

## **ARTICLE 46A. NEIGHBORHOOD CONSERVATION DISTRICTS**

(New Section ATM 2007.)

### **46A.1 Purpose**

- a. This bylaw enables the establishment of Neighborhood Conservation Districts in the Town of Wellesley for the following purposes:
  - i. to recognize that the Town contains unique and distinctive neighborhoods and areas which contribute significantly to the overall character and identity of the Town and which are worthy of preservation and protection. Some of these may be eligible for designation as Historic Districts, while others may lack sufficient historical, architectural or cultural significance at present to qualify. The Town aims to preserve, protect and enhance these neighborhoods through the establishment of Neighborhood Conservation Districts.
  - ii. To promote conservation and preservation of existing buildings; to encourage new construction that will complement and be compatible with existing Buildings, Structures, Settings and neighborhood character; and to foster appropriate reuse and upgrading of Buildings and Structures in designated neighborhoods.
  - iii. To provide residents and property owners with the opportunity to participate in planning the future of their neighborhoods.
  - iv. To promote wider public knowledge about and appreciation for Wellesley's distinctive neighborhoods and their Buildings, Structures and Settings.
  - v. And by furthering these purposes, to enhance public welfare by offering current and potential Wellesley residents a variety of neighborhoods from which to choose, thereby making the Town a more attractive and desirable place in which to live.
- b. Under this bylaw, the Buildings in and characteristics of a neighborhood are not intended to be frozen in time by an NCD designation. Neighborhoods will be able to grow and change to meet the needs of current and future owners, while conserving the neighborhood's distinctive qualities.
- c. An NCD designation acknowledges a neighborhood and its distinctive architectural, aesthetic, historical, cultural, political, economic or social role in developing the Town of Wellesley's character.

### **46A.2. Definitions.**

(Amended ATM 2018.)

**Alteration.** A change to a Building, Structure or Setting, or part thereof, including construction, demolition, moving, reconstruction, rehabilitation, removal, replication, restoration, or similar activities, and/or significant changes to the site itself.

**Area.** The total geographic area covered by all of the properties to be included in an NCD.

**Building.** A structure built, erected and framed with any combination of materials having a roof and permanent foundation and forming a shelter, open or enclosed, for persons, animals, or property. Gazebos and/or pavilions are included in this definition.

**Certificate of Compatibility.** A form created and issued by the NCD Commission under this bylaw, which states that a proposed plan for Construction and/or Alterations to a Building, Structure or Setting within an NCD meets the Design Guidelines adopted for that NCD, and which is signed by that NCD Commission's Chair or other officially delegated person responsible for its issuance. A building or demolition permit may be applied for by presenting this Certificate, if the scope or nature of such projects is covered under the Design Guidelines.

**Certificate of Non-Applicability.** A form created and issued by the NCD Commission under this bylaw, which states that proposed changes to a Building, Structure, or Setting within an NCD are not subject to review under Article 46A, and which is signed by that NCD Commission's Chair or other officially designated person.

**Certificate of Hardship.** A form created and issued by the NCD Commission under this bylaw, which states that substantial hardship, financial or otherwise, would occur if the application for work which is not otherwise compatible failed to be approved, and that such work would not be a significant detriment to the NCD. It

must be signed by that NCD Commission's Chair or other officially designated person. A building permit or demolition permit may be applied for by presenting this Certificate, if the scope or nature of such projects is covered under the Design Guidelines.

Construction. The erection of a new Building or Structure.

Demolition. The act of pulling down, destroying, removing or razing a Building and/or Structure or the act of commencing such work toward total or substantial destruction.

Design Guidelines. The official set of guidelines, duly adopted under this bylaw, to guide the review of proposed Construction and/or Alterations within a particular designated NCD. The Guidelines may be mandatory, advisory or a hybrid of both as chosen for and by a specific NCD.

Exterior Architectural Features. Such portions of the exterior of a Building or Structure, including but not limited to the architectural style, general arrangement and Setting thereof; the type and texture of exterior building materials; and the type and style of windows, doors, lights, signs and other appurtenant fixtures.

Guidelines. A written set of Design Guidelines and other regulations which describe the authority vested in the Area's Neighborhood Conservation District Commission

NCD. A Neighborhood Conservation District in accordance with this bylaw.

Neighborhood Conservation District Commission. A body established under this bylaw with the authority to review and approve or disapprove proposed Construction and/or Alterations to a Building, Structure or Setting in the NCD for compliance or compatibility with the Design Guidelines established for that District. A separate Neighborhood District Commission will be established for each designated NCD.

Petition. A document signed by at least 80% of the Property Owners, one signature per property, of a neighborhood stating the intent of the Property Owners to form a Neighborhood Conservation District, and including the supporting materials required to initiate the process by which an NCD is created.

Property Owner. The owner or one of multiple owners or one representative of other forms of legal ownership of a property as listed on the Town of Wellesley's property tax rolls. Before entering the NCD process, multiple owners must select one representative and provide the Historical Commission with written, signed confirmation of that selection.

Report. The document prepared by a Study Committee recommending favorable or unfavorable action on a Petition to create an NCD.

Setting. The characteristics of the site of a Building, Structure or undeveloped property, including, but not limited to, placement and orientation of the Building or Structure, and vegetation and landscaping.

Structure. A functional construction or object other than a Building, including but not limited to walls, fences, walks, driveways, bridges, paving, street furniture, lights and curbing.

Study Committee. The group of five (5) people appointed to review, recommend or reject a Petition to create an NCD.

Temporary Structures. Constructions or other objects of any combination of materials, including, but not limited to, tents and signs, which have no permanent foundation, and are intended to remain on a property for a brief period of time.

#### 46A.3. Designation of Neighborhood Conservation Districts (NCD).

- a. To be considered for designation as an NCD, a neighborhood must satisfy the following criteria:
  - i. The Area as a whole constitutes a recognizable neighborhood which has a distinctive character; and,
  - ii. The Area contains Buildings and/or Structures and/or Settings that are significant to the architectural, aesthetic, cultural, political, economic or social history of Wellesley; or
  - iii. The Area has generally cohesive features, such as the scale, size, type of construction, materials or style of its Buildings and Structures, and/or its land use patterns and landscaping.

- b. The designation of an NCD may be initiated by neighborhood Property Owners, the Historical Commission, the Planning Board, or the Select Board. A Petition requesting designation as an NCD shall be submitted to the Historical Commission, containing signatures of at least 80% of the Property Owners electing to be included in the proposed NCD Area, one signature per property, which petition shall also include:
  - i. A general statement of the historical, architectural or other qualities of the Area which make it appropriate for NCD designation;
  - ii. A preliminary map of the Area; and
  - iii. A general outline of the scope of the Guidelines and review authority that would be proposed for the NCD.
- c. Following receipt of a Petition for NCD designation, the Historical Commission shall appoint a Study Committee to investigate and prepare a Report on the appropriateness of such a designation for the Area. The Study Committee shall consist of five (5) members, of which one (1) shall be a designee of the Planning Board; one (1) shall be a designee of the Historical Commission, and three (3) shall be residents of the Area proposed for NCD designation who shall be appointed by the Historical Commission. When reasonably possible, the Study Committee should include an architect, landscape architect, or historic preservationist. Notice of a Study Committee's appointment shall be conveyed to all Property Owners in the Area and all property owners abutting the Area within 300 feet, at the address for such owners as listed in the real estate tax list of the Board of Assessors, and such information shall also be made available, to the extent reasonable, to prospective buyers through distribution to realtors with offices in Wellesley.
- d. The Study Committee, working with residents of the Area, shall evaluate the appropriateness of an NCD designation for the Area. If an NCD designation is not deemed appropriate, the Study Committee, within one (1) year of its appointment, shall prepare and file with the Historical Commission a written Report explaining why it reached a negative conclusion. If the Study Committee determines that an NCD designation is appropriate, it shall, within one (1) year of its appointment, prepare and file with the Historical Commission a written Report, to include
  - i. An overview of the significant historical, architectural or other relevant qualities of the Area;
  - ii. A map of the geographic boundaries of the Area; and
  - iii. Guidelines for the Area, including Design Guidelines and a general statement describing the nature of the authority to be vested in the Area's Neighborhood Conservation Commission.
- e. A public hearing shall be convened by the Planning Board and conducted jointly by the Historical Commission and the Planning Board to discuss the Study Committee's findings within 60 days after the filing of its completed Report. Public notice shall be given by publication in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing; and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing, and by conveying said notice, together with copies of the Report, to all Property Owners in the Area and by conveying said notice, with notification that the Report is available in the Planning Office, to property owners abutting the Area within 300 feet, at the address for such owners as listed in the real estate tax list of the Board of Assessors.
- f. Following the close of the public hearing, the Historical Commission and the Planning Board may, by majority vote at a joint meeting, recommend the Area for designation as an NCD. If the Historical Commission and Planning Board, acting jointly, do not vote to recommend the Area for NCD designation, or if, at or prior to the public hearing, more than 20% of the Property Owners in the proposed NCD object in writing to the proposed designation, then the proposed designation shall be deemed rejected. Property owners numbering below this 20% who do not wish to be part of the proposed NCD shall, at their request at, or prior to this hearing, be excluded from the NCD. If the NCD is favorably recommended by the Historical Commission and the Planning Board, acting jointly, the designation of the NCD shall be brought to Town Meeting for approval by majority vote.

- g. Each NCD, as adopted by Town Meeting, shall be listed by its name hereunder in Article 46A with its date of acceptance. Each NCD, as adopted by Town Meeting, shall have its own Guidelines, which are appropriate for the conservation of the particular qualities of that NCD, and shall:
  - i. Be based, to the extent appropriate, on the Guidelines proposed in the Petition; and
  - ii. Establish the nature and scope of review authority granted the corresponding NCD Commission under this bylaw for activities within the NCD, including, but not limited to, selecting categories and types of changes exempt from and/or subject to review.
- h. The establishment of an NCD shall not be construed to prevent the Construction or Alteration of a Building or Structure located in the NCD under a building permit, zoning permit or other municipal approval duly issued prior to the date of that NCD's establishment by the Town Meeting.
  - i. Amendments to the geographic boundaries, including additions to or withdrawals from the NCD; changes in the Guidelines, including governance and procedural changes; or dissolution of the NCD, may be proposed by 10% of the Property Owners in the NCD, an NCD Commission, the Historical Commission, the Planning Board or the Select Board. Proposals to amend or dissolve an NCD will follow the procedures described in Sections 46A.3.c through f, beginning with the appointment of a Study Committee, except, if it deems the changes minor, the Historical Commission may, by majority vote, waive appointment of a Study Committee. A decision to accept or reject the proposed changes will be made jointly by the Historic Commission and Planning Board following a public hearing. Proposed NCD amendments, and/or a proposal for dissolution of an NCD, must be brought to Town Meeting for approval by majority vote.

#### **46A.4. Neighborhood Conservation District Commissions.**

- a. Following Town Meeting acceptance of an NCD designation, a Neighborhood Conservation District Commission shall be appointed under Article 46A and shall consist of five (5) members and at least two (2) alternates. One (1) member and one (1) alternate shall be designees of the Historical Commission and one (1) member shall be a designee of the Planning Board. Three (3) members and one alternate shall be residents of the NCD, to be appointed by the Historical Commission. When reasonably possible, the NCD Commission shall include an architect, architectural preservationist, or landscape architect.
- b. Members and alternates of the NCD Commission designated by the Historical Commission and/or the Planning Board shall initially be appointed for staggered terms, and to two (2) year terms thereafter. Members who are residents of the NCD shall initially be appointed to staggered terms, and to three-year terms thereafter. Each NCD Commission member or alternate may continue to serve in office after the expiration of their term until a successor is duly appointed.

#### **46A.5. Review of Construction and/or Alterations.**

- a. The Design Guidelines for each NCD shall establish the extent of review required for Construction and/or Alterations proposed within that NCD.
- b. Except as otherwise provided in this bylaw or in the Guidelines of an NCD, no Building and/or Structure, or their Settings, within a Neighborhood Conservation District shall be Constructed, Demolished or Altered in any way unless the NCD Commission shall first have issued a Certificate of Compatibility, a Certificate of Non-Applicability or a Certificate of Hardship.
- c. Exemptions from Review
  - i. None of the following categories or types of Construction and/or Alterations shall require review by the NCD Commission
    - 1. Temporary structures;
    - 2. Interior alterations;
    - 3. Storm windows, storm doors, and screens;
    - 4. Colors;

5. Accessory structures of less than 120 square feet of floor area and less than 15 feet in height;
6. Exterior Alterations and Exterior Architectural Features not visible from a public way or other areas open to public access, including but not limited to, a public street, public way, public park or public body of water;
7. The ordinary maintenance, repair or replacement in kind of Exterior Architectural Features and/or changes made to meet requirements deemed necessary by the Inspector of Buildings to be necessary for public safety because of an unsafe or dangerous condition.

- ii. In addition, the Design Guidelines for an NCD may provide for other categories or types of Construction and/or Alterations within that NCD which shall not require review by its NCD Commission.
- iii. Although not a condition for obtaining a building permit, any Property Owner may request, and the NCD Commission shall issue, a Certificate of Non-Applicability for any Construction and/or Alterations that are exempt from the review of the NCD Commission pursuant to the foregoing.

- d. Review
  - i. All Construction and/or Alterations that are not exempt from review shall be subject to review by the NCD Commission.
  - ii. Any person wishing to perform Construction and/or Alterations that require review shall first file an application with the NCD Commission for a Certificate of Compatibility in such form as the NCD Commission may reasonably determine. In addition, plans, elevations, specifications, photographs, description of materials and other information as may be reasonably deemed necessary by the NCD Commission to enable it to make a determination on the application may be requested of the applicant. The date of the filing of an application shall be the date of the receipt of the application by the NCD Commission
  - iii. Following submission of an application for a Certificate of Compatibility deemed complete by the NCD Commission, the Commission shall determine within fourteen (14) days whether the application involves features that are subject to approval by the Commission. If it determines that the application is subject to review, the NCD Commission shall then hold a public hearing within 45 days of the filing date. Public notice of the time, place and purposes of the hearing shall be given at least fourteen (14) days before the hearing date by publication in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by conveying said notice to all Property Owners in the NCD and owners of properties abutting the property subject to the hearing, at the address for such owners as listed in the real estate tax list of the Board of Assessors.
  - iv. Following the close of the public hearing, the NCD Commission shall determine whether the proposed Construction and/or Alterations are compatible with the Design Guidelines. If the NCD Commission decides that the proposed Construction and/or Alterations are compatible, it shall issue a Certificate of Compatibility. If the NCD Commission decides that the Construction and/or Alterations are not compatible, the NCD Commission shall provide the applicant with a written statement of the reasons for its disapproval. A Certificate of Hardship may be issued if the NCD Commission determines that failure to issue a Certificate of Compatibility would result in substantial hardship, financial or otherwise, and that the proposed alteration, construction or demolition would not be a significant detriment to the NCD.
  - v. If the NCD Commission fails to make a determination within 60 days after the close of the public hearing, or such further time as the applicant may allow in writing, the Certificate of Compatibility shall be deemed granted, and the NCD Commission shall issue a Certificate of Compatibility.

- vi. The NCD Commission shall file with the Inspector of Buildings, Zoning Board of Appeals, Planning Board, and Historical Commission a copy of all Certificates of Compatibility, Certificates of Non-Applicability, Certificates of Hardship and determinations of disapproval.
- vii. The Design Guidelines for the NCD may provide that certain categories or types of Construction and/or Alterations shall be subject to advisory, non-binding review by the NCD Commission, or an owner may request such non-binding review of otherwise exempt Construction and/or Alterations, in which event the review procedures shall be followed, but without the NCD Commission voting or rendering a binding decision.
- viii. The NCD Commission shall meet with the Property Owners in the NCD for the purpose of determining whether or not the District's Guidelines are still appropriate. The first of these meeting shall occur two (2) years from the date of the District's designation as an NCD, and shall occur at no less than five (5) year intervals thereafter, unless this interval is changed, by a majority vote of the Property Owners after the first two (2) years. Recommendations for amendments to the Guidelines must be approved by a majority of the District's Property Owners and the amendment procedures described in Section 46A.3.i must be followed.

#### **46A.6. Decision Criteria.**

- a. In passing upon matters before it, the NCD Commission may consider, among other things:
  - i. The historical and architectural value and significance of the particular Buildings, Structures and/or Settings being affected, as well as the effects of same on the NCD;
  - ii. The suitability of the Construction's, Alterations' and/or Setting's general design, arrangement and composition of its elements; the scale and massing of the proposed changes relative to nearby Buildings and Structures; and the textures and materials of the features involved in the proposed Construction and/or Alterations, as well as the effects of same on the NCD;
  - iii. Setting and landscape characteristics, including their relationship to the street, topography and existing vegetation, including mature trees, of the particular site involved in the Construction and/or Alterations, as well as the effects of same on the NCD;
  - iv. For demolitions, the Building, Structure and/or Setting proposed to replace that/those existing; and
  - v. Alterations necessary for handicap accessibility; and
  - vi. All such other standards, factors and matters contained in the Design Guidelines for the NCD.
- b. In making its determination, the NCD Commission shall, among other things,
  - i. Allow for appropriate architectural diversity and individualized Construction and/or Alterations while respecting the characteristics of the neighborhood; and
  - ii. Encourage the compatible updating, expansion and renovation of Buildings and Structures in the neighborhood consistent with the foregoing.

#### **46A.7. Judicial Review, Enforcement and Lapse.**

- a. The Inspector of Buildings shall be charged with the enforcement of this bylaw. Anyone found in violation may be fined not more than \$300 dollars for each day such violation continues, each day constituting a separate offense.
- b. Any party dissatisfied with a determination may, within 45 days after the filing of the notice of such determination with the Inspector of Buildings, Zoning Board of Appeals, Historical Commission, and Planning Board, file a written request with the NCD Commission for a review by a joint meeting with at least three members each of the Historical Commission and Planning Board. The findings of this joint committee, which may sustain or overrule the prior decision of the NCD Commission, shall be filed with the Inspector of Buildings, Zoning Board of Appeals, Historical Commission, and Planning Board within 45 days after the close of the public hearing, and shall be binding on the applicant and the joint committee, unless a further appeal is sought in the Superior Court of Norfolk County.

- c. Certificates of Compatibility and Certificates of Hardship shall expire eighteen (18) months, plus such time as may be required to pursue or await the determination of a judicial review as provided above, from their date of issuance, if construction has not begun by such date. Notwithstanding the above, the NCD Commission may grant one or more extensions, of up to six (6) months each, if there are unavoidable delays.

**46A.8. Existing Bylaws not Repealed.**

- a. Nothing contained in this bylaw shall be construed as repealing or modifying any existing bylaw or regulation of the Town, but it shall be in addition thereto. If this bylaw imposes greater restrictions upon the Construction and/or Alteration, of Buildings, Structures or Settings than other bylaws or provisions of law, such greater restrictions shall prevail.