

TOWN OF BROOKLINE



Article 5.10

Neighborhood Conservation Districts

ARTICLE 5.10
NEIGHBORHOOD CONSERVATION DISTRICTS

5.10.1. TITLE AND PURPOSE

This by-law shall be known as and may be titled the Brookline Neighborhood Conservation District By-law. The Town of Brookline hereby establishes the category of Neighborhood Conservation District ("NCD").

This by-law is enacted for the purposes of preserving and protecting groups of buildings and their settings that are architecturally or historically significant; preserving and protecting the layout of neighborhoods or historical subdivisions of neighborhoods, vehicular and pedestrian circulation patterns, green spaces, open spaces, landscapes, and viewsheds that are historically significant or significant to the character of the town or its neighborhoods; preserving and protecting distinctive features of the architectural, environmental, cultural, economic, political or social history of the town and its neighborhoods, and limiting the detrimental effect of alterations, additions, demolitions and new construction on the character of the town and its neighborhoods. Through this by-law, alterations, additions, demolition and new construction may be reviewed for compatibility, including without limitation design, massing, topography, scale and materials, with the existing buildings, green spaces, open spaces, courtyards, landscapes, neighborhood and subdivision plans and layouts, circulation patterns, viewsheds, settings and neighborhood character. This by-law seeks to encourage the protection of the natural and built environment including without limitation buildings, viewsheds, cultural landscapes, land use patterns and neighborhood plans through regulatory review. This by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work by preserving the distinctive history and character of its built, landscaped and natural environment.

Each NCD identified in Section 5.10.3 shall be geographically defined. Each such district shall be subject to a set of design guidelines specific to that district established as set forth herein.

5.10.2. DEFINITIONS

As used in this by-law the following terms shall have the following meanings (whether or not capitalized in text):

- a. *ADDITION* - An extension or increase in gross floor area, number of stories, height or size of a building or structure.
- b. *ALTER or ALTERATION* - Any change to an existing building or other structure other than repair, or other changes to a site or property set forth in the definition of "Reviewable Project" (including without limitation Sections 5.10.2.m(iv) to 5.10.2.m(ix)). Alteration shall include, without limitation, the moving or complete or partial demolition of an existing building or structure (as defined in Sections 5.3.2(h) and (i) of these By-Laws, except as exempted below.
- c. *APPLICATION* - The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate of Appropriateness. A complete application shall include information reasonably deemed necessary by the Commission to enable it to make a determination.
- d. *BUILDING* - A combination of materials forming a shelter for persons, animals or property.
- e. *CERTIFICATE OF APPROPRIATENESS* - A document granted by the Neighborhood Conservation District Commission in order to permit a Reviewable Project to proceed, including without limitation to obtain a building (including demolition) permit.
- f. *COMPATIBLE* - A Reviewable Project that meets the design guidelines of the Neighborhood Conservation District.
- g. *DESIGN GUIDELINES* - The guidelines applicable to each Neighborhood Conservation District and used by the Commission to determine whether the design of a proposed Reviewable Project is compatible with the district. Such guidelines are set forth in Section 5.10.3 with

respect to each district created under this by-law.

- h. DISTRICT* - Any Neighborhood Conservation District as established in this by-law.
- i. NEIGHBORHOOD CONSERVATION DISTRICT ("NCD")* - A property or group of properties designated in Section 5.10.3.
- j. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSION ("the Commission" or "the NCD Commission")* - A member or members of the Brookline Preservation Commission, as supplemented by any additional individuals appointed in accordance with Section 5.10.4, acting as the body making determinations under this by-law regarding applications for Certificates of Appropriateness in a particular NCD. With respect to any NCD the composition of the NCD Commission may be specific to that NCD.
- k. PERSON AGGRIEVED* - An applicant and any immediate abutter whether inside or outside the NCD.
- l. REPAIR* - The reconstruction or renewal of any part of an existing building or other structure for the purpose of its maintenance without change in material, design or dimensions.
- m. REVIEWABLE PROJECT* - Except to the extent that the particular design guidelines for a specific NCD set forth in section 5.10.3 of this by-law may exempt some of these activities from review within that NCD, the following shall be subject to review, regardless of whether any demolition or other building permit is required: (i) a change to a building or other structure or part thereof such as removal, construction, reconstruction, restoration, renovation, replication, rehabilitation, addition, alteration, partial or total demolition and other similar activities, or the construction of a new building or other structure or part thereof; (ii) painting of previously unpainted masonry; (iii) addition or replacement of doors and windows, or tinting or altering glass reflectivity unless excluded in Section 5.10.6.c.11; (iv) a change to

a site that includes constructing, placing, erecting, installing, enlarging or moving a building or other structure or other similar activities; (v) the removal or addition of streets, driveways, parking areas, walkways or paved surfaces; (vi) removal of trees more than eight inches in diameter at 56" height (d.b.h.); (vii) substantial or complete removal of areas of vegetation specifically identified in the design guidelines at or after the creation of the NCD; (viii) removal of ledge or other rock outcroppings with at least one foot exposure in height; or (ix) changes in grade elevation of more than three feet. The activities set forth in Section 5.10.6 shall be exempt from review.

- n. *STRUCTURE* - That which is built or constructed, including buildings, walls, retaining walls, fences, walkways, driveways or parking areas, paving and curbs, street name signs, any signs larger than one square foot, swimming pools, tennis courts, freestanding HVAC equipment, and outdoor lighting that shines on any adjacent property.
- o. *SUBSTITUTE SIDING* - Exterior building cladding such as vinyl, aluminum or cement board not original to the date of construction of that portion of the building.
- p. *TEMPORARY BUILDING OR STRUCTURE* - A building or other structure, necessary for a specific event, incident or project, erected for a period of no more than 6 months, unless otherwise agreed to by the Commission, the installation and removal of which will cause no permanent change.

5.10.3. DISTRICTS AND GUIDELINES

a. A Neighborhood Conservation District shall encompass a geographically defined area that, at the time of its establishment, is located in its entirety within one or more residence districts as defined in section 3.01.1 of the Zoning Bylaw. Additional NCDs may be added by majority vote of Town Meeting and each such NCD and the design guidelines for such NCD shall be set forth in part d of this Section 5.10.3, as it may be amended. The boundaries of each NCD shall be set forth on a map on file with the

Town Clerk. The NCD Commission, Town Counsel or Town Clerk shall, in addition, promptly present a copy of the map and applicable by-law for filing in the Norfolk County Registry of Deeds.

b. The design of each Reviewable Project in a Neighborhood Conservation District shall be subject to the particular design guidelines set forth in this Section 5.10.3 for such district.

c. The Commission may impose dimensional requirements that further the purposes of this by-law, including without limitation preventing Reviewable Projects inconsistent with the historic or architectural aspects, scale or massing, neighborhood or subdivision plan or layout, circulation patterns, or green space, open space, landscape, vegetation or viewshed character of the NCD.

d. Specific districts and guidelines.

1. There shall be a Neighborhood Conservation District, to be entitled the "Hancock Village Neighborhood Conservation District", the boundaries of which are shown on the map entitled "Hancock Village Neighborhood Conservation District", a copy of which is on file with the Town Clerk's office, which is hereby declared to be part of this By-law.

The first and largest garden city apartment complex in Brookline, Hancock Village (1946-1949) is significant as a far-sighted, historically important collaboration between the town of Brookline and the Boston-based John Hancock Mutual Life Insurance Company to provide both employment and housing for returning World War II veterans. The development, which straddles the Brookline-Boston line, consists of 789 two-story attached townhouses, most of which are located in Brookline. In consideration of a zoning change by the Town which allowed the development to proceed, the development was designed and built as a high-quality development in the "garden village" style, meaning that each dwelling unit had a separate entrance to the exterior; the units were town-homes of two stories with peaked roofs; there was substantial open space; and there was a "greenbelt" serving as a buffer between the development and adjacent single-family homes. Such elements were embodied in commitments made on behalf of John Hancock Insurance by its president Paul F. Clark, including an agreement with the Town of Brookline executed

March 11, 1946. The landscape design was by Olmsted Associates, a Brookline firm with international experience and reputation. Significantly, Hancock Village remains the quality housing development conceived in those commitments and original design, and therefore remains internally coherent in design and compatible in scale, siting and impact with the adjacent neighborhood of single-family homes and with the D. Blakely Hoar Wildlife Sanctuary, especially due to the retention in Hancock Village of open lawns, courtyards and common areas, pedestrian paths, consistent town-house style buildings of modest scale, unobstructed sky planes, buffer zones, and significant landscape features such as puddingstone outcrops. Retaining integrity of location, design, setting, materials, workmanship, feeling, and association, the Hancock Village Neighborhood has as such remained an important historic property in Brookline and a compatible part of the fabric of the community and the adjacent neighborhood.

The Hancock Village Neighborhood Conservation District shall be governed by the following design guidelines. Any further development shall be compatible with the existing development of the district and its relationship to the adjacent neighborhood:

- i. Architectural style and character. The architectural design and building materials of any proposed Reviewable Project shall be compatible with the existing garden-village town-house architecture within the district, with, for example, each dwelling unit having a separate entrance to the exterior.
- ii. Building size, height and massing. The size, height and massing of a building or other structure which is part of any proposed Reviewable Project shall be compatible with existing buildings and other structures within the district and the adjacent neighborhood, and the elements considered shall include but not be limited to the volume and dimensions of any buildings or other structure; the scale, clustering and massing of any building or other structure in relation to its surroundings, including existing buildings and other structures and nearby landscape and other open spaces; and compatibility of

design and materials with existing buildings and other structures. Compatible building size, height and massing shall include, not be limited to limited to:

- a. No building over 2 ½ stories in height, measured from the highest point of the finished grade of each unit, shall be constructed.
 - b. In relation to any abutting single-family, detached homes, any new single-family homes shall be similarly oriented, have similar rear yard depths, and similar distance between dwelling units.
- iii. Façade. The number, size and location and design of windows, doors and solid elements, trim work, piers, pilasters, soffits, cornices, decks, porches and canopies, and the design of window and door details, including trim, muntins, mullion and sills, need not replicate but shall be compatible with the existing buildings within the district. Alterations necessary for handicap accessibility shall be compatible to the extent reasonably feasible.
- iv. Roof treatment. The shape, pitch, style, and type of surfacing of roof areas shall be compatible with those of buildings within the district. Including buildings in any Reviewable Project, buildings with flat or approximately flat roofs will not exceed 25% of the total number of buildings in the entire NCD.
- v. Streetscape, topography and landscape. Any proposed Reviewable Project (including demolition, removal, new construction or other alteration) shall maintain the spatial organization of the district and shall not have a significant negative impact on historic architectural or landscape elements, including structures, open spaces, green spaces, topography, walls and fences, circulation patterns including pedestrian circulation separated from vehicular traffic, viewsheds, park areas, play areas, courtyards and other landscaped areas previously accessible and

usable in common, significant trees as defined in this by-law, and buffer areas. The existing spatial organization and land patterns of the landscape shall be preserved, including the curvilinear circulation patterns and views from roads, sidewalks, pathways and buildings. Significant negative impacts shall include, but not be limited to:

- a. Removal or alteration of rock outcroppings greater than 200 square feet in contiguous area;
- b. Alteration of existing grades by more than three feet in vertical height;
- c. Removal of existing pedestrian paths that separate pedestrians from vehicular traffic;
- d. Addition of new impervious surfaces within 100 feet of abutting properties, including the Hoar Sanctuary or single-family homes; and
- e. Loss of open space through building coverage exceeding 20% of the area of the district or through loss of the "greenbelt" now serving as a buffer to the abutting single-family detached homes.

Nothing in this Section 5.10.3.d.1 shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this Section 5.10.3.d.1 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of this Section 5.10.3.d.1 shall be deemed to be severable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

2. There shall be a Neighborhood Conservation District, to be entitled the "Greater Toxteth Neighborhood Conservation District" the boundaries of which are shown on the map entitled "Greater Toxteth Neighborhood Conservation District", a copy of which is on file with the Town Clerk's office, which is hereby declared to be a part of this By-law.

The purpose of the Greater Toxteth Neighborhood Conservation District is to preserve and protect the unique character of the neighborhood and the individual properties and buildings located therein in ways that are not typically protected by the Zoning Bylaws or other By-laws of the Town of Brookline.

Neighborhood Characteristics. The pattern of development of the Greater Toxteth Neighborhood Conservation District includes a generous streetscape with mature plantings and a similarity of scale and configuration of homes. Most homes sit back farther from the street than is required under current zoning and cover less of their lots than is permitted by underlying zoning. This pattern contributes to a sense of open space and a wider street, with homes still close enough to actively contribute to the neighborhood's street-level social dynamic. The neighborhood is predominately single or two-family three storied structures, though they appear to be 2½ stories given the gambrel, cross-gabled, and mansard roof lines that provide spaciousness and light in spite of the close proximity of abutting houses, thereby mitigating the effect of the upper stories on abutting properties. Homes are generally respectfully positioned on their lots, address the street, and most have open porches that promote an active transition from the home to the street, which enhances the neighborhood's social fabric and fosters street level sociability. Broad backyard view corridors are broken only by mature trees and fences. While nestled in a rather dense area, the neighborhood has an abundance of open and green space and many mature trees - traditional characteristics found in Brookline - that soften the near-urban locale. There are a variety of architectural styles that coexist to create a pleasing liveliness that functions as a cohesive neighborhood. The scale, massing and configuration of homes in the neighborhood collectively contribute to a commonality of pattern that is unique relative to the surrounding neighborhoods (such as Coolidge Corner, Brookline Village and the Harvard Street corridor).

Special Definitions. With regard to the Greater Toxteth Neighborhood Conservation District, the following terms shall have the meaning given to them below.

- i. "Habitable Space" shall mean space in a building or structure suitable for living, sleeping, eating or cooking; otherwise used for human occupancy; or finished or built out and meeting the State Building Code requirements for height, light, ventilation and

gress for human habitation or occupancy. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas shall not be excluded from Habitable Space solely because they are excluded from the definition of habitable space under the State Building Code.

- ii. "Base-line Living Area" shall mean the amount of Habitable Space above grade in a building as of the Effective Date of this legislation. The Neighborhood Conservation District Commission shall use reasonable efforts to create and maintain a record of such baseline Habitable Space for each property in the district. The Commission may use Assessor records, building permits and such other Town records and information as it deems appropriate to create such record. In the event of demolition or destruction of a building that was existing as of the Effective Date, the Base-line Living Area of such building shall be used as the measurement for any new construction on that property.
- iii. "Reviewable Project" shall have the meaning given to it in the section below entitled "Projects Subject To Review."
- iv. "Front Plane" shall mean the forward most plane of the main structure façade on any above grade floor containing Habitable Space.
- v. "Effective Date" shall mean the date that this Bylaw amendment is approved at Town Meeting and becomes effective.

Projects Subject To Review. Section 5.10.2(m) sets forth the activities that are reviewable in a neighborhood conservation district unless otherwise exempted. In the Greater Toxteth Neighborhood Conservation District, only the following activities shall be reviewable. The term Reviewable Project, when used in this Section 5.10.3(d)(2) shall refer only to the following activities.

- i. Any Addition or Alteration to the existing exterior envelope of a building that, for any single project, increases the existing Habitable Space above grade (including new Habitable Space created by adding

dormers to the roof or new stories) by 15% or more of the applicable Base-line Living Area. Multiple Additions or Alterations undertaken under separate building permits maybe deemed by the Commission to constitute a single project if the Commission reasonably determines that the intent is to break a larger project into smaller pieces in order to avoid being subject to review.

- ii. Any Addition or Alteration to the existing exterior envelope of a building that, when aggregated with any prior such projects, would have the effect of increasing the Habitable Space above grade (including new Habitable Space created by adding dormers to the roof or new stories) by 33% or more over the Base-line Living Area. The purpose of this section is to prevent property owners from undertaking multiple smaller projects over time that would have the cumulative effect of adding volume to building and/or structures that is inconsistent in scale, massing and/or siting with other buildings in the district.
- iii. Construction of a new building or other improvements (whether constructed on vacant land or on land where prior improvements have been demolished), and construction to replace buildings or other improvements destroyed by fire or other casualty.
- iv. The addition of or to a front porch, or the enclosure of any portion thereof (such as to create a vestibule or a partially or fully enclosed porch) on an existing building.
- v. Any Addition or Alteration of an existing building or other improvements, or construction of any new or replacement buildings or other improvements (including the enclosure of any existing or newly constructed porch) that would have the effect of advancing the Front Plane of the building toward the street than the condition existing as of the Effective Date.

Projects Exempt From Review. The Reviewable Projects set forth above shall be the only projects subject to review in the Greater Toxteth Neighborhood Conservation District. All other activities listed in the definition of "Reviewable Project" at Section 5.10.2(m) of these By-laws, when undertaken as an independent project, shall be exempt from

review, provided, however, that such activities may be considered and be subject to review as part of the review process for a Reviewable Project to the extent that such activities are addressed by guidelines set forth below. In addition, all projects or activities listed in Section 5.10.6(c) shall be exempt from review, including renovations to the interior of a structure that do not impact the exterior of the structure.

Activities affecting the following elements shall be exempt from review when undertaken as an independent project, but such activities may be subject to review as part of the review process for a Reviewable Project to the extent that such activities are addressed by the guidelines set forth below.

- i. Terraces, walks, driveways, sidewalks and similar structures substantially at grade level, provided, however, that the grade is not changed and such improvements are not to be used for parking between the street and the Front Plane of a building (or the principal side wall plane along the street in the case of a building that occupies a corner property).
- ii. Walls and fences in front yards four feet high or less as measured from the grade of the sidewalk or the surface of the ground immediately below the wall or fence, whichever grade is lower.
- iii. Replacement Doors and windows (including storm doors and windows), trelliswork, cladding, roofing material.
- iv. Flat skylights or solar collectors that are parallel to and in close contact with the plane of the roof.
- v. Permanent exterior lighting, provided that it is installed in a manner that limits direct light from shining onto any adjacent property.
- vi. Chimney caps.
- vii. Ordinary maintenance, repair or replacement of any exterior feature so long as it does not involve a change in scale, massing or open space.

Guidelines applicable to Reviewable Projects. The Greater Toxteth Neighborhood Conservation District shall be governed

by the following design guidelines, and the Commission shall apply such guidelines to all Reviewable Projects in order to protect and preserve the unique neighborhood characteristics described above.

- i. Construction of any buildings or other improvements (including, without limitation, any Addition or Alteration of an existing building or other improvements, or construction of any new or replacement buildings or other improvements) shall be done in a manner that is compatible with the existing historic patterns of scale, massing and siting in the district, and maintains streetscapes, view sheds and green open space. Open/green space should be safeguarded, and respect shall be given to adjoining properties and the district as a whole.
- ii. A Reviewable Project generally shall be deemed by the Commission not to be consistent with these design guidelines (including, but not limited to, the design guidelines immediately set forth above in Paragraph (i) of this section), and should therefore not typically be approved, to the extent that it results in an increase of Habitable Space within an expansion of the exterior building envelop above grade (including new habitable space created by adding dormers to the roof) by more than 33% of the Base-line Living Area (whether such increase results from a one-time activity or from the aggregated effect of two or more successive activities, such that all such activities shall be cumulative and considered in the aggregate relative to the Base-line Living area condition). Notwithstanding the foregoing, the Commission may find in some circumstances that due to the unique characteristics of a particular property, the Base line Living Area is substantially less than the average condition for the immediate surrounding area and/or the district as a whole, and in such circumstances, the Commission may find that an increase of more than 33% is appropriate, provided that such larger increase does not result in a derogation of the special character of the neighborhood intended to be protected by this By-law.
- iii. Construction of any buildings or improvements (including, without limitation, any Addition or Alteration of an existing building or other

improvements, or construction of any new or replacement buildings or other improvements) shall be done in a manner such that the back and side-yard setbacks are consistent with and respectful of the existing character and fabric of the immediate surrounding area and the district as a whole. Such activity shall generally be deemed by the Commission to not be consistent with and respectful of the existing character and fabric of the immediate surrounding area and the district as a whole, and should therefore not typically be approved, if it results in any part of a building or other improvements (such as porches, porticos, entryways, breezeways and bay windows) exceeding the established back and side-yard setback requirements for the house itself under the Town's applicable zoning by-laws. Notwithstanding the foregoing, in certain circumstances, owing to the unique setting of the property and the improvements situated thereon, the Commission may permit modest variations to such setbacks so long as the special character of the neighborhood is preserved.

- iv. In the event that a lot existing as of the Effective Date is subdivided into two or more lots, then any new construction on such new lot or lots shall not be subject to Paragraph (ii) of this section, but shall otherwise be subject to these design guidelines in all respects. After such new construction has been approved, any additional Additions or Alterations that materially affect the massing, size or siting shall in general not be deemed to be consistent with these Bylaws.
- v. All Reviewable Projects shall be done in such a manner so as to preserve and promote the existing streetscape condition characterized by generous front yard setbacks and the transition from the home to the street through open front porches that foster street level sociability. Therefore, no Addition or Alteration of an existing building or other improvements, or the construction of any new or replacement buildings or other improvements shall be deemed to be consistent with these by-laws if it results in:

- a. The enclosure of an open porch in such a manner as to inhibit the transitional nature from the home to the street and the street level sociability fostered thereby.
 - b. The Front Plane of a building being closer to the street as compared to the existing condition as of the Effective Date. Enclosure of an existing or newly constructed porch should be deemed to constitute such a change in the location of the Front Plane of the building, provided, however, that the creation of enclosed front door vestibules of less than fifty (50) square feet shall be deemed to be consistent with the character of the neighborhood. Notwithstanding the foregoing, the Commission may find in certain circumstances that, due to the unique characteristics of a particular property, the existing front yard setback is substantially less than the average condition for the immediate surrounding area and/or the district as a whole, and in such circumstances, the Commission may, with respect to a new building, permit or require an increase to the front yard setback.
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- vi. In reviewing the siting, massing and design of any Reviewable Project, efforts shall be made to maintain front yard open space for each property in the district and ensure its compatibility with the streetscape pattern and preservation of neighborhood front and rear view corridors.
 - vii. The Commission shall endeavor to apply the following principles when reviewing an application for a Certificate of Appropriateness for a Reviewable Project:
 - a. Promote and support the mixed architectural vernacular of the neighborhood and acknowledge any historical significance.
 - b. Ensure that buildings, including and especially new buildings, respect the traditional scale, massing and configuration of the neighborhood, particularly as buildings relate to each other,

to open space, and to the street. Buildings shall be similarly oriented, and have similar yard depths and distance between buildings as their existing counterparts. The Commission shall take into account that the neighborhood desires to embrace both traditional and contemporary architectural style and design, as well as both traditional and new building materials practices and technologies.

- c. Take into account the imposition of a Demolition Delay under Brookline's Demolition Delay By-Law with respect to any Reviewable Project, and consider the special qualities of the property identified by the Preservation Commission.
 - d. Conserve and promote green space, including the tradition of mature trees and plantings, shading, green setbacks, topography, rear view corridors, streetscapes, and other landscape amenities of the neighborhood and the potential consequences to immediate neighbors of proposed changes.
 - e. Minimize the adverse visual and acoustical effects of trash/recycling containers, air conditioning compressors, transformers and other fixtures.
 - f. Consider traffic and parking impacts as they may affect traditional street patterns and use, pedestrian activity, and safety (particularly with respect to the Lawrence School area.
- viii. The Commission shall also consider the following specific factors when reviewing an application for a Certificate of Appropriateness for a Reviewable Project:
- a. The consistency of any proposed Alteration or Addition of an existing building or other improvement, or new or replacement building or other improvements with the scale, massing and configuration of surrounding properties;

- b. The significance to the neighborhood (e.g. historical, architectural, social), if any, of the existing buildings or structure(s);
- c. The design of any proposed Addition or Alteration, or new or replacement building, including potential adverse effects of the Project on the surrounding properties and/or the district as a whole;
- d. The extent to which the integrity of the established streetscape and its pattern and character are restored or enhanced;
- e. The proximity of surrounding buildings and structures;
- f. Provisions for green/open space and landscaping;
- g. Provisions for and character of parking; and
- h. If made, a claim of substantial hardship.

Nothing in this Section 5.10.3.d.2 shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this Section 5.10.3.d.2 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of this Section 5.10.3.d.2 shall be deemed to be severable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

5.10.4. NEIGHBORHOOD CONSERVATION DISTRICT OVERSIGHT

a. Each Neighborhood Conservation District shall be overseen by a Neighborhood Conservation District Commission consisting of no less than five members, which shall not preclude overlapping membership in whole or in part between commissions for various NCDs if appropriate to provide consistency, continuity, economy or other benefits in NCD administration Town-wide. If deemed appropriate by the Board of Selectmen for the administration of a specific NCD after consultation with the chair of the Brookline Preservation Commission, the size of an NCD Commission may be increased to seven members and the specific membership shall be determined

within the limits set forth below. In the case of a five-member NCD Commission, up to three members but no less than one member shall be representatives of the Brookline Preservation Commission as described in Section 5.6.4 of the Town By-laws, and the remaining members (and their alternates) shall be appointed by the Board of Selectmen. In the case of a seven-member NCD Commission, up to four members but no less than one member shall be representatives of the Brookline Preservation Commission and the remaining (and their alternates) shall be appointed by the Board of Selectmen. The member or members of an NCD Commission representing the Preservation Commission may be either regular or alternate members of the Preservation Commission, and shall be designated by the chair of the Preservation Commission to serve on a particular NCD Commission. The Selectmen's appointees shall be residents of the Town and may be, as appropriate, individuals such as members of other Boards and Commissions, residents and/or property owners within the NCD, residents of abutting areas, or residents of the Town with additional expertise in the issues specific to a particular NCD, such as architecture, historic landscape preservation, landscape architecture, agriculture, horticulture or forestry, urban planning or history. Such Selectmen's appointees (including alternates) shall initially be appointed to one-, two-, or three-year terms so as to minimize the number of terms that expire in the same year, and at the expiration of the initial terms, appointments shall be for three-years. Each NCD Commission shall elect a chair and vice-chair from within its own number, and a clerk from within or without its own number. In the absence of an NCD Commission member representing the Preservation Commission, the NCD Commission chair may appoint any regular or alternate Preservation Commission Member to act for that absent member. In the absence of an NCD Commission member appointed by the Selectmen, the NCD Commission chair may appoint any alternate appointed by the Selectmen to act for that absent member. Prior to the appointment by the Selectmen of the Selectmen-appointed NCD Commission members or alternates or in the event of the unavailability of such Selectmen's appointees, those positions shall be filled on an interim basis by regular or alternate members of the Preservation Commission appointed by the chair of the Preservation Commission, so that an NCD at all times has the requisite number of five (or seven, if applicable) members.

The Commission for each NCD shall exercise its powers in administering and regulating the alteration of buildings,

other structures and natural and manmade elements within such NCD as set forth under the procedures and criteria established in this by-law.

The Commission for each NCD shall review all Reviewable Projects in the NCD, including without limitation new construction, demolition or alterations that affect the landscape or topography, the exterior architectural features of buildings and other structures, or the mass and siting of buildings and other structures. The authority of the Commission shall be binding except with regard to the categories of structural, landscape or architectural features exempted by Section 5.10.6 or that may be otherwise exempted by the particular design guidelines for a specific district set forth in Section 5.10.3 of this by-law.

An NCD Commission, or the Town on behalf of any such commissions, may receive and accept appropriations, grants and gifts to further the purposes of this by-law. An NCD Commission, or the Town on behalf of any such commissions, is also authorized to the extent permissible by law to require the collection of funds as part of an application to be placed in a separate account. These funds may be used to fund Town review of a Reviewable Project, including the retention of consultants or the funding of staff required to complete review of an application.

b. An NCD Commission, after a public hearing duly noticed at least 14 days in advance, may adopt, and from time to time amend, reasonable rules and regulations not inconsistent with the provisions of this by-law or other by-laws governing the Commission. Such rules and regulations shall set forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, the process for collecting and utilizing funds including without limitation application fees and funds required to fund Town review, hearing procedures and other matters. Such rules and regulations may also include a set of design review standards, not inconsistent with the applicable design guidelines and exemptions contained herein under Sections 5.10.3 and 5.10.6, to refine and clarify the application of the design guidelines during the design review process. The NCD Commissions for various NCDs within the Town may adopt common rules and regulations for the conduct of their business, consistent with the specific design guidelines applicable to each NCD, including

coordinating or integrating procedures for review of applications. The Commission promulgating any such rules and regulations shall file a copy thereof with the office of the Town Clerk.

5.10.5. PROJECTS PROHIBITED WITHOUT A CERTIFICATE

Except as this by-law provides, no building, other structure, site, property or part thereof within a Neighborhood Conservation District shall be altered (which term includes complete or partial demolition and new construction) and no other Reviewable Project may proceed unless the Commission shall first have issued a Certificate of Appropriateness. A building permit (which shall include permits for demolition) or an occupancy permit may not be issued for an altered building, structure, site or property or other Reviewable Project without the prior issuance of a Certificate of Appropriateness.

5.10.6. ALTERATIONS EXEMPT FROM COMMISSION REVIEW

a. It shall be the responsibility of the staff of the Commission, with the concurrence of the Chair of the Commission, to determine whether a proposed alteration or other project is exempt from review and they shall have ten business days to make this determination. Any alteration or project that is exempt from review shall receive a Certificate of Exemption that will permit such alteration or project to go forward without further review under the Neighborhood Conservation District By-Law. The Commission may establish regulations to define projects that are of insufficient significance to warrant Commission review, and Commission staff may issue a Certificate of Exemption for such a project.

b. Nothing herein shall be deemed to limit review to features visible from a public way unless such a limitation is set forth in the particular design guidelines for a specific district set forth in Section 5.10.3.d of this by-law.

c. The following projects or portions of Reviewable Projects are exempt from Commission review in all NCD districts:

1. Temporary buildings and structures subject to time limits (no longer than 6 months) and size limits determined by the Neighborhood Conservation District Commission.

2. One-story detached accessory structures without permanent foundations used as tool and storage sheds, playhouses, and similar uses provided the floor area does not exceed 100 square feet. This exemption shall not apply to garages, parking structures or other structures for vehicular use nor to structures to shelter or visually shield HVAC equipment.
3. Interior Alterations, including interior demolition as defined in Sections 5.3.2(h)(iii) and (iv) (such sections shall continue to be applicable to the Demolition Delay By-Law).
4. Ordinary maintenance and repair of architectural features that match the existing conditions including materials, design and dimensions.
5. Removal of substitute siding provided, however, that any replacement siding and trim shall be reviewable.
6. Reversible changes of color (such as staining or repainting of wood siding or trim, but not work such as painting of previously unpainted masonry).
7. Removal, replacement or installation of the following exterior elements (this exemption shall not apply to replacement windows which may include storms or screens):
 - a. Exterior storm windows and exterior storm doors
 - b. Exterior window screens or exterior screen doors
 - c. Gutters and downspouts
 - d. Removable window air conditioners, but not permanently installed HVAC equipment whether as part of a building or freestanding.
 - e. Satellite dishes or antennae less than 3 feet in maximum width.
8. In-kind replacement of plant material.

9. Removal of public shade trees or removal of plant material that is severely damaged or dying due to weather-related events or natural causes.
10. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within the time period specified in Section 8.03.1 of the Zoning By-Law and carried forward with due diligence.
11. Replacement windows and doors, and windows and doors installed in an addition or new construction, whether including single-pane glass or multiple-pane insulating glass, provided that (a) the exterior appearance is consistent in size, scale and detailing with that of pre-existing windows and doors on the building and adjacent buildings, as through the use of true divided lites or exterior muntins adhered to the exterior glass surface, and (b) reflective or tinted glass is not used, unless used in the pre-existing windows and doors.

5.10.7. PROCEDURES FOR REVIEW

Any Reviewable Project not exempted above requires the submittal of an application for regulatory review by the Commission. The application shall be accompanied by a filing fee as may be determined from time to time by the Board of Selectmen. As may reasonably be deemed necessary by the Commission to enable it to make its determination on the application, the application may be required to include (a) drawings and/or photographs showing existing conditions, including existing buildings and other structures, landscape features and vegetation, open spaces and pedestrian and vehicular paths, and (b) plans, elevations, specifications, photographs, descriptions of materials and other supporting information of the proposed changes.

Within forty-five business days of the submittal of a complete application, including all required supporting information, the Commission shall hold a public hearing on

the application. At least fourteen days before said public hearing, public notice shall be given. Such notice shall identify the time, place and purpose of the public hearing.

At or subsequent to the public hearing, the Commission shall determine whether the proposed alteration or other Reviewable Project, including any modification thereof agreeable to the applicant, is compatible with the specific design guidelines of the applicable district and the purposes of this by-law. The Commission may waive or modify the application of a design guideline in a particular case if such waiver will not derogate the protections provided by this by-law to the neighborhood and abutters.

If the Commission determines that the alteration is compatible with the design guidelines for the district, the Commission shall issue a Certificate of Appropriateness. If deemed necessary to ensure that an alteration is compatible with the design guidelines, the Commission may attach appropriate conditions to the Certificate of Appropriateness. The concurring vote of a majority of Commission members, including voting alternates (i.e., not less than three votes for a five-member commission and not less than four votes for a seven-member commission) shall be required to issue a Certificate of Appropriateness.

If the Commission does not determine that the alteration is compatible with the design guidelines for the district, the Commission shall deny the Certificate of Appropriateness. The Commission shall provide the applicant with the reasoning for its denial including the manner in which the alteration does not meet the applicable design guidelines in Section 5.10.3.d or the purposes of this by-law.

The Commission may further delay or totally prohibit demolition in addition to any delay provided by the Brookline Demolition Delay By-Law. In considering an application to demolish a building or structure, the Commission shall consider the architectural or historical significance of the building, including, if any, the findings of the Preservation Commission under the Demolition Delay By-Law; the siting and significance of the building or structure in relation to its surroundings and surrounding buildings either by itself or as a component as a group of buildings or structures; and the design and siting of any replacement building or structure.

5.10.8. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificate or denial to the applicant and shall file a copy of the Certificate or denial with the office of the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or denial shall be the date of the filing of a copy of such Certificate or denial with the office of the Town Clerk.

If the Commission should fail to make a determination within sixty business days of the filing of a complete application for a Certificate including all required supporting information, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Appropriateness due to failure to act.

5.10.9. ENFORCEMENT AND PENALTIES

The Commission is specifically authorized to institute any and all actions, including proceedings in law and in equity, as it deems necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

The Commission may designate the Building Commissioner to act on its behalf and to enforce this by-law under the direction of the Commission.

Any owner of a property subject to this by-law that has altered a building or other structure or proceeded with a Reviewable Project without first obtaining a Certificate of Appropriateness in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, a faithful restoration of the demolished building or structure is completed, suitable replacement trees are planted, or the property is otherwise returned to its original condition unless otherwise agreed to by the Commission.

5.10.10. APPEAL PROCEDURE

Any applicant or person aggrieved by a determination of the Commission may appeal as provided for in the Massachusetts General Laws.

5.10.11. VALIDITY AND SEEVERABILITY; OTHER BY-LAWS

The provisions of this by-law shall be deemed to be severable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder of this by-law shall continue to be in full force and effect. Nothing in this by-law shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this by-law imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail.