



# TOWN OF NATICK

**Diane B. Packer**  
**Town Clerk**  
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## CERTIFICATE OF VOTE

I, Diane Packer, Town Clerk of Natick Massachusetts, do hereby certify the following vote:

### **ARTICLE 37: Amend Zoning By-Law to Make Various Technical Corrections and Modifications (Paul Griesmer et al)**

“To see what action(s) the town will take to amend the Zoning By Law to make technical corrections, modifications or changes regarding Modifications and Waivers, Aquifer Protection District exemptions, and Pre-Existing Non-Conforming Structures and Uses including but not limited to the following:

- 1) to eliminate, to restrict and/or to limit in whole or in part the ability of the Special Permit Granting Authority (SPGA) to grant or to make modifications or waivers with regard to the provisions of the Zoning By Law and the extent to which and/or the subject matter on which any modifications or waivers may be granted including but not limited to the following sections or subsections: III-A.6 Affordable Housing B. Housing Overlay option Plan (HOOP), 7. Modifications and Waivers III-A.6 Affordable Housing C. Smart Growth Overlay District (SGO District), 11. Waivers III-I Assisted Living Residences, Modifications and Waivers III-J Historic Preservation, 8. Modifications and Waivers Section 320 Highway Overlay Districts, 329 Administration, 329.2 Modifications and Wavers and/or
- 2) to move any and all language concerning modifications and waivers in the above sections to a new section or subsection in the Zoning By Law in order to consolidate all language concerning modifications and waivers in one place and to make changes to eliminate, in whole or in part, and/or to restrict and/or limit, in that new section or subsection, the ability of and /or extent to which and/or the subject matter on which an SPGA may grant waivers and/or modifications and/or
- 3) to delete all existing language concerning modifications and waivers in the above sections and create a new section or subsection which consolidates and/or modifies any and all waiver and modification language and/or eliminates , in whole or in part, and/or restricts and/or limits the ability of and/or extent to which and/or the subject matter on which an SPGA may grant any waivers and or modifications in such new language and/or to specify in such new section or subsection which districts, zones, or uses may benefit from or obtain any waivers or modifications and/or to specify that such new section or subsection shall prevail, override, super cede and/or control over any other section of the Zoning By Law notwithstanding any such other section of the Zoning By Law to the contrary and/or
- 4) to eliminate, to restrict and/or to narrow the applicability of the exceptions in Section III-A.5 Aquifer Protection District (APD) of the Zoning By Law which presently exempt any residentially used lot in the RG or RS zones from the any or all of the requirements of the Aquifer Protection District and/or to limit the applicability of any such exceptions in the RG and RS districts to single family and two family type uses and/or uses allowed in single family and two family structures and/or
- 5) to change the language in Section V – Special Requirements V-A Nonconforming Uses 2. Extension of the Zoning By Law to restrict the extent to which and/or the circumstances and/or bases under which the Zoning Board of Appeals may allow any extension, alteration and/or expansion of and/or change in pre existing non conforming uses, structures and/or buildings and to specify and/or to limit the extent, if any, to which any non conformity with other sections of the Zoning by Law may be increased and /or to prohibit the ability to increase the degree of non conformity and/or to prohibit , in whole or in part, the ability of the Zoning Board of Appeals to allow changes , alterations, extensions or expansions of pre

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existing non conforming structures, buildings and/or uses

Provided that none of the above changes under this article may increase the ability of any SPGA to grant waivers or modifications or create ability of any SPGA to grant waivers and/or modifications where none are currently allowed or make increases to any exemptions under the Aquifer Protection District section of the By Law or increase the ability of the Zoning Board of Appeals to allow expansion, alteration, increase or change in any pre existing nonconforming use or structure and/or to expand the basis upon which such permission(s) can be granted or otherwise act thereon.

**MOTION A (requires two-thirds vote)**

Moved by Mr. Evans, seconded by Mr. Hayes to amend the Zoning By-Law in sub Section 1A. APPLICABILITY: of Section III-A.5 Aquifer Protection District (APD) by inserting the words "Uses 1, 1A, 2, 3, or 5 of the Use Regulations Schedule on" in the first sentence after the words "shall not apply to" so that the sub section now reads

"This Section III-A.5 shall not apply to Uses 1, 1A, 2, 3, or 5 of the Use Regulations Schedule on residentially used lots in the RS and RG districts, however where more than 20% of such lots are hereafter proposed to be made impervious, roof runoff shall be directed to a pervious area or dry-well approved by the local building inspector."

Mr. Griesmer moved, seconded by Mr. Munnich to amend Motion A to insert the number and comma "5," after the number and comma "3," in the first line and to change the number "5" after the word "or" in the first line to the number "9". *The amendment passed unanimously (129-0-0). Amended motion A passed unanimously (126-0-1).*

**MOTION B (requires two-thirds vote)**

Moved by Mr. Evans, seconded by Mr. Hayes to amend the zoning by law in Section V-E by deleting, the word "DELETED" and inserting in its place the following:

**"WAIVERS AND MODIFICATIONS**

**1. Purpose and Applicability**

- a. The purpose of this section is to establish criteria, limits, restrictions, prohibitions and exemptions for any and all modifications and/or waivers from strict compliance with the dimensional, intensity, use, purpose, objectives, standards and /or requirements, provisions of this zoning by law. Notwithstanding anything else to the contrary in this zoning by law, this section shall apply both to any and all districts and to any and all waivers and/or modifications of dimensional and/or intensity unless specifically exempted or provided for below.
- b. Provided that the SPGA is authorized in the provisions for a particular zoning district to grant modifications and/or waivers from strict compliance with the provisions of this zoning by law in connection with Site Plan Review and /or Special Permits for such zoning district, the SPGA may grant modifications and waivers subject to the permissions, criteria, limitations, restrictions and prohibitions of this Section V-E.
- c. The SPGA may not grant modifications and or waivers for any use in any district unless the provisions for such zoning district in this zoning by law expressly allow for modifications and waivers.
- d. Notwithstanding anything else in this zoning by law to the contrary, no waiver and/or modification may be granted unless either i) specifically exempted in 1.e, 1.f, 1.g or 1.h below or ii) specifically complying with V-E 2, 3 and 4 below or allowed below in connection with grants of allowable bonus density or intensity.
- e. This section shall not apply to either i) Special Permits granted in conformity with Section 6 of MGL Chapter 40A and Section V-A Nonconforming Uses of this zoning bylaw or ii) variances granted in conformity with Section 10 of MGL Chapter 40A and section VI- E.3 of this zoning bylaw.
- f. This section shall not apply to sub Section C. Smart Growth Overlay District (SGO District) of Section III-A.6 Affordable Housing of this zoning by law.
- g. This section shall not apply to Section III- A.6.A.2, Section V-D.19 (d) or Section V-I.7

- h. This section shall not apply to Section 329.2 regarding the FAR for redevelopment projects which retain all or any part of prior- existing structures.

## 2. Criteria and Written Finding

- a. In granting any waiver and/or modification, the SPGA shall first make a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted and further that such waiver is necessary in order to allow or to encourage the purposes for which the district was created.
- b. These criteria shall be in addition to any other criteria applicable to a district.
- c. These criteria shall also be subject to V-E 3. and 4. below.

## 3. Limitations and Restrictions

- a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure, or sky-exposure plane.
- b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately.
- c. Any modifications and/or waivers shall be measured on a cumulative basis such that the 10% limitations and restrictions are i) applied, ii) maintained and iii) never exceeded on a cumulative basis. Any modifications and/or waivers shall be measured and take into account any variances such that any modification and/or waiver, considered and together with any variances, may not exceed the above limitations and restrictions. This provision shall affect only the modification and/or waiver and shall not affect any lawful variance.
- d. The maximum 10% shall be calculated by multiplying the regulatory factor by 1.10 if an increase and by 0.90 if a decrease. The result so calculated shall establish the limit for any regulatory factor modified and/or waived.
- e. Any Special Permit granting modifications and/or waivers shall provide as a condition of such Special Permit for the ongoing maintenance, continuing survival and enforcement of such waived or modified factors as a condition of the Special Permit.
- f. Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived.

No waiver and/or modification shall be granted if such grant, whether alone or in combination with other factors, increases, contributes to an increase in or facilitates an increase in the otherwise permissible density or intensity of any particular use unless such increase in density or intensity complies fully with the applicable FAR Bonus or Bonus Density provisions of this zoning by law. For the purposes of determining compliance with this Section V-E, this standard shall be applied by considering and measuring the effects of any modification and/or waiver on a specific project on a specific application for a particular use before the grant of any modification and/or waiver. Nothing in this section shall preclude any bonus density section of this zoning by law from imposing its own more restrictive limitations and restrictions on any waivers and/or modifications which are granted for the purposes of allowing bonus density or intensity of use.

## 4. Prohibitions

- a. No waivers and/or modifications can be granted if the application and/or parcel requests, includes or results in the continuance, extension or alteration of any pre-existing nonconforming use. For the avoidance of doubt, the intent of this provision 4.a) in conjunction with the exceptions in 1e) above is to allow the Zoning Board of Appeals to grant relief in conformity with Section 6 of MGL Chapter 40A and Section V-A Nonconforming

Uses of this zoning bylaw and to grant variances in conformity with Section 10 of MGL Chapter 40A and section VI- E.3 of this zoning bylaw but to prohibit i) the Zoning Board of Appeals from granting such relief separate from the provisions of Section 6 of MGL Chapter 40A , Section V-A Nonconforming Uses of this zoning bylaw and Section 10 of MGL Chapter 40A and section VI-E.3 of this zoning bylaw and ii) the Planning Board or other SPGA from granting modifications and /or waivers which include or result in the continuance, extension or alteration of any pre-existing nonconforming use.

- b. No waivers and/or modifications can be granted with regard to FAR Bonus or Bonus Density provisions or Affordable Housing requirements of this zoning by law. No waivers and/or modifications can be granted if the effect of such waiver and /or modification is to grant or to create additional density and/or intensity without strict compliance with Section 9 of MGL Chapter 40A section 9 and the applicable FAR Bonus or Bonus Density provisions of this zoning by law.
- c. No waivers and/or modifications can be granted with regard to minimum lot size, continuous frontage, lot frontage or lot depth.
- d. No waivers and/or modifications can be granted with regard to the purpose, intent, definitions and/or uses specified for any zoning district or with regard to the purpose, intent, definitions or uses of the zoning by law itself.”

And in Section III-I by deleting, after the words ‘Modifications and Waivers:’ the words

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, provided that it makes a specific finding in writing that a waiver and/or modification will not create conditions that are substantially more detrimental to the neighborhood in which the parcel is located than if the waiver and/or modification were not granted.’”

And replacing them with the words ‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.’”

so that the Section III-I Modifications and Waivers now reads:

‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.’”

and by deleting in Section 329.2 after the words ‘Modifications and Waivers:’ the words:

“The Planning Board may modify and/or waive strict compliance with one or more of the standards, regulations and objectives set forth in these Highway Overlay District regulations, provided that it makes a specific finding, in writing, that a waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted.”

And replacing them with the words: ‘The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E.’”

so that the Section 329.2 now reads: “Modifications and Waivers: The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E. The Planning Board shall not grant a waiver of the FAR regulations set forth in Section 324, except with respect to redevelopment projects which retain all or any part of prior existing structures. (Art. 5, STM #2, 10/10/00)”

and by deleting , in Section III-A.6 Affordable Housing sub section B. Housing Overlay Option Plan – (HOOP) after the sub heading ‘7. MODIFICATIONS AND WAIVERS’ the words:

“The SPGA may modify and/or waive strict compliance with one or more of the regulations in any of the HOOP districts provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted, and” And replacing them with the words:

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E, and provided”

so that the Section III-A.6 B.7 now reads

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives set forth in this Section, in accordance with Section V-E, and provided further that such waiver and/or modification is necessary in order to encourage the creation of Affordable Housing units.”

and in Section III-J – Historic Preservation in Section III- J 7 Requirements subsection 4 Intensity Regulations after the words ‘Intensity Regulations:’ by deleting the words:

“The SPGA may, for new construction, modify the dimensional requirements for the district by up to 10%.” And replacing them with the word “Deleted”

And in Section III –J subsection 8. Modifications and Waivers after the sub heading ‘Modifications and Waivers’ by deleting the words: “Except as specifically stated in this Section III -J, the SPGA may modify and/or waive strict compliance with one or more of the regulations of the Districts in which a Historic Preservation project is located provided that it makes a specific finding, in writing, that such waiver and/or modification will not create conditions which are substantially more detrimental to the existing site and the neighborhood in which the site is located, than if the waiver and/or modification were not granted, and”

And replacing them with the words: “The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives of the Districts in which a Historic Preservation project is located, in accordance with Section V-E and provided”

So that Section III - J 7.4 now reads:


“4. Intensity Regulations: Deleted”

And that Section III - J 8 Modifications and Waivers now reads:

“The SPGA may modify and/or waive strict compliance with one or more of these requirements, regulations, and objectives of the Districts in which a Historic Preservation project is located, in accordance with Section V-E and provided further that such waiver and/or modification is necessary in order to encourage the preservation of the historic building.”

***Motion B under Article 37 passed by two-thirds vote (127-1-0).***

These votes were taken at the May 9<sup>th</sup> session of the 2017 Spring Annual Town Meeting.

  
Diane B. Packer

