

D R A F T #6 May 15, 2017

**PIERCE-LOCKWOOD
NEIGHBORHOOD CONSERVATION DISTRICT
DRAFT BYLAW**

1. PURPOSE

Per Chapter 78 of the Code of Lexington, this Bylaw describes the regulations and procedures associated with the administration of the Pierce-Lockwood 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 neighborhood, and to emphasize the role this area played in the historical development of Lexington. The goals can best be described with the words, "coherence," "proportion," "and aesthetics."

Coherence may be defined as having a sense of logical interconnectedness, consistency and harmony among parts. There is a balance between a home's uniqueness and its commonality with surrounding houses. This balance is vital to the neighborhood's palpable and pleasing identity that we wish to preserve. Architectural changes must maintain a "harmony among parts, as well as a consistency with the architectural style of the surrounding homes.

Proportion may be defined as having a comparative proper relation between elements or magnitudes such as size, quantity, ratio, number, etc. A change in size leading to a large massing in relation to surrounding homes' size means, taken as a whole, the house is out of proportion to the neighborhood. Further, an addition that creates large massing can create indefinability of its original shape, affecting its aesthetics.

Aesthetics may be characterized as having a reverence for what's beautiful and what represents the history of the area. A neighborhood's sense of beauty is indeed its homes' uniqueness within commonality and includes considerations such as shape, original windows, open porches and landscaping that fits within the natural beauty surrounding the Pierce-Lockwood NCD. It is defined by the history of the area, its relationship to the east Village historic district and to historical Lexington. The NCD considers all of these, not singly, but rather in combination with the aim to fulfill the stated goals of the NCD.

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 NCD Definitions:

HDC - Historic Districts Commission

3. DESIGNATION OF THE PIERCE-LOCKWOOD 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 **enacted**.

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 twice annually and by request of an NCD member. Members of the NCD are encouraged to request an informal discussion at a formal meeting to discuss possible plans for alterations to their property prior to initiating a formal review.

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 2/3 of the 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

a. When an application for a Building Permit is filed, the Building Department will notify the applicant that the property is subject to the NCD regulations and guidelines. Application will then be made to the NCD for review.

b. 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.

c. 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.

Exempt from Review, Either through Chapter 78 or Guidelines of the NCD

- 1) Temporary structures,
- 2) Interior alterations,
- 3) Storm windows, storm doors, and screens,
- 4) Changes in exterior color,
- 5) Accessory Buildings of less than 120 square feet of floor area and less than 10 feet in height,
- 6) Alterations and Exterior Architectural Features that are not visible from a public way or other areas open to public access, including but not limited to, public streets, a public way, a public park or a public body of water,
- 7) 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
- 8) Changes explicitly permitted by other laws, including but not limited to laws related to Zoning, Subdivision Control, and Fair Housing
- 9) Skylights and solar panels installed in the same plane, and in close contact with, the plane of the roof,
- 10) Fences four feet high or less and their equal-height entry gates;
- 11) Handicapped-accessible ramps.

d. 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:

- 1) Alterations to Buildings or Structures including, but not limited to, current roof lines, additions, style and size of windows, and the enclosure of porches,
- 2) Alterations to Buildings or Structures which might require the issuance of a variance from the, then current, zoning bylaws of the Town,

- 3) Proposals to change the orientation of the Building or Structure in relation to its current position on the street,
- 4) Installation of **solid** fences that would extend beyond the corners of the Building or Structure toward the street
- 5) Additions of garages and additional paved parking areas.

e. 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.

If a review is required, the NCD Commission shall hold a public hearing within 45 days of the original filing date.

f. 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.

g. 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. **If the proposal is deemed compatible, a Certificate of Compatibility will be issued. A Certificate of Compatibility may also be issued with stated conditions. The applicant will then be given the opportunity to bring the proposal into full compliance with the conditions as stated in the Certificate of Compatibility's conditions.**

h. 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.

i. 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.

j. 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.

k. 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. DECISION CRITERIA

a. In passing upon matters before it, the NCD commission will consider:

1) the architectural, aesthetic, social and historical value and significance of the particular Buildings, Structures and Settings affected, as well as the effects of the same on the NCD. Retaining the basic bungalow, Dutch colonial and Federal colonial style of the existing homes, including window and door styles, roof lines, and open front porches will be significant considerations in any decisions. Architectural changes such as windows, front doors, exterior siding, garage doors, and roofing materials shall be replaced in kind; chosen for an increase in historical accuracy; or at the very least, compatible with abutting properties. The installation of solid fences which would essentially "wall off" a home from the neighborhood will be strongly discouraged.

2) the suitability of the Construction's, Alterations' or Setting's general design, arrangement, and composition of its elements on the distinctive character of the NCD; the effect on the cohesiveness of the NCD in terms of scale and massing of the proposed changes relative to nearby Buildings and Structure in the NCD, the type of construction, style, the textures and materials of the features involved in the proposed Construction or Alteration; Limiting the size and mass of any proposed additions, with or without previous additions, will be significant in the decision regarding proposals. (Changed the previous word, "paramount" to "significant.") The current location of every house contributes to the cohesiveness and welcoming atmosphere of the neighborhood, so that a change in the orientation of the house, making it eligible for a different address, will be strongly discouraged. Attached garages and increasing the amount of paved surface will be discouraged and will be significant considerations in the review of proposals.

3) the 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 or Alteration, as well as the effect of same on the NCD; Proposed additions shall not shade the abutting properties to preclude the use of yards for gardens, or unduly shade existing windows or porches.

4) for demolitions, the Building, Structure, or Setting proposed to replace those demolished; Plans involving a build-out to current zoning setbacks will be strongly discouraged, as are additions that reduce green space, back and side yards. Requests for variances from the then current zoning bylaws, particularly involving all setback variances will be strongly discouraged. Plans involving a build-out to current zoning setbacks will be strongly discouraged, as are additions that reduce green space, back and side yards.

5) alterations necessary for conditions of hardship, as contemplated in Section 5(d)(iii) of Chapter 78; and

6) all such other standards, factors, and matters contained in the Regulations and Guidelines for the NCD.

b. In making its determination, the NCD Commission shall, among other things, allow for appropriate architectural diversity and encourage the compatible updating, expansion and restoration of Buildings and Structures in the NCD consistent with the distinctive characteristics of the NCD.

c. Although not used as decision-making criteria, the following are suggested additional guidelines for consideration when planning Alterations to Buildings, Structures or Settings within the NCD:

1) Discussion with abutters concerning the installation of all allowable fences is strongly encouraged. Hedges, split rail or picket fences are acceptable alternatives.

2) Exterior house colors that are consistent with the current neutral tones of the neighborhood are encouraged.

3) If trees must be removed, the replanting of native, shade trees is highly encouraged, except where shading will have a negative impact on abutters.

7. 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 in what is 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 **some** 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 **above**, will take place after the HDC review.

8. CONFLICT OF INTEREST ISSUES

Due to the small size of this NCD, it is anticipated that there could be conflict of interest issues when an application by an abutter, or an abutter to an abutter, to one of the NCD commissioners occurs. When that happens, if there are three remaining members eligible to consider the application, it will proceed. If there are not three eligible members, the alternates will be considered in order to create an eligible quorum. If no eligible quorum can be created, with notification to the NCD, the existing NCD Commission members will rule on the application.

9. 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.

10. 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. **Anyone found in violation may be fined not more than \$300 for each day such violation continues, each day constituting a separate offense.** In addition, no building permit shall be issued with respect to any premises upon which a Building or Structure subject to the provisions of this bylaw has been voluntarily altered or demolished in violation of this bylaw for a period of two years after the date of the completion of such demolition or alteration 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.