



**CITY OF MELROSE**  
**APPROPRIATIONS & OVERSIGHT COMMITTEE**  
**AGENDA • MARCH 6, 2023**

Council Chamber, First Floor, Melrose City Hall Committee Meeting  
562 Main Street, Melrose, MA 02176

7:30 PM

## **I. CALL TO ORDER**

|                     |                       |
|---------------------|-----------------------|
| Leila Migliorelli   | Chair                 |
| Maya Jamaledine     | Vice Chair            |
| Shawn M. MacMaster  |                       |
| Christopher Cinella |                       |
| Jack Eccles         |                       |
| Mark Garipay        |                       |
| Robb Stewart        |                       |
| Manjula Karamcheti  |                       |
| John Obremski       |                       |
| Ryan Williams       |                       |
| Jen Grigoraitis     | President, Ex Officio |

## **II. PUBLIC HEARING**

7:30 PM Public Hearing concerning Zoning Amendments - See Order 2023-59

Remote Link for Public Hearing:

<https://cityofmelrose-org.zoom.us/j/98584359192>

Meeting ID:

985 8435 9192

## **III. PUBLIC COMMENT**

Remote Link for Public Comment:

<https://cityofmelrose-org.zoom.us/j/98584359192>

Meeting ID:

985 8435 9192

## **IV. ORDERS**

- ORDER-2023-59** : Amending Melrose Revised Zoning Ordinance, Chapter 235, Various Provisions

*Offered by:* Mayor Paul Brodeur

*From:* City Council

ASSIGNED TO COMMITTEE

## **V. ADJOURNMENT**



GREGORY SAMPSON  
Chair

## CITY OF MELROSE

## PLANNING BOARD

City Hall, 562 Main Street  
Melrose, Massachusetts 02176  
Telephone - (781) 979-4190  
Fax - (781) 979-4290

January 31, 2023

The Honorable Mayor Brodeur and  
The Honorable City Council  
of the City of Melrose, Massachusetts

RE: Proposed Zoning Amendments

To His Honor and the Members of the Council:

At its meetings on December 19, 2022 and January 23, 2023, the Planning Board voted to submit the attached zoning amendments to the City Council. These proposed changes seek to clarify sections of the code for easier interpretation and understanding, ensure compliance with Massachusetts General Laws, and reduce the number of variance requests for violations that are regularly approved by the Board of Appeals. The purpose and reasoning behind each proposed amendment will be described in detail below.

### Corner Lot Setbacks

The purpose of this amendment is to allow properties on corner lots to have similar side yard setback requirements as those properties that are not at the intersection of streets. In the Board's extensive review of corner lot properties, allowing for side yard setback distances on corner lots by Variance has not been detrimental to the streetscape or to the abutting properties. Two yards often function as side yards and allowing for a side yard setback in these locations provides the Owner space to build a structure that is consistent with the use of the yard while not creating negative impacts to the rhythm of buildings on the block.

Changing the Ordinance to allow for side yard setbacks will remove the need for many cases to obtain a Variance for corner lot setback relief. Since 2017, 38 cases have been brought before the Board of Appeals for variances related to a hardship imposed by the corner lot setback requirements. Removing the need for this permit reduces the Owners' administrative work, uncertainty, cost and extended permitting time that is associated with construction on corner lots. This amendment is also identified as an action item in the Melrose Forward Master Plan.

### Structure Definition

The Melrose Zoning Ordinance (MZO) currently defines retaining walls and fences as structures. MZO §235-24.B, Accessory Buildings and Other Structures, requires

accessory structures to be governed by regulations for an accessory building unless specifically exempted by a variance. Oftentimes fences and retaining walls are therefore required to have an accessory structure setback from property lines. Since it is a typical condition for a retaining wall or fence to be on or close to a property line, it was likely not the intent of the regulation for accessory structure setback to apply to them. Removing retaining wall and fence from the definition of structure will resolve this issue.

#### **BA-2 Zoning District Line Change at 521-529 Franklin St.**

521-529 Franklin Street (parcel B12 058) is split into two zoning districts. The front of the parcel facing Franklin Street is in BA-2, while most of the parking lot to the rear is in UR-A. The property owner requested that the entirety of the lot be brought into BA-2 explaining that refinancing and insuring the property is complicated by the split zoning and the best use of the property is in line with uses permitted in BA-2.

#### **Definition of Retail Food Establishment**

This amendment updates the definition of retail food establishment to allow for the sale of alcoholic beverages for off premise consumption, which reflects the recent change in the City's liquor laws.

#### **Definition of In-law Apartment**

The definition of in-law apartments in the MZO has been found to be overly restrictive and creates undue hardship for many applicants who wish to create a dwelling unit for a family member in their home or attached to their home. The provision requiring the unit to be located within the single-family dwelling as it existed on January 1, 1990, is limiting and prohibits additions to accommodate in-law apartments. The Board of Appeals has approved variances from this provision on several occasions to permit in-law apartments and allow for this reasonable use where all other provisions are met.

This amendment strikes paragraph F from the definition and modifies paragraph G to address this issue. Removing paragraph F will allow for alterations and additions to existing single-family houses to accommodate in-law apartments. Revising paragraph G would continue to restrict the size of the unit in relation to the existing single-family home; additions would need to conform to the dimensional regulations within the district; and a special permit from the ZBA is still required for all in-law apartment proposals. This amendment is also identified as an action item in the Melrose Forward Master Plan.

#### **Votes for Special Permit Approval & Term**

##### *Votes for Approval*

This amendment updates the MZO to be consistent with recent changes to MGL C.40A (the Zoning Act) and reflect State regulations. Chapter 358 of the Acts of 2020 made several amendments to Chapter 40A, including: (1) changes to section 5 to reduce the number of votes required to enact certain kinds of zoning ordinances and bylaws from a  $\frac{2}{3}$  supermajority to a simple majority; and (2) changes to section 9 making similar changes to the voting thresholds for the issuance of certain kinds of special permits.

Changes to the MZO related to Zoning Amendment voting is not needed because the language just references Section 5 of the Zoning Act.

#### Special Permit Term

This amendment increases the time allowed to exercise a special permit, which reflects another recent change to the Zoning Act. Chapter 219 of the Acts of 2016 increased the timeframe to exercise a special permit from two to three years. Municipalities are not obligated to adopt the longer timeframe, however, increasing the special permit term is more accommodating while conforming to the MGL.

#### **Site Lines and Fence Height in Front Yards On Corner and Non-Corner Lots**

The language in Sections 235-25.K and 235-25.L of the Zoning Ordinance is confusing and unclear. The Office of Planning and Community Development has received calls from residents attempting to understand this section of the code, which is easily misinterpreted and difficult to follow. Councilor McMaster also requested that the language in sections §235-25.K & §235-25.L be revised prompting the proposed amendment which provides clearer and more manageable instruction.

#### **Site Plan Review Criteria**

In relation to the amendment above, in districts where no setback from the property line is required, attention should be given to the safety of travel around corner sites with relation to the location of buildings and driveway openings during the Site Plan Review process. While the preceding amendment regulates lots in residential districts, this amendment ensures that this issue is considered for all new development.

#### **Vegetation Height for Corner Lots & in Yards along Streets - General Code Amendment**

In amending §235-25.K & §235-25.L, vegetation was removed from these sections and inserted in the General Code shifting enforcement responsibility from the Building Commissioner to the Department of Public Works, which generally oversees vegetation maintenance throughout Melrose. Additionally, with the regulation removed from the zoning ordinance a hedge that exists today will not be deemed legally nonconforming. The general code allows enforcement of existing and new vegetation and discretion is provided to the Director of Public Works to determine if vegetation creates a safety hazard.

#### **Unit Size**

The MZO's restrictions on unit size as regulated in §235-25.I prevent the City from complying with the Department of Housing and Community Development's guidelines on the new multi-family zoning requirements for MBTA Communities. (See Section 3A of MGL c. 40A, that was part of the 2021 Economic Development Bill.) The regulations require that multi-family housing is suitable for families with children and that zoning cannot restrict the number of bedrooms, the size of bedrooms, or the number of occupants.

The proposed amendment strikes the minimum unit sizes from the zoning ordinance. Residential unit sizes are addressed in the State Sanitary Code, enforced by the Board of

Health, and the State Building Code, enforced by the Building Commissioner, which regulate minimum dwelling unit and bedroom sizes per occupant and other dimensional controls of residential units. In addition to the aforementioned codes, the City's zoning districts have different mechanisms that directly or indirectly control the size of residential units. Some districts regulate the number of units per lot based on lot area, and all control a building's size through Floor Area Ratio and/or height and setback regulations. Market demand is an additional control over unit size. Two recent developments downtown provide a few studio apartments/microunits of between 360 to 400 square feet in each; however, the market demand is generally for larger units.

By eliminating unit size from the MZO, the City will comply with MGL c. 40A s. 3A while still being able to regulate density using other provisions. In addition to needing to make this change to the Ordinance to comply with the new law, having a variety of housing types in terms of size and cost, is a goal of the City's Housing Production Plan and this change will allow for smaller units, which have been successful in a few recent developments.

#### **Definition of Family & Dwelling Units**

The amendment to the definitions of family and dwelling units is also needed to comply with DHCD's guidelines on the new Multi-family zoning requirements for MBTA Communities. It strikes the definition of family and replaces it with definitions for One-Family and Two-Family Dwelling Units. The MZO already defines Dwelling Unit and Multifamily Dwelling Units thereby organizing the code in a more logical and streamlined manner. The definition of dwelling unit establishes the primary intent of a residential unit being a space with complete living facilities (living, sleeping, eating, cooking and sanitation) occupied by people that share the use of that space together as a single housekeeping unit. Restricting occupancy based on biological or legal relationships does not address the purposes of zoning. A biological family can have the same, less, or more of an impact on zoning issues such as traffic, parking, overcrowding, public systems, etc., than a non-tradition family living together as a household. Regulating density through the current definition of family can be discriminatory and illegal in how it is enforced.

This amendment also seeks to strike the definition of Apartment House from the MZO and the Table of Use and Parking Regulations. The definition references family and the Multifamily Dwelling duplicates the apartment house use rendering it obsolete. Lastly, this amendment seeks to eliminate the references to apartment house and garden house from the definition of Multifamily Dwelling, which are repetitive and antiquated.

In accordance with M.G.L., Chapter 40A, Section 5, all proposed zoning amendments received by the City Council shall be submitted to the Planning Board within 14 days for review and to schedule a public hearing. The City Council and the Planning Board are required to hold public hearings within 65 days. The Planning Board would welcome a joint public hearing with the City Council. After the hearing, the Planning Board has 21 days to submit a report with recommendations to the City Council. The City Council

Proposed Zoning Amendments  
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must wait until they receive a report from the Planning Board or wait for 21 days before holding a vote. Please forward the proposed amendments to us at your earliest convenience in order to begin the review process.

Thank you for your consideration. We look forward to discussing these important amendments with you.

Respectfully yours,



Gregory Sampson  
Planning Board Chair

Attachment: Proposed Zoning Amendments dated January 31, 2023

cc: Shannon Phillips, City Solicitor  
Rita Mercado, Chairwoman, Board of Appeals  
Albert Talarico, Building Commissioner  
Denise Gaffey, OPCD Director & City Planner  
Members of the Planning Board

Attachment: Letter to Mayor and CC with Proposed Zoning Amendments 1\_31\_2023 (ORDER-2023-59 : Zoning Amendments)

## Corner Lot Setbacks Zoning Amendment

**Amend ARTICLE II, Word Usage and Definitions, SECTION 235-5, definitions, as follows.**

*Text that is removed is ~~crossed out~~ and additions are underlined.*

LOT, CORNER - A lot at the point of intersection of and abutting on two or more intersecting streets, the interior angle of intersection of the street lot lines or, in case of a curved street, extended lot lines, being not more than 135°. ~~For purpose of this chapter, each street frontage shall be considered a front yard and the remaining two yards shall be considered rear yards.~~

LOT LINE, REAR—The lot line opposite from the front lot line except as provided for in §235-25.C.

**Amend ARTICLE VI, Dimensional and Density Regulations, SECTION 235-25, Additional dimensional and density provisions, as follows.**

*Text that is removed is ~~crossed out~~ and additions are underlined.*

~~C. A corner lot shall have minimum street yards with the depths which shall be the same as the required front yard depths for the adjoining lots.~~

For a corner lot the street frontage that is used to access the main entrance (typically identified by street address) of the structure from the street shall be considered a front yard. The other street frontage shall be considered a side yard.

Of the remaining two yards, the yard with the shallower depth shall be considered a side yard and the yard with the deeper depth shall be considered the rear yard. If the remaining yards have the same depth, the owner can designate the side and rear yards.

## Structure Definition Zoning Amendment

Amend ARTICLE II, Word Usage and Definitions, SECTION 235-5, definitions, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

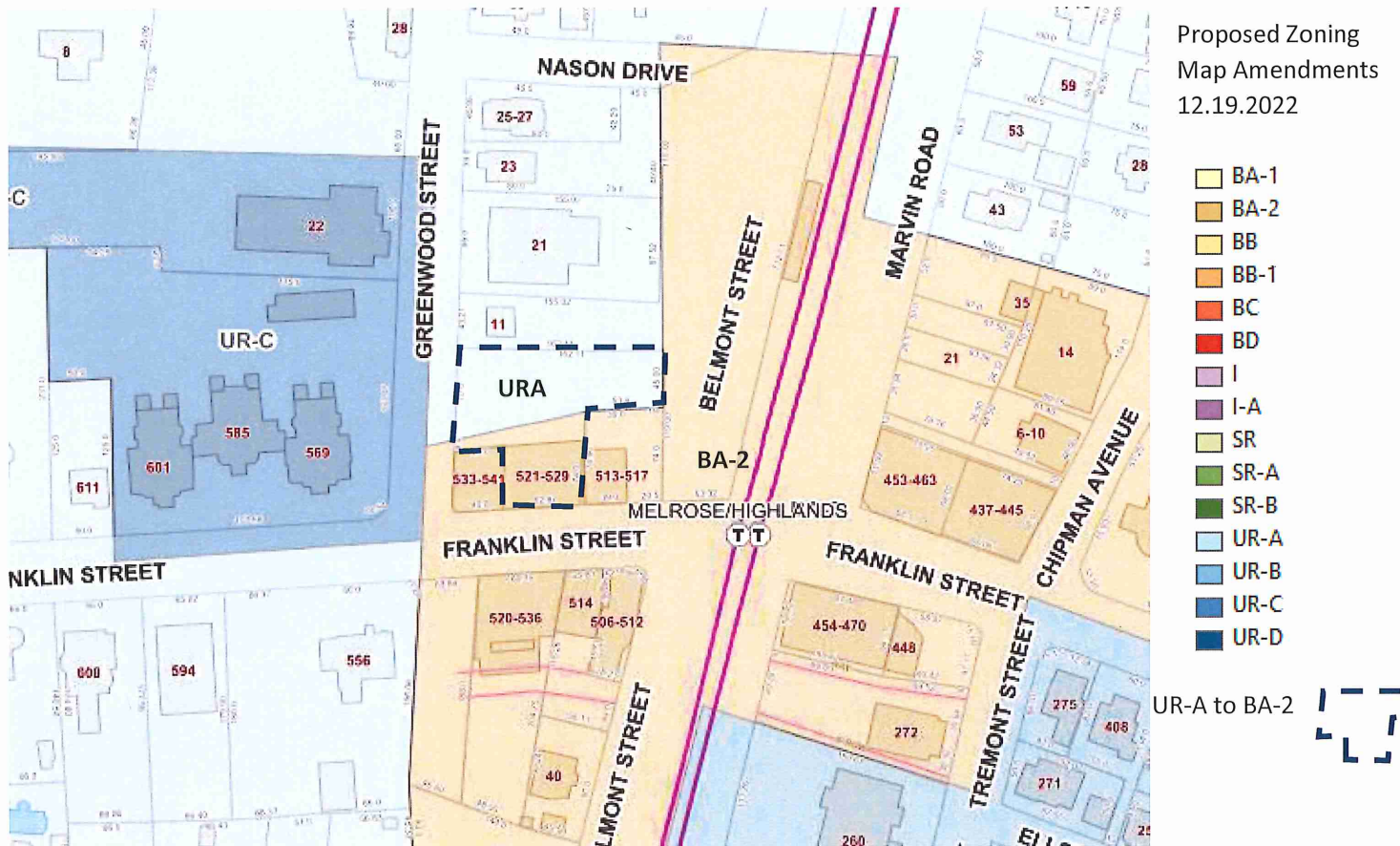
STRUCTURE - A combination of materials ~~for permanent or temporary occupancy or use~~ that are constructed or erected on the ground, such as but not limited to a building, bridge, trestle, tower, framework, ~~retaining wall~~, tank, tunnel, tent, stadium, reviewing stand, platform, swimming pool and equipment, shelters, piers, wharves, bin, ~~fence~~, and sign ~~or the like~~.

## BA-2 Zoning District Line Change at 521-529 Franklin St.

### Article III. Establishment of Districts

#### §235-8 Changes to map

The location and boundaries of the zoning districts are hereby amended as shown on a map titled “Zoning Map of the city of Melrose, Massachusetts,” dated \_\_\_\_.



## Definition of Retail Food Establishment

**Amend Chapter 235, ARTICLE II Word Usage and Definitions, SECTION 235-5, Definitions as follows.**

*Text that is removed is ~~crossed out~~ and additions are underlined.*

RETAIL FOOD ESTABLISHMENT- A retail store selling food products, not to be consumed on the premises, which shall include but not be limited to one or more of the following: fresh cheese, fresh meat or delicatessen products, freshly prepared baked goods or confections, natural and organic food or beverages, and which may also sell, incidental to the sale of food products therein, ~~wines and malt beverages,~~ alcoholic beverages for off premises consumption; but not tobacco products, lottery tickets, pharmacy items, toiletries, personal care products or photographic supplies or services. The term "retail food establishment" as used herein shall further comport with the definition of "establishment" as defined in Chapter 327 of the Acts of 2008.

## In-law Apartment Definition Zoning Amendment

Amend ARTICLE II, Word Usage and Definitions, SECTION §235-5, definitions, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

### IN-LAW APARTMENT

A dwelling unit either contained within an owner-occupied one-family ~~structure~~ dwelling (such as, but not limited to, a cellar or attic) or attached thereto (such as, but not limited to, a garage or barn) which constitutes separate living facilities for immediate members of the family, such as a mother and/or father or a son and/or daughter or their respective spouses. See "dwelling unit" as defined in this section.

**A.** An accessory in-law apartment is a separate, subordinate living area constructed as part of an existing owner-occupied one-family dwelling and built in a manner which maintains the appearance of a ~~single family structure~~ one-family dwelling.

**B.** There shall be no boarders or lodgers within either unit of a dwelling with an accessory in-law apartment.

**C.** No accessory in-law apartment shall be constructed without a building permit issued by the Building Inspector.

**D.** No use as an accessory in-law apartment shall be permitted prior to a certificate of occupancy by the Building Inspector.

**E.** A certificate of occupancy shall be issued for three years. Continued occupancy shall require issuance of a new certificate of occupancy.

**F.** ~~The dwelling unit shall be located within the single family dwelling as it existed on January 1, 1990.~~

**G.** The dwelling unit shall occupy no more than 1/3 of the structure's gross floor area ~~as of January 1, 1990.~~

## Votes for Special Permit Approval & Term

Amend Chapter 235, ARTICLE XI, Special Permits and Conditions, SECTION 235-62, Special Permit Procedure as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

F. Vote. A concurring vote of all but one of the members of the Board of Appeals is required to grant a special permit or variance by said Board, and two-thirds concurring vote of the Planning Board is required to grant a special permit by said Board except when only a simple majority is required for multifamily housing, mixed-use development in centers of commercial activity within a municipality, and reduced parking space to residential unit ratio requirement, all pursuant to the specifications in Section 9 of the Zoning Act.

G. Certification and recording of special permit or variance. Any special permit or variance granted by a special permit granting authority shall be certified by said authority and show the name and address of the landowner or applicant if other than the owner. The notice of special permit shall identify the land affected, set forth compliance with statutory prerequisites and state that a special permit has been granted and certify that copies of the decision and all plans referred to in the decision have been filed with the City Clerk and the Planning Board. No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the City Clerk that 20 days have elapsed and no appeal has been filed or, if such appeal has been filed, that it has been dismissed or denied is recorded in the Registry of Deeds with the date and time of such recording and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. A special permit granted under this chapter shall lapse in ~~two~~ three years, which shall not include such time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

## Site Lines and Fence Height in Front Yards on Corner and Non-Corner Lots

Amend ARTICLE VI, Dimensional and Density Regulations, SECTION §235-25.K and §235-25.L, Additional dimensional and density provisions, as follows.

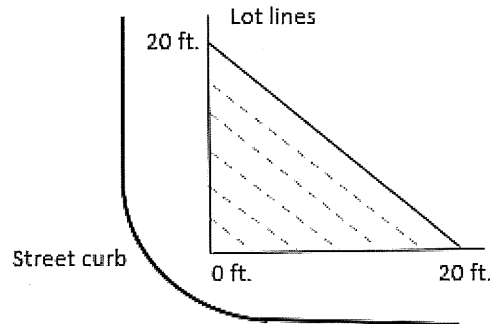
*Text that is removed is ~~crossed out~~ and additions are underlined.*

### Section §235-25.K.

At no street intersection in any district shall any new or replacement organic material, excepting a lawn or ground cover, be planted or permitted to grow, nor any obstruction to vision exceeding the lesser of three feet in height above the plane established by the intersecting streets or 30 inches above the sidewalk be placed, nor shall existing organic material be permitted to grow above such height, on any lot within the triangular area formed by the intersecting curbs at a distance of 25 feet from the corner. Where curbs do not exist, measurement shall be made along edge of pavement.

K. For a corner lot in a district with a required front yard setback, a fence, wall, or other structure shall not exceed three feet in height above the plane of the intersecting streets herein (also see §202-4.1):

- a) Within the triangular area formed by measuring 20 ft. from the intersection of the property lot lines and bounded by a straight line connecting the two points.
- b) Notwithstanding §235-25.K(a), if a fence, wall, or similar structure is setback three feet from the lot line in the side yard as designated in §235-25.C they are exempt from the height restrictions in this section; and
- c) Otherwise, §235-25.L applies.



### Section §235-25.L

A fence, hedge, wall, sign or other structure or vegetation may be maintained on any lot, provided that in the front yard area no such structure or vegetation shall be over three feet in height above the adjacent ground within five feet of the front lot line unless it can be shown that such vegetation will not restrict visibility in such a way as to hinder the safe entry of a vehicle from any driveway to the street.

L. For a non-corner lot, a fence, wall, or similar structure within the required front yard setback or from the front lot line to the line of the existing primary structure, whichever is less, shall not exceed three feet in height (also see §202-4.1(B)). Height is measured from the grade of land where the structure is installed. Existing retaining walls may be replaced in kind.

## Site Plan Review Amendment

Amend ARTICLE V, Use Regulations, SECTION §235-16.1.E(5), Site plan review, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

E.5 Convenience and safety of vehicular and pedestrian movement within and around the site and of the location of buildings, fences, walls, or other structures, and driveway openings, in relation to traffic and/or adjacent streets.

## Vegetation Height for Corner Lots & in Yards along Streets - General Code Amendment

Insert ARTICLE I, General Provisions, SECTION §202-4.1 Vegetation Height, as follows.

*Text that is removed is ~~crossed-out~~ and additions are underlined.*

### §202-4.1 Vegetation Height

A. For a corner lot, a hedge shall not exceed three feet in height above the plane of the intersecting streets, and/or any other leafy vegetation shall be maintained so as not to obstruct vision herein:

- i. Within the triangular area formed by measuring 20 ft. from the intersection of the property lot lines and bounded by a straight line connecting the two points.
- ii. Outside of the triangular area, §202-4.1(B) applies.

B. For all lots, a hedge shall not exceed three feet in height within three feet of the property line in the yard adjacent to the street and any other leafy vegetation shall be maintained so as not to obstruct vision of the public way. Height is measured from the grade of land where the vegetation is installed.

C. For existing vegetation, the determination regarding if vegetation is obstructing vision at an intersection or of the public way shall be at the discretion of the Director of Public Works,

## Unit Size Amendment

Amend ARTICLE VI, Dimensional and Density Regulations, SECTION §235-25.I, Additional dimensional and density provisions, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

Section §235-25.I

The gross floor area of each one family detached dwelling and per dwelling unit in a two family dwelling shall not be less than 768 square feet. The gross floor area in a multifamily dwelling shall not be less than 450 square feet for one bedroom dwelling units, 600 square feet for two bedroom units and 768 square feet for three bedroom or larger units.

## Definitions of Family & Dwelling Amendment

Amend ARTICLE II, Word Usage and Definitions, SECTION §235-5, definitions, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

Section §235-5

### APARTMENT HOUSE

A building designed or intended or used as the home or residence of three or more families, each in a separate dwelling unit, living independently of each other, and who may have a common right in halls and stairways.

### FAMILY

An individual or two or more persons related by blood or marriage living together as a single housekeeping unit and including necessary domestic help, such as nurses or servants, and further including, provided that the dwelling is owner occupied, not more than three lodgers or roomers taken for hire. A group of individuals (including necessary domestic help, such as nurses or servants, but excluding lodgers or roomers taken for hire) not related by blood or marriage but living together as a single housekeeping unit may constitute a family. For purposes of controlling residential density, each such group of four individuals shall constitute a single family.

### DWELLING, ONE-FAMILY

A building containing one dwelling unit.

### DWELLING, TWO-FAMILY

A building containing two dwelling units.

### DWELLING, MULTIFAMILY

A building containing three or more dwelling units and including an apartment house, garden apartment house and multifamily dwellings

Amend Table of Use and Parking Regulations, SECTION 235 attachment 1, as follows.

*Text that is removed is ~~crossed out~~ and additions are underlined.*

**Table of Use and Parking Regulations**

| Principal Use      | Residential Districts |      |      |      |      |             | Business Districts |      |            |    |    | Industrial Districts |     | Parking Code (see § 235-32) |
|--------------------|-----------------------|------|------|------|------|-------------|--------------------|------|------------|----|----|----------------------|-----|-----------------------------|
|                    | SR                    | SR-A | SR-B | UR-A | UR-B | URC<br>UR-D | BA<br>BA-1         | BA-2 | BB<br>BB-1 | BC | BD | I                    | I-A |                             |
| 5. Apartment house | —                     | —    | —    | —    | S    | P           | —                  | —    | —          | —  | P  | —                    | —   | B                           |