

I. DEVELOPMENT AGREEMENTS AND QUESTIONS PERTINENT TO THE CONTENTS OF A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF HAMILTON AND GORDON CONWELL THEOLOGICAL SEMINARY

A. Development Agreements

The Commonwealth of Massachusetts, through the Massachusetts Gaming Commission, funded the following article for the purpose of providing general information regarding development agreements to municipalities that may be considering a proposal from the developer or, in the case of Gordon Conwell Theological Seminary (GCTS or the Seminary), an owner seeking to sell all or a portion of its property to a developer or, more likely, several developers. The article is cited as follows and can be accessed in full from the link provided.

Edward J. Collins, Jr. Center for Public Management, University of Massachusetts Boston, "Understanding & Crafting Development Agreements in Massachusetts" (2013). Edward J. Collins Center for Public Management Publications. Paper 17.
http://scholarworks.umb.edu/cpm_pubs/17

<https://www.google.com/search?client=firefox-b-1-d&q=Understanding+%26+Crafting+Development+Agreements+in+Massachusetts>

The introduction to the article provides the following:

Part vision statement, part road map, and part contract, a development agreement is more than just a legal document, it is arguably the most important and complex relationship a municipality and a property owner can enter into. The word “relationship” is used here to reflect the long term nature of the agreement and working partnership that is to be developed through the agreement.

A development agreement describes a vision for the future – vision of what a community and a developer have agreed upon through negotiations that take each party’s goals and needs into consideration. *In most agreements, the vision, represented through text, plans, and renderings, will be expressed in a manner that provides an average community member with a clear understanding of what is about to be undertaken.*

A development agreement maps out the process by which the municipality and developer will realize their shared vision. It establishes a timeline when tasks are due and assigns responsibility for each task needed to achieve those deliverables. *Ultimately, a development agreement is a contract that provides assurances to parties, commits resources, and establishes mechanisms to address either party’s failure to live up to its responsibilities.*

To reach an agreement that is durable over an extended period of time, a process of fact finding and deliberation must occur. If the fact finding is not thorough or the time to reach agreement is overly compressed, mistakes can be made and needed components of the agreement missed. This will not benefit either party as

the agreement may need to be reopened and the relationship may be strained. Or, if the municipality does not have the technical assistance needed to make an informed decision, the entire project can be challenged by the community at large, where their displeasure may be evidenced by opposition during the permitting process or through litigation.

This document provides information that can be useful to municipal officials, community members, and developers involved in large scale or particularly complex developments in Massachusetts. In most situations, similar questions arise and need to be answered in the agreement:

- What are the uses, in what quantities that can be accepted by all parties? What design quality is to be expected?
- What infrastructure investment is needed? Who will fund the infrastructure? Who will build it?
- What are the potential negative impacts of the project and how will they be mitigated?
- What additional contribution to the community will the developer make to show it intends to be a long term partner?
- Who are all of the actors in the development and what will they contribute to moving the project forward?
- What types of guarantees will be put in place to ensure the development moves forward to completion once all required permits are secured?

Id. p. 1. (Emphasis supplied).

B. Additional Questions Pertinent to Development Agreements

In addition to the questions raised in the article produced by the Collins Center, the Planning Board has raised additional questions that should be considered in drafting the Development Agreement (DA) between GCTS and the Town.

Pre-Planning Questions for DA Signatories – Answers Required on an Expedited Basis:

- What is the Seminary’s timetable for moving from the site (i.e., six months, one year, two years, etc.) and what buildings will it continue to occupy until it vacates the site in its entirety? Will it continue to rely upon the Dover Amendment and Section 10.7 of the Town’s Zoning Bylaw¹ until it vacates the site?

¹ Section 10.7 SITE PLAN REVIEW FOR RELIGIOUS AND EDUCATIONAL USES AND CERTAIN CHILD CARE CENTERS provides:

10.7.1 Purpose. The purpose of this Section is to provide for Site Plan Review of religious and educational uses and child care centers otherwise subject to G.L. c. 40A, s. 3.

10.7.2 Site Plan Review Required. Prior to the issuance of any Building Permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.3, and B.7 as set forth in the Table of Use Regulations shall require Site Plan Approval from the Planning Board pursuant to this Section.

10.7.3 Scope of Site Plan Review. Under this Section, Site Plan Review shall be limited to two (2) inquiries: 1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so, 2. What reasonable regulations

- How will the mortgage of Cass Commercial Bank and the leases between the Seminary and MetroPCS Massachusetts, LLC and T-Mobile Northeast LLC be addressed in the DA?

concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

10.7.4 Required Information. All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3;
4. Reason that relief is requested from otherwise applicable zoning requirements; and
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

10.7.5 Site Plan; Contents. In addition, the applicant shall submit a site plan with the following information:

1. Legend depicting all pertinent existing and proposed site features;
2. The date and north arrow shall be shown on the plans;
3. All site plans must be stamped by a Registered Professional Civil Engineer and a Professional Land Surveyor. The land surveyor shall perform an instrument boundary survey and shall certify the 104 accuracy of the locations of the buildings, setbacks, and all other required dimensions to property lines;
4. Zoning Chart depicting "Required" vs. "Provided" for all applicable zoning criteria including lot size, lot frontage, setbacks, building height, lot coverage, parking spaces, and landscaping requirements;
5. Locus map, at a scale of 1"=600' or suitable scale to accurately locate the site in Town, oriented on the plan in the same way as the large scale plan;
6. The location, width, status (public or private), and name of all streets within 100' of the project;
7. On-site and abutting lot lines. On site lot lines shall be described by bearings and distance. Abutting lot lines shall be shown in a general way;
8. Zoning district lines, including overlay districts if applicable;
9. The location of existing or proposed building (s) on the Lot shall be shown with total square footage and dimensions of all buildings;
10. Any streams, brooks, or wetland resource area boundaries within 100' of the property lines;
11. Information on the location, size and type and number of existing and proposed landscape features;
12. Information on the location, size and capacity of existing and proposed on-site and abutting utilities, (water, sewer, drainage, natural gas, electrical cable, etc.) including utilities in abutting side streets, if applicable;
13. Detailed locations and dimensions of all existing and proposed buildings and uses on site and on abutting properties, including exterior details relating to the building footprint.
14. All existing and proposed setbacks from property lines.
15. All minimum, or below minimum, setback distances;
16. Information and details for all site and directional on-site signage shall be submitted;
17. Elevation and facade treatment plans of all proposed structures;
18. Color renderings for new construction;
19. Information on the location, size and type of parking, loading, storage and service areas. A parking calculation schedule noting existing, required and proposed spaces for the entire site shall be provided; and
20. Details and specifications (if applicable) for proposed site amenities, including but not limited to fences, recreation facilities, walls or other barrier materials, and special paving materials.

10.7.6 Decision. The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Planning Board shall be guided exclusively by G.L. c. 40A, s. 3. The Planning Board shall file a written decision with the Town Clerk within sixty (60) days of receipt of the application. Failure to file a decision within sixty (60) days shall constitute approval of the site plan.

10.7.7 Appeal. Any appeal of the Planning Board's Decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

- Has the Seminary commenced marketing the property? Has the Seminary identified any developers, other than Toll Brothers, that it has contacted or intends to contact for potential sales and projects?
- How will the site be organized when marketing is commenced? Given the shared systems (septic, potentially stormwater management), the need to maintain the entire campus (e.g., lawns, trees, pathways, etc.) and roadways, how will those responsibilities and liabilities be allocated once a portion or portions of the site are sold? Is a condominium association contemplated?
- If the infrastructure (e.g., septic systems stormwater management system) is improved as the amount of development increases, how will the cost be apportioned to those new owners/developers who have used the existing system prior to improvements?
- Will all roadways need to be accepted by the Town, or, if the site is organized as a condominium, will the condominium association be responsible for maintenance of roads?
- Will the Seminary forego insistence that the underlying R1-B zoning district be maintained? If not, the entire site can be sold to one developer for single family houses on one acre lots and, that under that circumstance, the Town have gained anything from its interactions with the Seminary, given Barry Abramson's conclusion that single-family homes on one-acre lots will produce a net annual fiscal benefit of (\$40,000) to the Town? Alternatively, if a portion of the site were sold for development under the subdivision control law, how would that type of development be integrated with other residential and commercial uses?
- How will the Town be protected if the Seminary's decisions to sell on a "first come, first served" basis result in a poorly planned site that does not yield the financial benefits the Town is seeking?
- If the Seminary can sell portions of the property to purchasers with different visions for the site, how will the site be developed as a cohesive whole if "as of right" development is the predominant model untethered to site plan review? Isn't one of the purposes of a Concept Plan to allow portions of the property to be sold off individually while ensuring a cohesive whole that will ultimately generate more revenue for both the Town and the Seminary?
- How will consistency between the DA and the OD be evaluated and monitored so that the DA and OD are internally consistent and dependent on one another?
- Will execution of the DA be conditioned upon approval of the OD at Town Meeting? Will the DA be an exhibit to the OD that is presented at Town Meeting?

Project Execution:

- Assuming there must be a site map identifying multiple proposed zones, each with different regulating mechanisms (i.e., as of right, special permit) who will be responsible and when for delineating sectors with metes and bounds descriptions with respect to 1) land subject to Conservation Restrictions, 2) buildings subject to

protection for their historic value, 3) public access corridors, 4) buffer areas, and 5) areas subject to commercial/residential development? Can those sectors be altered if they are part of the Overlay District (OD) approved at Town Meeting if a potential developer seeks alternatives?

- Can the Development Agreement be amended in the future if a developer and the Town found a mutual interest in doing so? Can additional conditions be imposed on development if further analysis is needed such as environmental impacts, if the DA does not sufficiently protect interests of the community and the environment?

II. PERTINENT PROVISIONS OF HAMILTON'S ZONING BYLAW

Comments made by GCTS representatives at the February 14, 2023 Planning Board meeting as well as comments from members of the Select Board at the meeting on February 27, 2023 warrant a brief summary of pertinent provisions of the Hamilton Zoning Bylaw. The Town's Zoning Bylaw has numerous provisions that potentially could apply to the GCTS site, including 3.0 USE REGULATIONS; 4.0 DIMENSIONAL AND DENSITY REGULATIONS; Section 5.0, NONCONFORMING USES AND STRUCTURES; and Section 6.0 GENERAL REGULATIONS. Moreover the provisions of the Zoning Bylaw inform as to when site plan review pertains to "as of right" development and special permits. Notably, conversion for temporary additional living area is authorized only by special permit (Section 3.4), as is conversion of a single-family dwelling to a two-family dwelling (Section 3.5) and the creation of accessory apartments (Section 3.6 and 3.7). What follows is a review of several provisions of the Zoning Bylaw to facilitate understanding what as of right development entails under our existing zoning scheme, as well as when special permits are required.

Development under Section 8.1 OPEN SPACE AND FARMLAND PRESERVATION DEVELOPMENT, and Section 8.2 SENIOR HOUSING, requires a special permit, as do certain uses and activities outlined in 9.1.9 of the GROUNDWATER PROTECTION OVERLAY DISTRICT. Notably Senior Housing under Section 8.2 is a use contemplated by Barry Abramson for the GCTS site.

Development under Section 9.3 ESTATE OVERLAY DISTRICT; Section 9.4 WILLOW STREET OVERLAY DISTRICT; and Section 9.5, COMMERCIAL OVERLAY DISTRICT (except for wind energy facilities which are permitted as of right subject to Site Plan Review) requires a special permit.

Section 10.0 of our Zoning Bylaw, captioned ADMINISTRATION AND ENFORCEMENT, contains eight (8) Sections. Section 10.1, Administration provides that Section 10.1 is administered and enforced by the Building Commissioner. Section 10.1.2 Building Permit Required provides:

It shall be unlawful to construct, alter, reconstruct or relocate any Building or Structure or to institute a new or altered use of a Building, Structure or land without first obtaining a Building Permit from the Building Commissioner. . . . A *Special Permit and/or Site Plan Approval under Section 10.5 [Special Permits] and/or 10.6*

[Site Plan Review] *may be required for some uses prior to Building Permit issuance.* (Emphasis supplied).²

Section 10.6. **SITE PLAN REVIEW** provides in pertinent part:

10.6.1 Purpose. *Site Plan Review is intended to allow the Town to review and impose reasonable conditions on development, allowed as of right or by Special Permit, which by its nature or location has the potential for significant impacts on traffic circulation, public safety, public utilities, the environment and neighborhood character and appearance. The purpose is to provide a mechanism and a process for fitting the proposed development to neighborhood character, scale, and infrastructure, and to reasonably protect the Town and abutting property owners from potential negative impacts.* These purposes are to be served by providing for consistent submissions of thorough data for each proposal for Town review; and for consideration by Town Boards as specified below, in terms of specific criteria; and for issuance of a Site Plan Decision setting whatever terms and conditions, if any, are necessary to achieve the purposes of Site Plan Review, consistent with Town Bylaws and Regulations. Provision is made to exempt small modifications and improvements from portions of this Section, and to coordinate Site Plan Review with other required review of Special Permits and alteration of nonconforming uses and structures. (Emphasis supplied).

10.6.2 Projects Requiring Approval. No Building Permit shall be applied for or issued for any construction or alteration subject to this Section, as specified below, until a site plan has been approved or conditionally approved by the

² Section 10.1 contains additional pertinent provisions as follows:

10.1.3 Application for Permit. Any application for a permit shall be accompanied by a specific reference to the subject lot or group of Lots in the same ownership as recorded in the Registry of Deeds, and by copies of a plan of the proposed lot, drawn to scale, showing the entire recorded ownership, all existing structures, all abutting streets, and the exact area and boundaries of the parcel to be assigned to the subject use, and the proposed outline and location of each and every proposed Structure on the subject lot, and the location and length of any proposed driveway from the access street to the building site. There shall also be shown on said plan the existing or proposed sewerage system and all distances necessary to establish full compliance with this Bylaw, including building frontage, areas proposed to be occupied by buildings or structures, yards and sideline distances. The accuracy of said plan and the information thereon shall be certified by the applicant and shall be staked out on the land and left in place until the final inspections are made.

Approval of an application is dependent in many instances upon obtaining a special permit or site plan approval.

10.1.4 Approval of Applications, provides:

The Building Commissioner *shall not issue a permit* for the construction, alteration, reconstruction or relocation of a building or structure if the building or structure as constructed, altered, reconstructed or relocated would be in violation of this Bylaw, or for a new or altered use of a building, structure or land if the use would be in violation of this Bylaw, *unless the applicant has secured a Special Permit or Site Plan Approval or variance from the Board of Appeals or Planning Board, as designated herein.* (Emphasis supplied).

Planning Board as set forth herein. Except as exempted in the Bylaw, *Site Plan Review shall be required for the following construction, alterations, and uses:*

1. *Any new construction or alteration or expansion of, or conversion to a business, office, industrial, institutional, or multi-family residence building or structure in any district;*
2. *Any alteration or extension of a nonconforming commercial, industrial, or institutional structure in a Residential Zone;*
3. *Parking lots over five (5) spaces serving any of the above-listed types of buildings, schools, hospitals, nursing homes, long term care facility, life care facilities, children's camps, campgrounds, churches, multi-family structures for more than two (2) families, government buildings and structures, farm stands, and buildings in commercial, and/or office use;*
4. *Industrial and scientific research use under Section 3.2;*
5. Stables providing boarding and/or services for more than six (6) horses other than those owned by the residents of the Lot on which the stable is located;
6. Greenhouses for commercial production of plants or produce;
7. *Interior alterations which increase the commercial, industrial, institutional or multi-family floor area within an existing building, and/or which change the number of separately leasable or saleable spaces within an existing building; and*
8. Wind Energy Facilities in the Commercial Overlay District. (Emphasis supplied).³ (Emphasis supplied).

³ Section 10.6 provides for abbreviated site plan review under certain circumstances. Section 10.6.3 Projects Requiring Abbreviated Site Plan Review provides:

Proposed additions or alterations to existing buildings subject to Site Plan Review which would either add new floor area totaling less than ten (10) percent of the current ground floor area of the existing building, or which are estimated to cost less than ten (10) percent of the current one hundred (100) percent assessed valuation of the building shall require only Abbreviated Site Plan Review as provided below. For purposes of applying this guideline, when ground floor area includes attached residential floor area or attached commercial greenhouses, the area of the residential and/or greenhouse portions shall be deducted before applying the ten (10) percent threshold factors.

There are exemptions to site plan review as set forth in 10.6.4 Exemptions from Site Plan Review. That section provides that the following activities do not require Site Plan Review or Abbreviated Site Plan Review:

1. Interior alterations unless the alterations increase the floor area within the building devoted to any of the uses listed in Section 10.6.2 and/or change the number of separately leasable or saleable spaces within the Building. Examples of exempt interior alterations are: paneling, shelving, partitions other than those creating new commercial units, counters, flooring and general interior decoration;

Section 10.6 contains numerous other provisions that are worthy of review, including the site plan standards set forth in Section 10.6.12.

In addition to the provisions of the Town’s Zoning Bylaw, the Subdivision Control Law imposes significant regulation on “as of right” development. Specifically, Hamilton’s Subdivision Regulations contain seven (7) sections and are over 25 pages in length.

With the foregoing as background, Attorney Meirwyn Walters, at the February 14, 2023 Planning Board meeting, and Select Board members advocated for “as of right” development on the GCTS site with very limited site plan review, and even more limited special permitting.

When viewed in its entirety, however, our Zoning Bylaw gives property owners in Hamilton, as well as developers, circumscribed rights to construct new structures, or alter, expand, or convert existing structures *without* site plan review or special permits. Accordingly, the following questions must be answered if as of right development were to be authorized untethered to site plan review:

- Whether as of right development untethered to site plan review is consistent with the overall tenor of our Zoning Bylaw, its salutary purposes and applicability as set forth in Sections 1.1 and 1.4⁴ and the provisions of Section 10 reproduced above,?

2. Repairs, repainting, residing, reroofing and window replacement unless the activity also increases floor area;

3. Replacement of parts of a partially damaged building that would normally require Site Plan Review with generally identical portions. Total replacement of such a destroyed building shall require Site Plan Review;

4. Demolition of a building or structure;

5. Change of tenant of commercial building unless there is also new construction triggering Site Plan Review;

6. Customary home occupations;

7. Townhouse or Multifamily housing developed under Sections 8.1 (OSFPD) or 8.2 (Senior Housing);

8. Uses permitted by Special Permit within the Commercial Overlay District; and

9. Entries B.1, B.3, and B.7 [There is no B.7] in the Table of Uses shall require Site Plan Review under Section 10.7. [Site Plan Review for Religious and Education Uses and Certain Child Care Centers].

⁴ Section 1.1 PURPOSE provides:

The purpose of the Hamilton Zoning Bylaw (“this Bylaw”) is:

1. To promote the health, safety, morals, convenience and general welfare of the inhabitants of Hamilton;
2. To lessen the danger from fire and congestion, and from the hazards of flood water inundation, to protect and conserve the value of property;
3. To preserve and increase the amenities of the Town;

- Would the Town be endorsing development that would be unavailable to other property owner in Hamilton, or any developers proposing projects outside an Overlay District for the GCTS site, absent an applicable exemption under Section 10.6.4?
- If as of right development were to be endorsed without site plan review, how would the site be developed in a coherent manner that would attract developers over time and maximize the financial benefit to the Seminary and the Town?
- If as of right development were to be endorsed without site plan review, how would abutters be protected from the negative effects of light pollution, poor traffic circulation, noise, and other unintended consequences?
- Realistically, wouldn't competent and experienced developers expect to be subject to oversight by the Town?
- If as of right development were untethered to Site Plan Review, how would the Town or the Seminary enforce violations of the reasonable rights and expectations of abutters and the citizens of Hamilton?

III. MASSACHUSETTS LAW

M.G.L. ch. 40A, § 5 governs adoption of zoning bylaws. It provides enables the Select Board and a land owner to submit a zoning bylaw for adoption to the Planning Board, although the Planning Board itself is also authorized to propose bylaw for adoption. Section 5 provide in pertinent part the following:

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning

-
4. To conserve natural conditions, to promote the educational, cultural and economic welfare of the public through the preservation and protection of Buildings, sites, and districts of historic interest; and
 5. To improve and beautify the Town by encouraging the most appropriate uses of land within the Town in accordance with the General or Master Plan, and under the provisions of Chapter 40A of the Massachusetts General Laws, as amended, and Section 2A of 1975 Mass. Acts 808.

Section 1.4 APPLICABILITY provides:

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to

agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or *by a two-thirds vote of a town meeting; . . .*