

**TOWN OF WEST NEWBURY
PLANNING BOARD
Tuesday December 5th, 2023 7:00 p.m.
AGENDA**

For Remote Participation (see below)

1. Zoning Bylaw – Proposed additions and amendments to Definitions
2. Housing Opportunities Initiative Discussion
3. Subdivision Application Review and Approval Process
4. General Business:
 - Minutes – November 7, 2023, November 21, 2023; others if available
 - Correspondence
 - Administrative Details
 - Placement of Items for Future Planning Board Agendas
 - Items not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting
The Planning Board reserves the right to take Agenda items out of order

Addendum to Meeting Notice Regarding Remote Participation

Pursuant to Chapter 2 of the Acts of 2023 that includes extending certain COVID - 19 measures adopted during the state of emergency, this meeting of the West Newbury Planning Board will be conducted via remote participation to the greatest extent possible. Members of the public who wish to view and/or listen to the meeting may do so using Zoom, by calling the telephone number or using the VideoLink listed below:

Zoom Meeting Instructions:

Phone: 1+(646) 558-8656

VideoLink: <https://us06web.zoom.us/j/83672828249?pwd=Qm5jdGI2TWdCN2N3VnAvK094emhmQT09>

Meeting ID: 836 7282 8249

Passcode: 688550

No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the Town of West Newbury website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as practicable after the meeting.

SECTION 2. DEFINITIONS

For the purposes of this by-law certain terms and words are herein defined as follows:

Words used in the present tense include the future; words in the singular number include the plural and words in the plural number include the singular; the word “shall” is mandatory and not directory; the word “lot” includes the word “plot”; the word “land” includes the words “marsh” and “water”.

~~Accessory Building. A building not attached to any principal building, customarily incidental to and located on the same lot with the principal building. [Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]~~

Accessory Structure. A structure that is accessory to and incidental to that of dwelling(s) and that is located on the same lot

Accessory Use. A use subordinate and customarily incidental to the principal use and located on the same lot as the principal use. [Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]

Addition. An extension or increase in floor area, number of stories or height of a building or structure.

Adult Use. Adult use shall mean any of the following adult uses as separate or combined entities or activities.

(1) Adult bookstore: an establishment having a substantial or significant portion 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” as defined by MGL Chapter 272, Section 31; (2)

Adult video store: an establishment having a substantial or significant portion of its stock in trade videos, movies, CD-ROM, DVD or similar technologies that provide images to be viewed on or off premises which are distinguished or characterized by their emphasis depicting, describing or relating to “Sexual excitement” or “Sexual conduct” as defined in MGL Chapter 272, Section 31; (3) Adult paraphernalia store: an

establishment having a substantial or significant portion of its stock, devices, objects, tools or toys which are distinguished or characterized by their association with sexual conduct or sexual excitement as defined by MGL Chapter 272, Section 31; (4) Adult motion picture theater: a building or structure used for presenting

material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL Chapter 272 Section 31; (5) Adult live entertainment establishment: any establishment which displays live entertainment which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL Chapter 272

Section 31.

Animal Hospital or Veterinary. Facilities for keeping animals to be treated, in treatment or recovering from treatment in accord with normal veterinary practice as established by the Massachusetts Board of Registration of Veterinary Medicine.

~~Apartment. A dwelling unit which occupies a part of a building, other parts of which may or may not be used as dwellings.~~

~~Apartment House. A building arranged, intended or designed to be occupied by two or more families living independently of each other.~~

Assisted Living Facility. A managed residential community, operating under provisions of MGL Chapter 19D and contained in one or more primary buildings consisting of private residential units with or without kitchens. Further, said facilities may provide assistance with activities of daily living, together

with meal service, housekeeping services, social and recreational activities and personal care services, transportation services, in a group setting primarily limited to individuals 62 years and older or couples, one of whom is at least 62 years of age, who require help or assistance with activities of daily living but do not require full time nursing care.

~~ATM/Automatic Teller Machine. A drive in or walk in banking facility which either stands as a single structure or is attached to another building.~~

~~Basement. The part of the building which is wholly or partly below ground level. A story that is not a story above grade plane (see “story above grade plane”)~~

Basement, Finished *[Deleted, by vote of Annual Town Meeting, Article 13, effective November 4, 2019 and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Bed and Breakfast. A house, or portion thereof, where up to four lodging rooms, with meals, are provided providing that the maximum duration of any tenant shall be less than 14 consecutive nights. The operator shall live on the premises, or in an adjacent premises immediately abutting the residence with the bed and breakfast facility. *[Amended by vote of Annual Town Meeting, Article 24, effective October 18, 2020, and approved by the Attorney General on January 25, 2022 and posted according to law on April 1, 2022]*

~~Boarding House. A building or premises, other than a hotel or bed & breakfast, for not more than four (4) persons, provided that the principal use is as a private residence, where rooms are let and where meals may be regularly served by prearrangement for compensation; not open to short term paying guests.~~ *[Amended by vote of Annual Town Meeting, Article 24, effective October 18, 2020, and approved by the Attorney General on January 25, 2022 and posted according to law on April 1, 2022]*

~~Building. A structure having a roof or cover for the shelter, housing, or permanent habitation for one (1) or more persons. Any structure used or intended for supporting or sheltering any use or occupancy.~~

Building Inspector/ Building Official. See Inspector of Buildings/Building Commissioner.

Building Lot or Lot. *[Deleted, by vote of Annual Town Meeting, Article 13, effective November 4, 2019 and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Cemetery. An area of land for the interment of human remains.

~~Child Care Center. A child care center or school age child care program as defined in Massachusetts General Laws Chapter 15D, Section 1A.~~ *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Cluster Zoning. *[Deleted, by vote of Annual Town Meeting, Article 13, effective November 4, 2019 and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Condominium. A system of real estate ownership in which a person or persons, partnership or corporation own one or more units or parcels in a multi-unit structure or parcel of land plus an undivided interest in elements and/or components owned jointly by all of the unit or parcel owners, or as defined in Chapter 183A of the General Laws.

Congregate Housing. A group living arrangement for elderly persons and persons with disabilities who cannot easily maintain their own housing, financially or otherwise, but who do not need nursing home care. The persons living together may care for themselves or may have ~~some~~ support services. *[Amended by vote of Annual Town Meeting, Article 24, effective October 18, 2020, and approved by the Attorney General on January 25, 2022 and posted according to law on April 1, 2022]*

~~Cooperative. A system of ownership in which shares in a corporation are owned, entitling an owner or owners to occupancy of a portion of real estate owned by the corporation.~~

Contiguous and Buildable Area. See Section 6.A.2. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Corner Lot. A lot abutting two or more public or private ways at their intersection. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Cul-de-sac. A dead-end street with the closed end consisting of a turn around. Refer to the West Newbury Planning Board Rules and Regulations Governing the Subdivision of Land, as may be amended. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Dwelling. Any building, or part thereof, used for habitation for one (1) or more persons, but not including commercial accommodations for transient occupancy or trailers or mobile homes, however mounted.

~~Dwelling Unit. One (1) or more rooms with cooking, living, sanitary and sleeping facilities arranged for the use of one (1) or more persons living together as a single housekeeping unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.~~

Family. One (1) or more persons living together in one dwelling unit, but not including sororities, fraternities and other communal arrangements.

Family Day Care. A day care facility for not more than six children located in a building in which the primary purpose is residential.

Farming. The use of land for agriculture as defined in Massachusetts General Laws Chapter 128, Section 1-A, as may be amended. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Floor Area. Floor area shall be the cumulative floor area, of all levels within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns or features. In the case of a multi-unit building, the center of the common wall shall be included.

Frontage. The linear extent of a lot measured along a constructed street ~~right-of-~~ or way from the intersection of one side lot line to the intersection of the other side lot line of the same lot, which can be used for access to the lot but not including any portion thereof devoted to a right-of-way or a driveway serving more than one lot unless a special permit for a common driveway has been approved by the Planning Board.

Frontage at corner lot. ~~At a corner, frontage shall be measured to the point of intersection of the extension of the sideline of the rights-of-way. (see diagram in Appendix One).~~ *[Amended by vote of the Annual Town Meeting, second session, on May 6, 2009, approved by the Attorney General on August 11, 2009 and posted according to law on August 20, 2009]* Frontage for a corner lot shall be measured on the side of the lot that will be used to access the property and the proposed construction will front on.

Frontage on Curved Streets and in Cul-De-Sacs. For lots fronting on curved streets and cul-de-sacs, the frontage distance shall be determined by measuring the cumulative linear distances along the curves and any tangent sections there between, where the lot fronts on the street. ~~See diagram in Appendix One.~~ *[Added by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007.]*

Garage, Private. Covered space for the housing of motor vehicles, but not for the rental of more than two (2) stalls or for commercial repair of vehicles or commercial storage of vehicles.

Garage, Public. Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles, or supplying of gasoline or oil to motor vehicles.

Gasoline Station. An establishment which provides for the refueling of and servicing of motor vehicles and operations incidental thereto, and may include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means.

Hazardous Materials. A substance or solid material in a quantity or form that significantly contributes to serious illness or death, or that poses a substantial threat to human health or poses an unreasonable risk to health, safety, property or the environment when improperly managed, including all materials listed as hazardous by the Environmental Protection Agency, under the Toxic Substance Control Act, Federal Resource Conservation and Recovery Act or similar authority, the Department of Energy or the Commonwealth of Massachusetts pursuant to applicable General Laws.

Hotel. A building, or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of ~~three (3) or more~~ short-term paying guests ~~who are lodged~~, with or without meals, and in which major provision for cooking may be made in a central kitchen but may not be in the individual rooms or suites. *[Amended by vote of Annual Town Meeting, Article 24, effective October 18, 2020, and approved by the Attorney General on January 25, 2022 and posted according to law on April 1, 2022]*

Inspector of Buildings/ Building Commissioner. The administrative chief of the building department in a municipality who is charged with the enforcement of 780 CMR in accordance with M.G.L. c. 143 §§ 3 and 3A as well as the enforcement of the Zoning-By-Law.

Kennel. Facilities for keeping four (4) or more dogs three (3) months old or older on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are customarily kept for sale.

~~Kindergarten. A school or class of young children, usually from four (4) to six (6) years of age.~~

Loading Space, Off-Street. An off-street space ~~or berth~~, on the same lot with a building, for the temporary parking of vehicles while loading or unloading merchandise or material, and which has access to a street or other appropriate means of ingress or egress.



Lodging House. A one-family dwelling where one or more occupants are primarily permanent in nature and rent is paid for guest rooms.

Lot. An area of land in single ownership with definite boundaries, established by a recorded plan or deed, including a lot created by combining several previously recorded lots, and used or available for use as the site of one or more buildings or for any other purpose. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Lot Area. ~~The area of a lot exclusive of any area in a street or way, public or private. *[Added by vote of the Annual Town Meeting of April 30, 2007, approved by the Attorney General on June 11, 2007 and posted according to law on June 25, 2007.]*~~ The area of the horizontal plane of a parcel of land bounded by the front, side and rear lot lines.

Lot Width. The shortest distance between the side lot lines of the lot measured at the minimum front set back line.

Maximum Building Coverage. The maximum permissible area that may be covered by the ground floor area of all buildings, portions or that building and appurtenances on a lot when viewed from above; to be measured as a percent of the required minimum lot area in the zoning district where the lot is located.

Maximum Lot Coverage. The maximum permissible area that may be covered by all impervious surfaces on a lot, such as but not limited to buildings, pools, paved tennis courts, paved driveways and walkways; to be measured as a percent of the required minimum lot area in the zoning district.

Membership Club. A private, non-profit organization, building or grounds, to include specifically country clubs and fraternities and other organizations to which membership is limited or controlled.

Mobile Home. Any vehicle or object, which is drawn by or used in connection with a motor vehicle and which is so designed and constructed or reconstructed or added to by means of such accessories as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundations. It shall include the type of vehicle or modular construction commonly known as a mobile home, containing complete electrical, plumbing, and sanitary facilities and designed to be installed on a temporary or permanent foundation for permanent living quarters.

Municipal Buildings and Use. Facilities owned by the Town of West Newbury, operated by the Town of West Newbury, or both, and the uses conducted therein.

[Added by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]

Non-Conforming Lot. A non-conforming lot is an existing lawful lot, which does not conform to the regulations for the district in which it is located and which existed at the time of the publication of notice of the hearing before the Planning Board respecting the regulation to which it does not conform as described in M.G.L. 40A § 6.

Non-Conforming Use. A non-conforming use of land or building is an existing lawful use of land or building which does not conform to the regulations for the district in which such use of land or building exists and which existed at the time of publication of notice of the hearing before the Planning Board respecting the regulation to which it does not conform as described in M.G.L.

40A § 6.

~~Nursery School. A place for group pre-school training of children.~~

Open Space Preservation Development A residential development in conformance with the Section 6.B, in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and from other groups in the same development by intervening open land, and in which the minimum dimensional requirements of lots are reduced and the land gained thereby is preserved as open space. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Principal Building. A building in which the primary use of the lot on which the building is located is conducted.

Principal Use. The ~~main~~ primary use of land or structures on a lot, as determined by the Inspector of Buildings.

~~Screened Area. A section shielded from view from adjacent areas by fencing, hedges or trees.~~

Screening. The material used to shield an area from view.

Short-Term Paying Guest. A person who rents a room in a hotel or bed & breakfast for less than 14 consecutive nights. *[Amended by vote of Annual Town Meeting, Article 24, effective October 18, 2020, and approved by the Attorney General on January 25, 2022 and posted according to law on April 1, 2022]*

Sign. Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks, whether stationary or portable, by which anything is made known, such as are used to designate or locate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are visible from a public or private street or right-of-way and used to attract attention.

~~Stream, Bank of. Rising ground bordering a flowing body of water as defined in 310 CMR 10 of Massachusetts Regulations.~~

Street. A public way or a private way either shown on a plan approved in accordance with the subdivision control law, or otherwise qualifying a lot for frontage under the subdivision control law.

Street Line. The dividing line between a street and a lot and, in the case of a public way, the street line established by the public authority laying out the way upon which the lot abuts.

~~Structure. Any construction, erection, assemblage or other combination of materials upon the land, necessitating pilings, footings or a foundation for attachment to the land including swimming pools two (2) feet or more deep or having a surface of seventy five (75) or more square feet and including all swimming pools permanently equipped with a water circulating system.~~ That which is built or constructed.

~~Swimming Pool. An artificial pool of water or a natural pool altered to have a depth of two (2) feet or more at any point or seventy five (75) or more square feet of surface and used for swimming or bathing, located indoors or outdoors, together with the equipment, and appurtenances used in connection with the pool.~~

~~Town House. A single family dwelling attached to another single family dwelling, in such a manner that each dwelling has a floor at ground level and front and rear access to the outside.~~

Trailer. Any vehicle or object which is drawn by a motor vehicle.

Veterinary. See Animal Hospital

Wetlands. Swamps, bogs and freshwater wetlands as defined by Chapter 131, Section 40 of the General Laws of the Commonwealth of Massachusetts. *[Amended by vote of Annual Town Meeting, Article 13, effective November 4, 2019, and approved by the Attorney General on November 1, 2021 and posted according to law on November 4, 2021]*

Yard. An open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and a lot line, and is not occupied or obstructed from the ground upward by a building or a structure, except for fences.

Yard, Front. A yard extending across the full width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of a front yard shall be the minimum distance between the building and the front lot line.

Yard, Rear. A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and the rear lot line.

Yard, Side. A yard between the side lot line of the lot and the nearest line of the building, and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line.



**Proposed Multi-Family Zoning Section to Comply with the MBTA Communities Act
Planning Board Review Draft, November 9, 2023**

8.4 MBTA Communities Multi-family Housing Overlay

8.4.1. Purpose

The purpose of the MBTA Communities Multi-family Overlay District (MCMOD) is to allow multi-family housing as of right in accordance with Section 3A of the Zoning Act (Massachusetts General Laws Chapter 40A). The MCMOD provides for as-of-right multi-family housing to accomplish the following purposes:

- 8.4.1.1. To increase the supply of housing in West Newbury.
- 8.4.1.2. To increase the diversity of housing in West Newbury so that it better meets the needs of people across age groups, household compositions, and income levels.
- 8.4.1.3. To ensure that multi-family housing minimizes harm to environmental, historic, and cultural resources.
- 8.4.1.4. To ensure that the design of sites and buildings for multi-family housing supports a good quality of life for occupants and abutters through:
 - a. efficient and attractive site circulation that balances the needs of all modes of travel,
 - b. environmentally sustainable public and private open spaces that fulfill specific ecological, recreational, or scenic functions,
 - c. durable buildings whose massing, and placement shapes human-scaled streets and open spaces while reflecting local building vernacular,
 - d. and parking that is convenient but that does not dominate the experience of the site.
- 8.4.1.5. To allow new homes in locations with adequate public infrastructure including streets, sidewalks, and water infrastructure.
- 8.4.1.6. To increase the municipal tax base through private investment in new residential developments.

8.4.1.7. To support the vibrancy of West Newbury’s village center by allowing new homes close to it.

8.4.2. Establishment and Applicability

8.4.2.1. The MCMOD is an overlay district with a land area of approximately ____ acres. It is superimposed over the underlying zoning district(s) and is shown on the Zoning Map.

8.4.2.2. Subdistricts. The MCMOD contains the following subdistricts which are shown on the Zoning Map:

a. Neighborhood

b. Mixed-Use

8.4.2.3. Applicability of MCMOD. An applicant may develop multi-family housing located within a MCMOD in accordance with the provisions of this **Section 8.4.**¹

8.4.2.4. The provisions of this section apply only to developments on land located within a MCMOD where the property owner has elected to comply with the requirements of the overlay district, rather than complying with those of the underlying zoning district.

8.4.2.5. Relationship to Underlying Zoning. Provisions of this section supersede those of the underlying zoning. If there is a conflict between the provisions of this section and provisions found elsewhere in the Zoning Bylaw, the provisions of this section shall apply. All other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except that no special permit shall be required for multi-family housing, or any accessory use typically associated with multi-family housing, in a MCMOD. Uses that are not identified in **Section 8.4** are governed by the requirements of the underlying zoning district(s).

8.4.3. Definitions.

¹ Note: Yellow highlights indicate cross-references to section numbers. They are included for the drafter’s convenience and will be removed for the final draft of the Bylaw.

For purposes of this **Section 8.4**, the following definitions shall apply.

As of right. Development that may proceed under the Zoning in place at time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

Compliance Guidelines. Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act as further revised or amended from time to time.

Developable land. Land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately-owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.

Developable public land. Any publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan approved by EOHLC; or (iii) has been designated by the public owner for disposition and redevelopment. Other publicly-owned land may qualify as developable public land if EOHLC determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to multi-family housing, and will be converted to or made available for multi-family housing within a reasonable period of time.

Development standards. Provisions of **Section 8.4.7 General Development Standards** made applicable to projects within the MCMOD.

EOHLC. The Massachusetts Executive Office of Housing and Livable Communities, DHCD's successor agency.

Excluded land. Land areas on which it is not possible or practical to construct multi-family housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (i) All publicly-owned land, except for lots or portions of lots determined to be developable public land.

- (ii) All rivers, streams, lakes, ponds and other surface waterbodies.
- (iii) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (iv) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (v) All public rights-of-way and private rights-of-way.
- (vi) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (vii) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

Gross density. A units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

Height, Building. The vertical distance measured between the mean elevation (average grade) where the foundation of the building meets the soil and the mid-point between the eaves and the ridge of a peaked roof, or the top of the structure of the highest roof beams of a flat roof, or the deck of a mansard roof.

Infeasible. Not technologically possible, or not economically practicable and achievable in light of best industry practices.

Mixed-use development. Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, industrial, or other uses.

Multi-family housing. A building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building.

Multi-family zoning district. A zoning district, either a base district or an overlay district, in which multi-family housing is allowed as of right.

Open space. The space on a lot unoccupied by buildings or structures, not devoted to streets, driveways, off-street parking or loading spaces. Open space may include natural areas, fields used for agriculture or horticulture, facilities for low impact development stormwater management, wastewater leach fields, walkways and paths other than required sidewalks, off street bicycle paths, and facilities for outdoor use by the occupants of the lot such as swimming pools, tennis courts, patios, vegetable gardens, terraces and patios. When used in the context of Dimensional Standards, Open Space is expressed as a percentage of the total lot area.

Overlay District: A zoning district that is applied over one or more previously established zoning districts. An Overlay District may establish additional or alternative requirements for properties in the Overlay District that are different than the requirements in the underlying zoning district.

Section 3A. Section 3A of the Zoning Act.

Setback. The minimum required distance from a lot line to any part of a principal or accessory building nearest such lot line. A setback shall be measured perpendicular (at a right angle) to the lot line.

Setback, Front. Setback required from a front lot line or street line. Any edge of a lot fronting on a street shall be considered a front lot line.

Setback, Rear. Setback required from a rear lot line.

Setback, Side. Setback required from a side lot line.

Story. That portion of a building contained between any floor and the floor or roof next above it, but not including the lowest portion if more than 1/2 that portion is below the mean finished grade of the ground adjoining the building. If a mezzanine floor area exceeds 1/3 of the area of the floor immediately below it, the mezzanine shall be deemed to be a story. An attic shall not be deemed to be a story if unfinished and without human occupancy.

Story, Half. A partial story under a gable, gambrel, or hip roof, the wall plates of which do not rise more than four feet above the floor on any two sides of such partial story.

Surface parking. One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition.

Sub-district. An area within the MCMOD that is geographically smaller than the MCMOD district and differentiated from the rest of the district by use, dimensional standards, or development standards.

8.4.4. Permitted Uses

8.4.4.1. Uses Permitted As-of-Right, Neighborhood Subdistrict

The following uses are permitted as-of-right within the MCMOD, in the Neighborhood Subdistrict:

- a. Multi-family housing.
- b. Exempt uses as defined in the Zoning Act (MGL C. 40 §3)
 - a. Uses which are permitted in all districts per Section 4.2.
 - b. Uses which are permitted in Residential A, B, and C Districts per Section 4.3.2, except for the uses described in paragraphs:
 - i. 4.3.2.c.v.(4) (School buses)
 - ii. 4.3.2.c.v.(5). (Commercial vehicles which are unregistered or abandoned)
 - iii. 4.3.2.d. (Bed and Breakfast)

8.4.4.2. Uses Permitted As-of-Right, Mixed-Use Subdistrict

The following uses are permitted as-of-right within the MCMOD, in the Mixed-Use Subdistrict:

- a. All uses allowed in the Neighborhood Subdistrict
- b. Mixed-use development, including a mix of residential use and any of the following uses:

i. Retail store or service establishment, the principal activity of which shall be the offering of goods or services at retail within the building.

ii. Business or professional offices or banks, not including drive-in banks or standalone ATMs.

iii. Restaurants or other places for serving food within a structure, not including drive-in or fast food establishments.

iv. Parking areas or garages for use of employees, customers, or visitors.

8.4.4.3. Accessory Uses. The following uses are considered accessory to any of the permitted uses in Section 8.4 and are allowed as of right.

a. Surface parking as needed to support permitted uses on the lot.

b. Parking within a multi-family or mixed-use building at the ground floor level or below grade. Parking garages shall not have more than three (3) parking spaces per unit.

c. Solar panels installed above one or more parking spaces

d. Common buildings for accessory uses related to multi-family housing, including administration, maintenance facilities, shared storage, shared community spaces, and space for professional office or customary home occupation. The gross floor area of common buildings may not exceed 40% of the gross floor area of multi-family housing in the development project.

e. Accessory buildings and uses associated with a mixed-use building provided that outdoor business-related storage shall be located behind or beside the mixed-use building and shall be screened from view of abutting residential dwellings with shrubs or a fence at least four (4) feet in height.

f. Signs in compliance with **Section 6.4**.

8.4.4.4. Uses permitted with a Special Permit

The following uses may be permitted by a special permit granted by the Planning Board subject to appropriate conditions where such are deemed necessary to protect the neighborhood or the Town in accord with the provisions of Section 11.

a. A parking structure that is integrated into a mixed-use or multi-family building with more than one story of parking above the ground floor level of the building.

b. A standalone parking structure with more than one story of parking above grade.

c. The uses described in Section 4.3.3 may not be permitted as part of an application under the MCMOD.

d. Projects permitted under the MCMOD are exempt from Section 4.3.4 Uses permitted in the Residence B and C Districts with a Special Permit.

8.4.4.5. Land Division. The tract may be a subdivision or a division of land pursuant to G.L. c.41, s.81 P or may be permitted where intended as a condominium on land not so divided or subdivided.

8.4.4.6. Multiple-Buildings-on-a-Lot. In the MCMOD, lots may have more than one principal building.

8.4.5. Dimensional Standards

8.4.5.1. This **Section 8.4.5** established Dimensional Standards for all uses in the MCMOD. It overrides all provisions of Section 5. Dimensional Requirements, except as specified in **paragraph 8.4.5.10** below.

8.4.5.2. Table of Dimensional Standards. Notwithstanding anything to the contrary in this Zoning, the dimensional requirements applicable in the MCMOD are as follows:

Criteria	Dimension
Lot Size	
Required lot size to be eligible for development under the MCMOD (Minimum)	250,000 sq ft
Lot Size for New Lots Created under the MCMOD (Minimum)	No minimum
Height	
Stories (Maximum)	3
Feet (Maximum)	35 ft
Open Space (Minimum)	30%
Frontage (Minimum)	20 ft
Front Setback (Minimum)	5' (See 8.4.5.4)
Side Setback (Minimum)	7.5 ft
Rear Setback (Minimum)	10 ft
Gross Density (Maximum)	15 units/acre of Developable Land
Minimum Distance between Buildings	15'
District Transitional Buffer	30'

8.4.5.3. Setbacks, Applicability. Requirements for front, side, and rear yard setbacks apply to the principal building and all accessory buildings and structures on a lot, except for stairs, unenclosed porches with no more than forty-eight (48) square feet or floor area, bay or other projecting windows that are less than four (4) feet deep, or accessory buildings that are less than ten (10') in height and less than 120 square feet in total area.

8.4.5.4. Front Setbacks for Buildings on Main Street. Where a proposed building will front on Main Street, its front setback requirement shall be calculated by averaging the front setbacks of the four closest principal buildings to the development site on the same side of the street, plus or minus five feet.

8.4.5.5. Height Exceptions.

a. The height limits required by this section do not apply to: chimneys; antennae with support structure for personal use; flagpoles; ventilators; elevator machine rooms; mechanical equipment; towers, silos, spires, or other architectural features of buildings not used for human occupancy, not exceeding ten feet in height, and whose area is less than 10% of the principal building footprint. Elements that exceed the height limits required by this section must be screened from view or designed with the same level of detail and quality as the rest of the building.

b. Mixed-Use. The Planning Board may allow, by a waiver during Site Plan Review, up to five additional feet of height for a mixed-use project when the applicant demonstrates that additional height is necessary to accommodate a ground floor commercial use, or due to unusual characteristics of the terrain surrounding the building.

c. Renewable Energy Installations. The Site Plan Review Authority may waive the height and setbacks in Section 8.4.4.5 Dimensional Standards to accommodate the installation of solar photovoltaic, solar thermal, living roofs, and other eco-roofs, energy storage, and air-source heat pump equipment. Such installations shall not create a significant detriment to abutters in terms of noise or shadow and must be appropriately integrated into the architecture of the building and the layout of the site. The installations shall not provide additional habitable space within the development.

8.4.5.6. The width of a lot shall be equal to at least ninety (90) percent of the required frontage.

- 8.4.5.7. A District Transitional Buffer must be maintained where the boundary of a MCMOD abuts a lot that existed at the time of adoption of this Section and that is not in a MCMOD.
- a. Buildings and parking are not allowed in a District Transitional Buffer.
 - b. Vegetation in the District Transitional Buffer shall not be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project.
 - c. New buildings that are proposed within 150' of existing residential buildings should be screened by dense tree growth and understory vegetation of sufficient height and depth in all directions to create an effective year-round visual buffer.
- 8.4.5.8. Dimensions for Multiple-Buildings-On-A-Lot. When a project proposes multiple buildings on a lot, the minimum dimensional standards shall be as follows:
- a. A building shall be no closer to the back edge of a sidewalk, or the back of a curb at the street edge, than the front setback requirement.
 - b. The side of any building shall be no closer to another building than twice the side setback.
 - c. The rear of any building shall be no closer to another building than twice the rear setback.
 - d. The minimum open space percentage shall be calculated against the developed area of the project.

8.4.5.9. Lot Access Through Legal Frontage. Frontage must provide access to the lot from the right of way counted for frontage unless otherwise approved by the Planning Board on a Definitive Plan submitted in accord with Chapter 41, General Laws or approved by the Planning Board in the same manner as a Definitive Plan. When a lot or lots has a minimum required frontage pursuant to the West Newbury Zoning Bylaw (or relief from such) on a street and there are no physical impediments for a vehicle to physically pass over the legal frontage onto the lot, the Planning Board may determine that there is adequate access. A valid Order of Conditions pursuant to MGL Ch. 131, Section 40 from the Conservation Commission allowing the crossing of a wetland to access a lot is sufficient for the Board to make this finding.

8.4.5.10. Uses Subject to the Dimensional Requirements of the Underlying Zoning. The following uses are allowed in a MCMOD and may be included in a common plan of development with multi-family housing or mixed-use development, but are subject to the dimensional standards of the underlying zoning district:

- a. The use of land or structures for religious purposes or for education purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination or by a non-profit education corporation, except as provided in Section 3 of Chapter 40A of the General Laws as amended.
- b. Municipal Buildings and Use
- c. One (1) family dwelling
- d. Family Day Care in single family residential structure if a secure and fenced yard/outdoor play area of at least 3,000 square feet is provided.
- e. Boarding house.

8.4.6. Off-Street Parking

The provisions of Section 6.3 apply to development under the MCMOD with the following exceptions:

8.4.6.1. Number of parking spaces.

a. Not more than 1.5 off-street automobile parking spaces per Residential Dwelling Unit shall be required in the MCMOD. More than 3 automobile parking spaces per Residential Dwelling Unit shall not be allowed in the MCMOD, except by waiver from the Planning Board during Site Plan Review. On-street parking may be counted toward the required number of parking spaces with a waiver by the Planning Board during Site Plan Review.

b. Parking for Mixed-Use. The required number of parking spaces for a mix of uses on a single site shall be based on an evaluation, prepared by the applicant, of shared parking demand following the procedures of the Urban Land Institute (ULI) Shared Parking Manual (latest edition), the Institute of Transportation Engineers (ITE) Shared Parking Guidelines (latest addition), or other approved procedures determined by the Planning Board. A formal shared parking evaluation may be waived by the Planning Board during Site Plan Review where there is established experience with the land use mix and its impact is expected to be minimal.

c. A minimum of .25 covered bicycle parking spaces shall be provided per each dwelling unit that is not provided with a dedicated garage parking space. These covered bicycle parking spaces shall be located no further from the building entrance than the off-street vehicle parking spaces intended for use by the building's occupants.

d. A minimum of 1 bicycle parking space shall be provided per 1,000 sq ft of commercial use. The bicycle parking spaces shall be located no further from the principal entrance to the commercial use than the closest vehicle parking space.

8.4.6.2. The provisions of the *Regulations of the Planning Board of the Town of West Newbury Governing the Design, Construction and Maintenance of Off-Street Parking and Loading Areas*, March 22, 1982 shall in no way be construed as precluding development of multi-family housing by right. The Planning Board shall waive any provision of the *Regulations* that is not objective or that renders multi-family housing infeasible.

8.4.7. Exceptions from Provisions of the Underlying Zoning

8.4.7.1. Section 5.8. Lots in Two Districts does not apply to the MCMOD. Where a MCMOD boundary line divides a lot in single ownership at the time of adoption of this Section 8.4, the provisions of this Section only apply to that portion of a lot that is included in the MCMOD. The portion of such a lot that is not included in the MCMOD is subject to the underlying zoning, except that it may be used for stormwater infrastructure, wastewater infrastructure, and open space uses associated with development in the MCMOD. Streets and/or driveways developed under the provisions of a MCMOD may not be used to access single-family houses on the portion of such a lot that is not included in the MCMOD.

8.4.7.2. Exceptions from Section 8.2 Groundwater Protection Overlay District (GPOD)

a. The last sentence of Section 8.2.2. Applicability of GPOD Overlay, which reads “Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District,” does not apply to uses specifically allowed by this Section 8.4.

b. Paragraph c. of Section 8.2.8. Uses and Activities Requiring a Special Permit does not apply to projects permitted under MCMOD. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater shall be subject to Site Plan Review to ensure the use meets the following performance standards:

i. a system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

8.4.7.3. Exceptions from Section 9.8. Common Driveways

All of the provisions of Section 9.8 shall apply in the MCMOD, except as indicated below:

- a. A Common Driveway shall be allowed by Site Plan Approval in the MCMOD provided it fulfills the Purpose and standards found in Section 9.8.
- b. The number of lots or dwelling units served by a common driveway shall not be limited.
- c. A common driveway shall meet the design and construction standards found in Sections 4, 5, and the Construction Details Index of the Rules and Regulations Governing the Subdivision of Land, West Newbury, MA. Selection of an appropriate Road Type shall be determined based on anticipated traffic volumes per the definitions of Road Types found in the Subdivision Regulations.

8.4.8. General Development Standards

8.4.8.1. The following Development Standards are applicable to all multi-family development and all mixed-use developments within the MCMOD. These standards are components of the Site Plan Review process in **Section 8.4.11 Site Plan Review.**

8.4.8.2. Site Design.

- a. When a project includes multiple buildings on a lot, the applicant may request a waiver from the Planning Board to forgo Definitive Subdivision Approval. The Planning Board may grant the waiver if the application for Site Plan Approval includes all of the submittals typically required of a Definitive Subdivision and complies with the design and construction standards listed in Sections 4-6 of the Rules and Regulations Governing the Subdivision of Land, West Newbury, MA.
- b. Site designs that arrange streets into loops are preferred over dead end streets with cul de sacs.
- c. Where possible, buildings should be clustered into groups that share common open space.
- d. Pedestrian Connections. The project shall be served by a continuous network of sidewalks and pathways that provides direct connections between the public sidewalk (if applicable), building entrances, bicycle storage and parking, vehicle parking, and any open spaces intended for common use.
- e. Parking and circulation on the site shall be organized to minimize the amount of impervious surface. Where possible, parking and loading areas shall be connected.
- f. Vehicular access. Curb cuts shall be minimized and shared driveways are encouraged. More than one curb cut per building shall be permitted only when necessary to minimize traffic and safety impacts.
- g. The design of any sidewalk (i.e. width, grade, cross-slope, materials) must be maintained across any driveway to indicate that, although a vehicle may cross, the area traversed by a vehicle remains part of the sidewalk. The depth of the sidewalk materials must be capable of supporting the weight of a vehicle.

8.4.8.3. Open Space

- a. All open space shall serve a function, including preservation of natural features, provision of habitat, improving the scenic quality of a site, screening objectional features, stormwater management, recreation, or gathering.

b. Whether an open space is public or private shall be easily discernable through the use of fences, landscaping, and the physical relationship of open spaces to site circulation and nearby buildings.

c. Shared Outdoor Space. Where private open space is not provided for a dwelling unit, the residents of that dwelling unit shall be provided with access to usable common outdoor space. Usable common outdoor space can include, but is not limited to, building courtyards, rooftop open spaces, plazas, terraces, front yards if designed for use, parks, commons, and greens. Such outdoor space shall count towards the project's minimum Open Space requirement.

8.4.8.4. Parking

a. Parking should be located beside, behind, or within buildings. The Planning Board may issue a waiver for this requirement when site conditions make it infeasible to achieve.

b. Screening for Parking. Surface parking adjacent to a public sidewalk shall be screened up to a height of at least four (4) feet by a landscaped buffer of sufficient width to allow the healthy establishment of trees, shrubs, and perennials, but no less than five (5) wide. The buffer may include a fence or wall of no more than four (4) feet in height.

c. Parking Materials. The parking surface may be concrete, asphalt, decomposed granite, bricks, or pavers, including pervious materials but not including grass or soil not contained within a paver or other structure.

d. Garage doors shall be located on the side or rear of buildings. The Planning Board may issue a waiver for this requirement when site conditions make it infeasible to achieve.

i. If the sidewall of a garage faces a street or shared open space, it must include windows that are consistent in size and placement with windows in nearby living spaces.

ii. When located on the front façade of a building, a garage must be set back at least 2 feet from the front façade and the garage door may be no wider than 12 feet. Front-facing garage doors shall occupy no more than 1/3 of the front façade of a building.

8.4.8.5. Landscaping, Lighting, Screening

a. Plantings. Plantings shall include species that are native or adapted to the region. Plants on the Massachusetts Prohibited Plant List, as may be amended, shall be prohibited.

b. Plants selected shall be suitable for the given site conditions (soil, moisture, pollution, light) to minimize the need for irrigation, fertilizer, and pesticides.

c. Plantings must fulfill one or more of the following functions: green stormwater management, providing habitat for wildlife or pollinators, providing food for residents, or shaping outdoor spaces and must also provide visual interest through harmony and variation of the size, shape, color and/or texture of plants and/or their leaves, flowers, seed heads, fruits, stems and bark.

d. Lighting. Light levels shall be the minimum necessary to provide even and adequate visibility for pedestrians and vehicles. Light levels shall meet the minimum design guidelines defined by the Illuminating Engineering Society of North America (IESNA) and shall provide illumination necessary for safety and convenience while preventing glare and overspill onto adjoining properties and reducing the amount of skyglow.

e. Mechanicals. Mechanical equipment at ground level shall be screened by a combination of fencing and plantings. Rooftop mechanical equipment shall be screened.

f. Utility equipment like water meters, electric meters, gas meters, external heating or cooling units, or electrical transformers shall be set back at least five feet behind the front façade of adjacent buildings.

g. Dumpsters. Dumpsters shall be screened by a combination of fencing and plantings. Where possible, dumpsters or other trash and recycling collection points shall be located within buildings or behind them.

h. Stormwater management. Design and construction plans for the proposed project must demonstrate compliance with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Massachusetts Stormwater Handbook, Massachusetts Erosion Sediment and Control Guidelines, and, if applicable, additional requirements under the West Newbury MS4 Permit for projects that disturb more than one acre and discharge to West Newbury's municipal stormwater system, and an Operations and Management Plan for both the construction activities and ongoing post-construction maintenance and reporting requirements.

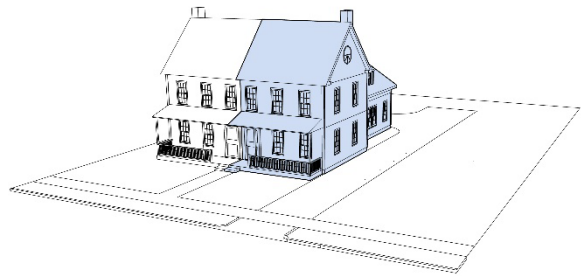
8.4.8.6. Buildings

a. Building Types

The following building types are allowed within the MCMOD:

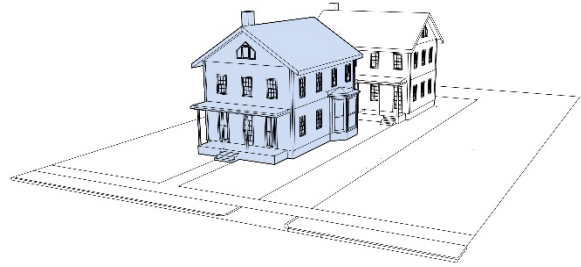
i. Two-family

(1) Illustration:



ii. 3-5 family with manor house or farmhouse massing

(1) Illustration:



iii. Stacked flats (3-10 units)

(1) [Illustration to come]

iv. Apartments (8-24 units)

(1) [Illustration to come]

v. Mixed-use (up to 20 units)

(1) [Illustration to come]

b. The principal façade of each building should face a street or shared open space and should include an operable pedestrian entrance (the front entry).

i. Front entries shall be easy to find on the front façade of a building. An entry shall have a prominent position and shall be indicated by a building element such as a porch, portico, stoop, recessed entry, or a noticeable door surround.

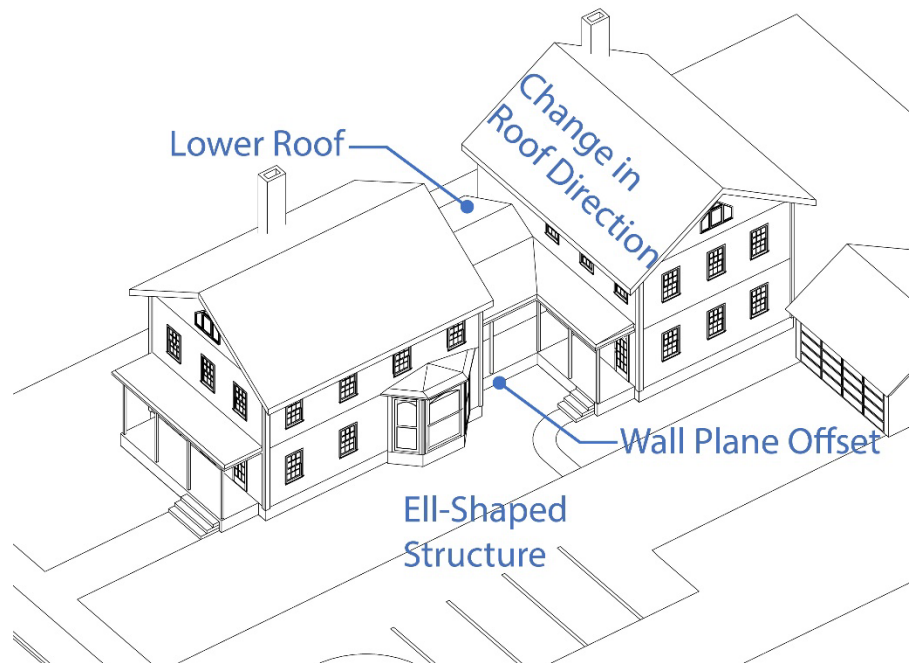
ii. Front entries shall be directly linked to a paved pedestrian network that includes the public sidewalk.

c. In a mixed-use building, access to and egress from the residential component shall be clearly differentiated from access to other uses. Such differentiation may occur by using separate entrances or egresses from the building or within a lobby space shared among different uses.

d. Building Massing. Buildings shall be broken down into masses that are similar in size to residential structures in the surrounding neighborhood. No mass should be longer than fifty feet in length. Buildings may be composed of multiple masses that are attached together. When a mass is attached another mass, the masses must meet the following design criteria:

- i. Roofs: The roofs of adjacent masses must run in different directions, or have at least a 2' difference in height.
- ii. Adjacent masses may be arranged in Ell or T shapes. The leg of the Ell or the arms of the T must extend at least 4' beyond an intersecting wall.
- iii. Where the walls of adjacent masses are in the same plane, the walls must be offset by at least 2'.

e. Illustrative example of appropriate techniques for attaching masses:



f. Roofs:

i. Roofs longer than 40' in length must incorporate one or more of the following roof variations: a change of roof height of at least one foot, a change of roof pitch of at least 2:12, a change of the direction of roof pitch, or a dormer.

ii. Flat roofs are not allowed, except for on mixed-use buildings. A building with a flat roof must include an architectural feature that distinguishes the roof from the building's uppermost story, for example a parapet with a cornice, or a projecting overhang.

g. Windows:

i. Windows and doors should generally align vertically within each bay and horizontally across each story of a building. Alternative alignments may be approved by the Planning Board in buildings that create new architectural character.

ii. The variety of window and door sizes and proportions should be limited. No more than five different sizes or shapes of windows and doors should be used on a building façade.

iii. The majority of windows on the front façade of a building must be taller than they are wide.

iv. Generally, an upper story window should not be taller than windows below it.

h. Buildings should be oriented and arranged to shape the space along streets into a pedestrian scale environment and/or to shape shared open spaces.

i. All building façade(s) visible from a public right-of-way or a shared outdoor space shall be treated with the same care and attention in terms of entries, fenestration, and materials.

j. Corner Lots. A building on a corner lot shall indicate a primary entrance either along one of the street-facing façades or on the primary corner as an entrance serving both streets.

k. Exterior fire exits shall not be located on the front façade of a building.

8.4.8.7. Waivers. Upon the request of the Applicant and subject to compliance with the Compliance Guidelines, the Site Plan Review Authority may waive the requirements of this Section **8.4.8 General Development Standards**, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the MCMOD.]

8.4.9. Affordability Requirements.

8.4.9.1. **Section 6.1** Inclusionary Housing Requirements applies to all residential development in the MCMOD.

8.4.9.2. The Planning Board may waive some or all of the inclusionary housing provisions of Section 6.1 when the applicant demonstrates that such requirements are financially infeasible, using a methodology of evaluation that is acceptable to the Planning Board.

8.4.10. Bonuses.

8.4.10.1. When at least 20% of the dwelling units in a building are Affordable Housing Units, the number of allowed units in any building type may be increased by 1/3.

8.4.10.2. When an applicant designates the portion of a parcel that is not covered by the MCMOD as protected open space, the allowed gross density may be increased to 20 units per developable acre.

a. Any proposed protected open space, unless conveyed to the Town or its Conservation Commission for conservation purposes, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes of open space indicated by this section, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

8.4.11. Site Plan Review

8.4.11.1. Applicability. Site Plan Review is required for all development proposed under the MCMOD.

8.4.11.2. The provisions of Section 11.3 apply to all development under the MCMOD with the following modifications:

a. For applications under the MCMOD, Section 11.3.7.1 is replaced with the following:

The Planning Board may make a Decision as follows:

i. Approval as Submitted: Approval based on a determination that the Application complies with the criteria and design performance standards set forth in this Bylaw and Section 8.4.8 General Development Standards.

ii. Approval with Conditions: Approval of the Application subject to reasonable conditions, modifications, and restrictions the Planning Board may deem necessary to ensure the health, safety, and general welfare of the community. The Planning Board may not impose any condition, modifications or restriction that would make it infeasible to develop multi-family housing that meets the standards of this Bylaw. Conditions must be consistent with the parameters established by EOHLC's *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act*, as amended.

iii. Rejection of the Site Plan: The Planning Board may reject the Application because:

(1) the Application is incomplete, in that the submittal fails to furnish adequate information required for approval;

(2) the submittal, although proper in form, includes or creates an intractable problem so intrusive on the needs of the public in one regulated aspect or another that it cannot be adequately mitigated and the Planning Board has been unable to devise reasonable conditions to satisfy the problem with the plan.

Rejection of a Site Plan may only be issued in extreme cases after the Planning Board has made a substantial good faith effort to work with the Applicant to remedy the issues.

b. Notwithstanding the first paragraph (unnumbered) or **Section 11.3.6. Site Plan Review Guidelines**, an application under the MCMOD need not comply with “Section C, Development Guidelines and Standards” of “Section IV. Regulations Governing Site Plan Review” found in the *West Newbury Planning Board Regulations Governing the Conduct of Planning Board Functions, Meetings, and Hearings Special Permits, Site Plan Review, Scenic Road Application Guidelines*, as amended.

8.4.11.3. Project Phasing. An Applicant may propose, in a Site Plan Review submission, that a project be developed in phases subject to the approval of the Site Plan Review Authority, provided that the submission shows the full buildout of the project and all associated impacts as of the completion of the final phase. However, no project may be phased solely to avoid the provisions of **Section 8.4.9 Affordability Requirements**.

8.4.11.4. Adoption of Regulations. The Planning Board may adopt and amend, by simple majority vote, Design Standards or Design Guidelines, to augment the General Development Standards or Site Plan Review Criteria or guide interpretation of them. Such regulations must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. The regulations may contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable. The regulations shall be consistent with the purposes of this section and EOHLC's *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act*, as amended.

8.4.12. Severability.

If any provision of this Section 8.4 is found to be invalid by a court of competent jurisdiction, the remainder of Section 8.4 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 8.4 shall not affect the validity of the remainder of the Town of West Newbury Zoning.

**Town of West Newbury
Conservation Commission**

DRAFT 11/21/2023

WETLANDS PROTECTION BYLAW

Sections:

- | | |
|---|--|
| 1. Purpose | 8. Permits and Conditions |
| 2. Jurisdiction | 9. Security |
| 3. Exemptions & Exceptions | 10. Appeals |
| 4. Definitions | 11. Enforcement |
| 5. Burden of Proof | 12. Regulations |
| 6. Applications, Fees, & Outside
Consultants | 13. Relation to Wetlands Protection Act |
| 7. Notice, Public Hearings, and Public
Meetings | 14. Severability |
| | 15. Effective Date |

1. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas in the Town of West Newbury by regulating activities deemed by the Conservation Commission (“Commission”) likely to have a significant or cumulative adverse effect on resource area values, including but not limited to the following:

- 1.1** Public or private water supply
- 1.2** Groundwater supply
- 1.3** Flood control
- 1.4** Erosion and sedimentation control
- 1.5** Storm damage prevention including coastal storm flowage
- 1.6** Water quality
- 1.7** Prevention and control of water pollution
- 1.8** Agriculture
- 1.9** Fisheries, including aquaculture
- 1.10** Wildlife habitat
- 1.11** Rare species habitat, including rare plant and animal species
- 1.12** Recreation;

deemed important to the community (collectively, the "resource area values protected by this bylaw").

This bylaw is subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of West Newbury.

This bylaw is intended to utilize the Home Rule authority of West Newbury to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond those protected in the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those identified in the Act, and to impose, in local regulations and permits, additional standards and procedures in addition to those of the Act and regulations thereunder (310 CMR 10.00).

2. Jurisdiction

Except as permitted by the Commission or as provided in Section 3 of this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas:

- 2.1 Any freshwater or coastal wetlands, isolated wetlands, marshes, wet meadows, bogs, swamps and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone
- 2.2 Any freshwater or coastal bank or beach bordering on any lake, pond, reservoir, river, stream, brook, or creek and adjoining land extending out to a distance of 100 feet, known as the Buffer Zone
- 2.3 Any perennial rivers, streams, brooks and creeks and lands adjoining these resource areas out to a distance of 200 feet, known as the Riverfront Area
- 2.4 Any land under the aforementioned waterbodies and waterways
- 2.5 Any vernal pools and adjoining land extending out 100 feet, known as the Vernal Pool Habitat
- 2.6 Any lands subject to flooding or inundation by groundwater or surface water
- 2.7 Any lands subject to tidal action, coastal storm flowage, or coastal flooding

(collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

3. Exemptions and Exceptions

The following exemptions shall apply and no permit is necessary for:

- 3.1 Minor activities in the Buffer Zone and Riverfront Area Pursuant to 310 CMR 10.02(2)(b)(2)(a)–(q), and as may be Amended by the Massachusetts Department of Environmental Protection (“MA DEP”)
The exemptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall apply under this bylaw provided that advance written notice of at least 72 hours has been given to the Commission or its agent before the commencement of work and provided that the work also conforms to any performance standards and design specifications as written in the Act and regulations.
- 3.2 Emergency Projects
Projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof and provided that advance notice, oral or written, has been given to the Commission or its agent before the commencement of work or within 24 hours after the commencement and provided that the Commission or its agent certifies the work as an emergency project and provided that the work is performed only for the time and place certified by the Commission or its agent for the limited purposes necessary to abate the emergency. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
- 3.3 Agriculture
Work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
- 3.4 Utilities and Roads
Maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice is provided to the Commission or its agent at least 72 hours before the commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

3.5 Routine Mowing and Maintenance of Lawns, Gardens, and Landscaped Areas

These activities shall be exempt from this bylaw provided that these areas were lawfully in existence on the effective date of this bylaw or were created after such date in accordance to any performance standards and design specifications in regulations adopted by the Commission.

4. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "agriculture" shall refer to the definition provided by G.L. Ch. 128 §1A.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- b. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- c. Drainage, or other disturbance of water level or water table.
- d. Dumping, discharging, or filling with any material which may degrade water quality.
- e. Placing of fill, or removal of material, which would alter elevation.
- f. Driving of piles, erection, or expansion of buildings or structures of any kind.
- g. Placing of obstructions or objects in water.
- h. Destruction of plant life including but not limited to cutting or trimming of trees, shrubs, and other vegetation.
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- j. Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater.
- k. Incremental activities which have, or may have, a cumulative adverse effect on the resource areas protected by this bylaw.

The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first break in the slope observed in the field or the mean annual flood level, whichever is higher.

The term "cumulative adverse effect" shall mean the adverse effects of activities regulated under this bylaw which may be individually insignificant to the interests and values under this bylaw, but when considered in relation to other past or present activities in a given area may be significant to said interests and values in the aggregate.

The term "interests" shall mean the resource area values and resource areas protected by this bylaw.

The term "isolated wetlands" means freshwater wetlands not bordering on a water body and at least 1,000 square feet in surface area.

The term "permit" shall mean any Order of Conditions, Order of Resource Area Delineation, Determination of Applicability, or other document issued by the Commission approving work in a resource area subject to jurisdiction of this bylaw.

The term "pond" shall follow the definition of 310 CMR 10.04 except a size threshold of 1,000 square feet shall apply.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife or the United States Fish and Wildlife Service, regardless of whether the habitat in which they occur has been previously identified by the Massachusetts Division of Fisheries and Wildlife.

The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species which have been found in the basin or depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the vernal pool is the mean annual high-water line defining the depression.

Except as otherwise provided in this bylaw or in associated regulations of the Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

5. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have significant or cumulative adverse effects on the interests protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, at the Commission's discretion and with the applicant's permission, to continue a public hearing or meeting to another date to enable the applicant or others to present additional evidence upon such terms and conditions the Commission deems reasonable.

6. Applications, Fees, & Outside Consultants

6.1 Application

A written application shall be filed with the Commission to perform activities that may impact resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The application shall include such information and plans deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. The Commission may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) where they are sufficient to meet the requirements of the bylaw and any regulations promulgated thereto. The Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), in order to fulfill the requirements of this bylaw.

6.2 Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request, in writing, a determination from the Commission. The Commission shall accept a Request for Determination of Applicability (RDA) under the Wetlands Protection Act (G.L. Ch. 131 §40) as a request under this bylaw. Such a request for determination shall contain information and plans specified by the regulations of the Commission. The Commission shall make a determination as to whether or not this bylaw applies to a specific situation prior to the filing of a written notice of intent under the provisions hereof. Any person desiring only to certify limits of resource areas on site shall file an Abbreviated Notice of Resource Area Delineation (ANRAD).

6.3 Abbreviated Notice of Resource Area Delineation (ANRAD)

Any person desiring to certify, for purposes of this bylaw, the limits of resource areas on a site may file an Abbreviated Notice of Resource Area Delineation (ANRAD). This application shall include such information and plans as are set forth in the regulations of the Commission to describe and define the wetland resource areas. The Commission shall accept an Abbreviated Notice of Resource Area Delineation (ANRAD) under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) as a request under this bylaw.

6.4 Fees

At the time of an application, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

6.5 Fee Waiver

The Commission may waive fees specified in the regulations of the Commission for applications filed by a government agency, including a municipal department, board, or committee. The Commission may also waive fees specified in the regulations of the Commission for applications filed for projects the Commission finds have a net benefit to wetland resources and a primary purpose of restoring wetland ecological functions.

6.6 Consultants

The Commission may, at the expense of the applicant and in accordance with the provisions of G.L. Ch. 44 §53G and regulations promulgated by the Commission, impose reasonable fees upon applicants to secure outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts to aid in the review of proposed projects presenting technical issues requiring additional expertise to assist in protecting resource areas. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than initially calculated or new information requires additional consultant services. This is intended to apply only to assist in reviewing projects deemed by the Commission to be large or complex.

7. Notice, Public Hearings, and Public Meetings

7.1 Abutter Notification

Any person filing a Notice of Intent or Abbreviated Notice of Resource Area Delineation, or for an amendment to an Order of Conditions shall follow the abutter notification requirements set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations, 310 CMR 10.05(4), and as may be amended by the MA DEP.

7.2 Public Notice

The Commission shall provide written notice given at the expense of the applicant at least five business days prior to the public hearing or public meeting by publication in a newspaper of general circulation in West Newbury or in any other manner approved by the MA DEP. Where applicable, notice given for public meetings and public hearings under this bylaw may be combined with notice given for public meetings and public hearings under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

7.3 Public Hearings & Public Meetings

The Commission shall commence a public hearing on any permit application, Notice of Intent, or Abbreviated Notice of Resource Area Delineation, or a public meeting on the Request for Determination of Applicability, within 21 days from receipt of a complete permit application, Notice of Intent, or

Abbreviated Notice of Resource Area Delineation unless an extension is authorized in writing by the applicant.

The Commission shall have authority to continue the public hearing or public meeting to a specific date announced at the hearing or meeting, for reasons stated at the hearing or meeting, which may include the need for additional information or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing or meeting shall be closed and the Commission shall take action on such information as is available.

The Commission may combine its hearing or meeting under this bylaw with the hearing or meeting conducted under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

8. Permits and Conditions

8.1 Decision

The Commission shall issue its permit, denial, or determination within 21 calendar days of the close of the hearing or meeting, unless the applicant authorizes an extension in writing. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any adverse effect to the interests of this bylaw. Each case will be considered on its own merits. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing or public meeting. The Commission may, in an appropriate case, combine the permit issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability issued under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

8.2 Waivers

Upon written request, the Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its bylaw or regulations, provided that:

- a. The Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said bylaw or regulations.
- b. That avoidance, minimization and mitigation have been employed to the maximum extent feasible.
- c. The project, when considered in its entirety, would result in a net benefit of resource areas values.
- d. The waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

8.3 Approvals

The Commission is authorized to approve a permit or Order of Conditions when proposed work meets all applicable design specifications, performance standards and other requirements under this bylaw and in regulations of the Commission and where the work will not result in significant or cumulative adverse effects upon the interests protected by this bylaw, as determined by the Commission. Any permit or Order of Conditions issued under this bylaw may differ from any such permit or Order of Conditions issued by the Commission under the provisions of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), where the bylaw and regulations of the Commission differ.

8.4 Conditions

The Commission is authorized to impose conditions on any approved permit or Order of Conditions that the Commission deems necessary to protect the interests of this bylaw or to ensure that a project or activity proceeds in accordance with any design specifications, performance standards and other

requirements in regulations of the Commission. If an approved permit contains conditions, all activities shall be conducted in accordance with those conditions.

A permit or Order of Conditions may include conditions with requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land. These conditions may remain in full force and effect after issuance of a Certificate of Compliance.

8.5 Denials

The Commission is empowered to deny a permit or Order of Conditions for the following reasons:

- a. Failure to meet the requirements of this bylaw.
- b. Failure to submit necessary information and plans requested by the Commission.
- c. Failure to meet the design specifications, performance standards and other requirements in regulations of the Commission.
- d. Failure to avoid or prevent significant or cumulative adverse effects upon the interests protected by this bylaw.
- e. The refusal to authorize entry of the Commission to a property in connection with review of an application for a permit, Notice of Intent, Request for Determination of Applicability or Abbreviated Notice of Resource Area Delineation.
- f. Where no conditions are adequate to protect the interests of this bylaw, in the Commission's sole discretion as the issuing authority.

Any denial issued under this bylaw may differ from any such permit, Order of Conditions, or denial issued by the Commission under the provisions of Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00), where the bylaw and regulations of the Commission differ.

8.6 Amendments

An applicant may request an amendment to an Order of Conditions. The request for an amendment shall be submitted to the Commission in writing and shall contain a narrative description of what changes are proposed and any pertinent plans showing the changes. Once the request is received, the Commission shall make a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is of a relatively minor nature and can be considered as an amendment to the Order of Conditions. If the Commission determines a new Notice of Intent is not necessary, the applicant shall provide abutter notification of the public hearing for the proposed amendment per section 7.1 of this bylaw and the Commission shall provide public notice of the public hearing per section 7.2 of this bylaw. The Commission shall issue an amended Order of Conditions or denial of the amendment request within 21 days of the close of the public hearing. The amended Order of Conditions shall not extend the effective date of the original Order of Conditions and shall run with the term of the original Order of Conditions or the term of the effective date of an extended Order of Conditions.

8.7 Expiration

A permit, Order of Conditions, Determination of Applicability, or Order of Resource Area Delineation shall expire three years from the date of issuance unless otherwise specified by the Commission at the time of issuance.

8.8 Extensions

Notwithstanding the above, the Commission in its discretion may extend a permit, Order of Conditions, or Order of Resource Area Delineation for one or more periods of up to three years each, upon written request from the applicant made at least 30 days prior to the expiration of the permit Order of Conditions, or Order of Resource Area Delineation.

8.9 Revocation

For good cause the Commission may revoke or modify any permit, Order of Conditions, Order of Resource Area Delineation, or other decision issued under this bylaw after notice to the holder, the public, abutters, and after a public hearing.

8.10 Recordation of Permit

No work proposed in any application shall be undertaken until the permit, Order of Conditions, or amended Order of Conditions issued by the Commission with respect to such work has been recorded in the Southern Essex District Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the Southern Essex District Registry of Deeds, and until the holder of the permit, Order of Conditions, or amended Order of Conditions certifies in writing to the Commission that the document has been recorded or registered. If the holder of the permit fails to perform such recording, the Commission may record the document itself and require the holder of the permit to furnish the recording fee either at the time of recording or as a condition precedent to the issuance of a Certificate of Compliance.

9. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, a deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of West Newbury whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

10. Appeals

A decision of the Commission shall be reviewable in the superior court of the Commonwealth of Massachusetts in accordance with G.L. Ch. 249, §4. Any applicant, owner, abutter, or any ten (10) residents of West Newbury may appeal an order of the Commission under this bylaw to the Superior Court of Essex County within ten (10) business days following the date of issuance of the permit, order, determination, or other decision. However, if an appeal has been made to MA DEP, then said appeal period under this bylaw shall commence upon the date of issuance of a superseding order from MA DEP and shall continue for no more than sixty (60) days from that date, even if a further appeal has been made for a final order of conditions before a MA DEP adjudicatory hearing. If an appeal under the Wetlands Protection Act is made to MA DEP within ten (10) days of the issuance of the Order, the sixty-day appeal period under the bylaw will be suspended during this period of appeal to DEP.

11. Enforcement

11.1 Scope

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

11.2 Entry

The Commission, its agents, officers, and employees shall have authority to request authorization to enter upon privately owned land to perform their duties under this bylaw subject to the constitutions and laws of the United States and the Commonwealth. They may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth. The refusal to authorize entry in connection with review of an application for a permit, Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation shall be grounds for denial of that application.

11.3 Enforcement

The Commission, its agents, officers, and employees shall have authority to enforce this bylaw, its regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, and Determinations of Applicability issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, enforcement orders, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

11.4 Legal Action

Upon request of the Commission the Select Board may authorize town counsel to take legal action for enforcement of this bylaw under civil law. Upon request of the Commission the chief of police may take legal action for enforcement of this bylaw under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

11.5 Fines

As an alternative to criminal prosecution the Commission may, in its sole discretion, issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which West Newbury has adopted in §XXVIII of the Bylaws of the Town of West Newbury. Any person who violates any provision of this bylaw, or regulations, permits, Orders of Conditions, Orders of Resource Area Delineation, Determinations of Applicability, enforcement order, or other administrative orders issued thereunder, shall be punished by a fine set by the Commission of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permit, or administrative orders violated shall constitute a separate offense.

As long as any person in violation demonstrates, in the sole judgement of the Commission, a reasonable, good faith effort to comply with this bylaw, the Commission shall refrain from issuing fines. However, the Commission shall resort to issuing fines when the violator ceases to demonstrate a reasonable, good faith effort toward achieving compliance. This provision does not preclude the Commission from issuing fines or preclude the Commission from simultaneously ordering mitigation or restoration of the affected resource areas.

11.6 Appeals

In addition to the appeal provisions under M.G.L. Chapter 40, §21D, persons fined may appeal in writing to the Commission within 21 days. The Commission shall vacate fines where compliance has been established or where the issuance of fines is inconsistent with the interests of this bylaw. The Commission shall suspend fines as long as the person in violation demonstrates a reasonable, good faith effort toward obtaining compliance. The Commission may restore suspended fines at any time during an existing violation. This provision does not preclude the issuance of fines in conjunction with orders for restoration or mitigation.

12. Regulations

The Commission may promulgate regulations after public notice and public hearing to effectuate the purposes of this bylaw, effective when voted by the Commission and filed with the town clerk. At a minimum, these regulations shall reiterate the terms defined in this bylaw, define additional terms and requirements not inconsistent with the bylaw, impose filing and consultant fees, and include design specifications and performance standards which provide for undisturbed vegetative buffers extending from the edge of resource areas. Failure by the Commission to promulgate such regulations or a legal declaration of their invalidity, in whole or in part, by a court of law shall not act to suspend or invalidate the effect of this bylaw.

13. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

14. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, Order of Conditions, Order of Resource Area Delineation, Determination of Applicability, enforcement or other administrative orders which previously has been issued.

15. Effective Date

The effective date of this bylaw shall be the first day of the month following the approval of the bylaw by the Attorney General. This bylaw shall not be applicable to activity that is the subject of a Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation filed with the Commission pursuant to the provisions of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw. This bylaw shall not be applicable to activity that has been issued a permit, Order of Conditions, Order of Resource Area Delineation, or Determination of Applicability pursuant to the provisions of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) before the effective date of this bylaw.

From: [Conservation](#)
To: [Town Hall All](#)
Cc: [Molly Hawking \(mhawkins513@hotmail.com\)](mailto:mhawkins513@hotmail.com)
Subject: West Newbury Draft Wetlands Bylaw for Review
Date: Wednesday, November 29, 2023 3:15:54 PM
Attachments: [WN Wetlands Protection Bylaw Draft 11.21.2023.docx](#)

Hello,

The West Newbury Conservation Commission has prepared a draft wetlands protection bylaw which it will propose to the Select Board and Finance Committee for the Spring 2024 Annual Town Meeting.

I wanted to provide a copy of the draft wetlands protection bylaw for your review and I encourage you to share the draft bylaw with any employees, boards, committees, or commissions that you work with so that they have the opportunity to review as well.

Feedback on this draft version of the bylaw is valuable and I encourage you to send any feedback you may have.

One thing I haven't prepared yet but hope to soon is an executive summary/guidance document for the draft bylaw. However, ahead of having that document available, some notable items to highlight in this version of the draft bylaw as compared to previous draft versions of the bylaw are:

- An overhaul of formatting and ordering of sections to create a bylaw that is easier to read and presents information in an order more aligned with how projects are permitted.
- Revisions of most sections to rewrite them in a more concise, easier to understand manner.
- A 200' buffer / Riverfront Area is *not* proposed around intermittent streams (section 2)
 - The bank of any stream, including intermittent streams, will have a 100' buffer zone under this bylaw as exists today under the Wetlands Protection Act (section 2.2)
 - Perennial streams and rivers will have a 200' riverfront area extending from the Mean Annual High Water Line or bank, whichever is higher, under this bylaw as exists today under the Wetlands Protection Act (section 2.3)
- The 100' buffer zone *is* proposed as a resource area under the bylaw as it was in past versions (section 2.1)
 - The 100' buffer zone is regulated under the Wetlands Protection Act but because it is not a resource area under the Act, it does not have design specifications or performance standards in the state regulations for activities proposed in the buffer zone.
 - Regulations of the Commission under the bylaw would include design specifications and/or performance standards for activities proposed in the buffer zone and other resource areas.
 - The regulations will include undisturbed vegetative buffers extending from the edge of resource areas (section 12)
- The bylaw specifically exempts needing a permit for any of the activities currently exempt in the Wetlands Protection Act and Regulations and as may be amended by MA DEP (section 3.1)
- The bylaw specifically exempts needing a permit for routine mowing and maintenance of

existing lawns, gardens, and landscaped areas if these areas were lawfully in existence upon the effective date of the bylaw or lawfully created under the bylaw (section 3.5)

- A process for amending an Order of Conditions has been added to the bylaw. This process is the policy provided by DEP which the bylaw codifies (section 8.6)
- A more defined process for which the Commission can issue fines and for which a person can appeal fines or have fines suspended (section 11.5)
- The effective date has been revised from the 1st of the year following the approval of the attorney general to the 1st of the month following approval of the attorney general. This change will likely provide 3-6 months' notice of the effective date of the bylaw (based on recent AG review times) while not creating a rush of permit applications ahead of the effective date. (section 15).

The Commission is also hosting a hybrid in-person/Zoom info session on 12/6 at 6PM to go over the draft bylaw which we hope you can attend.

If you have any comments, questions, or feedback on the bylaw, please submit them to me and I will ensure they are provided to the Commission for its review.

Thank you,

Michelle Greene
Conservation Agent
Town of West Newbury
381 Main Street
West Newbury, MA 01985
Office: (978) 363-1100 x126
Mobile: (978) 891-0238
conservation@wnewbury.org

Don't let your decoration lead to destruction! Some berries used in wreaths and planters for their bright colors, like Asiatic bittersweet and multiflora rose, can spread invasive plants to your property where the plants can wreak havoc by forming impenetrable thickets that harbor ticks, growing vines that strangle and pull-down trees, and depleting your land's biodiversity. Learn more about these plants, including how to identify them, [here](#) and



Haverhill

City Clerk's Office, Room 118
Phone: 978-374-2312 Fax: 978-373-8490
cityclerk@cityofhaverhill.com

October 25, 2023
KAITLIN M. WRIGHT, CITY CLERK
10/25/23 11:00 AM

HYBRID HEARING

City Council Chambers, City Hall, Room 202, 4 Summer st

Notice is hereby given that a hearing will be held for all parties interested, in a hybrid meeting (virtual/in person), on Tuesday, December 12, 2023; at 7:00 PM on a request from Attorney Michael Migliori, for applicant Ronald Judkins to build a 2 family at 0 Stanley dr which is in the Watershed Overlay Protection District WSPOD

(Residents who are interested in commenting on this item can either (1) Attend in person (Council Chambers, Room 202) or (2) Attend remotely using the link provided on the public meeting calendar on the City's website.)

Description of area, maps and plans are on file in the City Clerk's Office.

Advertise: November 23 & November 30, 2023
Haverhill Gazette

Kaitlin M. Wright

Kaitlin M Wright
City Clerk