

## **SECTION VI - ADMINISTRATION**

### **VI-A ENFORCEMENT**

This bylaw shall be enforced by the Building Inspector. No action taken under the enforcement powers of this bylaw shall be in contradiction to the provisions of Chapter 40A, General Laws as adopted or amended.

No lot shall be changed in size, shape or ownership so that the area, minimum yard dimensions, maximum percent of building coverage, off-street parking or open-space requirements herein prescribed are no longer satisfied, except to the extent that any such change may result from the acquisition by the Town through voluntary conveyance or taking of a part of such lot for a public purpose. Any land voluntarily conveyed to the Town for a public purpose by an owner of a lot in a P.C.D. District, whether such conveyance occurs prior to or after completion of the development of such lot, shall be taken into account in determining compliance with the intensity regulations of SECTION IV - B hereof. (Art. 1 S.T.M. June 17, 1969)

### **VI-B REPETITIVE PETITIONS**

No proposed change in this bylaw which has been unfavorably acted upon by the Town Meeting shall be considered on its merits by the Town Meeting within two years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board.

### **VI-C BUILDING OR USE PERMIT**

No building shall be constructed or reconstructed and no use of a building or land shall be begun or changed without a permit having been issued by the Building Inspector. No such permit shall be issued until such construction, alteration, or use, as proposed, shall comply in all respects with the provisions of this bylaw or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimension of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed, together with the lines within which all buildings or structures are to be erected, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this bylaw. A record of all applications, plans, and permits shall be kept on file by the Building Inspector. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction is continued through to completion as continuously and expeditiously as is reasonable.

(Art. 1, S.T.M. #2, Oct. 10, 2000 – delete subparagraph 1 (Planning Board Apartment Site Review))

#### **VI-D. CERTIFICATES OF OCCUPANCY**

No premises and no building or structure erected, altered, or in any way changed as to the construction or use, under a permit or otherwise, shall be occupied or used without a Certificate of Occupancy, signed by the Building Inspector. No such occupancy permit shall be issued until the following departments or inspectors have approved of the construction in writing on a form devised by the Building Inspector.

1. **Fire Department** - to assure compliance with state and local fire regulations and statutes.
2. **Health Department** - to assure compliance with state and local public works regulations and statutes.
3. **Public Works** - to assure compliance with state and local public works regulations and statutes.
4. **Wire Inspector** - to assure compliance with state and local electrical regulations and statutes.
5. **Plumbing Inspector** - to assure compliance with state and local plumbing regulations and statutes.
6. **Building Inspector** - as to all other phases of construction and as to compliance with state and local building regulations and statutes.
7. **Board of Assessors** – to facilitate compliance with state and local laws and regulations regarding assessment and taxation of real property including improvements thereto. (Art. 17, A.T.M. – Oct. 21, 2008)

In the event the Building Inspector refuses to grant approval of said construction or alteration, he shall state the reason for his refusal in writing to the applicant of such occupancy permit.

In the event any of the above remaining departments or inspectors refuse to grant approval of said construction or alteration, said department or inspector shall state the reasons for its or his refusal in writing to the applicant of such occupancy permit and a copy of same shall be given to the Building Inspector. Such Certificates of Occupancy shall not be issued to the premises, building or structure, unless its uses and accessory uses comply in all respects with the bylaw. A record of all applications and Certificates of Occupancy shall be kept on file by the Building Inspector.

The Inspectors and Departments mentioned above in this bylaw shall report their findings within a reasonable period to the Building Inspector.

(Art. 66 A.T.M. 1974)

## **VI-DD SPECIAL PERMIT PROCEDURES AND SITE PLAN REVIEW**

### **1. Purpose and Intent Administration**

a) The purpose of the following Special Permit section of this zoning bylaw is to authorize the hearing of and decisions on Special Permit applications, authorize the issuance of Special Permits, establish criteria and procedures for the issuance of Special Permits and set forth matters which can be addressed and regulated in a Special Permit decision. Unless specifically exempted in Section VI- DD2.B., all uses requiring Special Permits under this Zoning By-Law shall require Site Plan Review in accordance with VI-DD 2.B. The purpose of the Site Plan Review Procedure hereby established is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town by providing a comprehensive review of plans for those uses and structures which have a significant impact upon the character of the Town and upon traffic, utilities and property values therein. Factors to be considered are the placement of buildings and utilities, surface and groundwater drainage, wetlands, water supply, parking, loading, landscaping, lighting, dust and noise control, access to the development, acceptable sanitary conditions and the proper provision for open areas. It is intended to insure that the design and layout of those developments so subject to this procedure in this bylaw will constitute suitable development and will not result in a detriment to the neighborhood or to the environment. It is also intended hereby to assist those wishing to build projects within the Town by providing them with the necessary information about all of the Town's requirements affecting their project prior to the start of any construction or the issuance of the permits. (Art. 38, Spring ATM, 4/11/17)

b) The Special Permit Procedure and the Site Plan Review Procedure are to be administered by a Special Permit Granting Authority ("SPGA") in those uses and/or districts, and in the manner as indicated in this Section VI-DD. Those Town Agencies who may function as the SPGA hereunder are: The Board of Appeals and the Planning Board. The specific assignments given to each SPGA are set forth in Section 2.A and Section 2.B hereafter. (Art. 38, Spring ATM, 4/11/17)

c) It is the further intent of the Site Plan Review Procedure that any Final Site Plan filed with the SPGA shall receive the approval of such SPGA if said plan conforms to the standards established herein and to the reasonable rules and regulations of the SPGA made in conformity with these bylaws. It is to be noted, however, that where maximums are stated in this bylaw the SPGA acting hereunder can deny granting the maximum (e.g. height, building coverage, etc.) if in its opinion the proposed plan does not merit granting the maximum, in view of the criteria and standards set hereby. Similarly, where minimums are stated in this bylaw, the SPGA acting hereunder can make increased requirements. (e.g. parking, screening, landscaping, etc. ) if in its opinion in

applying the criteria and standards set hereby, the proposed plan warrants exceeding such minimums.

## 2. A. Special Permits

- a. Special Permit Granting Authority. As designated in this By-Law, the Board of Appeals or the Planning Board shall act as the Special Permit Granting Authority (SPGA) for hearing and deciding all matters pertaining to Special Permits and for issuance of such Special Permits. The specific assignments are listed below.

1. The Planning Board shall act as the SPGA in the following Districts:

- Highway Mixed Use - I
- Highway Mixed Use II
- Highway Mixed Use III
- Highway Planned Use
- Town House Cluster Development –RSA
- Single Family Town House Cluster Development - RSB
- Single Family Town House Cluster Development - RSC
- Hospital (H)
- Inclusionary Housing Option Program (IHOP)
- Regional Center Overlay District
- Highway Corridor Overlay District
- Planned Cluster Development - PCD
- Mall Center (MC) Overlay District
- Housing Overlay Option Plan - I (HOOP I)
- Housing Overlay Option Plan - II (HOOP II)
- Regional Center Mixed-Use Overlay District
- Historic Preservation
- Administrative and Professional (AP)
- Commercial II (C-II)
- Industrial I (In-I)
- Industrial II (In-II)
- Downtown Mixed Use (DMU)
- Independent Senior Living Overlay Option Plan (ISLOOP)
- Assisted Living Overlay Option Plan ALOOP
- Indoor Recreational Overlay District (IROD)
- Inclusionary Housing Special Permit (IHSP)

2. Zoning Board of Appeals shall act as the SPGA in the following Districts:

- Limited Commercial (LC)
- Subsidized Housing (SHA)
- Non Conforming Uses in accordance with Section V-A

3. In the event of a failure of this zoning by law to designate an SPGA, the Planning Board shall be authorized to act and serve as SPGA.
  
- b. Decision Criteria. The following criteria shall be the minimum basis for all decisions on special permits, in addition to criteria as may be more specifically provided elsewhere in this By-Law. Special permits shall be granted by the Special Permit Granting Authority as specified herein only upon its written determinations for each of the following factors that the proposed use will not have adverse effects which outweigh its beneficial effects for both the neighborhood and the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determinations shall be made separately for and indicate consideration of each of the following criteria:
  1. Social, economic, or community needs which are served by the proposal;
  2. Adequacy of traffic flow and safety, including parking and loading,
  3. Adequacy of utilities and other public services;
  4. Neighborhood character and social structures;
  5. Impacts on the natural environment;
  6. Potential fiscal impact, including impact on town services, tax base, and employment; and
  7. Conformity with the purposes and objectives of both this zoning by law and the district which the property is situated.

The applicant shall show to the satisfaction of the special permit granting authority that the use, building, or structure for which application is made shall not be against the public interest, shall not derogate from the character of the neighborhood in which such use, building, or structure is to occur and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and that such use, building, or structure shall not otherwise be injurious to the inhabitants of the Town or their property or dangerous to the public health or safety.

Consideration of traffic flow and safety and parking and loading shall consider affects on nearby and collector streets at both peak and off peak hours. Consideration of the natural environment shall include not creating additional shadow or causing additional blockage of sunlight and/or view on or from existing buildings, constituting the primary use, on adjacent properties to a greater extent than could result from the construction of a permitted use (i.e. a use not requiring special permit) in full compliance with all applicable dimensional and intensity regulations on the parcel for which the special permit is sought. When the foregoing criteria are not so satisfied, the special permit granting authority shall deny the application.

In addition to these criteria, the special permit granting authority may impose conditions, safeguards and limitations on time and use.

- c. Procedures. Each application for a special permit, together with copies of supporting plans and other materials, shall be filed by the petitioner with the Town Clerk. Fifteen copies of said application, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the Special Permit Granting Authority, together with five (5) copies of the supporting plans and other materials, and one copy of all materials in digital (PDF) format.
- d. Referral to Other Officials and Agencies. The Special Permit Granting Authority shall refer notice of all applications immediately upon receipt to the Town Administrator, Building Commissioner, Planning Board (when it is not the SPGA), Town Engineer, DPW, Board of Health, Conservation Commission, Police Department, Fire Department, and to any other involved Town official or agency.

The Special Permit Granting Authority shall also transmit copies of the submitted plans and support documentation to all agencies having requested such documentation for either that specific project or for such projects generally, and to any other authorities whose review is judged appropriate by the Building Commissioner, for technical review and comment. Failure of any official or agency to make recommendation within thirty-five days of receipt of the application and support documentation shall be deemed lack of opposition thereto.

- e. Decision. A special permit, if granted, shall be subject to any general or specific rules prescribed herein, and it may be made subject to appropriate conditions, safeguards, and limitations on time or use. When the Special Permit Granting Authority determines that a special permit may be granted if accompanied by conditions specially designated to safeguard the neighborhood and the Town, it shall impose such conditions and make them a part of the decision, and they shall be made a part of the building permit issued by the Building Commissioner.
- f. Lapse. A special permit granted under this Section shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause (Art. 38, Spring ATM, 4/11/17)

## 2.B Site Plan Review Applicability and SPGA Designation

a) All uses, other than Uses Nos. 1, 3, 5, 8, 9, 17, 18, 46, 47 and 48, permitted or allowed in the following Zoning districts, shall be subject to the Site Plan Review Procedure described herein, to be administered by the Planning Board, acting as the SPGA:

- Highway Mixed Use - I
- Highway Mixed Use - II
- Highway Mixed Use - III
- Highway Planned Use
- Town House Cluster Development - RSA
- Single Family Town House Cluster Development - RSB
- Single Family Town House Cluster Development - RSC
- Hospital (H)
- Inclusionary Housing Option Program (IHOP)
- Regional Center Overlay District (Art. 7, S.T.M. #1, 2/3/93)
- Highway Corridor Overlay District (Art. 7, S.T.M. #1, 2/3/93)
- Planned Cluster Development - PCD (Art. 2, S.T.M. #2, 10/10/00)
- Mall Center (MC) Overlay District (Art. 1, S.T.M. #2, 12/03/02)
- Housing Overlay Option Plan – I (HOOP – I) (Art. 27, Spring A.T.M., 4/15/04)
- Housing Overlay Option Plan – II (HOOP – II) (Art. 27, 2004 Spring A.T.M., 4/15/04))
- Regional Center Mixed-Use Overlay District (Art. 1, Fall STM #1, 10/18/05)
- Historic Preservation (Art. 37, Fall ATM, 10/21/14)
- Industrial I (In-I) (Art. 7, S.T.M.#2, 11/1/16)
- Industrial II (In-II) (Art. 7, S.T.M.#2, 11/1/16)
- Downtown Mixed Use (DMU) (Art. 38, Spring ATM, 4/11/17)
- Independent Senior Living Overlay Option Plan (ISLOOP)
- Assisted Living Overlay Option Plan ALOOP
- Indoor Recreational Overlay District (IROD)

The following zoning districts shall be subject to the Site Plan Review Procedures described herein, to be administered the Zoning Board of Appeals acting as the SPGA

- Limited Commercial (LC)
- Subsidized Housing (SHA)  
(Art. 38, Spring ATM, 4/11/17)

b) All uses, other than Uses No. 46, 47, 48 and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-II), zoning districts, shall be subject to the Site Plan Review procedure described herein with the Planning Board acting as SPGA (Art. 7, S.T.M.#2, 11/1/16) (Art. 38, Spring ATM, 4/11/17)

c) Notwithstanding the foregoing, in the Commercial II, Industrial I, and Industrial II districts, the Site Plan Review procedures described herein shall not be required with respect to alteration or rehab construction unless:

1.) There is a change from one use designation to another use designation as described in the Use Regulation Schedule, or when an additional use designation, as described in the Use Regulation Schedule, is sought, or (Art. 28, Spring Town Meeting, 4/14/15)

2.) The proposed alteration of a structure in existence prior to August 10, 1960 will increase the floor area of a building on the premises by more than five (5%) percent. (Art. 28, Spring Town Meeting, 4/14/15)

d) All uses, other than Use No. I, which are permitted or allowed under the Use Regulation Schedule in the AP (Administrative & Professional) District, shall be subject to the Site Plan Review procedure described herein, with the Planning Board acting as the SPGA for all such review procedures. (Art. 39 Spring T.M. 4/12/2011)

e) Where Site Plan Review is not otherwise required by the provisions of Section VI DD, in all zoning districts the construction of parks, trails, roads, driveways and parking areas shall be subject to the Site Plan Review procedure described herein to be administered by the Planning Board as the SPGA. This section VI-DD 2.B (e) shall not remove the exclusions created by Section VI-DD 2.B (c). (Art. 29, Spring Town Meeting, 4/14/15) (Art. 33, Spring ATM, 4/10/18)

### 3. General Requirements

a) Final Site Plan: No person shall undertake a use, construction or alteration of any structure which is subject to the provisions of the Site Plan Review Procedure in those districts and/or uses to which this Section VI-DD applies, unless he has first submitted to the SPGA for its approval, a Final Site Plan of such proposed use or alteration. Once approved by the SPGA, the SPGA shall issue a Special Permit therefor and such Plan shall not be changed in any material respect without being amended or modified in the same manner as provided for obtaining initial approval. No building or use permit shall be issued by the Building Inspector for any use subject to the Site Plan Review Procedure, and no construction or site preparation shall be started, until a decision of the SPGA approving the final Site Plan has been filed with the Town Clerk. An applicant for site plan review may not attach conditions to its submittal of plans for review, and any site plan so submitted may be rejected as not being in conformance with these bylaws. There shall only be one (1) Final Site Plan in



effect for a tract at any point in time. The SPGA shall not approve multiple Final Site Plans for all or any portion of a tract subject to the Site Plan Review Procedure. Although final Site Plans may be approved for all or part of a project on a tract to accommodate the phasing thereof, any subsequent changes in such previously approved Final Site Plan may be accomplished by amending or modifying the prior approval, including by substituting or replacing previously approved plans or portions thereof. Notwithstanding any other provision in these By-laws, once a building permit is issued for development under plans approved by the SPGA under the Site Plan Review Procedure for all or any part of a tract, all further development of the remainder of such tract shall be subject to this Site Plan Review Procedure, regardless of the zoning classification applicable to such tract at the time of site plan approval, prior thereto, or effective thereafter.

b) Content of Final Site Plan and Other Submittals: In addition to any other requirements which the SPGA may reasonably make, a Final Site Plan shall show all existing and proposed buildings, existing and proposed contour elevations, structures, parking spaces, driveway openings, driveways, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, wetlands, surface water, areas subject to the 100 year flood, maximum groundwater elevation, location of aquifers, private or public wells and drinking water supplies in relation to the site, and landscape features such as fences, walls, planting areas, walks, and lighting both existing and proposed. The Site Plan shall also show the relation of the above features to adjacent ways and properties. The site plan shall also show all contiguous land owned by the applicant or by the Owner(s) of the property which is the subject of the application. In addition to the foregoing, the applicant shall submit material dealing with pollution of surface or groundwater, soil erosion, increased runoff, changes in groundwater level, and flooding as it affects the site and the project; and the plans and such other submittal shall indicate the measures proposed to deal with and mitigate such environmental impacts. Similar submittals and materials regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectionable features from neighbors shall also be presented. The applicant shall further submit a traffic study which shall project traffic flow patterns into and upon the site for both vehicles and pedestrians, and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours, as well as the existing patterns and existing ways for passage of traffic and pedestrians. Except for building permits, any other permits or approvals required from Town Agencies are to be included as part of this submittal or an explanation for their absence satisfactory to the SPGA shall be submitted. Failure to provide such permits or approvals shall not be due to failure by the applicant to apply to the appropriate Agency for their grant.

#### 4. Procedures:

The SPGA shall adopt such rules and regulations for carrying out its duties under this Section as a SPGA in accordance with Section 9 of the General Laws, Chapter 40A, these bylaws, and the Constitution of the Commonwealth of Massachusetts. The SPGA may in any particular case, where such action is allowed by law, in the public interest and not inconsistent with the purpose and intent of this Site Plan Review Procedure, waive strict compliance with its rules and regulations. The SPGA shall not require a Site Plan Review where the nature of the proposed construction, alteration or use is such as to have a minimal effect on any of the standards or criteria provided for hereafter in this Section, when measured against existing conditions of the site. The SPGA may provide for a schedule of examination fees in connection with the Site Plan Review Procedure herein provided.

##### a) Submission of Plans

Although preliminary plans may be discussed informally with the SPGA only one plan submission is required. An application for Final Site Plan approval shall be made by filing an application with the SPGA. The applicant shall file a copy of such application with the Town Clerk and with the Planning Director for their information and records.

##### b) Approval and Disapproval: Notice and Hearing:

Before approval, approval subject to conditions, or disapproval, of a Final Site Plan is given, a public hearing shall be held by the SPGA in the manner set forth in General Laws, Chapter 40A, Section 11. The SPGA shall file its decision with the Town Clerk, and shall send notice of such action by registered or certified mail, postage prepaid to the applicant. In the event of disapproval, the SPGA shall state in detail wherein the plan does not conform with legal requirements, or the requirements of this Site Plan Review Procedure. Reconsideration of applications and withdrawal of application shall be in accordance with General Laws, Chapter 40A, Section 16.

##### c) Failure to Act:

Failure of the SPGA to take final action upon an application for site plan review, within ninety days following the close of a public hearing shall be deemed to be approval of such application, however, the public hearing procedure need not be concluded in one sitting, and it may be continued or extended as the SPGA determines to be necessary for it to receive further information to enable it to render its decision in the matter.

d) Right of Appeal:

Any person aggrieved by a decision of the SPGA may appeal to the Superior Court or to the Land Court in accordance with General Laws, Chapter 40A, Section 17.

5. Criteria for Approval

In considering a Final Site Plan for approval, the SPGA shall assure that the following criteria are met:

- a) Compliance with all provisions of the Zoning Bylaws.
- b) Protection of adjoining premises against seriously detrimental or offensive uses on the site (e.g. by integrating development design onto existing landscape to enhance aesthetic assets, screening of objectionable features from neighbors, providing adequate surface water drainage, buffers against light, sound, dust, noise and vibration).
- c) Convenience and safety of vehicular and pedestrian movement on the site and in relation to streets and properties in the surrounding area, and for the location of driveway openings in relation to street traffic, so as to prevent traffic congestion and dangerous access within the site and onto existing ways.
- d) Adequacy of the methods of disposal of wastes.
- e) Adequacy of measures for the prevention of pollution of surface and groundwater, soil erosion, increased runoff, changes in groundwater level and runoff, and conservation and recycling of water.
- f) Protection of significant features on the site and in adjacent areas insofar as consistent with the purposes of these bylaws.

6. Standards for Site Plan Review

The following performance standards shall be utilized by the SPGA in addition to any specific standards prescribed elsewhere in these bylaws, or in the Rules and Regulations of the SPGA, in reviewing all site plans. These standards are intended to provide guidance to the applicant in the preparation of his plans as well as guidelines for review. These are not intended to be exhaustive, and specific additional standards may be applied for a project if in the opinion of the SPGA such are reasonably necessary. The standards are not intended to discourage creativity, invention and innovation; but are intended to encourage good design and exemplary projects offering solutions to all problems of a site, where possible. The issues and concerns represented by the standards

enumerated below must be addressed to the satisfaction of the SPGA in the Final Site Plan:

a) Preservation of Landscape:

The landscape shall be preserved in its natural state, insofar as practicable by minimizing tree and soil removal and any grade changes shall be in keeping with the general appearance of the neighboring developed areas. Where tree coverage does not exist, or has been removed, new planting may be required. Finish site contours shall depart only minimally from the character of the natural site and the surrounding properties.

b) Relation of Buildings to Environment:

Proposed development shall be related harmoniously to the terrain and to the use, scale and siting of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. All buildings and other structures shall be sited to minimize disruption of the topography. Strict attention shall be given to proper functional, visual, and spatial relationship of all structures, landscape elements and paved areas.

c) Open Space:

All open space (landscaped and useable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility to persons passing the site or overlooking it from nearby properties.

d) Circulation:

With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

e) Surface Water Drainage:

Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system, nor obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas. All surface water drained from roofs, streets, parking lots and other site features shall be disposed of in a safe and efficient manner which shall not create problems of water runoff or

erosion on the site in question or on other sites. Insofar as possible, natural drainage courses, swales properly stabilized with plant materials, or paving when necessary, and drainage impounding areas, shall be utilized to dispose of water on the site through natural percolation to a degree equivalent to that prior to development. Also, appropriate control measures shall be employed which include: maximum slope requirements, slope stabilization measures including seeding of exposed areas to replace vegetative cover.

f) Groundwater Recharge and Quality Preservation:

Groundwater recharge shall be maximized and groundwater quality shall be protected. Various techniques may be required to maximize recharge, such as perforated drain pipes, previous pavement, reduction of paved areas, reduction of building coverage, etc; or to improve quality, such as installing grease traps or gas/oil separators. Where the groundwater elevation is close to the surface, extra site-grading precautions may be required to maintain the protective function of the overburden.

g) Utilities:

The placement of electric, telephone and other utility lines and equipment, such as water, sewer or gas, shall be underground; and so located as to provide no adverse impact on the groundwater levels, and to be coordinated with other utilities. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated precisely on the plans.

h) Advertising

All signs and outdoor advertising features shall be reviewed as an integral element in the design and planning of all development on the site. As a minimum all signs and advertising devices shall be in conformance with Section V-H of these bylaws, and the provisions thereof shall be administered by the SPGA having responsibility for the Site Plan Review Procedure.

i) Other Site Features:

Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings, or other screening methods as shall be reasonably required to prevent their being a hazard or being visually incongruous with the existing or contemplated environment and the surrounding properties.

j) Safety:

With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and to maximize accessibility by fire, police, and other emergency personnel and equipment.

7. Start of Construction

Construction on a site must be started or substantial activity commenced on the site within one year from the date of Final Site Plan approval. Site preparation alone shall not be deemed to constitute start of construction. Approval of a Final Site Plan may be extended for one additional year at the discretion of the SPGA after a receipt of a written request from the owner or his designated agent, and for good cause shown. If one year has elapsed from the date of approval and no extension has been granted, or if so granted then at the end of such one year extension, no construction has been started or substantial activity commenced, the Final Site Plan approval shall be come null and void without requiring any further action by the SPGA.

8. Certificate of Occupancy: Designer's Certification:

No certificate of occupancy shall be issued for any structure or parcel subject to a Site Plan Review Procedure unless it, and all of its related facilities, substantially conform to the approved Final Site Plan. The applicant shall conform to the approved Final Site Plan. The applicant shall submit to the Building Inspector with a copy to the SPGA, a written certification from a professional engineer, architect, or landscape architect, preferably the one who prepared the Final Site Plan, that the work has been completed substantially in accord with the approved Final Site Plan. The Building Inspector shall deny the issuance of a certificate of occupancy if a professional engineer's, architect's or landscape architect's certification is not so provided. A Certificate of Occupancy, issued by the Building Inspector for any activity requiring Site Plan approval shall constitute a certificate that such construction was performed and completed in compliance with an approved Final Site Plan, and such certification shall be conclusive for all purposes, unless it was issued in disregard of the requirement for certification by a professional engineer, architect or landscape architect as provided for herein. Prior to the issuance of a Certificate Of Occupancy, documents for all easements to be granted to the Town shall be recorded.

## **VI-E BOARD OF APPEALS**

The Board of Selectmen shall within sixty days after this amendment to the bylaw takes effect, increase the members of the Board of Appeals from three to five members for terms of such length and arranged so that the term of one member will expire each year. They shall be citizens of the Town of Natick and serve from the first day of May. The members of the Board of Appeals whose terms have not expired, shall continue as members until the expiration date of the term to which they were appointed. After the five-man board has been established, all subsequent appointments shall be made annually to replace those members whose terms are ending for terms of five years from the first day of May in each calendar year. The term of each member shall be extended until his successor has been appointed and qualified. Said Board shall act as Board of Appeals under the Building Code Bylaws, Zoning Bylaws, Sign Code Bylaws, and Planning Board. At least one member of said Board shall be an attorney-at-law, one member may be if feasible a qualified architect, and one member may be if feasible a civil engineer or master builder.

In like manner, the Board of Selectmen shall increase the associate members of the Board of Appeals from two to three; and in case of absence, inability to act, or conflict of interest on the part of a member of said Board, his place shall be taken by an associate member designated by the Chair of the Board. Vacancies shall be filled for the unexpired terms in the same manner as in the case of the original appointments. The Board shall elect annually a Chairman from its own members, and a Clerk. Any member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing.

Any person aggrieved by an order, decision, issue or refusal of a permit or certificate, or by a delay of more than two weeks (except for apartment houses as defined in Chapter 2, Section 2.1 of the Building Code and Section I-D of the Zoning Bylaw) in rendering a decision, or by a ruling on or application of any part of this code by the Inspector, may appeal to said Board within thirty days of the date thereof, by filing a written notice of appeal with the Town Clerk, on a form provided by the Board of Appeals.

Any owner or lessee of real estate affected by the issue of a permit may likewise appeal within 30 days of the publication of the notice thereof. The Inspector may appeal to the Board for a ruling in any case wherein he is in doubt as to the true intent or application of any part of the Zoning Bylaws. On receipt of notice of appeal, the Town Clerk shall notify the Board of Appeals, who after due notice to the parties concerned, shall give a hearing and shall either affirm, annul or modify such order, decision, issue refusal, ruling or application or shall determine the true intent and application of any provisions of the Zoning Bylaws.

Every decision of the Board shall be in writing and shall be signed by four of its five members, and shall be filed in the office of the Town Clerk and the Planning Board and notice shall be sent to the applicant and others in conforming with Chapter 40A, Section II, of the General Laws. If it modifies or overrules any action of the Inspector, he shall issue a new order, permit, certificate or ruling in conformity with the decision of the Board without delay.

An affirmative decision shall require the concurring vote of four of its five members thereof after due notice and public hearing upon a written petition addressed to the Board, may vary the application of these codes, without, however, making any change in its provisions or departing from its substantial intent or purpose, in specific cases wherein its strict enforcement would involve unnecessary hardship, and shall vary it so far as necessary in any case to avoid violation of constitutional guarantees, but shall not otherwise vary it. They may authorize a limited permit for a temporary non-conforming structure to remain less than one year from the date of issue if in their judgment it is safe and desirable. The detailed public record of proceedings and the decision on every such petition shall be signed by four of its five members thereof, and shall specify the variation allowed and the reasons therefor.

The records of the Board of Appeals shall be kept by said Board, shall be the property of the Town and open at all reasonable time to the inspection of the Selectmen or to any interested citizen, but shall not be taken from the custody of the Board of Appeals; and the Board of Appeals shall submit to the Selectmen at such time as they may require, an annual report of such business and such other reports as they may request.

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:

#### 1. Appeals

To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provision of Chapter 40A, General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Building Inspector or other administrative official in violation of any provision of Chapter 40A of the General Laws, or of this bylaw.

#### 2. Special Permits

a) To grant a Special Permit for those uses for which the Board of Appeals is the Special Permit Granting Authority, and in issuing any said Special Permit, the Board of Appeals may impose such a safeguard, conditions and limitations pertaining to the use in question as may be, in the reasonable



opinion of the members of the Board, necessary or advisable to prevent such permitted use from being either detrimental or injurious to the neighborhood or to the value of any property within the neighborhood or to prevent such permitted use from substantially derogating from the purpose of this bylaw.

b) The Special Permit Granting Authority may grant a special permit for business uses, including parking and loading areas servicing such business uses, in a PCD District, for the purpose of providing a business area to serve principally the dwelling units constructed in the development of such PCD District. (Art. 2, S.T.M. #2, Oct. 10, 2000)

c) The area devoted to business uses in any PCD District under a Special Permit shall in no case exceed five percent (5%) of the total land area of the PCD District concerned. No such Special Permit shall be granted for business uses in any PCD District until six hundred (600) dwelling units have been constructed in said District and certificates of occupancy issued therefor. No business establishment having a gross floor area in excess of seventy-five hundred (7,500) sq. ft. shall be allowed by Special Permit in any PCD District including Parking and Loading areas serving such business uses.

d) The Board of Appeals may grant a special permit for the development of any tract of land in an SH district in which not less than 75% of the dwelling units to be constructed in such development come within the definition of subsidized housing contained herein. The following provisions shall be applicable only to tracts of land in an SH district:

1) Where the proposed construction of subsidized housing is dependent upon obtaining approval and/or a commitment of financial assistance under relevant federal or state housing subsidy programs, it shall be a condition of any special permit issued hereunder that no building permit shall issue for any portion of the proposed development until the applicant has filed with the Board of Appeals evidence that such approval and/or commitment has been obtained.

2) Any special permit granted hereunder shall designate the dwelling units to be used for subsidized housing and shall impose appropriate safeguards to ensure the continued use of such designated units or equivalent units for subsidized housing.

3) A special permit granted hereunder may allow the construction of single family detached houses, two-family houses, two-family semi-detached houses, townhouse type dwelling units separated by walls meeting state or federal safety requirements, garden apartments not exceeding in height three stories used for human occupancy, or any combination of such housing types or other housing types not exceeding

in height three stories used for human occupancy. Ownership for such housing may be in any form permitted by law, including condominiums.

4) The Board of Appeals may permit dwelling unit density in SH districts of up to, but not exceeding, 10 dwelling units per acre. However, in each instance in which the Board of Appeals permits such density to exceed 8 dwelling units per acre, the Board shall file with its decision the basis for its determination that such density would be appropriate, and, in reaching such determination, shall consider, among other factors, soil conditions, drainage, traffic or other neighborhood conditions brought to the Board's attention, the provision of usable open space in excess of the minimum

required per dwelling unit and the provision of off-street parking under or within buildings which contain dwelling units.

5) The minimum distance between detached buildings shall be 30 feet or 10% of the length of the shorter building involved, whichever is greater.

6) A number of direct accesses shall be provided to the dwelling units adequate for the number of such units and of adequate width.

7) There shall be provided at least one off-street parking space per dwelling unit, reserved for the use of such dwelling unit and within 150 thereof. The total number of off-street parking spaces provided shall be not less than 1 1/2 times the number of dwelling units. Such parking spaces shall be paved, contained in garages, or under or within buildings which contain dwelling units.

8) Not less than 1,000 square feet of permanent usable open space per dwelling unit available for outdoor activities shall be provided. Required front yards, paved vehicular areas and wetlands shall not be considered as such usable open space.

9) Special permits granted hereunder shall incorporate by reference the building design, site development and financing plans submitted by the developer with the application. Development of the tract in question under such special permit shall be in conformance with such designs and plans, unless, after hearing, the Board of Appeals amends such special permit.

However, financing plans may be modified without requiring amendment of such special permit provided that all other requirements of said special permit shall remain unchanged.

10) There shall be no more than 125 dwelling units permitted on any one tract of land which is zoned as an SH District.

11) Special permits may not be granted for any tract of land zoned as an SH District which is closer than one mile to any other tract of land zoned as an SH District for which special permits have already been granted.

12) Special permits may not be granted for any tracts of land in an SH District which: (i) will result in a number of dwelling units of subsidized housing, which when added to the then existing total number of dwelling units of subsidized housing in being or under construction in the Town of Natick, will exceed the number of dwelling units of subsidized housing required under Chapter 40B, Sections 20-23, General Laws, or (ii) place more than 25% of such total number of dwelling units of subsidized housing in any one quadrant as shown in the maps appearing hereafter, and as further described by line drawn along the center lines of State Route 27 and the Penn-Central Railroad tracks.

13) In granting a special permit, the Board of Appeals may impose such additional conditions and safeguards as public safety, welfare and convenience may require, either as recommended by any Town Board or Department, or upon its own initiative. Special permits issued hereunder shall lapse if no building permit issues within two years of the date of the special permit, unless the Board of Appeals, upon application, extends this time.

e) The application to the Board of Appeals for a special permit for subsidized housing under subsection VI E 2 d shall be accompanied by the following plans and supporting materials, copies of which also shall be submitted to the Planning Board.

1) Plan of the tract showing the existing topography at 2-foot contours, soil culture, existing streets and structures within and adjacent to the tract.

2) Where a subdivision of land is involved, a preliminary subdivision plan, which may be combined with the plan required under the preceding paragraph.

3) Site development plans showing the proposed grading of the tract and the proposed locations, dimensions, materials and types of construction of streets, drives, parking areas, walks, paved areas, utilities, usable open space, planting, screening, landscaping and other improvements and the locations and outlines of proposed buildings.

4) Preliminary architectural drawings for building plans including typical floor plans, elevations and sections, identifying construction and exterior finishes.

5) Financing plan describing the federal or state subsidy program, the

subsidizing agency, the estimated costs of land, site development, building, operation and maintenance and the planned approximate schedule of rents, leases or sale prices.

6) A tabulation of proposed buildings by type, size (number of bedrooms, floor area), ground coverage and a summary showing the percentages of the tract to be occupied by buildings, parking and other paved vehicular areas, and the usable open space.

7) Descriptive material providing information about the owner and developer, the developer's experience in building and eligibility as public, non-profit or limited dividend housing sponsor, evidence of preliminary approval under the subsidy program, the names of architect, engineer and landscape architect, if any, and other pertinent information.

f) The Planning Board shall review each application for a special permit for subsidized housing and shall submit in writing to the Board of Appeals its report and recommendations as to the appropriateness of the proposed development for subsidized housing, to include at least the following:

1) A general description of the tract in question and surrounding areas.

2) An evaluation of the probable impact of the proposed development on Town services and facilities.

3) The availability of permanent public open space in the immediate vicinity.

4) The proximity of the proposed development to public transportation, school, recreation facilities, neighborhood shopping and service facilities.

5) Whether the site is sufficiently separated from other subsidized housing and housing of equivalent rental value to achieve a desirable mix of income levels.

6) A determination from known or estimated land and site preparation costs whether or not such costs might render the proposed subsidized development uneconomic.

7) A review of the proposed development, including such aspects as the size of development (number of dwelling units) and density per acre, the arrangement or layout design of buildings and site improvements, the location and capacity of parking, the provisions for open space within the development, grading, landscaping and screening, the provisions for access, egress, and traffic within the development and on adjacent streets.

8) Whether or not, in the opinion of the Planning Board, the site, the proposed development layouts, the proposed number of housing units will constitute a suitable development compatible with the surrounding area.

9) Recommendations for the granting or denial of the special permit, including recommendations for modifications, restrictions or requirements to be imposed as a condition of granting the special permit.

g) The Board of Appeals shall not take any action on an application for a special permit for subsidized housing development until the Planning Board shall have submitted its written recommendations to the Board of Appeals or forty-five days have elapsed from the date of submission of the application. Where its decision differs from the recommendations of the Planning Board, the Board of Appeals shall state in its decision the reasons therefor.

h) The Board of Appeals may deny an application for special permit for subsidized housing and base its denial upon:

1) A failure to meet the standards established by sub-section VI E 2 d and/or e and/or f.

2) A finding that the proposed development would not be consistent with the general objective of SH district development.

3) A finding that the proposed development is not likely to result in a permanent increase in the number of dwelling units of subsidized housing in the Town.

i) Nothing contained herein shall in any way exempt a proposed subdivision in a SH district from compliance with the rules and regulations of the Planning Board, nor shall it in any way affect the right of the Planning Board to approve, with or without modifications, or disapprove a subdivision plan in accordance with the provision of such rules and regulations and of the subdivision control law.

j) Subsequent to a special permit granted by the Board of Appeals for subsidized housing development under the provisions of this section, and where applicable, the approval of a definitive subdivision plan by the Planning Board, minor revisions may be made from time to time in accordance with applicable laws, bylaws and regulations, but the development under such special permit shall otherwise be in accordance with the submission accompanying the developer's application for a special permit, except as modified by the decision of the Board of Appeals.

k) No section or subsection of the special permit procedure established herein for subsidized housing development shall be deemed severable from other sections or subsections of the special permit procedure for the construction of subsidized housing. In the event that any section or subsection of such procedure shall later be invalidated, whether by judicial decree or otherwise, all other provisions contained herein relating to the issuance of special permits for subsidized housing shall become inoperative, except that special permits previously issued by the Board of Appeals hereunder shall remain valid.

Quadrants of Town of Natick in accordance with Sub-section VI E 2 (d) (12) (ii)

". . . quadrant(s) . . . described by lines drawn along the center lines of State Route 27 and the Penn-Central Railroad tracks." (Art 1 S.T.M. 6/17/69, Art. 1 S.T.M. #1 1973 and Art. 83 A.T.M. 1973)

### 3. Variances.

To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this bylaw where, owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw, but not otherwise. The Board may impose limitations both of time and use and may require bonds, and a continuation of the permitted use may be conditioned upon compliance with the regulations to be made and amended from time to time thereafter.

The Board of Appeals shall establish procedures and shall conduct its hearings and meetings and give proper notice thereof consistent with the provisions of Chapter 40A or other provisions of the General Laws and of this bylaw. The Board of Appeals shall notify the Planning Board on all appeals, Special Permits, and variances submitted to said Board of Appeals at the time of the first notice of a public hearing for such study and report as the Planning Board may deem appropriate. All applications for appeals, Special Permits, or variances to the Board shall be made in writing on appropriate forms furnished by the Board. The Board shall, with the advice and assistance of the Building Inspector, maintain and keep up-to-date a map indicating thereon by approximate notations the locations of all actions whether approved or disapproved.

In all of its deliberations, the Board shall give due consideration to promoting the public health, safety, convenience and welfare, encouraging the most appropriate use of land and conserving property values, shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood, and shall,

whenever deemed advisable, prescribe appropriate conditions and safeguards in each case.

The Board of Appeals shall act on all matters within its jurisdiction under this bylaw in the manner prescribed by said Chapter and subject always to the rule that due consideration shall be given to conserving the public health, safety, convenience, welfare, and property values.

No appeal or petition for a variance, and no application for a Special Permit, which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by said Board within two years after the date of such unfavorable action except with the unanimous consent of all but one of the members of the Planning Board.

A special permit shall lapse within two years, including such time required to pursue or await the determination of an appeal referred to in the General Laws, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of permit for construction, if construction has not begun by such date, except for good cause. (Art. 61 A.T.M. 1968, Art. 70 A.T.M. 1971 & Art. 15 Fall A.T.M. 1984)

## **VI-EE PLANNING BOARD AS SPECIAL PERMIT GRANTING AUTHORITY**

There shall be a Special Permit Granting Authority consisting of the five (5) members of the Planning Board. The Chair, Vice Chair and Clerk of the Planning Board shall serve in a similar capacity with respect to its activities under this section. The Planning Board acting as a Special Permit Granting Authority shall adopt rules, not inconsistent with the provisions of these Bylaws and Chapter 40A of the General Laws for the conduct of its business hereunder.

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. (Art. 9, 1991 Fall ATM)

2- Associate Member:

(a) There shall be one Associate Member of the Planning Board who shall be elected to serve a term of five years.

(b) Within thirty (30) days after the Town is notified that this subsection is approved, or within thirty (30) days after this subsection becomes effective without action by the Attorney General, the Board of selectmen and the Planning Board, sitting together for such purpose, shall appoint the first Associate Member by majority vote of its membership, to serve until the next regular Spring Annual Election, at which time the appointment shall expire and the position shall thenceforward be filled by election. Notwithstanding the expiration of such appointment, the Associate Member so appointed shall continue to serve on any matter on which he or she was designated to serve until such matter is decided.

(c) In the event of a vacancy in the position of Associate Member the position shall be filled for a period ending at the next regular Spring Annual Town Meeting, in the same manner as in the case of the original appointment. In such case, election shall be for the balance of the unexpired term.

(d) The Chair of the Planning Board may require such Associate Member to be in attendance at special permit hearings, and may designate such Associate Member to sit on the Board for the purpose of acting on a special permit application, the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board, or in the event of a vacancy on the Board.

(Art. 9, 1991 Fall ATM)



## **VI-F PENALTY**

Any person violating any provisions of this bylaw, any of the conditions under which a permit is issued, or any decision rendered by the Board of Appeals or the Planning Board, may be fined not more than two hundred dollars for each offense. Each day that such violation continues shall constitute a separate offense. (Art. 25, Spring ATM, April 19, 2005)

Whoever violates any provision of these Zoning By-Laws, any of the conditions under which a permit is issued, or any decision rendered by the Board of Appeals or the Planning Board, the violation of which is subject to a specific penalty, may be penalized by a noncriminal disposition as provided in Massachusetts General Laws Chapter 40, Section 21D. A noncriminal disposition under this provision shall not preclude further judicial proceedings regarding continuing violation of the Zoning By-Laws beyond the date of said noncriminal disposition. (Art. 24, Spring ATM, April 19, 2005)

## **VI-G AMENDMENT**

Hearings. It shall be the duty of the Planning Board, upon petition signed by the owners of fifty percent in valuation of the property contained in the area of any entire block, and it may proceed upon its own initiative, to appoint and hold a public hearing, of which it shall give at least fifteen days published notice, for the consideration of amendments altering the boundaries of any district established by this bylaw, or the regulations applied to the same, or proposing the creation of new districts.

This bylaw may be amended from time to time in accordance with provisions of Section 6 of Chapter 40A, Massachusetts General Laws.

Reports. The Planning Board shall report to the Town its recommendations in regard to any proposed amendments to the bylaw that are brought before a Town Meeting for action.

## **VI-H VALIDITY**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

### **VI-I REPEAL**

These Zoning Bylaws and the repeal of all Zoning Bylaws heretofore in force shall not affect any act done, any right accrued, any penalty or liability incurred or any suit, prosecution or proceeding pending at the time they take effect.

### **VI-J EFFECTIVE DATE**

All Zoning Bylaws heretofore in force shall be repealed and these Zoning Bylaws shall become effective when the latter are approved and published as required by statute.