

## Article 11 Administration

The provisions of this ordinance shall be implemented through the procedures contained in this Article 11. The procedures in this Article are intended to ensure compliance with the zoning regulations in this ordinance. These procedures shall not, in any way, supersede any other reviews or approvals required by other City Departments (i.e. Department of Public Works, Inspectional Services Department, Fire Department, etc.).

### 11.1 Development Review Bodies.

Applications for permits or approvals under this ordinance are subject to approval by the City Boards and officials listed below.

#### 11.1.1 Commissioner of Inspectional Services Department (ISD)

The Commissioner of Inspectional Services issues Building Permits, Certificates of Occupancy, and all other approvals under the State Building Code (780 CMR). The Commissioner of Inspectional Services is also responsible for ensuring that all issued building permits, and all other modifications to real property or the use of land or buildings not requiring a building permit, are in compliance with this zoning ordinance through the issuance of zoning consistency determinations.

#### 11.1.2 Director of Planning & Development.

The Director of Planning and Development has the following responsibilities:

- A. Administrative Site Plan Approval (Sec. 11.3)
- B. Administrative Review of Exempt Educational, Religious, and Child Care Uses (Sec. 11.3.1)
- C. Advisory review and comment on special permits, zoning amendments, and comprehensive permits.
- D. Advisory review and comment on projects before the Commissioner of Inspectional Services, as requested by the Commissioner.
- E. The Director of Planning and Development shall ensure that all agencies, boards, commissions, and departments with jurisdiction over a project are informed of any pending applications and invited to participate in the decision process under this Article.
- F. The Director of Planning and Development shall coordinate all required reviews involving Site Plan Approval, Special Permits, and the division of land and real property, as well as other permits and approvals of City, State, and Federal agencies.

#### 11.1.3 Planning Board.

The Planning Board has the following review and approval responsibilities:

- A. Special Permits, as provided in Section 11.5 of this ordinance

- B. Appeals of Administrative Site Plan decisions by the Director of Planning and Development (See Sec. 11.4.3).
- C. The Planning Board also provides a recommendation to the City Council on amendments to the zoning ordinance.

#### 11.1.4 Zoning Board of Appeals.

The Zoning Board of Appeals has the following review and approval responsibilities:

- A. Variances (See Sec. 11.6)
- B. Appeals (See Sec. 11.7)
- C. Comprehensive Permits (See Sec. 11.13)
- D. Section 6 Findings (See Sec. 11.8)

#### 11.1.5 City Council.

The City Council has the following review and approval responsibilities:

- A. Zoning Amendments (See Sec. 11.9)
- B. Certain special permits for large-scale developments (See Sec. 11.5)

#### 11.1.6 Urban Design Commission

The Urban Design Commission provides advisory design review to City boards and officials as required by this Ordinance. See Chapter 22, XXXXX, of the Newton Revised Ordinances.

## 11.2 Development Review.

The purpose of development review is to provide a predictable and expeditious development review process, tailored to the scale of a proposed development, in order to enable the City to ensure compatibility of different uses and minimize the impact of proposed uses on their surroundings. Such review is also intended to ensure that development is designed in a way that fulfills the purposes of this Ordinance.

### 11.2.1 Definitions.

- A. **Development Review Application.** Any application for review by Site Plan, Special Permit, Variance, or Section 6 Finding.

### 11.2.2 Pre-application meetings

- A. An applicant for any type of development review is advised to first contact the Commissioner of Inspectional Services and/or the Director of Planning and Development for advice as to which type(s) of review is required.
- B. Based upon the consultation in A, the applicant will be advised to make a specific type of application either to the Commissioner of Inspectional Services for a by-right

use, appeal, variance, or Section 6 finding, or to the Director of Planning and Development for special permits and site plan approvals.

- C. If the applicant determines that the application is likely to require Site Plan Approval, a Special Permit, or a Variance, the applicant is advised to obtain a Preliminary Zoning Review from the Director of Planning and Development. A Preliminary Zoning Review identifies all required municipal approvals as well as the need for any waivers or other forms of zoning relief needed to obtain approval of an application.
- D. Before submitting an application for a use that will require a special permit or site plan approval, an applicant is strongly encouraged to attend a Pre-application meeting with the Director of Planning and Development to determine specific submission requirements for that application and to clarify procedures, as well as to identify concerns posed by the application and possible ways to address those concerns.
- E. Before submitting an application for a use that will require a special permit or site plan approval, an applicant is also strongly encouraged to meet with the Urban Design Commission for a preliminary discussion of proposed project design. Such a pre-application discussion will expedite any design review that occurs or is required as a formal step in the application review process.
- F. None of the steps in A through E above are required, but they are highly recommended to ensure that an applicant applies for the appropriate approvals, relief, and/or waivers and submits the necessary application materials to enable the approval process to proceed efficiently.

### 11.2.3 Development Review Process.

The Development Review process for each type of review is specified in the following sections as well as in M.G.L. 40A.

## 11.3 Site Plan Approval

### 11.3.1 Administrative Site Plan Approval

- A. The Director of Planning and Development shall conduct administrative Site Plan Approval in cooperation with the Commissioner of Inspectional Services, Department of Public Works, and other departments that have jurisdiction.
- B. Application.
  - 1. A development review application for Administrative Site Plan Approval is submitted to the Director of Planning and Development.
  - 2. The Director of Planning and Development may waive certain submittal requirements or require the submission of additional materials as necessary to conduct an informed review.
  - 3. Application materials shall be prepared by a licensed professional engineer, architect, land surveyor, or landscape architect, unless the Director of Planning and Development determines that the services of such professionals are not necessary to provide accurate information and are not otherwise required by law.

C. Administrative Site Plan Approval Criteria.

1. In order to grant administrative approval of a site plan, the Director of Planning and Development must find that the application complies with this Ordinance and other applicable laws, including applicable district requirements, development and use standards.
2. The Director of Planning and Development shall not deny approval of an application that meets all applicable requirements.
3. The Director of Planning and Development may impose reasonable conditions as necessary to ensure compliance with applicable standards and any other applicable provisions of this Ordinance. These conditions shall be incorporated in writing into the site plan approval decision.

D. Decision Process.

1. The Director of Planning and Development shall make a decision within 30 days of finding that the application is complete. This 30 day period may be extended with the written consent of the applicant.
2. If the Director of Planning and Development fails to act within the 30 day period, approval shall be deemed constructively granted and the applicant may file an application for a Building Permit in the same manner as for a by-right use.
3. The Director of Planning and Development's decision shall be mailed to the applicant and to all parties in interest (as defined in Section 11.3.3.F and MGL Ch 40A Sec. 11) within 2 business days after the decision has been made, and shall be simultaneously filed with the City Clerk and the Commissioner of Inspectional Services.

E. Expiration.

1. The applicant shall file a Building Permit application or, where no Building Permit is required, commence work consistent with the Site Plan Approval decision, within 2 years of receiving Administrative Site Plan Approval.
2. If no Building Permit application is filed, or work not commenced, within this time period, the Director of Planning and Development may require a new application for Administrative Site Plan Approval to be filed.
3. The Director of Planning and Development may grant a 1 year extension if the applicant files a request for such extension within the original 2 year period, stating the reason for requesting such extension. Such extension by the Director of Planning and Development may not be unreasonably denied.

F. Appeals of Administrative Site Plan Decisions.

An applicant or any party in interest may appeal a decision of the Director of Planning and Development to the Planning Board by filing a request for review within 10 business days of the filing of the Director of Planning and Development's decision in the City Clerk's Office. In such a case the Planning Board shall follow the procedures and timelines for special permits in Section 11.4.

1. The applicant shall be given an opportunity to appear before the Planning Board, but no public hearing shall be required for an appeal of an administrative Site Plan Approval. No additional information shall be required to be submitted unless the Planning Board determines that additional information is necessary to make an informed decision.

2. If the Planning Board determines that more information is needed, it shall so inform the applicant at the meeting at which the appeal is discussed, and all applicable timelines shall be suspended until the applicant provides the required information. Upon submission of the required information, the appeal shall be decided at the regular meeting of the Planning Board occurring at least 7 days after submission of the material. If the information is not provided within 60 days of the Planning Board meeting during which the request for additional information was made, the appeal shall be denied.
3. The criteria for decision making applied by the Planning Board shall be those in Section 11.4.2.

### 11.3.2 Administrative Site Plan Review for Educational, Religious, and Child Care Uses

- A. Religious uses, exempt educational uses, child care centers and school age child care programs, as those uses are defined in Article 9, which are partially exempted from local zoning regulation by M.G.L. Chapter 40A, Section 3, shall be subject to the streamlined Site Plan Review provisions of this Section 11.3.2.
- B. The Director of Planning and Development shall conduct Administrative Site Plan Review of such exempt uses in cooperation with the Commissioner of Inspectional Services, Department of Public Works, and other departments that have jurisdiction.

#### C. Application.

In addition to the application requirements of Sec. 11.3.1.B, applicants shall submit evidence of their religious or educational non-profit status in order to qualify for the protections of this Section 11.3.2.

#### D. Decision Process.

The Director of Planning and Development shall follow the decision-making procedure for review and approval of an exempt use under this Section provided in Section 11.3.1.D.

#### E. Criteria

The Director of Planning and Development shall consider the exempt use application in light of the criteria set forth below:

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 any existing or proposed structures and the street 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 including designated historical structures or sites, historical architectural elements or archaeological sites.
- F. In approving any site plan for an exempt use under this section, the Director of Planning and Development shall be limited to imposing reasonable restrictions on the bulk and height of structures, setbacks, lot area, open space, parking, and lot coverage. The Director of Planning and Development shall refer to the applicable sections of this Ordinance in considering such reasonable restrictions.

## 11.4 Special Permits

### 11.4.1 Special Permit Granting Authority

- A. The Planning Board is the Special Permit Granting Authority except where a project is of a size, or includes a specific use, where the project is of exceptional significance to the City, in which case the City Council is the Special Permit Granting Authority.
- B. The thresholds at which Special Permit review shifts from the Planning Board to the City Council are specified in Articles 3, 4, 5, and 6 and in the use standards of Article 9.
- C. Where an application requires Special Permits from both the Planning Board and the City Council, the City Council shall be the Special Permit Granting Authority for all required Special Permits.
- D. The Planning Board and City Council shall adopt and from time to time amend rules relative to the issuance of Special Permits and shall file a copy of these rules in the office of the City Clerk.

### 11.4.2 Decision Process.

- A. The decision-making process is as defined by M.G.L. 40A.
- B. The Director of Planning and Development shall conduct a detailed review of the application and prepare a staff report to the Special Permit Granting Authority detailing compliance or non-compliance of the application with the requirements of this ordinance and recommending approval, denial, or approval with conditions. This staff report must be submitted to the Planning Board or City Council prior to the public hearing and should include the reports of all City departments who have submitted comments.

### 11.4.3 Special Permit Review Criteria

In its discretion to approve or deny a special permit required by this Ordinance, the Special Permit Granting Authority shall find that the application meets the following criteria:

- A. Conformance with the adopted Comprehensive Plan and other existing policy plans of the City of Newton
- B. Consistency with the purposes of this Ordinance.
- C. Consistency with the purpose of the district where the subject property is located
- D. Conformance with all applicable provisions of this Ordinance
- E. Considerations indicated elsewhere in this Ordinance specifically for the required special permit

#### 11.4.4 Conditions Attached to Special Permit Approvals

- A. In granting approval of a special permit the Planning Board or City Council may impose reasonable conditions, limitations and safeguards, which shall be in writing and shall be part of such approval. Such conditions shall be limited to those necessary to ensure compliance with the review criteria in Sec. 11.4.3.
- B. Conditions may include, but are not limited to, the following:
  - 1. Modifying the exterior features or appearance of the structure;
  - 2. Modifying the site design characteristics including building setbacks, landscaping, and parking areas;
  - 3. Limiting the size, number of occupants, method or time of operation, or extent of facilities;
  - 4. Regulating the number, design, and location of pedestrian facilities, access drives, and other streetscape elements; and/or
  - 5. Requiring improvements to necessary public infrastructure.

#### 11.4.5 Expiration.

A Special Permit shall lapse if a substantial use thereof or construction authorized by the special permit has not commenced within 2 years. This 2-year period shall not include the time required to pursue or await the determination of an appeal under MGL Ch. 40A, §17. Exception may be made for good cause by the issuing Special Permit Granting Authority upon the filing of a request for an extension, for a maximum of 1 year, prior to the lapse of such Special Permit.

#### 11.4.6 Subsequent Applications following Denial

If the Planning Board or City Council denies the development review application, it shall not entertain any further application for the same development for a period of 2 years from the date of denial, except as provided in MGL Ch. 40A, Section 16.

## 11.5 Variances

- A. The Zoning Board of Appeals has the power to hear and grant petitions for variances.
- B. The Zoning Board of Appeals shall adopt, and from time to time amend, rules relative to the granting of variances and shall file a copy of these rules in the office of the City Clerk.

### 11.5.1 Criteria.

In order to grant a variance, the Zoning Board of Appeals must find:

- A. That owing to circumstances relating to soil conditions, shape or topography of 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 Ordinance would involve substantial hardship, financial or otherwise, to the petitioner
- B. That desirable relief may be granted without substantial detriment to the public good
- C. That granting such relief would not nullify or substantially derogate from the intent or purpose of this Ordinance

### 11.5.2 Decision Process.

- A. The decision-making process is as defined by M.G.L. 40A.
- B. A concurring vote of 4 members of the Board shall be required to grant a variance.

### 11.5.3 Expiration.

If rights authorized by a variance are not exercised within one year of the date of grant of such variance, such rights shall lapse unless the petitioner grants an extension as provided in MGL Ch. 40A, Sec. 10.

## 11.6 Appeals.

- A. An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative officer under the provisions of this Ordinance or of M.G.L Chapter 40A.
- B. Such an appeal may also be taken by the Metropolitan Area Planning Council, an abutting city or town, or any person, including an officer or board of the City who is aggrieved by an order or decision of the Commissioner of Inspectional Services or of any other administrative official where such an order or decision is alleged to be in violation of any provision of this Ordinance or of M.G.L Chapter 40A.
- C. Appeals of Administrative Site Plan decisions by the Director of Planning and Development may only be taken to the Planning Board.
- D. Any appeal under Sections 11.6.A or 11.6.B. shall be taken within 30 days from the date of the order or decision which is being appealed.

### 11.6.1 Decision Process.

- A. The decision-making process is as defined by M.G.L. 40A.
- B. A concurring vote of 4 members of the Zoning Board of Appeals Board shall be required to grant an appeal.

## 11.7 Section 6 Finding

### 11.7.1 Overview.

- A. The Zoning Board of Appeals has the power to make findings relative to the alteration, extension, or enlargement of nonconforming uses and structures under M.G.L, Ch. 40A, Section 6. Such findings may be made for any application for an alteration, extension, or enlargement that is not permitted by right under Article 10.
- B. The Zoning Board of Appeals shall adopt, and from time to time amend, rules relative to making Section 6 Findings and shall file a copy of these rules in the office of the City Clerk.

### 11.7.2 Criteria.

The Zoning Board of Appeals may make a Section 6 Finding only if it determines that the proposed alteration, extension, or enlargement will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure.

### 11.7.3 Decision Process.

- A. A concurring vote of 3 members of the Zoning Board of Appeals shall be required to grant a Finding.
- B. Except as noted in this section, the Zoning Board of Appeals shall follow the notice and process requirements for a public hearing as are required for the granting of a Variance request.
- C. The decision of the Board of Appeals shall be made within 100 days after the filing of an application. The 100-day period may be extended with the written consent of the applicant. Failure of the Board of Appeals to act within the allowed time shall be deemed to be an approval of the application.

## 11.8 Zoning Amendments

The purpose of this Section 11.9 is to provide standards and procedures for legislative amendments to this Ordinance and the Zoning Map. Amendments may be necessary from time to time to reflect changing community conditions, needs, and desires, to correct mistakes, to implement a comprehensive plan or area plan, to address changes in the law, or to address other community needs.

### 11.8.1 Initiation of Zoning Ordinance Amendments

This Ordinance may be amended by the City Council on its own initiative or upon submission of a petition to the City Council by the Planning Board, the Board of Appeals, a landowner proposing a zoning amendment affecting his or her land, or a regional

planning agency, or by petition signed by ten (10) registered voters of the City or by any other methods provided by the City Charter.

### 11.8.2 Procedure

- A. The notice and decision-making process is as defined by M.G.L. 40A.
- B. The City Council shall transmit such submission to the Planning Board for review within 14 days of such submission.
- C. The City Council, or a committee designated by the City Council for that purpose, and the Planning Board, shall hold a public hearing at which persons interested shall be given an opportunity to be heard. Such hearing shall be held within 65 days of submission of the proposed amendment.
- D. A vote to amend this ordinance shall not be taken by the City Council until the Planning Board has submitted a report with recommendations or 21 such days have elapsed since the hearing without submission of such report or recommendations.
- E. A vote to amend the Zoning Ordinance requires a 2/3 vote of the City Council; provided that if there is filed with the City Clerk, prior to final action, a written protest against such change stating the reasons, duly signed by owners of 20 percent or more of the area included in such change, or of the area of the land immediately adjacent, extending three hundred 300 feet therefrom, shall require a 3/4 vote of the City Council.

### 11.8.3 Zoning Map Amendments

The Zoning Map, which is part of this Ordinance, may be amended, altered or changed only in accordance with the foregoing provisions.

## 11.9 Institutional Campus Master Plans

[Reserved].

## 11.10 Design Review

For any application in which design review is required, the application shall be submitted to the Urban Design Commission for a formal recommendation. If the application has received a pre-application review and substantially complies with Urban Design Commission recommendations made in that review, the Urban Design Commission, through its Chair or staff, may waive formal review of the application. For any application that does not require UDC review, the administrative official or Board conducting the approval process may seek the advice of the Urban Design Commission. For any UDC referral, the UDC shall have a maximum of 30 days from the date of referral to submit its recommendations.

## 11.11 Zoning Consistency Determination

Once an applicant has met all of the requirements of the Zoning Ordinance, either for a by-right use for which an application for a building permit has been submitted or following successful completion of a site plan approval, special permit, variance, or section 6 finding process, as determined by the Commissioner of Inspectional Services, the Commissioner shall issue a

Zoning Consistency Determination, which shall be a precondition for the issuance of a Building Permit.

## 11.12 Enforcement and Penalties

### 11.12.1 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 State Building Code (780 CMR). The 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 ordinance.
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, his/her 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, the 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 owner's duly authorized representative. 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.

### 11.12.2 Penalties

- A. Any person who violates the provisions of this Ordinance shall be punished with a fine of not more than \$300.00 for each offense, where each day that a violation is not corrected or abated shall constitute a separate offense.
- B. In addition to procedure for enforcement described above and in Article 11, the Commissioner of Inspectional Services may enforce the ordinance by a non-criminal disposition per M.G.L. Chapter 40 Section 21 D and the Revised Ordinances of Newton, MA Chapter 17, Article III.

## 11.13 Zoning Board of Appeals, Establishment

- A. **Established.** A Zoning Board of Appeals (ZBA) is established, consisting of 5 members and 5 associate members appointed by the Mayor, subject to confirmation

by the City Council with the powers and duties set forth in Ch. 40A, Sec. 12, including but not limited to the power to hear and decide upon appeals and variances. The ZBA shall also have the power to review and decide upon applications for Section 6 Findings where authorized in this ordinance.

- 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.
- C. **Associate Members.** In the case of a temporarily unfilled vacancy or inability to act 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. **Powers.** The Zoning Board of Appeals shall have the following powers:
  - 1. To hear and decide appeals as described in Sec. 11.6.
  - 2. 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. 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 according to Sec. 11.5.
  - 4. To make findings with regard to the alteration, extension, or enlargement of nonconforming uses and structures under M.G.L, Ch. 40A, Section 6., as described in Sec. 11.7.
- E. **Zoning Administrator.** The power to grant variances or make Section 6 Findings may be delegated by the Zoning Board of Appeals to a Zoning Administrator duly appointed by the Zoning Board of Appeals pursuant to M.G.L. Ch.40A, Sec. 13. In the event such delegation is made, decisions of the Zoning Administrator may be appealed to the Zoning Board of Appeals as provided in M.G.L. Ch.40A, Sec. 13.
- 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.