



Town of Lexington
PLANNING BOARD
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Robert Creech, Chair
Robert D. Peters, Vice Chair
Ginna Johnson, Clerk
Richard L. Canale
Charles Hornig
Michael Leon, Associate

1 **RECOMMENDATION REPORT OF THE LEXINGTON PLANNING BOARD**
2 **ARTICLE 9: AMEND ZONING BYLAW –**
3 **DISTANCE FROM BASEMENT, SLAB OR CRAWL SPACE AND GROUNDWATER**

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5 **RECOMMENDATION**

6 The Planning Board **unanimously** recommends that Town Meeting **APPROVE** the
7 motion under Article 9. On Wednesday, September 23, 2020, after a series of public
8 hearings, the Planning Board voted to recommend favorable action with a vote of [redacted]
9 in favor, [redacted] in opposition, and [redacted] in abstention for Article 9: Amend the Zoning Bylaw
10 – Distance from Basement, Slab or Crawl Space, and Groundwater.

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11 **BACKGROUND**

12 Over the years, residents within Lexington have been experiencing the impacts of
13 development through the displacement of groundwater. Such an issue arises when a
14 new house with a basement is installed in the water table. The displacement of
15 groundwater often results in the flooding of the new basement and displaces water off-
16 site, onto neighboring properties, and into the street. It should also be noted that this
17 issue sometimes results in new illegal connections to the Town's drainage system,
18 thereby increasing costs to the Town.

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19 The proposed Groundwater Bylaw requires a minimum distance between the Estimated
20 Seasonal High Groundwater Table (ESHGWT) and the finished basement floor or slab.
21 This issue was regulated until [redacted] when the Lexington Zoning Bylaw was amended, and
22 the regulation was deleted. The flooding of basements or movement of water onto
23 abutting properties is not unique to Lexington. Throughout the Commonwealth, many
24 communities are working to enforce similar regulations.

25 **PUBLIC HEARING PROCESS**

26 Due to COVID-19, all of the zoning articles initially scheduled for the Annual Town
27 Meeting scheduled for March of 2020 were postponed to a Fall Special Town Meeting of
28 2020. Due to the length of time between the Annual and Fall Special Town Meetings, the
29 Planning Board was required to hold new public hearings. To ensure all information
30 heard during the public hearings has been communicated, this section of this report
31 provides a review of the public hearings held for the Annual Town Meeting 2020 and
32 Fall Special Town Meeting 2020.

33 **Annual Town Meeting Public Hearing Proceedings (February – March 2020)**

34 On Wednesday, February 26, 2020, after the publication of the legal advertisement in
35 the Boston Globe Newspaper on February 11, 2020, and February 18, 2020, and
36 notification sent to parties of interest, the Planning Board open its public hearing for

41 Article [35: Distance from Basement, Slab or Crawl Space and](#) Groundwater. A continued
42 public hearing was held on Wednesday, March 4, 2020. At such time the Planning Board
43 closed the public hearing and made a favorable recommendation to the Annual Town
44 Meeting of 2020.

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45 The Planning Board during the public hearing process provided comments, in addition
46 to taking public comments. Much of the discussion during the Wednesday, February 26,
47 2020, a public hearing was associated with clarifying questions associated the proposed
48 language relative to two (2) feet vs. two point five (2.5) feet, in addition to proposed
49 amendments to Section 4.5, all of which were resolved before the Planning Board's vote
50 on Wednesday, March 4, 2020.

51 PUBLIC HEARING MINUTES

52 FEBRUARY 26, 2020

53 Present for the public hearing: James Kelly, Lexington Building Commissioner

54 James Kelly presented a PowerPoint presentation entitled Article [35: Amend Zoning](#)
55 Bylaw - Distance from Basement, Slab, or Crawl Space and Groundwater. The
56 presentation identified the problem that Article 35 intends to address; the potential
57 solution to the problem; a review of examples relevant to discharging of water
58 without proper planning, pumping water into the street, sewer, and drainage
59 system; the need for engineering review; a review of conditions and requirements
60 that Article [35](#) proposes; and a review of comments received from builders.

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61 Mr. Hornig requested comments from members of the Planning Board. The
62 following comments were provided.

- 63 • Ginna Johnson questioned if the staff had time to review and consider her
64 comments relevant to Section 4.5.4.
- 65 • Richard Canale requested clarification as to the reason for two (2) feet.
- 66 • Ms. Johnson proposed alternative language for Section 5.3.4 of the proposed
67 Bylaw relative to the slab being below groundwater.

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68 Mr. Hornig questioned if the Planning Board would like to close the public hearing.
69 Ms. Johnson requested permission to work with Mr. Kelly to finalize the language
70 and ask that the public hearing remain open.

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71 MARCH 4, 2020

72 Present for the public hearing: James Kelly, Lexington Building Commissioner

73 Robert Creech, Chair, opened the continued public hearing for Article 35: [Distance](#)
74 [from Basement, Slab or Crawl Space and](#) Groundwater and requested an update
75 since the February 26, 2020, public hearing.

76 Mr. Kelly provided a review of amendments to the proposed language since
77 February 26, 2020, public hearing.

78 Mr. Creech requested comments from members of the Planning Board. The
79 following comments were provided.

- 85
- 86 • Charles Hornig questioned if the proposed language in Section 4.5.5
87 Relationship to Other Laws is needed since its located elsewhere in the
88 Zoning Bylaw. Mr. Hornig requested that Section 4.5.5 be stricken from the
89 proposed language.
 - 90 • Ginna Johnson stated her appreciation for the amendments and the work
91 efforts of staff.

92 On February 26 and March 4, 2020, the Planning Board opened the floor for public
93 comments. Public comments were received on February 26, 2020. All comments can be
94 reviewed on the video stream capture of the public hearing and the associated meeting
95 minutes.

96 **Fall Special Town Meeting Public Hearing Proceedings (September 2020)**

97 On Wednesday, September 9, 2020, after the publication of the legal advertisement in
98 the Minuteman Newspaper on August 20, 2020, and August 27, 2020, and notification
99 sent to parties of interest. The Planning Board opened its public hearing for Article 9:
100 Amend the Zoning Bylaw – Distance from Basement, Slab or Crawl Space, and
101 Groundwater. A continued public hearing was held on Wednesday, September 23, 2020.
102 At such time the Planning Board closed the public hearing and made a favorable
103 recommendation to the Annual Town Meeting of 2020.

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104 **PUBLIC HEARING MINUTES**

105 **SEPTEMBER 9, 2020**

106 Present for the public hearing: James Kelly, Lexington Building Commissioner

107 James Kelly presented a PowerPoint presentation entitled Article 9: Amend Zoning
108 Bylaw – Distance from Basement, Slab, or Crawl Space and Groundwater. The
109 presentation identified the problem that Article 9 intends to address; the potential
110 solution to the problem; a review of examples relevant to discharging of water
111 without proper planning, pumping water into the street, sewer, and drainage
112 system; the need for engineering review; a review of conditions and requirements
113 that Article 9 proposes; and a review of comments received from builders.

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114 Bob Creech requested comments from members of the Planning Board. The
115 following comments were provided.

- 116 • Ginna Johnson requested clarification as to how the two (2) feet depth is
117 measured to ensure there are no questions.
- 118 • Robert Peters requested clarification as to how do the two (2) feet compare
119 to other comparable communities doing whether bylaw. Mr. Kelly stated that
120 other communities are using one (1) foot, and provided clarification
121 regarding the proposed two (2) feet separation

122 **SEPTEMBER 23, 2020**

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126 On September 9 and 23, 2020, the Planning Board opened the floor for public
127 comments. Public comments were received on September 9 and 23, 2020. All comments
128 can be reviewed on the video stream capture of the public hearing and the associated
129 meeting minutes.

130 ARTICLE MOTION & PROPOSED LANGUAGE

131 That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, be amended by
132 adding a new Section 4.5 as follows, and further that non-substantive changes to the
133 numbering of this bylaw be permitted so that it comply with the numbering format of the
134 Code of the Town of Lexington.

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135 4.5.1 PURPOSE.

136 The purposes of this section are to preserve and protect groundwater; to maintain and
137 enhance the public safety, environment, health, and general welfare by establishing
138 minimum requirements; and to establish procedures to control the adverse effects of
139 building basement floors nearer than two (2) feet from the Estimated Seasonal High
140 Groundwater Table (ESHGWT), including basement flooding, pumping and discharge of
141 groundwater to neighboring properties, discharging groundwater to the public way,
142 and illicit connections to the Town's sewer and stormwater connections.

143 4.5.2 DEFINITIONS.

144 Estimated Seasonal High Groundwater Table (ESHGWT): The estimated highest level to
145 a zone of saturation in the soil in most years under normal wet season, as determined
146 by a registered professional engineer, a qualified soil scientist or licensed soil evaluator.

147 4.5.3 APPLICABILITY.

148 The requirement of this Section 4.5 shall apply to:

- 149 1. A new dwelling; or
- 150 2. Additions to an existing dwelling that increases a building footprint by more
151 than 1,000 square feet.

152 4.5.4 CONDITIONS AND REQUIREMENTS.

153 The vertical distance between the finished basement floor of any dwelling shall not be
154 less than two (2) feet above the ESHGWT. Permission for a vertical distance less than
155 two (2) feet above the ESHGWT may be granted if the applicant provides sufficient
156 evidence that a proposed lesser vertical distance will not impact the structure being
157 proposed in a manner contrary to the purposes of this Section 4.5, any other structures
158 or constructed facilities, or the functions of the natural groundwater system (such as
159 base flow maintenance) and if all of the following conditions are met:

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- 160 1. Detailed engineering plans, certified by a Registered Professional Engineer showing
161 a foundation and perimeter drain management system and roof stormwater
162 management system(s) that will mitigate and control groundwater discharge and
163 stormwater runoff, are provided;
- 164 2. The provided foundation and perimeter drain discharge management system and
165 roof stormwater management system plans have been reviewed by the Building,

- 170 Conservation, Health and Engineering Departments and comments adequately
171 addressed;
- 172 3. Roof drains and downspouts connect to a stormwater management system designed
173 by a Registered Professional Engineer; and
- 174 4. The applicant has agreed to pay the fee for consulting services to perform
175 engineering review pursuant to the provisions of MGL Chapter 44, Section 53G.

176 **Planning Board Vote**

177 **█ moved that the Planning Board recommend favorable action for Article 9: Amend**
178 **the Zoning Bylaw - Distance from Basement, Slab or Crawl Space, and Groundwater as**
179 **presented. █ seconded the motion. The Planning Board voted in favor of the motion**
180 **█. MOTION PASSED**

- 181
- 182 Robert Creech
- 183 Robert Peters.....
- 184 Ginna Johnson.....
- 185 Richard Canale.....
- 186 Charles Hornig.....

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189 **Record of Vote**

190 On May 13, 2020, the Planning Board voted to allow the Planning Board Chair to sign
191 documents on behalf of the Planning Board.

192 **Charles Hornig moved that the Planning Board vote to allow the Chair of the Planning Board**
193 **to sign all documents for the Planning Board during the COVID-19 State of Emergency. Robert**
194 **Peters seconded the motion. The Planning Board voted in favor of the motion 5-0-0 (Roll Call:**
195 **Robert Peters - yes; Charles Hornig - yes; Richard Canale - yes; Ginna Johnson - yes; and**
196 **Robert Creech - yes). MOTION PASSED**

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199 **Signature of the Planning Board**

200 Signatures of a majority of the Planning Board,

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203 Robert Creech, Chair