

SPECIAL PERMIT AND SITE PLAN REVIEW
RULES AND REGULATIONS

NATICK PLANNING BOARD

December 5, 1979
(with amendments through September 2000)

Special Permit and Site Plan Review
Rules and Regulations

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I. Introduction

The Town of Natick has adopted several zoning by-laws which allow increased flexibility in planning and developing parcels of land. The Planning Board has been designated as a Special Permit Granting Authority with the power to review and act on applications within the Highway Overlay Districts, which have been established as districts that overlay non-residential zoning districts abutting major arterial highways. There are two such overlay districts: the Regional Center (RC) district and the Highway Corridor (HC) district. Within these districts, there are the following underlying districts:

- Town House Cluster Development,
- Highway Mixed Use I, and
- Highway Mixed Use II.

The Planning Board has adopted these rules and regulations setting out the site plan review procedures and submission requirements in accordance with the above by-laws.

II. Purpose and Intent

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 substantial impact on the character of the Town and upon traffic, utilities, and property values therein.

Specific factors to be considered are the placement of buildings and utilities, surface and groundwater drainage, water supply, parking, loading, landscaping, lighting, dust and noise control, access to the developments, acceptable sanitary conditions, and the proper provision for open area. The site plan review procedure is intended to insure compliance with all applicable by-laws and statutes.

It is also designed to assist those wishing to build major 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 any permits.

It is the intent of the site plan review procedure that any Final Site Plan filed with the Planning Board shall receive the approval of such Board if said Plan conforms to the standards and criteria established and to these rules and regulations.

III. Application Procedure

A. Pre-Application Review

To promote better communication and to avoid misunderstanding, the applicant is encouraged, prior to preparation of a formal application, to meet with the Planning Board and Planning Director for general discussion, using the soil survey, topographic and drainage maps, and other data available from the Town. A list of

some of the materials available for inspection and use in the Community Development Office is included as Appendix C to these rules and regulations.

B. Application Form

Seven copies of a completed application shall be submitted to the Planning Board together with the application fee and seven sets of the plans and information described in Section IV.

An application for a Wireless Communications Facility shall also include the following:

1. A description of the free-standing tower and the technical, economic, and other reasons for the proposed location, height, and design;
2. A description of the capacity of the free-standing tower, ensuring that ANSI standards are met, including the number and type of panels, antenna, and/or transmitter receivers that it can accommodate and the basis for these calculations;
3. A color photograph or rendition of the proposed free-standing tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the free-standing tower and/or antenna from the nearest street or streets;
4. A visual study depicting “where within a three-mile radius any portion of the proposed tower could be seen”;
5. A statement of intent on whether excess space will be leased;
6. Proof of ownership of the proposed site or authorization to utilize it.
7. Confirmation that the free-standing tower complies with all applicable Federal and State standards;
8. If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health.

No application shall be considered complete and processed until all required materials are submitted.

Upon submission of a completed application to the Planning Board, the applicant shall forthwith submit a copy of said application to the Town Clerk.

C. Application Fee

For Site Plan Review: an amount equal to \$2,000 plus .05¢ per square foot of Gross Floor Area and/or \$100 per dwelling unit.

For Special Permit: an amount equal to \$200.
Additional mitigation may be required.
(as amended February 18, 1998)

D. Distribution Review

Within three business days or receipt of an application, the Planning Board shall forward copies of the plans to the following for review and comment:

- Board of Health
- Department of Public Works
- Conservation Commission
- Fire Department
- Police Department
- Building Inspector

The above shall submit such recommendations, as they deem appropriate to the Planning Board and the applicant. Failure of any such Board or agency to make recommendations within thirty-five days of receipt of said plans shall be deemed lack of opposition thereto.

E. Public Hearing

The Planning Board shall hold a Public Hearing within sixty-five days after the filing of an application. Notice of this Public Hearing shall be given in accordance with M.G.L. Chapter 40A, Section 11. It shall be the normal practice of the Board to allow time for review of plans by other Boards and agencies prior to the Public Hearing.

F. Action by Board

The Planning Board shall act within ninety days following a Public Hearing on an application. Failure to take final action upon an application within ninety days, following the date of Public Hearing, shall be deemed to be a grant of the permit applied for.

A vote of at least four out of the five members of the Planning Board shall be required for approval as specified in the M.G.L. Chapter 40A, Section 9, for Special Permit Granting Authorities.

The Planning Board 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 Planning Board shall state in detail wherein the plan does not conform with legal requirements. Reconsideration of applications and withdrawal of applications shall be in accordance with M.G.L. Chapter 40A, Section 16.

G. Right of Appeal

Any person aggrieved by a decision of the Planning Board may appeal to the Superior Court or to the Land Court in accordance with M.G.L. Chapter 40A, Section 11.

IV. Site Plan Requirements

A. Format and Scale

Paper size shall be 24" x 36". If necessary, the plan can be divided with a match line. If a plan exceeds two sheets, a cover sheet shall be provided with a key map. The scale of a site plan shall be from 1" = 1' to 1" = 40' as appropriate to the size of the proposal. No plan shall have a scale less than 1" = 40'.

B. Preparation

A site plan must be prepared by a registered Professional Engineer or Landscape Architect who has a current license to practice within the Commonwealth of Massachusetts. Property lines and other surveyor's work must be certified by a registered Land Surveyor currently licensed to practice within the Commonwealth of Massachusetts.

C. Content

As a minimum, a site plan must show the following:

1. A location plan showing all of the land in the parcel together with any adjacent or contiguous parcels in the same ownership and with such detail of adjacent properties and ways as will relate the subject premises to the neighborhood and street pattern within 1,000 feet (scale approximately 1" = 500' or 1" = 1,000');
2. Name of the development, north arrow, and date;
3. Boundary lines of development and names of adjoining owners;
4. Existing and proposed topography in two-foot contours;
5. Location and dimensions (including height) of all existing and proposed buildings and structures;
6. Location of any easements necessary (also include written copy);
7. Provisions for water supply, storm water drainage, sanitary sewage disposal, and other utilities;
8. Provisions for off-street parking and vehicular traffic, including all entrances, exits, and driveways;
9. Sidewalks and other facilities necessary for safe pedestrian movement within the parcel and to adjacent parcels;
10. Location and specification of all landscaping;

11. Location of all significant existing natural features, including all streams, watercourses, wetlands, rock outcrops, wooded areas, and trees over 12” in diameter;
12. Architectural drawings shall be provided for all buildings and structures proposed;
13. Such other plans and information as may be requested by the Planning Board or one of the designated reviewing Boards or agencies.

V. Site Plan Standards

The following performance standards shall be utilized by the Planning Board in addition to any specific standards prescribed elsewhere in these by-laws or in the Rules and Regulations of the Planning Board, 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 standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention, and/or innovation. However, the issues and concerns which they represent must be addressed to the satisfaction of the Planning Board 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 area. 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 surrounding properties.

B. Landscaping in Commercial Areas

The following regulations are intended to implement the general purpose and intent, as well as the objectives of the landscaping requirements of the Highway Overlay Districts. In addition, these rules and regulations are to be applied in all instances where commercial or industrial uses require good landscaping practices. The following provisions set forth a preferred form of arrangement of plantings.

1. Plantings in Buffer Strips and along Street Frontages

- a. At least one tree shall be provided per twenty-seven linear feet of street frontage or portion thereof. There shall be a minimum of three trees in the entire buffer strip. Trees may be evenly spaced or grouped. Groups of trees shall be spaced no further apart than fifty feet.
- b. At least four shrubs shall be provided per one hundred square feet of landscaped area in the buffer strip.

2. Opaque Screens

An opaque screen may be comprised of walls, fences, berms, shrubs, or evergreen plantings, or any combination thereof. Opaque screens shall be opaque in all seasons of the year. Opaque screens shall be required for developments adjoining or facing residential districts or residential uses, or when necessary for public safety or to prevent adverse impacts on neighboring properties.

- a. The screen shall be opaque from the ground to a height of between three to six feet when planted or installed.
- b. Walls or fences exceeding four and one-half feet in height shall have plantings on the side facing the residential district, and may be required to have plantings on both sides.
- c. Evergreen trees or shrubs shall be spaced not more than five feet on center.
- d. Ornamental or shade trees may be required in addition to an opaque screen, depending upon the type, size, and proximity of adjoining residential uses.

3. Landscaping within Off-Street Parking Areas

The following provisions set forth a preferred form of arrangement of landscaping within parking areas. Parking areas shall be broken into sections which shall be separated by landscaped buffers to provide visual relief. The buffers shall consist of a combination of divider islands and terminal islands.

- a. Parking area sections shall not exceed one hundred forty cars per section.
- b. Each landscaped island shall have a minimum area of one hundred fifty square feet and shall consist of pervious landscaping. Curbing, at least five inches in height, shall surround each landscaped island as protection from vehicles. No tree shall be planted so that its trunk is less than four feet from the curbing.
- c. The following additional design standards apply to divider islands:
 - i. At least one landscaped divider island shall be provided for every four parallel rows of parking.
 - ii. Trees shall be spaced not more than twenty-seven feet on center.
 - iii. At least one shrub shall be provided for every five linear feet, or one shrub per thirty-five square feet of ground area, whichever results in a greater number of shrubs.

- d. Terminal islands shall separate groups of parking spaces in a row, such that no group of adjoining spaces contains more than twenty-five parking spaces.
- e. As an alternative to separating groups of parking spaces with small internal terminal islands, additional landscaped area may be provided. Such additional landscaped area shall be provided as additional depth in the buffer strip (above the minimum depth otherwise required in these regulations) or as additional internal landscaped area within the parking area, and shall be provided at a ratio of at least 1.2:1.0 – that is, for every square foot of internal landscaped cross-island eliminated, an additional 1.2 square feet of landscaped area shall be provided elsewhere as additional buffer strip area or internal landscaping.
- f. Terminal islands at the ends or rows of parking spaces shall contain at least two trees.
- g. Landscaped terminal islands shall contain evergreen shrubs planted three feet or less on center, in order to prevent damage due to pedestrian traffic.
- h. Grass or ground cover may be substituted for shrubs in divider islands and terminal islands with the approval of the Planning Board.
- i. Increase of impervious areas: Notwithstanding the limitation on paved areas set forth elsewhere in these regulations, a landscaped island may contain up to thirty-three percent impervious surface, provided that all such area is used for pedestrian walkways and that such walkways are adequately buffered from the parking areas.

4. Standards for Plant Materials

- a. All trees, shrubs, and hedges must be species that are hardy in Plant Hardiness Zone 5, as defined by the American Standards for Nursery Stock and shall be resistant to salt spray and urban conditions where appropriate.
- b. Plantings shall be selected and designed so as not to require high water use for maintenance.
- c. Deciduous trees must be at least two and one-half to three inches caliper, six inches above the top of the root ball, at the time of planting; and must be expected to reach a height of at least twenty feet within ten years, when considering the species to be planted, and the expected normal growth patterns to be experienced.
- d. Evergreen trees must be at least eight feet in height at the time of planting and deciduous trees must be at least eight to ten feet in height at the time of planting.

- e. Shrubs and hedges must be at least three and one-half feet in height or have a spread of at least twenty-four inches at the time of planting

5. Pedestrian Walkways

Pedestrian walkways shall be at least six feet in width.

C. 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 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.

D. Open Space

All open space (landscaped and usable) 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.

E. 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.

F. 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 run-off or erosion on the site in question or on other sites. Insofar as possible, natural drainage courses, swales properly stabilized with plan 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.

G. Building Mounted Wireless Communication Facilities shall conform to the following:

- 1. Situated on a structure in such a manner that it is screened, and preferably not visible from abutting streets. All equipment shall be colored, molded, and/or installed to blend into the structure and/or the landscape;

2. Finished in a manner designed to be aesthetically pleasing and consistent with the exterior finish of such building or structure;
3. Mounted in such a manner that it does not obscure any architectural feature of the structure (including windows);
4. It shall not exceed ten feet above the level of the attachment thereof to the building;
5. It shall not extend more than ten feet below the top of the wall, or exterior surface of the building;
6. It shall not extend beyond the surface of any wall, or exterior surface, by more than eighteen inches;
7. It must be setback at a height-to-distance ratio of at least 1:1 from the exterior walls of the building;
8. Comprised of devices which do not, individually or in the aggregate, have a front surface area facing surrounding streets and adjacent properties that exceeds fifty square feet in area.

H. Utilities

The placement of electric, telephone, and other utility lines and equipment, such as water, sewer, or gas, shall be underground; and coordinated whenever possible. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated precisely on the plans.

I. Outdoor Lighting

1. Objectives

The regulation of outdoor lighting is intended to enhance public safety and welfare by providing for adequate and appropriate outdoor lighting, provide for lighting that will complement the character of the Town, reduce glare, minimize light trespass, and reduce the cost and waste of unnecessary energy consumption.

2. Applicability

The requirements of this section shall apply to outdoor lighting on lots and parcels in all districts but shall not apply to:

- a. One and two family dwellings on lots on which they are the principal use, and
- b. Street lighting, lights that control traffic or other lighting for public safety on streets and ways.

When an existing outdoor lighting installation is being modified, extended, expanded, or added to, the entire outdoor lighting installation on the lot shall be subject to the requirements of this section.

3. Terminology

In addition to the terms defined in Section 200, Definitions, of the Town of Natick Zoning By-Laws, the following words, which are technical terms applying to lighting, which are set forth below, shall have the meaning indicated below. Although set forth here for convenience, the terms shall have the same effect as if set forth in Section 200, Definitions.

Color Rendering Index (CRI): A measurement of the amount of color shift that objects undergo when lighted by a light source as compared with the color of those same objects when seen under a reference light source of comparable color temperature. CRI values generally range from 0 to 100, where 100 represents incandescent light.

Cutoff Angle: The angle formed by a line drawn from the direction of the direct light rays at the source with respect to the vertical, beyond which no direct light is emitted.

Direct Light: Light emitted from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture: The assembly that houses a lamp or lamps, and which may include a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor, lens, or diffuser lens.

Fully-Shielded Luminaire: A lamp and fixture assembly designed with a cutoff angle of 90°, so that no direct light is emitted above a horizontal plane.

Glare: Light emitted from a luminaire with an intensity great enough to produce annoyance, discomfort, or a reduction in a viewer's ability to see.

Height Of Luminaire: The vertical distance from the finished grade of the ground directly below to the lowest direct light emitting part of the luminaire.

Indirect Light: Direct light that has been reflected off other surfaces not part of the luminaire.

Lamp: The component of a luminaire that produces the actual light.

Light Trespass: The shining of direct light produced by a luminaire beyond the boundaries of the *lot or parcel* on which it is located.

Lumen: A measure of light energy generated by a light source. One foot candle is one lumen per square foot. For these purposes, the lumen output shall be the initial lumen output of a lamp, as rated by the manufacturer.

Luminaire: A complete lighting system, including a lamp or lamps and a fixture.

4. Lighting Plan

Wherever outside lighting is proposed, every application for a building permit, a special permit, a special permit with site plan review, a variance, or an electrical permit, shall be accompanied by a lighting plan which shall show:

- a. The location and type of any outdoor lighting luminaires, including the height of the luminaire;
- b. The luminaire manufacturer's specification data, including lumen output and photometric data showing cutoff angles;
- c. The type of lamp such as: metal halide, compact fluorescent, high pressure sodium;
- d. A photometric plan showing the intensity of illumination at ground level, expressed in foot candles; and
- e. That light trespass onto any street or abutting lot will not occur. This may be demonstrated by manufacturer's data, cross section drawings, or other means.

5. Control of Glare and Light Trespass

Any luminaire with a lamp or lamps rated at a total of more than 2,000 lumens shall be of fully shielded design and shall not emit any direct light above a horizontal plane passing through the lowest part of the light emitting luminaire.

All luminaires, regardless of lumen rating, shall be equipped with whatever additional shielding, lenses, or cutoff devices are required to eliminate light trespass onto any street or abutting lot or parcel, and to eliminate glare perceptible to persons on any street or abutting lot or parcel.

Paragraph D. above shall not apply to any luminaire intended solely to illuminate any freestanding sign or the walls of any building but such luminaire shall be shielded so that its direct light is confined to the surface of such sign or building.

6. Lamp Specifications

Lamp types shall be selected for optimum color rendering as measured by their color rendering index (CRI), as listed by the lamp manufacturer. Lamps

with a color rendering index lower than 50 are not permitted. This paragraph shall not apply to temporary decorative lighting which may include colored lamps, such as holiday lighting.

7. Hours of Operation

Outdoor lighting shall not be illuminated between 11:00 P.M. and 6:00 A.M. with the following exceptions:

- a. If the use is being operated, such as a business open to customers, or where employees are working or where an institution or place of public assembly is conducting an activity, normal illumination shall be allowed during the activity and for not more than one half hour after the activity ceases;
- b. Low level lighting sufficient for the security of persons or property on the lot may be in operation between 11:00 P.M. and 6:00 A.M., provided the average illumination on the ground or on any vertical surface is not greater than 0.5 foot candles.

8. Special Permits

In accordance with Sections VI-DD. 2.b) 2 and Section 329, the Special Permit Granting Authority (SPGA), may grant a Special Permit modifying the requirements of this Section, provided it determines that such modification is consistent with the objectives set forth in paragraph A., in the following cases:

- a. Where an applicant can demonstrate, by means of a history of vandalism or other objective means, that an extraordinary need for security exists;
- b. Where an applicant can show that conditions hazardous to the public, such as steep embankments or stairs, may exist in traveled ways or areas;
- c. Where a minor change is proposed to an existing non-conforming lighting installation, such that it would be unreasonable to require replacement of the entire installation;
- d. Where it can be demonstrated that for reasons of the geometry of a lot, building, or structure, complete shielding of direct light is technically unfeasible.

J. Advertising

All signs and advertising devices shall be in conformance with Section V-H of these by-laws. All signs and outdoor advertising features shall be reviewed as an integral element in the design and planning of all development on the site.

K. Other Site Features

Exposed storage areas, exposed machinery installation, service area, 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 there being a hazard or being visually incongruous with the existing or contemplated environment and the surrounding properties.

L. Safety

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

VI. Criteria for Approval

A. General Criteria for Approval

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

1. Compliance with all provisions of the Zoning By-Laws;
2. Protection of adjoining premises against seriously detrimental or offensive uses on the site;
3. Convenience and safety of vehicular and pedestrian movement on the site and in relation to adjacent streets and properties, and for the location of driveway openings in relation to street traffic;
4. Adequacy of the methods of disposal of wastes;
5. Protection of significant features on the site and in adjacent areas insofar as consistent with the purposes of these by-laws.

B. Criteria for Town House Cluster Plans

Approval of the application for a Special Permit to allow the construction of a Town House Cluster Development shall be granted only upon Planning Board determination that the plan is superior to a conventional subdivision plan. The following criteria shall be used to make the determination as to whether or not the plan is superior; the preservation of open space for conservation and/or recreation; the protection of historical or other significant features; more efficient provision of street, utilities, and other public services. Specific means of achieving these objectives include:

1. Avoidance of frequent driveway openings onto through streets, or near street intersections;
2. Avoidance of extensive topographic change necessitating vegetation and tree removal;
3. Preservation of scenic views from public ways;

4. Preservation of natural landscape in large contiguous areas which are visible from roadways and residences, enhancing the likelihood of the existing ecosystems;
5. Use of Preserved Open Space to protect natural environments such as stream valleys, ponds, outstanding vegetation, or scenic spots;
6. Avoidance of access via existing minor streets servicing single-family homes, especially where Town Houses are sited.

VII. General Requirements

A. Term of Approval

Unless specified otherwise by the Natick Zoning By-Laws, any Special Permit granted by the Planning Board shall lapse within one year from the grant thereof if a substantial use thereof has not sooner commenced. However, the Planning Board may grant an extension of such approval when they determine there is good cause for any delay in the use of the Special Permit.

B. Certificate of Occupancy and 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 its related facilities, substantially conform to the approved Final Site Plan. The applicant shall submit to the Building Inspector 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.

C. Certificate of Completion

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 certifications shall be conclusive for all purposes.

D. Outside Consultants

1. When reviewing an application for a Special Permit approval, the Board may determine that the assistance of outside consultants is warranted due to the size, scale, or complexity of a proposed project or because of a project's potential impacts. The Board may require that applicants pay a "review fee", consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of an application. The aforementioned application review should preferably take place at an informational preliminary presentation to the Board prior to the formal filing of an application.

2. In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers, or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. The Board shall inform an applicant as to the type of consultants it desires to hire, and the amount of review fees that will be initially required, at the time of the informational preliminary presentation to the Board, should one take place or at the time of filing the application; such fee shall be paid as part of the application fee. However, the Board may hire additional consultants and/or require additional review fees should it determine at anytime during the hearing that such consultants and/or additional fees are required to cover the costs which may arise as a result of review of the application before the Board. Failure of the applicant to pay such fees may result in denial of the approval sought.
3. Funds received by the Board pursuant to this section shall be deposited with the Treasurer of the Town who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the issuance of a special permit.
4. Review fees may only be spent for services rendered in connection with the specific project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or to the applicant's successor in interest. A final report of said account shall be made available to the applicant or to the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest and entitlement to repayment of such excess amount.
5. An applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be filed within ten days after the Board informs the applicant of its selection. Such appeal must be in writing, with a copy thereof filed with the Planning Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

E. Conditions for Approval and Limitations Governing Resale

A development plan approved by the Planning Board under the provisions of Section III-A.6 of the Zoning By-Laws should have conditions added to the approval decision. Proposed conditions and a proposed program for discussion are as follows:

1. Affordable IHOP units shall be designated and shall be dispersed throughout the development. The IHOP units shall at least be equal in quality, style, construction, and cost to the average unit in the development.
2. In the event the development only provides one IHOP unit, such unit shall be made available on a preferred basis to both employees and residents of the Town of Natick, who shall be equally eligible to submit their applications for consideration as the selected purchaser.
3. In the event there are multiple IHOP units available, then the following procedure shall apply: The first IHOP unit available for sale shall be first offered to employees of the Town of Natick who qualify under the guidelines. The second affordable unit shall be first offered to residents of the Town of Natick who qualify. The third and subsequent unit(s) shall be offered sequentially in the same alternative preference arrangement to Town Employees and Town residents. In the event a unit designated for either of such categories has no potential buyers from that category, then applicants from the other of such preference categories shall be first considered as purchasers before consideration shall be given to anyone in the general public who qualifies.
4. Preferences given in accordance with the foregoing shall be made available for a period of six months from the date a building permit is taken out for the construction of an IHOP unit. The developer shall fund the cost of advertising the availability of such IHOP unit and advising potential purchasers how and where to apply for consideration. Advertisements shall be as required by the Planning Board in a newspaper of general circulation, and shall also be posted in the Town Hall. Only one preference shall be given to persons who are both residents and work in the Town of Natick. Natick residency status shall be given to a person who has been a resident for at least one year within the previous five years. Such preference shall not be given if prohibited by, or to the extent prohibited by, a federal or state agency under a financing or other subsidy program under which the dwelling unit was constructed, or under which the potential purchaser is to receive financing.
5. Applications for purchase shall be made to the Planning Board, and shall be identified by date when received. The Planning Board shall determine qualifications of potential purchasers, compliance with the terms of the by-law and with its rules and regulations. Potential candidates shall be selected by lottery or other like procedure. After the first selected candidate is qualified, such candidate will be permitted to negotiate for the purchase of the available IHOP unit directly with the developer.

6. Once and initial purchaser negotiates a purchase arrangement, the developer shall submit the proposed purchase and sale agreement, and the proposed form of deed to be used, to the Planning Board for determination of compliance with all conditions of approval of the special permit and the terms of the by-law. Once approved, neither the purchase and sale agreement nor the deed may be altered without obtaining the consent of the Planning Board.
7. The developer shall submit three appraisals of fair market value, from independent appraisers approved by the Planning Board, of each unit to be sold under the IHOP program. The Planning Board shall consider these appraisals in determining the average fair market value of the unit to be sold, and the discount that the actual agreed upon selling price obtained by the initial purchaser of such unit bears to such fair market value – expressed as a percentage (the “IHOP Discount”).
8. When the owner of an affordable IHOP unit desires to sell such unit, such owner shall be required to obtain a confirming special permit from the Planning Board. No fees shall be required. Such proceeding shall be for the purpose of assuring that the provisions of the Zoning By-Laws and the conditions of the decision approving the creation of such unit are followed. At the hearing to obtain such special permit, the seller shall be required to submit the proposed purchase and sale agreement to be used, the proposed form of deed, and three appraisals from independent appraisers approved by the Planning Board of the then present market value of such unit. The maximum price at which such unit may then be sold shall be the average market value then prevailing for such unit, less the IHOP Discount. Notwithstanding the foregoing, the maximum resale price so calculated may not exceed the then current limits for acquiring the particular IHOP unit under any applicable state or federal financing program under which the unit is to be purchased, if it is to be so purchased. The special permit decision shall include a procedure to select eligible purchasers who qualify under the by-law as low/moderate income households.
9. On the occasion of each resale of an IHOP unit in the same six months, preference shall be given to Town employees and Town residents as was available on the occasion of the original sale of such unit.
10. Notice of any proposed resale of an IHOP unit shall be given to the Natick Housing Authority, who shall have a right of first refusal for a period of thirty days from the date of first offering for sale, to purchase such unit at the maximum resale price calculated in accordance with the foregoing.
11. Following the special permit decision granting permission for a resale, should the Natick Housing Authority not purchase such IHOP unit and should an eligible purchaser for the IHOP unit not be located within a period of one hundred twenty days from the effective date of such decision, the Planning Board shall proceed to remove the resale restriction by issuing an appropriate

release certificate in accordance with the procedure provided for at the end of the forty year restriction period.

12. Ninety days prior to the end of the forty year restriction period mentioned in the original deed for an IHOP unit, the then owner of the IHOP unit (in the event such unit has not be purchased by the Natick Housing Authority) shall apply for a special permit from the Planning Board for the purpose of either: (a) requesting an extension of the restriction on resale for another forty year period, or (b) removing the resale restriction by issuing an appropriate release certificate. If the subject matter of the special permit proceeding is to extend the resale restriction, the applicant shall not be required to pay any fees and shall propose documents for approval by the Planning Board to accomplish such purpose. If the subject matter of the special permit proceeding is to remove the resale restriction, then the Planning Board shall determine the value of the IHOP Discount then prevailing in the manner indicated above. In order to enable it to do so, the owner shall provide the Planning Board with three appraisals of market value from independent appraisers approved by the Board. Any release certificate issued in accordance with a special permit decision shall provide for payment by the then owner of the IHOP unit for the dollar value representing the IHOP Discount. The Planning Board may require payment in cash should refinancing be possible. It may alternatively accept a note secured by a mortgage for such amount, or it may make any other arrangement which secures for the Town the monetary value representing the then IHOP Discount. The money so obtained by the Planning Board for the Town shall be applied by the Board for the purpose of increasing the supply of affordable housing available in the Town in accordance with the intent and purposes of Section III-A.6.
13. In the event that a holder of a mortgage on the IHOP unit conducts a foreclosure or other proceeding enforcing its rights under the mortgage and the IHOP unit is sold for a price in excess of the greater of: (a) the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the holder is entitled to recover pursuant to the terms of the mortgage, and (2) the maximum permitted resale price to low/moderate income households applicable on the date of the foreclosure sale (which shall be determined by the Planning Board in the manner as indicated above in connection with the removal of the restriction on resale); such excess shall be paid to the Planning Board. The money so paid to the Planning Board for the Town shall be applied by the Board for the purpose of increasing the supply of affordable housing available in the Town.

F. Conditions of Deed

The form of deed to be used for the initial sale of each affordable IHOP unit shall contain the following provisions, as special provisions:

1. The deed shall make reference to the special permit decision of the Planning Board that permitted the creation of the IHOP unit, and that decision shall be recorded.
2. The IHOP unit shall only be occupied and used as a single-family residential unit. No business, except permitted home occupations, shall be conducted from such unit. The IHOP unit shall not be used for rentals.
3. A forty year restriction (from date of first sale) on the resale of such IHOP unit providing that such IHOP unit shall be available for repurchase during such period only by those who qualify under the terms of the special permit issued by the Planning Board on the occasion of the first sale.
4. Resales of such IHOP unit during the forty-year restriction period shall be made only under a special permit to be obtained from the Planning Board authorizing each such subsequent sale. The purpose of such proceeding shall be for the Planning Board to authorize the procedure to be followed to obtain a qualified purchaser and to determine, from evidence that is submitted by the reseller, whether compliance with the provisions of the IHOP By-Law and the conditions in the Planning Board decision authorizing the prior sale, have been met.
5. Sale of any IHOP unit subsequent to the end of the forty-year period, or sale as a market rate unit at any time permitted, shall be in accordance with the Rules and Regulations of the Natick Planning Board adopted from time to time.