adult entertainment use within such adjacent municipality;

   c. 500 feet from the nearest establishment licensed under M.G.L. Chapter 138, Section 12 to manufacture, with intent to sell or expose or keep for sale, store, transport, import or export of alcoholic beverages.

   d. The distances specified above shall be measured by a straight line from the nearest property line of the proposed adult

entertainment use to the nearest property line of any of the designated uses set forth herein.

2. No adult entertainment use shall be located within 150 feet from any residential property line. The distance shall be measured by a straight line from the nearest exterior wall of the adult use structure to the nearest property line of any residential use.

3. All building openings, entries, and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.

4. No material described in the definitions of adult entertainment uses in this ordinance that depicts, describes or relates to nudity or sexual conduct as defined in M.G.L. Chapter 272, Section 31 shall be so located in or on the building housing such adult use which is visible to the public from the outside of the premises in which an adult use is permitted. No advertising, or other material, whether displayed in the window or affixed to the building shall be permitted which depicts, describes or relates to nudity or sexual conduct as defined in M.G.L. Chapter 272, Section 31.

5. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

6. The proposed adult entertainment use shall comply with all dimensional and parking requirements set forth in Sec. 5.1. In addition, no off-site parking as is allowed by special permit under Sec. 5.1.6.B. shall be permitted.

7. No adult entertainment use shall have a free-standing accessory sign. All signage shall comply with all requirements set forth in Sec. 5.2.

8. Adult entertainment uses shall not be open to the public between the hours of 11:30 p.m. and 6:00 a.m.

9. At no adult entertainment use shall alcoholic beverages be allowed or suffered to be used or consumed.

10. If the adult entertainment use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, or screens. All such booth openings shall be clearly seen from the center of the establishment.

11. The applicant must demonstrate full compliance with the design and operating criteria provided in this Article.

E. Adult Entertainment Uses Not Allowed As-of-Right. Adult entertainment uses are not included within the definition of retail sales or services or of any other lawful business permitted as of right or by special permit as provided in this Chapter. In no instance shall an adult entertainment use be allowed as-of-right.

F. Adult Entertainment Uses Allowed Only by Special Permit. Adult entertainment uses shall be allowed only by special permit in the following districts: Mixed Use 1 and Limited Manufacturing.

1. Special Permit Application. Where a special permit is required for adult entertainment uses, a written application for a special permit shall be submitted in accordance with Sec. 7.3. The application for a special permit for an adult use shall provide the following: name and address of the legal owner of the establishment; name and address of all persons having legal, beneficial, equitable or security interests in the adult use; name and address of the manager(s) and assistant manager(s); the number of employees; proposed security precautions; a map showing all properties that lie within 1000 feet of the property boundary; and a plan of the physical layout of the premises showing, among other things, the location or proposed location of the adult books, adult paraphernalia or adult videos; a sworn statement that neither the applicant nor any person having a legal, beneficial, equitable, or security interest in the establishment has been convicted of violating M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28.

2. The legal owner of an adult entertainment use having received a special permit shall promptly notify the special permit granting authority of any changes in the above information within 10 days and failure to do so will be grounds for revocation of the special permit.

3. Special Permit Procedure. The procedures for special permit set forth in Sec. 7.3., except for Sec. 7.3.2.F.,

shall apply. The Board of Aldermen may grant a special permit subject to the conditions, safeguards, and limitations set forth here, when, in its judgment, the purposes stated in this paragraph Sec. 6.10.1.A. above and criteria in Sec. 6.10.1.D. above have been satisfied.

4. Expiration. A special permit to conduct an adult entertainment use shall expire after a period of 2 calendar years from its date of issuance and shall be eligible for renewal for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon notification of adverse changes regarding the public safety factors applied at the time that the original special permit was granted.

5. No special permit shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28 or registered with or required to be registered under the Sex Offender Registration Law, M.G.L. Chapter 6, Sections 178C et. seq., or its successor.

G. Existing Adult Entertainment Uses. Any adult entertainment use in existence upon the effective date of this Sec. 6.10.1. shall apply for an adult entertainment use special permit within 90 days of the adoption of this Sec. 6.10.1..

(Rev. Ords. 1995, Ord. No. V-183, 06/29/98)

## 6.10.2. Keno

A. Purpose. Whereas the deleterious effects of gambling and wagering on individuals, families and the public health, safety, convenience and welfare are known and documented, it is the policy of the City to regulate and condition the operation of establishments allowing Keno, or similar games of chance, entertainment or amusement, whether operated live or through audio or video broadcast or closed-circuit transmission, and to prohibit persons under 18 years of age from engaging in or participating in any manner in Keno or other such games of chance, entertainment or amusement.

B. Conditions. No building or structure, or any portion of a building or structure, shall be used for Keno, or similar games of change, entertainment or amusement unless the following conditions are satisfied:

1. It must be a restaurant-business which is duly licensed by the Newton Board of Licensing Commissioners pursuant to both M.G.L. Chapter 140 as a common victualler selling prepared food to patrons and pursuant to M.G.L. Chapter 138, Section 12, whereby alcoholic beverages may be sold to and drunk on the premises by patrons. The alcoholic beverages license may be either an "all alcoholic beverages" license, or a "wine and malt beverages" license.

2. The restaurant-business must provide a lounge or similar area within the premises which is physically separated from the regular dining area by a wall, partition or other means deemed acceptable to the Newton Board of Licensing Commissioners. Keno, or similar games of chance, entertainment or amusement shall be restricted to this separate lounge or similar area. The restaurant-business shall not permit minors unaccompanied by a parent or adult guardian to enter, occupy, or remain in the restricted lounge or similar area, and shall prominently post signs to this effect.

3. No person under 18 years of age shall be permitted to engage in or participate in any manner in Keno or other such games of chance, entertainment or amusement, pursuant to this Sec. 6.10.1, M.G.L. Chapter 10, Section 29, as amended, and the regulations promulgated thereunder, including, but not limited to 961 CMR 2.00, 2.20(3) and 2.27(5).

C. Violation. Any establishment found to have violated state laws or regulations or the provisions of this section regarding the prohibition of minors in this regard shall be deemed an unlawful use in violation of this Chapter, and shall be subject to enforcement proceedings and penalties provided under M.G.L. Chapter 40A, Section 7, and this Chapter.

D. Penalties. Any 'person', including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, which is found to have violated state laws or regulations regarding prohibition of minors in this regard shall be subject to the statutory penalties of M.G.L. Chapter 10, Section 29, as amended, and revocation of their license as a lottery sales agent pursuant to state law, including but not limited to

Massachusetts Lottery Commission regulations 961 CMR 2.00, 2.13(1), 2.20(3) and 2.27(5).

E. Video Monitors. No restaurant-business shall provide more than 2 video monitors for broadcast or closed-circuit transmission of Keno or similar games of chance, entertainment or amusement in the aforesaid lounge or similar area. Said limitation shall not apply to regular television programming of network, independent television stations, or television stations provided by cable, satellite, or similar systems.

F. No Affirmative Rights are Granted by this Sec. 6.10.2.. The City shall not be precluded from exercising any legislative powers it may now have or which may be granted to the city by the General Court in future legislative enactments to prohibit or further regulate Keno, or similar games of chance, entertainment or amusement.

G. Keno License. Any 'person', including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, who has filed prior to June 10, 1996 an application for a Keno license with the Massachusetts Lottery Commission and who thereafter receives from said Commission a valid Keno license, pursuant to M.G.L. Chapter 10, Section 27A, will be exempt from the provisions of paragraph B.1 and B.2 above relating to possession of a license to sell alcoholic beverages and provision of a separate lounge or similar area, but only at the location for which the application was filed prior to June 10, 1996.

(Rev. Ords. 1995, Ord. No. V-89, 08/12/96)

## 6.10.3. Registered Marijuana Dispensaries

A. Purpose. The purpose of this Sec. 6.10.3. is to provide for the limited establishment of registered marijuana dispensaries (RMD) within the City as they are authorized pursuant to state regulations set forth in 105 CMR 725.000. Since RMD's are strictly regulated and will be limited in number by the Massachusetts Department of Public Health, the intent of this Sec. 6.10.3. is to permit RMD's where there is access to regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not adversely impact the character of residential neighborhoods and business districts.

B. RMD uses not Allowed As-of-Right. RMD uses are not included within the definition of retail sales or services, agriculture, or any other lawful business permitted as of right or by special permit as provided in this Chapter.

C. RMD Uses Allowed by Special Permit. Use of land, buildings or structures for RMD's shall be allowed only by special permit in the following districts, subject to the requirements and criteria of this Sec. 6.10.3.: Business 2; Business 5; and Mixed Use 1.

D. Minimum Criteria and Limitations on Approval.

1. An RMD shall not be located within a radius of 500 feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, or but may be located within a lesser distance if the Board of Aldermen finds that the RMD is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation. Such distance shall be measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility.

2. An RMD shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations, public safety code regulations and all other applicable state and local laws, ordinances, rules and regulations. No building permit or certificate of occupancy shall be issued for an RMD that is not properly registered with the Massachusetts Department of Public Health. The RMD shall file copies of its initial certificate of registration and each annual renewal certificate with the Clerk of the Board of Aldermen within one week of issuance, and shall immediately notify said Clerk if its registration is not renewed or is revoked. The RMD shall provide the Newton Police Department with the names and contact information for all management staff and shall immediately notify the police department of any changes.

3. A special permit granted by the Board of Aldermen authorizing the establishment of an RMD shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the RMD has been authorized by the

special permit. If the registration for the RMD is revoked, transferred to another controlling entity, or relocated to a different lot, a new special permit shall be required prior to the issuance of a certificate of occupancy.

4. An RMD shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home delivery to qualified clients pursuant to applicable state regulations.

5. An RMD shall conform to the dimensional requirements applicable to the zoning district in which it is located.

6. An RMD shall be subject to the number of parking stalls required in Sec. 5.1. unless a lesser or greater number of stalls is required by the Board of Aldermen based on the transportation analysis provided by the applicant.

7. All signage shall conform to the requirements of 105 CMR 725.105(L) and to the requirements of Sec. 5.2. No graphics, symbols or images of marijuana or related paraphernalia shall be displayed or clearly visible from the exterior of an RMD. The Board of Aldermen may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.

8. The RMD's hours of operation shall not adversely impact nearby uses. The Board of Aldermen may, as a special permit condition, limit the hours of operation of an RMD to mitigate any adverse impact on nearby uses.

E. Special Permit Application and Procedure. The procedural and application requirements of Sec. 7.3. shall apply. In addition to the procedural and application requirements of Sec. 7.3., an application for special permit shall include, at a minimum, the following information:

1. Description of Activities. A narrative providing information about the type and scale of all activities that will take place on the proposed lot, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIP's), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.

2. Service Area. A map and narrative describing the area proposed to be served by the RMD and the anticipated number of clients that will be served within that area. This description shall indicate where any other RMD's exist or have been proposed within the expected service area.

3. Transportation Analysis. A quantitative analysis, prepared by a qualified transportation specialist acceptable to the Director of Planning and Development and the Director of Transportation, modeling the expected origin and frequency of client and employee trips to the lot, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the lot.

4. Context Map. A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot, whether such uses are located in the City or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs. The context map shall include the measured distance to all uses described in paragraph D.1 above.

5. Registration Materials. Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to that Department for the purpose of seeking registration, to confirm that all information provided to the Board of Aldermen is consistent with that provided to the Massachusetts Department of Public Health.

F. Special Permit Criteria. In granting a special permit for a RMD in addition to finding that the general criteria for issuance of a special permit are met, the Board of Aldermen shall find that the following criteria are met:

1. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

2. The lot is located at least 500 feet distant from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, or the lot is located at a lesser distance if the Board of Aldermen finds that the lot is sufficiently

buffered such that these facilities or uses will not be adversely impacted by the RMD's operation.

3. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot, whether driving, bicycling, walking or using public transportation.

4. Traffic generated by client trips, employee trips, and deliveries to and from the RMD shall not create a significant adverse impact on nearby uses.

5. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

6. The building and lot have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

7. The building and lot are accessible to persons with disabilities.

8. The lot is accessible to regional roadways and public transportation.

9. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel.

10. The RMD's hours of operation will have no significant adverse impact on nearby uses.

(Rev. Ords. 2012, Ord. No. A-35, 12/02/13)

PAGE INTENTIONALLY LEFT BLANK

# Article 7. Administration


Sec. 7.1. Development Review Bodies ..... 7-2
7.1.1. Board of Aldermen ..... 7-2
7.1.2. Planning Board ..... 7-2
7.1.3. Urban Design Commission ..... 7-2
7.1.4. Commissioner of Inspectional Services ..... 7-2
7.1.5. Director of Planning and Development ..... 7-2
7.1.6. Zoning Board of Appeals ..... 7-2

Sec. 7.2. Amendments ..... 7-3

Sec. 7.3. Special Permit Review ..... 7-3
7.3.1. Application ..... 7-3
7.3.2. Review ..... 7-4
7.3.3. Grant of Permit ..... 7-4
7.3.4. Special Requirements for Rear Lots in Residential Zoning ..... 7-5
7.3.5. Special Requirements for Recombinant DNA Research or Technology ..... 7-6
7.3.6. Special Requirements in MU3/TOD ..... 7-7

Sec. 7.4. Site Plan Approval ..... 7-13
7.4.1. Purpose ..... 7-13
7.4.2. Applicability ..... 7-13
7.4.3. Applications ..... 7-13
7.4.4. Plans ..... 7-13
7.4.5. Procedures ..... 7-13

Sec. 7.5. Administrative Site Plan Review ..... 7-14
7.5.1. Authority ..... 7-14
7.5.2. Process for Religious or Educational Use ..... 7-14

Sec. 7.6. Variances ..... 7-16
7.6.1. Applicability ..... 7-16
7.6.2. Hearing Required ..... 7-16
7.6.3. Notice ..... 7-16
7.6.4. Conditions, Safeguards and Limitations ..... 7-17
7.6.5. Lapse ..... 7-17
7.6.6. Vote ..... 7-17
7.6.7. Re-Application ..... 7-17
7.6.8. Decision ..... 7-17
7.6.9. Record ..... 7-17

Sec. 7.7. Appeals ..... 7-18
7.7.1. Applicability ..... 7-18
7.7.2. Timing of Appeal ..... 7-18
7.7.3. Hearing Required ..... 7-18
7.7.4. Notice ..... 7-18
7.7.5. Authority ..... 7-18
7.7.6. Vote ..... 7-18
7.7.7. Re-Application ..... 7-18
7.7.8. Decision ..... 7-18
7.7.9. Record ..... 7-18

Sec. 7.8. Nonconformities ..... 7-20
7.8.1. Applicability ..... 7-20
7.8.2. Nonconforming Buildings, Structures, or Uses ..... 7-21
7.8.3. Substandard Commercial Lots ..... 7-23
7.8.4. Alteration, etc.., of Structure When Shape or Size of Lot is Changed ..... 7-23

Sec. 7.9. Enforcement and Penalties ..... 7-26
7.9.1. Enforcement ..... 7-26
7.9.2. Penalties ..... 7-26

# Sec. 7.1. Development Review Bodies

## 7.1.1. Board of Aldermen

[Reserved]

## 7.1.2. Planning Board

[Reserved]

## 7.1.3. Urban Design Commission

[Reserved]

## 7.1.4. Commissioner of Inspectional Services

[Reserved]

## 7.1.5. Director of Planning and Development

[Reserved]

## 7.1.6. Zoning Board of Appeals

A. Established. A Zoning Board of Appeals is established and shall consist of 5 members to be appointed by the Mayor, subject to confirmation by the Board of Aldermen.

B. Appointments. Each member shall be appointed for a term of 3 years. Vacancies shall be filled for the balance of the unexpired term in the same manner in which original appointments are made. The Zoning Board of Appeals shall annually elect a chairman from its members and a clerk. No member shall act in a case in which such member is in any way interested.

C. Associate Members. The Mayor shall annually appoint for a term of 1 year, subject to confirmation by the Board of Aldermen, 5 associate members of the Zoning Board of Appeals. The associate members shall be sworn and shall qualify in the same manner as regular members. In the case of a temporarily unfilled vacancy, inability to act, or interest on the part of a regular member, the Chairman shall designate 1 of the associate members to fill such vacancy or serve in place of such regular member, as the case may be.

D. Compensation. Members and associate members of the Zoning Board of Appeals shall serve without compensation.

E. Powers. The Zoning Board of Appeals shall have the following powers:

1. To hear and decide appeals taken by:

   a. Any person aggrieved by reason of an inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. Chapter 40A; and

   b. Any person, including an officer or board of the City, or of any abutting city or town, or the Metropolitan Area Planning Council, aggrieved by an order or decision of the Commissioner of Inspectional Services, or other administrative official, in violation of any provision of M.G.L. Chapter 40A or any section of this Chapter. Any appeal under this paragraph 1. shall be taken within 30 days from the date of the order or decision which is being appealed.

2. Comprehensive Permit. To grant a Comprehensive Permit for an affordable housing development under flexible rules, provided at least 20 percent to 25 percent of the units have long-term affordability, and the project otherwise meets all of the requirements of M.G.L. Chapter 40B.

3. Variance. To grant, upon appeal or application in cases where a particular use is sought for which no permit is required with respect to particular land or structures, a variance from the terms of this Chapter where it is determined that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Chapter would involve substantial hardship, financial or otherwise, to the applicant or appellant, and that the desired relief may be granted without substantial detriment or the public good and without nullifying or substantially derogating from the intent or purpose of this Chapter, but not otherwise.

F. Rules. The Zoning Board of Appeals shall adopt rules, not inconsistent with the provisions of this Chapter, for conducting its business and otherwise carrying out the purposes of this Chapter; a copy of these rules shall be filed with the office of the City Clerk.

G. Meetings. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and also 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 Board of Aldermen 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 Board of Aldermen.

B. Any person making application to the Board of Aldermen 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 Board of Aldermen pertaining to special permit and site plan approval applications to the City Clerk, who shall transmit such application to the Board of Aldermen 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, 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:

   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

   b. For a proposed development containing a gross floor area in excess of 100,000 square feet, the

model 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 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 Board of Aldermen, the City Solicitor, and the Chief Information Officer.

C. The applicant shall also submit 1 massing model, prepared as appropriate by an architect, professional engineer or land surveyor, for any commercial or multi-family development with a gross floor area of 20,000 square feet or more as follows:

1. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the massing model shall show the proposed development, all abutting properties and abutters to such abutting properties;

2. For a proposed development containing a gross floor area 50,001 to 100,000 square feet, the massing 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;

3. For a proposed development containing a gross floor area in excess of 100,000 square feet, the massing model 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.

D. As part of an application for special permit, an applicant must comply with the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval.

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

## 7.3.2. Review

A. The Board of Aldermen or a committee of the Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen 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 then 2 years from the date of the grant of the special permit.

F. The Newton Biosafety Committee shall serve as an advisory body to the Board of Aldermen with regard to any application for a special permit. The Newton Biosafety Committee shall be consulted by the Board of Aldermen for its recommendations on the siting of any institution intending to conduct recombinant DNA research or technology, which recommendations shall be in writing and shall be submitted within such time as the Board of Aldermen shall specify to assure said board's ability to act within the time periods set forth in this Sec. 7.3.

(Ord. No. S-260, 08/03/87; Ord. No. V-9, 02/21/95; Ord. No. A-6, 10/01/12)

## 7.3.3. Grant of Permit

A. A special permit from the Board of Aldermen for any purpose for which a permit is required under this Chapter shall be granted only by ⅔ vote of all the Board of Aldermen.

B. The Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen may attach such conditions, limitations, and safeguards as it deems necessary to protect or benefit the neighborhood, the zoning district and the City. Such conditions may include, but are not limited to, the following:

1. Requirement of front, side or rear yards greater than the minimum required by this Chapter;

2. Limitation of the number of occupants, size, method of time of operation, or extent of facilities; and

3. Requirement of off-street parking or other features beyond the minimum required by this, or any other applicable Chapter.

(Ord. No. S-260, 08/03/87; Ord. No. Y-17, 05/21/07)

## 7.3.4. Special Requirements for Rear Lots in Residential Zoning

A. Creation of rear lots in residential districts requires a special permit. The rear lot development density and dimensional controls in Sec. 3.1.4. shall apply to the proposed rear lot and the remainder of the original lot shall be subject to the density and dimensional controls of the underlying district unless waivers from either of such controls are granted by the Board of Aldermen.

1. The provisions of Sec. 7.8.4. shall not apply to the creation of rear lots under this Sec. 7.3.4.

2. Additional Application Requirements. In addition to the information required in Sec. 7.3.1., there shall be submitted architectural plans for all proposed residential buildings and structures, a landscape plan, site plan, and an area plan showing distances from proposed buildings or structures to existing residential buildings and structures on the original lot and all abutting lots, along with information on the heights and number of stories of these existing buildings or structures. All plans must be prepared, stamped and signed, as appropriate, by an architect, landscape architect, professional engineer or registered land surveyor.

B. Review Criteria. The Board of Aldermen shall consider the special permit application for a rear lot development in light of the following criteria:

1. Whether the proposed buildings or structures exceed the respective average height of abutting residential buildings and any structures used for accessory purposes;

2. The scale of proposed buildings or structures in relation to adjacent residential buildings and structures used for accessory purposes and in relation to the character of the neighborhood;

3. Topographic differentials, if any, between proposed buildings or structures and adjacent residential buildings and any structures used for accessory purposes;

4. Proposed landscape screening;

5. Adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways;

6. Whether any historic or conservation public benefit is provided or advanced by the proposed development;

7. Whether the location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot or on abutting lots will negatively impact either the proposed rear lot development or abutting property;

8. Siting of the proposed buildings or structures with reference to abutting residential buildings or any structures used for accessory purposes; and

9. Impact of proposed lighting on the abutting properties.

(Ord. No. X-123, 12/06/04)

## 7.3.5. Special Requirements for Recombinant DNA Research or Technology

A. In the case of a special permit involving recombinant DNA research or technology, as defined in Revised Ordinances Chapter 12, Article III, Recombinant DNA Research, as amended, the applicant shall be required to meet the requirements of Sec. 7.3.3. and shall also be required to demonstrate that the proposed use meets applicable health and safety criteria, including, without limitation, the following:

   1. The National Institute of Health guidelines published in the Federal Register of May 7, 1986, as amended and as adopted by the biosafety committee, and any other health guidelines and regulations the federal government may from time to time promulgate;

   2. The Massachusetts Department of Public Health guidelines known as, "State Sanitary Code, Chapter VIII: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste", 105 CMR 480.000, as amended;

   3. Revised Ordinances Chapter 12, Article III, Recombinant DNA Research, as amended; and

   4. Code of Federal Regulations, Title 10, Parts 0 to 199, as amended, pertaining to low-level radioactive waste management.

B. The Newton Biosafety Committee shall serve as an advisory body to the Board of Aldermen with regard to the additional health and safety findings required by this Sec. 7.3.5.

C. The Newton Biosafety Committee's findings on the above criteria shall be deemed presumptively valid unless the Board of Aldermen makes contrary written findings. The Newton Biosafety Committee may make recommendations relating to the above criteria, and shall render its report within a time to be specified by the Board of Aldermen.

(Ord. No. T-319, 12/20/93)

## 7.3.6. Special Requirements in MU3/TOD

A. Additional Filing Requirements. In addition to the provisions of Sec. 7.3. and Sec. 7.4., applicants for a special permit under Sec. 4.2.4. shall submit:

1. Conceptual Plans. Prior to submittal of an application for a special permit in the Mixed Use 3/ Transit-Oriented Development (MU3/TOD), which will include subsection 2. to 12. below, applicants shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Land Use Committee shall provide a forum for a public presentation whereby the Land Use Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:

    a. Project description, including project purpose or design rationale;

    b. Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;

    c. Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to adjacent public property, whether or not it is currently available for public use, north arrow and scale; and

    d. Other information as may be requested by City staff to perform a zoning review and preliminary impact analyses.

2. A 3D computer-generated model that shows the relationship of the project to its surroundings consistent with Sec. 7.3.1.B.;

3. Narrative analysis describing design features intended to integrate the proposed mixed-use development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site-specific considerations, as well as an explanation of how the proposed mixed-use development satisfies each criterion in Sec. 7.3.6.B.;

4. Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;

5. Site plans showing any by right or zoning-exempt alternatives;

6. A roadway and transportation plan reflecting the "EOEEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the Commissioner of Public Works, Director of Planning and Development, and peer review consultants. The plan should include the following:

    a. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles.

    b. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts.

    c. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the mixed-use development, documenting:

        i. The projected base volume of trips to and from the mixed-use development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable

projects in Newton or nearby communities, acceptable to the Commissioner of Public Works and Director of Planning and Development;

ii. The projected adjusted volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the mixed-use development guideline of adjusted volume being at least 10 percent below the base volume on weekday evening peak hours;

iii. The means of making mitigations if it is found pursuant to the monitoring under Sec. 7.3.6.D. and Sec. 7.3.6.E. that the trips counted exceed the projected adjusted volume by 10 percent or more; and

iv. The projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.

d. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the mixed-use development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues. Analysis shall include:

i. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

ii. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.

7. A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.

8. Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the Commissioner of Public Works, Director of Planning and Development, and peer review consultants and shall include the following:

a. A study of the proposed project's surface water runoff relating to the Charles River and associated deep marsh system that shows how all storm water will be infiltrated on site, and which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:

i. A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the Massachusetts Department of Environmental Protection's "Stormwater Management Handbook" and the City's "Requirements for On-Site Drainage (Stormwater Management)";

ii. A drainage analysis based on the City's 100-year storm event of seven inches over a 24 hour period, showing how runoff from impervious surfaces will be infiltrated on-site;

iii. An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;

iv. If a connection to the City's drainage system is proposed, a closed-circuit television (CCTV) inspection, prior to approval of this permit, which shall be witnessed by the Engineering Division of Pubic Works; the applicant shall provide the City inspector with a video or CD prepared by a CCTV specialist hired by

the applicant. A post-construction video inspection shall also take place and be witnessed as described above; and

v. An evaluation of hydraulic capacity of the downstream drainage system submitted to the Engineering Division of Public Works to determine any impact to the municipal drainage system.

b. A master plan and schedule of the sanitary sewer system improvements, including:

i. A plan showing a reduction in infiltration and inflow into the sanitary sewer system to the satisfaction of the Commissioner of Public Works;

ii. A calculation of the life cycle cost of the proposed sanitary system;

iii. A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and

iv. A study showing how the developer will comply with the City's cross connection control program relating to sewer and drain pipes.

c. A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.

d. A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal that demonstrates compliance with Revised Ordinances Chapter 11, Recycling and Trash, and the Massachusetts Department of Environmental Protection Waste Ban. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes.

e. A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the City, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The applicant must coordinate this test with both the Fire Department and Utilities Division of Public Works; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be submitted to the Fire Department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the Director of Utilities.

9. Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

10. Proposed phasing schedule, including infrastructure improvements.

11. Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon.

12. Submittal in electronic form of all documents required by Sec. 7.3. and Sec. 7.4. and any supplemental reports, memoranda, presentations, or other communications submitted by the applicant to the Board of Aldermen and pertaining to the special permit application, unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The Director of Planning and Development will arrange to have electronically submitted documents posted on the City website within a reasonable time after receipt.

B. Review Criteria. Additional special permit criteria for a mixed-use development in the MU3/TOD district. In granting a special permit for a mixed-use development under Sec. 4.2.4., the Board of Aldermen shall not approve the special permit unless it also finds, in its

judgment, that the proposal meets all of the following criteria in addition to those listed in Sec. 7.3.3.:

1. Not inconsistent with the City's Comprehensive Plan. The proposed mixed-use development is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a mixed-use development and applicable general laws relating to zoning and land use.

2. Housing, Public Transportation, Parking, and Utility Infrastructure Improvements. The proposed mixed-use development offers long-term public benefits to the City and nearby areas including:

    a. Improved access and enhancements to public transportation;

    b. Improvements to parking, traffic, and roadways;

    c. On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;

    d. Public safety improvements;

    e. On-site affordable housing opportunities, except where otherwise allowed in Sec. 5.11.; and

    f. Water, sewer, and storm water infrastructure improvements which increase capacity and lower impacts on the surroundings.

3. Fiscal Impacts. The proposed mixed-use development has a positive fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

4. Improved Access Nearby. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed mixed-use development and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the mixed-use development as well as to improve traffic and access in nearby neighborhoods.

5. Enhanced Open Space. Appropriate setbacks, buffering, and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the proposed mixed-use development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, whether or not they are currently available for public use, are provided and take full advantage of the unique opportunities of the site and its nearby natural features for use and enjoyment by the community at large.

6. Excellence in Place-Making. The proposed mixed-use development provides high quality architectural design and site planning so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the mixed-use development and its surroundings.

7. Comprehensive Signage Program. Notwithstanding the requirements of Sec. 5.2., all signage for the proposed mixed-use development shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the mixed-use development and character of the streetscape.

8. Pedestrian Scale. The proposed mixed-use development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the development parcel.

9. Public Space. The proposed mixed-use development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make connections to the surrounding neighborhood, as well as to the commercial and residential components of

the mixed-use development, to other commercial activity, and to each other.

10. Sustainable Design. The proposed mixed-use development at least meets the energy and sustainability provisions of Sec. 7.3.3.C.5. and Sec. 7.4.5.B.8.

11. Adequacy of Parking. Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.

12. Pedestrian and Neighborhood Considerations. If the proposed mixed-use development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such negative impact:

    a. Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;

    b. Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;

    c. Traffic signal additions, alterations, or roundabouts; and

    d. Relocation or alterations to public transport access points.

13. Accessible Design. Consideration is given to issues of accessibility, adaptability, visitability, and universal design in development of the site plan.

C. Project Phasing. Any development subject to a special permit under Sec. 4.2.4. may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

D. Adequacy of Public Facilities.

1. Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the mixed use development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the applicant as part of the special permit application process under Sec. 4.2.4. with the project scope determined by the Director of Planning and Development and the Commissioner of Public Works (peer reviews may be required, hired by the City and paid for by the applicant):

    a. Adequacy of road and traffic infrastructure, including the traffic analysis required in Sec. 7.3.6.A.6.;

    b. Adequacy of water, sewer, and storm water infrastructure, including the water, sewer, and storm water analysis required in Sec. 7.3.6.A.8.; and

    c. Net fiscal impacts, including the fiscal impact analysis required in Sec. 7.3.6.A.9.

2. As part of any special permit granted, post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within 12 months of full occupancy of each phase, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for 2 years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for 5 years consecutively that the impacts from the development comply with the special permit.

3. The special permit shall also require a bond or other security satisfactory to the Director of Planning and Development and Commissioner of Public Works to secure performance. The bond or other security may be forfeited, at the election of the Director of Planning and Development and Commissioner of Public Works, and proceeds used by the City for mitigation if the applicant fails to complete any required mitigation or to manage impacts

within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

E. Post-Construction Traffic Study.

1. A special permit issued under Sec. 4.2.4. shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the mixed-use development. The special permit shall require a bond or other security satisfactory to the Commissioner of Public Works and Director of Planning and Development to secure performance as specified below:

   a. Monitoring of vehicle trips for this purpose shall begin within 12 months of full occupancy of each phase, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for 2 years following final build-out. Measurements shall be made at all driveway accesses to the mixed-use development and/or intersections studied in the pre-construction roadway and transportation plan. The Commissioner of Public Works may require traffic monitoring earlier or more frequently, if there appears to be degradation from the level of service projected by the pre-construction roadway and transportation plan.

   b. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the mixed-use development at all points studied in the pre-construction roadway and transportation plan shall be measured by a traffic engineering firm retained by the City and paid for by the applicant or successor.

   c. Mitigations will be required if actual total number of vehicle trips to and from the mixed-use development measured per paragraph b. above, summed over the points of access exceeds the weekday evening adjusted volume projected per Sec. 7.3.6.B.5. by more than 10 percent as a result of traffic generated by the mixed-use development. Within 6 months of notification, the owner of the mixed-use development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the roadway and transportation plan submitted by the applicant and listed in the mixed-use development special permit in order to reduce the trip generation to 110 percent or less of the adjusted volume. Such reduction is to be achieved within 12 months after mitigation begins. The Commissioner of Public Works and Director of Planning and Development must approve any mitigation efforts prior to implementation.

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

# Sec. 7.4. Site Plan Approval

## 7.4.1. Purpose

The purpose of this Sec. 7.4. is to protect the health, safety, convenience and general welfare of the inhabitants of the City by providing for a review of plans for certain proposed uses and structures in order to better control potential impacts on traffic, parking, municipal and public services, utilities, and environmental quality in the City, to administer the provisions of this Chapter and to ensure that the proposed uses and structures will be located, designed and constructed in a manner which promotes the appropriate use of land and upholds the purposes and objectives set forth in Section 2A of Chapter 808 of the Acts of 1975.

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

## 7.4.2. Applicability

Whenever site plan approval is required under the provisions of this Chapter, the procedure set forth in this section shall be followed.

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

## 7.4.3. Applications

A written application for a site plan approval, on forms provided by the City Clerk and accompanied by 15 sets of plans prepared as provided below, shall be submitted in accordance with the procedures of this Sec. 7.4. and the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval applications to the City Clerk, who shall transmit such application to the Board of Aldermen and the Department of Planning and Development.

(Ord. No. A-6, 10/01/12)

## 7.4.4. Plans

The plans submitted with an application for site plan approval shall be prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Site plans shall be drawn at a suitable scale, on sheets no larger than 24 inches by 36 inches. When more than 1 sheet is required, a key sheet shall be provided. The site plan shall include the following information:

A. Boundaries, dimensions and area of the subject lot;

B. Use, ownership, zoning of, and existing buildings or structures on the subject lot; such information shall also be provided for all parcels adjacent to the subject lot;

C. Existing and proposed topography of the subject lot at 2-foot intervals;

D. Existing and proposed easements, if any;

E. Existing and proposed wetlands and watercourses, if any;

F. All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot, with the dimensions thereof;

G. All facilities for sewage, refuse and other waste disposal, for surface water drainage, utilities, proposed screening, surface treatment, exterior storage, lighting, and landscaping, including fencing, walls, planting areas, and signs; and

H. Facade elevations and floor plans for any proposed new construction or alteration to the existing building or structure.

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

## 7.4.5. Procedures

A. The Board of Aldermen or a committee of the Board of Aldermen shall hold a public hearing within 65 days of the filing of an application for site plan approval. Notice of such public hearing shall be provided as required by M.G.L.. Chapter 40A, Section 11.

B. When conducting a site plan approval, the Board of Aldermen shall consider the application in light of the following criteria.

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible;

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage;

3. Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site;

4. Screening of parking areas and structures on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between the street and existing or proposed structures shall be discouraged;

5. Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas;

6. Location of utility service lines underground wherever possible. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines;

7. Avoidance of the removal or disruption of historic resources on or off-site. Historical resources include designated historical structures or sites, historical architectural elements or archaeological sites; and

8. Significant contribution to the efficient use and conservation of natural resources and energy for projects proposing buildings, structures, or additions to existing buildings or structures, if those proposed buildings, structures, or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area.

C. The Board of Aldermen may condition approval of a site plan submittal in a manner consistent with the objectives set forth in these criteria.

D. Any approval of an application for site plan approval shall lapse not later than 1 year from the grant of such approval unless construction required by such site plan approval has begun. The Board of Aldermen 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 Board of Aldermen 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 site plan approval for more then 2 years from the date of the grant of the requested relief.

E. Site plan approval shall be granted by a majority vote of the Board of Aldermen.

(Ord. No. S-260, 08/03/87; Ord. No. Y-17, 05/21/07)

# Sec. 7.5. Administrative Site Plan Review

## 7.5.1. Authority

The Director of Planning and Development may make nonbinding recommendations to the applicant for changes in the site plan, which changes shall be consistent with accepted and responsible planning principals, for an applications provided under Sec. 7.5.2. below.

A. Upon completion of the review process, the Director of Planning and Development shall indicate, in writing, to the Commissioner of Inspectional Services whether:

1. There has been compliance by the applicant with the procedural requirements as stated in Sec. 7.5.2.; and

2. Whether in the opinion of the Director of Planing and Development, the applicant has complied with the dimensional regulations of Article 3 and the parking regulations of Sec. 5.1.

B. This statement shall be made within 60 days after receipt of the application for site plan review. If no such statement is received by the Commissioner of Inspectional Services within the above-stated time period, an application for a building permit shall be accepted without receipt of such statement.

C. If the applicant does not apply for a building permit within 1 year from the date of the original site plan application to the Director of Planning and Development, the applicant must refile for review under the procedures required under Sec 7.5.2. below.

D. Where a special permit is required in accordance with Sec. 7.3., the uses delineated in Sec. 7.5.2.2 shall not be subject to the Administrative Site Plan Review procedures of this section.

## 7.5.2. Process for Religious or Educational Use

### A. Application.

1. At least 60 days prior to the application for a building permit, an applicant shall file a site plan application for the proposed development with the Director of Planning and Development. Such application shall consist of 5 sets of plans prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Such site plans shall be drawn at a suitable scale, on sheets no

larger than 24 inches by 36 inches. When more than 1 sheet is required, a key sheet shall be provided.

2. Except when waived by the Director of Planning and Development, the site plan shall include the following information:

   a. Evidence of the applicant's religious or nonprofit educational status;

   b. Boundaries, dimensions and area of the subject lot;

   c. Use of the existing building or structures on the subject lot;

   d. Existing and proposed topography of the subject lot at 2-foot intervals;

   e. Existing and proposed easements, if any;

   f. Existing and proposed wetlands and watercourses, if any;

   g. All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot with dimensions;

   h. All facilities for sewage, refuse and other waste disposal, for surface water, drainage, utilities, proposed screening, surface treatment, exterior storage, lighting, and landscaping, including fencing, walls, planting areas, and signs; and

   i. Facade elevations and floor plans for any proposed new construction or alteration to the existing building or structure.

B. Notice. At the time the applicant files an application, he shall give written notice of said filing and send a copy of the application and 1 set of site plans to:

1. Each of the 3 Aldermen representing the ward in which the proposed project is to be located;

2. Give written notice of said filing to the Clerk of the Board of Aldermen; and

3. Give written notice of the application to all immediate abutters of the property upon which the project is to be located.

C. Review.

1. The applicant also shall give all reasonable assistance to the Director of Planning and Development in the review of the site plan, including, but not limited to attendance at least one meeting called by the Director of Planning and Development.

2. The Director of Planning and Development, upon receipt of the site plan, shall transmit a copy to the Commissioner of Inspectional Services, the City Engineer, the Commissioner of Public Works, and the Fire Chief. These departments may respond with their comments and recommendations to the Director of Planning and Development within 25 days of receipt. Upon the receipt of any responses by the above-mentioned departments or upon the expiration of the 25 day period, the Director of Planning and Development shall review the plan for compliance with Articles 2, 3, 4, and 5 of this Chapter.

3. Further, the Director of Planning and Development may consider the religious or educational use application in light of the criteria set forth below:

   a. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible;

   b. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage;

   c. Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site;

   d. Screening of parking areas and structures on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between any existing or proposed structures and the street shall be discouraged;

e. Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas;

f. Location of utility service lines underground wherever possible. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines; and

g. Avoidance of the removal or disruption of historic resources on or off-site. Historical resources including designated historical structures or sites, historical architectural elements or archaeological sites.

(Ord. No. S-287, 12/07/87)

# Sec. 7.6. Variances

## 7.6.1. Applicability

A. Variance applications shall be heard by the Zoning Board of Appeals as provided in M.G.L. Chapter 40A, Sections 10 and 15, as at the time in effect. The Zoning Board of Appeals may grant, upon appeal or application in cases where a particular use is sought for which no permit is required with respect to particular land or structures, a variance from the terms of this Chapter.

B. A variance may be granted where it is determined that owing to circumstances relating to soil conditions, shape or topography of such land or structures, and that such circumstances especially affect such land or structures, but do not affect generally the zoning district in which it is located.

C. A variance may only be granted where a literal enforcement of the provisions of this Chapter would involve substantial hardship, financial or otherwise, to the applicant or appellant.

D. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Chapter, but not otherwise.

(Ord. No. 284, 06/19/78)

## 7.6.2. Hearing Required

The Zoning Board of Appeals shall hold a hearing on any variance application transmitted to it by the City Clerk within 65 days from the transmittal to the Zoning Board of Appeals. The Zoning Board of Appeals shall hold a hearing upon any appeal or other matter referred to it in the manner provided in, and after notice given as required by, M.G.L. Chapter 40A, Section 11, as at the time in effect.

(Rev. Ords. 1973 § 24-30; Ord. No. 284, 06/19/78)

## 7.6.3. Notice

The Zoning Board of Appeals shall cause notice of such hearing to be published and sent to parties in interest as provided by Section 11 of M.G.L. Chapter 40A, and by the rules of the Zoning Board of Appeals.

(Ord. No. 284, 06/19/78)

### 7.6.4. Conditions, Safeguards and Limitations

In exercising its powers, the Zoning Board of Appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structures but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant or any owner.

(Ord. No. 284, 06/19/78)

### 7.6.5. Lapse

If the rights authorized by a variance are not exercised within 1 year of the date of the grant of such variance or within such a lesser period as the Zoning Board of Appeals may determine, they shall lapse, and may be re-established only after notice and a new hearing pursuant to this Sec. 7.6.

(Ord. No. 284, 06/19/78)

### 7.6.6. Vote

The concurring vote of 4 members of the Zoning Board of Appeals shall be necessary to reverse any order or decision of the Commissioner of Inspectional Services, or to decide in favor of the appellant for a permit on any matter upon which it is required to pass under this Chapter.

(Ord. No. 284, 06/19/78)

### 7.6.7. Re-Application

No application which has been unfavorably and finally acted upon by the Zoning Board of Appeals shall be favorably acted upon within 2 years after the date of such final unfavorable action unless the following criteria are met:

A. At least 4 members of the Zoning Board of Appeals must find specific and material changes in the conditions upon which the previous unfavorable action was based, and must describe such findings in the record of its proceedings;

B. All but 1 member of the Planning Board consents; and

C. Notice is given to parties in interest as to the time and place of the proceedings when the question of such consent will be considered.

(Ord. No. 284, 06/19/78)

### 7.6.8. Decision

The decision of the Zoning Board of Appeals shall be made within 100 days after the date of the filing of an appeal or application. Failure by the Zoning Board of Appeals to so act within 100 days shall be deemed to be a grant of the application sought.

(Rev. Ords. 1973 § 24-30; Ord. No. T-40, 8/14/89)

### 7.6.9. Record

The Zoning Board of Appeals shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and setting forth clearly the reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed with the City Clerk and shall be a public record, and notices of decisions shall be mailed in a timely manner to parties in interest, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states an address to which such notice is to be sent.

(Rev. Ords. 1973 § 24-30)

# Sec. 7.7. Appeals

## 7.7.1. Applicability

Appeals may be taken to the Zoning Board of Appeals as provided in M.G.L. Chapter 40A, Sections 8 and 15, as at the time in effect. The Zoning Board of Appeals shall hear and decide appeals taken by:

A. Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. Chapter 40A; and

B. Any person, including an officer or board of the City, or of any abutting city or town, or the Metropolitan Area Planning Council, aggrieved by an order or decision of the Commissioner of Inspectional Services, or other administrative official, in violation of any provision of M.G.L. Chapter 40A or any section of this Chapter.

(Rev. Ords. 1973 § 24-30; Ord. No. 284, 06/19/78)

## 7.7.2. Timing of Appeal

Any appeal shall be taken within 30 days from the date of the order or decision which is being appealed.

(Rev. Ords. 1973 § 24-30; Ord. No. 284, 06/19/78)

## 7.7.3. Hearing Required

The Zoning Board of Appeals shall hold a hearing on any appeal or application transmitted to it by the City Clerk within 65 days from the transmittal to the Zoning Board of Appeals. The Zoning Board of Appeals shall hold a hearing upon any appeal or other matter referred to it in the manner provided in, and after notice given as required by, M.G.L. Chapter 40A, Section 11, as at the time in effect.

(Rev. Ords. 1973 § 24-30; Ord. No. 284, 06/19/78)

## 7.7.4. Notice

The Zoning Board of Appeals shall cause notice of such hearing to be published and sent to parties in interest as provided by M.G.L. Chapter 40A, Section 11, and by the rules of the Zoning Board of Appeals

(Ord. No. 284, 06/19/78)

## 7.7.5. Authority

In considering an appeal, the Zoning Board of Appeals may, in conformity with this Chapter, reverse or affirm in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and to that end shall have all the powers of the Commissioner of Inspectional Services, and may direct the Commissioner of Inspectional Services to issue a permit.

(Rev. Ords. 1973 § 24-30)

## 7.7.6. Vote

The concurring vote of 4 members of the Zoning Board of Appeals shall be necessary to reverse any order or decision of the Commissioner of Inspectional Services, or to decide in favor of the appellant for a permit on any matter upon which it is required to pass under this Chapter.

(Ord. No. 284, 06/19/78)

## 7.7.7. Re-Application

No appeal or application which has been unfavorably and finally acted upon by the Zoning Board of Appeals shall be favorably acted upon within 2 years after the date of such final unfavorable action unless the following criteria are met:

A. At least 4 members of the Zoning Board of Appeals must find specific and material changes in the conditions upon which the previous unfavorable action was based, and must describe such findings in the record of its proceedings;

B. All but 1 member of the Planning Board consents; and

C. Notice is given to parties in interest as to the time and place of the proceedings when the question of such consent will be considered.

(Ord. No. 284, 06/19/78)\

## 7.7.8. Decision

The decision of the Zoning Board of Appeals shall be made within 100 days after the date of the filing of an appeal or application. Failure by the Zoning Board of Appeals to so act within 100 days shall be deemed to be a grant of relief or application sought.

(Rev. Ords. 1973 § 24-30; Ord. No. T-40, 8/14/89)

## 7.7.9. Record

The Zoning Board of Appeals shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and setting forth clearly the reasons for

its decision, and of its other official actions, copies of all of which shall be immediately filed with the City Clerk and shall be a public record, and notices of decisions shall be mailed in a timely manner to parties in interest, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states an address to which such notice is to be sent.

(Rev. Ords. 1973 § 24-30)

# Sec. 7.8. Nonconformities

## 7.8.1. Applicability

A. In General.

1. Except as provided specifically below, this Chapter, as amended, shall not affect any building or special permit issued or apply to buildings, structures or uses lawfully in existence or lawfully begun prior to the first publication of notice of the public hearing on such ordinance required by M.G.L. Chapter 40A, Section 5, nor to the use of land to the extent that it was used at the time of adoption of the same or of any corresponding provision of any prior ordinance. Provided that, construction work under such a permit must be commenced within 6 months after it is issued and the work, whether under such permit or otherwise lawfully begun is continued through to completion as continuously and expeditiously as it is reasonable.

2. Notwithstanding paragraph 1., all land use applications for site plan approval or special permits which were filed with the City Clerk on or before April 29, 1987 and which were approved subsequent to that date shall be subject to the provisions of the Newton Zoning Ordinance, in effect on April 29, 1987.

B. Specifically. This Chapter, as amended, shall apply to the following cases:

1. Any building or structure or the use of any building, structure or land existing in violation of the ordinances in force at the time this Chapter or any corresponding provision of any prior ordinance was adopted;

2. Any nonconforming building or structure not used for a period of 2 years or any nonconforming use abandoned for a period of 2 years; and

3. Any nonconforming use which is changed to a conforming use. No reversion to a nonconforming use shall be permitted thereafter.

C. Increases in Area, Frontage or Setback Requirements in Residential Districts.

1. In General. Any increase in area, frontage, or setback requirements prescribed in Sec. 3.1. or Sec. 3.2. shall apply to any lot in a residential district except to the extent that either the provisions of M.G.L. Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

2. Exceptions. Any increase in area, frontage, or setback requirements prescribed in Sec. 3.1. or Sec. 3.2. shall not apply to any lot in a residential district if all of the following requirements are met:

a. At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the lot:

i. Conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increased requirements; and

ii. Had at least 5,000 square feet of area; and

iii. Had at least 50 feet of frontage.

b. The size or shape of the lot has not changed since the lot was created unless such change complied with the provisions of Sec. 7.8.4.

c. Either:

i. The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question; or

ii. If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single- or two-family dwelling; or

iii. If the lot:

a) Did not have on it a single- or two-family dwelling as of July 7, 2001; and

b) Was held in common ownership at any time after January 1, 1995 with an adjoining lot that had continuous frontage on the same street and the

adjoining lot was the site of a single- or two-family dwelling; and

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 Board of Aldermen 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 Board of Aldermen 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 Board of Aldermen 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 of 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 paragraph a., the following de minimus alterations are allowed:

   a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;

b. Decks or deck additions or porches less than 200 square feet in size;

c. First floor additions in the side and rear setbacks which do not total more than 200 square feet in size;

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

e. Enclosing an existing porch of any size;

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

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

h. Alterations to the front of the structure if within the existing footprint; and

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

C. Special Permit Required.

1. A special permit from the Board of Aldermen 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 Board of Aldermen 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)

## 7.8.3. Substandard Commercial Lots

A. Defined. Lots which on August 3, 1987 were undeveloped and which prior to that date were in single and separate ownership and were not available for use in common or in connection with a contiguous or adjacent lot and which have a lot area less than 10,000 square feet. For the purpose of this provision, lots must have been shown as separate parcels on plans filed in the Assessor's Office and assessed as such prior to August 3, 1987 or they must have been shown or described in the most recent plans or deeds duly recorded with the Registry of Deeds for the Southern District of Middlesex County prior to August 3, 1987.

B. Height. The as-of-right building height shall be 1 story or 12 feet. By special permit, the building height may be 2 stories or 24 feet.

C. Floor Area Ratio. As of right FAR shall be 0.50 and by special permit the maximum FAR may be 0.75.

D. Uses in Business 1, 2, 3 and 4 Districts. For substandard commercial lots, the only uses permitted are:

1. Office;
2. Bank, excluding drive-in facilities;
3. Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
4. Dwelling units above the first floor;
5. Accessory parking facilities; and
6. Other uses similar or accessory to those authorized by paragraph D. above.

E. Uses in Business 2 District. For substandard commercial lots, the following uses are permitted in addition to those in paragraph A, above:

1. Wholesale business or storage warehouse, provided that no outside storage is permitted; and
2. Other uses similar or accessory to those authorized in paragraph D. above.

F. Uses in Manufacturing Districts. For substandard commercial lots, the only uses which are permitted are:

1. Research and development facility, laboratory or research facility;
2. Office;
3. Storage warehouse;
4. Wholesale business, excluding the on-site collection or storage for wholesale sale of trash or yard waste of any sort, including but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials;
5. Accessory parking facilities; provided that they are limited to a single level; and
6. Other uses similar or accessory to those authorized by paragraph F. above, provided that the following or similar uses shall not be permitted in connection with nor shall they be considered valid accessory uses to the uses authorized by paragraph F. above: collection, storage, transfer-haul or composting of trash or yard waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials.

G. Uses in Mixed Use Districts. For substandard commercial lots, the only uses which are permitted are:

1. Office;
2. Research and development facility;
3. Bank, excluding drive-in facilities;
4. Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
5. Dwelling units above the first floor;
6. Accessory parking facilities; and
7. Uses similar or accessory to those authorized by this section.

(Ord. No. T-75, 03/05/90; Ord. No. W-33, 03/05/01)

## 7.8.4. Alteration, etc.., of Structure When Shape or Size of Lot is Changed

A. In General. Except to the extent that this Sec. 7.8.4. Provides otherwise, whenever a lot upon which stands a building or structure erected after the passage of this Chapter, or of any corresponding provision of any prior ordinance, is changed in size or shape so that the lot, building or structure no longer complies with the provisions of this Chapter, such building or structure

shall not be used until it is altered, reconstructed or relocated so as to comply with the provisions of the underlying zoning district.

B. Defined. For purposes of this Sec. 7.8.4., the size or shape of a lot shall be deemed to have been changed only if the lot was combined, merged, subdivided, or resubdivided by recording a deed, plan, or certificate of title in the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County. The date of such change shall be the date of recording.

C. Exempt Lots. For purposes of implementing this Sec. 7.8.4., no lot, building or structure shall be deemed in noncompliance with the provisions of this Chapter if the lot was changed in size or shape:

1. Solely as a result of a taking of a portion of the lot for a public purpose; or

2. As a result of a conveyance of a portion of the lot by the owner thereof to the City of Newton, any other body politic, or any agency or department thereof, in lieu of such a taking; or

3. In compliance with the requirements of the remainder of this Sec. 7.8.4.

D. The provisions of this Sec. 7.8.4. shall not apply to a lot in any residential district, or a building or a structure located on the lot, if the lot changed in size or shape at any time on or after October 11, 1940, if the change was in accordance with all of the following requirements:

1. At the time such lot changed in size or shape:

a. Either:

i. If the lots were changed before December 7, 1953, all of the lots met the requirements of Section 7.8.4.D.3.; or

ii. If the lots were changed on or after December 7, 1953, either:

a) The number of resulting lots did not exceed the number of lots that had existed immediately prior to the change, and all of the resulting lots met the requirements of Section 7.8.4.D.3.; or

b) The number of resulting lots exceeded the number of lots that had existed immediately prior to the change, and all the lots, and all of the buildings and structures on the lots, conformed to the requirements in Sec. 3.1. or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in question;

b. And no other lot, and no building or structure on any lot, was rendered nonconforming, or more nonconforming, by reason of the change in size or shape of such lot.

2. For purposes of implementing this Sec. 7.8.4., a lot, or a building or structure on a lot, shall be deemed "rendered nonconforming, or more nonconforming" if the lot was changed in size or shape in a manner not in conformity with the provisions of this Sec. 7.8.4..

3. Except as provided in the paragraphs below, following the change in lot size or shape or both, the resulting lot area, lot frontage, lot area per unit, lot coverage, and usable open space of the lot, and the resulting height, number of stories, and front, side, and rear setbacks, of the buildings and structures on the lot, met any of the following requirements:

a. The lot area, lot frontage, lot area per unit, and usable open space, and the front, side, and rear setbacks all were either unchanged or increased, and the lot coverage, height, and number of stories were either unchanged or decreased; or

b. If there was a decrease of lot area, lot frontage, lot area per unit, or usable open space, or front, side, or rear setback, or if there was an increase of lot coverage, height, or number of stories, the change resulted in conformity with the following requirements:

i. If the lot in question was created before December 7, 1953, the requirements shall be those prescribed in Sec. 3.1. or Sec. 3.2. for lots created before December 7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred; or

ii. If the lot in question was created after December 7, 1953, the requirements shall be those prescribed in Sec. 3.1. or Sec. 3.2. for lots created after December 7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred.

4. If more than 50 percent of a single- or two-family dwelling is demolished, and if the size or shape of the lot was changed at any time after January 1, 1995, the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to any subsequent addition, construction, reconstruction, alteration, or structural change shall be the requirements prescribed in Sec. 3.1. or Sec. 3.2. for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

5. In any multi-residence district, if a single-family dwelling is converted to a two-family dwelling, and if the size or shape of the lot was changed at any time after January 1, 1995, the two-family dwelling shall always be subject to the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances prescribed in Sec. 3.1. or Sec. 3.2. for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

6. If, before a change in size or shape of 2 or more lots, a lot, regardless of when the lot was created, had lot area and lot frontage that was equal to or greater than the minimum required for a lot created after December 7, 1953, in the zoning district in which the lot was located, the requirements for lot area and lot frontage that shall apply to any subsequent change in the size or shape of the lot shall be the requirements prescribed in Sec. 3.1. or Sec. 3.2. for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

7. If, following the change in size or shape of 2 or more lots, any 1 or more of the resulting lots has lot area or lot frontage or both that is equal to or greater than twice the minimum required for a lot created after December 7, 1953, in the zoning district in which such lot was located at the time when the lot was changed, the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to every lot whose size or shape was changed shall be the requirements prescribed in Sec. 3.1. or Sec. 3.2. for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

E. The Board of Aldermen may grant a special permit to allow the area of a lot in a residential district to be reduced by up to 5 percent of the applicable lot area required in Sec. 3.1. or Sec. 3.2., but only if the grant of such a special permit:

1. Does not result in the creation of any nonconformity that did not previously exist with respect to frontage, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or usable open space percentage; and

2. Is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood.

F. The Board of Aldermen may grant a special permit to allow the frontage of a lot in a residential zoning district to be reduced by up to 5 percent of the applicable lot area required in Sec. 3.1. or Sec. 3.2., but only if the grant of such a special permit:

1. Does not result in the creation of any nonconformity that did not previously exist with respect to lot area, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or usable open space percentage; and

2. Is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood.

(Rev. Ords. 1973 §24-28; Ord. No. W-50, 07/09/01)

# Sec. 7.9. Enforcement and Penalties

## 7.9.1. Enforcement

A. Building Permits.

1. The Commissioner of Inspectional Services shall enforce the provisions of this Chapter and shall have the same powers as are provided for executing and enforcing the 780 CMR. Commissioner of Inspectional Services shall not grant a permit for the construction, alteration, enlargement, extension, reconstruction, moving or razing of any building or structure or for use, change in use, moving or extension of use in any building or structure which would violate the provisions of this Chapter.

2. The applicant for a building permit shall, upon the granting of such permit, post a copy of the building permit in view and protected from the weather on the site of operation within a reasonable time after the granting of the permit and prior to the start of construction.

B. Violations.

1. If the Commissioner of Inspectional Services is informed, in accordance with M.G.L. Chapter 40A, Section 7, or otherwise has reason to believe that any provision of this Chapter is being or may be violated, her or his designee shall investigate the alleged violation and inspect the property in question.

2. If the Commissioner of Inspectional Services determines that the provisions of this Chapter are being violated, Commissioner of Inspectional Services shall give notice thereof in writing to the owner of the property at which the violation is occurring or to the duly authorized representative thereof, and shall order that the violation cease.

C. Right of Appeal. Decisions of the Commissioner of Inspectional Services may be appealed to the Zoning Board of Appeals within 30 days of such decision.

(Ord. No. S-322, 07/11/88)

## 7.9.2. Penalties

1. Whoever violates any of the provisions of this Chapter shall be punished by a fine of not more than $300 for each day during which the violation continues. Upon any well-founded information in writing from any citizen that this Chapter is being violated, or upon his own initiative, the Commissioner of Inspectional Services shall take immediate steps to enforce this Chapter by causing complaint to be made before the district court or by applying for an injunction in the superior court.

2. Notwithstanding the provisions of this Sec. 7.9.1., where non-criminal disposition of specified sections of this Chapter by civil fine has been provided for in Revised Ordinances Chapter 20, Sections 20-20 and 20-21, pursuant to the authority granted by M.G.L. Chapter 40, Section 21D, said zoning violations may be enforced in the manner provided in such statute. The penalty for violation of each such violation is set out in Revised Ordinances Chapter 20, Section 20-21 accordingly.

(Rev. Ords. 1973 §24-35; Ord. No. 7, 07/01/74; Ord. No. S-93, 06/03/85; Ord. No. T-126, 03/04/91)

# Article 8. Definitions


Sec. 8.1. In General ..... 8-2

8.1.1. Common Meaning ..... 8-2

8.1.2. Graphics, Illustrations, Photographs & Flowcharts ..... 8-2

Sec. 8.2. Abbreviations ..... 8-2

Sec. 8.3. Defined Terms ..... 8-3

A ..... 8-3

B ..... 8-3

C ..... 8-3

D ..... 8-4

E ..... 8-4

F ..... 8-4

G ..... 8-4

H ..... 8-4

I ..... 8-5

J ..... 8-5

K ..... 8-5

L ..... 8-5

M ..... 8-5

N ..... 8-5

O ..... 8-5

P ..... 8-6

Q ..... 8-6

R ..... 8-6

S ..... 8-7

T ..... 8-7

U ..... 8-7

V ..... 8-8

W ..... 8-8

X ..... 8-8

Y ..... 8-8

Z ..... 8-8

# Sec. 8.1. In General

## 8.1.1. Common Meaning

A. All words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in this Chapter or the context in which they are used clearly indicates to the contrary.

B. In the absence of court decisions or Zoning Board of Appeals decisions specifically interpreting a provision in question, specific definitions listed in this Chapter or previous interpretations of a provision by the Commissioner of Inspectional Services, the meaning of provisions shall be based on the following general hierarchy of sources:

1. For a legal term, definitions in a legal dictionary or if not a legal term, definitions in an ordinary dictionary;
2. Statements of the purpose and intent of particular sections, although such statements cannot overrule a specific code provision;
3. Minutes of discussions of legislative or advisory bodies considering adoption of the provision in question;
4. Definitions of similar terms contained in Federal and State statutes and regulations; and
5. Ordinary rules of grammar.

C. When vagueness or ambiguity is found to exist as to the meaning of any word or term used, any appropriate cannon, maxim, principle or other technical rule of interpretations or construction used by the courts of this state may be employed to resolve vagueness and ambiguity in language.

## 8.1.2. Graphics, Illustrations, Photographs & Flowcharts

The graphics, illustrations, photographs and flowcharts used to explain visually certain provisions of this Chapter are for illustrative purposes only. Where there is a conflict between a graphic, illustration, photograph or flowchart and the text of this Chapter, the text of this Chapter controls.

# Sec. 8.2. Abbreviations

| | |
|---|---|
| AMI | Area Median Income |
| ANR | Approval Not Required |
| Bldg Ht | Building Height |
| DHCD | Massachusetts Department of Housing and Community Development |
| DNA | Deoxyribaneucleic Acid |
| DPH | Massachusetts Department of Public Health |
| CCTV | Closed-Circuit Television |
| CMR | Code of Massachusetts Regulations |
| FAR | Floor area ratio |
| FCC | Federal Communications Commission |
| GIS | Geographic Information System |
| HUD | United States Department of Housing and Urban Development |
| MWRA | Massachusetts Water Resource Authority |
| M.G.L. | Massachusetts General Law |
| NIH | National Institute of Health |
| n/a | Not Applicable |
| Ord. | Ordinance |
| PMBD | Planned Multi-Use Business Development |
| RMD | Registered Marijuana Dispensary |
| Sec. | Section |
| SF | Square Feet |
| SP | Special Permit |
| TDM | Transportation Demand Management |

## Sec. 8.3. Defined Terms

# A

Accessory Apartment: See Sec. 3.4.4.

Accessory Purpose: As applied to buildings or structures, a use in conjunction with an existing building on the same or an adjoining lot.

Accessory Sign: See Sign, accessory.

Adult Entertainment Uses: See Sec. 6.10.1.

Agriculture: See Sec. 6.6.1.

Animal Service: See Sec. 6.4.1.

Apartment House: See Dwelling, multifamily.

Assembly or Fabrication of Materials Manufactured Off Premise: See Sec. 6.5.1.

Assisted Living: See Sec. 6.2.5.

Association of Persons: A group of 5 or more persons 18 years of age or older, who are unrelated by blood, marriage or adoption; provided that an association of persons as defined in this Sec. 8.3. shall not be deemed to constitute a "family" within the meaning of this Chapter.

Attached Dwelling: See Dwelling, single-family attached.

Attached, Single-Family: See Dwelling, single-family attached.

Attic: The space in a building between the ceiling joists of the top full story and the roof rafters.

# B

Bakery, Retail: See Sec. 6.4.3.

Bakery, Wholesale: See Sec. 6.5.2.

Bank: See Sec. 6.4.4.

Basement: See Sec. 1.5.4.D.

Bike Rental: See Sec. 6.4.8.

Boarder: See Lodger.

Boarding House: See Sec. 6.2.7.

Bottling Works: See Sec. 6.5.4.

Bowling Alley: See Sec. 6.4.5.

Build Factor: A mathematical formula which limits the irregularity of the lot shape. See Sec. 1.5.6.

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.

Building Materials Sales Yard: See Sec. 6.5.5.

Building, Nonconforming: A building which does not conform in whole or in part to the use or construction regulations of the district in which the building is located.

Business Establishment: Each separate place of business whether or not consisting of one or more buildings or a part of a building or vacant land.

Business Services: See Sec. 6.4.7.

# C

Car-Sharing Service: See Sec. 6.4.8.

Car Rental: See Sec. 6.4.8.

Car Wash: See Sec. 6.4.9.

Carport: A one-story roofed structure permanently open on at least three sides and designed for or used for occupancy by a motor vehicle. For the purposes of this Chapter, a one-story port-cochere meets the definition of a carport.

Cemetery: See Sec. 6.3.1.

Club, Clubhouse: See Sec. 6.3.2.

Cluster Development for Open Space Preservation: See Sec. 6.2.12.

Commercial Vehicle Parking: See Sec. 6.7.2.

Community Use Space: See Sec. 6.3.3.

Congregate Living Facility: See Sec. 6.2.8.

Convalescent: See Sec. 6.3.7.

Corner Lot: See Sec. 1.5.2.F.

Country Club Facilities: See Sec. 6.4.10.

# D

Day Care Center: See Sec. 6.3.4.

Detached, Single-Family: See Sec. 6.2.1.

Detached, Two-Family: See Sec. 6.2.2.

Development Parcel: The real property on which a planned multi-use business development or a mixed-use development (including any appurtenant easement areas benefiting a mixed-use development) is located in connection with a special permit under Sec. 4.1.4. or Sec. 4.2.4.

Dormer: See Sec. 1.5.4.F.

Dormitory: See Sec. 6.2.9.

Drive-in Business: See Sec. 6.4.11.

Driveway: An area on a lot which is designed or used to provide for the passage of motor vehicles to and from a street or way.

Dry Cleaning or Laundry, Retail: See Sec. 6.4.12.

Dwelling: A building or structure used for human habitation.

Dwelling, Single-Family Attached: See Sec. 1.5.1.

Dwelling, Multifamily: See Sec. 1.5.1.

Dwelling, Two-Family: See Sec. 1.5.1.

Dwelling Unit: See Sec. 1.5.1.E.

# E

Elderly Housing with Services: See Sec. 6.2.10.

Electric Car-Charging Station: See Sec. 6.4.8.

# F

Family Child Care Home: See Sec. 6.3.4.

Family Child Care Home, Large: See Sec. 6.3.4.

Fast Food Establishment: See Sec. 6.4.13.

Feed and Seed Store: See Sec. 6.5.7.

Flat Roof: See Roof, Flat.

Floor Area Ratio: See Sec. 1.5.5.

Floor Area, Gross: See Sec. 1.5.5.

Floor Area, Ground: See Sec. 1.5.5.

Food Processing, Wholesale: See Sec. 6.5.8.

Funeral Home: See Sec. 6.4.15.

# G

Garage, Greenhouse, Maintenance or Storage Facility: See Sec. 6.7.3.

Government Offices or Services: See Sec. 6.3.5.

Grade Plane, Average: See Sec. 1.5.4.E.

Gross floor Area: See Sec. 1.5.5.

Ground Floor Area: See Sec. 1.5.5.

# H

Habitable space: See Space, habitable.

Hall: See Sec. 6.3.15.

Health club: See Sec. 6.4.16.

Height: See Sec. 1.5.4.

Height, contextual: See Sec. 1.5.4.

Heliport: See Sec. 6.7.3.

Home business: See Sec. 6.7.3.

Hospital: See Sec. 6.3.7.

Hotel: See Sec. 6.4.17.

# I

Indoor Recreation Facility: See Sec. 6.6.2.

Institution, Single-Use: A religious or nonprofit educational use having no more than one principal building and less than 50,000 square feet of lot area.

Institution, Multi-Use: A religious or nonprofit educational use having one or more buildings and at least 50,000 square feet of lot area.

Interior Lot: See Lot, interior.

# J

[reserved]

# K

Keno: See Sec. 6.10.2.

# L

Laboratory and Research Facility, No Recombinant DNA: See Sec. 6.5.9.

Landing: A level area at the top of a staircase or between one flight of stairs and another.

Laundry, Cleaning and Dyeing Establishment: See Sec. 6.5.10.

Library: See Sec. 6.3.8.

Listed Standards: Rules and regulations for land uses otherwise allowedby right.

Live/Work Space: See Sec. 6.2.11.

Lodger: A person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals; and who is not a member of the housekeeping unit

Lot, Corner: See Corner Lot.

Lodging Establishment: See Sec. 6.4.17.

Lot Coverage: See Sec. 1.5.2.D.

Lot, Interior: Any lot or part of a lot other than a corner lot.

Lot Line: See Sec. 1.5.2.A.

# M

Maneuvering Aisle: A maneuvering space which serves a row or rows of parking stalls.

Manufacturing: See Sec. 6.5.11.

Mass Below First Story: See Sec. 1.5.5.D.

Mixed-Use Residential Building: A building occupied by both residential and nonresidential uses.

Molding, Shaping or Assembly from Prepared Materials (Including Repairs): See Sec. 6.5.12.

Multi-Family Dwelling: See Sec. 6.2.4.

Museum: See Sec. 6.3.8.

# N

Nonconforming Building: See Building, nonconforming.

Nonconforming Use: See Use, nonconforming.

Nonprofit Institution: See Sec. 6.3.8.

Nursing Home: See Sec. 6.2.5.

# O

Occupy/Occupancy: When used in connection with accessory apartments, this term shall mean physical presence and residency on the subject premises except for short periods of temporary absence.

Office: See Sec. 6.4.20.

Office of a Contractor, Builder, Electrician or Plumber or Similar Enterprises: See Sec. 6.4.21.

Open-Air Business: See Sec. 6.4.22.

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens,

playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation, (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

Open Space, Usable: All the lot area not covered by buildings and/or structures, roadways, drives, surface parking area or paved surfaces other than walks. The area devoted to lawns, landscaping, exterior tennis courts, patios, in-ground swimming pools and non-structural recreational amenities shall be included as usable open space. The area covered by roof overhangs of up to 2 feet shall be included in the calculation of open space.

Outdoor Recreational Activities: See Sec. 6.6.3.

# P

Paint Store: See Sec. 6.5.12.

Parking Facility: A building, structure, lot or part of a lot where off-street parking is provided or permitted. See Sec. 6.4.24.

Parking Lot: A parking facility where off-street parking of vehicles is permitted other than as an accessory use.

Parking Stall: An area, exclusive of inventory storage space, display space, maneuvering aisles or other maneuvering space, adequate for parking a motor vehicle.

Personal Service: See Sec. 6.4.25.

Place of Amusement: See Sec. 6.4.26.

Porch: A roofed structure with sides not more than 60 percent enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned. A porch may share no more than two exterior walls with the residential structure. Railings or solid walls on the projecting facades of the porch may be no higher than 36 inches as measured from the finished porch floor; the remainder of these facades may be open to the elements or enclosed by mesh, glass, or similar material.

Porch, Enclosed: A porch enclosed for any portion of the year by any non-permeable material such as glass or a similar material.

Porch, Unenclosed: A porch that at all times is either enclosed by permeable materials such as mesh or similar material or is unenclosed by any material.

Printing, Publishing and Reproduction Establishments: See Sec. 6.5.13.

Public Use: See Sec. 6.3.10.

# Q

[reserved]

# R

Radio,Television or Telephone Transmission Station: See Sec. 6.4.28.

Rear Setback Line: A line equidistant from the rear 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.

Recreational Trailer or Vehicle: A vehicular, portable unit which exceeds 18 feet in length, 7 feet in height or 7 feet in width and which is designed and principally used for travel, camping or recreational use, including, but not limited to, a travel trailer, pick-up camper, motorized camper, tent trailer, boat or boat trailer.

Registered Marijuana Dispensaries: See Sec. 6.10.3.

Residential Care Facility: See Sec. 6.2.13.

Resource Extraction: See Sec. 6.6.4.

Rest Home: See Sec. 6.3.7.

Restaurant: See Sec. 6.4.29.

Retail Sales: See Sec. 6.4.31.

Retaining Wall: See Sec. 5.4.2.

Riding School: See Sec. 6.6.5.

Roof, Flat: A roof with a pitch of less than 1:12.

Roof, Sloped: A roof with a pitch of 1:12 or greater, typically having gables at both ends.

Roomer: The same as "Lodger".

Rooming House: The same as "Lodging house".

# S

Sanitarium: See Sec. 6.3.7.

School or Other Educational Purposes: See Sec. 6.3.14.

Scientific Research and Development Activities: See Sec. 6.7.4.

Service Establishment: See Sec. 6.4.32.

Setback Line: See Sec. 1.5.3.

Shipbuilding, Small Boat Building, Yards for Storage and Repair: See Sec. 6.5.3.

Side Setback Line: A line equidistant from the side lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected.

Sign: See Sec. 5.2.

Sign Painting Shop: See Sec. 6.5.14.

Single-Person Occupancy Dwelling: See Sec. 6.2.14.

Single-Room Occupancy Dwelling: See Sec. 6.2.14.

Single-Family Attached: See Sec. 1.5.1.

Single-Family Detached: See Sec. 1.5.1.

Sloped Roof: See Roof, Sloped.

Space, habitable: Gross floor area in a building structure used for living, sleeping, eating or cooking purposes, including closets and hallways.

Sports Stadium: A building or structure containing tiered seating facilities for more than 200 spectators at sporting events.

Stable: See Sec. 6.4.33.

Stairs: A set of steps leading from one floor of a building to another, typically inside the building.

Steps: A flat surface, especially one in a series, on which to place one's foot when moving from one level to another.

Stock Farm: See Sec. 6.6.5.

Storage Building: See Sec. 6.5.5.

Storage, Outdoor: See Sec. 6.4.23.

Story: See Sec. 1.5.4.

Street: A public way or a way opened and dedicated to the public use which has not become a public way, or a toll road open to public travel, including its approaches and toll houses or booths.

Street Level: The level of a building the floor of which is nearest to the grade of the adjacent sidewalk.

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.

# T

Telecommunications and Data Storage Facility: See Sec. 6.5.15.

Theatre: See Sec. 6.3.15.

Trash or Yard Waste, Collection, Storage, Transfer-Haul or Composting: See Sec. 6.5.16.

Two-Family Detached: See Sec. 6.2.2.

Two-Family Dwelling: See Dwelling, two-family.

# U

Use: Any purpose for which land, buildings or structures are arranged or designed, or for which said land, building or structure is occupied or maintained.

Use, Nonconforming: A use which does not conform to the use regulations of the district in which such use exists or might be introduced.

# V

Vehicle Repair Shop: See Sec. 6.4.34.

Vehicle Sales and Service Facility: See Sec. 6.4.36.

Vehicle Storage: See Sec. 6.5.17.

Veterinary Hospital: See Sec. 6.4.37.

# W

Watchman or Caretaker: See Sec. 6.7.5.

Wireless Communication Equipment: See Sec. 6.9.

Wholesale Distribution Plant: See Sec. 6.5.19.

# X

[reserved]

# Y

Yard of a Contractor or Builder for Office and Storage of Vehicles and Materials: See Sec. 6.5.6.

# Z

[reserved]

(Rev. Ords. 1973 § 24-1; Ord. No. 202, 03/21/77; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-57, 11-20-89; Ord. No. T-114, 11/19/90; Ord. No. T-273, 06/07/93; Ord. No. V-91, 09/16/96; Ord. No. V-92, 10/21/96; Ord. No. V-122, 07/14/97; Ord. No. V-233, 04/05/99; Ord. No. W-20, 11/06/00; Ord. No. Z-16, 12/17/07; Ord. No. Z-45, 03/16/09; Ord. No. Z-77,02/22/11; Ord. No. Z-108, 04/17/12; Ord. No. A-4, 10/01/12; Ord. No. A-32, 10/21/13)