

ARTICLE 1: AMEND ZONING BY-LAW – RETAINING WALLS

To see if the Town will vote to amend the Needham Zoning By-Law, as follows:

- (a) Amend Section 1.3 Definitions, by adding the following term and definition in the appropriate alphabetical location as follows:

“Retaining Wall - A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher position. Retaining walls may be attached to or independent from other structures. The exposed side of a retaining wall shall be known as a “face”. The area between a lower wall and a successive higher wall shall be known as a “terrace.”

- (b) Amend Section 1.3 Definitions, by revising the existing definition of the term “Structure”, so that the entire definition shall now read as follows: (new language underlined):

“Structure – anything constructed or erected, the use of which requires a fixed location on the ground or attached to something located on the ground including an artificial or a constructed swimming pool having a depth of water of two (2) feet or more or a water surface area of at least one hundred (100) square feet when filled to capacity, but excluding a fence, boundary wall, retaining wall, public utility pole, public utility supporting device or a structure with less than one hundred square foot ground coverage and a height of less than eight (8) feet.”

- (c) Amend Section 6, Special Regulations, by inserting a new Subsection 6.11, Retaining Walls, to read as follows:

“6.11 Retaining Walls

6.11.1 Purpose and Intent

The Town of Needham adopts this section to accomplish and ensure the following:

- (a) To allow for the review of retaining walls of a size that may impact surrounding buildings, land, and uses;
- (b) To require the construction of retaining walls in a manner consistent with engineering and construction best practices; and
- (c) To lessen the impact of large retaining walls on abutting properties and the public by encouraging the use of landscaping and aesthetically pleasing design elements.

6.11.2 Applicability and Exemptions

The regulations and requirements contained herein shall apply to all retaining walls erected in the Town of Needham, except the following:

- (a) Retaining walls measuring an average height of four (4) feet or less shall be exempt from the requirements of this section.

- (b) A terraced combination of walls, in which each separate wall retains less than four (4) feet of unbalanced fill and in which each successive wall is separated by a distance of at least one times (1x) the height of the highest wall.

6.11.3 General Provisions

- (a) Determining Retaining Wall Height - The height of a retaining wall shall be the distance from the grade at the base of the face of the wall to the top of the finished wall. Terraced walls shall be measured in the same manner. For walls that are not a constant height the average of these measurements shall be used to determine the height of the wall, up to a maximum height at any single point as follows.
- (b) Walls Within Yard Setbacks - Zero to two (2) feet from a property line retaining walls four (4) feet high are allowed, with a maximum height at any point of four (4) feet. Retaining walls two (2) feet or more from a property line may be six (6) feet high, with a maximum average height at any point of six (6) feet. Notwithstanding the above, retaining walls greater than four (4) feet in height shall not be located within ten feet of a front yard property line, with the exception that portions of such walls which measure four (4) feet in height or less than four (4) feet shall not be subject to this requirement. Multiple walls not meeting the requirements of Terracing (6.11.3.d) shall be measured in height as a single wall. No wall shall encroach on the required setback as required herein, except by a Special Permit issued in accordance with Subsection 6.11.5 of this Section.
- (c) Fall Protection - All retaining walls over four (4) feet in height shall be required to provide fall protection if so determined by the Building Inspector. Fall protection systems may include, but shall not be limited to, permanent landscaping or fencing as approved by the Building Inspector.
- (d) Terracing - Terracing of retaining walls is allowed and encouraged. In a terraced retaining wall system, if two (2) retaining walls are separated by a distance at least one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as separate walls; if two (2) retaining walls are separated by a distance less than one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as a single wall.
- (e) Height Limitation - No retaining wall shall exceed twelve (12) feet in height at any point, except by a Special Permit issued in accordance with Subsection 6.11.5 of this Section.
- (f) Nonconforming Retaining Walls - Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance, as determined by the Building Inspector, of nonconforming retaining walls shall be allowed without requiring conformity with these regulations.

6.11.4 Design Review and Permitting

- (a) Design Review - Design Review shall be required for all retaining walls requiring a permit, as determined by the Building Inspector, and having an average height of more than (six) 6 feet. The Design Review Board shall review retaining walls in accordance

with Section 7.7, Design Review, and shall consider such requests under those criteria contained in Subsection 7.7.4, Design Criteria, of Section 7.7. The Design Review Board shall submit an advisory recommendation to the Building Inspector prior to the issuance of a permit and to the Board of Appeals and applicant prior to the issuance of a special permit.

- (b) Permitting - A permit shall be required, consistent with the requirements of the Town of Needham Building Department, for all retaining walls that retain four (4) or more feet of unbalanced fill.

6.11.5 Special Permit Provisions

The Special Permit Granting Authority shall consider requests for special permits in accordance with this Section and Section 7.5 of the Zoning Bylaw.

- (a) Circumstances Under Which A Special Permit May Be Granted - The Special Permit Granting Authority may grant a Special Permit in the following situations:
 - (i) Retaining walls not meeting the Setback requirements indicated in Subsection 6.11.3, Paragraph (b), of this Section.
 - (ii) Retaining walls greater than twelve (12) feet in height at any point as indicated in Subsection 6.11.3, Paragraph (e) of this Section.
- (b) Required Findings - A Special Permit for a retaining wall may be issued provided the Special Permit Granting Authority finds:
 - (i) That the retaining wall is otherwise in compliance with the provisions of this Section;
 - (ii) That the requested retaining wall will not adversely impact adjacent property or the public;
 - (iii) That the report of the Design Review Board has been received and the requested retaining wall is consistent in that report and those criteria contained in Section 7.7, Design Review, Subsection 7.7.4 Design Criteria, of the Zoning Bylaw.”
- (d) Amend Section 7.7 Design Review, Subsection 7.7.2, Design Review Board, Subparagraph 7.7.2.2, Authority and Specific Powers, by revising the first paragraph, so that the entire paragraph shall now read as follows: (new language underlined):

“The Design Review Board shall review requests for site plan review and approval submitted in accordance with Section 7.4 Site Plan Review and requests for special permits in accordance with Section 4.2.5 Planned Residential Development, Section 4.2.4 Flexible Development and Section 6.11 Retaining Walls and, for a minor project that only involves a change in the exterior façade of a building in the Center Business District, shall review and may approve such façade change.”
- (e) Amend Section 7.7 Design Review, Subsection 7.7.2, Design Review Board, Subparagraph 7.7.2.2, Authority and Specific Powers, by adding a new sentence at the end of the fourth paragraph, so that the entire paragraph shall now read as follows: (new language underlined):

“It shall evaluate such requests based on Subsection 7.7.4 Design Criteria below. Its findings and recommendations, along with any suggested restrictions and conditions, shall be transmitted to

the applicant and Planning Board, acting as a special permit granting authority for “Major Projects” under Site Plan Review, Planned Residential Developments and Flexible Developments and to the applicant and Board of Appeals, acting as a special permit granting authority, under Section 6.11 Retaining Walls. Such advisory reports of the Design Review Board shall be transmitted to the Building Inspector and applicant in all other instances as described in the two paragraphs above for “Minor Projects” under Site Plan Review, building permits in all non-residential districts, retaining wall permits and sign permits. For a minor project that only involves a change in the exterior of a building in the Center Business District, the Design Review Board shall be the review and approval entity for such façade changes.”

Or take any other action relative thereto.

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- (b) Amend Section 1.3 Definitions, by revising the existing definition of the term “Structure”, so that the entire definition shall now read as follows: (new language underlined):

“Structure – anything constructed or erected, the use of which requires a fixed location on the ground or attached to something located on the ground including an artificial or a constructed swimming pool having a depth of water of two (2) feet or more or a water surface area of at least one hundred (100) square feet when filled to capacity, but excluding a fence, boundary wall, retaining wall, public utility pole, public utility supporting device or a structure with less than one hundred square foot ground coverage and a height of less than eight (8) feet.”

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6.11.3 General Provisions

- (a) Determining Retaining Wall Height - The height of a retaining wall shall be the distance from the grade at the base of the face of the wall to the top of the finished wall. ~~Terraced walls shall be measured in the same manner, exclusive of any fill, to the grade at the back of the wall at the same section.~~ For walls that are not a constant height the average of these measurements shall be used to determine the height of the wall, up to a maximum height at any single point as follows.
- (b) Walls Within Yard Setbacks - ~~Zero to Less than~~ two (2) feet from a property line retaining walls four (4) feet high are allowed, with a maximum height at any point of four (4) feet. Retaining walls two (2) feet or more from a property line may be six (6) feet high, with a maximum average height at any point of ~~six~~ (~~6~~7) feet. Notwithstanding the above, retaining walls greater than four (4) feet in height shall not be located within ten feet of a front yard property line, with the exception that portions of such walls which measure four (4) feet in height or less than four (4) feet shall not be subject to this requirement. Multiple walls not meeting the requirements of Terracing (6.11.3.d) shall be measured in height as a single wall. No wall shall encroach on the required setback as required herein, except by - Retaining walls exceeding these requirements require approval by the Design Review Board in accordance with Subsection 6.11.4 of this Section - a Special Permit issued in accordance with Subsection 6.11.5 of this Section.
- (c) Fall Protection - All retaining walls over ~~four~~ (~~4~~6) feet in height shall be required to provide fall protection if so determined by the Building Inspector. Fall protection systems may include, but shall not be limited to, permanent landscaping or fencing as approved by the Building Inspector.
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- (e) Height Limitation - No retaining wall shall exceed twelve (12) feet in height at any point, except by a Special Permit issued in accordance with Subsection 6.11.5 of this Section.
- (f) Nonconforming Retaining Walls - Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance, as determined by the ~~Building Inspector~~ Inspector of Buildings, of nonconforming retaining walls shall be allowed without requiring conformity with these regulations.

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- (a) Design Review - Design Review shall be required for all retaining walls requiring a permit, as determined by the ~~Building Inspector of Buildings~~, and having retaining an average height of six (6) feet or more of unbalanced fill more than (six) 6 feet. The Design Review Board shall review retaining walls in accordance with Section 7.7, Design Review, and shall consider such requests under those criteria contained in Subsection 7.7.4, Design Criteria, of Section 7.7. The Design Review Board shall submit an advisory recommendation to the ~~Inspector of Buildings~~ Inspector prior to the issuance of a permit and to the Board of Appeals and applicant prior to the issuance of a special permit.
- (b) Permitting - A permit shall be required, consistent with the requirements of the Town of Needham Building Department, for all retaining walls that retain four (4) or more feet of unbalanced fill.

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- (b) Required Findings - A Special Permit for a retaining wall may be issued provided the Special Permit Granting Authority finds:
 - (i) That the retaining wall is otherwise in compliance with the provisions of this Section;
 - (ii) That the requested retaining wall will not adversely impact adjacent property or the public;

~~(iii)~~ That the report of the Design Review Board has been received and the requested retaining wall is consistent in that report and those criteria contained in Section 7.7, Design Review, Subsection 7.7.4 Design Criteria, of the Zoning Bylaw. ~~and~~

(iii)

(d) Amend Section 7.7 Design Review, Subsection 7.7.2, Design Review Board, Subparagraph 7.7.2.2, Authority and Specific Powers, by revising the first paragraph, so that the entire paragraph shall now read as follows: (new language underlined):

“The Design Review Board shall review requests for site plan review and approval submitted in accordance with Section 7.4 Site Plan Review and requests for special permits in accordance with Section 4.2.5 Planned Residential Development, Section 4.2.4 Flexible Development and Section 6.11 Retaining Walls and, for a minor project that only involves a change in the exterior façade of a building in the Center Business District, shall review and may approve such façade change.”

(e) Amend Section 7.7 Design Review, Subsection 7.7.2, Design Review Board, Subparagraph 7.7.2.2, Authority and Specific Powers, by adding a new sentence at the end of the fourth

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paragraph, so that the entire paragraph shall now read as follows: (new language underlined):

“It shall evaluate such requests based on Subsection 7.7.4 Design Criteria below. Its findings and recommendations, along with any suggested restrictions and conditions, shall be transmitted to the applicant and Planning Board, acting as a special permit granting authority for “Major Projects” under Site Plan Review, Planned Residential Developments and Flexible Developments and to the applicant and Board of Appeals, acting as a special permit granting authority, under Section 6.11 Retaining Walls. Such advisory reports of the Design Review Board shall be transmitted to the Building Inspector and applicant in all other instances as described in the two paragraphs above for “Minor Projects” under Site Plan Review, building permits in all non-residential districts, retaining wall permits and sign permits. For a minor project that only involves a change in the exterior of a building in the Center Business District, the Design Review Board shall be the review and approval entity for such façade changes.”

(iv) That the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized.”

Or take any other action relative thereto.

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