

**D R A F T #1 February 6, 2017**

**BYRON/LOCKWOOD/MASS. AVE.  
NEIGHBORHOOD CONSERVATION DISTRICT  
BYLAW**

**1. PURPOSE**

Per Chapter 78 of the Code of Lexington, this Bylaw describes the regulations and procedures associated with the administration of the Byron/Lockwood/ Mass. Ave. Neighborhood Conservation District (NCD). The goals of the NCD are to preserve the architectural style and general size of the homes, the closeness of the neighbors, the affordability of the homes in relation to the Lexington real estate market and the role this area played in the historical development of Lexington.

**2. DEFINITIONS**

The following definitions per Chapter 78 shall apply:

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

**Building** - a combination of materials forming a shelter for persons, animals or property.

**Building Commissioner** - the Building Commissioner of the Town of Lexington.

**Certificate of Compatibility** - a form created and issued by the NCD Commission under this Bylaw which states that a proposed plan for Construction of Alterations to a Building, Structure or Setting within an NCD meets the Regulations and Guidelines adopted for that NCD, and which is signed by that NCD Commission's chair or other officially delegated person responsible for its issuance.

**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 this Bylaw, 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 owing to conditions especially affecting the Building or Structure, but not affecting the NCD generally, failure to issue a Certificate of Compatibility would result in a substantial hardship to the applicant, and that such application may be approved without substantial detriment to the public welfare and

without substantial derogation from the intent and purposes of the NCD, and which must be signed by that NCD Commission's chair or other officially designated person.

**Construction** - the erection of a new Building or Structure.

**Demolition** - the act of pulling down, destroying, removing, or razing a Building or Structure or any substantial portion thereof or the act of commencing the work of total or substantial destruction with the intent of completing the same. "Demolition" as used herein shall be deemed to include Demolition by Neglect.

**Demolition by Neglect** - a process of ongoing damage to the fabric, viability or functionality of an unoccupied Building leading towards or causing its eventual demolition due to decay, structural failure or severe degradation over a period of time as a result of a general lack of maintenance; failure to secure the Building from pests or vandals; or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

**Exterior Architectural Features** - such portions of the exterior of a Building or Structure, including but not limited to the architectural style and 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** - advisory guidelines, duly adopted under this Bylaw, to guide the review of proposed Construction or Alteration within a particular designated NCD.

**Historical Commission** - the Lexington Historical Commission.

**Neighborhood Conservation District or NCD** - a district approved by Town Meeting for those properties within a NCD Area that are not Opted Out Properties.

**NCD Area** - the total geographic area covered by all of the properties studied under each Section 3 Study.

**NCD Commission** - a public body established under this Bylaw with the authority to review and approve or disapprove proposed Construction or Alteration to a Building, Structure, or Setting in the NCD for compatibility with the Design Guidelines established for that NCD. A separate NCD Commission shall be established for each designated NCD.

**Opted Out Properties** - properties in NCD Areas which shall be excluded from a NCD designation in accordance with Section 3(e).

**Petition** - a document signed by at least 10 Property Owners, one signature per property, of a neighborhood stating the desire of the Property Owners to form a NCD, and including the supporting materials required to initiate the study process by which a NCD is established.

**Planning Board** - the Lexington Planning Board.

**Property Owner** - an owner of a property as listed on the Town of Lexington's property tax rolls at the relevant time.

**Regulations** - mandatory regulations which describe the authority vested in the NCD Area's NCD Commission, duly adopted under Chapter 78 of the Code of Lexington.

**Report** - the document prepared by a Study Committee recommending favorable or unfavorable action on a Petition to establish a 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 combination of materials other than a Building, including a sign, fence, wall, terrace, walk or driveway.

**Study Committee** - a group of five people appointed to review, recommend or reject a Petition to create a NCD, as described in Section 3(c), or amend an existing NCD, as contemplated in Section 3(i) of Chapter 78, the Code of Lexington.

**Temporary Structures** - structures which have no permanent foundation, and are intended to remain on a property only for a brief period of time, not to exceed 60 days.

**Additional Definitions:**

**HDC** - Historic Districts Commission

**3. DESIGNATION OF THE BYRON/LOCKWOOD/MASS. AVE. NCD**

Having held a neighborhood meeting on October 24, 2015 to discuss the possibility of creating a NCD based on the possible passage of Article 29 by the spring 2016 Lexington Town Meeting; and

Having a follow-up neighborhood meeting on October 13, 2016, to obtain signatures for the required petition and to discuss potential guidelines for the NCD after the successful passage of Article 29; and

Having submitted a successful petition to the Historical Commission on October 19, 2016 in which the architectural features and size of the NCD Area homes; the closeness of the neighborhood; and the affordability of the NCD Area homes (in Lexington's terms) were described; and

Having had a NCD Study Committee, composed of a Planning Board representative, a Historical Commission representative, and three neighborhood representatives appointed by the Town Manager on December 22, 2016; and

Having submitted a Final Report to the Historical Committee and the Planning Board and participated in a joint Public Hearing on \_\_\_\_\_ during which it was determined that the approval of the NCD should be submitted to Town Meeting; and

Having 75% of the Property Owners "Opting in" to the NCD; and

Having been approved by the 2017 fall Town Meeting, this NCD Bylaw is being written.

#### **4. NCD COMMISSIONS**

##### **Membership of the Commission:**

Per Chapter 78, following Town Meeting approval of the NCD designation and the recording of a boundary map of the NCD at the Middlesex Registry of Deeds, a NCD Commission shall be appointed and shall consist of five members and two alternates. One member and one alternate shall be appointed by the Historical Commission and one member shall be appointed by the Planning Board. Three members and one alternate shall be residents of the NCD, to be appointed by the Town Manager. When reasonably possible, the NCD Commission shall include an architect, historic preservationist or landscape architect.

**Term Length of Commission Members:** Members and alternates of the NCD Commission shall initially be appointed for staggered terms, and to two-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 his/her term until a successor is duly appointed.

**Meetings with Property Owners:** The NCD Commission shall meet periodically with the Property Owners in the NCD for the purpose of determining whether the NCD Regulations and Guidelines are still appropriate. The first of these meetings shall occur three years from the date of the District's designation as a NCD, and shall occur at no less than seven-year intervals thereafter.

**Amendments to this Bylaw:** Amendments to a NCD, including changes to Regulations, Guidelines, and the boundaries of the affected NCD, may be proposed by petition of 10 Property Owners in the NCD, one signature per property, by the NCD Commission, by the Historical Commission, or by the Planning board. Upon receipt of a written request for any such amendment, the Historical Commission shall hold a public hearing, notifying all Property owners in the NCD and all property owners within 100 feet of the NCD, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Within 30 days of such public hearing, the Historical Commission, by majority vote, shall determine whether the proposed amendments

would be appropriate and may, at its option, appoint a Study Committee in the manner described in Chapter 78, Section 3(c) to prepare a report with its recommendations. If the Historical Commission deems that the proposed changes are within the scope of the original Study, the Historical Commission shall bring the proposed amendments to Town Meeting for approval by majority vote. If the Historical Commission finds that significant changes are being proposed, the process outlined in Chapter 78, beginning in Section 3(d) shall then be followed.

**Dissolution of a NCD:** The dissolution of a NCD may be proposed by petition of the Property Owners in the NCD, one signature per property, that constitute 67% of all Property Owners in the NCD. Upon receipt of a written request for any such dissolution, the Historical Commission shall hold a public hearing, notifying all Property Owners in the NCD, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Within 30 days of such public hearing, the Historical Commission, by majority vote, may, at its option, appoint a Study Committee in the manner described in Chapter 78, Section 3(c) and shall prepare a report with its recommendations. The Historical Commission shall then forward a NCD bylaw dissolution article to the Selectmen for consideration at Town Meeting for approval by majority vote.

**Expenses:** All expenses of notice and advertisement for the establishment, modification, or dissolution of an NCD shall be borne by the petitioners.

## 5. NCD REVIEW PROCESS

The NCD review process begins by a Property Owner completing an application describing the proposed Alterations to the property and submitting it to the Chair of the NCD Commission on a form provided by the NCD. The date that the application is received by the NCD Chair will be considered the date of filing.

In addition to the application, such plans, elevations, specifications, photographs, description of materials and other information as may be reasonably be deemed necessary by the NCD Commission to enable it to make a determination will be required.

Except as otherwise provided in this Bylaw, or in the Regulations and Guidelines of a NCD, no Building, Structure, or Setting within a NCD shall be Constructed, Demolished, or Altered unless exempt from review, and no permit shall be issued for such construction, Demolition, or Alteration, unless the NCD Commission shall first have issued a Certificate of Compatibility, a Certificate of Non-Applicability, or a Certificate of Hardship.

<b>Exempt from Review, Either through Chapter 78 or this Bylaw:</b>
<ul style="list-style-type: none"><li>• Temporary structures</li><li>• Interior alterations</li></ul>

- Storm windows, storm doors, and screens
- Changes in exterior color
- Accessory Buildings of less than 120 square feet of floor area and less than 10 feet in height
- Ordinary maintenance, repair or replacement in kind of Exterior Architectural and Landscaping Features or changes made to meet requirements deemed by the Building Commissioner to be necessary for public safety because of an unsafe or dangerous condition, or
- Changes explicitly permitted by other laws, including but not limited to laws related to Zoning, Subdivision Control, and Fair Housing

Any property Owner may request, and the NCD Commission shall issue, a Certificate of Non-Applicability for any Construction or Alteration that is exempt from the review of the NCD Commission pursuant to the foregoing.

**Subject to Review:**

- Any Alterations to the Building or Structure
- Proposals to change the orientation of the Building or Structure in relation to its current position on the street,
- Alteration of the existing landscape by removal of significant shrubbery and trees over 8" in diameter,
- Installation of fences that would extend beyond the front corners of the Building or Structure toward the street,
- Additions of garages and additional paved parking areas, and
- Energy-saving future technologies, other than solar roof panels which will be allowed.

The neighborhood discussed at length those items that we wished to review. The primary objective is to preserve the basic style and size of the homes in the neighborhood as they currently exist. The hope is that residents will consider these characteristics carefully when planning alterations, so that a review will not be an automatic rejection. We are fully aware that as these homes age, they will require maintenance and perhaps substantial "parts replacement" at one time or another. This Bylaw is a guide for preserving the neighborhood during these times of maintenance and possible replacement.

**Additional Suggested Guidelines:**

- Proposed additions shall not shade the abutting properties to preclude the use of yards for gardens or unduly shade existing windows or porches,
- Residents are encouraged to discuss the use of vegetative fences with abutters prior to installation,
- If trees must be removed, the replanting of native, shade trees is highly encouraged, except where shading will have a negative impact on abutters,
- Residents are encouraged to use exterior house colors that are consistent with the general tones of the neighborhood, and

- Additions should reduce green space, back and side yards, as little as possible.

### **Historic District Commission:**

Homes on Mass. Ave. and three homes on Lockwood Rd. are also in the East Village Historic District and certain alterations are subject to review by the Historic District Commission. While this may seem incompatible, it is the belief of this NCD that there are fundamental differences being reviewed by the NCD and the HDC. The Historic District Commission concentrates its review on the changes that are inconsistent with the historical architecture and historical nature of the district as a whole. The NCD, on the other hand, concentrates its review on the impact an alteration may have on a particular neighborhood. Occasionally the reviews may intersect.

Homeowners who have participated in the HDC process for proposed alterations, and received a Certificate of Appropriateness, may submit such paperwork and plans to the NCD Chair for review. In most instances, a Certificate of Non-Applicability can be issued without further hearings or review. When alterations have been approved by the HDC, but the NCD review guidelines are substantially different, then the NCD review, as outlined below, will take place after the HDC review.

### **When a NCD Review is Required:**

- a) Once an application has been submitted to the Chair, a determination by the Chair will be made within 14 days as to whether a formal review is required.
- b) If a review is required, the NCD Commission shall hold a public hearing within 45 days of the original filing date.
- c) Public notice of the time, place and purpose of the hearing shall be given at least 14 days prior to the hearing date by publication in a newspaper of general circulation in the Town and by conveying said notice to the applicant and all owners of properties within 100 feet of the property, at the address for such owners as listed in the then current real estate tax list of the Boards of Assessors, all at the expense of the applicant.
- d) Following the close of the public hearing, the NCD Commission shall determine whether the proposed Construction or Alteration is compatible with the Regulations and Guidelines outlined in this Bylaw.
- e) If the NCD Commission determines that the proposal is not compatible, the Commission shall provide the applicant with a written statement of the reasons for its disapproval.
- f) A Certificate of Hardship may be issued if the NCD Commission determines that, owing to conditions especially affecting the Building or Structure, but not affecting the

NCD generally, failure to issue a Certificate of Compatibility would result in a substantial hardship to the applicant and that such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of the NCD; provided that upon elimination of the hardship condition, any incompatible Construction or Alteration shall promptly be removed.

g) If the NCD fails to issue a Certificate or statement of disapproval within 60 days after the filing of the application, or such further time as the applicant may allow in writing, the Certificate shall be deemed granted.

h) The NCD Commission shall within seven days file with the Building Commissioner copies of all Certificates issued by it as well as any determinations of disapproval.

## **6. DEMOLITION BY NEGLECT**

a) If the NCD Commission has reason to believe, through visual inspection or other means, that a Building or Structure in the NCD may be undergoing Demolition by Neglect, then the NCD Commission shall notify the Building Commissioner and the Property Owner, and the NCD Commission and the Building Commissioner shall jointly hold a public hearing to determine whether it is undergoing Demolition by Neglect, which shall require the concurrence of the Building Commissioner. In furtherance of determining its condition, the NCD Commission may, at any time, request an inspection of the Building or Structure by the Building Commissioner.

b) If it is determined at the above-mentioned public hearing that Demolition by Neglect is happening, the NCD Commission and the Building Commissioner shall attempt to negotiate a voluntary agreement with the Property Owner for appropriate and timely repairs sufficient to structurally stabilize the Building or Structure and prevent further deterioration.

c) If a voluntary agreement cannot be negotiated, or that the Property Owner has agreed to undertake repairs but has failed to satisfactorily complete such repairs in a timely manner, then the NCD Commission and the Building Commissioner may take such action as is permitted under Section 7 of this Bylaw, including seeking a court order that specific repairs be undertaken to secure the Building or Structure against the elements, vandals and vermin; to halt further deterioration; and to stabilize it structurally. The NCD Commission may forbear from commencing an action in court for any reason.

d) Upon completion of all repairs that have been negotiated, or that have been ordered by the NCD Commission and the Building Commissioner, or the court, and upon certification by the Building Commissioner that said repairs have been completed, the NCD Commission shall certify that the Building or Structure is no longer undergoing Demolition by Neglect.

## **7. JUDICIAL REVIEW AND ENFORCEMENT**



a) The Building Commissioner shall be charged with the enforcement of this Bylaw and he/she is authorized to institute any and all proceedings in law or equity, as he/she deems necessary and appropriate to obtain compliance with the requirements of this Bylaw, or to prevent violation thereof.

b) If a Building or Structure is voluntarily altered or demolished in violation of this Bylaw, no building permit shall be issued for the premises for two years from the date of the completion of the alteration or demolition OR the date by which the NCD Commission and the Building Inspector determined that the property was subject to Demolition by Neglect, whichever date is later. As used herein "premises" includes the parcel of land upon which the demolished altered Building or Structure was, or is, located.

c) Any party aggrieved by a NCD Commission determination may, within 20 days after the filing of the notice of such determination with the Building Commissioner, file a written request with the NCD Commission for a review by a joint meeting of the Historical Commission and Planning Board. The Historical Commission and the Planning Board shall hold a public hearing within 45 days of the request. Public notice of the time, place and purpose of the hearing shall be given at least 14 days prior to the hearing date by publication in a newspaper of general circulation in the Town and by conveying said notice to the applicant and all owners of properties within 100 feet of the property, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors, all at the expense of the party aggrieved. The findings of this joint hearing, which may sustain or overrule the prior decision of the NCD Commission, shall be filed with the Building Commissioner within 60 days of the request, and shall be binding on the applicant and the joint committee, unless a further appeal is sought in a court with jurisdiction.

d) Certificates of Compatibility and Certificates of Hardship shall expire in 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 months each, if there are unavoidable delays.