



TOWN OF NATICK

Meeting Notice

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, Sections 18-25

Natick Finance Committee

PLACE OF MEETING

School Committee Meeting Room -
3rd Flr., Town Hall, 13 E. Central
St., Natick, MA

DAY, DATE AND TIME

September 27, 2018 at 7:00 PM

MEETING AGENDA

1. **Public Concerns/ Comments**
2. **2018 Fall Town Meeting Warrant Articles - Public Hearing**
 - a. Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws: Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B sections 20-23
3. **Adjourn**

Please note the committee may take the items on this agenda out of order.

SUBMITTED BY

ITEM TITLE: Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws: Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B sections 20-23

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
Preliminary Motions for Article 38 & 39	9/6/2018	Exhibit
Article 38 - Questionnaire Response	9/10/2018	Exhibit
Article 38 Motions	9/10/2018	Exhibit
MGL c40 A s12	9/10/2018	Exhibit
MGL c40B s21	9/10/2018	Exhibit
MGL c43B s20	9/10/2018	Exhibit

2018 FALL ANNUAL TOWN MEETING; Article 38

MOTION - B: (2/3rds)

Move: Subject to, and effective on, the approval by the voters in the town election; officially known as the Annual Town Meeting for the determination of all questions, held on the last Tuesday in March of 20__ or such date as the Board of Selectmen may set for said town election; of the Charter changes contained in Motion – A; to amend the Natick Zoning By-laws as follows:

-To amend Section VI-E BOARD OF APPEALS, by inserting; immediately preceding the paragraph that commences with the sentence: *"The Board of Appeals shall have the following powers insofar as this Zoning Bylaw is concerned and in addition to those powers set forth in the Building Code and as defined by the General Laws of Massachusetts"*; A new paragraph as follows:

"Comprehensive Permits: For all matters devolving from G.L. c. 40B, sections 20-23; the powers, duties, and responsibilities are divided, and are exercised by the Planning Board."

And further, that the Town Clerk may reasonably number and/or letter this amendment to appropriately sequence this section.

-To amend Section VI-EE PLANNING BOARD AS SPECIAL PERMIT GRANTING AUTHORITY, 1 – Powers; by deleting said section 1- powers, and inserting in its stead:

"1 - Powers:

- (a) The Planning Board, acting as a Special Permit Granting Authority, may hear and decide applications for site plan approvals, and grant special permits as is provided for elsewhere in this Zoning By-Law.
- (b) The Planning Board, acting in lieu of a board of appeals, shall hear and decide all matters devolving from general law chapter 40B, sections 20-23; for which the powers, duties, and responsibilities are divided by Charter, and are exercised by the Planning Board."

RECEIVED

AUG 31 2018

Town of Natick
Community Development

2018 FALL ANNUAL TOWN MEETING; Article 39

MOTION - C: (2/3rds Zoning Bylaws)

Move: Subject to, and effective on, the approval by the voters in the town election; officially known as the Annual Town Meeting for the determination of all questions, held on the last Tuesday in March of 20__ or such date as the Board of Selectmen may set for said town election; of the Charter changes contained in Motion – A; to amend the Natick Zoning By-laws as follows:

-To amend Section VI-E BOARD OF APPEALS, by deleting the first two paragraphs and inserting in their stead the following text:

“There shall be a Board of Appeals as established by the Town of Natick Home Rule Charter and Town Bylaws.”

RECEIVED

AUG 31 2018

Town of Natick
Community Development

Warrant Article Questionnaire Citizen Petitions Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 38	Date Form Completed: 2018.09.07
Article Title: Division and distribution of powers regarding MGL c. 40B sections 20-23	
Sponsor Name: Julian Munnich, et al.	Email: julian.munnich@rcn.com

Question	Question
1	Provide the article motion exactly as it is intended to be voted on by the Finance Committee.
Response	<p>Motions Attached:</p> <p>Article 38 consists of two motions. Motion A is to amend the Charter. Motion B is a contingent motion dependent on the passage of Motion A. Depending on a response put to Town Counsel; Town Meeting action on Motion B may not be required at this time.</p>
2	At a summary level and very clearly, what is proposed purpose and objective of this Warrant Article and the required Motion?
Response	<p>Article 38 proposes to move the function and responsibility of permitting “40B Housing“, from the Zoning Board of Appeals, to the Planning Board.</p> <p>When the 40B statute was passed in 1969, the presumptive permitting board in Massachusetts municipalities was the ZBA. However; since the passage of the 1975 amendments to the Zoning Act, along with multiple subsequent changes, the major functions of site plan review and special permits have shifted to elected Planning Boards.</p>
3	What does the sponsor gain from a positive action by Town Meeting on the motion?
Response	The sponsors have no personal gain.
4	Describe with some specificity how the sponsor envisions how: the benefits will be realized; the problem will be solved; the community at large will gain value in the outcome through the accompanied motion?
Response	<p>Chapter 40B is a state mandate that municipalities create affordable housing. These projects are, however, on an administrative and permitting level, essentially exercises in Site Plan Review and Special Permitting. It is precisely the 1975 enablement of Planning Boards to perform Site Plan Review and Special Permits that indicates that it is appropriate for Planning Boards to review and permit 40B projects.</p> <p>In Natick, the Planning Board, has used the tools of site plan review and special permits to assure that large scale significant projects such as the Natick Mall and MathWorks are not just generic construction in the midst of asphalt, but high value amenities to the Town.</p>

Warrant Article Questionnaire Citizen Petitions Articles

	Natick is a Town challenged by development pressure, limited space, and a housing supply that is having its full-spectrum naturally-affordable housing replaced by new housing representing the extremes of subsidized housing and housing beyond the means of the average workforce. These are the issues that are best addressed by a permitting body that is charged to not only “Master Plan” but to “Comprehensively Plan”.
5	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive plan, and community values as well as relevant state laws and regulations
Response	<p>The Town’s zoning bylaw was recently amended to better define the functions of site plan review and special permitting; as well as assigning more of those functions to the Planning Board.</p> <p>The Planning Board is better situated to incorporate affordable housing into a comprehensive plan for the Town that would include safeguards for all aspects of Town affairs including fiscal matters.</p> <p>This proposal is entirely enabled by state statute.</p> <p>-- Chapter 40B, s. 20 assigns the permitting function to a c. 40A, s. 12 entity.</p> <p>-- Chapter 40A, s. 12 provides for that entity to be defined by Charter.</p> <p>-- Chapter 43B, s. 20 enables the Charter to “divide” functions. (separate/segregate), and to merge consolidate those functions in another local office.</p>
6	<p>Have you considered and assessed, qualified and quantified the various impacts to the community such as:</p> <ul style="list-style-type: none"> • Town infrastructure (traffic, parking, etc.) • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.);
Response	The proposal would inherently create a process more along the lines of a Planning Board project review. All of the listed considerations are major components of Planning Board project review.
7	<p>Who are the critical participants in executing the effort envisioned by the article motion?</p> <p>To this point what efforts have been made to involve those participants who may be accountable, responsible, consulted or just advised/informed on the impacts of executing the motion?</p>
Response	As a Charter initiative; the critical and essential participants are the voters of Natick.

Warrant Article Questionnaire Citizen Petitions Articles

8	<p>What steps and communication has the sponsor attempted to assure that:</p> <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process, that • Appropriate town Boards & Committees were consulted • Required public hearings were held
Response	<p>As a Charter initiative this is consonant with the petition process for amendments of the Charter outlined in MGL c. 43B, s. 15.</p> <p>Questions have been put to Town Counsel as to the requisite form required by that section.</p>
9	<p>Why is it required for the Town of Natick AND for the sponsor(s)?</p>
Response	<p>40B projects have previously been “one-off” permitting exercises. That is an inherent aspect of ZBA procedures and practices.</p> <p>As a Town that is essentially fully built out; Natick needs to address 40B projects as a component of master planning.</p> <p>The sponsors have no individual, requisite, or pecuniary interest.</p>
10	<p>Since submitting the article petition have you identified issues that weren’t initially considered in the development of the proposal?</p>
Response	<p>There are the issues that still await directional advice from Town Counsel.</p>
11	<p>What are other towns and communities in the Metro West area, or the Commonwealth of MA doing similar to what your motion seeks to accomplish</p>
Response	<p>On such a town specific topic, it is difficult to find a peer-set or comparable-list of municipalities to match against Natick. In less than two decades Natick moved the needle on its affordable housing stock from the vicinity of +/- 5% to over 10%. Not only has Natick used state inspired programs for creating affordable housing but has developed other zoning instruments such as the HOOP districts and targeted tools such as the 62+ housing. It is rare for any municipality to create as much affordable housing, protect as much open space, establish bespoke zoning for an aging population; all while hosting major Federal and State land assets; all in a compact area of some plus/minus 16 square miles.</p>

Warrant Article Questionnaire
Citizen Petitions Articles

	If this Charter change is approved by the Town of Natick, it is other communities that will be looking to our example.
12	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences.
Response	40B projects will continue to be treated as ad hoc anomalies by a permitting entity that is not constituted in a manner to apply site plan review and special permit standards. To date, previous 40B projects are generally agreed to not represent the best net advantage to Natick for combined fiscal and structural consequences. This is best seen by the underestimated effects on municipally provided services; especially schools, public safety, and transportation infrastructure.

MOTION - A: (2/3rds Home Rule Charter)

Move to amend the Town of Natick Home Rule Charter by adding in ARTICLE 7, GENERAL PROVISIONS, a new section as follows:

“Section 7-12 Powers, duties, and responsibilities of one local office to be divided and exercised by two or more local offices

(a) board of appeals – For all matters devolving from general law chapter 40B, sections 20-23; the powers, duties, and responsibilities are divided, and are exercised by the planning board.”

-To amend ARTICLE 3, ELECTED OFFICERS, Section 3-11 Planning Board; to insert in 3-11 (b);

“inclusive of Section 7-12 (a),”

So that the sentence shall read as: “The planning board shall have all of the other powers and duties planning boards are given by general laws, special laws, the charter inclusive of Section 7-12 (a), or the zoning by-laws.”

And further, that the Town Clerk may reasonably number and/or letter these amendments to appropriately sequence these sections.

MOTION - B: (2/3rds)

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~~1 – Powers: The Planning Board, acting as a Special Permit Granting Authority, may hear and decide applications for site plan approvals, and grant special permits as is provided for elsewhere in this Zoning By Law.~~

DRAFT

Section 12: Boards of appeal; membership; rules

Section 12. Zoning ordinances or by-laws shall provide for a zoning board of appeals, according to the provisions of this section, unless otherwise provided by charter. The mayor subject to confirmation of the city council, or board of selectmen shall appoint members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals, the city council or board of selectmen shall act as the board of appeals. Any board of appeals established hereunder shall consist of three or five members who, unless otherwise provided by charter, shall be appointed by the mayor, subject to the confirmation by the city council, or by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year. Each zoning board of appeals shall elect annually a chairman from its own number and a clerk, and may, subject to appropriation, employ experts and clerical and other assistants. Any member may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Zoning ordinances or by-laws may provide for the appointments in like manner of associate members of the board of appeals; and if provision for associate members has been made the chairman of the board may designate any such associate member to sit on the board in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board until said vacancy is filled in the manner provided in this section.

The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance or by-law for the conduct of its business and for purposes of this chapter and shall file a copy of said rules with the city or town clerk. In the event that a board of appeals has appointed a zoning administrator in accordance with section thirteen said rules shall set forth the fact of such appointment, the identity of the persons from time to time appointed to such position, the powers and duties delegated to such individual and any limitations thereon.

Section 21: Low or moderate income housing; applications for approval of proposed construction; hearing; appeal

Section 21. Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The board of appeals shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk. The provisions of section eleven of chapter forty A shall apply to all such hearings. The board of appeals shall render a decision, based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section seventeen of chapter forty A.

Section 20: Provisions of charter or amendment deemed consistent with certain other laws

Section 20. The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices. Such provisions may provide:

- (a) that any particular local office shall be either elected or appointed; provided, however, that in any town having a board of selectmen the members of such board shall always be elected; provided, further, that in any city or town having a school committee the members of such committee shall always be elected; and provided, further, that in any town having a form of town meeting open to all of its registered voters the town moderator shall always be elected and in every other case all of the members of the legislative body shall always be elected;
- (b) that any particular local officer or employee shall be appointed by any particular local officer;
- (c) for the number of persons to serve as members of any multiple member body; provided, however, that all such multiple member bodies shall always consist of an odd number of members;
- (d) for the term of office to be served by any local elected officer; provided, however, that no term of office of a local elected officer shall be for more than five years, and the members of multiple member bodies shall serve for terms which, as nearly as possible, expire in different years;
- (e) for the merger or consolidation of two or more local offices into a single office;
- (f) that the powers, duties and responsibilities of one local office be divided and exercised by two or more local offices;
- (g) for the confirmation of any appointment by another municipal agency.