



TOWN OF NEWBURY MASSACHUSETTS

Gretchen E. Girard, Town Clerk

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May 15, 2024

To Whom It May Concern:

At a legal meeting of the registered voters of the Town of Newbury on April 30, 2024, the following action was taken under Article 14:

Select Board Vice Chair William DiMaio

Motion: I move that the Town approve Article 14 to amend the zoning map and the zoning bylaw as printed in the warrant.

Motion was moved and seconded. 234 in favor and 80 opposed.

Motion passed.

ARTICLE 14: To see if the Town will vote to amend the Town of Newbury Zoning Bylaw by adding a new section 87-4.G, MBTA Communities Multi-Family Overlay District and amend the Zoning Map to reflect the Zoning District as follows:

Article IV REGULATIONS OF OVERLAY DISTRICT

§97-4.G. MBTA Communities Multi-Family Overlay District (MCMOD)

(1) Purpose

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

- (a) Increase the production of a range of housing units to meet existing and anticipated housing needs; and
- (b) Increase the diversity of housing and provide more housing choice to meet the needs of residents of different age groups, household compositions, and income levels.

(2) Establishment and Applicability

This MCMOD is an overlay district having a land area of approximately 50.1 acres in size that is superimposed over the underlying zoning district(s) and is shown on the Zoning Overlay and Resource Districts Map.

- (a) **Applicability of MCMOD.** An applicant may develop multi-family housing located within the MCMOD in accordance with the provisions of this Section 97-4.G.

12 Kent Way, Newbury MA 01922 978.465.0862 ext. 315

- (b) **Underlying Zoning.** The MCMOD is an overlay district superimposed on all underlying zoning districts. The regulations for uses, dimensions, and all other provisions of the Zoning Bylaw governing the respective underlying zoning district(s) shall remain in full force, except for uses allowed as of right in the MCMOD. Uses that are not identified in this § 97-4.G. are governed by the requirements of the underlying zoning district(s). Within the boundaries of the MCMOD, a developer may elect either to develop a Project in accordance with the requirements of this Section 97-4.G., or to develop in accordance with requirements of the regulations for uses, dimensions, and all other provisions of the Zoning Bylaw governing the underlying zoning district.
- (c) **Relationship of MCMOD to Other Zoning Provisions.** Notwithstanding any other provision of this bylaw to the contrary, including any other provision which requires a special permit for development on land (property) which is included in this Overlay District, no development undertaken pursuant to this Section 97-4.G. shall require a permit under zoning other than the Site Plan Review as set for in Section 97-4.G.(7) below.
- (d) **Sub-districts.** The MCMOD contains the following sub-districts, all of which are shown on the map titled "Proposed 3A Subdistricts, Town of Newbury":
- 01) Newbury North – Sub-District A (North-A), which is generally comprised of certain parcels along the intersection of U.S. Route 1, Middle Road, and Hanover Street;
 - 02) Newbury North – Sub-District B (North-B), which is generally comprised of certain parcels along Hanover Street;
 - 03) Newbury South – Sub-District A (South-A), which is generally comprised of a certain parcel along Kent Way;
 - 04) Newbury South – Sub-District B (South-B), which is generally comprised of a certain parcel along Central Street.

(3). Definitions.

For purposes of this Section, the following definitions shall apply. Otherwise, section 97-11(D) shall apply.

- (a) **Affordable Housing Restriction.** A use or deed restriction acceptable in form and substance to Massachusetts Executive Office of Housing and Livable Communities (HLC) and the Town that imposes restrictions on Affordable Housing Units to make such units affordable to Income Eligible Households which meets the requirements of HLC's Local Initiative Program (LIP) or any successor program established by HLC for purposes of Subsidized Housing Inventory (SHI) eligibility; and causes the Affordable Housing Units to be eligible for inclusion on the SHI. An Affordable Housing Restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of Chapter 184, §§ 26, 31, and 32 of the Massachusetts General Laws.
- (b) **Affordable Housing Unit.** A housing unit in a development subject to this bylaw that is required to be sold or rented to, as applicable, and occupied by an Income Eligible Household.
- (c) **Applicant.** A person, business, or organization that applies for a building permit, Site Plan Review, or Special Permit.
- (d) **Area Median Income (AMI).** The area median household income as determined by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size, for the metropolitan area that includes the Town.

- (e) **As of right.** Development that may proceed under the Zoning in place at time of application without the need for a special permit, variance, zoning amendment, or other discretionary zoning approval.
- (f) **Building coverage.** The maximum area of the lot that can be attributed to the footprint of the buildings (principal and accessory) on that lot. Building Coverage does not include surface parking.
- (g) **HLC.** The Massachusetts Executive Office of Housing and Livable Communities, or any successor agency.
- (h) **Income Eligible Household.** A household of one or more persons whose annual income does not exceed 80% of AMI and meets the applicable requirements established by HLC's LIP.
- (i) **Local Initiative Program (LIP).** A program administered by HLC pursuant to 760 CMR 56.00 to develop and implement local housing initiatives that produce low- and moderate-income housing, with or without a comprehensive permit issued pursuant to Chapter 40B, §§ 20 through 23 of the Massachusetts General Laws.
- (j) **Lot.** An area of land with definite boundaries that is used or available for use as the site of a building or buildings.
- (k) **MBTA.** Massachusetts Bay Transportation Authority.
- (l) **Mixed-use development.** Development containing a mix of residential uses and non-residential uses, including, commercial, institutional, industrial, or other uses.
- (m) **Dwelling, Multi-Family.** A building designed for, or containing, three (3) or more residential dwelling units.
- (n) **Open space.** Contiguous undeveloped land within a parcel boundary
- (o) **Parking, surface.** One or more parking spaces without a built structure above the space. A solar panel designed to be installed above a surface parking space does not count as a built structure for the purposes of this definition.
- (p) **Permit Granting Authority.** The Permit Granting Authority (PGA) shall include the Planning Board for the issuance of permits.
- (q) **Residential dwelling unit.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (r) **Section 3A.** Section 3A of the Massachusetts General Laws Chapter 40A, the Zoning Act.
- (s) **Site plan review authority.** The Planning Board shall have authority over site plan review
- (t) **Subsidized Housing Inventory (SHI).** The list compiled by HLC containing the count of eligible low- or moderate-income housing by a city or town pursuant to 760 CMR 56.00, Chapter 40B of the Massachusetts General Laws, and applicable HLC guidelines.
- (u) **Sub-district.** An area within the MCMOD that is geographically smaller than the MCMOD district and differentiated from the rest of the district by use, dimensional standards, or development standards.

(4) Permitted Uses

- (a) **Uses Permitted as of Right.** The following uses are permitted as of right within the MCMOD:
 - 01) Multi-family housing.
 - 02) Commercial Uses as allowed by the underlying zoning, when part of a mixed-use development

(5) Dimensional Standards

- (a) Table of Dimensional Standards.** Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the MCMOD for all subdistricts are as follows:

Standard	Subdistricts North-A and South-A	Subdistricts North-B and South-B
Lot Size (square feet)		
Minimum	40,000	40,000
Height ¹		
Stories (Maximum)	3	2.5
Feet (Maximum)	40	35
Lot Coverage ²		
Minimum Open Space	40%	50%
Maximum Building Coverage	50%	40%
Setbacks (feet)		
Front yard setback	50	50
Rear yard setback	25	60
Side yard setback 1	25	60
Side yard setback 2	25	60
Density (Housing Units per Acre)		
Maximum	17	8
Parking		
Minimum # of parking spaces per unit	1 per one bedroom or studio 2 per two bedroom or greater	1 per one bedroom or studio 2 per two bedroom or greater

(6) Affordability Requirement

(a) Applicability

- 01) Any proposed multi-family residential or mixed-use development containing ten (10) or more rental or ownership dwelling units on any parcel or contiguous parcel(s) comprising a proposed site within the MCMOD shall be subject to the requirements of this section.

(b) Mandatory Provision of Affordable Units

- 01) As a condition of approval for a development subject to this section, a project shall contribute at least 10% of the total housing units in the development subject to this bylaw as Affordable Housing Units constructed or rehabilitated on the locus subject to the development under this Section 97-4.G.(6).
- 02) For purposes of this article, any calculation of required Affordable Housing Units that results in the fractional or decimal equivalent of one-half (0.50) or above shall be increased to the next highest whole number. Nothing in this bylaw shall

¹ Exceptions. Limitations of height shall not apply to flagpoles, chimneys, radio and television antennae, windmills, silos, water tanks, public utility structures, solar panels, and similar non-inhabitable structures.

² Multi-Building Lots. In the MCMOD, lots may have more than one principal building.

preclude a developer from providing additional affordable units, or greater affordability, or both, than the minimum requirements.

- 03) As a condition for the approval of a project, all Affordable Housing Units shall be subject to an Affordable Housing Restriction. The Affordable Housing Restriction shall be approved by Town Counsel and HLC and shall be recorded at the Essex County Registry of Deeds prior to a building permit being issued for the project and a copy provided to the Planning Board and the Building Commissioner.
- 04) Affordable Housing Units shall be sold or rented, as applicable, to Income Eligible Households at sales prices or rents that are affordable to Income Eligible Households pursuant to an Affordable Housing Restriction.

(7) Site Plan Review

- (a) Applicability.** Site Plan Review is required for all multi-family or mixed-use projects in the MCMOD. An application for Site Plan Review shall be reviewed by the Permit Granting Authority in accordance with Section 97-9.
- (b) Requirements.** As part of any application for Site Plan Review for a project within the MCMOD, the Applicant must adhere to Article IX, Section 97-9 of this Zoning Bylaw.
 - 01) As part of Site Plan Review, applicants shall, in addition to the submission requirements set forth in Section A of the Planning Board's "Site Plan Review Submission Requirements and Procedures," submit application materials detailing their adherence with the General Design Standards and Guidelines outlined in Section (8) of this Section 97-4.G as well as adherence to Section 97-9.
 - 02) Prior to submission of a Site Plan Review application for a project within the MCMOD, the Applicant shall file a request with the Planning Director for a mandatory pre-application conference to include, at a minimum, the Planning Director, the Building Commissioner, the Conservation Agent, the Health Director, the Police Chief, the Fire Chief, the DPW Director, and other staff or Board and Commission members as appropriate for the project. The purpose of this pre-application conference is to review with the Applicant the requirements and criteria for site plan approval for a project within the MCMOD and to address questions in order to give the Applicant advice and guidance prior to submitting a Site Plan Review Application, entering into binding commitments, and/or incurring substantial expense in the preparation of plans, surveys, and other data.

(8) Design Standards

(a) Intent

- 01) This section contains the required design standards and guidelines for the MCMOD that are intended to provide direction to a Project's planning and design.
- 02) These design standards are intended to ensure that the physical character of projects in the MCMOD will comply with the following guiding principles:
 - a) Building styles and materials reflect the vernacular styles of traditionally settled areas of Newbury and other similar communities in the region;
 - b) Materials used for streets, paths, landscape features, etc. also reflect those found locally;
 - c) Design features encourage pedestrian travel to and from and within the site and provide a safe and aesthetically attractive pedestrian environment;

- d) Existing natural resources, native vegetation, and the natural topography of the site are preserved and integrated into the site design to the greatest extent practical;
- e) Housing development aligns with the State's climate resiliency goals and follows current guidance for water and energy resource efficient design.

(b) Applicability

- 01) These design Standards shall apply to any proposed multifamily or mixed-use development in the MCMOD.
- 02) The Planning Board may waive the design Standards provided that the Board determines that such waiver will substantially further the purposes and intent of this section.

(c) Site Design, Open Space and Landscaping

- 01) Projects shall be sited to maximize opportunities for creating usable, attractive, well-integrated Open Space.
- 02) Acceptable activities within the minimum required Open Space include natural areas (including wetlands and surface waters), wildlife and native plant habitat, landscape plantings, agricultural activities, low-impact design stormwater management, non-motorized trails, and other low-impact activities. Open Space shall not contain habitable structures.
- 03) Open Space shall be planned as a single contiguous area and, to the extent practicable, configured contiguously with any abutting conservation open areas.
- 04) Open Space intended for public use shall have direct access from one or more streets, pedestrian ways, sidewalks, and/or other public access.
- 05) Landscape design shall strive to provide greenery so that streets and access drives are lined with shade trees, large paved areas are visually divided and screened, and buffers are provided within and around the Project.
- 06) Landscaped areas shall be planted with drought-tolerant species which do not require any automatic irrigation systems.
- 07) Plantings shall be native species and shall not include species on the Massachusetts Prohibited Plant list, as may be amended.
- 08) Light levels for exterior lighting shall meet or exceed the minimum design guidelines defined by the Illuminating Engineering Society of North America (IESNA) and shall provide illumination necessary for safety and convenience while preventing glare and overspill onto adjoining properties and reducing the amount of skyglow. The color temperature of exterior lighting shall not exceed 3000 K.
- 09) Parking and circulation on the site shall be organized so as to reduce the amount of impervious surface.

(d) Building and Structure Placement

- 01) Placement of buildings and structures in the Overlay District shall:
 - a) Provide for a landscaped buffer between buildings or structures and properties adjacent to the Overlay District;
 - b) Orient buildings to any adjacent usable open space, with access to the building onto or accessible to the usable open space;
 - c) Orient structures to provide pedestrian entrances to any adjoining sidewalks;

- d) Locate trash collection and dumpster locations in appropriate locations, screened to avoid adverse impacts on properties adjacent to the Overlay District;
- e) Minimize the visual impact of the development from the street by locating lower buildings closest to the street frontage and taller buildings in the interior of the parcels.

(e) Building Massing, Articulation, and Architecture

- 01) Architecture shall demonstrate the cohesive planning of the development and present a clearly identifiable design feature throughout. It is not intended that buildings be totally uniform in appearance or that designers and developers be restricted in their creativity. The following standards shall apply:
 - a) To reduce a building's perceived mass, building façades shall be divided into smaller scale horizontal and vertical components, through use of changes in plane and changes in color, material, and texture.
 - b) For multi-family buildings of three stories, building design shall maintain a distinction between upper and lower floors. Primary building entrances shall be accentuated. Design features can include covered porches, porticos, and other pronounced architectural forms.
 - c) Buildings shall have pitched roofs typical of historic building types in Newbury, with a pitch between 5:12 and 12:12.
 - d) Side and rear façades shall be generally consistent with the primary façade's architectural style.
 - e) Accessory buildings shall be in the same style as the primary building(s).
 - f) Mechanical equipment at grade, attached to, or on the rooftops shall be screened from view or made an integral part of the overall design of the building.
 - g) All utility, service, loading, and trash collection areas shall be screened or enclosed by plantings, walls, or solid fencing, or a combination thereof. Enclosures shall be designed to be compatible with the architecture of the adjacent building.

02) Building Materials

- a) Materials such as brick, stone, wood clapboard, and cementitious siding such as Hardi-plank shall be used for siding, particularly where visible at the pedestrian level.
- b) Architectural asphalt shingles are preferred for roofing.

(f) Pedestrian Amenities and Connections

- 01) Sidewalks shall be a minimum of 5 feet in width, and shall be constructed of concrete, brick pavers, precast pavers, stone, or similar materials.
- 02) Off-street walking trails may be constructed of crushed stone, stone dust, or wood.
- 03) All elements of the pedestrian network shall be accessible to the physically disabled in accordance with the Americans with Disabilities Act and the Massachusetts Architectural Access Board (AAB) or other applicable regulations.
- 04) Pedestrian access shall be provided to link buildings with open spaces, parking areas, recreation facilities, and sidewalks on adjacent properties wherever practical.

- 05) Site planning shall include consideration of future access to bike paths, parks, playgrounds, residential neighborhoods, other businesses, and transportation facilities.

(g) Resource Efficiency

- 01) Applicants shall use energy- and water-efficient systems and site designs, resource-efficient materials, and methods of construction that limit the project's environmental impact and minimize regular maintenance costs. This may include but is not limited to:
 - a) Building orientation appropriate for use of solar or other renewable energy collection;
 - b) Electric vehicle charging stations;
 - c) LED and dark sky compliant light fixtures; and
 - d) Technologies to minimize water demand throughout site design.

(9) Decision

The Permit Granting Authority shall make and issue decisions within 180 days of the filing of a complete application as certified by the Planning Director. The time within which the Planning Board must act on an application may be extended upon mutual agreement in writing upon request of the Applicant.

- (a) Final action of the Permit Granting Authority shall include one of the following:
 - 01) Approval based on a determination that the proposed project complies with the criteria and design standards set forth in this section and section 97-9(A)(6) of the Zoning Bylaw.
 - 02) Approval subject to any site plan and design performance conditions, modification, and restrictions the Permit Granting Authority may deem necessary to ensure the health, safety, and general welfare of the community.
 - 03) Disapproval of the application for the reasons of an incomplete application.

(10) Recording

Any permit issued hereunder shall be recorded in the Essex South Registry of Deeds and no building permit shall issue until a copy of the recorded permit is provided to the Building Inspector and the Planning Director.

(11) Lapse

Approval for a project shall lapse after two years from the date of issuance, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. This two-year period shall not include time required to pursue or await determination of an appeal filed pursuant to G.L. c. 40A, §§ 8 and 17 (Appeals to permit granting authority). Site Plan approval may, for good cause, in the sole opinion of the Planning Board, be extended in writing by the Board upon the written request of the applicant.

or take any other action in relation thereto.

Select Board Recommendation: 4-1-0

Finance Committee Recommendation: 6-1-0

Rationale: Adoption of this zoning bylaw and associated map amendment will allow the Town to achieve full compliance with Massachusetts General Law Chapter 40A, Section

3A, The MBTA Communities Act, which requires that the 177 cities and towns in Massachusetts which have been designated "MBTA Communities" establish "at least 1 district of reasonable size in which multi-family housing is permitted as of right," or, in other words, in which buildings containing three (3) or more residential dwelling units are allowed without the need for any special permits or waivers under zoning. The proposed bylaw provides for creation of a multi-family overlay district with four separate sub-districts, two in the northern end of town and two in the southern end of town. This overlay district will lie on top of the existing underlying zoning and expand the types of potential development allowed in those areas without replacing the existing zoning or allowed uses that are already in place. Multi-family and mixed-use projects in this overlay district will require Site Plan Review and be subject to all applicable state environmental regulations, including the Wetlands Protection Act and Title 5. This zoning will allow for opportunities to increase the production of a range of housing units to meet existing and anticipated housing needs and to increase the diversity of housing and provide more housing choice to meet the needs of residents of different age groups, household compositions, and income levels. The State's requirement is only to zone for multi-family housing; it does not mandate any construction of multi-family housing.

Select Board Vice Chair William DiMaio

Motion: I move that the Town approve Article 14 to amend the zoning map and the zoning bylaw as printed in the warrant.

Ian Burns from Merrimack Valley Planning Commission presented a slide show and opened the floor up for discussion. A discussion ensued.

Motion was moved and seconded. 234 in favor and 80 opposed.

Motion passed.

A true copy attest:

Gretchen E. Girard, Town Clerk

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