

## **ADMINISTRATION AND ENFORCEMENT**

### **SECTION 11. ADMINISTRATION AND ENFORCEMENT**

#### **11.1 Enforcement**

The Building Inspector of the Town of Concord is hereby designated as the officer charged with the enforcement of this Bylaw.

*11.1.1* The Building Inspector, upon a written complaint of any citizen of, or owner of property within, the Town or upon such officer's own initiative, shall institute any appropriate action or proceedings in the name of the Town of Concord to prevent, restrain or abate violation of this Bylaw.

*11.1.2* Violation of this Bylaw shall be punishable by a fine of one hundred dollars (\$100.00) for each offense. Each day that such violation continues shall constitute a separate offense.

#### **11.2 Building Permit**

No structure or part thereof shall be constructed, altered, or moved without a permit from the Building Inspector. The Building Inspector shall not grant such permit if such construction, alteration or movement would be in violation of any of the provisions of this Bylaw, nor shall any officer of the Town of Concord grant any permit or license for the use of any land or structure if such use would be in violation of this Bylaw.

#### **11.3 Certificate of Occupancy**

No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Building Inspector stating that the use of the land and structure, if any, complies with this Bylaw and other applicable codes in effect at the time of issuance.

#### **11.4 Board of Appeals**

The Town of Concord Board of Appeals, heretofore established by the Town of Concord pursuant to the provisions of Section 30 of Chapter 40, Section 14 of Chapter 40A (as in effect prior to January 1977) and Section 81Z of Chapter 41 of the General Laws, is hereby designated as the Zoning Board of Appeals required by Section 12 of Chapter 40A of the General Laws as in effect on the date of adoption of this Bylaw.

*11.4.1* The Board shall act on all matters over which it has jurisdiction and in the manner prescribed by the following provisions, as the same may from time to time be amended:

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*11.4.1.1* The provisions of this Bylaw;

*11.4.1.2* Chapter 40A of the General Laws;

*11.4.1.3* Section 81Y through 81BB of Chapter 41 of the General Laws; and

*11.4.1.4* Any other applicable provisions of the General Laws or this Bylaw.

*11.4.2* Without limiting the generality of subsection 11.4.1, an appeal may be taken to the Board by any person including an officer or board of the Town of Concord aggrieved by reason of inability to obtain a permit or enforcement action from any administrative officer of the Town of Concord under Chapter 40A of the General Laws or this Bylaw, or by reason of an order or decision of the Building Inspector or other administrative officer of the Town of Concord in violation of any provision of Chapter 40A or any bylaw of the Town of Concord adopted thereunder.

### **11.5 Rules and Regulations**

The Board and the Planning Board shall adopt rules, not inconsistent with the provisions of this Bylaw and Chapter 40A of the General Laws or other applicable provision of the General Laws, and shall file a copy of said rules with the Town Clerk.

### **11.6 Special Permit**

Certain uses are designated in this Bylaw as requiring a special permit. The Board and the Planning Board may, in accordance with Chapter 40A of the General Laws, grant such special permits for such designated uses without any finding of hardship. A special permit is a permit to use property for the purpose specified and shall not reverse, alter or vary any provision of this Bylaw applicable thereto. Application for a special permit must be made by the owner of the property noted in the permit or with the owner's written permission. Special permits may be issued only following public hearings held within sixty-five (65) days after filing an application.

Special permits shall be granted by the Board or the Planning Board, unless other criteria are otherwise specified herein, only upon the written determination of either board, as applicable, that the adverse effects of the proposed use will not outweigh its beneficial impacts to the public interest, the town and the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any other specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

*11.6.1* Impacts on economic or community needs;

*11.6.2* Traffic flow and safety concerns, including parking and loading;

*11.6.3* Adequacy of utilities and other public services;

*11.6.4* Impacts on neighborhood character;

*11.6.5* Impacts on the natural environment; and

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### 11.6.6 Fiscal impacts, including impacts on town services, the tax base and employment.

Either such Board shall also make such further findings as may be otherwise required by this Bylaw and may impose such additional conditions, safeguards and limitations as it deems appropriate to protect the surrounding neighborhood including, but not limited to, imposition of requirements greater than the minimum set forth in this Bylaw. A special permit shall lapse if a substantial use thereof has not commenced, or, in the case of a permit for construction, if construction has not commenced (except for good cause) within two (2) years from the date of grant thereof.

### 11.7 Variance

A variance from the specific requirements of this Bylaw, including a variance authorizing a use or activity not otherwise permitted in a particular zoning district, may be authorized by the Board only where, after notice and a public hearing, the Board specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. The Board may impose such conditions, safeguards and limitations, both of time and of use, as it deems appropriate upon the grant of any variance. Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this subsection.

### 11.8 Site Plan Review

*11.8.1 Applicability:* In all instances specified in Section 4, Table I, Use Regulations, indicating site plan approval, no building permit to establish a new building or to alter substantially an existing building shall be issued by the Building Inspector; no change in use of an existing building or lot shall be permitted; no area for parking, loading, or vehicular access shall be established or substantially altered; and, no exterior light fixtures shall be installed or substantially altered unless a site plan has been submitted and approved in accordance with the requirements set forth in this section.

*11.8.2 Site plan compliance:* No certificate of occupancy shall be issued by the Building Inspector until the site has been developed in compliance with the approved site plan, unless completion is delayed by seasonal considerations. In such instances, the Building Inspector may issue a temporary occupancy permit and shall require sufficient security to insure full compliance within six (6) months.

*11.8.3 Interpretation:* Substantial alteration to a building means an alteration of a single building or a group of buildings under one ownership on the same lot or contiguous lots which results in an increase in gross floor area of either five hundred (500) square feet or

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ten (10) percent of the existing gross floor area, whichever is less. The calculation of substantial alteration shall be determined based upon the aggregate of all expansions undertaken within a consecutive five-year period.

Change in use means a change in part or all of an existing building or lot from one use category to another. However, in a mixed or multi-use building, change or rearrangement of uses that does not result in an increase of required parking or loading spaces shall not be construed as a change in use.

Substantial alteration to areas for parking, loading or vehicular access shall mean a change in the layout or location of parking spaces, an increase in pavement area of more than three hundred (300) square feet, or any relocation, addition or change in driveways. Resurfacing shall not be construed as a substantial alteration unless it involves a change of surface material.

Substantial alteration to exterior lighting shall mean an increase in more than ten (10) percent of the number of exterior light fixtures, an increase in height of any free standing light fixture, or a change in the coloration or an increase in the brightness/luminance produced by a fixture. Change in coloration from non-white light to white light; installation of full cut-off fixtures, positioned to prevent glare and light spillover, and with a height equal to or less than existing free standing light fixtures; and the use of temporary holiday lighting shall not be construed as a substantial alteration. Furthermore, when Site Plan Review is required based solely on the installation or alteration of exterior light fixtures, review by the Board or the Planning Board shall be limited to the proposed exterior lighting and to issues directly related to the proposed exterior lighting.

*11.8.4 Procedure:* Anyone seeking Site Plan Review shall obtain an application and checklist from the office of the Town Planner. A completed application form, the plan and supporting materials shall be submitted to the Planning Board in accordance with the rules and regulations of the Planning Board in effect at the time.

*11.8.5 Site Plan Review:* In reviewing the site plan submittal, the following matters shall be considered:

- (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air;
- (b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- (c) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- (d) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- (e) Adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;

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- (f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw; and,
- (g) Impact on the Town's resources including the effect of the Town's water supply and distribution system, sewage collection and treatment, fire protection, and streets.
- (h) Incorporation of sustainability and resiliency principles into the site design that result in a plan that is responsive to the environment and actively contributes to the development of a more sustainable community.

*11.8.6 Decision:* Where a special permit from the Board is required or a variance from the Bylaw is requested in connection with any action subject to Site Plan Review, a site plan decision shall be made by the Board. In such case the Planning Board shall submit a report to the Board concerning the matters described in subsection 11.8.5 prior to any public hearing. In considering a site plan, the Board shall insure a reasonable use of the site consistent with the uses permitted in the district in which the site is located. The Board shall give due consideration to the report of the Planning Board and where the decision of the Board differs from the recommendations of the Planning Board the reasons therefore shall be stated in writing.

Where a special permit or a variance is not required or requested, the Planning Board shall render a site plan decision and shall file its decision with the Town Clerk within ninety (90) days of receipt of an application, unless such time is extended in writing by agreement with the applicant and notice of such extension is filed with the Town Clerk. The Planning Board may impose such appropriate conditions, limitations, and safeguards as will insure compliance with the terms of approval.

*11.8.7 Site Plan Review for religious uses, educational uses and child care facilities:* The purpose of this section is to ensure that all religious and education uses, and all child care facilities are reasonably regulated in regards to bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. The Board and the Planning Board have the authority to place reasonable conditions on the aforementioned issues, but are not permitted to withhold approval of Site Plan Review.

*11.8.7.1* In reviewing the site plan submittal for religious uses, educational uses and child care facilities, the following issues shall be considered:

- (a) Relationship of the bulk and height of structures and adequacy of open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw, which includes, but is not limited to, building coverage requirements, yard sizes, lot areas and setbacks;
- (b) Physical layout of the plan as it relates to convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;

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- (d) Physical lighting of the site, especially the adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;
- (e) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage;
- (f) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- (g) Adequacy of fire protection measures, and;
- (h) Incorporation of sustainability and resiliency principles into the site design that result in a plan that is responsive to the environment and actively contributes to the development of a more sustainable community.

11.8.7.2 Where a special permit from the Board is required or a variance from the Bylaw is requested in connection with any action subject to site plan review for religious uses, educational uses and child care facilities, site plan approval shall be by the Board. In such case the Planning Board shall submit a report to the Board concerning the matters described in subsection 11.8.7 prior to any public hearing. In considering a site plan for religious uses, educational uses and child care facilities, the Board shall insure a reasonable use of the site consistent with the uses permitted in the district in which the site is located. The Board shall give due consideration to the report of the Planning Board and where the decision of the Board differs from the recommendations of the Planning Board the reasons therefore shall be stated in writing.

11.8.7.3 Where a special permit or a variance is not required or requested, site plan approval for religious uses, educational uses and child care facilities shall be by the Planning Board. The Planning Board shall file its decision with the Town Clerk within ninety (90) days of receipt of an application, unless such time is extended in writing by agreement with the applicant and notice of such extension is filed with the Town Clerk. The Planning Board may impose such appropriate conditions, limitations, and safeguards as will insure compliance with the terms of approval.

11.8.8 *Term of approval:* Site plan approval shall lapse if construction has not commenced within two (2) years from the date of approval. For site plan approval by the Planning Board, an extension of time may be granted for up to six (6) months.

11.8.9 *Appeal:* Decisions of the Planning Board regarding site plan approval shall be appealed as set forth in G.L. Chapter 40A, Section 17 to a court of competent jurisdiction.

### 11.9 Bylaw Construction

This Bylaw shall not interfere with or annul any other Town Bylaw, rule or regulation, which is more restrictive, except where this Bylaw is more restrictive, it shall control.

### 11.10 Validity and Separability

The invalidity of one or more sections, subsections, sentences, clauses or provisions of this Bylaw shall not invalidate or impair the Bylaw as a whole or any other part hereof.