

ARTICLE 26

MOTION OFFERED BY THE PEITIONERS

Voted that the Town amend the Zoning By-Laws by adding a new Section 9.13 as follows:

Section 9.13: On-Site Fossil Fuel Infrastructure

Purpose

This section is adopted by the Town of Brookline, to protect the health and welfare of the inhabitants of the Town from air pollution, including greenhouse gas emissions that cause climate change and thereby threaten the Town and its inhabitants.

2. Definitions

As used in this section, the following terms shall have the following meanings:

“New Building” is defined as a building not in existence on the date of an application for a special permit that is subject to this section.

“On-Site Fossil Fuel Infrastructure” is defined as fossil fuel piping that is in a building, in connection with a building, or otherwise within the property lines of premises, including piping that extends from a supply source; provided, however, that “On-Site Fossil Fuel Infrastructure” shall not include:

- a. Fuel gas piping connecting a supply source to a meter or to the meter itself; or
- b. Fossil fuel piping related to backup electrical generators, cooking appliances or portable propane appliances for outdoor cooking and heating.

“Significant Rehabilitation” is defined as an alteration, requiring a building permit, to a building in existence on the date of an application for a special permit that is subject to this section, and that:

- a. For existing buildings regulated by the 9th Edition of the Massachusetts State Building Code 780 CMR 51.00, the Massachusetts Residential Code, includes the reconfiguration of space or building systems, in which the Work Area is more than 75% of the gross floor area as defined in the Zoning By-Law, prior to the project; or
- b. For existing buildings regulated by the 9th Edition of the Massachusetts State Building Code 780 CMR 34.00, the Massachusetts State Basic Commercial Code,

includes the reconfiguration of space and/or building systems, in which the Work Area is more than 50% of the gross floor area, as defined by the Massachusetts Building Code, prior to the project.

“Work Area” is defined as the aggregate area of those portions of a building affected by alterations for the reconfiguration of space or building systems, including new floor area added as a result of the alteration, as indicated in the drawings associated with a building permit application. Excluded from the calculation of Work Area are those portions of a building where only repairs, refinishing or incidental work occur or where work not initially intended by the applicant is specifically required by an inspector from the Building Department pursuant to the applicable building code.

3. Applicability

The requirements of this section shall apply to all special permit applications for New Buildings or Significant Rehabilitations proposed to be located in whole or in part within the Town or for uses to be located within such New Buildings or Significant Rehabilitations, as well as to applications for the continuation of New Buildings, Significant Rehabilitations or uses authorized by a special permit previously issued subject to this section, except as follows:

- a. The requirements of this section shall apply only to project proposals that
 1. Require a special permit pursuant to sections 9.03, 9.04, 9.05, 9.08, or 9.10 for the proposed structure, alteration or use; and
 2. Include a New Building or Significant Rehabilitation as defined in this section.
- b. The requirements of this section shall not apply to any application for a special permit filed on or before the later of September 1, 2021 or the date of first issuance of Planning Board guidelines pursuant to paragraph 7 of this section.
- c. The requirements of this section shall not apply to the piping, in buildings with floor areas of at least 10,000 square feet, required to produce potable or domestic hot water from centralized hot water systems if the Engineer of Record certifies that no commercially available electric hot water heater can meet the building’s hot water demand for less than 150% of installation or operational costs, compared to a conventional fossil-fuel hot water system.
- d. The requirements of this section shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping if fossil fuel piping is not installed.

- e. The requirements of this section shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in section 5.06, paragraph 4, subparagraph k, or a Fisher Hill Special Overlay District Special Permit, as described in Section 5.06, paragraph 4, subparagraph l.
- f. The requirements of this section shall not apply to:
 - 1. Research laboratories for scientific or medical research, and
 - 2. Health care uses that require licensure or certification as a health care facility by the Massachusetts Department of Public Health.
- g. The requirements of this section shall not apply to repairs or replacement of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.
- h. The requirements of this section shall not apply to any application for a special permit, made pursuant to the Design Review requirements of section 5.09, if no other special permit is otherwise required.
- i. The requirements of this section shall not apply to any application for a special permit for the renovation, reconstruction, alteration or extension of a nonconforming single or two-family residence, where the only relief needed represents an increase or intensification of a nonconformity lawfully in existence at the time the applicable provision of the Zoning By-Law became effective.

4. Climate Responsive Conditions for Approval of Special Permits

Except as otherwise provided in this section, the Board of Appeals shall not approve any special permit application made pursuant to sections 9.03, 9.04, 9.05, 9.08, or 9.10 unless the Board finds that:

- a. The proposal does not involve the installation of any new On-Site Fossil Fuel Infrastructure or the continuation of any On-Site Fossil Fuel Infrastructure installed pursuant to a special permit previously issued subject to this section; or
- b. The proposal involves the installation of On-Site Fossil Fuel Infrastructure or the continuation of any On-Site Fossil Fuel Infrastructure installed pursuant to a special permit previously issued subject to this section; provided, however, that either:
 - 1. Except as otherwise provided in paragraph 4, subparagraph b(2) of this section, the special permit shall be conditionally approved for a term not to exceed five years from the date of its first exercise or until January 1, 2030, whichever is later; or

2. Where a special permit has previously been issued subject to paragraph 4, subparagraph b(1) of this section, it may, for good cause, be renewed, one or more times, for a term not to exceed one year; or
3. The special permit shall be approved on the condition that it is personal to the applicant and is non-transferrable, including by the transfer of stock or other ownership interest in a business organization or trust, except in the case of an owner's primary residence to an immediate family member or to a trust for which the owner or an immediate family member is the primary beneficiary;

and provided further that, at the applicant's request, the Board of Appeals may modify the special permit to run with the land in perpetuity, upon a finding that the applicant has removed, disconnected or otherwise permanently disabled any On-Site Fossil Fuel Infrastructure that was subject to this section at the time the special permit was first granted.

5. Waivers

A waiver from the requirements of paragraph 4 of this section may be approved by the Board of Appeals, in its special permit decision, upon a finding:

- a. If supported by a detailed cost comparison provided by the applicant, that strict compliance with the requirements of paragraph 4 would be financially infeasible, including after utilizing available rebates and credits, or otherwise impractical to implement; or
- b. That strict compliance with the requirements of paragraph 4 would result in the loss of new affordable housing units eligible for inclusion in the Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory.

No modification of a special permit, the rights under which have previously been exercised, shall grant a waiver from the requirements of this section. In considering any waiver request, the Board of Appeals shall evaluate whether particular portions of a project are financially infeasible or impractical to implement, or would result in the loss of new affordable housing units, and the Board of Appeals shall issue waivers narrowly for those portions, where appropriate, rather than for an entire project.

6. Notices

For a special permit granted subject to paragraph 4, subparagraph b of this section, any notice that is required to be recorded pursuant to *M.G.L. c.40A, §11*, shall include a statement detailing the condition upon which the special permit was granted.

For all properties subject to a special permit conditioned on a time limitation pursuant to paragraph 4, subparagraph b(1) of this section, the Building Commissioner will provide notice to the owner of record of the expiration of said special permit and the requirement of compliance with this section. Such notice will be first provided not less than three (3) years prior to the expiration of such a special permit, and annually thereafter; provided, however, that the failure of the Building Commissioner to issue timely notices pursuant to this paragraph shall not be deemed to prevent the Building Commissioner from seeking to enforce the requirements of this section or otherwise to operate as a defense to any such enforcement action.

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7. Rules, Regulations, and Guidelines

No later than September 1, 2021, the Planning Board shall adopt, and may in its discretion thereafter amend, guidelines for procedures and waivers that will provide for the uniform and equitable application of this section. The Planning Board may consider such guidelines in issuing advisory reports pursuant to section 9.04, paragraph 5, and the Board of Appeals may consider such guidelines in making special permit decisions subject to this section.