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ANNUAL TOWN MEETING,

pending approval by the Attorney General

ZONING BY-LAW

OF THE

TOWN OF LEXINGTON, MASS

Adopted June 4, 1968, under Article 10 of the Warrant for the June 3, 1968 Special Town Meeting and approved by the Attorney General on July 16, 1968, and posted in the six precincts on September 16, 1968. This was a reenactment and continuance of the Zoning By-Law, originally adopted at the Adjourned Town Meeting on March 17, 1924, approved by the Attorney General on April 8, 1924, and published on April 18, 25, and May 2, 1924, and including all amendments in the period 1924 to 1968 including a major revision in 1950. Subsequent amendments in 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990 and 1991 as adopted, approved and published have been incorporated.

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SECTION 1. PURPOSE, DISTRICTS, AUTHORITY

1.1 PURPOSE

For the purposes set forth in Section 2A of Chapter 808 of the Acts of 1975, and all acts in amendment thereof and in addition thereto, and under the authority thereof, the uses of land, including wetlands and lands deemed subject to seasonal or periodic flooding; the size, height, bulk, location and use of structures, including buildings and signs; noxious uses; areas and dimensions of land and bodies of water to be occupied or unoccupied by uses and structures, courts, yards and open spaces; the density of population and intensity of use; the relationship between land development and traffic congestion; accessory facilities and uses, such as vehicle parking and loading, landscaping and open space; and the development of the natural, scenic and aesthetic qualities of the Town of Lexington are hereby regulated as herein provided.

1.2 DIVISION OF THE TOWN INTO ZONING DISTRICTS

In order to carry out the purposes of this By-Law, the Town of Lexington is divided into zoning districts, as specified hereinafter.

1.2.1 APPLICABILITY

Every parcel of land and every building or other structure in the town shall be in a zoning district, and except as otherwise provided by law or by this By-Law, shall be subject to the regulations, restrictions, and requirements specified for the zoning district in which it is located.

Zoning districts are hereby established as shown on a map entitled "Zoning Map of the Town of Lexington Mass." (hereinafter referred to as the Zoning Map) or as hereafter amended. The Zoning Map by this reference and all boundaries, notations, and other data shown thereon, are made as much a part of this By-Law as if fully described in detail herein.

Any change in the location or boundaries of zoning districts shall be by the same procedure as amendment to the text of the Zoning By-Law.

1.2.2 CLASSES OF DISTRICTS

There shall be three classes of districts as follows:

Symbol	Title
--------	-------

A. Standard Districts

Residential Districts

RO	One Family Dwelling
RS	One Family Dwelling
RT	Two Family Dwelling
RM	Multi-Family Dwelling

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Commercial Districts

- CN Neighborhood Business
- CRS Retail Shopping
- CS Service Business
- CB Central Business
- CLO Local Office
- CRO Regional Office
- CM Manufacturing

B. Planned Development Districts

- RD Planned Residential Development
- CD Planned Commercial Development

The development standards for each planned development district are different and are set forth in the preliminary site development and use plan voted by the Town Meeting for each such district. Such standards are on file in the office of the Town Clerk.

C. Overlay Districts

- WP Wetland Protection
- NFI National Flood Insurance

Each such zoning district may be designated in this By-Law or on the Zoning Map by its symbol only.

1.2.3 DESCRIPTION, PURPOSE OF DISTRICTS

RESIDENTIAL DISTRICTS

Each of the residential districts is intended to secure for residents a pleasant environment retaining as many natural features as possible and secure from the intrusion of incompatible and disruptive activities that belong in other zoning districts.

- RO ONE FAMILY DWELLING:
- RS ONE FAMILY DWELLING: are intended to be districts with a low density of development providing housing for families with children and small households with related public and institutional uses.
- RT TWO FAMILY DWELLING: is intended to be a district with a low density of development providing housing for both families and small households and opportunities for both ownership and rental.
- RM MULTI-FAMILY DWELLING: is intended to be a district with a higher density of development providing dwelling units in apartment buildings principally for small households desiring rental accommodations. The district describes multi-family developments approved by the Town Meeting prior to 1980. It is not intended that new RM districts will be added but that the RD, Planned Residential district will be used instead.
- RD PLANNED RESIDENTIAL DEVELOPMENT: is intended to be a district with a higher density of development providing housing in dwelling units or group quarters for families or small

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households or single persons in a variety of types of housing, all in a planned setting for which the approval of the Town Meeting is obtained.

COMMERCIAL DISTRICTS

CN NEIGHBORHOOD BUSINESS: is intended to be a district with a low intensity of development for small establishments, oriented to one or more nearby neighborhoods, which provide a few services and convenience goods that are purchased frequently and require a minimum of consumer travel. The range of goods and services offered should not be so broad as to attract substantial trade from outside the neighborhood. Due to the location of CN districts adjacent to residential areas, development should be small in scale and architecturally compatible with nearby residential buildings.

CRS RETAIL SHOPPING: is intended to be a district with a low intensity of development for establishments offering a variety of goods and services, serving the whole, or large sections of, the town. Development in the CRS district is best achieved by a group of stores in a building developed and managed as a unit served by a common parking area so as to comprise an efficient and architecturally integrated shopping area. In some cases, individual establishment separate lots, which are not part of a larger shopping complex, may occur in the CRS district.

CS SERVICE BUSINESS: is intended to be a district with a low intensity of development for: establishments providing certain types of business services; for the shops and yards of local tradesmen providing building construction and repair services primarily for the residents and small businesses in the town; or automotive services necessary for the residents of the town which may not be compatible with uses permitted in other districts. The pattern of development generally is individual establishments on separate lots, each with its own off-street parking. Frequent automobile turning movements off and on abutting arterial streets are anticipated and must be regulated.

CB CENTRAL BUSINESS: is intended to be a district with a medium intensity of development for establishments and institutional uses offering a wide variety of goods and services. The CB district is intended to recognize and enhance the role of Lexington Center as the focus of civic, cultural, retail and service activity in the town. Its contribution to the history, culture and image of the town requires special development standards not appropriate for other locations in the town.

A compact and more intensive development oriented to pedestrians and people entering several businesses, public or institutional uses is anticipated. Most off-street parking will be in a few larger lots serving a variety of uses. Mixed-use development is appropriate. Uses which interrupt the continuity of the pedestrian circulation and shopping patterns are discouraged.

CLO LOCAL OFFICE: is intended to be a district with a medium intensity of development for offices and related services that are oriented primarily to residents of the town and other businesses in the town but not to a regional clientele. In some locations, the proximity to adjacent residential areas, or the re-use of buildings originally constructed as dwellings, may warrant special design controls in the CLO district that insure retention of a residential scale and the use of exterior building materials characteristic of residential construction.

CRO REGIONAL OFFICE: is intended to be a district with a higher intensity of development for offices and related services appropriate for larger companies oriented primarily to a regional clientele. Buildings are assumed to be placed in an open, park-like or campus setting.

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- CM MANUFACTURING:** is intended to be a district with a low intensity of development for the manufacture, assembly, processing or handling of materials, subject to certain performance standards, which are incompatible with and need to be well separated from residential, institutional or certain business uses.
- CD PLANNED COMMERCIAL:** is intended to be a district to permit considerable flexibility in the development of land for commercial or mixed-use purposes without predetermined standards. The CD district procedure is intended to permit the Town Meeting to approve development standards unique to a particular location and not applicable to other locations in the town. Where land not now zoned for commercial development is proposed for new commercial development, it is intended that the CD procedure be used rather than rezoning to one of the standard commercial zoning districts.

1.2.4 PREPARATION OF THE ZONING MAP

The official Zoning Map of the Town of Lexington shall be prepared by the Planning Board and shall be on file in the office of the Town Clerk and in the office of the Planning Board. The Planning Board may also prepare and print "Zoning District Maps" showing the boundaries of districts at a larger scale and on individual sheets which shall also be as much a part of this By-Law as the Zoning Map. The Zoning Map and the Zoning District Maps may be revised, from time to time, by the Planning Board as amendments to the Zoning Map are voted by the Town Meeting. Both the Zoning Map and the Zoning District Maps may include geographical features, streets, notations and such other information as the Planning Board may add to keep the maps reasonably current and to facilitate orientation.

1.2.5 BOUNDARIES OF OVERLAY DISTRICTS

Wetland Protection Districts WPD are shown on maps entitled "WETLAND PROTECTION DISTRICTS, LEXINGTON, MASSACHUSETTS - 1973" consisting of an index sheet and 12 sheets entitled Zoning District Maps numbered W-1, W-2, W-5, W-6, W-7, W-8, W-12, W-13, W-26, W-32, W-33 and W-39.

The National Flood Insurance Districts NFI are as defined in the HUD Flood Insurance Study and as shown on maps entitled "Flood Boundary and Floodway Map, Town of Lexington, Massachusetts, effective June 1, 1978" or as duly amended from time to time thereafter and "Flood Insurance Rate Map, Town of Lexington, Massachusetts, effective June 1, 1978" or as duly amended from time to time thereafter which maps are on file with the Town Clerk.

1.2.6 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES

The boundaries between zoning districts are as shown on the Zoning Map and on the Zoning District Maps. In the event of any difference between the boundary of a zoning district as shown on the Zoning Map or the Zoning District Maps and the perimeter description set forth in the vote of the Town Meeting establishing or amending said boundary, the vote of the Town Meeting shall govern. Where uncertainty exists with respect to the boundaries of the various zoning districts as shown on the Map, the following rules shall apply:

- a. Where the boundary is indicated as a street, highway, railroad right-of-way, or utility easement, the boundary shall be the center line of the street, highway, railroad right-of-way, or utility easement.
- b. Where the district boundary is indicated as approximately parallel to a street, highway, railroad right-of-way, or utility easement, the boundary shall be taken as parallel thereto and, unless otherwise indicated, 100 feet from the center line thereof.
- c. Where the district boundary is indicated as following a water course, the boundary shall coincide with the center line thereof as said center line existed as of the effective date of this By-Law of any amendment to the Zoning Map applicable to that water course.

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- d. Where the district boundary is indicated as following the shore line of a body of water (such as a pond), or of a contour line, the boundary shall be the elevation above the datum mean sea level of such body of water, or contour, and shall be labelled el. _ with the elevation of the Zoning Map, such as el. 150. If the elevation is not labelled, it shall be as shown on the U.S. Geological Survey Map, Lexington quadrangle of 1971 and Concord quadrangle of 1958, and if the elevation is not indicated on the USGS map, the boundary shall be the water line, or contour line, as shown on the photogrammetric maps of the Town prepared by the James W. Sewall Company in 1972.
- e. Where the district boundary is designated as approximately following a lot line, such line shall be construed to be the boundary, and shall be labelled L.L. on the Zoning Map.
- f. Where the district boundary is indicated as the extension of another district boundary line, the boundary shall be the straight line extension thereof.
- g. In cases not covered by subparagraphs a. through f. above, the locations of the district boundaries shall be determined by the distances, if given, from other lines or features on the Zoning Map, or, if distances are not given, then by the scale of the Zoning Map.

If, after the application of the rules set forth in paragraphs a through g, uncertainty still exists with respect to the boundaries of a district, the Zoning Officer shall make a determination after first seeking an advisory opinion from the Planning Board.

1.3 AMENDMENTS

All amendments to these By-Laws shall be made in a manner conforming with Section 5 of Chapter 40 A of the General Laws. Petitions for rezoning to the RM, RD or CD district and a development proposal pursuant to Section 9.3 presented to the 1985 Annual Town Meeting may be voted by the Town Meeting and comply with the Zoning By-Law as it was in effect in January, 1985. Any building permit or special permit, which was properly issued between January 17, 1991 and April 1, 1991, and which might otherwise be subject to the amendments dealing with off-street parking requirements, which were approved by Article 31 of the 1991 Annual Town Meeting, shall comply with the Zoning By-Law as it was in effect in December, 1990.

1.4 VALIDITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision hereof.

1.5 OTHER BY-LAWS

Where this By-Law imposes a greater restriction upon the use of land or the use or erection of buildings in the Town than is imposed by other By-Laws of the Town, the provisions of this By-Law shall control.

1.6 CONTINUITY OF BY-LAW

This By-Law shall be deemed to constitute a reenactment and continuance of the provisions of the Zoning By-Law in effect when it was adopted except so far as it contains changes in wording or arrangement which unequivocally constitute changes in meaning.

SECTION 2. DEFINITIONS

For the purpose of this By-Law the following words and terms used herein are hereby defined or the meaning thereof explained or limited:

The word "shall" is mandatory, the word "may" is permissive. The present tense includes the future tense, the singular number includes the plural and the plural includes the singular.

ACCESSORY APARTMENT: A second dwelling unit located within a structure constructed as a detached one family dwelling, subordinate in size to the principal unit and separated from it in a manner that maintains the appearance of the structure as a single family house.

ACCESSORY BUILDING OR USE: A building or use which is subordinate and customarily incidental to the principal building or use and is located on the same lot; except that activities necessary in connection with scientific research or scientific development or related production may be on another lot if a special permit is granted.

APARTMENT BUILDING: Same as "MULTI-FAMILY DWELLING"

ownings

BANK: Land adjoining a pond or stream which serves to confine said water.

BASEMENT: A space in a building which is partly below and partly above the level of the adjoining ground and having at least one-half of its floor-to- ceiling height above the average level of the adjoining ground.

BED AND BREAKFAST HOME: A private owner-operated dwelling unit where three or fewer bed and breakfast units (See Definition) are let, and a breakfast is included in the rent, as an accessory use, in which accommodations are available for overnight. See Section 5.5.

BED AND BREAKFAST UNIT: A rental guest unit in a bed and breakfast home (See Definition and Section 5.5) consisting of one bedroom and an adjoining bathroom, if provided.

BEDROOM: A private room, however named, planned, intended or used for sleeping, and separated from other rooms by walls and a door.

BILLBOARD: Any sign not an accessory sign, regardless of size.

BOARDER: Same as "ROOMER" although a distinction may be made that a boarder is a person who receives meals as part of the rent.

BUILDING: A combination of materials having a roof and forming a shelter for persons, animals or property. The word "building" shall be construed, where the context allows, as though followed by words "or structure or part or parts thereof."

BUSINESS DISTRICT: Same as "COMMERCIAL DISTRICT"

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CAMPING VEHICLE: A registered self-propelled camper or automobile-drawn trailer used as a mobile camping facility, with sleeping equipment, which may or may not have toilet or cooking facilities.

CELLAR: A space in a building which has less than one-half of its floor-to-ceiling height above the average level of the adjoining ground.

CERTIFICATE OF OCCUPANCY: The certificate issued by the Building Commissioner which permits the use of a building in accordance with approved plans and in compliance with the Zoning By-Law.

COMMERCIAL DISTRICT: Any district in Lexington whose designation begins with the letter "C". This shall not include portions of residential districts where businesses are allowed as nonconforming uses, by special permit, by variance, or otherwise.

COMMERCIAL VEHICLE: A registered motor vehicle used for business purposes which: has advertising or the logo of a business displayed, or has equipment or tools used for business purposes visible on the outside of the vehicle, or has commercial registration plates, or has a gross vehicle weight rating of 5,000 pounds or more. An automobile, van, pick-up truck or recreational vehicle which has commercial registration plates or a gross vehicle weight rating of 5,000 pounds or more will not be considered to be a commercial vehicle if it does not have advertising or equipment or tools visible on the outside of the vehicle.

CLUSTER SUBDIVISION: A planned residential development in which buildings are constructed on lots in one or more groups separated from adjacent property and other groups of buildings by intervening open land. The density, dimensional standards or types of buildings permitted may vary from those otherwise permitted or required.

CONGREGATE LIVING FACILITY: A non-institutional, shared living environment which integrates shelter and service needs of functionally impaired and/or socially isolated older persons who are otherwise in good health and can maintain a semi-independent life style and who do not require constant supervision or intensive health care as provided by an institution. Each resident has his/her own bedroom and may have a separate living room, kitchen, dining area, or bathroom, and may share living, dining and bathroom facilities with other older persons, such as in a common dining facility.

CONVENTIONAL SUBDIVISION: The division of a tract of land into two or more lots complying with the dimensional standards set forth in this By-Law, accompanied by the construction of certain public facilities, in accordance with Chapter 41, Section 81K - 81GG, MGL, "The Subdivision Control Law," and the Planning Board's "Development Regulations".

DAY CARE CENTER: Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives seven or more children not of common parentage under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents; and as further described in Chapter 28A, §9. M.G.L., as amended. (See also FAMILY DAY CARE HOME)

DEVELOPABLE SITE AREA: That part of a lot which remains after subtracting land that is not available and suitable for the construction of a structure or other man-made improvements, subject to Section 7.9.

DEVELOPMENT REGULATIONS: The document adopted, and amended from time to time by the Planning Board, containing various regulations, procedures, standards and fees for actions which the Planning

SECTION 2. DEFINITIONS

Board uses in dealing with subdivision control, zoning and other matters relative to residential and commercial development in Lexington.

DRIVE-IN RESTAURANT: An establishment primarily for dispensing prepared food to persons who eat this food while sitting in cars on the premises.

DRIVEWAY: An area on a lot which: is for the passage of motor vehicles (and not for storing or standing of such vehicles except where serving four or fewer parking spaces), has an all-weather surface, provides access and egress to and from a street, or interior drive, and leads to or from a parking space or loading bay (or their related maneuvering aisle).

DWELLING: A structure, or part of a structure, which: 1) is designed or used primarily for human habitation; 2) contains one or more dwelling units; and 3) is capable of separate ownership.

Structural Characteristics of Dwellings:

ONE-FAMILY DETACHED DWELLING: A dwelling which is not attached to any other dwelling by any means and is surrounded by open space or yards on all sides.

SEMI-ATTACHED DWELLING: A building containing two dwelling units which are attached to each other by a common vertical wall, each dwelling unit having open space or yards on three sides and each dwelling unit having direct access to the ground.

TWO-FAMILY DWELLING: A building containing two dwelling units, with one of the dwelling units all, or partially, on a story above the other (as contrasted with a semi-attached dwelling).

TOWN HOUSE: A building containing three or more dwelling units in a row in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, and each dwelling unit is separated from any other dwelling unit by one or more party walls.

THREE-FAMILY DWELLING: A building containing three dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

FOUR-FAMILY DWELLING: A building containing four dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

MULTI-FAMILY: A building containing five or more dwelling units.

Occupancy Characteristics of Dwellings:

ONE-FAMILY DWELLING: A building containing one dwelling unit occupied by not more than one family.

TWO-FAMILY, THREE-FAMILY, FOUR-FAMILY DWELLING: A building containing the number of dwelling units, indicated by the first word of the phrase, each occupied by not more than one family.

MULTI-FAMILY DWELLING: A building containing five or more dwelling units, each occupied by one family.

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DWELLING UNIT: One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

ELDERLY: For the purposes of this By-Law, persons who are 60 years of age or older.

ERECTED: The word "erected" shall include the words "built," "constructed," "reconstructed," "altered," "enlarged," and "moved."

FAMILY: An individual, or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit and occupying one dwelling unit; or a group of individuals, not so related, but living together as a single housekeeping unit. For purposes of controlling residential density, not more than four unrelated individuals shall constitute a family; any roomer, not so related, living in the dwelling unit shall be included in determining the number of unrelated individuals.

FAMILY DAY CARE HOME: Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age, or under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence; and as further described in Chapter 28A, §9. M.G.L., as amended. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. (See also DAY CARE CENTER)

FAST FOOD SERVICE: An establishment primarily for self-service or purchase of food or beverage at a counter for consumption on the premises.

FIRE LANE: An open space in which no automotive vehicles may be parked and in which no building or structure may be erected without written permission from the Fire Chief or his designee, except that buildings may be interconnected by corridor or walkways, if provision is made for access by fire apparatus to all outside walls. The open space shall be between a building and a line parallel to and fifteen feet equidistant from a building.

FLOOR AREA, GROSS: The sum, in square feet, of the horizontal areas of all floors of a building or several buildings on the same lot measured from the exterior face of exterior walls, or from the center line of a party wall separating two buildings. Where the text of this By-Law refers to floor area, the term shall mean gross floor area unless the term net floor area is used.

FLOOR AREA, NET: The sum, in square feet of the occupiable or habitable area in a building, which shall be determined by excluding the following from calculation of gross floor area:

- a. areas used for parking or loading
- b. areas devoted exclusively to the operation and maintenance of a building, irrespective of its occupants, such as heating, ventilating and cooling equipment, electrical and telephone facilities, fuel storage, elevator machinery or mechanical equipment
- c. the thickness of load bearing walls, at each floor
- d. elevator shafts and common stairways, and common hallways at each floor
- e. porches, balconies, fire escapes which are unroofed.
- f. areas used for a child care facility as provided in subparagraph 7.9.3.

FLOOR AREA RATIO (FAR): The ratio of the sum of the net floor area of all buildings on a lot to the

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developable site area of the lot.

FRONTAGE, LOT: The continuous portion of the line separating a lot from a street to which the owner of the lot can provide the physical access to a principal building on the lot, in compliance with applicable by-laws, regulations or laws, for motor vehicles to reach required off-street parking spaces or loading bays, and for emergency services such as fire protection or ambulance service, and for other vehicles to gain access to the principal building for deliveries, such as mail.

FRONTAGE STREET: A street to which the owner of the lot has a legal right of access and which provides the required lot frontage.

GOLF COURSE, STANDARD OR PAR THREE: Course, including customary accessory buildings, where tee to hole distance averages not less than 80 yards.

GROUP CARE FACILITY: A type of group quarters in which a group of individuals not related by blood, marriage or adoption live together as a single housekeeping unit under a common housekeeping management plan in which some form of health care is provided.

GROUP QUARTERS: A dwelling, or part thereof, which is not divided into dwelling units but may be divided into rooming units in which persons live who are not related by blood, marriage or adoption. Examples are dormitory, housing for religious orders.

HALF STORY: See "Story, Half"

HOME OCCUPATION: Certain occupations engaged in within an existing dwelling or a building accessory thereto by a resident thereof, provided that there shall be no sign, advertising device, exterior storage, or other exterior indication of the home occupation, and that such occupations are limited to the exercise of personal or professional skills in the fields of music, dramatics, arts and crafts and academic pursuit and the giving of instructions or lessons, for compensation, in such skills; and also the performance of custom work of a domestic nature, such as dressmaking, millinery, and clothes washing provided that equipment utilized is such as is customarily incidental to residential occupancy.

HOTEL, MOTEL: An establishment providing lodging for 15 or more guests on a short term basis, usually less than one week; dining rooms, function rooms and other support services may be included. In a hotel, access to the individual sleeping rooms, is usually through a lobby and interior corridors; in a motel, access to the individual sleeping rooms, is usually directly from parking spaces or by an exterior walkway.

IMPERVIOUS SURFACE: Any surface which reduces or prevents the absorption of storm water into previously undeveloped land. Examples are buildings, parking lots, driveways, streets, sidewalks, and any areas surfaced with concrete or asphalt.

IMPERVIOUS SURFACE RATIO: The ratio of the sum of all impervious surfaces on a lot to the developable site area of the lot.

INTERIOR DRIVE: A roadway which is privately owned and maintained and serves a planned residential or commercial development. It may have many of the physical characteristics of a street but does not meet the legal standards for STREET, ROAD OR WAY as defined in this section. An interior drive is not the same as a driveway, which is the means of access to a parking lot or parking space; an interior drive is the connecting link between a public street and a driveway.

SECTION 2. DEFINITIONS

JUNKYARD: Without limiting the generality of Table 1, line 18.3, the following shall be deemed to be junkyard uses: outdoor storage of two or more unregistered automobiles, except where expressly authorized in a special permit issued by the Board of Appeals for an automobile sales or repair business, or an accumulation in the open of discarded items not used or intended to be used by the occupant of the property.

LIGHT MANUFACTURING: Fabrication, processing, or assembly employing only electric or other substantially noiseless and inoffensive motive power, utilizing hand labor or quiet machinery and processes, and free from neighborhood disturbing agents, such as odors, gas fumes, smoke, cinders, flashing or excessively bright lights, refuse matter, electromagnetic radiation, heat or vibration.

LODGER: Same as "ROOMER".

LONG-TERM CARE FACILITY: An institution or distinct part of an institution which is licensed or approved to provide health care under medical supervision to individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. For the purposes of this By-Law, it includes: extended care facility, intermediate care facility, nursing home, convalescent home, rest home.

LOT: An area of land in one ownership with definite boundaries ascertainable by recorded deed or plan and used or set aside and available for use as the site of one or more buildings or for any other definite purpose.

LOT AREA: Area within a lot, including land over which easements have been granted, but not including any land within the limits of a street upon which such lot abuts, even if fee to such street is in the owner of the lot, except that if a corner lot has its corner bounded by a curved line connecting other street lines which, if extended, would intersect, the area may be computed as if such boundary lines were so extended.

LOT, CORNER: A lot bounded by more than one street which has an interior angle of 135 degrees or less formed by the tangents or straight segments of street lines between the side or rear lines of such lot or by an extension of such street lines. A lot bounded by one street shall be considered a corner lot when the tangents or straight segments of the street line between the side lines of the lot form, or would form if extended, an interior angle of 105 degrees or less.

LOT FRONTAGE: See "Frontage, Lot".

MANEUVERING AISLE: An area on a lot which: is immediately adjacent to one or more parking spaces or loading bays, is necessary for turning, driving or backing a motor vehicle into such parking space or loading bay, but is not used for the parking or standing of motor vehicles.

MOTOR HOTEL OR MOTEL: Same as "hotel".

MOTOR VEHICLE TRIP: Use of one motor vehicle by one or more persons which either begins or ends (regardless of the duration of parking or standing) on a lot, or at a use or establishment.

MUNICIPAL: The word "municipal" means the Town of Lexington.

NONCONFORMING: Those uses, buildings, structures, parking spaces, loading bays, signs, landscaping and other activities that are now subject to the provisions of this By-law which were lawful before this By-law was adopted or before amendments to this By-law which are applicable to the situation were adopted, and such situations do not now conform to the provisions of this By-law.

SECTION 2. DEFINITIONS

NURSERY: The business of propagating plants, including trees, shrubs, vines, seed, grass, live flowers and other plants, and the storage and selling of such plants grown on the premises.

NURSING HOME: Same as "LONG-TERM CARE FACILITY".

OLDER PERSONS: Same as "ELDERLY".

OPEN SPACE, COMMON: Land within or related to a development which is not individually owned and is designed and intended for the common use or enjoyment of the residents of a development and may include such complementary structures and improvements as are necessary and appropriate.

OPEN SPACE, USABLE: The part or part of a lot, structure or building which are provided for the recreational and leisure time use and enjoyment of the occupants of a building. The space shall:

- a. have minimum dimensions and characteristics prescribed herein;
- b. be largely open and unobstructed to the sky; and
- c. exclude principal and accessory buildings, parking spaces and loading bays, driveways and maneuvering aisle.

PARKING LOT: An area on a lot which includes 5 or more parking spaces and their related maneuvering aisle. Where there are 5 or more parking spaces on a lot, regardless of their location on the lot, all such spaces shall be subject to the standards for parking lots.

PERSON: The word "person" shall include one or more individuals, a partnership, an association or a corporation.

PUBLIC: The word "public" means the Town of Lexington, Commonwealth of Massachusetts, United States Government or an agency thereof.

RACQUET COURT: A fixed playing area such as a tennis court or racquet ball platform.

REAR LINE OF A LOT: A line separating a lot from other lots or from land in a different ownership, being the boundary of a lot which is opposite or approximately opposite the frontage street. Where because of irregular lot shape, the building commissioner and the lot owner cannot agree as to whether a lot line is a side or a rear line, it shall be considered a rear line.

RECORDED: The due recording in the Middlesex County South District Registry of Deeds, or, as to registered land, the due filing in the Middlesex County South District Land Registration Office.

RESIDENTIAL DISTRICT: Any district in Lexington whose designation begins with R and any district in an abutting city or town intended for residential use.

RESTAURANT: An establishment primarily for serving by a waiter or waitress, and consumption of meals at tables or at a counter, on the premises.

ROADSIDE STAND: The land and the structures thereon for the sale of edible farm products, flowers, fireplace wood, preserves and similar products; no goods except plants, flowers and fireplace wood shall be stored or offered for sale outdoors.

SECTION 2. DEFINITIONS

ROOMER: An individual, other than a member of a family occupying a dwelling unit, who occupies a rooming unit, for living and sleeping but not for cooking and eating purposes, and paying rent, which may include an allowance for meals, by prearrangement for a week or more at a time to an owner or operator to whom he/she is not related by blood, marriage or adoption.

ROOMING HOUSE: A dwelling, or part thereof, which is divided into four or more rooming units and is occupied by roomers for periods greater than one week.

ROOMING UNIT: One or more rooms designed, occupied or intended for occupancy as separate living quarters for one roomer or boarder with sleeping facilities but no kitchen facilities.

SANITARY SEWER: A public sanitary sewer of the Town of Lexington.

SCHOOL AGE CHILD CARE PROGRAM: any program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is not more than fourteen years of age, or sixteen years of age if such child has special needs. Such a program may operate before and after school and may also operate during school vacation and holidays. It provides for a planned daily program of activities that is attended by children for specifically identified blocks of time during the week, usually over a period of weeks or months; and as further described in Chapter 28A, §9. M.G.L., as amended. (See also DAY CARE CENTER)

SIDE LINE OF A LOT: A line separating a lot from other lots or from land in a different ownership, other than a street line or a rear lot line.

SIGN: Any device designed to inform, direct or attract attention of persons not on the premises on which the sign is located, provided however that the following shall not be included in the application of the regulations of this By-Law:

- a. Flags and insignia of any government, except when displayed in connection with commercial promotion
- b. Legal notices, identification, informational or directional signs erected or required by governmental bodies
- c. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights
- d. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

SIGN, ACCESSORY: Any sign or other advertising device which advertises, calls attention to, or indicates the person or activity occupying the premises on which the sign is erected or that advertises the property or some part of it for sale or lease and which contains no other advertising matter.

SIGN, NON-ACCESSORY: Any billboard or sign not an accessory sign.

SIGN, PROJECTING: Any sign which is attached to a building and is not parallel to the wall to which it is attached. A sign in contact with the ground is not a projecting sign.

SIGN, SIZE: The size of a sign shall include any intermediary removable surface to which it is affixed. The area of a flat two-faced projecting or standing sign is the area of one face. The width of a sign is its horizontal dimensions even when this is the smaller dimension.

SECTION 2. DEFINITIONS

SIGN, STANDING: The term "standing sign" shall include any and every sign that is erected on the land. If a sign support holds more than one sign, each such sign is considered a separate standing sign.

SIGN, WALL: A sign securely fixed parallel to the face of a building wall.

SIGN, WINDOW: A sign affixed to or placed so as to be viewed through a window or transparent door. Signs on the interior of an establishment which are intended to be viewed from inside the establishment are not considered to be window signs even if they can be seen through a window or door. Displays of merchandise inside of a window are not considered to be window signs.

SITE COVERAGE: The sum of all parts of a lot that are covered by a principal or accessory building or other structure; such parts of the lot to be delineated by the intersection of the ground with the vertical plane of the outermost walls or projections of a building or structure whether in contact with the ground or projecting over it.

SPECIAL PERMIT GRANTING AUTHORITY: The authority empowered to grant special permits, which shall be the Board of Appeals unless some other board is so designated in these By-Laws.

SPGA: Special Permit Granting Authority.

SPECIAL RESIDENTIAL DEVELOPMENT: A planned residential development, which may be on one or more lots, in which considerable design flexibility is allowed if a development meets design criteria as set forth in Section 9. The dimensional standards, types of buildings permitted and density may vary from those otherwise permitted or required.

STORY: That portion of a building contained between any floor and the floor or roof next above it, but not including either a cellar or the uppermost portion so contained if under a sloping roof and not accessible, by an approved stairway, or not designed or intended to be used for human occupancy.

STORY HALF: A story directly under a sloping roof in which the points of intersection of the bottom of the rafters and the interior faces of the walls are less than three feet above the floor level on at least two exterior walls. Dormers may be constructed on those exterior walls provided the length of the dormer(s) as measured between the lowest bearing points of the dormer(s) on the rafters of the sloping roof does not exceed 50 per cent of the length of the sloping roof to which it is attached.

STREET, ROAD, OR WAY: An area of land dedicated, approved by the Planning Board, or legally open for public travel under at least one of the following classifications:

- a. A public way duly laid out by the Town of Lexington, the Middlesex County Commissioners, or the Commonwealth of Massachusetts, or a way which the Lexington Town Clerk certifies is maintained by public authority and used as a public way; or
- b. A way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law and constructed in accordance with such plan; or
- c. A way in existence on April 4, 1948, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

A public or private way as aforesaid shall not be deemed to be a "Street" as to any lot of land that does not have rights of access to and passage over said way.

SECTION 2. DEFINITIONS

STREET LINE: The boundary of a street right-of-way or layout.

STRUCTURE: Anything constructed or erected, the use of which requires a fixed location on the ground, or attachment to something located on the ground, including buildings, mobile homes, bill-boards, tanks, or the like, or the parts thereof, and swimming pools; but not including paved surfaces such as a driveway, a walk or a patio.

SWIMMING POOL: Any pool having a depth of 24 inches or greater and a surface area of 250 square feet or greater.

TAKE OUT FOOD SERVICE: An establishment primarily for dispensing prepared food to persons carrying the food away for consumption elsewhere.

TEMPORARY STRUCTURE: Tent, construction shed; or similarly portable or demountable structure intended for continuous use for not longer than one year, or such other time period as may be specified in this By-law.

TEMPORARY USE: Use, operation or occupancy of a parcel of land, building or structure for a period not to exceed one year, or such other time period as may be specified in this By-law.

THROUGH STREET: A continuous street which connects to the Town's street system in at least two places.

TRACT: One or more lots, whether or not in common ownership, under unified development control and designated to be developed in accordance with a plan approved by the Town.

UNIT PARKING DEPTH: The distance required to accommodate two rows of parking and a common maneuvering aisle.

WAY: see "Street, Road or Way."

YARD: An open space on a lot unoccupied by a building or structure or such parts thereof as covered or uncovered porches, steps, cornices, eaves and other projections; provided however that fences, gates or security stations, yard accessories, ornaments and furniture, and customary summer awnings are permitted in any yard but shall be subject to height limitations. Yard depth shall be measured from the street or lot line to the nearest point on a building in a line perpendicular or normal to such lot or street line. The minimum required yard shall be a strip of land of uniform depth required by this By-Law measured from the lot or street line and adjacent thereto.

YARD, FRONT: A yard extending between lot side lines across the lot adjacent to each street it abuts.

YARD, REAR: A yard extending between the side lines of a lot adjacent to the rear line of the lot.

YARD, SIDE: A yard extending along each side line of a lot between front and rear yards.

SECTION 3. ADMINISTRATION AND ENFORCEMENT

3.1 ADMINISTRATION, ENFORCEMENT

The Zoning Officer appointed under the provisions of Chapter 40A of Massachusetts General Laws and the Selectmen/Town Manager Act is hereby designated and authorized as the officer charged with the interpretation and enforcement of this By-Law.

If the Zoning Officer is informed or has reason to believe that any provision of this By-Law is being violated, he/she shall make or cause to be made an investigation of the facts and inspect the property where such violation may exist.

If upon such investigation and inspection he/she finds evidence of such violation, he/she shall give notice thereof in writing to the owner and occupant of said premises and demand that such violation be abated within such time as the Zoning Officer deems reasonable. Such notice and demand may be given by mail, addressed to the owner at his address as it then appears on the records of the Board of Assessors of the Town and to the occupant at the address of the premises.

If after such notice and demand the violation has not been abated within the time specified therein, the Zoning Officer shall institute appropriate action or proceedings in the name of the Town of Lexington to prevent, correct, restrain or abate such violation of this By-Law.

If the Zoning Officer is requested in writing to enforce this By-Law against any person allegedly in violation of the same, he/she shall notify in writing the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen days of receipt of such request.

3.1.1 PENALTY

Anyone who violates a provision of this By-Law, or of any condition of a variance, a special permit or a special permit with site plan review, shall be punishable by a fine of not more than one hundred dollars (\$100) for each offense, except that the penalty for the removal of earth materials in violation of this By-Law shall be provided for in the General By-Laws of the Town of Lexington. Each day during which any portion of a violation continues under the provisions of Section 3.1 shall constitute a separate offense.

3.1.2 BUILDING PERMITS

Applications for building permits, and certificates of occupancy shall be filed with the Building/Inspection Department on forms furnished by it. With every such application there shall be filed a plan in duplicate of the lot upon which said building is to be erected drawn to scale and showing the dimensions of the lot and the location and size of the building, if any, upon said lot and the building or buildings to be erected thereon and all streets upon which said lot abuts. Before a foundation is constructed, a certified plot plan shall be submitted to the Zoning Officer with such information as he/she may deem necessary for the enforcement of the Zoning By-Law and other applicable laws, by-laws, rules and regulations of the Town.

3.1.3 CONFORMING TO SUBSEQUENT AMENDMENTS

Construction on or use of property under a building permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six months after the issuance of the building permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

3.1.4 LIMITED EXEMPTIONS FROM ZONING

SECTION 3. ADMINISTRATION AND ENFORCEMENT

3.1.4.1 RELIGIOUS, NON-PROFIT EDUCATIONAL INSTITUTIONS

The use of land or structures for religious purposes or for educational purposes on land owned or leased by a religious sect or denomination or by a nonprofit educational corporation, as described in Chapter 40A, The Zoning Act, §3, M.G.L., is permitted as a matter of right in all zoning districts. Such land or structures are subject to reasonable regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements as set forth in this By-Law.

3.1.4.2 CHILD CARE FACILITIES

The use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility is permitted as a matter of right in all zoning districts. Such land or structures are subject to By-Law regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a day care center or a school age child care program, as those terms are defined in Section 2 of this By-Law and as further described in Chapter 28A, §9. M.G.L., as amended.

A family day care home (see Definition) for not more than six children is not covered by the partial exemption from zoning regulations afforded by Chapter 40A, §3, The Zoning Act, M.G.L. as amended and is subject to the provisions of this By-Law.

3.2 BOARD OF APPEALS

There shall be a Board of Appeals of five members appointed by the Selectmen for five year terms. The Selectmen shall also appoint six associate members of the Board of Appeals. The appointment, service and removal or replacement of members and associate members and other actions of the Board of Appeals shall be as provided for in the General Laws, Chapter 40A. The Board of Appeals in existence up to the date of the adoption of this Section shall continue in office for the balance of terms for which originally appointed.

3.2.1 APPEALS

The Board of Appeals shall hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A, General Laws, by the regional planning agency in whose areas the Town is situated or by any person including an officer or board of the Town, or of any abutting city or town aggrieved by an order or decision of the Zoning Officer, or other administrative official in violation of any provision of Chapter 40A, General Laws, or of this By-Law.

Such appeal shall be taken within thirty days from the date of the order or decision being appealed, by filing three copies of a notice of appeal, specifying the grounds therefor, with the Town Clerk. The Town Clerk shall forthwith transmit said copies to the officer or board whose decision is being appealed, and to the Board of Appeals. The Board of Appeals shall hold a hearing on any appeal within 65 days of the filing, shall properly serve notice of such hearing, and shall render its decision within 100 days of the filing.

3.2.2 VARIANCES

Variances - to authorize upon appeal, or upon petition with respect to particular land or structures or to an existing building thereon a variance from the terms of this By-Law where, owing to circumstances relating to the soil conditions, shape or topography of such land or structures and 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 By-Law would involve substantial hardship, financial

SECTION 3. ADMINISTRATION AND ENFORCEMENT

or otherwise, 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 by-law, but not otherwise.

3.2.3 PROCEDURES FOR APPEALS AND VARIANCES

The procedures for an appeal brought under paragraph 3.2.1 or for a petition for a variance filed under paragraph 3.2.2 shall be the same as those for a petition for a special permit or a special permit with site plan review as set forth in subparagraphs 3.5.1.1 (information required), 3.5.1.2 (acceptance of application), 3.5.2 first sentence only (SPGA procedures), and 3.5.4 (extension of time for action, leave to withdraw), except where:

- a) Chapter 40A, The Zoning Act, may provide for different time periods or other procedures than those for an appeal or a variance or
- b) the context of the appeal or the petition for the variance are clearly different given the substance of the appeal or the petition.

A petition for a variance shall state the section, paragraph or line for which the variance is sought, what would need to be provided to comply with this By-law, what the petitioner proposes, spelled out in specific terms, and the difference between what is required and what is proposed.

The applicant shall be responsible for filing in the Registry of Deeds, or where applicable, the Land Court of the Commonwealth, a copy of the Board of Appeals' decision granting a variance. Prior to the issuance of a building permit, the applicant shall present evidence of such recording to the Building Commissioner.

3.3 SPECIAL PERMITS (SP)

3.3.1 The Special Permit Granting Authority (SPGA) may, in its discretion, grant a special permit for a use, building, structure, sign, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity where it would not otherwise be permitted but only in those cases where this By-law specifically refers to a change from the provisions of this By-Law by the granting of a special permit and only in those cases where the SPGA makes the finding and determination set forth in subparagraph 3.3.3.

An applicant is not entitled to a special permit and the SPGA, in its discretion, may decline to grant a special permit if it is unable to make a positive finding and determination as required in subparagraph 3.3.2.

3.3.2 FINDING AND DETERMINATION

Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity, which is the subject of the application for the special permit:

- a. complies with such criteria or standards as may be set forth in the section of this By-Law which refers to the granting of the requested special permit;
- b. is consistent with: 1) the general purposes of this By-law as set forth in subparagraph 1.1, and 2) the more specific objectives and purposes applicable to the requested special permit which may be set forth elsewhere in this By-Law, such as, but not limited to, those at the beginning of the various sections; (For example, see subsection 9.1 or 12.1 or subparagraphs 1.2.3, 5.2.1 or 11.1.1.);
- c. is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

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Where the SPGA determines that one or more of the following objectives are applicable to the particular application for a special permit, the SPGA shall make a finding and determination that the objective will be met:

- d. the circulation patterns for motor vehicles and pedestrians which would result from the use or structure which is the subject of the special permit will not result in conditions that unnecessarily add to traffic congestion or the potential for traffic accidents on the site or in the surrounding area; and
- e. the proposed use, structure or activity will not constitute a demonstratable adverse impact on the surrounding area resulting from:
 - 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area,
 - 2) emission or discharge of noxious or hazardous materials or substances,
 - 3) pollution of water ways or ground water, or
 - 4) transmission of signals that interfere with radio or television reception.

3.3.3 CONDITIONS FOR APPROVAL OF A SPECIAL PERMIT

In addition to the conditions, standards and criteria as may be set forth in the section of this By-law that refers to the granting of the special permit, the SPGA may impose additional conditions and limitations, as it deems necessary to insure that the finding and determination that it must make under subparagraph 3.3.2 is complied with, including but not limited to:

- a. dimensional standards more restrictive than those set forth in Table 2, Schedule of Dimensional Controls;
- b. screening or landscaping of structures or of principal or accessory uses from view from adjoining lots or from a street, by planting, walls, fences or other devices; planting of larger planting strips, with more or larger plant materials or higher walls or fences than that required in Section 10;
- c. modification of the exterior features or appearance of a building or structure;
- d. limitations on the size, number of occupants or employees, method or hours of operation, extent of facilities or other operating characteristics of a use;
- e. regulation of the number, design and location of access drives or other traffic features of the proposed use;
- f. provision of a greater number of off-street parking spaces or loading bays, and with greater yard setbacks, landscaping and screening than the minimum standards set forth in Section 11;
- g. limitations on the number, location, type and size of signs or illumination or modification of the design features thereof;
- h. limitations on construction activities, such as but not limited to, the hours during which construction activity may take place, the movement of trucks or heavy equipment on or off the site, measures to control dirt, dust, erosion and to protect existing vegetation on the site;
- i. requirements for independent monitoring, at the expense of the applicant, and reporting to the building commissioner, if necessary to insure continuing compliance with the conditions of a special permit or of this By-Law;
- j. limitations on the period of time the special permit shall be in effect; and
- k. such other limitation as may be reasonably related to reducing any adverse impact on, or increasing the compatibility of the proposed use, structure or activity with, the surrounding area.

3.4 SPECIAL PERMITS WITH SITE PLAN REVIEW (SPS)

3.4.1 A special permit with site plan review (SPS) is a type of special permit in which a use, or one or more buildings that comprise a development, may be permitted if the proposed development of the site meets certain criteria, standards or conditions as set forth in the section of this By-Law that refers to the

SECTION 3. ADMINISTRATION AND ENFORCEMENT

granting of a special permit with site plan review and to other standards and objectives as set forth in this section. The SPGA may, in its discretion, grant a special permit with site plan review but only in those cases where this By-law specifically refers to the granting of a special permit with site plan review and only in those cases where the SPGA makes a finding and determination, as set forth in subparagraph 3.4.2.

An applicant is not entitled to a special permit with site plan review and the SPGA, in its discretion, may decline to grant a special permit with site plan review if it is unable to make a positive finding and determination as required in subparagraph 3.4.2.

3.4.2 FINDING AND DETERMINATION

Prior to granting a special permit with site plan review, the SPGA shall make a finding and determination that the proposed development of the site:

- a. complies with such criteria or standards as may be set forth in the section of this By-Law which refers to the granting of the requested special permit with site plan review;
- b. is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area;
- c. meets accepted design standards and criteria for the functional design of facilities, structures and site construction;
- d. will not create impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the street system for vehicular traffic, the sidewalks and footpaths for pedestrian traffic, and, in addition, for residential developments, the recreational facilities, which can not be accommodated by such services and facilities, or where there is insufficient capacity in such services and facilities, improvements will be made to provide sufficient capacity; (see Section 12 for the standards for the adequacy of the street system to accommodate additional traffic);
- e. will not create adverse impacts, including those that may occur off the site, or such potential adverse impacts will be mitigated in connection with the approved development, so that the development will be compatible with the surrounding area;
- f. is consistent with: 1) the general purposes of this By-law as set forth in subparagraph 1.1, and 2) the more specific objectives and purposes applicable to the requested special permit with site plan review which may be set forth elsewhere in this By-Law, such as, but not limited to, those at the beginning of the various sections. (For example, see subsection 8.1, 9.1 or 12.1 or subparagraphs 1.2.3, or 11.1.1.);

Where the SPGA determines that one or more of the following objectives is applicable to the particular application for a special permit with site plan review, the SPGA shall make a finding and determination that the objective will be met:

- g. that the proposed development will not present a demonstrable adverse impact on the surrounding area resulting from:
 - 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area,
 - 2) emission or discharge of noxious or hazardous materials or substances,
 - 3) pollution of water ways or ground water, or
 - 4) transmission of signals that interfere with radio or television reception;
- h. that the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of vegetation that may result therefrom, particularly from development on steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption;

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- i. that buildings are located:
 - 1) harmoniously with the land form, vegetation and other natural features of the site,
 - 2) effectively for solar and wind orientation for energy conservation, and
 - 3) advantageously for views from the building while minimizing the intrusion on views from other buildings;
- j. that a system of routes for pedestrians, including bicycles, with minimal conflicts with vehicles, is provided;
- k. that all measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area of a proposed development are taken, such as, but not limited to, minimizing the velocities of water runoff, maximizing protection of disturbed areas from stormwater runoff, and retaining sediment within the development site as early as possible following disturbances;
- l. the removal or substantial alteration of buildings of historic or architectural significance is minimized and that new uses or the erection of new buildings are compatible with buildings or places of historic or architectural significance;
- m. that the natural character and appearance of the town is enhanced. Awareness of the existence of a development, particularly a non-residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, single family neighborhoods or Town property by the effective use of existing land forms, or alterations thereto, such as berms, and by existing vegetation or supplemental planting;
- n. that open space on the site, particularly such common open space and usable open space as may be required by this By-Law, is located and designed so as to increase the visual amenities for the surrounding area as well as for the occupants of the development;
- o. that the scale, massing and detailing of buildings are compatible with those prevalent in the surrounding area, without specifying any particular architectural style;
- p. that construction on the site conforms to good design practice for features such as parking and loading, grading, landscaping, drainage, utilities, lighting;
- q. that there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment;
- r. that there is improved access to, or the development of additional links and connections to, a Town system of public facilities such as conservation areas, recreation facilities, footpaths or bicycle paths, streets or utility systems;
- s. that the location of intersections of access drives with the Town's arterial or collector streets minimizes traffic congestion;
- t. that electric, telephone, cable TV and other such lines and equipment are either placed underground or are as inconspicuous as possible; that support facilities such as storage, refuse disposal, utility buildings and structures for recreational activities are located, and screened, to form as effective a visual screen of them as is possible;
- u. that no development shall cause downstream properties, water courses, channels, or conduits to receive stormwater runoff from a proposed development at a higher peak flow rate, or to receive other unreasonable impacts, than would have resulted from the same storm event occurring over the site of the proposed development in its natural undeveloped condition;
- v. that adequate water quality standards are promoted giving due regard to the conservation of surface and groundwaters for the protection of fish and wildlife, recreational purposes and the use of such water for public water supply in communities which are downstream, by requiring that adequate pollution abatement controls be incorporated into the drainage design of the proposed development;

3.4.3 CONDITIONS FOR APPROVAL OF SPECIAL PERMIT WITH SITE PLAN REVIEW

In addition to such conditions, standards and criteria as may be set forth in the section of this By-Law that refers to the granting of a special permit with site plan review, the SPGA may attach such conditions and

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limitations as it deems necessary to insure that the finding and determination that it must make under subparagraph 3.4.2 is complied with, including, but not limited to:

- a. any of the conditions set forth in subsection 3.3.3 which apply to the granting of a special permit;
- b. reduction in the density of development such as the number of dwelling units or buildings in a residential development or in the amount of floor area in a commercial development;
- c. compliance with traffic trip reduction techniques, such as those set forth in subparagraph 12.3.4;
- d. to require the provision of security, as set forth in subparagraph 3.7.

Where an applicant proposes, and will be responsible for carrying out, mitigating measures or the construction of improvements to deal with the impacts of a proposed development or to provide sufficient capacity in Town facilities or services, the SPGA:

- 1) shall make compliance with such measures or completion of such construction a condition of the granting of, or the continued compliance with, the special permit with site plan review,
- 2) may link the stages of construction of such improvements to the stages of construction of the proposed development.

Where an applicant offers to make a financial contribution to the Town for the construction of improvements to increase the capacity of Town facilities or services, with the work not to be performed by the applicant, the SPGA:

- 1) shall make the special permit with site plan review, if approved, conditional upon the receipt of the funds and
- 2) to link the stages of construction of the proposed development to the stages of the completion of the improvement.

3.5 PROCEDURES FOR SPECIAL PERMITS AND SPECIAL PERMITS WITH SITE PLAN REVIEW

3.5.1 APPLICATION PROCEDURES

3.5.1.1 INFORMATION REQUIRED

A person applying for a special permit under subsection 3.3 or a special permit with site plan review under subsection 3.4 shall file an application and plans, one copy of each, with the Town Clerk and seven copies of each with the SPGA. Such application and site plan shall refer to the specific section of this By-law, other than subsection 3.3 or 3.4, which refers to the granting of a special permit or special permit with site plan review and shall include information on the conditions, standards and criteria sufficient for the SPGA to make the finding and determination required by subparagraphs 3.3.2 or 3.4.2.

In the event a person seeks a special permit under more than one provision of this By-law as part of one building or site development proposal, he/she shall file an application that clearly identifies each provision of the By-law for which such special permit is sought. The SPGA may issue notice, conduct a hearing and issue a decision in a concurrent manner that does not require a separate application, notice, hearing and decision on each such special permit, provided that it clearly identifies the separate provisions of the By-law for which each special permit is sought or granted. In the event a person seeks a special permit and a variance as part of one building or site development proposal, he/she shall file a separate application for each and a separate decision shall be rendered for each.

The application to the SPGA for a special permit under subsection 3.3 shall be accompanied by the following materials:

- a. a plot plan, showing the location of all buildings and structures on the lot including existing conditions

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and proposed changes, if applicable. In the case of a building or structure which is, or is proposed to be, close to a minimum yard setback line, the SPGA may require submittal of a certified plot plan.

- b. if applicable, an off-street parking and loading plan, as described in subsection 11.2.
 - c. if applicable, a landscaping plan, described in subsection 10.2.
 - d. if applicable, a copy of the determination of applicability issued by, or of a Notice of Intent filed with, the Conservation Commission pursuant to Article XXXIII of the General By-Laws and Chapter 131, Section 40 MGL,
 - e. if applicable, a traffic study, and a proposal for mitigating measures to improve capacity or for trip reduction programs, if any, as described in Section 12,
 - f. if applicable, proposals for mitigating measures or the construction of improvements to deal with the impacts, other than traffic impacts, of the proposed development or to provide sufficient capacity in Town facilities or services;
 - g. any other material necessary for the SPGA to make the finding and determination required by subparagraph 3.3.2 or 3.4.2 or as may be required by the written rules of the SPGA;
- and the application to the SPGA for a special permit with site plan review under Section 3.4 shall, in addition, be accompanied by the following material:
- h. a definitive site development plan, as described in 3.6.4.

The term "application" as used in this section shall include the accompanying materials described in a through g above.

Upon written request from the applicant prior to the filing of an application, the SPGA may waive the submission of such information, plans, studies or analyses, or parts thereof, as may not be needed for, or germane to, consideration of the application.

3.5.1.2 ACCEPTANCE OF APPLICATION

Upon the original submittal of an application to the Town Clerk and the SPGA, the application shall be considered to be conditionally accepted pending review of its contents. Within 14 days of the original submittal of the application, the SPGA, or its designee, shall determine whether the application is complete. The determination that an application is complete means that the required plans, maps, studies, analyses, exhibits and other documents have been submitted and is not a determination that the proposed use, building or development complies with the Zoning By-Law and does not relieve the applicant of the obligation to do so. An application which does not contain any of the material described in a, b, c, d, e, f, or g above, shall be considered incomplete, shall not be considered to have been filed and shall not be accepted for processing. If an application is determined to be incomplete, the SPGA or its designee, shall notify the Town Clerk and the applicant in writing that the application has been determined to be incomplete setting forth the reasons for that determination and that the application is not considered to have been filed.

If the application is considered to be complete, or if the applicant and the Town Clerk are not notified that the application is incomplete within 14 days, the application shall be considered to be complete as of the date originally submitted.

If a revised application is submitted, it shall be considered to be a new application and shall be subject to the same procedures and determinations as to completeness as are set forth above and to the same time periods as if it were a new application.

The time periods set forth in this By-Law and Chapter 40A, MGL, during which the SPGA shall notify parties in interest, hold a public hearing and issue a decision will not start until the application, or revised application, is considered to be complete.

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3.5.2 SPGA PROCEDURES

Upon the determination that an application for a special permit with site plan review is complete, or is considered to be complete because of the expiration of 14 days without notification to the applicant, the SPGA shall promptly notify the Conservation Commission, the Engineering Department, the Fire Department, the Board of Health and the Planning Board (when it is not the SPGA), of the receipt of the application and such other boards, commissions or departments as it may consider appropriate, given the substance of the application. In the case where the Planning Board is not the SPGA, the SPGA shall furnish the Planning Board with one copy of the complete application for a special permit with site plan review and the Planning Board shall submit a report and recommendation to the SPGA on the application.

3.5.3 PUBLIC HEARING, RECEIPT OF RECOMMENDATIONS

The SPGA shall hold a public hearing on the application, as provided in Chapter 40A, M.G.L., within 65 days after the filing of an application which has been determined to be complete and, except as hereinafter provided, shall take final action on an application within 90 days after the hearing. The SPGA shall not make a decision on an application for a special permit with site plan review until boards, commissions and departments which have been notified have submitted reports or recommendations thereon or, if reports are not received, until 35 days have elapsed since the date of filing of an application which has been determined to be complete.

3.5.4 EXTENSION OF TIME FOR ACTION, LEAVE TO WITHDRAW

The period within which final action shall be taken may be extended for a definite period by mutual consent of the SPGA and the applicant. In the event the SPGA determines that the plans and evidence included with the application or presented to it at the public hearing are inadequate to permit the SPGA to make a finding and determination, in its discretion, instead of denying the application, it may:

- a. adjourn the hearing to a later date to permit the applicant to submit a revised site plan and further evidence, provided, however, that such adjournment shall not extend the 90 day period within which final action shall be taken by the SPGA, unless said period is extended to a day certain by mutual consent, or
- b. grant a leave to withdraw without prejudice so that the applicant may submit a revised application which shall not be considered as a repetitive petition. Such revised application shall be treated as a new application.

3.5.5 DECISION OF THE SPGA

The SPGA may grant, grant with conditions, deny, or grant a leave to withdraw an application for a special permit or a special permit with site plan review. A decision to grant, or grant with conditions, shall cite the specific section of this By-Law which refers to the granting of a special permit or special permit with site plan review and shall incorporate by reference the plans referred to in 3.5.1 which have been filed with the application. A copy of the decision shall be filed with the Town Clerk and the Planning Board, when it is not the SPGA, and shall be furnished to the applicant.

Any person aggrieved by a decision of the SPGA may file an appeal to a court of the Commonwealth by bringing an action within 20 days of the date the decision was filed with the Town Clerk, as provided in Chapter 40A, Section 17, M.G.L.

An applicant is not entitled to a special permit or a special permit with site plan review and the SPGA, in its discretion, may decline to grant it if the SPGA is unable to make a positive finding and determination as required in subparagraph 3.3.2 or 3.4.2.

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The applicant shall be responsible for filing in the Registry of Deeds or, where applicable, in the Land Court of the Commonwealth, a copy of the decision of the SPGA granting a special permit or special permit with site plan review. Prior to the issuance of a building permit, the applicant shall present to the Building Commissioner evidence of such recording.

3.5.6 CONDITIONS FOR APPROVAL OF SPECIAL PERMIT WITH SITE PLAN REVIEW

In addition to the conditions, standards and criteria set forth in the section of this By-law that authorizes the granting of a special permit or a special permit with site plan review, the SPGA may attach such conditions and limitations as it deems necessary to insure that the finding and determination that it must make under subparagraphs 3.3.2 or 3.4.2 is complied with.

In the event that the SPGA approves a special permit or a special permit with site plan review, any use or any construction, or any subsequent reconstruction or substantial exterior alteration shall be carried out only in conformity with all conditions and limitations included in the decision of the SPGA, and only in essential conformity with the application and the definitive site plan on the basis of which the finding and determination was made.

3.5.7 SPGA FAILURE TO TAKE ACTION

In the event the SPGA shall fail to hold a public hearing or shall fail to take action on an application within the times set forth in subparagraph 3.5.3 or within such extended period as may have been mutually agreed under subparagraph 3.5.4, then upon the expiration of said times, the SPGA shall be deemed to have granted the application.

3.5.8 REVISION OF SPECIAL PERMIT

Subsequent to a special permit or a special permit with site plan review granted by the SPGA, minor revisions in the plan may be made from time to time in accordance with applicable law, by-laws, and regulations, but the use or development approved under such special permit or special permit with site plan review shall otherwise be in accordance with the plans referred to, and such conditions as may be included, in the decision of the SPGA. The developer shall notify the SPGA in advance of any such revision which shall not be effective until approved by vote of the SPGA. If the SPGA determines such revisions not to be minor, it shall order that an application for a revised special permit or special permit with site plan review be filed, and a public hearing be held in the same manner as set forth in Section 3.5.3.

3.5.9 CONFORMING TO SUBSEQUENT AMENDMENTS

Construction on or use of property under a special permit or special permit with site plan review shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within six months after the granting of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. A special permit or special permit with site plan review shall lapse two years from the granting thereof or such shorter time as specified in said permit if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause, but such period shall be extended by the time required to pursue or await determination of an appeal.

3.6 TYPES OF PLANS; INFORMATION REQUIRED

3.6.1 PRELIMINARY SITE DEVELOPMENT PLAN

The objectives of a preliminary site development plan are:

SECTION 3. ADMINISTRATION AND ENFORCEMENT

- 1) for the developer to demonstrate an understanding of the characteristics of the tract and adjoining land and to present a proposal consistent with those characteristics,
- 2) to make a general determination of the feasibility of the development, and
- 3) to make an evaluation of the off-site impacts of the development and the ability of public services to accommodate it.

A preliminary site development plan shall include:

- a. A site analysis map (or series of maps) showing:
 - 1) existing contours at two-foot intervals,
 - 2) steep slopes (15% or more),
 - 3) significant soil types,
 - 4) significant rock outcroppings,
 - 5) water systems (including standing surface water, brooks or streams, the direction of drainage, wetlands, and the 100-year flood elevation),
 - 6) significant vegetation (including mature trees, unique specimens of vegetation and vegetation that indicates wetness),
 - 7) significant noise/visual impact (including views from the site and sources of noise affecting the site), and
 - 8) historically or architecturally significant structures and sites on or adjacent to the site.
- b. A locus-context map of all land within 500 feet of any part of the tract and showing:
all dwellings and principal buildings,
the land use of each lot,
lot and right-of-way lines,
existing contours at two-foot intervals,
principal natural features (see a. above) in general,
zoning district boundaries,
recorded easements abutting the tract, and
public facilities, such as conservation or recreation land, footpaths, bicycle paths, or streets.

The SPGA may require the submittal of cross-sections showing elevations on the lot to be developed and those on adjacent properties. Information taken from the Town's photogrammetric or property maps is acceptable where applicable.

- c. A traffic analysis, if subparagraph 12.1.2 is applicable, and meeting the requirements set forth in subsection 12.2,
- d. A utilities analysis showing:
 - 1) the location and size of the Town's existing water mains, fire hydrants, sanitary sewers, and storm drains;
 - 2) the proposed location and the approximate size of utilities to be constructed on the site and their proposed connections to the Town's utilities, and any special features, such as culverts or pumping stations, that might affect the ability of the Town to service the development.
- e. A property rights and dimensional standards plan showing:
 - 1) the location of existing easements or other property rights affecting the development;
 - 2) the approximate location of any sections of the land to which the Town would be granted property rights, either easements or transfer of ownership for street, utility, conservation or other purposes;
 - 3) the anticipated division of the property into parcels in private ownership, if any, if it affects zoning provisions;
 - 4) the yard setback in feet for buildings and parking lots from lot lines and where applicable, a zoning district boundary, a brook or a pond;
 - 5) the boundaries of any common open space or usable open space;
 - 6) the maximum height of buildings; and
 - 7) the distance, in feet, between buildings.

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- f. A preliminary site construction plan showing in a general manner:
 - 1) the location of buildings;
 - 2) existing and proposed contours;
 - 3) the location and dimensions of drives and parking areas;
 - 4) the location and characteristics of any common open space or usable open space;
 - 5) the proposed drainage system; and
 - 6) proposed landscaping.
- g. A table showing:
 - 1) total land area;
 - 2) developable site area;
 - 3) common or usable open space, if any;
 - 4) site coverage of buildings;
 - 5) area covered with impervious surface;
 - 6) impervious surface ratio;
 - 7) gross floor area and, if applicable, net floor area, of all non-residential buildings;
 - 8) floor area ratio, if applicable;
 - 9) density of dwelling units, or their equivalent, if applicable, and
 - 10) number of off-street parking spaces and, if applicable, loading bays.

3.6.2 PRELIMINARY SITE DEVELOPMENT AND USE PLAN

Where the preliminary site development plan is submitted with a petition for a change of zoning district, it shall be known as a preliminary site development and use plan and shall include the following additional information:

- a. For a CD, Planned Commercial District:
 - 1) Uses to be permitted in the buildings, which may be a narrative describing the type and character of uses and/or a listing, by cross-reference, of uses to be permitted as they appear in Table 1, Permitted Uses and Development Standards, and the maximum floor area ratio;
 - 2) other zoning provisions; this may be a narrative describing special regulations unique to the development and/or a cross-reference to provisions of this By-Law that will apply to the CD district;
- b. For an RD, Planned Residential Development District:
 - 1) Number of dwelling units, or their equivalent;
 - 2) The types of buildings;
 - 3) Approximate number of dwelling units by bedroom type (efficiency-studio, one-bedroom, two-bedroom, three-bedroom, etc.) including the approximate number of square feet in each dwelling unit and the total number of square feet of floor area in the development; and
 - 4) Estimated sales or rental level of the dwelling units.
- c. For either a CD, Planned Commercial District, or an RD, Planned Residential Development District:
 - 1) a visual representation, such as sketches or photographs, of the general scale and massing of buildings;
 - 2) special conditions, if any, applicable to the proposed development which may include grants of benefits to the Town such as land for public purposes, construction of improvements (or financial contributions therefor) in behalf of the Town, or other development limitations such as aesthetic features.

3.6.3 FILING OF PRELIMINARY SITE DEVELOPMENT AND USE PLAN

Two copies of the preliminary site development and use plan which accompanies a petition for a rezoning shall be filed with the Town Clerk and one copy with the Planning Board at least three weeks prior to the Planning Board public hearing required to be held under Chapter 40A. Subsequent to that public

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hearing, revisions to the preliminary site development and use plan may be filed with the Town Clerk and the Planning Board and must be filed at least seven days prior to the vote of the Town Meeting on the petition. The vote of the Town Meeting shall refer to the preliminary site development and use plan and shall be considered part of the rezoning action.

3.6.4 DEFINITIVE SITE DEVELOPMENT PLAN

The objectives of a definitive site development plan are: 1) presentation of specific plans, of the construction documents type, for the development of the site, 2) provision of a specific plan for reference in granting a special permit with site plan approval.

The definitive site development plan shall include all of the material and information contained in the preliminary site development plan with the following modifications and additions:

- a. a site analysis map based on a field survey;
 - b. a utilities plan showing the location, size, materials and connections to the Town's utilities;
 - c. a property rights plan based on an instrument survey identifying parcels to be conveyed to the Town whether by deed or easement;
 - d. a site construction plan showing proposed changes in contours and identifying landscaping by materials, species of plants and sizes, and specific plans for any common open space;
 - e. a traffic analysis including proposed mitigating measures, if any, to maintain an acceptable traffic "level of service";
- all in accordance with the Planning Board's "Development Regulations", as applicable; and further,
- f. the off-street parking and loading plan described in section 11.2;
 - g. elevations of proposed buildings;
 - h. preliminary drafts of any deed, easement, offer or agreement to carry out any special condition.

3.7 SECURITY FOR SPECIAL PERMITS

The Special Permit Granting Authority, as a condition of granting a special permit may require that the performance of the conditions and observance of the safeguards of such special permit be secured by one, or in part by one and in part by the other, of the methods described in the following clauses 1) and 2). The SPGA shall administer this securing of performance.

- 1) Bond or Deposit: By a proper bond or a deposit of money or negotiable securities or letter of credit, sufficient in the opinion of the SPGA to secure performance of the conditions and observance of the safeguards of such special permit.
- 2) Covenant: By a covenant running with the land, executed and duly recorded by the owner of record, whereby the conditions and safeguards included in such special permit shall be performed before any lot may be conveyed other than by mortgage deed. Nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant of the entire parcel of land, the development of which is governed by the special permit.

3.7.1 REDUCTION OF SECURITY

Until completion of the development the penal sum of any deposit or security held under clause one 1) above may from time to time be reduced by the SPGA by an amount not to exceed 85% of the value of work originally estimated.

3.7.2 RELEASE OF SECURITY

Upon the completion of the development or upon performance of the conditions and safeguards imposed by such special permit, security for the performance of which was given, the applicant shall send by

SECTION 3. ADMINISTRATION AND ENFORCEMENT

registered mail to the SPGA an affidavit that the conditions and safeguards in connection with which such security has been given have been complied with. If the SPGA determines that the conditions and safeguards of the special permit have been complied with, it shall release the interest of the Town in such security, return or release the security to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged. If the SPGA determines that the conditions or safeguards included in the special permit have not been complied with, it shall specify the conditions or safeguards with which the applicant has not complied in a notice sent by registered or certified mail, to the applicant.

3.7.3 SPGA FAILURE TO ACT

If the SPGA fails to send such a notice within sixty days after it receives the applicant affidavit, all obligations under the security shall cease and terminate, any deposit shall be returned and any such covenant become void.

3.7.4 APPLICANT FAILURE TO COMPLETE WORK

Upon failure of the applicant to complete such work to the satisfaction of the SPGA and in accordance with all applicable plans, regulations and specifications, the Town shall be entitled to enforce such bond or to realize upon such securities to the extent necessary to complete all such work without delay.

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

4.1 APPLICABILITY

4.1.1 PERMITTED USES

No land shall be used and no structure shall be erected or used except in compliance with the provisions of this By-Law and as set forth in TABLE 1, PERMITTED USES AND DEVELOPMENT STANDARDS, or as permitted by Section 6. Non-Conforming Uses and Structures. Use of land in:

- 1) overlay zoning districts, such as the Wetland Protection District or the National Flood Insurance District, shall be subject to the additional requirements of subsections 8.5 and 8.6 respectively, and
- 2) a planned commercial CD district shall be subject to the preliminary site development and use plan approved by the vote of the Town Meeting as provided in subsection 8.2.

While TABLE 1 sets forth the uses that may be permitted in planned residential RD districts generally, the uses permitted in a particular planned residential RD district shall be only those set forth in the preliminary site development and use plan approved by the vote of the Town Meeting for that district.

4.1.2 USE OF SYMBOLS IN TABLE 1

The symbols in TABLE 1, PERMITTED USES AND DEVELOPMENT STANDARDS shall have the following meanings:

Y YES: Permitted as of right provided however that all:

- 1) non-residential uses or developments with 10,000 square feet or more of gross floor area, including any existing floor area, but not including any floor area devoted to residential use or to off-street parking, or
 - 2) all residential uses or developments with three or more dwelling units, or their equivalent, including any existing dwelling units,
- are not permitted as of right but are allowed only upon the granting of a special permit with site plan review (SPS*);

SP: Special Permit required (See Section 3.3)

SPS: Special Permit with Site Plan Review required (See Section 3.4)

N NO: Not permitted.

* A religious or non-profit educational use, as described in subparagraph 3.1.4.1, is permitted as a matter of right in all zoning districts.

4.1.3 USES NOT LISTED IN TABLE 1 ARE PROHIBITED

All uses which are not listed in Table 1 are prohibited.

4.1.4 MORE THAN ONE CLASSIFICATION

Where a use, structure, development or activity might be classified under more than one of the uses on the lines in TABLE 1, the more specific classification shall apply; if equally specific, the more restrictive classification shall be used.

4.1.5 COMPLIANCE WITH ALL STANDARDS

In several sections of TABLE 1, in the various groups of uses and at the beginning of the major sections of the Table, there are listed standards for: permissible uses, operating characteristics and development standards. A use, building, activity or development must comply with each of those standards which may be applicable. Failure to comply with any one of the standards will be the basis for denial of a

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

building permit or certificate of occupancy; failure to continue to comply with any one of the standards will be the basis for revocation of the certificate of occupancy.

4.1.6 PRINCIPAL USES, ACCESSORY USES

A principal use is a main or primary use of a lot or structure. More than one principal use may be allowed on a lot, except where such use is a dwelling as provided in subparagraph 7.1.4, and provided that each principal use is permitted by Table 1 and the sum of such principal uses complies with the other requirements of this By-Law.

An accessory use is one that constitutes only an incidental or insubstantial part of the total activity that takes place on a lot and is commonly associated with and integrally related to the principal use. More than one principal use may be allowed on a lot, except where such use is a dwelling as provided in subparagraph 7.1.4, and provided that each principal use is permitted by Table 1 and the sum of such principal uses complies with the other requirements of this By-Law.

Even though a use may be a principal use in another situation, it may be conducted as an accessory use in conjunction with another principal use provided it is insubstantial, incidental, commonly associated with and integrally related to that principal use and does not exceed the size set forth in subparagraph 4.1.7. A use or structure not listed in TABLE 1 and not prohibited by line 18.2 or 18.3 is permitted provided it is a use or structure that is accessory to a principal use or structure that is permitted by TABLE 1 and conforms to all other provisions of this By-Law and is not in violation of any other Town By-Law or the General Laws.

4.1.7 LIMIT ON SIZE OF ACCESSORY USES

An accessory use shall not occupy more than 25 percent of the area of a lot or more than 25 percent of the gross floor area on a lot except that such limitation shall not apply to off-street parking. An accessory apartment (see subsection 5.2) may occupy not more than 30 percent of the floor area of a dwelling.

4.1.8 CHANGE IN USE

Prior to a substantial change in use, a new certificate of occupancy shall be obtained. If the existing use or the proposed new use is one which requires a special permit or special permit with site plan review, as set forth in TABLE 1, prior to a substantial change in use, a new special permit or special permit with site plan shall be obtained.

A substantial change of use occurs when:

- 1) the change is from one principal use category to another, i.e. use classifications which are on a different line in TABLE 1;
- 2) the existing use of a lot is a combination of several different principal uses, such as different stores or offices or eating establishments within one building, and the change alters the off-street parking requirements for the overall use of the lot;
- 3) the operating characteristics of the new use differs substantially from that of the use which it replaces because there are adverse impacts on nearby properties, or the capacity of public services or facilities is not adequate to accommodate the new use, or
- 4) in a planned residential development, if the type of dwelling units is changed.
- 5) In the case where a special permit or variance is in effect, the change would result in exceeding any conditions included in the special permit or variance, even if the preceding use and the new use are in the same line in TABLE 1.

A change in the ownership or management of an establishment, without the type of changes enumerated in the previous sentence, is not considered a substantial change in use.

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

4.2 TABLE 1 PERMITTED USES AND DEVELOPMENT STANDARDS

PART A RESIDENTIAL, INSTITUTIONAL, AGRICULTURAL USES

Line	RO		RM	RD*	CB		CRS	CS	CLO	CRO	CM
	RS	RT			CN	CRS					

*For uses permitted in RD districts, see subparagraphs 4.1.1 and 8.3.3

1. RESIDENTIAL USES

1.1 PERMITTED RESIDENTIAL USES

(Must also comply with operating and development standards)

1.11	One-family dwelling	Y	Y	Y	SP	Y	N	N	N	N	N
1.12	Two-family dwelling, semi-attached dwelling	N	Y	Y	SP*	Y	N	N	N	N	N
1.13	Conversion of one-family dwelling to two-family dwelling (see subsection 5.3 elsewhere in this By-Law)	SP	Y	Y	N	Y	N	N	N	N	N
1.14	Conversion of one-family dwelling to congregate living facility (see subsection 5.4 elsewhere in this By-Law)	SP	SP	Y	SP*	SP	N	N	N	N	N
1.15	Dwelling unit in commercial or institutional building for security, maintenance or administrative employee	Y	Y	Y	SP*	Y	Y	Y	Y	Y	Y
1.16	(Reserved)										
1.17	Temporary dwelling, which may include a mobile home, to be erected for a period of not more than one year to replace a permanent dwelling which has been damaged or destroyed by fire, natural catastrophe, or by demolition or substantial reconstruction; may be located in a required yard setback if not otherwise feasible to locate on the lot	Y	Y	Y	Y	N	N	N	N	N	N
1.18	Planned residential development (three or more dwelling units or rooming units) All planned residential developments, require a special permit with site plan review (SPS). See Section 9.	SPS	SPS	N***	SPS	N	N	N	N	N	N

TYPES OF DWELLINGS AND RESIDENTIAL FACILITIES

The types of dwellings and residential facilities permitted vary according to the type of district and the type (three alternatives) of planned residential development. Listed below, for information purposes, is a general summary. Subsection 9.2.3 controls which types of dwellings are permitted.

1.181	One-family detached	Y	Y	N***	SP*	N	N	N	N	N	N
1.182	One-family attached, two-family	SP	Y	N***	SP*	N	N	N	N	N	N
1.183	Townhouse	SP	SP	N***	SP*	N	N	N	N	N	N
1.184	Three-family, four-family, multi-family	N	N	N***	SP*	N	N	N	N	N	N
1.185	Rooming house, group quarters	N**	N**	N***	SP*	N	N	N	N	N	N
1.186	Group care facility, congregate living facility long term care facility	N	N	N***	SP*	N	N	N	N	N	N
1.187	Conversion of a municipal building to residential use (see subsection 9.5)	SPS	SPS	N***	SP*	N	N	N	N	N	N

* subject to a preliminary site development and use plan (see subsections 4.1.1 and 8.3.3)

** Y, if accessory to a religious or educational use

*** Development of new multi-family dwellings is not permitted in the RM district; these uses are permitted in RM districts in existence in January, 1985.

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

Line	RO							CB		
	RS	RT	RM	RD*	CN	CRS	CS	CLO	CRO	CM
1.2	ACCESSORY USES FOR RESIDENTIAL USES (See also line 5, accessory uses permitted in all residential, institutional, agricultural uses)									
1.21	Y	Y	Y	SP	N	N	N	N	N	N
1.22	Y	Y	Y	SP	Y	N	N	N	N	N
1.23	Y	N	N	N	N	N	N	N	N	N
1.24	Y	Y	Y	SP	Y	N	N	N	N	N
1.25	SP	SP	SP	SP	Y	N	N	N	N	N
1.26	Y	Y	Y	Y	Y	N	N	N	N	N
1.27	Y	Y	Y	Y	Y	N	N	N	N	N
1.28	Y	Y	Y	SP	Y	N	N	N	N	N
1.29	SP	SP	SP	SP	Y	N	N	N	N	N
1.30	Y	Y	Y	SP	Y	N	N	N	N	N
1.31	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
1.32	Y	Y	Y	N	N	N	N	N	N	N
1.33	Y	Y	Y	Y	Y	N	N	N	N	N
1.34	N	N	N	SP	N	N	N	N	N	N

2. INSTITUTIONAL USES

2.1	PERMITTED INSTITUTIONAL USES (Must also comply with operating and development standards)									
2.11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

Line		RO						CB			
		RS	RT	RM	RD*	CN	CRS	CS	CLO	CRO	CM
2.12	Day care center (see Definition), school age child care program (see Definition), nursery school, kindergarten;	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2.13	Family day care home (see Definition) for not more than six children	Y	Y	Y	Y	Y	SP	SP	SP	SP	SP
2.14	Elementary or secondary school, trade or vocational school for elementary and secondary school students; operated by a public agency, or by a religious sect or denomination, or a non-profit educational corporation; includes associated buildings and land used for educational purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2.15	Public or private non-profit, college or technical school, trade or vocational school operated for college age students; includes buildings, land or other facilities used for educational purposes but not including space used for revenue producing purposes not directly associated with the education of students; (for space used for revenue producing purposes, see commercial uses)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2.16	Public parks, playgrounds, municipal buildings or uses	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2.17	Museum, art gallery, private library	SP	SP	SP	SP	Y	Y	N	Y	Y	N
2.18	Non-profit community service center or charitable organization	SP	SP	SP	SP	Y	Y	N	Y	Y	Y
2.19	Private, non-profit club or lodge of social, fraternal, veterans, professional or political association, union hall; not including a recreational club	SP	SP	SP	SP	Y	Y	N	Y	Y	Y
2.20	Private non-profit recreational facility such as golf course, tennis or swimming club	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
2.21	Cemetery	Y	Y	Y	N	Y	Y	Y	Y	Y	Y
2.3	ACCESSORY USES, INSTITUTIONAL USES (See also line 5, accessory uses permitted in all residential, institutional, agricultural uses)										
2.31	Within a lodge or recreational club, kitchen, dining room, function room available for members but not open to the general public	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
2.32	Within a recreational club, place for the sale of related equipment, such as balls; snack bar	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
2.33	Within a school, kitchen and dining facilities for staff or students; dwelling units for staff	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
2.4	DEVELOPMENT STANDARDS										
2.41	Uses and structures with less than 10,000 square feet of gross floor area, including the area of any existing structure but not including any floor area devoted to parking, on a lot provided the use is permitted.	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
2.42	Uses and structures with 10,000 square feet or more of gross floor area, including the area of any existing structure but not including any floor area devoted to parking, on a lot provided the use is permitted and the SPGA grants a special permit with site plan. (See subsection 3.4 and 3.5) (A religious or non-profit educational use, as described in subparagraph 3.1.4.1, is permitted as a matter of right in all zoning districts.)	SPS	SPS	SPS	SPS	SPS	SPS	SPS	SPS	SPS	SPS

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

Line	RO							CB		
	RS	RT	RM	RD*	CN	CRS	CS	CLO	CRO	CM
<u>3. AGRICULTURAL, NATURAL RESOURCE USES</u>										
3.1 PERMITTED AGRICULTURAL, NATURAL RESOURCE USES										
3.11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3.12	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3.13	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*
3.14	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*
3.15	SP	N	N	N	N	N	N	N	SP	SP
* Y, if the use satisfies all of the requirements for the so-called agricultural exemption in The State Zoning Act, Chapter 40A, Section 3										
<u>4. COMMERCIAL USES IN RESIDENTIAL DISTRICTS</u>										
4.1 PERMITTED COMMERCIAL USES IN RESIDENTIAL DISTRICTS										
For permitted commercial uses in commercial districts, see Part B of this Table.										
4.11	SP	SP	SP	SP						
4.12	SP	SP	SP	SP						
4.13	Y	Y	Y	Y						
4.14	SP	SP	SP	SP						
<u>5. ACCESSORY AND TEMPORARY USES PERMITTED FOR ALL RESIDENTIAL, INSTITUTIONAL AND AGRICULTURAL USES</u>										
5.11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5.12	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.13	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5.14	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.15	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.16	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
5.17	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.18	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

Line		RO							CB		
		RS	RT	RM	RD*	CN	CRS	CS	CLO	CRO	CM
5.19	Convenience business or other commercial uses in an institutional building; provided the use is conducted entirely within the principal building, is conducted primarily for the occupants or employees of the principal use and there is no evidence of the conduct of the accessory use from the street or from any lot line.	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.20	Accessory sign, as permitted by Section 13.	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y

TEMPORARY USES

For permitted temporary uses in commercial districts, see Part B of this Table

5.21	Temporary building(s) or trailer(s) incidental to the construction of a building or land development for a period not to exceed two years provided a non-renewable permit is granted by the building commissioner.	Y	Y	Y	Y						
5.22	Temporary structures and uses not otherwise permitted in the district provided the SPGA makes a finding that the proposed structure or use is compatible with the neighborhood and the time period of the special permit is not greater than two years.	SP	SP	SP	SP						

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS
 Table 1. (continued)

TABLE 1 PERMITTED USES AND DEVELOPMENT STANDARDS

PART B COMMERCIAL USES

Note: Commercial Uses Are Not Permitted in Residential Districts Except As Indicated in PART A

<u>Line</u>	<u>ALL COMMERCIAL USES</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
B.1 OPERATING STANDARDS								
B.11	All operations are conducted entirely within an enclosed building	Y	Y	Y	Y	Y	Y	Y
B.12	Operations, in part or in whole, conducted outdoors during operating hours and subject to the transition and screening requirements set forth in section 10.	SP	Y	Y	SP	SP	SP	Y
B.13	Storage of equipment and products outdoors during non-operating hours	N	Y	Y	Y	N	SP	SP
B.2 DEVELOPMENT STANDARDS								
B.21	Uses and structures with less than 10,000 square feet of gross floor area including the area of any existing structures but not including any floor area devoted to off-street parking, on a lot provided the use is permitted and complies with the operating and development standards in this Table.	Y	Y	Y	Y	Y	Y	Y
B.22	Uses and structures with 10,000 or more square feet of gross floor area including the area of any existing structures but not including any floor area devoted to off-street parking, on a lot provided the SPGA grants an SPS as provided in subsections 3.4 and 3.5.	SPS	SPS	SPS	SPS	SPS	SPS	SPS
<u>6. OFFICE USES</u>								
6.1 PERMITTED OFFICE USES (Must also comply with operating and development standards)								
6.11	Real estate development, management	N	Y	N	Y	Y	Y	Y
6.12	Finance, credit, investment but not a bank (See line 7.15)	N	Y	N	Y	Y	Y	Y
6.13	Medical, dental, psychiatric office, but not a clinic (see line 7.21)	Y	Y	N	Y	Y	Y	Y
	a. with related laboratory	N	Y	N	Y	Y	Y	Y
6.14	Professional services such as law, engineering, architecture, consulting service	N	Y	N	Y	Y	Y	Y
6.15	Advertising, editing, composition, but not including printing or other reproduction service	N	N	N	N	Y	Y	Y
6.16	Employment agency, office of a business, professional, labor, civic or social association	N	Y	N	Y	Y	Y	Y
6.17	Office of manufacturer's representative or salesman with no sales or storage and distribution of products from the premises	N	Y	N	Y	Y	Y	Y
6.18	Other business or administrative office, not elsewhere classified	N	N	N	Y	Y	Y	Y
6.2 DEVELOPMENT STANDARDS								
6.21	Office located on a street level floor	Y	N	N	N	Y	Y	Y
6.22	Office located on any floor other than on a street level floor; * permitted in a basement	N*	Y	N	Y	Y	Y	Y

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

<u>Line</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
6.23 Office space of all companies in a building occupies a total of more than 50% of the floor area in a building	N	N	N	Y	Y	Y	Y
6.24 Offices in which one company has not more than 1,000 square feet of floor area in a building	Y	Y	N	Y	Y	Y	Y
6.25 Offices in which one company has more than 1,000 square feet of floor area but not more than 2,500 square feet of floor area in a building	N	Y	N	Y	Y	Y	Y
6.26 Building used for offices without limit as to the amount of floor area one company may occupy or the percentage of floor area occupied by offices.	N	N	N	N	N	Y	Y

7. PERSONAL, BUSINESS SERVICES

7.1 PERMITTED PERSONAL, BUSINESS SERVICE USES (Must also comply with operating and development standards)

7.11 Beauty salon, barber shop	Y	Y	Y	Y	Y	N	N
7.12 Laundry or dry cleaning pick-up station with processing done elsewhere; laundry or dry cleaning with processing on the premises subject to the development standards for the district; self-service laundromat or dry cleaning	Y	Y	Y	N	N	N	N
7.13 Tailor, dressmaker, shoe repair	Y	Y	Y	Y	N	N	N
7.14 Real estate sales or rental	Y	Y	N	Y	Y	Y	Y
7.15 Bank, credit union	N	Y	N	Y	Y	Y	Y
a. external automatic teller machine	N	Y	Y	Y	Y	Y	Y
b. with drive-up window or auto-oriented branch bank	N	SP	N	N	N	SP	SP
7.16 Travel agency, insurance agency, ticket agency	N	Y	N	Y	Y	Y	Y
7.17 Photographic services including commercial photography	Y	Y	Y	Y	Y	Y	Y
7.18 Repair of household appliances, small tools or equipment, rental of equipment or tools for use in a home	Y	Y	Y	Y	N	N	N
7.19 Funeral parlor	N	N	Y	N	Y	N	N
7.20 Photocopying, reproduction services but not commercial printing	Y	Y	Y	Y	Y	Y	Y
7.21 Medical clinic for out-patient services	N	Y	N	Y	Y	Y	Y
7.22 For-profit school for instruction in arts, skills or vocational training	N	Y	Y	Y	Y	Y	Y
7.23 Commercial printing, publishing	N	N	Y	Y	Y	N	Y
7.24 Newspaper distribution agency	N	N	Y	N	Y	N	Y
7.25 Office of veterinarian	N	N	Y	N	N	N	N
7.26 Kennel, boarding of household pets	N	N	Y	N	N	N	N

7.3 DEVELOPMENT STANDARDS

7.31 Services with less than 1500 square feet of floor area per establishment	Y	Y	Y	Y	Y	Y	Y
7.32 Services with 1500 or more square feet of floor area per establishment	N	Y	Y	Y	Y	Y	Y

8. SALES OR RENTAL OF GOODS, EQUIPMENT

8.1 PERMITTED RETAIL SALES AND RENTAL USES (Must also comply with operating and development standards)

8.11 Convenience goods often bought on a daily basis such as food, candy, newspapers, tobacco products,	Y	Y	Y	Y	Y	N	N
8.12 General merchandise, department stores	N	Y	N	Y	N	N	N
8.13 Food, but not that intended for consumption on the	Y	Y	N	Y	N	N	N

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

<u>Line</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
<u>11. MOTOR VEHICLE-RELATED SALES AND SERVICE USES</u>							
11.1 PERMITTED MOTOR VEHICLE-RELATED SALES AND SERVICE USES (Must also comply with operating and development standards)							
11.11 Motor vehicle sales or rental; includes automobiles, trucks campers, vans, recreational vehicles, or trailers	N	SP	SP	N	N	N	SP
11.12 Service station, sale of fuel and other motor oil products and accessories such as batteries, tires	N	SP	SP	N	N	N	N
11.13 Sales and installation of automotive parts such as tires, mufflers, brakes and motor vehicle accessories	N	N	SP	N	N	N	N
11.14 Motor vehicle maintenance and minor repairs limited to engine tune-up, lubrication and installation of replacement parts, adjustment or replacement of brakes or tires, washing and polishing, but not including engine overhaul, body work or painting	N	SP	SP	N	N	N	SP
11.15 Substantial motor vehicle repair including engine overhaul, body work and painting	N	N	SP	N	N	N	N
11.16 Car wash conducted entirely within a building	N	N	SP	N	N	N	N
11.17 Automobile parking lot where the parking spaces do not serve a principal use on the same lot and where no sales or service takes place.	N	N	SP	SP	N	SP	SP
11.18 Storage of automobiles or trucks where the principal user of the vehicles is not on the same lot.	N	N	SP	N	N	N	N
11.2 DEVELOPMENT STANDARDS							
11.21 Activities conducted entirely within a fully enclosed building	N	SP	SP	N	N	N	SP
11.22 Activities conducted outside of a building, in an open area	N	SP	SP	SP	N	SP	SP
11.23 Open-air storage of inoperable and unregistered motor vehicles where accessory to a permitted principal use	N	N	SP	N	N	N	N
<u>12. CONSTRUCTION, STORAGE, DISTRIBUTION AND INDUSTRIAL SERVICES</u>							
12.1 PERMITTED CONSTRUCTION, STORAGE, DISTRIBUTION AND INDUSTRIAL SERVICE USES (Must also comply with operating and development standards)							
12.11 Laundry, dry-cleaning where clothes or other fabrics are washed or cleaned; but not including carpets	N	N	SP	N	N	N	N
12.12 Bakery	N	N	Y	N	N	N	N
12.13 Industrial services such as machine shop, welding	N	N	SP	N	N	N	Y
12.14 Commercial mover, associated storage facilities	N	N	SP	N	N	N	Y
12.15 Distribution center, parcel delivery, commercial mail delivery center	N	N	N	N	N	Y	Y
12.16 Office, display or sales space of a wholesale or distributing establishment, provided that not more than 25 per cent of the floor area is used for assembly of products	N	N	Y	N	N	N	N
12.17 Shop and storage facilities for tradesmen such as carpenter, plumber, electrician etc. engaged in the construction and repair of residential buildings and other light frame structures with incidental sale of building materials or products on the premises	N	N	Y	N	N	N	N
12.18 Office, yard and storage facilities for construction company such as a general contractor, landscape contractor	N	N	SP	N	N	N	N

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

<u>Line</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
12.19 Fuel oil dealer including sale and repair of heating equipment but not including bulk storage of fuel oil	N	N	SP	N	N	N	N
<u>13. MANUFACTURING</u>							
13.1 PERMITTED MANUFACTURING USES (Must also comply with operating and development standards)							
13.11 Light manufacturing	N	N	N	N	N	N	Y
13.12 Laboratory engaged in research, experimental and testing activities, which may include the development of mock-ups and prototypes but not the manufacture of finished products	N	N	N	N	N	Y	Y
<u>14. UTILITY, COMMUNICATIONS AND TRANSPORTATION</u>							
14.1 PERMITTED UTILITY, COMMUNICATIONS AND TRANSPORTATION USES (Must also comply with operating and development standards)							
14.11 Substation, pumping station or automatic telephone exchange of a regulated public utility	SP	Y	Y	Y	Y	Y	Y
14.12 Radio, television studio, but without transmitting or receiving towers	N	Y	Y	N	N	Y	Y
14.13 Transmitting or receiving tower or antenna for commercial activities	N	N	N	N	N	N	Y
14.14 Commercial ambulance service	N	N	SP	N	N	N	N
14.15 Taxicab garage, parking area	N	N	SP	N	N	N	N
14.16 Bus garage or storage facility	N	N	SP	N	N	N	Y
14.17 Parking, maintenance facilities for commercial vehicles where it is a principal use	N	N	SP	N	N	N	Y
14.18 Landing place for helicopters not including storage or maintenance facilities	N	N	N	N	N	SP	SP
<u>15. OPEN-AIR, SEASONAL AND SPECIAL EVENTS</u>							
15.1 PERMITTED OPEN-AIR, SEASONAL AND SPECIAL EVENTS USES (Must also comply with operating and development standards)							
15.11 Flea market	N	N	SP	N	N	N	N
15.12 Fund raising event conducted by Lexington non-profit organization provided permission, if required, is granted by the appropriate Town agency.	N	Y	Y	Y	N	N	N
15.13 Seasonal sale of Christmas trees and wreaths	SP	Y	Y	N	SP	SP	SP
<u>16. ACCESSORY USES FOR COMMERCIAL USES</u>							
16.1 Off-street parking for vehicles associated with the principal use; (See Section 11) NOTE: an off-street parking structure must comply with the dimensional controls for a building	Y	Y	Y	Y	Y	Y	Y

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

<u>Line</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
16.2 Off-street loading for vehicles associated with the principal use; (See Section 11)	Y	Y	Y	Y	Y	Y	Y
16.3 Parking of trucks or other equipment to be used for the maintenance of the buildings and grounds only; shall be parked only in a garage or in an outdoor area not within the minimum yard for the principal building and shall be screened from the view of abutting lots and the street. (See Section 10)	N	Y	Y	Y	Y	Y	Y
16.4 Temporary overnight outdoor parking of freight carrying or material handling equipment	N	Y	Y	Y	Y	Y	Y
16.5 Building for storage of tools, lawn and garden equipment and supplies subject to same dimensional controls as a principal building.	Y	Y	Y	Y	Y	Y	Y
16.6 Dumpster or other refuse disposal equipment subject to Section 10.	Y	Y	Y	Y	Y	Y	Y
16.7 a. Convenience business use	N	Y	Y	Y	Y	Y	Y
b. Commercial use not otherwise permitted in district provided the use is conducted entirely within the principal building, is conducted primarily for the employees or clientele of the principal use and not for the general public and there is no evidence of the conduct of the accessory use from the street or from any lot line.	N	SP	SP	SP	SP	SP	SP
16.8 Cafeteria, dining room, conference rooms, function rooms, recreational facilities for the employees and clientele of the principal use; if the use is not otherwise permitted in the district, it shall not be available to the general public and shall be conducted entirely within the principal building with no evidence of the existence of the use from the street or from any lot line	N	Y	Y	Y	Y	Y	Y
16.9 Accessory sign, as permitted by Section 13.	Y	Y	Y	Y	Y	Y	Y
16.10 Processing, storage and limited manufacturing of goods and materials related solely to research, experimental and testing activities	N	N	N	N	N	Y	Y
16.11 Uses accessory to permitted scientific research, development or related production activities	N	N	N	N	N	Y	Y
16.12 Temporary building(s) or trailer(s) incidental to the construction of a building or land development for a period not to exceed two years provided a non-renewable permit is granted by the building commissioner.	Y	Y	Y	Y	Y	Y	Y
16.13 Pet grooming service, incidental to a pet accessory store provided: the pet grooming is conducted entirely within the principal building with no evidence of the existence of the service from the street or any lot line; the grooming service is by appointment only; and no pets are boarded overnight.	N	N	N	Y	N	N	N
<u>17. TEMPORARY USES</u>							
17.1 Temporary structures and uses not otherwise permitted in the district provided the SPGA makes a finding that the proposed structure or use is compatible with the neighborhood	SP	SP	SP	SP	SP	SP	SP

SECTION 4. PERMITTED USES AND DEVELOPMENT STANDARDS

Table 1. (continued)

<u>Line</u>	<u>CN</u>	<u>CRS</u>	<u>CS</u>	<u>CB</u>	<u>CLO</u>	<u>CRO</u>	<u>CM</u>
<u>18. PROHIBITED USES: ALL COMMERCIAL AND RESIDENTIAL DISTRICTS</u>							
18.1	N	N	N	N	N	N	N
18.2	N	N	N	N	N	N	N
18.3	N	N	N	N	N	N	N

SECTION 5. SUPPLEMENTARY USE REGULATIONS, RESIDENTIAL USES

5.1 (Reserved)

5.2 ACCESSORY RESIDENTIAL USES IN ONE FAMILY DWELLINGS: ACCESSORY APARTMENTS

An accessory apartment is a second dwelling unit located within a structure constructed as a detached one family dwelling, subordinate in size to the principal dwelling unit and separated from it, in a manner that maintains the appearance of the structure as a one family dwelling.

5.2.1 GENERAL OBJECTIVES

The provision of accessory dwelling units in owner occupied one family dwellings is intended to:

- 1) increase the number of small dwelling units available for rent in the town,
- 2) increase the range of choice of housing accommodations,
- 3) encourage greater diversity of population with particular attention to young adults and senior citizens, and
- 4) encourage a more economic and energy-efficient use of the town's housing supply while maintaining the appearance and character of the town's single family neighborhoods.

5.2.2 CONDITIONS AND REQUIREMENTS

The Building Commissioner shall issue a building permit for a newly created accessory apartment in a detached, one family dwelling in an RO or RS district provided that each of the following conditions and requirements is met:

a. GENERAL

1. The owner of the dwelling in which the accessory apartment is created, shall occupy either of the dwelling units in the structure, except for temporary absences as provided in paragraph 5.2.4. For the purposes of this section, the "owner" shall be one or more individuals who constitute a family, who hold title directly or indirectly to the dwelling, and for whom the dwelling is the primary residence for voting and tax purposes,
2. There shall be no more than one accessory apartment within a one family dwelling.
3. There shall be no boarders or lodgers within either unit of a dwelling with an accessory apartment.
4. The lot area shall be at least 10,000 square feet.
5. The gross floor area of the dwelling, excluding floor area in the dwelling used for off-street parking, as of January 1, 1983, was at least, 2,000 square feet. The amount of the gross floor area, excluding floor area in the dwelling used for off-street parking, shall be verified in the records of the Building/Inspection Department, or in the Board of Assessors, or in such documentation as the Zoning Officer may accept.
6. The maximum gross floor area of the accessory apartment shall not exceed the greater of 700 square feet or 30 percent of the gross floor area of the dwelling, excluding areas of the structure used for parking.
7. There shall not be more than two bedrooms in an accessory apartment.

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8. No structure that is not connected to the public water and sanitary sewer systems shall have an accessory apartment.
 9. There shall be usable open space, as defined in subparagraph 9.3.7, for the recreation and leisure time use of the occupants of the dwelling, on the lot equal to or greater than the gross floor area of the dwelling.
- b. **EXTERIOR APPEARANCE OF A DWELLING WITH AN ACCESSORY APARTMENT**
The accessory apartment shall be designed so that the appearance of the structure remains that of a one family dwelling, subject further to the following conditions and requirements:
1. All stairways to second or third stories shall be enclosed within the exterior walls of the dwelling.
 2. There shall be no enlargements or extensions of the dwelling in connection with any accessory apartment except for minimal additions necessary to comply with building, safety or health codes, or for enclosure of an entryway, or for enclosure of a stairway to a second or third story.
 3. Any new entrance shall be located on the side or in the rear of the dwelling.
 4. Where there are two or more existing entrances on the front facade of a dwelling, if modifications are made to any entrance, the result shall be that one appears to be the principal entrance and other entrances appear to be secondary.
- c. **OFF-STREET PARKING**
There shall be provided at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the accessory apartment. In order to maintain the appearance of a single family neighborhood all parking spaces on the lot shall be subject further to the following conditions and requirements:
1. Each parking space and the driveway leading thereto shall be paved or shall have an all-weather gravel surface. No motor vehicles shall be regularly parked on the premises other than in such a parking space.
 2. No more than two outdoor parking spaces shall be located in the required front yard. All other parking spaces shall be either:
 - 1) outdoor parking spaces located in a side or rear yard or
 - 2) in a garage or carport.
 3. There shall be no more than four outdoor parking spaces on the lot.
 4. No parking space shall be located within the boundary of a street right-of-way.
 5. Parking spaces shall be located so that both the principal dwelling unit and the accessory apartment shall have at least one parking space with direct and unimpeded access to the street without passing through a parking space designated to serve the other dwelling unit.
 6. Where there are more than two outdoor parking spaces, there shall be provided suitable screening with evergreen or dense deciduous plantings, walls, fence, or a combination thereof in the area between the parking spaces and the nearest side lot line and, if the parking space is in the front yard and parallel to the street, in the area between the parking space and the front lot line. Screening shall be sufficient to minimize the visual impact on abutters and to maintain the single family appearance of the neighborhood.

5.2.3 PROCEDURES

- a. No accessory apartment shall be constructed without issuance of a building permit by the building commissioner.
- b. The application for a building permit shall be accompanied by a filing fee and by such plans and other documentation related to the conditions and requirements of paragraph 5.2.2 as the building commissioner may require.
- c. Not less than 14 days before issuing a building permit, the building commissioner shall notify owners

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of property immediately abutting the applicant's property, including owners of property separated from the applicant's property by a public or private way, an application for a building permit for an accessory apartment has been filed.

- d. The building commissioner shall act on the application within 30 days of receipt.
- e. No use as an accessory apartment shall be permitted prior to issuance of a certificate of occupancy by the building commissioner. A certificate of occupancy shall be issued after the building commissioner determines that the accessory apartment as constructed is in conformity with the approved plans and with the provisions of this by-law.
- f. A certificate of occupancy shall be issued for a period of not greater than three years. Continued occupancy will require issuance of a new certificate of occupancy. Proof of owner occupancy shall be submitted with the application for a new certificate of occupancy.
- g. A certificate of occupancy shall be issued to the owner only, and is not transferable. A new owner shall apply to the building commissioner for a new certificate of occupancy.

5.2.4 TEMPORARY ABSENCE OF OWNER

An owner of a dwelling containing an accessory apartment who is to be absent for a period of less than two years may rent the owner's unit as well as the second unit during the temporary absence provided:

- a. Written notice thereof shall be made to the building commissioner on a form prescribed by him.
- b. The owner shall be resident in the house for at least two years prior to the temporary absence.
- c. The residence shall be owner occupied for at least two years between such temporary absences.
- d. The house shall remain the owner's primary legal residence for voting and tax purposes.

5.2.5 REGISTRATION OF NON-CONFORMING UNITS CREATED BEFORE 1924

- a. For a second dwelling unit which existed as of January 1, 1983, in a one family dwelling, in an RO or RS district, to be a non-conforming (lawful) use, the second dwelling unit must have been constructed prior to March 17, 1924 in a dwelling and have been in continuous use since that time with the exception of temporary non-use for a period not greater than twenty-four consecutive months.
- b. To verify the non-conforming status of such a unit, an owner shall apply for a certificate of occupancy from the building commissioner prior to January 1, 1985 and shall present documentary evidence that: 1) the second dwelling unit was constructed prior to March 17, 1924; and 2) the unit was in use for any three years between 1978 and 1982 inclusive, which shall, for this purpose, be considered prima facia evidence of continuous use since 1924; and the building commissioner shall issue a certificate of occupancy, which shall remain effective so long as the second dwelling unit remains in continuous use. If sufficient evidence of construction prior to March 17, 1924 and of continued use is not presented, the second dwelling unit shall be considered a second dwelling unit in violation, and shall comply with paragraph 5.2.6
- c. If an owner does not apply for a certificate of occupancy by January 1, 1985, he/she shall be required to present evidence of continuous use of the second dwelling unit since 1924 in order to obtain a certificate of occupancy, and shall be subject to penalties under paragraph 3.1.1.

5.2.6 SPECIAL CONDITIONS, EXISTING SECOND DWELLING UNITS IN VIOLATION

All second dwelling units which existed as of January 1, 1983, in a one family dwelling in an RO or RS district, except those which are a lawful, non-conforming use, or those which were granted a special permit under Table 1, Permitted Uses and Development Standards, line 1.13, dwelling conversion to two family, or similar provisions of preceding Zoning By-Laws, are in violation of the Zoning By-Law.

- a. Owners of existing second dwelling units in violation must apply to the building commissioner for a determination of compliance with paragraph 5.2.2 before January 1, 1985. Applications shall be accompanied by a filing fee and by such plans and other documentation related to the conditions and

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requirements of paragraph 5.2.2, as may be required by the building commissioner.

- b. Within 90 days the building commissioner shall issue one of the following:
 1. A determination of compliance with paragraph 5.2.2, and a certificate of occupancy.
 2. A conditional determination of compliance with paragraph 5.2.2, describing corrective changes needed to bring the second dwelling unit into compliance, which changes shall be completed within 90 days of the date of the conditional determination. Upon successful completion of the required changes, the building commissioner shall issue a certificate of occupancy.
 3. A determination of non-compliance with one or more of the requirements of paragraph 5.2.2, together with a listing of those requirements and conditions with which compliance cannot be achieved through corrective changes.

The owner of a second dwelling unit built prior to January 1, 1983 is eligible to apply within 60 days of the date of the determination to the SPGA for a special permit for maintenance of an existing, non-complying apartment, subject to the special conditions in subparagraph 5.2.6.c, below.

- c. Special conditions for second dwelling units constructed prior to January 1, 1983 that comply with at least subparagraphs 5.2.2.a.1, 2, and 3; 5.2.2.b.1; and 5.2.2.c.
 1. Upon presentation of evidence of construction prior to January 1, 1983, the owner may apply to the SPGA for a special permit for maintenance of an existing non-complying apartment.
 2. The SPGA shall ordinarily grant a special permit for the existing non-complying second dwelling unit unless specific evidence is submitted supporting any claim that the unit has caused a deterioration of the single family neighborhood, a decrease in property values, or has caused any other substantial detrimental effect on the public welfare and convenience. In weighing such claims and evidence, the SPGA shall consider whether any changes required to bring the second dwelling unit into compliance are sufficient to counteract any prior negative impact.
 3. In granting a special permit, the SPGA may impose such additional conditions as it may deem necessary to protect the single family appearance of the dwelling, and to bring the dwelling as close to conformity with the conditions and requirements for new accessory apartments, paragraph 5.2.2, as is feasible.
 4. A special permit granted by the SPGA shall include a condition that a certificate of occupancy shall be obtained for periods not to exceed three years in the same manner as set forth in paragraph 5.2.3. No subsequent certificate of occupancy shall be issued unless there is compliance with the plans and conditions approved by the SPGA.
 5. If a special permit is granted and corrective changes are required, they must be completed within 90 days of the date of granting the permit. When required changes are completed, the building commissioner will issue a certificate of occupancy.
 6. If a special permit is denied, the second dwelling unit shall be terminated within one year of the date of the denial.
- d. If an owner fails to comply with paragraph 5.2.6 the second dwelling unit shall be terminated within six months of the date of notice from the building commissioner, and the owner shall be subject to penalties as provided in paragraph 3.1.1 for each day the second dwelling unit is in use after January 1, 1985.

5.2.7 ACCESSORY APARTMENT IN ACCESSORY STRUCTURE

5.2.7.1 NEW ACCESSORY APARTMENT IN AN ACCESSORY STRUCTURE

Notwithstanding the provisions of this By-law that state an accessory apartment shall be located in a structure constructed as a detached one family dwelling and the prohibition in subparagraph 7.1.4 against having more than one dwelling on a lot, the Board of Appeals may grant a special permit to allow the construction of an accessory apartment in an existing accessory structure which is on the same lot in the RS

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or RO district as an existing one-family dwelling provided:

- a. the lot has an area of at least 18,000 square feet in the RS district and at least 33,000 square feet in the RO district;
- b. the structure was in existence on January 1, 1983 and had at least 500 square feet of gross floor area at that time;
- c. the accessory apartment has at least 500, but not more than 900, square feet of gross floor area. An addition to an accessory structure, which already has 500 or more square feet of gross floor area, may be permitted but no addition shall be allowed which increases the gross floor area to over 900 square feet. The gross floor area for the accessory apartment shall not include floor area used for any other permitted accessory use or floor area designed, intended or used for required off-street parking to serve the principal dwelling;
- d. the creation of the accessory apartment shall not reduce the number of existing parking spaces in the accessory structure which are designed, intended or used for required off-street parking spaces to serve the principal dwelling;
- e. all existing and proposed off-street parking spaces shall comply with the requirements for the location, layout, design and screening of off-street parking spaces set forth in subsection 5.2.2 c. and in Section 11;
- f. not more than one accessory structure on the lot may have an accessory apartment. There shall be not more than two dwelling units, one of which is the accessory apartment and the other is the principal dwelling, on the lot;
- g. the accessory apartment shall comply with all building, health and safety codes for a dwelling; and further provided the Board of Appeals determines that: the exterior appearance of the accessory structure maintains the essential character of the purpose for which it was originally constructed and is compatible with the principal dwelling on the same lot and with other dwellings on adjoining lots.

5.2.7.2 SPECIAL CONDITION, EXISTING DWELLING UNIT IN ACCESSORY STRUCTURE IN VIOLATION

All dwelling units in accessory structures in an RO or RS district which existed as of April 1, 1988, except those which are a lawful nonconforming use, or those which were authorized by the granting of a special permit or a variance, are in violation of the Zoning By-law.

The owner of each existing dwelling unit in an accessory structure in violation must apply to the building commissioner for a determination of compliance with the provisions of subparagraph 5.2.7.1 and of the applicable conditions and requirements of subsection 5.2.2, before January 1, 1990. The application for such determination and the procedures followed shall be essentially the same as those set forth in subsection 5.2.6 but shall differ as the context of an accessory apartment in an accessory structure shall require and the effective date shall be January 1, 1990.

5.3 CONVERSION OF ONE FAMILY DWELLINGS

5.3.1 OBJECTIVES

The conversion of existing single-family detached dwellings into dwellings containing two dwelling units is intended to:

- 1) encourage an increase in the number of dwelling units which are larger than those permitted as

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- accessory apartments (see 5.2) while smaller than most one-family dwellings in the town,
- 2) encourage high standards of maintenance for large one family dwellings which might fall into disrepair, and
 - 3) encourage more economic, energy-efficient use of the town's housing supply while maintaining the appearance and character of the town's single family neighborhoods.

5.3.2 CONDITIONS AND REQUIREMENTS

In accordance with Section 3.3, and where consistent with the objectives set forth in 5.3.1, the Board of Appeals may grant a special permit for a second dwelling unit in a detached one-family dwelling in an RO or RS district provided that each of the following conditions and requirements is met:

a. GENERAL

1. There shall be not more than two dwelling units in the dwelling.
 2. There shall be no roomers or boarders within either of the dwelling units.
 3. The lot area shall be at least 15,500 square feet in the RS district and 30,000 in the RO district.
 4. The gross floor area, excluding areas in the structure used for parking, of the dwelling used for residential purposes shall have been at least 2,500 square feet as of January 1, 1983, which amount shall be verified in the records of the Building/Inspection Department or on a document, "Total Living Area of Dwellings as of January 1, 1983," prepared by the Board of Assessors.
 5. The smaller of the dwelling units shall have at least 700 square feet of gross floor area, excluding areas in the structure used for parking.
 6. The dwelling shall be connected to public water and sanitary sewer system.
- b. The dwelling to be converted shall be designed so that the appearance of the structure remains that of a detached one-family dwelling, subject further to the following conditions and requirements:
1. All stairways to second and third stories shall be enclosed within the exterior walls of the dwelling. There shall be no exterior fire escapes.
 2. An enlargement or addition to the structure is permitted provided the architectural character of a detached one-family dwelling is maintained. The additional floor space created shall not be counted toward the requirement of minimum net floor area as of January 1, 1983, set forth in a.4., above.
 3. Any new entrance shall be located on the side or the rear of the dwelling.
 4. Where there are two or more existing entrances on the front facade of a dwelling, if modifications are made to any entrance, the result should be that one appears to be the principal entrance and any other entrance appears to be secondary.

c. OFF-STREET PARKING

In order to maintain the appearance of a single-family neighborhood, all parking spaces on the lot shall be subject further to the following conditions and requirements.

1. Parking spaces shall be located so that each dwelling unit shall have at least one parking space with direct and unimpeded access to the street without passing through a parking space designated to serve the other dwelling unit.
2. The provisions of subsection 5.2.2 c 1, 2, 3 and 6.

5.3.3 PROCEDURES

Each application for a special permit shall be accompanied by:

1. Floor plans, drawn to scale, of the dwelling showing each of the dwelling units to be created;
2. Where exterior changes are proposed, an elevation, or other visual representation, of the facade to be changed sufficient to show the architectural character of the dwelling; and
3. An off-street parking plan as described in 11.2.1.

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5.4 CONVERSION OF DWELLING TO CONGREGATE LIVING FACILITY

5.4.1 OBJECTIVES

The conversion of an existing dwelling to a congregate living facility is intended to: 1) encourage alternative living arrangements for the town's elderly residents, 2) permit housing arrangements compatible in size and scale with one-family and two-family neighborhoods, and 3) encourage an economic, energy-efficient use of the town's housing supply while maintaining the appearance and character of the town's neighborhoods.

5.4.2 CONDITIONS AND REQUIREMENTS

A dwelling may be converted to a congregate living facility provided that each of the following conditions and requirements is met:

a. GENERAL

1. In the RO, RS and RT districts, there shall be not more than one converted dwelling on any one lot and there shall be accommodations for not more than 15 residents in the dwelling. The provisions of subsection 9.2.10 relative to equivalent density shall not apply in the RO, RS, and RT districts. A converted dwelling in an RM or RD district shall conform to the standards of that district.
2. The lot area shall be at least 10,000 square feet.
3. The gross floor area, excluding areas in the structure used for parking, prior to the issuance of any building permit, shall be at least 2,000 square feet.
4. The dwelling shall be connected to the public water and sanitary sewer system.
5. No dwelling in an RS, RO, RT or RD district may be converted without the granting of a special permit by the Board of Appeals and no dwelling in an RM district may be converted without the issuance of a building permit by the building commissioner, and no dwelling in any district may be occupied as a congregate living facility without the issuance of a certificate of occupancy by the building commissioner.
6. This section shall not be used to create a long-term care facility, a multi-family dwelling or a rooming house. If the building commissioner has sufficient information to indicate that the converted dwelling is being used for other purposes not allowed in the zoning district or not allowed by the special permit or that sufficient support services are not being provided, the building commissioner shall notify the owner and, if within 90 days, the occupancy is not returned to conformity, the special permit and certificate of occupancy shall be suspended or revoked.

b. SERVICES AND FACILITIES FOR RESIDENTS

1. Supportive services, such as nutrition, housekeeping, or social activities and access to other services, such as health care, recreation or transportation shall be provided. At least one meal per day shall be served to residents in a common dining room.
2. There shall be rooms and facilities that promote a shared living experience for residents including at least: a dining room, one living/common room suitable for social activities, space for outdoor activities and other rooms for other supportive services.
3. A service providing organization, with sufficient resources, responsible for the provision of the supportive services shall be identified. If the relationship between that organization and the facility is terminated, and if, within 90 days, another comparable service providing organization is not designated, the certificate of occupancy shall be suspended or revoked. The service providing organization shall employ a manager or coordinator, to direct the supportive services, and the manager or coordinator, or a designee, who shall not be a client of the congregate living

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facility, shall be on the site at least eight hours per day, seven days per week.

4. A resident may occupy a separate bedroom or a suite of rooms which may have one or more of the following: a) a private full or half bath, b) a kitchenette of a size and type suitable for preparation of light meals for one or two persons, but not larger, or c) a living room.
5. There shall be provided at least 150 square feet of usable open space, as described in 9.3.7, for each resident.
6. The dwelling may not contain any dwelling unit (see definition) other than that provided for the manager or coordinator.

c. EXTERIOR APPEARANCE OF THE DWELLING

The dwelling to be converted shall be designed so that the appearance of the structure is that of a dwelling characteristic of the zoning district in which it is located, i.e. a detached one-family dwelling, if located in an RO, RS or RT district; a two-family dwelling if located in an RT district; or a multi-family dwelling if located in an RM or RD district, subject further to the following conditions and requirements:

1. Any stairway to a second or third story shall be enclosed within the exterior walls of the dwelling. There shall be no exterior fire escapes.
2. Any enlargement or addition to the dwelling shall maintain the architectural character of a one-family dwelling, or in the RT district, a two-family dwelling. The architectural detailing and the exterior materials shall be those characteristic of a one-family neighborhood. The additional floor space created shall not be counted toward the requirement of minimum net floor area set forth in a.3. above.
3. Any new entrance shall be located on the side or rear of the dwelling.

d. OFF-STREET PARKING

In order to maintain the appearance of a one-family neighborhood, all parking spaces shall be subject further to the following conditions and requirements:

1. Not more than two outdoor spaces shall be located in the front yard. All other parking spaces shall comply with the standards in section 11 for a parking lot (five or more spaces). Additional screening may be required to minimize the visual impact of parking on adjacent properties.

5.4.3 PROCEDURES

- a. A dwelling located in an RM district may be converted upon the issuance of a building permit. A dwelling located in an RO, RS, RT or RD district may be converted only upon the granting of a special permit by the Board of Appeals. Each application for a building permit or special permit shall be accompanied by:
 1. A statement identifying the supportive services to be provided and the service providing organization who will provide them.
 2. Floor plans of the dwelling drawn to scale showing the living spaces of the residents and the common facilities.
 3. Where exterior changes are proposed, elevations, or other visual representations, of the facade to be changed sufficient to show the architectural character of the dwelling before and after the change.
 4. An off-street parking plan as described in 11.2.1.
 5. A preliminary site development plan, as described in 3.6.1, except that a traffic analysis need not be submitted.
- b. Prior to the granting of a special permit or the issuance of a building permit, the SPGA, or the building commissioner, shall submit a copy of the application to the Human Services Committee

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and the Board of Health who shall be given a reasonable time period in which to make a recommendation on the application.

- c. Each building permit or special permit shall include a condition that the certificate of action is subject to suspension or revocation if the dwelling is no longer used as a congregate living facility or if the support services are no longer rendered. Each special permit shall be recorded in the Registry of Deeds.

5.5 BED AND BREAKFAST HOME

A bed and breakfast home is a private owner-occupied dwelling unit where three or fewer bed and breakfast units (See Definition) are let, and a breakfast is included in the rent, as an accessory use, in which accommodations are available for overnight.

5.5.1 OBJECTIVE

The conversion of an existing single-family dwelling unit into a bed and breakfast home containing not more than three bed and breakfast units is intended to provide standards to ensure that any dwelling containing a bed and breakfast home is maintained primarily as a residence and the bed and breakfast accommodations are subordinate and incidental to the principal use of the dwelling as a residence.

5.5.2 CONDITIONS AND REQUIREMENTS

The Building Commissioner may issue a certificate of occupancy for a bed and breakfast home to be conducted in a one-family dwelling unit in an RO or RS district provided that each of the following conditions and requirements are met:

a. General

1. No bed and breakfast home, new or pre-existing, shall be operated without first being granted a certificate of occupancy from the Building Commissioner. Each bed and breakfast home in existence on the effective date of this provision is not a nonconforming use, is in violation of the Zoning By-Law and is not entitled to remain in operation without the issuance of a certificate of occupancy.
 2. A bed and breakfast home is an accessory use and the primary use of the dwelling unit shall remain as a residence and not as a lodging house or as a "bed and breakfast establishment", as that term is defined in Chapter 64G of the Massachusetts General Laws. As an accessory use, the bed and breakfast operation shall not occupy more than 45 per cent of the gross floor area of the dwelling unit, and shall meet the criteria for an accessory use set forth in paragraph 4.1.6.
 3. Within one dwelling unit there shall be a maximum of three (3) bedrooms which are rented to roomers, boarders or bed and breakfast units. Within a dwelling, (the structure, see definition of dwelling) there shall be a maximum of three (3) bedrooms which are occupied as an accessory apartment, or rented to roomers, boarders or bed and breakfast units.
 4. Food for a fee may be served only to overnight guests.
 5. No signs beyond those allowed by Section 13.2.2 of this By-Law shall be permitted.
- b. The dwelling unit containing the bed and breakfast home shall be designed so that the exterior appearance of the structure remains that of a one-family dwelling, subject further to the following conditions and requirements:
1. All stairways to upper stories shall be enclosed within the exterior walls of the dwelling. There shall be no exterior fire escapes.
 2. An enlargement or addition to the structure is permitted provided the architectural character of a one-family dwelling is maintained.

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c. Parking.

In order to maintain the appearance of a single-family neighborhood, all parking spaces on the lot shall be subject to the following conditions and requirements in addition to those set forth in Section 11 Off-Street Parking and Loading:

1. There shall be one parking space provided for each bed and breakfast unit.
2. Newly created parking spaces may be located only in the rear and side yard.

5.5.3 PROCEDURES

5.5.3.1 Each application for a certificate of occupancy shall be accompanied by:

- a. Floor plans, drawn to scale, of the dwelling showing each of the bed and breakfast units to be designated and the access to, and egress from, each such unit.
- b. An off-street parking plan as required in section 11.2.
- c. Where exterior changes are proposed, an elevation, or other visual representation, of the facade to be changed sufficient to show the architectural character of the dwelling is maintained as a one-family house.
- d. An application for inspection of the property by the Building Commissioner to determine compliance with the current requirements of the Massachusetts State Building Code.

5.5.3.2 The certificate of occupancy for the bed and breakfast operation shall be limited to a maximum of three (3) years. A certificate of occupancy shall be issued only to the owner of the property and shall not be transferable. Any changes in ownership of the property shall require a new certificate of occupancy.

5.5.3.3 Upon issuance of a certificate of occupancy, the Building Commissioner shall notify abutters of the lot that a certificate of occupancy has been issued and of the terms and conditions under which it has been issued.

5.6 NURSERIES

Where the Board of Appeals determines that the character of the neighborhood would not be impaired, the storage and sale of some or all of the following supplementary items in conjunction with the operation of a nursery may be permitted by Special Permit under Subsection 3.3; plants grown elsewhere than on the premises, items intended to improve or preserve the life and health of plants, including without limitation pesticides, insecticides, peat moss, humus, mulches, fertilizers, and other chemicals, hand gardening tools and hand gardening equipment, garden hose, watering and spraying devices, containers for living plants, cut flowers, Christmas trees and wreaths, in season; indoors only, birdseed, birdbaths, birdfeeders, birdhouses, and ornamental or decorative items intended for use with plants.

The foregoing list may be expanded, in the discretion of the Board of Appeals, to include other items related to plants, gardens or gardening, but shall not include power tools, other power equipment, furniture or items generally associated with the business of a hardware store rather than with the conduct of a nursery. A nursery granted a special permit shall conform to the dimensional controls in Table 2 as to lot area, frontage and yards and the maximum height of buildings for the district in which located and to the following additional requirements.

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Minimum lot area 2 acres; building (other than greenhouses) may cover no more than a maximum of 20% of the lot area; greenhouses shall not be used for retail sales of items other than plants; buildings (other than greenhouses) used for retail sales shall not exceed a maximum of 7,500 square feet; not less than 50% of the total land area of the nursery shall be used for the propagation or cultivation of plants in the open or in greenhouses; the Board of Appeals shall impose and may from time to time review and revise requirements for adequate off-street parking, screening, open space buffers, lighting, outdoor storage and display, hours of operation and such other requirements as the Board of Appeals may deem necessary to preserve the character of the neighborhood.

5.7 ACCESSORY STRUCTURES

5.7.1 SWIMMING POOLS AND RACQUET COURTS

The Building Commissioner may grant a building permit for a swimming pool and the SPGA may grant a special permit for the construction of a racquet court, accessory to a residential use, subject to the following minimum conditions:

- a. No racquet court shall be constructed within 15 feet and no swimming pool shall be constructed within 20 feet of a lot line or within the required minimum yard setback for a principal building, whichever is greater. The setback of the swimming pool shall be measured to the edge of the water in the pool; the setback of the racquet court shall be measured to the fence enclosing the court.
- b. Any nighttime illumination shall be installed in such a way so as not to shine directly into nearby housing.
- c. Screening at least five feet high shall be provided around the pool or court.
- d. A fence or wall, at least five feet high for the pool and at least eight feet high for the racquet court, shall be provided so that the pool or court is completely enclosed. A principal or accessory building may form part of the enclosure. All gates in the fence surrounding a swimming pool shall be self closing and self-latching and the latch shall be at least four feet above the ground.
- e. No swimming pool or racquet court shall be constructed without the issuance of a building permit.

Applications for a special permit shall contain an order under the provisions of Article XXXII of the General By-Laws, or a determination by the Conservation Commission that Article XXXII is not applicable or that an Order of Conditions is not necessary.

5.7.2 SATELLITE RECEIVING ANTENNA

- a. A satellite receiving antenna is a device or instrument for the reception of television or other electronic communications broadcast or relayed from a satellite orbiting the earth. A satellite receiving antenna may not be erected in a residential district unless it is accessory to a residential or institutional use and it is located in a rear yard.
- b. A satellite receiving antenna may be erected after the issuance of a building permit provided the following conditions are met:
 - 1) The antenna is located in a rear yard but not within the required minimum set back set forth in Table 2.
 - 2) The antenna shall be permanently secured to the ground. No antenna shall be installed on a building or on a portable or movable structure, such as a trailer.
 - 3) Size: No antenna shall exceed an overall diameter of 12 feet or a height of 15 feet above the natural grade when measured to its uppermost point when in an upright position.
 - 4) Screening: The base of the antenna shall be screened from view from any abutting lot or from the street by an opaque fence, at least six feet high, or by planting providing comparable screening and opacity.

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- 5) **Appearance:** The antenna shall be of a non-reflecting and inconspicuous color and compatible with the appearance and character of its surroundings. No advertising material shall be permitted.
 - 6) The antenna shall not be used for commercial purposes except where accessory to a use permitted in the district by special permit provided the antenna is subject to the conditions of the special permit.
- c. Where the SPGA determines any of the conditions set forth in 5.7.2b operate to prevent reception of satellite transmitted signals by the receiving antenna, the SPGA may issue a special permit to locate the antenna elsewhere on the lot, or on a building, where it may receive such signals.

SECTION 6. NONCONFORMING SITUATIONS

6.1 OBJECTIVES AND APPLICABILITY

6.1.1 NONCONFORMING SITUATIONS

For the purposes of this By-law nonconforming situations are those uses, buildings, structures, parking spaces, loading bays, signs, landscaping and other activities that are now subject to the provisions of this By-law which were lawful before this By-law was adopted, or before amendments to this By-law which are applicable to the situation were adopted, and such situations do not now conform to the provisions of this By-law.

6.1.2 NONCOMPLYING SITUATIONS

Those uses, buildings, structures, parking spaces, loading bays, signs, landscaping and other activities that are subject to the provisions of this By-law which were not lawfully created after this By-law was adopted or after amendments to this By-law which are applicable to those situations were adopted, are in violation of this By-law and may be called noncomplying situations.

6.1.3 NONCOMPLYING STRUCTURES 10 YEARS OR OLDER

In accordance with Section 7, Chapter 40A M.G.L., a structure, which has not been in compliance with this By-law, or with the conditions set forth in any special permit or variance affecting the structure, for a period of 10 years or more from the commencement of the violation, may not be the subject of an enforcement action by the Town to compel the removal, alteration, or relocation of such structure. Structures which qualify under Section 7, Chapter 40A M.G.L., are considered to be nonconforming structures and are entitled to treatment as such as provided in this section.

6.1.4 OBJECTIVES

The provisions of this section are intended to achieve the following purposes:

- a. Allow nonconforming situations to continue until they are discontinued or abandoned.
- b. Encourage change in nonconforming situations toward greater compliance with the provisions of this By-law and to reduce the degree of nonconformity.
- c. To discourage any expansion of a nonconforming use, as measured either by the amount of floor space or land area used or by the volume of activity in the use; and to encourage the substitution of other uses, which may also be nonconforming, but which are more compatible with, and have fewer adverse impacts on, the surrounding area.
- d. To permit some expansion of nonconforming buildings provided there are not demonstrable adverse impacts on adjoining properties.
- e. Where a nonconforming situation is proposed to be changed, to encourage greater conformity with all the provisions of the By-law and the objectives and purposes stated in this By-law.
- f. In the event of the partial destruction of a nonconforming situation, to permit the reconstruction of the nonconforming situation so that the owner, and tenants if any, are not subjected to substantial economic loss while, at the same time, seeking to achieve greater conformity with the provisions of this By-law and to reduce any adverse impacts on the surrounding area.
- g. To permit the treatment of non-conforming situations to be varied by the type of zoning district and the type of nonconformity, i.e. to have a different approach for uses, structures, parking or lots, for example.

SECTION 6. NONCONFORMING SITUATIONS

6.2 GENERAL PROVISIONS

6.2.1 A use, building, structure, parking space, loading bay, sign, landscaping or any other activity which is nonconforming, but not noncomplying, may be continued but may not be increased or expanded except as may be specifically authorized by this section. If such nonconforming situation is abandoned or terminated, as set forth below, it may not be resumed except in compliance with this By-law.

6.2.2 LAWFULLY CREATED

A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity is considered to be lawfully created, with respect to zoning requirements, if:

- a. it was in existence on March 17, 1924 when the Zoning By-law was originally adopted, or,
- b. subsequent to March 17, 1924 it was permitted by right by the Zoning By-law and was in existence prior to the effective date of any amendment which renders it nonconforming, and if required at the time of its creation, a building permit or certificate of occupancy was issued.

As the records of the Building/Inspection Department in earlier years are incomplete, the Zoning Officer may accept such evidence of lawful creation for those years as he/she may deem to be adequate in lieu of official Town records.

6.2.3 SPECIAL PERMIT, VARIANCE ARE NOT NONCONFORMING

A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which is not otherwise permitted by right and does not comply with this By-law, due to the granting of a variance or special permit, is not a nonconforming situation, is not entitled to the treatments afforded by this section and is bound to the conditions of the special permit or variance, as granted.

In the case of a special permit or variance which is not entitled to treatment as a nonconforming situation, the Board of Appeals may grant an additional special permit or variance which has the effect of extending such special permit or variance for an additional period of time provided such special permit or variance is subject to conditions that:

- a. are not more permissive than those in the most recently approved special permit or variance, and
- b. bring the situation closer to compliance with the provisions of this By-law.

6.2.4 ONCE IN CONFORMITY, OR CLOSER TO CONFORMITY, CANNOT REVERT

Once a use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which had been nonconforming is brought into conformity with this By-law, it shall not be permitted to revert to nonconformity. Once a use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which is nonconforming is brought into closer conformity with this By-law, i.e. the amount or degree of nonconformity is reduced, it shall not be permitted to revert to nonconformity with the provisions of this By-law which is greater than the closest amount or degree of conformity which it has achieved.

6.2.5 CHANGE IN LOT THAT RESULTS IN NONCOMPLIANCE

No lot upon which there is a building or for which a building permit is in force shall be subdivided or otherwise changed in area or shape, except through public acquisition, so as to result in a violation, applicable to either the lot or the building, of the requirements of Table 2, Schedule of Dimensional Controls, and of other applicable requirements of this By-law. A lot already nonconforming shall not be changed in area or shape so as to increase the degree of nonconformity with the requirements of this By-law; a nonconforming lot may be changed in area or shape to move closer to conformity with the requirements of this By-law. If land is subdivided, conveyed or otherwise transferred in violation hereof, no building permit, special permit,

SECTION 6. NONCONFORMING SITUATIONS

certificate of occupancy or approval of a subdivision plan under the Subdivision Control Law shall be issued with reference to said transferred land until both the lot retained and the newly created lot(s) meet the requirements of this By-law.

6.2.6 NONCONFORMITY RESULTING FROM PUBLIC ACTION

If, as a result of public acquisition, a use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity no longer complies with this By-law, it shall be considered to be nonconforming and entitled to the treatment afforded by this section provided it was in compliance at the time of the public acquisition.

6.2.7 DISCONTINUANCE, ABANDONMENT

A nonconforming use or structure or other nonconforming situation is considered to be discontinued or abandoned whenever:

- a. it is not used for a period of 24 consecutive months, or
- b. there is evidence of discontinuance or abandonment and it is apparent that the owner does not intend to resume the use or other nonconforming situation, whichever occurs first.

In the administration of part b. above, evidence of discontinuance or abandonment shall be:

- 1) bringing the use, structure or other nonconformity into compliance with this By-law, or,
- 2) ceasing to be open to the public for the conduct of business for a period of six continuous months, and one or more of the following:
 - a) removal of customary equipment or supplies for the operation of a use,
 - b) disconnecting electrical, gas or other utility services,
 - c) failure to provide for operation in colder weather such as ceasing to heat the building at normal levels required by health regulations or failing to provide snow removal,
 - d) issuance of a notice of an unsafe structure by the Building Commissioner.

In the event that the Zoning Officer has evidence of discontinuance or abandonment, he/she shall communicate with the owner of record, by certified mail, inquiring as to the owner's intent and informing the owner of the potential loss in nonconforming status. Such owner shall be allowed a period of thirty days from the transmittal of such communication in which to respond and to take action.

Discontinuance or abandonment of a part of a nonconforming use, structure or situation shall not normally be considered to be evidence of discontinuance or abandonment of the whole unless that part which is discontinued or abandoned is the part which causes the nonconformity.

6.2.8 The rights of a nonconforming use, structure, building, lot, parking space, loading bay, landscaping or other situation are not affected by a change in ownership, tenancy or management unless such ownership, tenancy or management is specifically a condition of the issuance of a permit.

6.3 NONCONFORMING USES

6.3.1 A nonconforming use may be continued to the same degree and for the same purpose but may not be altered, expanded or extended. A nonconforming use shall be considered to be altered, expanded or extended if there is:

- a. an increase in the net floor area, or
- b. an increase in the number of employees, or

SECTION 6. NONCONFORMING SITUATIONS

- c. a substantial increase in the number of automobile or truck traffic trips generated by the use, or
- d. an increase in the hours of operation, or
- e. a change from seasonal to full time operation,

since the use first became nonconforming.

6.3.2 A nonconforming use is limited to the lot on which it is located and cannot be relocated to another lot within the same zoning district.

6.3.3 SUBSTITUTION OF NONCONFORMING USE

The Board of Appeals may issue a special permit to allow a new use, not otherwise permitted by right in the zoning district in which the nonconforming use is located, to be substituted for the existing nonconforming use subject to the following conditions:

- a. the new use is more compatible with the zoning district in which the nonconforming use is located than the existing nonconforming use it re-replaces. In this context, more compatible shall mean it complies with the criteria set forth in subsection 3.3.2 subparagraphs c, d and e, and
- b. the new use is consistent with the purpose of the zoning district in which it is to be located as set forth in subparagraph 1.2.3. and
- c. in the case that an existing nonconforming use is a commercial use (is listed in Table 1, Permitted Uses and Development Standards, Part B) and is located in a residential zoning district, the SPGA may permit:
 - 1) the substitution of another use permitted in any residential district or
 - 2) if the SPGA first determines that a use permitted in a residential district is not feasible, it may permit a new commercial use that is permitted in the CN district in substitution instead.

6.3.4 If a new use, not otherwise permitted by right in the zoning district in which it is located is allowed by a special permit granted under subparagraph 6.3.3, the new substituted use shall be considered to be the non-conforming use and the previous nonconforming use shall not be reestablished.

6.4 NONCONFORMING BUILDINGS

6.4.1 ONE-FAMILY, TWO-FAMILY DWELLING

An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this By-law by the issuance of a building permit as provided in subsection 3.1.2. That part of an existing nonconforming dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in that yard provided the SPGA grants a special permit and all of the following conditions are met:

- a. the degree of nonconformity is not greater than 50 percent of the required minimum yard setback,
- b. the site coverage of the dwelling within that minimum yard setback is not increased, and
- c. the SPGA determines that the extension or enlargement is appropriate in scale and mass for the neighborhood, with particular consideration of abutting properties.

6.4.2 An existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this By-law by the issuance of a building permit as provided in subsection 3.1.2 provided all other uses, structures and activities on the lot comply fully with the requirements of this By-law.

SECTION 6. NONCONFORMING SITUATIONS

6.4.3 An existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming with respect to another requirement of Section 7, Dimensional Controls, or of Table 2, Schedule of Dimensional Controls, other than a minimum yard setback, may not be enlarged or extended.

6.4.4 NONCOMPLYING BUILDING

If a building, or a part of a building, does not comply with the standards in Table 2, Schedule of Dimensional Controls, except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed, and the building was constructed in accordance with a building permit issued by the Town except for such dimensional noncompliance, it shall be considered to be a nonconforming building, and entitled to treatment as such, if the following conditions are met:

- a. the noncompliance has existed for at least six years during which time no enforcement action under the provisions of sections 3.1 has been taken, and
- b. the noncompliance was not created or increased by changes in lot lines after the construction of the building.

If a building, or a part of a building, does not comply with the standards in Table 2, Schedule of Dimensional Controls, except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed, and conditions a) and b) above are met but the building was not constructed in accordance with a building permit duly issued or there is no evidence a building permit was issued, the Board of Appeals may grant a special permit for the continued use of the building under the provisions of section 3.3 provided it determines the building is compatible with its neighborhood and complies with the criteria set forth in subsection 3.3.2 subparagraphs b, c, d, and e.

6.5 NONCONFORMING LOTS

6.5.1 No lot which does not comply with the provisions of this By-law with respect to minimum lot area, minimum lot frontage, or minimum lot width or with the requirements then in effect at the time of recording or endorsement, whichever occurs sooner, shall be subdivided or otherwise changed in area or shape, except through public action, so as to be in violation of the provisions of this By-law. A lot already nonconforming with respect to those provisions shall not be changed in area or shape so as to increase the degree of noncompliance. A lot which is nonconforming with respect to those provisions may be changed to be made closer in compliance but once brought closer into compliance i.e. the amount or degree of nonconformity is reduced, it shall not be permitted to revert to noncompliance which is greater than the closest amount or degree of compliance which it has achieved.

6.6 NONCONFORMING OFF-STREET PARKING AND LOADING

6.6.1 EXISTING NONCONFORMING PARKING SPACES, LOADING BAYS

Any off-street parking spaces or loading bays in existence on the effective date of this By-Law or thereafter established, which serve a building or use, may not be reduced in number, or changed in location or design contrary to the requirements of Section 11 so as to increase the degree of nonconformity with the requirements of Section 11.

If the use of an existing structure or lot, which does not have sufficient parking or loading, including a use which has no off-street parking or loading, is changed to a different type of use for which a different number of parking spaces or loading bays is required as set forth in subsection 11.3, and there is no increase in the net floor, the following rules shall apply:

SECTION 6. NONCONFORMING SITUATIONS

- 1) if there is a net increase in the number of required parking spaces or loading bays, that net increase shall be provided, which number shall not include any existing parking spaces or loading bays, and
- 2) if there is a net decrease in the number of required parking spaces or loading bays, that lesser number shall be the new basis for determining whether, in the future, there is a net increase in the number of parking spaces or loading bays required.

If it is proposed to increase the net floor area of a building, whether by addition to the exterior of the building or by internal reconstruction, and the building does not have sufficient off-street parking or loading, full compliance with Section 11 for the entire building shall be a condition of the issuance of a building permit for the construction of the increase of net floor area.

Parking spaces or loading bays in existence on April 4, 1984 which serve existing uses, and comply with the design standards of sub-section 11.7.2 (dimensions), 11.7.4 (loading bays), 11.7.7 (surfacing) and 11.7.8 (grade), may be counted toward the number needed for the enlargement or increase in the net floor area of an existing building or the change from one type of use to another, but not for a new building, even though they do not conform to the requirements of sub-sections 11.6.2 (setbacks), 11.7.6b (snow storage), 11.7.6c (access for a parking lot), and 11.7.9 (landscaping), provided they comply to the maximum extent practicable.

An applicant seeking credit for existing parking spaces or loading bays shall first submit an off-street parking and loading plan, as provided in subsection 11.2, certified by a registered land surveyor or professional engineer. If the existing paved area is not marked off into parking spaces or loading bays, such spaces or bays, complying with the subsection 11.7.2 (dimensions) shall be delineated on the plan. To qualify, an existing parking space or loading bay shall be entirely on the lot.

6.6.2 PARKING AND LOADING REQUIREMENTS FOR A BUILDING DESTROYED, DAMAGED OR DEMOLISHED

If a building, for which sufficient off-street parking or loading is not provided, is destroyed, damaged or demolished by the owner, the building may be reconstructed or replaced if otherwise permitted by this By-law, without providing additional parking spaces or loading bays provided the new use is the same type of use (see 11.3.1 or 11.3.3) as the use before the destruction, damage or demolition, or is a type of use that requires the same or fewer parking spaces or loading bays. If parking spaces or loading bays were provided before the destruction, damage or demolition, at least the same number of spaces or bays shall be provided.

If the new use is a different type of use, for which a greater number of parking spaces or loading bays is required, or if more net floor area is to be constructed than previously existed, full compliance with Section 11 for the entire building shall be a condition of the issuance of any building permit for the reconstruction or replacement of the building.

6.7 REPAIR, RECONSTRUCTION

6.7.1 CONTINUANCE, REPAIRS

Routine maintenance and repairs are permitted to a nonconforming structure, sign, parking space or loading bay or other nonconforming situation to maintain it in sound condition and presentable appearance.

SECTION 6. NONCONFORMING SITUATIONS

6.7.2 RECONSTRUCTION AFTER INVOLUNTARY DESTRUCTION (BY RIGHT)

Any nonconforming use, structure, building, sign, parking space or loading bay or other nonconforming situation, which is destroyed or damaged by explosion, collapse, fire, storm, natural disaster or other catastrophic event any of which is beyond the control of the owner, to the extent of not more than 50 percent of its replacement cost, as determined by the Zoning Officer, may be reconstructed provided there is no increase in the site coverage or gross floor area or the degree of nonconformity and the reconstruction conforms to the current requirements of this By-law to the maximum extent practicable in the opinion of the Zoning Officer. In this context, maximum extent practicable shall consider extreme site conditions, such as steep grades, the presence of ledge or other unsuitable soil conditions, or the shape and configuration of the lot.

6.7.3 RECONSTRUCTION AFTER DESTRUCTION (BY SPECIAL PERMIT)

The Board of Appeals may grant a special permit for the reconstruction of a nonconforming use, structure, building, sign, parking space or loading bay or other nonconforming situation, which is destroyed or damaged by explosion, collapse, fire, storm, natural disaster or other catastrophic event any of which is beyond the control of the owner, to the extent of more than 50 percent of its replacement cost, as determined by the Zoning Officer, or by the proposed voluntary action of the owner to demolish, in whole or in part, provided the SPGA determines that:

- a. there is no increase in the site coverage or gross floor area or the degree of nonconformity,
- b. the reconstruction conforms to the current requirements of this By-law to the maximum extent practicable as described in subparagraph 6.7.2.
- c. in the case of the reconstruction of a nonconforming use, that it complies with the standards for the substitution of a nonconforming use described in subparagraph 6.3.3.

6.8 VESTING OF RIGHTS DURING ADOPTION OF AMENDMENTS

6.8.1 A use, building, structure, sign, parking space or loading bay or other situation which would comply with the provisions of this By-law at the time at which a building permit is issued or a special permit is granted but would not comply with a proposed amendment to this By-law shall be considered to be nonconforming and may be completed, continued or maintained provided:

- a. the building permit was issued or special permit was granted before the first publication of notice of public hearing on the proposed amendment, and
- b. substantial physical construction or start of operations is begun within six months of the issuance of a building permit or the grant of a special permit and is carried through to completion as continuously and expeditiously as is reasonable in the opinion of the Zoning Officer. If the construction is not completed within 18 months of the issuance of the building permit or the grant of the special permit, the rights to nonconforming status shall cease and the construction shall comply with this By-law, as amended.

The filing of an application for either a building permit or a special permit is not sufficient to vest rights but the building permit must be issued or the special permit must be granted prior to such first publication of notice.

6.8.2 In the event of the filing and subsequent approval of a definitive subdivision plan an exemption from an amendment to this By-law and a right to be treated under the previously existing provisions of this By-law may be vested as set forth in Section 6 of the Zoning Act, Chapter 40A M.G.L.

SECTION 6. NONCONFORMING SITUATIONS

6.8.3 In the event of the filing and subsequent endorsement of an "approval not required" plan, referred to in Section 81P of Chapter 41, Sections 81K-81GG, The Subdivision Control Law, an exemption from an amendment to this By-law affecting the use of land only and a right to be treated under the previously existing provisions of this By-law may be vested as set forth in Section 6 of the Zoning Act, Chapter 40A M.G.L. Such exemption shall apply only in the case of the endorsement of a plan showing a subdivision, as defined in section 81L of the Subdivision Control Law, in which there is a change in lot lines and shall not apply in the case of the endorsement of a plan which confirms existing lot lines without change.

6.8.4 In the event that rights have been vested under a previous version of the Zoning By-law, an owner may proceed as if that version of the Zoning By-law applied to his/her property or he/she may use the most current version of the Zoning By-law but must use either version of the Zoning By-law fully and cannot select provisions of both versions.

6.9 REGISTRATION

6.9.1 The Zoning Officer may issue a certificate of occupancy or certificate of registration of nonconformity which acknowledges the existence of a use, structure, building, sign, parking space, loading bay or other situation which is believed to be nonconforming. The issuance of either certificate shall not be a final determination by the Building Commissioner, unless so stated, that the apparent nonconformity was lawfully created but is a means of recording the size, characteristics and degree of nonconformity at the time of issuance of the certificate.

SECTION 7. DIMENSIONAL CONTROLS

7.1 COMPLIANCE WITH DIMENSIONAL CONTROLS

7.1.1 Each use, building or structure shall comply with the standards set forth in Table 2, Schedule of Dimensional Controls, except where specifically provided otherwise by this By-law.

7.1.2 RESIDENTIAL USES IN OTHER DISTRICTS

Uses and buildings permitted in the RO, RS or RT districts shall, when located in a CRS, CS, CLO, CRO or CB district, be regulated by the dimensional controls of an RS district if located within an RS district, and otherwise by the dimensional controls of an RO district. All uses located in CM or CN districts are regulated by the dimensional controls of the district in which they are located.

7.1.3 LOTS PARTLY IN LEXINGTON

When a lot in one ownership is situated in part in the Town of Lexington and in part in an adjacent town or city, the provisions of this By-Law shall be applied to that portion of the lot located in the Town of Lexington in the same manner as if the entire lot were situated in Lexington.

7.1.4 ONE DWELLING PER LOT

In an RO, RS, or RT district, not more than one dwelling, shall be erected on a lot unless specifically authorized by other provisions of this By-law. Each such lot shall comply with the minimum lot area, the minimum lot frontage, the minimum lot width and each dwelling or building containing another type of permitted principal use shall comply with the requirements of Table 2.

7.2 MINIMUM LOT WIDTH

7.2.1 CHANGE IN LOT THAT RESULTS IN NON-COMPLIANCE

See subparagraph 6.2.5 dealing with the subdivision or other change in a lot which is now nonconforming or would be made noncomplying.

7.2.2 No new principal structure shall be erected on any part of a lot created after April 30, 1984, which does not have an area in which a circle, the diameter of which is not less than 80 percent of the minimum lot frontage, tangent to the lot frontage and within all other lot lines, may be located. This provision shall not apply in the case of a lot that qualifies under Subsection 7.4.1.

7.2.3 No new dwelling shall be erected on any lot created after April 13, 1988, which does not contain a contiguous developable site area (see subsection 7.9) which is at least 90 percent of the minimum lot area for the district in which the lot is located. This requirement shall not apply to any lot created in a cluster subdivision, a special residential development or a planned residential district.

7.3 MINIMUM LOT FRONTAGE

7.3.1 MINIMUM LOT FRONTAGE REQUIRED

Every lot shall have a minimum frontage on a street, as defined in this By-law, equal to or greater than that set forth in TABLE 2 SCHEDULE OF DIMENSIONAL CONTROLS for the district in which it is located except as subsection 7.4 may provide. In the case of a lot with continuous frontage in both a commercial and a residential district which is proposed to be used for a commercial use, the lot shall have a

SECTION 7. DIMENSIONAL CONTROLS

minimum frontage within the commercial district equal to or greater than that required for that commercial district in TABLE 2.

7.3.2 ACCESS

An owner shall provide a means of access for vehicles from the frontage street to a principal building for emergency services, such as fire protection, for deliveries, such as mail, and for off-street parking. Alternatively the owner may provide the actual means of access for vehicles from another street, or over another lot provided a special permit for a common driveway under subparagraph 11.8c is granted, provided it can be demonstrated that it is both physically and legally possible to provide access from the designated frontage street.

7.3.3 DESIGNATION OF FRONTAGE STREET

When a lot is bounded by more than one street, any one of them but only one, may be designated as the frontage street provided that the street meets the requirements for minimum lot frontage set forth in this By-Law. However, in the case of a lot bounded by two streets forming an interior angle of more than 135 degrees, their combined frontage may be used to satisfy the lot frontage requirement.

7.3.4 MEASUREMENT OF LOT FRONTAGE

Frontage shall be measured in a continuous line along the sideline of the street right-of-way between the points of intersection of the side lot lines with the street right-of-way line. The measurement of lot frontage shall not include jogs in the street width, back-up strips and other irregularities in street line, and, in the case of a corner lot may at the option of the owner extend to the midpoint of the curve connecting street lines, instead of to their intersection.

7.4 EXEMPTIONS FROM DIMENSIONAL REQUIREMENTS

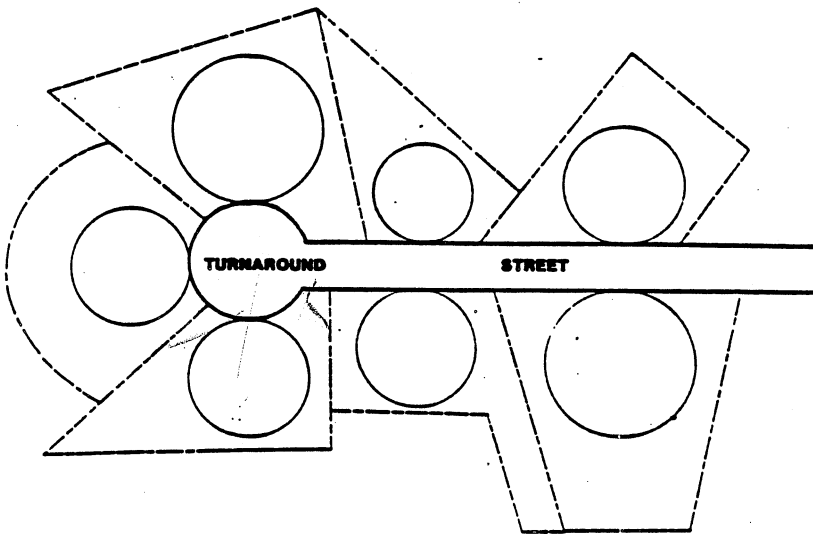
Lesser requirements than those of Table 2 apply to certain lots. These are as follows:

7.4.1 PRE-EXISTING RESIDENTIAL LOTS

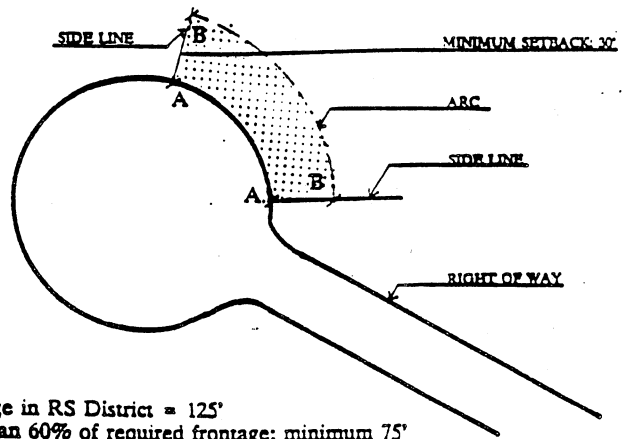
In RO, RS and RT districts the following lots, if used for a dwelling or other building permitted in such districts, are exempted from the area, frontage and side yard provisions of Table 2. Any such lot may be enlarged by combining it with an adjoining lot or lots, or fractions thereof, in the same ownership. Such enlarged lot shall not be subject to greater requirements as to area, frontage, front or rear yards by reason of such enlargement, but the required side yards shall be based on the total frontage of the enlarged lot.

SECTION 7. DIMENSIONAL CONTROLS

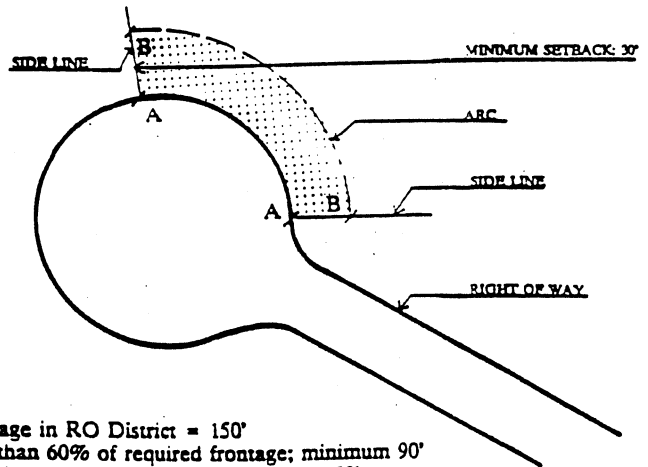
LOT WIDTH 7.2



These drawings are for illustrative purposes only. They are not legally-adopted parts of the Zoning By-Law as voted by the Town Meeting.



Minimum Frontage in RS District = 125'
 A - A Not less than 60% of required frontage; minimum 75'
 B - B Not less than required frontage; minimum 125'



Minimum Frontage in RO District = 150'
 A - A Not less than 60% of required frontage; minimum 90'
 B - B Not less than required frontage; minimum 150'

ILLUSTRATION 7.4.3 FRONTAGE REDUCTION ON CURVES

SECTION 7. DIMENSIONAL CONTROLS

a. AREA AND FRONTAGE EXEMPTIONS

<u>Lots laid out and recorded by plan or deed</u>	<u>Area at least</u>	<u>Frontage at least</u>
Prior to March 17, 1924	Any	Any
On or after March 17, 1924 and prior to March 18, 1929	5,000 sq. ft.	50 ft.
On or after March 18, 1929 and prior to August 8, 1938	7,500 sq. ft.	75 ft.
On or after August 8, 1938 and prior to December 4, 1950	12,500 sq. ft.	100 ft.
On or after December 4, 1950 and prior to December 1, 1953 and located in RO districts	15,500 sq. ft.	125 ft.

b. SIDE YARD EXEMPTIONS

The following shall apply to the above lots:

<u>If actual lot frontage is:</u>	<u>Side yard must be</u>
100 ft. or more	Not less than 15 ft.
More than 75 ft. but less than 100 ft.	Not less than 12 ft.
More than 50 ft. but not more than 75 ft.	Not less than 10 ft.
50 ft. or less	Not less than 7.5 ft.

7.4.2 CLUSTER SUBDIVISIONS, SPECIAL RESIDENTIAL DEVELOPMENTS

Certain tracts may be subdivided using the provisions of Section 9.2.11 which permit reduction of certain requirements of Table 2.

7.4.3 FRONTAGE REDUCTION ON CURVES

Where more than one half of the lot frontage is on a circular turnaround, or on a curve of less than 100 foot radius, frontage may be reduced to not less than 60 per cent of the distance required in Table 2, Schedule of Dimensional Controls, provided that the distance between the side lot lines, measured along the arc parallel to the street line at the same distance from the street line as the front yard setback required by Table 2, shall be not less than the minimum lot frontage required by Table 2. All dimensions referred to in the previous sentence shall be shown on a plan approved or endorsed by the Planning Board.

7.4.4 FRONTAGE ON TURN-AROUND IN CRO DISTRICTS

In CRO districts where a lot abuts on a dead-end turn-around part of a street and abuts also on such street before the turn-around, the 300 feet frontage may be measured in part along the side line of the street

SECTION 7. DIMENSIONAL CONTROLS

before the turn-around and in part along a projection of the course of such side line through and beyond the turn-around, provided however that the lot shall have a frontage of not less than 60 feet on the street, including such turn-around.

7.5 HEIGHT OF BUILDINGS, STRUCTURES

7.5.1 The maximum height of a building shall not exceed either the distance in feet or the number of stories, whichever is less, set forth in Table 2 for the district in which the building is located. The maximum height of a building in feet shall be the vertical distance between the lower elevation and the upper elevation, as described below.

a. The lower elevation shall be:

the natural grade of the land at the point of measurement prior to disturbance for construction. The elevation of the natural grade prior to disturbance for construction shall be certified by a registered land surveyor, or may be such elevation as the Zoning Officer may determine from Town maps or records.

An average natural grade may be used, which shall be determined by computing the average of the elevations of the natural grade of the four extreme corners of the building, or, in the case of a non-rectangular building, of such equivalent locations as the Zoning Officer may determine. In a case where the lower elevation, thus determined, is lower than the average of the elevations of the natural grades of the four extreme corners of the lot, the average of the elevations of the corners of the lot may be used. In a case where the finished grade is lower than the natural grade, the finished grade shall be the lower elevation.

b. The upper elevation shall be:

- 1) in the case of a flat roof, the top of the highest roof beams; or
- 2) in the case of a pitched, gable, hip, gambrel, or mansard roof, the plane that passes through the ceiling of the top story.

Where the top story is not finished with a horizontal ceiling, the elevation seven feet above the floor of the top story shall be considered equivalent to the ceiling.

7.5.2 STRUCTURES OTHER THAN BUILDINGS

When located on the ground, the maximum height of structures, other than buildings, shall be the highest point on the structure and shall not exceed the maximum height for buildings in feet as set forth in Table 2. Structures other than buildings, such as antennas, recreational apparatus, fences and the like may be located in a required front, rear or side yard provided the height of the structure is not greater than its horizontal distance from the lot line, except that a fence or wall not greater than six feet in height may be located on, or closer to a lot line than six feet.

Structures erected on a building and not used for human occupancy, such as chimneys, heating-ventilating or air conditioning equipment, solar or photo-voltaic panels, elevator housings, antennas, skylights, cupolas, spires and the like may exceed the maximum height of a building in feet provided no part of the structure is more than 20 feet higher than the upper elevation of the building and the total horizontal coverage of such structures on the building does not exceed 25 percent.

The Board of Appeals may grant a special permit for structures, but not buildings, to exceed the maximum height in feet, allowed by Table 2 for the district in which the structure is located, or the percentage of

SECTION 7. DIMENSIONAL CONTROLS

horizontal coverage of structures erected on a building, specified above, provided it makes a determination that the structure is compatible with the scale of the neighborhood and does not intrude on the solar access of any adjoining lot.

7.5.3 AVERAGE HEIGHT OF BUILDING

Where a building is on a sloping site or has some stories that do not extend for the full building coverage, the height in feet of the several elements of the building may be calculated separately provided that neither the maximum height in feet or the number of stories in any one element exceeds that permitted by Table 2.

7.5.4 STRUCTURES BELOW GROUND

Where the upper elevation of a structure or building is below the elevation of the natural grade, and such structure is covered by earth to a depth sufficient to support vegetation, such structure may be located within a required front, side or rear yard, but no closer than five feet to a lot line. Open grates or small ventilation shafts servicing the part of the structure below ground may be located in the required yard.

7.5.5 PARKING WITHIN BUILDING

Where a building contains parking spaces, a parking level shall be counted as a story unless more than one-half of such level vertically is below the lower elevation as described in Subsection 7.5.1a.

7.6 BASEMENT FLOOR ELEVATIONS

The basement floor or slab of any dwelling house or accessory structure thereto shall not be less than 4 feet above the water table; said distance to be determined by methods and procedures approved by the Building Commissioner. Provided, however, this section shall not apply to any dwelling house or accessory in existence or for which a building permit has been issued on or before the effective date of this section, nor shall this section be construed to prevent or restrict any addition, alteration, repair or reconstruction of any dwelling house in existence or for which a building permit has been issued on or before the effective of this section.

7.7 BROOK AND POND SETBACKS

No structure, other than a bridge or pump house, shall be built within 20 feet of the bank of any pond having an area over 2000 square feet nor within 20 feet of the bank of any of the following brooks:

7.7.1 Kiln Brook, starting between the Minute Man National Park and Wood Street, from ponds in Pine Meadows Golf Course, and from Town-owned land near Hill St., continuing, and including a tributary N.W. of Route 128, across Hartwell Avenue to the Bedford Town Line.

7.7.2 Simonds Brook from its origin on Town owned land N.E. of Grove Street to Kiln Brook including that portion sometimes known as Farley Brook.

7.7.3 A brook sometimes known as Turning Mill Brook from its origin N.E. of North Emerson Road near Route 128 to Simonds Brook.

7.7.4 North Lexington Brook from where it emerges from a culvert near Brigham Road to Kiln Brook.

SECTION 7. DIMENSIONAL CONTROLS

- 7.7.5 Clematis Brook, (also known as Beaver Brook) from its origins west of Waltham Street to the Belmont Town Line near Concord Avenue; including tributaries originating near Marrett Road and Bacon Street, near Marrett Road and Tricorn Road, near Blossom Street and Route 2, and near Philip Road.
- 7.7.6 An unnamed brook from the vicinity of Valleyfield Street to the Waltham City line (from whence it flows to Hardy's Pond).
- 7.7.7 An unnamed brook from its source near Hayden Avenue to the Waltham City line (from whence it flows toward Cambridge Reservoir).
- 7.7.8 The North Branch of the Upper Vine Brook from the Lexington Reservoir until it goes underground.
- 7.7.9 The South Branch of the Upper Vine Brook from its source between Sherburne Road and Sherburne Road South until it goes underground near Vinebrook Road.
- 7.7.10 Lower Vine Brook, from where it surfaces near Hayes Lane to the Burlington Town Line.
- 7.7.11 Munroe Brook, from near Woburn Street to the Arlington Reservoir including a tributary originating in a pond on Whipple Hill, a tributary flowing in from Arlington near Patricia Terrace and a tributary north of Maple Street.
- 7.7.12 Fessenden Brook from the start of its two branches in Munroe Meadows to Munroe Brook.
- 7.7.13 Sickle Brook from its two sources near Peacock Farm and Pleasant Street to the Arlington Town line
- 7.7.14 An unnamed brook from Cary Avenue until it goes underground near Birch Hill Lane; including its east branch originating near Middle Street.
- 7.7.15 An unnamed brook entering Lexington from Waltham west of Route 128 to the Cambridge Reservoir.
- 7.7.16 An unnamed brook from the pond near Shade Street to the Cambridge Reservoir.
- 7.7.17 An unnamed brook from Concord Avenue near Blossom Street to Waltham Street.
- 7.7.18 Two branches of Shaker Glen Brook from their sources near Rolfe Road and Peachtree Road to the Woburn City Line.
- 7.8 (Reserved)

SECTION 7. DIMENSIONAL CONTROLS

7.9 INTENSITY OF DEVELOPMENT

7.9.1 DEVELOPABLE SITE AREA

- a. The developable site area shall be calculated by subtracting from the lot area, all land which is located in:
 - 1) a wetland, which shall mean a "freshwater wetland" as defined in Chapter 131, Section 40, M.G.L. or land located under a brook, creek, stream or river or pond or lake,
 - 2) a Wetland Protection zoning district, and
 - 3) another zoning district in which the principal use of the lot is not also permitted.

- b. To assist in the determination of developable site area, where applicable, each application for a special permit, a special permit with site plan review, or a building permit shall be accompanied by:
 - 1) a map of existing site conditions clearly identifying:
 - 2) and a calculation, expressed in square feet of land area, of:
all parts of a lot located in a wetland, a Wetland Protection zoning district, and another district in which the principal use of the lot is not permitted. The map and the calculation shall be certified as to accuracy and shall bear the stamp of a Land Surveyor or Professional Engineer registered in the Commonwealth of Massachusetts.

7.9.2 MAXIMUM FLOOR AREA, FLOOR AREA RATIO

The maximum net floor area on a lot shall not exceed the product of the developable site area and the maximum floor area ratio set forth in Table 2, Schedule of Dimensional Controls, for the district in which the lot is located. To simplify the determination of net floor area, 80 percent of the gross floor area may be used.

7.9.3 DETERMINATION OF MAXIMUM FLOOR AREA FOR A STRUCTURE WITH A CHILD CARE FACILITY

The floor area of any structure shall be measured exclusive of any portion of such structure in which a day care center or school age child care program (see Definitions) is to be operated as an accessory or incidental use, and the otherwise allowable floor area of such structure shall be increased by an amount equal to the floor area of such child care facility up to a maximum increase of ten per cent. In any case where the otherwise allowable floor area of a structure has been increased pursuant to the provisions of this section, the portion of such structure in which a child care facility is to be operated as an accessory or incidental use shall not be used for any other purpose unless, following the completion of such structure, the Board of Appeals shall have granted a variance, with the written concurrence of the State Office for Children, that the public interest and convenience do not require the operation of such facility. (See also Chapter 40A, §9C, The Zoning Act, M.G.L. as amended for other provisions dealing with child care facilities operated as an accessory or incidental use.)

SECTION 8. SPECIAL ZONING DISTRICTS

A. PLANNED DEVELOPMENT DISTRICTS (TOWN MEETING REZONING REQUIRED)

8.1 OBJECTIVES

A planned development district is intended:

- 1) to permit considerable flexibility in the development of tracts of land by requiring few pre-determined standards,
- 2) to permit a developer to propose, and for the Town to vote on a site development and use plan unique to a particular location,
- 3) to permit the use of development standards more detailed than the more general standards elsewhere in this By-Law,
- 4) to provide information for the Town to evaluate the potential impacts of a proposed development and to enable the SPGA to require adherence to such site development plans in the granting of a special permit.

8.2 PLANNED COMMERCIAL DISTRICT - CD

8.2.1 STANDARDS FOR DEVELOPMENT

The Planned Commercial District - CD, does not have pre-determined standards for development. Such standards are to be proposed by the developer, included in the preliminary site development and use plan and approved by the Town Meeting.

8.2.2 TOWN MEETING PRESENTATION

Each petition presented to the Town Meeting for rezoning land to a CD district shall include a preliminary site development and use plan as described in subsection 3.6, and shall be filed in accordance with the provisions of that section.

8.2.3 USES PERMITTED

No use is permitted and no development may occur in a CD district except in conformity with a preliminary site development and use plan approved by the Town Meeting, the provisions of this section and a special permit with site plan review granted by the SPGA. Uses other than commercial may be in a CD district if clearly identified in the preliminary site development and use plan approved by the Town Meeting.

8.2.4 SPGA

The Board of Appeals shall be the special permit granting authority. In action upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 3.4.

8.3 PLANNED RESIDENTIAL DEVELOPMENT DISTRICTS - RD

8.3.1 STANDARDS FOR DEVELOPMENT

A number of standards for development in the planned residential development district, RD, are included in Section 9. Additional standards may be proposed by the developer and included in the preliminary site development and use plan and approved by the Town Meeting.

8.3.2 TOWN MEETING PRESENTATION

Each petition presented to the Town Meeting for rezoning land to an RD district shall include a preliminary site development and use plan as described in subsection 3.6, and shall be filed in accordance with

SECTION 8. SPECIAL ZONING DISTRICTS

the provisions of that section.

8.3.3 DEVELOPMENT PERMITTED

No types of residential buildings may be constructed and no development may occur in an RD district except in conformity with a preliminary site development and use plan approved by the Town Meeting, the provisions of this section and of Section 9, and a special permit with site plan review (SPS) approved by the SPGA.

8.3.4 SPGA

The Board of Appeals shall be the special permit granting authority. In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 3.4 and Section 9.4.

8.4 SPECIAL PERMIT PROVISIONS APPLICABLE TO BOTH CD AND RD DISTRICTS

8.4.1 SPECIAL PERMIT APPLICATION

The application for an SPS under this section shall comply with subsection 3.4 and shall be accompanied by:

- a. a copy, certified by the Town Clerk, of the preliminary site development and use plan approved by the Town Meeting.
- b. definitive site development and use plan as described in subsection 3.6.

8.4.2 SPECIAL PERMIT PROVISIONS

The SPGA may grant a special permit with site plan review (SPS) for the development of a tract of land in the CD or RD district subject to the following provisions:

- a. The SPGA makes a determination that the development conforms substantially to the preliminary site development and use plan approved by the Town Meeting and is consistent with the considerations set forth in subsection 3.4;
- b. the SPS incorporates, by reference, the definitive site development and use plan filed with the application for the SPS;
- c. the SPS may allow any or all of the uses specified in the plan approved by Town Meeting but no others;
- d. the SPGA may, in its discretion, permit minor deviations from the plan approved by Town Meeting provided they do not conflict with the intent of the plan and they do not allow the building floor area to exceed that shown on the approved plan by more than 10% in the RD district, or to exceed the maximum floor area ratio approved for the CD district;
- e. the SPS shall require that any land designated as common open space on the approved plan shall be either conveyed to the Town or protected by an easement granted to the Town; and
- f. the SPS may contain such additional conditions as the SPGA finds will serve the public interest.

8.4.3 DENIAL OF SPECIAL PERMIT

The SPGA may deny an application for an SPS and base its denial upon a finding that the proposed development does not conform substantially to the plans for the commercial or residential development of the tract as approved by the Town Meeting.

8.4.4 REVISION OF SPECIAL PERMIT

Subsequent to an SPS granted by the SPGA, minor revisions may be made from time to time in accordance with applicable laws, by-laws, and regulations, but the commercial or residential development

SECTION 8. SPECIAL ZONING DISTRICTS

approved under such SPS shall otherwise be in accordance with the application for the special permit, except as modified by the decision of the SPGA. The developer shall notify the SPGA in advance of any such revision which shall not be effective until approved by vote of the SPGA.

If the SPGA determines such revisions not to be minor, it shall order that an application for a revised SPS be filed, and a public hearing held in the same manner as set forth in Section 3.4.

8.4.5 CHANGES IN USES OR SITE DEVELOPMENT PLAN

Changes in uses or substantial changes in the site development plan approved by Town Meeting may be made only after approval by Town Meeting of a new site development and use plan according to the procedures used for a zoning amendment, followed by the issuance of an SPS based on the new approved plan.

B. OVERLAY DISTRICTS

An overlay district is a special purpose zoning district which is superimposed over another zoning district so that the land contained within the overlay district is subject to the requirements of both the overlay district and the zoning district in which it is located. An overlay district does not supersede the requirements of the other zoning district, which remain in effect, but are additional requirements applicable to all land within the overlay district.

8.5 WETLAND PROTECTION DISTRICT

8.5.1 PURPOSE OF DISTRICT

The purposes of the Wetland Protection District are to preserve and maintain the ground water table; to protect the public health and safety by protecting persons and property against the hazards of flood water inundation; and to protect the community against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, or in areas subject to floods.

8.5.2 DISTRICTS SUPERIMPOSED OVER OTHER DISTRICTS

A Wetland Protection District shall not supersede other zoning districts established by this by-law for land within the District but shall be deemed to be superimposed over such zoning districts.

8.5.3 PERMITTED USES

Within a Wetland Protection District no land shall be used except for one or more of the following uses; any woodland, grassland, wetland, agricultural, horticultural, or recreational use of land or water, provided such use does not require filling of the land.

8.5.4 SPECIAL PERMIT FOR STRUCTURES ACCESSORY TO PERMITTED USES

The Board of Appeals may issue a special permit for buildings and structures accessory to any of the uses permitted in Section 8.5.3, or for filling and excavation of the land for such uses, if the Board finds that such building, structure or filling or excavation is in harmony with the general purpose and intent of Section 8.5. A copy of every application for such a special permit shall be given by the applicant at the time of submission of the application to the Board of Selectmen, to the Board of Health, to the Planning Board, and to the Conservation Commission as well as all other parties required.

SECTION 8. SPECIAL ZONING DISTRICTS

8.5.5 SPECIAL PERMITS FOR USES IN HARMONY WITH GENERAL PURPOSES OF THE DISTRICT

The Board of Appeals may issue a special permit for any use of land which would otherwise be permitted if such land were not, by operation of this section, in the Wetland Protection District if the Board finds,

- 1) that such land within the District is in fact not subject to flooding or is not unsuitable because of drainage conditions for such use, and
- 2) that the use of such land for any such use will not interfere with the general purposes for which Wetland Protection Districts have been established, and
- 3) that such use will not be detrimental to the public health, safety, or welfare.

A copy of every application for a special permit under this section shall be given by the applicant at the time of submission of the application to the Planning Board, the Board of Health, the Conservation Commission, and the Board of Selectmen. The Board of Appeals shall not hold a public hearing on the application earlier than 35 days after submission of the application. The above-named Boards shall submit reports or recommendations on the application to the Board of Appeals at or before the public hearing on the application, but failure to make such reports or recommendations shall not prevent action by the Board of Appeals.

8.5.6 USES PROHIBITED WITHIN WETLAND DISTRICT

Except as provided in Sections 8.5.4 or 8.5.5 there shall be in the Wetland Protection District:

- No landfill or dumping or excavation of any kind.
- No drainage work other than by an authorized public agency.
- No damming or relocation of any watercourse except as part of an overall drainage plan.
- No building or structure.
- No permanent storage of materials or equipment.

8.5.7 PRE-EXISTING USES

No land, building, or structure in a Wetland Protection District shall be used for sustained human occupancy except buildings or structures existing on the effective date of this section, or land, buildings or structures which comply with the provisions of this by-law. Where no filling of such land takes place, any addition, alteration, repair or reconstruction of such building or structure or the construction of any structure accessory thereto shall be exempt from the provisions of Sections 8.5.4 and 8.5.5.

8.5.8 NO EFFECT ON DIMENSIONAL REQUIREMENTS

Notwithstanding any other provision of Section 9.2, if any part of a lot is within the Wetland Protection District, that part of the lot may be used to meet the lot area and minimum yard requirements specified in Table 2 for lots in the underlying district.

8.6 NATIONAL FLOOD INSURANCE DISTRICT

8.6.1 PURPOSE OF DISTRICT

The purpose of this district is to insure proper flood plain management consistent with criteria established by the National Flood Insurance Program.

8.6.2 SUPERIMPOSED OVER OTHER DISTRICTS

The National Flood Insurance District shall not supersede other zoning districts but shall be deemed to be superimposed over these other zoning districts.

SECTION 8. SPECIAL ZONING DISTRICTS

8.6.3 AREAS INCLUDED

This district shall include all special flood hazard areas designated either as Zone A or Zone A-1 through A-30 on the Flood Insurance Rate Map (F.I.R.M.).

8.6.4 BOARD OF APPEALS REQUIREMENTS

The Board of Appeals shall be the Special Permit Granting Authority for this section. Special Permits for construction or substantial improvements may be granted subject to the following requirements.

a. CONSTRUCTION ABOVE FLOOD LEVEL

Within those areas designated as Zones A-1 through A-30, all new residential construction or substantial improvements (the cost of which equals or exceeds fifty percent of the market value of the structure) shall have the lowest floor, including basement, elevated to or above the base flood level (the 100-year flood elevation) designated on the F.I.R.M. Nonresidential structures must be elevated to or above the base flood level or must be floodproofed and watertight to the base flood level. All other development must meet at least the minimum standards as set forth in the National Flood Insurance Program rules and regulations effective October 1, 1986, or as duly amended from time to time thereafter.

b. DEFINITION OF FLOOD LEVEL FOR ZONE A

Within those areas designated as Zone A, where the base flood level is not identified on the F.I.R.M., the applicant for a special permit shall provide the SPGA with data defining the base flood level. This data will be used to comply with the requirements of Section 8.6.4a.

c. LIMIT CONSTRUCTION IN FLOODWAY

Within those areas designated as a floodway, the SPGA shall grant no special permit for the following encroachments unless a registered professional engineer or architect certifies that such encroachments will not result in any increase in the flood level during the occurrence of the 100 year flood discharge:

Landfill or dumping of any kind

Construction or substantial improvements

Permanent storage of materials or equipment

Construction permitted within a floodway must comply with the requirement of Section 8.6.4a.

d. WATERTIGHT FLOODPROOFING

Where watertight floodproofing of a structure is permitted, a registered professional engineer or architect shall certify that the methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the 100 year flood.

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

9.1 OBJECTIVES AND APPLICABILITY

9.1.1 The provisions of this section are intended to:

- a. insure that the development of additional housing does not detract from the livability, scale, character or economic value of existing residential neighborhoods;
- b. encourage greater diversity of housing opportunities in Lexington to meet the needs of a population which is diversified with respect to number of persons in a household, and income;
- c. provide greater choice in the type of housing available to correspond to the varying needs of town residents in different stages of their life cycle;
- d. encourage the development of housing affordable to low-, moderate- and middle-income households;
- e. provide greater flexibility and design freedom in the development of those tracts of land which lend themselves to planned development;
- f. promote a high standard in the design of development sites and of individual buildings;
- g. encourage the preservation of open space for conservation, outdoor recreation or park purposes, in conjunction with residential development;
- h. encourage the preservation, and minimum disruption, of the existing natural features of land and to minimize impacts on environmentally sensitive areas;
- i. preserve, where applicable, historically or architecturally significant buildings or places;
- j. permit ostensibly different types of structures and residential uses to be combined in a planned interrelationship;
- k. facilitate a detailed review, by town officials and by the public, of those developments which either:
 - 1) have an impact on public facilities and services and on adjoining land, or 2) are large enough to constitute a self-contained environment;
- l. promote the efficient and economical provision of public facilities such as utilities and streets;
- m. assure that the number of dwelling units allowed will be compatible with surrounding land uses, and that traffic and public services will not be adversely impacted;

9.1.2 No building permit shall be issued for a dwelling which is part of a development on a tract of three or more dwelling units, or their equivalent in housing accommodations not classified as dwelling units, except in accordance with the provisions of this section.

9.2 SCHEDULE OF PERMITTED BUILDINGS, DENSITY AND DIMENSIONAL STANDARDS (Applicable to the planned residential development as a whole.)

		<u>ZONING DISTRICTS</u>		
		RO**	RS,RT**	RD***
		(conv)(clus)	(conv)(clus)	
		(spec)	(spec)	
9.2.1	Minimum Area of Tract to be Developed *no requirement for a conventional subdivision	100,000 sf	100,000 sf*	125,000 sf
9.2.2	Maximum Base Density in Dwelling Units, or Equivalent; For calculation of density, see 9.2.9	@ 1.2/acre 30,000 sf	@ 2.4/acre 15,500 sf	No requirement No requirement

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

	<u>ZONING DISTRICTS</u>					
	RO**		RS,RT**		RD***	
	(conv)	(clus)	(conv)	(clus)		
	(spec)		(spec)			
9.2.3 Types of Buildings Permitted						
a. One-Family Detached	Yes	Yes	Yes	Yes		Yes
b. One-family Attached, *Yes in RT	No	SP	No*	SP*		Yes
c. Two-family *Yes in RT	No	SP	No*	SP*		Yes
d. Townhouse	No	SP	No	SP		Yes
e. Three-, Four-Family	No	No	No	No		Yes
f. Multi-Family	No	No	No	No		Yes
g. Rooming House	No	No	No	No		Yes
h. Group Quarters **Yes where accessory to a religious or educational use	No**	No**	No**	No**		Yes
i. Group Care Facility	No	No	No	No		Yes
j. Congregate Living Facility	No	No	No	No		Yes
k. Long-Term Care Facility	No	No	No	No		Yes
l. Conversion of Municipal Building (See 9.5)	Yes	Yes	Yes	Yes		Yes
9.2.4 Minimum Frontage of the Tract on Existing Street						
	50 ft.		50 ft.			100 ft.
9.2.5 Minimum Yard Setback on Perimeter of Tract						
a. Front Yard	40 ft		40 ft			50 ft
b. Side yard, rear yard	30 ft		25 ft			40 ft.
9.2.6 Maximum Impervious Surface Ratio Calculation: Divide area of impervious surface by developable site area (see 7.9) *No requirement for a conventional subdivision as a whole; see 9.2.12 for individual lots	NR*	0.15	NR*	0.20		0.40
9.2.7 Minimum Usable Open Space per Dwelling Unit, or Equivalent	5,000 sf		3,500 sf			1,500 sf
9.2.8 Maximum Height of Dwellings	40 ft		40 ft			40 ft

NOTE:

**1. In an RO, RS or RT district, a planned residential development may be:

- a. a conventional (conv) subdivision,
- b. cluster (clus) subdivision, with the tract divided into separate lots for dwellings and common open space, or
- c. a special (spec) residential development in which the tract may be in one ownership or may be divided into separate lots for dwellings and common open space.

***2. Standards for a development proposal in an RD Planned Residential Development zoning district.

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

9.2.9 DENSITY

The maximum number of dwelling units on a tract in a planned residential development shall be the lesser of:

- 1) the product of the following formula: multiply the developable site area (see 7.9) by 0.85 and divide the product by the minimum lot area for the district in which the lot is located (RO=30,000 sf, RS and RT=15,500 sf), provided any fraction thereof shall not be credited toward another dwelling unit, or
- 2) the number of lots complying with the minimum lot area, lot frontage and lot width requirements for a conventional subdivision as shown on the "proof" plan required below.

To determine the maximum number of dwelling units permitted in a planned residential development, an applicant shall submit a certified calculation of the developable site area (see 7.9) and the calculation described in 1) above; and a "proof plan" of the tract showing a lot layout and street layout only, complying with the Planning Board's "Development Regulations". The maximum density of a facility permitted by 9.2.3 h, i, j, or k shall be determined by 9.2.2 and, where applicable, 9.2.10.

9.2.10 EQUIVALENT DENSITY, RESIDENTIAL ACCOMMODATIONS NOT IN DWELLING UNITS

Where residential accommodations do not have kitchen and dining facilities and are not arranged in dwelling units, for the purpose of calculating density and other dimensional standards, the following shall be considered equivalent to one dwelling unit:

- 1,000 square feet of gross floor area in a long-term care facility
- 1,200 square feet of gross floor area in group quarters, a group care facility or congregate living facility

9.2.11 DIMENSIONAL STANDARDS, WAIVERS

A conventional subdivision shall comply with both the dimensional standards set forth in Table 2 and subsection 9.2.

In an RO, RS or RT district, where the following conditions are met:

- a. the development is a cluster subdivision, or a special residential development,
 - b. the maximum number of dwelling units does not exceed the maximum density allowed by 9.2.9, and
 - c. the SPGA makes a determination that the proposed development has a design that more than complies with the design standards and criteria set forth in 9.4.8;
- the SPGA, as part of the grant of a special permit with site plan review, may also grant a special permit to:
- 2) modify the standards:
 - a) in Table 2 for minimum lot area, minimum lot frontage, minimum front yard, minimum side yard, minimum rear yard, maximum percentage of site coverage, and maximum height in stories, the provisions of 7.1.4 relative to the number of dwellings on a lot, the minimum lot width in subsection 7.2.2, in subparagraph 11.4.1 relative to the location of off-street parking spaces and in subsection 11.6 relative to setbacks required for parking spaces and driveways; all as they may apply to individual dwellings or lots within a cluster subdivision or a special residential development, and
 - b) for the common open space requirements in 9.3.6 for a special residential development only; to such standards as may, in the opinion of the SPGA, be consistent with the design standards and criteria set forth in subparagraph 9.4.8.

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

9.2.12 ADDITIONAL STANDARDS APPLICABLE TO CONVENTIONAL SUBDIVISIONS

In addition to the standards set forth in lines 9.2.1 through 9.2.8 which apply to the planned residential development as a whole, the following shall also apply to an individual lot in a conventional subdivision approved after May 4, 1987:

	RS, RT DISTRICT	RO DISTRICT
a. Maximum Impervious Surface Ratio	0.20	0.12

and if a dwelling, including any addition thereto, which has a gross floor area of 2500 square feet or more, is erected thereon, it shall have:

b. Minimum Side Yard	25 feet	25 feet
Minimum Rear Yard		

See also subparagraph 7.2.3 which requires that a minimum percentage of the required minimum lot area be in a contiguous developable site area.

9.3 GENERAL PROVISIONS

9.3.1 COMPLIANCE WITH OTHER RULES AND REGULATIONS

The construction of community services, such as utilities, and of streets and interior drives shall comply with the requirements of the Planning Board's "Development Regulations". Nothing contained herein shall in any way exempt a conventional subdivision from compliance with the right of the Board of Health and of the Planning Board to approve, with or without modifications, or disapprove a subdivision plan in accordance with the provision of the "Development Regulations" and of the Subdivision Control Law.

9.3.2 STREETS, DRIVES

The objective of this section is to provide two means of access to dwelling units for emergency vehicles. Each street and interior drive, or system of streets or interior drives, within a planned residential development shall connect to a public street. A dead-end street or dead-end interior drive shall not be more than 650 feet from a through public street or from a street or interior drive which intersects with a through public street in at least two places which are not less than 125 feet apart. Where there are more than 10 dwelling units served by a dead-end street or dead-end interior drive, two means of access, suitable for fire-fighting and other emergency operations, such as by paved or all-weather routes, shall be provided to each dwelling unit. A dead-end street or dead-end interior drive is one which has only one means of entrance and exit.

If a street or interior drive in a development tract is located in a minimum yard required by 9.2.5, in order to provide protection for abutting residential lots, there shall be a screen of densely planted vegetation and/or an opaque fence adjacent to the lot line, for such distance as the Planning Board may determine.

9.3.3 NON-RESIDENTIAL USES

In the RD district, the residential development may also include commercial uses provided:

- 1) such uses serve primarily the residents of the development,
- 2) are conducted within and may be entered only from within a principal building,
- 3) there is no external evidence of such uses visible beyond the development tract, and
- 4) the appearance and character of the commercial uses are compatible with a residential development.

9.3.4 PARTS OF DWELLING UNITS BELOW GROUND

No part of a dwelling unit or rooming unit used for sleeping, cooking, dining or bathroom purposes

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may be located in a cellar. A part of a dwelling unit or rooming unit used for such purposes may be located in a basement provided the vertical height between the horizontal plane of the ceiling and the finished grade of the ground adjoining the dwelling unit is at least six feet for at least two-thirds of the length of the exterior walls of all rooms used for such purposes.

9.3.5 CLUSTER SUBDIVISION, SPECIAL RESIDENTIAL DEVELOPMENT

The objective of this section is to allow flexibility in the standards and procedures for those planned residential developments which are a cluster subdivision or a special residential development which, in the opinion of the Planning Board, comply with the following criteria:

- a. there is a significant amount of common open space (see 9.3.6) of which a significant amount meets the standards for usable open space (see 9.3.7),
- b. the common open space is readily accessible by one or more paths specifically designed for access purposes,
- c. the dwellings are sited and oriented in a complementary relationship to the common open space,
- d. the design promotes a sense of open, natural character when viewed from adjacent public streets,
- e. there are a set of design controls and restrictions to insure the dwellings will be built, and the site will be developed, under an overall design plan,
- f. that any building which contains more than one dwelling unit is designed so that either:
 - 1) the building has the exterior appearance of a one-family dwelling or, alternatively,
 - 2) if semi-attached dwellings and/or townhouses (see 9.2.3 b or d and the definitions of those terms under DWELLING, STRUCTURAL CHARACTERISTICS in Section 2, Definitions) are constructed, each individual dwelling unit has direct access to ground level and an opportunity for a private yard, patio, or other private outdoor space,
- g. there are provisions for common facilities, such as recreation or parking, or for services such as the maintenance of streets, walkways or paths, utilities, landscaping or recreation facilities.

It is not the intent of this By-law that the procedure for a cluster subdivision or a special residential development be used as an alternative to allow the construction of a conventional subdivision which does not otherwise comply with the standards and requirements set forth in this By-law or in the "Development Regulations".

9.3.6 COMMON OPEN SPACE

At least 25% of the area of the development tract shall remain as common open space. This requirement shall not apply to a conventional subdivision. Such open land may be in one or more parcels of a size and shape appropriate for the intended use and may be conveyed:

- 1) to and accepted by the Town or its Conservation Commission,
- 2) to a legal association comprised of the owners of the development, which may include homeowners, or
- 3) to a non-profit organization the principal purpose of which is the conservation of open space. When such open space is conveyed to persons or entities other than the Town, an easement over such land shall be granted to the Town to insure its perpetual use as open space, conservation, recreation or park land. A maximum of 20% of such open space may be devoted to parking or structures used for, or accessory to, active outdoor recreation and consistent with the open space uses of such land.

9.3.7 USABLE OPEN SPACE

Usable open space shall be provided for the recreational and leisure time use of the occupants of dwellings. Such open space shall be equal to or greater than the amount shown in subsection 9.2.7. To qualify

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as usable open space, an area shall conform to the following standards:

a. **USABILITY**

A space must have a surface which is adequately drained, and permits recreational or leisure time use. Such surface may include any combination of grass, plant materials, wood, or paving materials of a type designed for pedestrian or recreational use. No open space shall be considered usable if the slope of the finished grade is more than 10 percent or if the area is wet or swampy.

b. **LOCATION**

The nearest part of the space shall be not more than 300 feet walking distance from the dwelling unit it serves. Usable open space may be located in an area which:

- 1) is on a privately owned lot occupied by one dwelling or a space designated for the exclusive use of one dwelling unit, or
- 2) qualifies as common open space.

c. **SIZE AND SHAPE**

No open space shall be considered usable unless it has a minimum horizontal area of 600 square feet and no dimension less than 20 feet.

d. **STRUCTURES AND FACILITIES**

All usable open space shall be open to the sky, and may include unroofed facilities such as a tennis court, swimming pool and related structures, or similar recreational facilities.

- e. The access to usable open space shall conform to the same standards set forth in a., b., and d. above, but may have dimensions smaller than those set forth in c. above. If the dimensions of the access are smaller than those required in c. above, the access shall not be counted toward the minimum usable open space required in 9.2.7.

9.4 SPECIAL PERMITS: PROCEDURES, CRITERIA

9.4.1 SPS REQUIRED

No planned residential development shall be initiated without first obtaining a special permit with site plan review in accordance with the provisions of this section. The purpose of the special permit with site plan review is to provide individual detailed review of planned residential developments which have a substantial impact upon the character of the town and impacts on adjoining residential areas and the provision of public facilities and services.

9.4.2 SPGA

The Planning Board shall be the special permit granting authority for all planned residential developments except for a development in an RD district and for the conversion of a municipal building. (See subsection 8.3.4 for a development in an RD district, where the Board of Appeals is the SPGA; see subsection 9.5.6 for conversion of a municipal building, where the Board of Selectmen is the SPGA). In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Sections 3.4. and 3.5.

9.4.3 SPECIAL PERMIT APPLICATION REQUIREMENTS

The application to the SPGA for a special permit with site plan review (SPS) under this section shall be accompanied by a definitive site development plan, as described in subsection 3.6.

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

Where the applicant submits a definitive subdivision plan complying with the Subdivision Control Law and the Planning Board's "Development Regulations", insofar as practical, the public hearing on the application for the special permit and the definitive subdivision plan shall be held concurrently.

9.4.4 SPECIAL PERMIT PROVISIONS

The SPGA may grant a special permit with site plan review for the development of any tract of land in a residential district provided it makes a determination that the proposed development is consistent with the standards and criteria set forth in subsection 9.4.8, subject to the following provisions:

- a. The special permit shall incorporate by reference the building design and definitive site development plans filed with the application for a special permit.
- b. The SPGA may require that the dwelling unit density be less than that shown on the definitive site development plan if it determines that the criteria contained in subsection 9.4.8 so require.

9.4.5 DENIAL OF SPECIAL PERMIT

The SPGA may deny an application for a special permit with site plan review hereunder and base its denial upon:

- a. a failure to comply with the provisions set forth in Section 9, or
- b. a finding that the proposed development would not be consistent with the general objectives for planned residential development set forth in subsection 9.1.1, or the criteria set forth in subsection 9.4.8.

9.4.6 REVISION OF SPECIAL PERMIT

Subsequent to a special permit with site plan review granted by the SPGA under the provisions of this section and where applicable, the approval of a definitive subdivision plan, minor revisions may be made from time to time in accordance with applicable law, by-laws, and regulations, but the planned residential development approved under such SPS shall otherwise be in accordance with the application for the SPS, except as modified by the decision of the SPGA. The developer shall notify the SPGA in advance of any such revision which shall not be effective until approved by vote of the SPGA. If the SPGA determines such revisions not to be minor, it shall order that an application for a revised SPS be filed, and a public hearing be held in the same manner as set forth in Section 3.5.

9.4.7 SPS VS. REZONING

Where the density of dwelling units exceeds that authorized by subsection 9.2 or where the type of building proposed is indicated by the designation "No" in subsection 9.2.3, a petition for a rezoning to a district permitting such density or type of building, shall be submitted to the Town Meeting.

9.4.8 STANDARDS, CRITERIA

In addition to the purposes set forth in Section 1.1, the finding and determination in Section 3.4 and the objectives set forth in subsection 9.1.1, a planned residential development shall also demonstrate that it complies with the following design standards and criteria:

- a. Architectural Character

Where a planned residential development, such as a long-term care facility, a congregate living facility, or group quarters, is located adjacent to a neighborhood of single family dwellings, the massing scheme and the selection of exterior materials for buildings shall be complimentary to a single family neighborhood.

SECTION 9. PLANNED RESIDENTIAL DEVELOPMENT

9.5 SPECIAL PERMIT WITH SITE PLAN REVIEW FOR CONVERTED MUNICIPAL BUILDINGS AND PUBLIC SCHOOL BUILDINGS

9.5.1 GENERAL OBJECTIVES

This section is intended to allow the conversion of municipal buildings and the development of land on which they are situated in a manner which encourages practical residential development, which is compatible with the neighborhood, and which encourages development of economically priced and a variety of housing, and which fosters flexibility and creativity of development.

9.5.2 PERMITTED TYPES OF HOUSING

Permissible housing types and forms of ownership include all single and multiple occupancy housing types, and any mix thereof, and any form of ownership permissible under law.

9.5.3 PUBLIC HEARING BY THE PLANNING BOARD

The Planning Board shall hold a public hearing on the development proposal prior to the first deliberative session of Town Meeting. The procedure for such public hearing shall be the same as the procedure for proposed amendments to the Zoning By-Law.

9.5.4 PLANNING BOARD REPORT TO TOWN MEETING

The Planning Board shall report to the Town Meeting concerning the suitability of the proposal, its contribution to the furtherance of the objectives of this section, and its likely impact on the neighborhood, town services and facilities.

9.5.5 PLANS SUBMITTED TO TOWN MEETING

The development proposal for such conversion shall show in a general manner with plans drawn to scale, the floor plan, exterior design, housing types and estimated sales prices or rentals as the case may be, landscaping, accessory buildings, parking areas and other paved areas, dwelling unit density and total floor area. The development plan shall be presented to the Town Meeting for its approval, by a majority of those present and voting. A copy of the site development plan, which shall be deemed to include any literature and commitments, authorized by the developer which has been presented to Town Meeting shall be filed with the Town Clerk before the vote and shall be part of the site development plan.

9.5.6 SPGA

The Board of Selectmen shall be the Special Permit Granting Authority.

9.5.7 SPGA PUBLIC HEARING

After approval by the Town Meeting, the Special Permit Granting Authority may grant a special permit with site plan review which shall incorporate by reference the development proposal approved by the Town Meeting. Plans submitted for a special permit with site plan review shall conform substantially to the development plan which the Town Meeting has approved. The Board of Selectmen may, in its discretion, permit minor deviation from the development plan which the Town Meeting has approved.

9.5.8 SPECIAL PERMIT WITH SITE PLAN REVIEW

The Special Permit Granting Authority and the Planning Board shall, in acting upon applications for special permits with site plan review, be governed by the provisions of Section 3.4 of this By-Law where not inconsistent with the provisions of Section 9.3.

SECTION 10. LANDSCAPING, TRANSITION AND SCREENING

10.1 OBJECTIVES, APPLICABILITY

10.1.1 The provisions of this section are intended to achieve the following purposes:

- a. to provide a suitable transition between different zoning districts;
- b. to separate different and otherwise incompatible adjacent land uses from each other in order to partially or completely reduce potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, the intrusion from artificial light including the ambient glow therefrom, signs, or the view of unsightly buildings and parking lots;
- c. to preserve or improve the visual and environmental character of a neighborhood and of Lexington generally;
- d. to offer property owners protection against possible diminution of property values due to adjacent commercial construction, or a change in existing ostensibly incompatible land uses.

10.1.2 No building permit or certificate of occupancy for a use, special permit or special permit with site plan review shall be issued or granted where this By-Law indicates that a landscaping, transition or screening area, in accordance with this Section shall be required or where this Section indicates such shall be provided, unless compliance with the provisions of Section 10 is demonstrated.

10.1.3 APPLICABILITY TO SPECIAL PERMITS

Any application for a special permit or special permit with site plan review under subsections 3.3 or 3.4 of this By-law for a use, structure or activity that does not conform to the provisions of this section shall not be granted until compliance with this section, to the maximum extent practicable, is demonstrated.

10.2 LANDSCAPING PLAN REQUIRED

10.2.1 A landscaping plan, demonstrating compliance with the standards contained in this Section for landscaping, transition areas and screening, shall accompany each application for a building permit, certificate of occupancy, special permit or special permit with site plan review, as required by subparagraphs 10.1.2 or 10.1.3. The plan shall be drawn to scale and include dimensions and distances.

10.2.2 The landscaping plan shall be certified by a landscape architect registered in the Commonwealth of Massachusetts.

10.2.3 The landscaping plan shall show:

- a. existing and proposed grades, the existing vegetative cover to be retained, the location, size and type of such vegetation;
- b. the proposed site development plan showing existing and proposed building footprints, walls, fences, parking spaces, loading bays, driveways, walks, storage areas, public rights-of-way, easements and the location of structures on, and the uses of, abutting properties;
- c. a plan and plant schedule giving botanical and common names of plants to be used, size at time of planting, mature size, rate of growth, quantity of each, location and method of any excavation and soil preparation, and the spacing and location of all proposed trees, shrubs and ground covers;
- d. the methods for protecting plant materials during and after construction;

10.2.4 Where an application for an SPS is required, the landscaping plan shall be consistent with the definitive site development plan required by subparagraph 3.6.4.

SECTION 10. LANDSCAPING, TRANSITION AND SCREENING

10.3 TRANSITION AREAS

10.3.1 Where a lot abuts a different zoning district or is across a street from a different zoning district, a landscaped transition and screening area shall be provided and shall be located adjacent to the lot line as set forth in the table in subparagraph 10.3.3. In the case of a non-residential use in a residential district, or a non-conforming commercial use in a residential district, a landscaped transition and screening area shall be provided except that while the transition area shall be the width specified in the table in subparagraph 10.3.3, it shall be installed only along those segments of lot lines necessary to screen the non-residential use from buildings located on abutting lots. The transition area may be provided within the minimum yard required for a building.

Where a lot is divided into two zoning districts for which a transition area would be required by subsection 10.3.3, the transition area shall be along the zoning district line except that the SPGA may grant a special permit for the transition area to be in a different location if it meets the objectives of this section. Where a lot has a nonconforming use for which a special permit is requested (see 10.1.3), a transition area shall be provided on all lot lines where necessary to meet the objectives of this section.

Landscaping and screening of other use areas and parking lots shall be provided in accordance with subsections 10.9 and 10.10.

10.3.2 A lot shall be considered to be across the street from a different zoning district if, at any point along its street line, a line drawn perpendicular to the street line intersects at any point with the street line of the lot across the street. Where any part of the street line of a lot having a non-residential principal use, is determined to be across the street from a residential district, a screening and transition area shall be provided along the entire length of the street line. If a corner lot is across the street from a residential use or district on only one side of the lot, then screening is required only on the side that faces the residential use or district.

10.3.3 REQUIRED DEPTH OR WIDTH (IN FEET) OF TRANSITION AREA
ADJACENT ZONING DISTRICT

District in which lot is located	RO	RS	RT	RD	RM	CN	CRS	CS	CB	CLO	CRO	CM	Street Line
RO	25*	25*	25*	10*	10*	15	15	20	-	20	20	20	-
RS	25*	25*	25*	10*	10*	15	15	20	15	20	-	-	-
RT	25*	25*	25*	10*	10*	10	10	-	-	10	-	-	-
RD	20*	20*	20*	20*	20*	20	20	20	20	20	20	20	25
RM	20*	20*	20*	20*	20*	20	20	20	-	20	-	-	25
CN	20	20	20	20	20	-	10	15	-	10	-	-	10
CRS	20	20	20	20	20	10	-	15	-	10	-	-	10
CS	20	20	20	20	20	15	15	-	-	15	-	-	10
CB	-	20	-	20	-	-	-	-	-	-	-	-	-
CLO	50	50	50	50	50	10	10	10	-	-	-	-	10
CRO	50	-	-	50	-	-	-	-	-	-	-	-	50
CM	50	-	-	50	-	-	-	-	-	-	-	-	50

- Not Applicable

* No requirement for an individual dwelling. (See 10.1.3)

SECTION 10. LANDSCAPING, TRANSITION AND SCREENING

10.4 TRANSITION AREA STANDARDS AND REQUIREMENTS

The following standards shall apply to the installation and maintenance of all landscaping, transition and screening areas required by this section.

10.4.1 COMPOSITION OF LANDSCAPING, TRANSITION AND SCREENING AREAS

A landscaped transition and screening area shall consist of a landscaped strip and may include fences, walls (see 10.4.8) or berms (see 10.4.9) which shall serve to provide an effective year round visual screen at the time of installation.

10.4.2 HEIGHT OF SCREENING

Visual screening comprised of a mixed planting of deciduous and coniferous trees and shrubs and walls or fences shall have a minimum overall height of six feet at the time of installation except in a required front yard where the maximum height shall comply with subparagraph 10.4.3 so as not to interfere with sight distance.

10.4.3 SIGHT DISTANCE

In order to provide an unobstructed sight distance for motorists, there shall be a triangle which is at least 30 feet on two sides of the intersection of a street with a driveway or an interior drive that shall be clear of visual obstructions. The triangle shall be measured from the point of intersection of the street with the driveway or interior drive for a distance of at least 30 feet along the street line (see definition); along the side line of the driveway or interior drive for a distance of at least 30 feet; and by a third line connecting these two points. Within this triangle so described, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to impede vision for motorists between a height of two and a half feet and ten feet above the grade of the center lines of the street and the driveway or interior drive.

10.4.4 TYPE OF PLANT MATERIALS

- a. A variety of plant materials shall be selected to provide an effective visual screen, to be maintained at a minimum height of six feet. Plantings shall be a mixture of deciduous and coniferous trees and shrubs for the screening to maintain its effectiveness throughout the winter months.
- b. Ground cover, grass, mulch or other equivalent landscape treatment, shall be provided in all landscaped transition and screening areas. Where the width of a transition area exceeds twenty feet, and where existing vegetation is used as the required planting, no ground cover, grass, mulch or equivalent treatment shall be required, provided all man-made debris has been removed from within the transition area.
- c. The substitution of artificial plant materials is not permitted.
- d. Existing vegetation in a healthy condition which provides an effective year round visual screen may be used as the required planting provided it is approved by the SPGA or its designee who may require supplemental planting.

10.4.5 SIZE OF PLANT MATERIALS

All trees required by this section shall have a minimum caliper of three inches at the time of planting.

10.4.6 SPACING OF PLANT MATERIALS

The arrangement of plant materials shall consider the relationship of plants in size, form, texture and color. The configuration and combinations of plant materials shall be in accordance with sound horticultural and landscape architectural practices.

10.4.7 PROTECTION OF LANDSCAPING AND SCREENING AREAS

Wherever required landscaping, transition or screening areas are adjacent to parking areas or driveways

SECTION 10. LANDSCAPING, TRANSITION AND SCREENING

such areas shall be protected by curbing or wheel stops to avoid damage to the plant materials and other structures by vehicles.

10.4.8 STRUCTURES WITHIN LANDSCAPING, TRANSITION AND SCREENING AREAS

- a. Walls or fences may be erected within a transition area to supplement the required planting to provide an effective visual screen as determined by the SPGA or its designee.
- b. When walls or fences are required by the SPGA or its designee, they shall be of the following type:
 1. a solid masonry wall faced with visually attractive materials on the side which faces the residential or less intensive use.
 2. a wood stockade or other opaque wooden fence installed so that the attractive side faces the residential, or less intensive use. Between such fence and the lot line there shall be planted a minimum of one shrub or vine per ten linear feet, and a minimum of one small deciduous tree per 40 linear feet.
 3. a fence or wall of an alternate material which may be appropriate to the site which may be proposed by the applicant's landscape architect.
- c. Walls or fences may not be substituted for plant materials to reduce the required width of a transition and screening area. A wall or fence may be added only where a mass of plant materials would not provide an adequate screen or where required by the SPGA or its designee.

10.4.9 EARTHEN BERMS

- a. The SPGA or its designee may require that earthen berms be constructed within a transition area as part of a planned residential development adjacent to an arterial street or limited access highway. The berms shall be planted. Whenever a wall or fence is required in addition to a berm, the wall or fence shall be located between the berm and the higher intensity use in order to improve sound absorption.
- b. The use of earthen berms and similar grading techniques in combination with the standard landscaping requirement is encouraged.
- c. Berms shall be constructed of earth and shall be between three to six feet in height.

10.5 USE OF TRANSITION AREAS

10.5.1 Only necessary driveways or interior drives shall be located across a required transition area. No structure, parking area, play area, interior street or driveway may be located in this transition area.

10.5.2 A transition area may be used for passive recreation; it may contain pedestrian, bike or equestrian trails, provided they do not reduce the effectiveness of the transition area as a year round visual screen. No other uses are permitted in transition areas.

10.6 EXCEPTIONS, SPECIAL PERMITS

10.6.1 Where, due to the size, shape or topography of a lot, the strict provisions of this section would reduce the usable area of a lot so as to preclude a reasonable use of the lot, the SPGA may grant a special permit to modify the transition area requirements where the side of a building, a barrier and/or the land between the building and the lot line has been specifically designed, through a combination of architectural and landscaping techniques, to minimize potential adverse impacts on abutting lots.

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10.6.2 The application for a special permit must demonstrate, in detail, the problems imposed by these requirements and provide an effective alternative.

10.6.3 Any modification of the required transition areas may be made subject to such conditions as are determined by the SPGA to assure adequate screening and buffering between particular uses. In determining what, if any such conditions are necessary, the SPGA shall consider:

- a. the proximity to a residential development;
- b. the topography of the site and of adjacent property;
- c. the nature of the use and/or activity on the site;
- d. the land use of adjacent property;
- e. the width and use of all abutting public rights-of-way;
- f. the potential for impact of any nuisance activities such as noise, light or glare.

10.7 MAINTENANCE

10.7.1 The owner of the lot shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with the approved landscaping plan.

10.7.2 All plant material shall be maintained in a healthy growing condition, replaced when necessary and kept free of refuse and debris. After the initial planting, all plant materials not surviving after the first winter and through the following growing season shall be replaced in kind.

10.7.3 Fences and walls shall be maintained in good repair. Gates or openings may be provided where necessary for access to an area for maintenance.

10.8 INSPECTION

The landscaping plan, as approved, shall be completed according to specifications prior to the issuance of a certificate of occupancy for any residential or non-residential use or building. If the completion of the structure occurs after the planting season has passed, only a temporary certificate of occupancy may be issued until the landscaping is completed.

10.9 SCREENING OF OTHER USE AREAS WITHIN THE LOTS

10.9.1 OUTDOOR STORAGE AREAS

All outdoor storage areas for non-residential uses in residential districts and all facilities for refuse disposal for all commercial, institutional or multi-family uses in all districts shall be enclosed by a fence or wall at least six feet in height. In the event that a wall six feet in height is insufficient to adequately screen such areas, the SPGA or its designee may require additional screening in such manner and of such materials as may be reasonably necessary to adequately screen such area from public view.

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10.9.2 SCREENING OF MECHANICAL EQUIPMENT

In all districts, on non-residential properties, all air conditioning equipment, transformers, elevator equipment or similar mechanical equipment on any roof or building or on the ground shall be screened from public view. The SPGA or its designee may require additional screening in such manner and of such materials as may be reasonable necessary to adequately screen such area from public view.

10.9.3 TRANSFORMERS, EQUIPMENT LOCKERS, UNDERGROUND INSTALLATION OF UTILITY LINES

In all districts, when electric, telephone and all other utility lines, cables or transformers are proposed to be extended or relocated, in connection with the development or redevelopment of land or a building for non-residential purposes, they shall be installed underground.

10.10 LANDSCAPING OF FRONT YARDS IN COMMERCIAL DISTRICTS

For a lot in a commercial district which abuts a street and is across the street from another commercial district, there shall be a transition area (see 10.3.3) at least ten feet in width along such street line of which at least six feet shall be landscaped with a minimum of one deciduous tree for each forty linear feet plus additional underplanting of shrubs which shall be maintained to a height of not less than three feet. The trees and shrubs may be arranged in groupings of planting beds and shall be a mixture of evergreen and deciduous plant materials. The underplanting may be eliminated within ten feet of the trunk of a living tree with a caliper of 18 inches or greater. Street trees as required by the Planning Board's Development Regulations may satisfy this requirement.

SECTION 11. OFF-STREET PARKING AND LOADING

11.1 OBJECTIVES, APPLICABILITY

NOTE: The following terms relative to off-street parking and loading are defined in Section 2, Definitions: driveway, interior drive, maneuvering aisle, motor vehicle trip, parking lot, and unit parking depth.

11.1.1 Any use of land involving the arrival, departure, or storage of motor vehicles, and all structures and uses requiring the delivery or shipment of goods as part of their function, shall be designed and operated to:

- a. promote traffic safety by assuring adequate places for storing of motor vehicles off the street, and for their orderly access and egress to and from the public street;
- b. increase the traffic-carrying capacity of streets and highways in the town and obtain a more efficient utilization of on-street curbside parking;
- c. reduce hazards to pedestrians upon public sidewalks;
- d. protect adjoining lots and the general public from nuisances and hazards such as: 1) noise, glare of headlights, dust and fumes, resulting from the operation of motor vehicles, 2) glare and heat from parking lots, 3) a lack of visual relief from expanses of paving, 4) accelerated run-off of surface water from land covered by impervious materials.

11.1.2 No building permit or certificate of occupancy shall be issued for the erection of a new building, the enlargement or increase in the net floor area of an existing building, the development of a use not located in a building, or the change from one type of use to another (see 11.3.1 or 11.3.3), unless off-street parking spaces or loading bays are provided in accordance with this section.

11.1.3 EXISTING NONCONFORMING PARKING SPACES, LOADING BAYS:
see subparagraph 6.6.1

11.1.4 PARKING AND LOADING REQUIREMENTS FOR A BUILDING DESTROYED, DAMAGED OR DEMOLISHED: see subparagraph 6.6.2

11.2 PARKING, LOADING PLAN REQUIRED

11.2.1 Each application for a special permit with site plan review or, where needed, for a building permit, special permit, certificate of occupancy, or petition for a variance, shall be accompanied by an off-street parking and loading plan showing:

- a. the number, location, elevation and dimensions of all driveways, maneuvering spaces or aisles, parking spaces and loading bays, which shall comply with this By-Law and accepted engineering practice,
- b. the construction details and the location, size and type of materials for surface paving, drainage facilities, curbing or wheel stops, trees, screening and lighting,
- c. the location of all buildings, lot lines and zoning boundary lines from which the parking lot or loading area must be set back,
- d. where landscaping is to be provided, the species and size of plant materials
- e. a summary schedule showing the amount of floor space, or other parking or loading factor to be met, the number of standard, compact and handicapped parking spaces and number of loading bays.

Such plan shall be a drawing at a scale of 1" = 20' or 1" = 40' or at such other scale as the building commissioner may approve. Where necessary, the building commissioner may require that the owner or operator of a use, building, or establishment furnish a statement as to the number of employees working at the lot or establishment, or the number of motor vehicle trips (by type of motor vehicle) that are made to and from the use, building or establishment.

SECTION 11. OFF-STREET PARKING AND LOADING

11.3 NUMBER OF PARKING SPACES, LOADING BAYS

11.3.1 The number of parking spaces indicated for the corresponding types of uses shall be provided in all zoning districts, except as otherwise indicated.

The symbols under the column parking factor shall mean:
s.f.: square feet of net floor area.

TYPE OF USE

PARKING FACTOR

(Minimum Number of Parking Spaces To Be Provided)

1) Residential Uses

- | | |
|--|--|
| a. Dwelling unit in one family detached structure | 2/dwelling unit |
| b. Dwelling unit in: semi-attached dwelling, two-family dwelling, town house, three-family dwelling, four-family dwelling, multi-family dwelling | 1.5/dwelling unit for units with 2 or fewer bedrooms,
2/dwelling unit for units with more than 2 bedrooms |
| c. Accessory apartment, rooming unit | 1/apartment or unit |
| d. Publicly assisted housing for the elderly | 0.5/dwelling unit |
| e. Congregate living facility | 1 for each 2 bedrooms plus 1/employee |
| f. Group care facility, long-term care facility | 1 for each 4 beds plus 1/employee |
| g. Rooming house, group quarters | 0.5 per bed |

2) Institutional, Educational & Recreational Uses

- | | |
|---|---|
| a. Elementary, secondary schools | 2/classroom |
| b. College, technical school | As needed |
| c. Day care center, school age child care program, nursery school, kindergarten | 1 per 500 s.f. |
| d. Church, temple, club, lodge, community service center | 1 per each 6 seats in the largest assembly area |
| e. Gymnasium, stadium, field house | 1 per each 6 seats |
| f. Library, art gallery, museum and other non-recreational public facilities | 1 per each 600 s.f. |

SECTION 11. OFF-STREET PARKING AND LOADING

TYPE OF USE

PARKING FACTOR

(Minimum Number of Parking Spaces to be Provided)

2) Institutional, Educational & Recreational Uses (con't)

- g. Parks, athletic fields, tennis and pool facilities, golf courses, recreation centers, other institutional uses
- h. (deleted 1989 Town Meeting)
- i. Medical office, out-patient clinic

as needed

1 per 200 s.f., in CB 1/250 s.f.

3) Agricultural Uses

- a. Greenhouses, nursery, roadside stand

per 1,000 s.f. of display area whether indoors or outdoors

4) Office Uses

- a. Office uses (except as otherwise classified)

1/250 s.f.

5) Retail Business

- a. Personal services, business services, retail sales, and rental uses (See Table 1, Section 7.0 and 8.0 except as otherwise classified.)

1/250 s.f., in CB 1/325 s.f., on street level floors

1/500 s.f., in CB 1/600 s.f., in a cellar

1/300 s.f., in CB 1/400 s.f., on all other floors

6) Other Commercial Uses

- a. Funeral parlor
- b. Motor vehicle related sales and service uses

1 per 4 seats in the largest assembly area

2 per bay, work station or pump island

7) Eating Establishments

- a. Restaurant, fast food, and other eating establishments not otherwise classified
- b. Take-out food service

1 per 3 seats, or 1/150 s.f. whichever is greater; in CB 1 per 5 seats, or 1/200 s.f., whichever is greater

1 per employee plus 1 per 5 linear feet of counter space; in CB 1 per 2 employees plus 1 per 7 linear feet of counter space

8) Amusements, Recreation

- a. Theater
- b. Commercial amusements

1 per 6 seats

1 per employee plus 1 per alley, machine; in CB 1 per employee plus 1 per 2 alleys, machines

9) Transient Accommodations

- a. Hotel, motel
- b. Convention center

1 per guest room

1 per 4 seats in the largest assembly area

SECTION 11. OFF-STREET PARKING AND LOADING

<u>TYPE OF USE</u>	<u>PARKING FACTOR</u> (Minimum number of Parking Spaces To Be Provided)
<u>10) Manufacturing, Research Uses</u>	
a. Manufacturing, research laboratory	1 per 500 s.f.
<u>11) Construction, Storage, Distribution and Industrial Service Uses</u>	1 per 1,000 s.f.
<u>12) All Other Permitted Use</u>	As needed, usually 1 per employee

11.3.2 RULES FOR INTERPRETATION OF SECTIONS 11.3.1 AND 11.3.3

- a. Where the number of spaces is expressed as a ratio to dwelling units, floor area, beds, employees, etc., any fraction thereof shall require one parking space but after the first such parking space or loading bay, only a fraction of one half or greater shall require an additional space or bay.
- b. Where the requirement is stated "as needed," the applicant for a permit shall estimate the number of parking spaces or loading bays required to serve the use and shall provide such number; the building commissioner shall verify that the number is adequate and shall, if necessary, order that additional spaces or bays be provided.
- c. To simplify the determination of net floor area, 80 percent of the gross floor area may be used.
- d. Where off-street parking or loading serves two or more activities that are different types of uses, including two or more activities that are part of the same principal use, the number of spaces or bays provided shall be the sum of the requirements for the various individual uses which shall be determined by computing the number of parking spaces and loading bays required for the various individual uses and by then adding those numbers including any fractional number. Parking spaces or loading bays for one activity or use shall not be considered to be providing the required parking or loading bays for any other use, except as provided in paragraph 11.8.e.
- e. Where the requirement is based on the number of employees, the number of spaces shall be based on the number of employees in the peak period, which shall be at least 3 hours per day for at least 3 days per week.
- f. Where places of assembly are provided with benches rather than individual seats, each two lineal feet of bench shall equal one seat, and where no fixed seats or benches are used, each 20 square feet of floor area in the largest assembly area shall equal one seat.
- g. Where uses are of the open air type and are not enclosed in a structure, each square foot of lot devoted to such use shall be considered to be equivalent to one fifth of a square foot of net floor area.
- h. In the case where the Board of Selectmen authorizes the placement of temporary seats on the sidewalk within the public right of way of streets within the CB district in Lexington Center, and such seats could be interpreted to be an increase in the number of seats serving a restaurant or eating establishment, such seats shall not be counted toward the off-street parking or loading requirements as long as they are seasonal and temporary.

11.3.3 The number of off-street loading bays indicated for the corresponding types of uses shall be provided in all zoning districts except as otherwise indicated. The symbols under the column loading factor shall mean:
s.f.: square feet of net floor area

SECTION 11. OFF-STREET PARKING AND LOADING

<u>TYPE OF USE</u>	<u>LOADING FACTOR</u> Minimum number of loading bays to be provided:
1) Residential Uses a. Long-term care facility, group care facility	1 per 100 beds
2) Institutional Uses School, college, church, club, library, gallery	1 per first 25,000 s.f., 1 per each additional 75,000 s.f.
3) Office Uses	0 for first 10,000 s.f. 1 for next additional 50,000 s.f. 1 for each additional 100,000 s.f. thereafter
4) Personal, business service uses, retail sales or rental uses	1 per first 5,000 s.f. 1 per each additional 15,000 s.f.
5) Restaurants	1 per first 99 seats, 1 per all additional seats
6) Manufacturing, research, construction, storage, distribution and industrial service uses	1 per first 10,000 s.f., 1 per each additional 40,000 s.f.
7) All other permitted uses	As needed

11.3.4 Required off-street parking spaces or loading bays which, after development, are later dedicated to and accepted by the Town and are maintained by the Town for off-street parking or loading purposes, shall be deemed to continue to serve the uses or structures for which they were originally provided.

11.3.5 PARKING SPACES FOR HANDICAPPED PERSONS

Specially designated parking spaces for the physically handicapped shall be provided, as follows:

<u>Total Number of Spaces</u>	<u>Spaces for Handicapped</u>
10-25	1 space
26-40	5% of the total spaces but not less than 2
41-100	4% of the total spaces but not less than 3
101-200	3% of the total spaces but not less than 4
201-500	2% of the total spaces but not less than 6
501-1,000	1.5% of the total spaces but not less than 10
1,000-2,000	0.75% of the total spaces but not less than 20

Spaces for the handicapped shall be clearly identified by a sign indicating those spaces are reserved for physically handicapped persons. Such spaces shall be located in that portion of the parking lot nearest to the entrances to the use or structure which the parking lot serves.

SECTION 11. OFF-STREET PARKING AND LOADING

11.4 LOCATION OF OFF-STREET PARKING, LOADING BAYS

11.4.1 Required off-street parking spaces shall be provided on the same lot as, and loading bays shall be provided next to, the principal or accessory use they are required to serve, except that some parking spaces may be provided on a separate lot as provided in section 11.8.

11.4.2 No area may be utilized and counted as both a required parking space and a required loading bay. However, maneuvering aisles and driveways may serve both required parking and loading bays if they meet the design standards of each. Existing areas used for both parking and loading shall be counted for loading purposes.

11.4.3 Required off-street parking spaces or loading bays may be wholly or partly enclosed in a structure.

11.4.4 Off-street parking spaces required for two or more buildings, uses, or establishments may be provided in a common lot where it is evident that such facilities will continue to be available for the several buildings, uses, or establishments, and if the Board of Appeals shall grant a special permit therefor in accordance with Section 11.8.

11.5 DRIVEWAYS

11.5.1 Each parking space and loading bay shall be connected by a driveway to a street or to an interior drive that leads to a street. Parts of a driveway may be partly on another lot or may straddle a lot line provided the Board of Appeals grants a special permit under subsection 11.8c.

11.5.2 In all districts the number of driveways permitting entrance to and exit from a lot shall be limited to two per street line. Driveways shall be located so as to minimize conflict with traffic on public streets and where good visibility and sight distances are available to observe approaching pedestrian and vehicular traffic.

11.5.3 DRIVEWAYS SERVING NON-RESIDENTIAL DISTRICTS

No private way or driveway which serves a non-residential use in a non-residential district shall be built through a residential district.

11.6 MINIMUM YARDS FOR PARKING LOTS; SCREENING; DRIVEWAYS

11.6.1 PARKING FOR ONE-FAMILY, TWO-FAMILY DWELLING

On any lot in any district where parking is provided for a one-family or two-family dwelling, and where there are not more than four outdoor parking spaces serving a two-family dwelling and not more than four outdoor parking spaces serving a one-family dwelling, each parking space or driveway shall be set back five feet from any side lot line or rear lot line and shall be designated on a plan. If located in the front yard, a parking space shall be in the designated parking space, or driveway, and shall not be located on a lawn or other natural area.

11.6.2 On any lot in any district, for all uses other than a one-family or a two-family dwelling, all paved parts of all parking spaces, driveways and maneuvering aisles, shall be set back from any wall of a principal building, and from any lot line or zoning boundary line as indicated in the following table, and the

SECTION 11. OFF-STREET PARKING AND LOADING

setback shall be maintained as a landscaped open area except for:

- 1) not more than two driveways between the street line and its corresponding set-back line, or
- 2) a parking space located within a structure otherwise permitted in such area.

Distance in feet parking space, driveway and maneuvering aisle must be set back from:

<u>District</u>	<u>Residential district line</u>	<u>Street line</u>	<u>All other lot lines</u>	<u>Wall of a principal building</u>
RS, RO, RT	N.R.	25	8	5
RD, RM	N.R.	25	8	5
CRO, CLO, CM	50*	50	10	5
CRS, CS, CB, CN	20*	10	N.R.	5

* No requirement where the residential district line is coterminous with the line of the right-of-way now or formerly of the Boston and Maine Railroad or the right-of-way of State Route 2 or State Route 128.

Section 10 may require more extensive setback, transition and screening requirements than as set forth above.

NOTE: Screening (section 11.6.6) is required adjacent to the paved area but not in the required snow storage area and not between a paved area and a building.

11.6.3 No loading bay may be located in that half of the minimum required setback nearest to the street line or lot line of a minimum yard required by Table 2, Schedule of Dimensional Controls; maneuvering space for such bay may be as close to a street line or lot line as may be permitted by paragraph 11.6.2 or by the preceding clause.

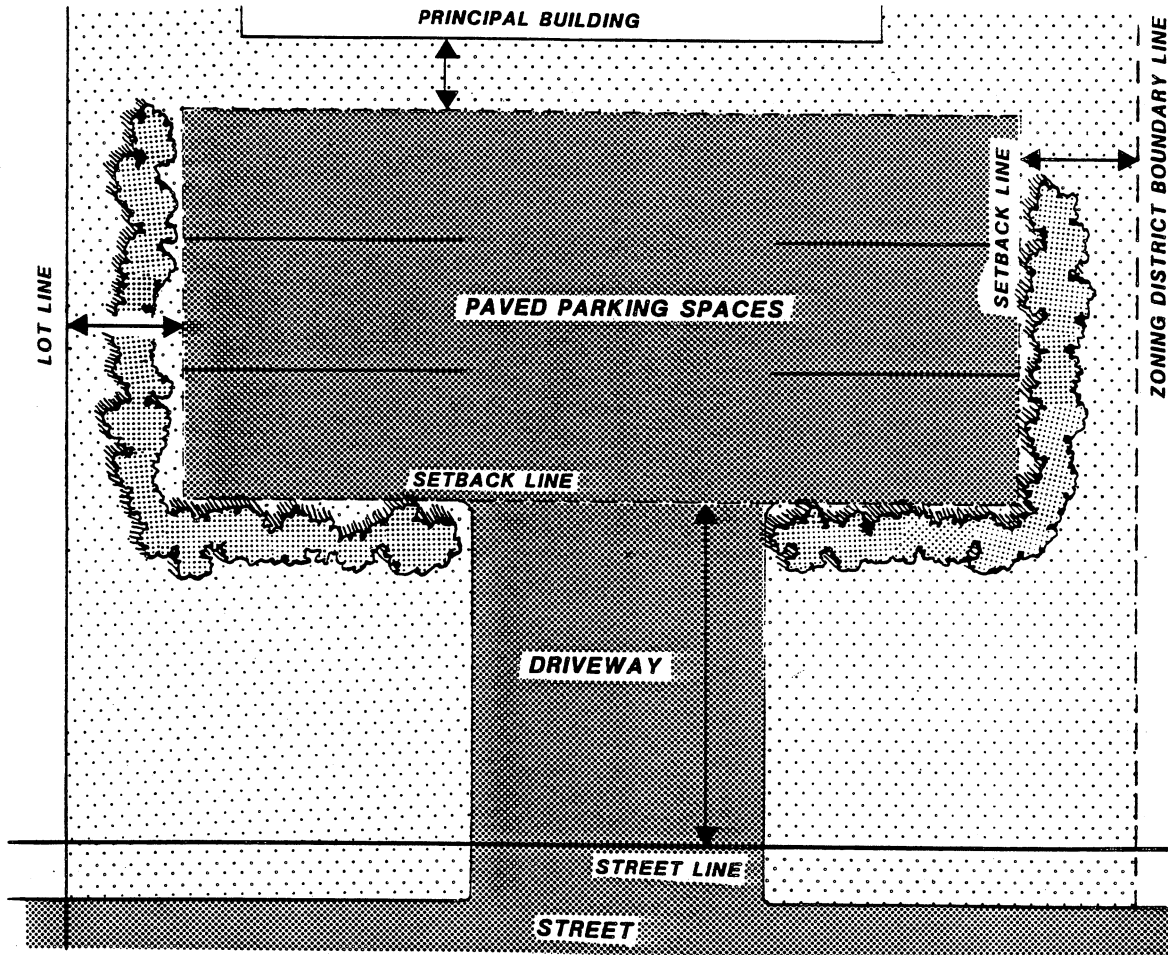
NOTE: Section 10 may require more extensive setback, transition and screening requirements than as set forth above.

11.6.4 No parking space or loading bay, whether required or otherwise provided, shall be located, wholly or partly, within the right-of-way of a public street.

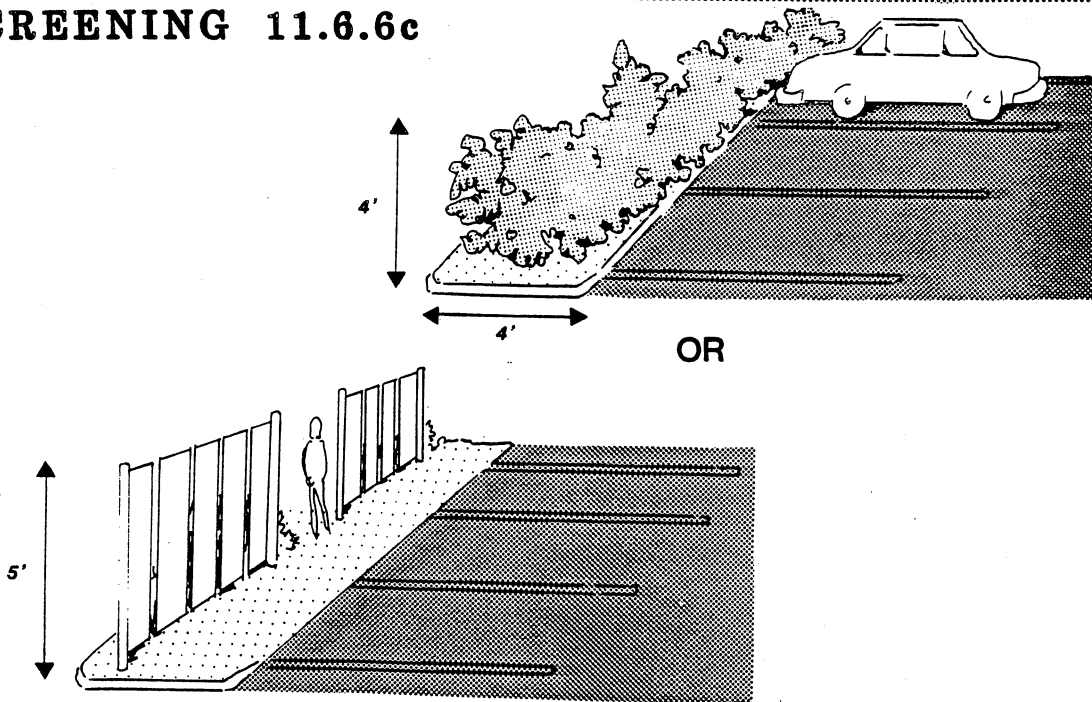
11.6.5 All parking lots, loading bays, and drive-in or motor vehicle uses shall be so arranged and designed that the only means of access and egress to and from such lots shall be by driveways meeting the requirements of this section; curbs, wheel stops, screening or similar barriers shall be installed along the setback line for parking and loading, as required by paragraph 11.6.2, to prevent vehicles from being parked or driven within required setback areas or into landscaped open space areas.

SECTION 11. OFF-STREET PARKING AND LOADING

DISTANCES 11.6



SCREENING 11.6.6c



These drawings are for illustrative purposes only. They are not legally-adopted parts of the Zoning By-Law as voted by the Town Meeting.

SECTION 11. OFF-STREET PARKING AND LOADING

11.6.6 TRANSITION AND SCREENING

NOTE: Section 10 may require more extensive setback, transition and screening requirements than as set forth above.

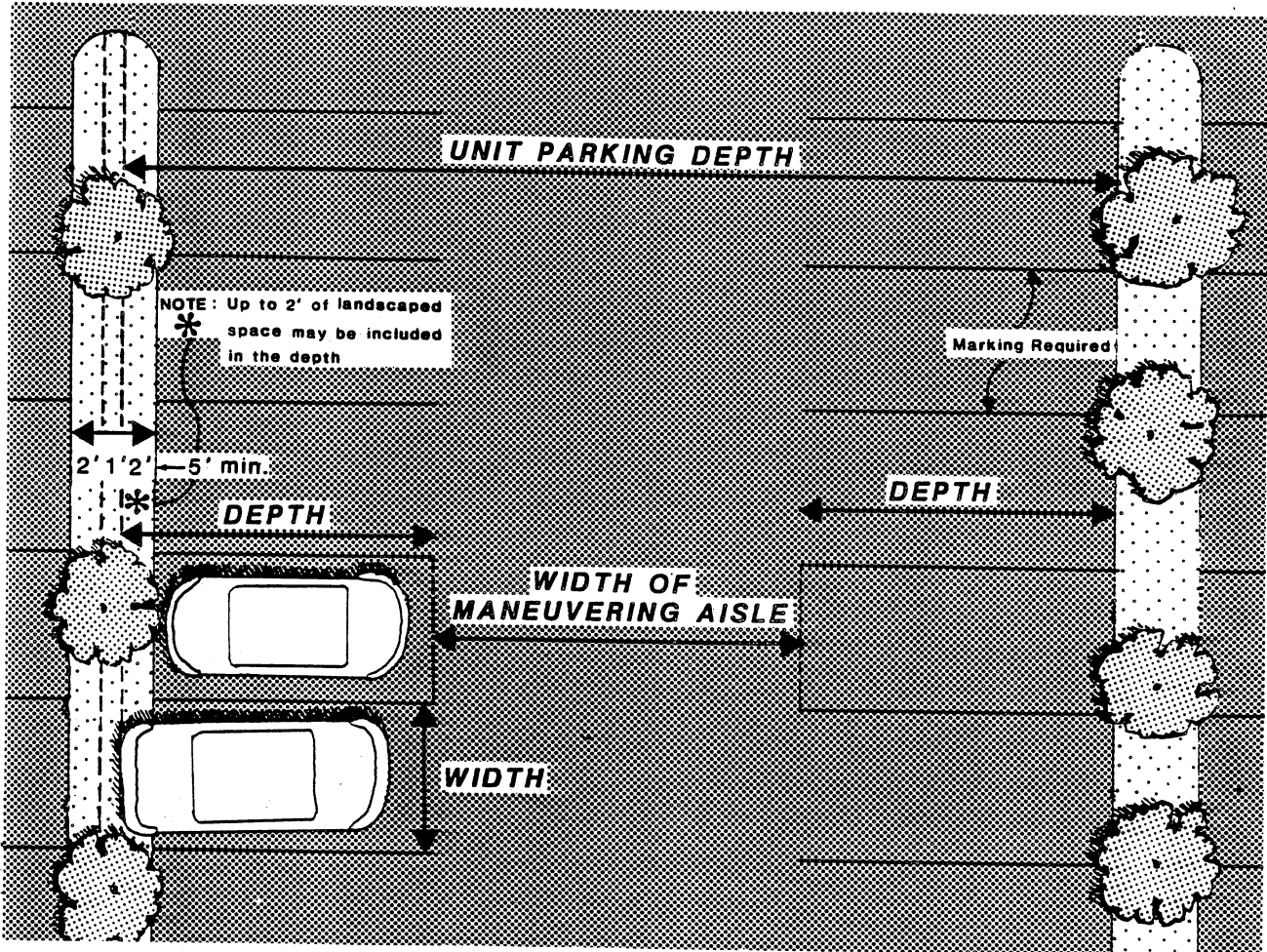
- a. In all residential districts, or on a lot in any other district which abuts or faces a lot in a residential district, any outdoor parking lot containing five or more parking spaces, all loading bays, maneuvering aisles and driveways shall be screened in accordance with subparagraph c, in a manner to protect abutting lots from the glare of headlights, noise and other nuisance factors.
- b. Any parking lot which is: 1) a principal use or 2) within any residential district, shall have setbacks computed in accordance with paragraph 11.6.2 and shall be screened along driveways and around the entire perimeter of the parking lot. The entrance to driveways, to the extent practicable, shall be located on the side near non-residential districts or on streets or highways leading to non-residential areas.
- c. Where screening is required, it shall consist of:
 - 1) A strip of land at least four feet wide, densely planted with shrubs or trees which are at least four feet high at the time of planting and which are of a type that may be expected to form a year-round dense screen at least six feet high within three years, or
 - 2) A wall, barrier, or fence of uniform appearance at least five feet high, above finished grade. Such wall, barrier or fence may be opaque or perforated, provided that not more than 50 per cent of the face is open.Such screening shall be maintained in good condition at all times. Such screening or barrier may be interrupted by entrances or exits, and shall have no signs attached thereto other than those permitted in the district.
- d. All artificial lighting used to illuminate specifically any parking space, loading bay, maneuvering space or driveway shall be so arranged that all direct rays from such lighting fall entirely within the parking or loading area and shall be shielded so as not to shine upon abutting properties or streets. The level of illumination of lighting for parking and loading areas shall be low so as to reduce the glow of ambient lighting perceptible at nearby properties or streets.

11.7 DESIGN STANDARDS

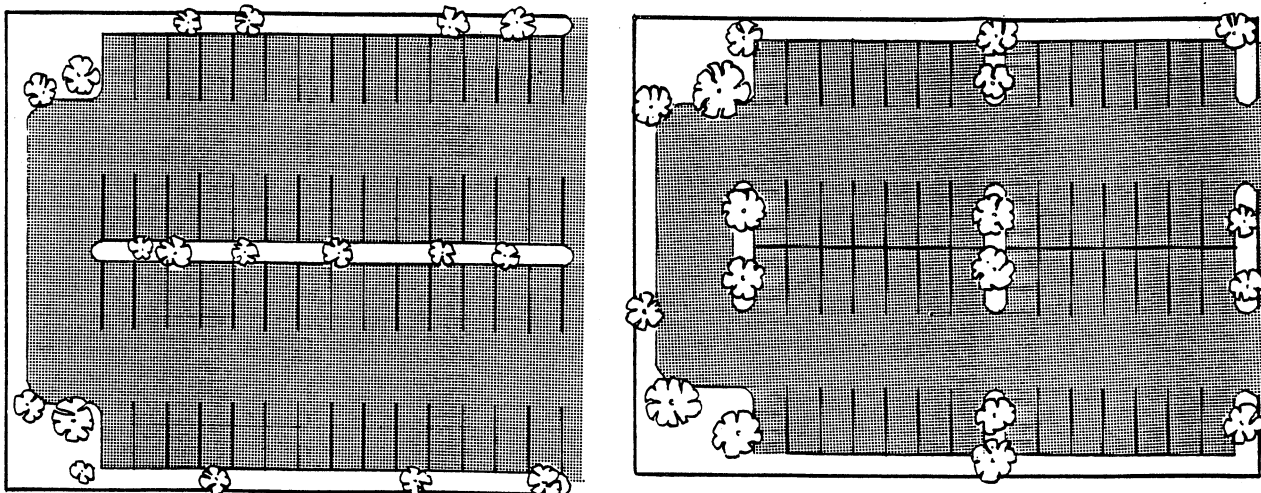
11.7.1 EXCEPTION FOR ONE-FAMILY, TWO-FAMILY DWELLING

The provisions of paragraph 11.7.2e (backing into a public street), 11.7.5 (marking of pavement), 11.7.6c (moving of vehicles) and 11.7.7 (surfacing, drainage) shall not apply where parking is provided for any one-family or two-family dwelling.

DIMENSIONS 11.7



INTERIOR LOT LANDSCAPING: TWO ALTERNATIVES 11.7.9.



These drawings are for illustrative purposes only. They are not legally-adopted parts of the Zoning By-Law as voted by the Town Meeting.

SECTION 11. OFF-STREET PARKING AND LOADING

11.7.2 DIMENSIONS

- a. On any lot in any district, parking spaces and maneuvering aisles shall have the minimum dimensions set forth in the following table and elsewhere in this subsection:

Minimum Parking Space and Aisle Dimension for Parking Lots (in feet)

S = standard

C = compact

H = handicapped

Angle of Parking	Width of Parking Space			Depth **of Parking Space			Width of Maneuvering Aisle			Unit Parking Depth		
	S	C	H	S	C	H	S	C	H	S	C	H
61-90 degrees	9*	8.5*	12*	19	15	19	22	20	22	60	50	60
46-60 "	9	8.5	12	19	15	19	16	15	16	56	48	56
45 "	9	8.5	12	19	15	19	14	13	14	53	47	54
Parallel	8	8	12	22	18	22	12	12	12	n/a		

* Where one or both of the long sides of a parking space abuts a wall or similar obstruction, the width shall be 12 feet.

** Up to 2 feet of unpaved landscaped space may be included in the depth provided there are no obstructions to the vehicle's overhang.

- b. To be counted as a required parking space, a parallel parking space shall have maneuvering space at least 20 feet deep in front of it in an aisle parallel to and abutting such parking space.
- c. Where columns of a building or structure are located in a parking lot (such as a parking garage under a building) no part of a column may be within 3 feet of a maneuvering aisle or within the minimum dimensions of a parking space as set forth in 11.7.2a.
- d. The width of a driveway for a one-way use shall be a minimum of 8 feet and for two-way use shall be a minimum of 18 feet and a maximum of 30 feet, as measured at the setback line. Note: Design standards for interior drives are different from those for driveways; see "Development Regulations".
- e. Where access or egress is provided for a parking lot (5 or more spaces), or 1 or more loading s, such access or egress shall be so arranged to provide a circulation system or maneuvering space on the lot so that all vehicles may exit from and enter onto a public street by being driven in a forward direction and no vehicle shall be required to enter or leave by backing and no vehicle shall have to stand within a street right-of-way waiting to enter the lot.

11.7.3 NUMBER OF COMPACT CAR SPACES

In parking lots containing more than 20 spaces, not more than 33% of such spaces may be designed for use by compact cars. Such compact car spaces shall be located in one or more continuous areas, and shall not be intermixed with spaces designed for standard cars and shall be clearly designated by signs or pavement marking. In parking lots with 20 or fewer parking spaces, spaces meeting the minimum dimensions for compact cars are not permitted.

11.7.4 LOADING BAYS

All required loading bays shall have minimum dimensions as follows: 30 feet long, 12 feet wide and 14 feet high. Each loading bay shall have a maneuvering space equal to its length. Where the long portion of a loading bay abuts a wall, column or other obstacle, or in other cases where the building commissioner requests, evidence shall be provided that the loading bay and its maneuvering space is adequate to accommodate large motor vehicles, and trailers.

SECTION 11. OFF-STREET PARKING AND LOADING

11.7.5 MARKING

In a parking lot or loading area, the surface of the parking lot or loading area shall be painted, marked or otherwise delineated so that the location of the parking spaces and loading bays is apparent, and signs shall be erected indicating that loading bays, and if necessary, compact or other reserved parking spaces, are reserved for such use. Where 50 per cent or more of the required parking spaces in a parking lot are assigned, such as to individual employees or to dwelling units in an apartment building, parking spaces for guests or visitors to the use or establishment, not to exceed ten per cent of the required parking spaces, shall be located and designated as visitor parking near the principal entrance to the building which it serves.

11.7.6 AVAILABILITY, SNOW STORAGE

To insure the availability and utilization of required parking spaces and loading bays on a year round basis:

- a. No fee or other charge to the parker, in addition to a lease or purchase agreement applicable to occupants generally, shall be made for a parking space or loading bay required to serve a use, building, or establishment.
- b. A strip of land not less than five feet in width shall be provided on at least two sides of a parking lot or loading area and designated on the off-street parking and loading plan for the storage of snow plowed or removed from the surface area of the parking lot or loading area; such snow storage area may not encroach on the area required for off-street parking or loading but may be located in the landscaped open area or in the area of required setback from a lot line or building.
- c. Each required off-street parking space and loading bay shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or by passing over any other space or bay.
- d. Parking spaces for vehicles larger than automobiles, such as large trucks or buses, shall be specifically identified on the off-street parking and loading plan and shall be of such dimension as to accommodate the specified type of vehicle. Such vehicles shall be permitted to park only in the spaces so identified and approved.

11.7.7 SURFACING, DRAINAGE

All required parking spaces and loading bays, maneuvering aisles, and driveways shall have a durable, dustless, all-weather surface suitable for year-round use, such as asphalt or concrete, and shall dispose of surface water by grading and drainage in such a manner that no surface water shall drain onto any public way or onto any lot in other ownership.

It is the intent of this section that the paved surface of a parking lot or loading area shall be limited to such areas as are necessary for the parking spaces, loading bays, maneuvering aisles, and driveways required to meet the provisions of this section. The off-street parking and loading plan required by this Section shall demonstrate that all paved areas associated with a parking lot are necessary for the storing, standing, or maneuvering of vehicles; the building commissioner may deny the request for a permit when more area is paved than is necessary to comply with the provisions of this section.

11.7.8 GRADE

The maximum grade of any required maneuvering aisle, parking space, or loading bay shall be ten per cent. The maximum grade of any outdoor driveway shall be twelve per cent.

SECTION 11. OFF-STREET PARKING AND LOADING

11.7.9 LANDSCAPING

NOTE: Section 10 may require more extensive setback, transition and screening requirements than as set forth above.

- a. On at least three sides of the perimeter of an outdoor parking lot containing 20 or more parking spaces, there shall be planted at least one tree for every eight parking spaces abutting the perimeter; such trees shall be spaced so that some part of a parking space is not more than 30 feet from a tree.
- b. In the interior part of an outdoor parking lot where two rows of parking spaces containing a total of 10 or more parking spaces face each other, a landscaped open space not less than 5 feet in width shall be provided. The landscaped strip may be provided either:
 - 1) between the rows of parking spaces parallel to the aisle or,
 - 2) in two or more strips parallel to the spaces and extending from the aisle serving one row of spaces to the aisle serving the other row of spaces.

There shall be planted in each such strip at least three trees and in all such strips not less than one tree for every eight parking spaces in the interior part of the parking lot. Trees shall be spaced so that some part of a parking space is not more than 30 feet from a tree.

- c. Trees required by this section shall be at least 2 inches diameter at a height four feet above the ground at time of planting and shall be of a species characterized by suitability and hardiness for location in a parking lot. To the extent practicable, existing trees shall be retained and used to satisfy this section.

11.8 EXCEPTIONS, SPECIAL PERMITS

In accordance with Section 3.3, and where consistent with the objectives set forth in 11.1.1, the Board of Appeals may grant a special permit modifying the requirements of this Section in the following cases:

- a. Where it can be demonstrated that a use or establishment needs a lesser number of parking spaces or loading bays than is required by subsection 11.3, the number of such spaces or bays required may be reduced by not more than 50 per cent. An applicant shall submit documentary evidence that the parking or loading experience of the use justifies a lesser number of spaces or bays.

A reserve area, to be maintained as landscaped open space, shall be provided sufficient to accommodate at least one half of the difference between the spaces or bays required and the lesser number provided. The off-street parking and loading plan shall show how the reserve area would be laid out in compliance with this section.

The term of a special permit for such reduction initially may not exceed two years, but may be granted subsequently for a longer period upon verification that the parking or loading is adequate. A special permit granted under this authority shall lapse upon change to a different type of use and shall not be considered to constitute any non-conformity.

- b. Where the design of a parking lot or loading area differs from the design provisions of sub-section 11.6 or 11.7 provided such design complies with the intent of 11.6 or 11.7, is prepared by a professional engineer or landscape architect and provided such design is approved in writing by the Town Engineer.
- c. To allow a driveway on one lot to lead to a parking space or loading bay on another lot, or to allow a driveway to straddle the lot line and serve a parking space or a loading bay on two or more lots, when both lots are in a residential district(s), or when both lots are in a commercial district(s), provided a binding agreement, satisfactory in form to the Town Counsel, is executed and is filed in the Registry of Deeds of Middlesex County. Where the driveway is located in a planned residential development for which a special permit with site plan review (SPS) is required and the Planning Board is the SPGA, the Planning Board may grant the special permit for the driveway location.

SECTION 11. OFF-STREET PARKING AND LOADING

- d. In any commercial or industrial district, allowing required parking spaces to be located on a separate lot, which may be in separate ownership, within a zoning district in which the principal use is permitted provided:
- 1) All such parking spaces are within 750 feet walking distance of an entrance to the building which they serve,
 - 2) all such spaces are for employees only and not clientele, and
 - 3) where such lot is not in the same ownership, a lease guaranteeing long term use of such lot, and satisfactory in form to the Town Counsel is executed and filed in the Registry of Deeds of Middlesex County.

In a CB district all such parking spaces may be within 1,200 feet walking distance of the entrance of such building if located on a lot within the CB district.

- e. Where two or more activities or uses provide for required parking or loading in a common parking lot or loading area, the number of parking spaces or loading bays required may be reduced below the sum of the spaces or bays required for the separate activities or uses or if it can be demonstrated that the hours, or days, of peak parking or loading need for the uses are so different that a lower total will provide adequately for all uses or activities served by the parking lot or loading bay.

11.9 PARKING IN CB DISTRICT

11.9.1 It is the intent of this section that a safe and attractive environment for pedestrians be preserved and enhanced in the Lexington center business district. Therefore, no new off-street parking space, loading bay or driveway shall be permitted for a depth of 30 feet from the street line of Massachusetts Avenue or of Waltham Street within the center business district.

11.9.2 Required parking spaces may be provided on the same lot, or, if a special permit under Section 11.8 d. is granted by the Board of Appeals, on another lot within the CB zone provided such facility is within 1200 feet walking distance of the entrance of the building which such parking spaces are required to serve.

SECTION 12. TRAFFIC

12.1 OBJECTIVES, APPLICABILITY

12.1.1 The provisions of this section are intended to achieve the following purposes:

- a. to permit vehicular traffic on Lexington streets to move in an efficient manner without excessive delay or congestion,
- b. to permit emergency vehicles to reach homes and businesses with a minimum of delay,
- c. to reduce motor vehicle and pedestrian accidents on the town's streets,
- d. to consider and allow for safe and convenient routes for pedestrians and bicyclists,
- e. to promote cleaner air and to reduce automotive exhaust emissions caused by vehicles standing and idling for an excessive time,
- f. to promote the efficient use of the town's arterial and collector streets so that use of local and neighborhood streets as shortcuts can be discouraged,
- g. to avoid excessive traffic demand on town streets that necessitate extraordinary town expenditures to maintain adequate and safe traffic flow,
- h. to maintain a balance between the traffic generating capacity of dwellings and businesses in the town and the traffic carrying capacity of streets and intersections,
- i. to encourage alternative methods of transporting people, through public transportation, car pools and van pools, bicycling and walking, rather than near exclusive reliance on single occupant automobiles,
- j. to encourage the use of good traffic engineering principles and design standards consistent with a predominantly residential suburban town,
- k. to encourage the positive management of traffic flow consistent with the town's other stated objectives,
- l. to encourage private sector participation in dealing with the town's traffic problems,
- m. to expand the town's inventory of data about traffic conditions on town streets.

12.1.2 No building permit shall be granted for the erection of a new building or the enlargement of an existing building with the result that:

- 1) are 10,000 square feet or more of gross floor area on the lot, including any existing floor area, but not including any floor area devoted to residential use or to off-street parking, or
- 2) there are 50 or more dwelling units, or their equivalent, in a development, including any existing dwelling units,

unless a special permit with site plan review has been granted and the SPGA has made a determination that the streets and intersections affected by the proposed development have, or will have as a result of traffic improvements, adequate capacity, as set forth in subsection 12.3, to accommodate the increased traffic from the development. The requirement for a special permit with site plan review (SPS) does not apply to a religious or non-profit educational use, as described in subparagraph 3.1.4.1.

12.2 TRAFFIC STUDY REQUIRED

12.2.1 A traffic study shall be submitted with each application for a building permit, special permit or special permit with site plan review to which subparagraph 12.1.2 is applicable, or where required by any other provision of this By-law.

12.2.2 The traffic study shall be conducted by a traffic engineer who will certify that he/she qualifies for the position of member of the Institute of Transportation Engineers (ITE).

SECTION 12. TRAFFIC

12.2.3 For the purposes of this analysis, the terms below shall have the meaning indicated. The morning and evening "peak period" shall usually be the two hours between 7 A.M. and 9 A.M. and between 4 P.M. and 6 P.M. respectively. The morning and evening "peak hour" shall be that consecutive 60 minute segment within the peak period in which the highest traffic count occurs as determined by traffic counts of the peak period divided into 15 minute segments. For uses which have an exceptional hourly, daily or seasonal peak period, the SPGA may require that the analysis be conducted for that extraordinary peak period.

A street or intersection "likely to be affected by the development" is one which has an Average Daily Traffic (ADT) of 2,000 vehicles or more and either:

- 1) carries 10 percent or more of the estimated trips generated by the development or
- 2) in the case of an intersection only, traffic from the proposed development will add 5 percent or more to the approach volumes.

12.2.4 The traffic study shall include:

- a. An estimate of trip generation for the proposed development showing the projected inbound and outbound vehicular trips for the morning and evening peak periods and a typical one hour not in the peak period. Where there is existing development of the same type of use on the site, actual counts of trip generation shall be submitted. Trip generation rates may be based on:
 - 1) the "Trip Generation Manual, Third Edition" prepared by the Institute of Transportation Engineers, and, if applicable,
 - 2) data about similar developments in Massachusetts or
 - 3) data from professional planning or transportation publications, provided the methodology and relevance of the data from 2) or 3) is documented.
- b. An estimate of the directional distribution of new trips by approach streets and an explanation of the basis of that estimate. Where there is existing development of the same type of use on the site, actual counts of trip directional distribution shall be submitted.
- c. An assignment of the new trips to be generated by the proposed development to the segments of the Town street network, which shall include state highways in Lexington, which are likely to be affected by the proposed development (see 12.2.3).
- d. Average Daily Traffic (ADT) on the streets likely to be affected by the development (see 12.2.3), counted for a 24 hour period.
- e. Intersection turning movement counts of the morning and evening peak periods at the intersections likely to be affected by the proposed development (see 12.2.3). In special circumstances where the peak traffic impacts are likely to occur at times other than the usual morning and evening peak periods, the SPGA may require counts for those other peak periods.
- f. An inventory of roadway characteristics of the principal approach streets adjacent to the development site and of the streets in the intersections at which turning movement counts are taken showing the width of the right of way and of the travelled way, traffic control devices, obstructions to adequate sight distance, the location of driveways or access drives within 500 feet of the entrance to the site for uses that are substantial trip generators, and the presence or absence of sidewalks and their condition.
- g. In the case of a development in an abutting city or town, which will have a traffic impact on a street or intersection in Lexington which is one that is likely to be affected by the proposed development for which the traffic study is being prepared, the traffic impact of the development in the abutting city or town shall be included in the traffic study provided:
 - 1) that traffic impact is equal to or greater than that set forth in the test in 12.2.3,
 - 2) the development has been approved by official action of that abutting city or town but has not opened for use prior to the date that the traffic counts required by this section were taken, and

SECTION 12. TRAFFIC

- 3) data on the traffic impact of that development, comparable to that required by this section, is available.
- h. An analysis of the effect on the capacity of those intersections in the Lexington street system likely to be affected by the development (see 12.2.3) during peak periods of:
 - 1) the additional traffic generated by the development, and
 - 2) additional traffic from other developments previously approved by the Town of Lexington for which a traffic study was required, or by an abutting city or town as provided in subparagraph "g" above, which have not yet been opened for use prior to the date that the traffic counts required by this section were taken. Analysis of the capacity of intersections shall be based on traffic "levels of service" as described in the "Highway Capacity Manual, 1985 Edition" published by the Transportation Research Board. This analysis may include an intersection of an access drive serving a development and a segment of the Lexington street system.
- i. Where mitigating measures or trip reduction programs are proposed, they shall be proposed by the applicant and shall accompany the traffic study at the time of filing of the application. Where the proposed mitigating measure is the construction of a traffic engineering improvement, evidence, such as letters of support, or commitment, or approval, or the award of a contract, may be submitted to show that construction of the traffic improvement is likely to occur.
- j. An estimate of the time and amount of peak accumulation of off-street parking. The counts referred to above shall have been taken within the 12 months prior to the filing of the application. Upon request, the traffic engineer shall furnish an explanation of the methodology of the traffic study and additional data, as needed.

12.3 ADEQUATE TRAFFIC CAPACITY

12.3.1 Prior to granting a special permit or special permit with site plan review in those cases covered by subparagraph 12.1.2 or as may be required elsewhere in this By-Law, the SPGA shall determine that the streets and intersections likely to be affected by the proposed development currently have, or will have as a result of traffic improvements, adequate capacity, as defined in subparagraph 12.3.2. In making its determination of adequate capacity, the SPGA shall consider at least the cumulative effect on a street or intersection likely to be affected by the development, as provided in subparagraph 12.2.3, of:

- 1) existing traffic conditions,
- 2) estimates of traffic from other proposed developments which have already been approved in part or in whole by the Town of Lexington for which a traffic study was required or by official action of an abutting city or town, which have not yet been opened for use prior to the date that the traffic counts required by this section were taken, and
- 3) estimates of traffic from the proposed development.

12.3.2 ADEQUATE CAPACITY DEFINED BY LEVEL OF SERVICE

Adequate capacity shall mean level of service "D" or better as described in the "Highway Capacity Manual, 1985 Edition" published by the Transportation Research Board. If the level of service that would result from the cumulative effect, referred to in subparagraph 12.3.1 is "E" or below, the SPGA shall determine there is not adequate capacity and shall deny the application.

12.3.3 MITIGATING MEASURES TO IMPROVE CAPACITY

The SPGA shall consider that various traffic engineering improvements, or other method of positive traffic control, such as a traffic control officer, can improve the traffic carrying capacity of an intersection or

SECTION 12. TRAFFIC

street and improve the level of service rating to a higher and acceptable value. The SPGA shall consider such improvements, or other method of traffic control, in its determination and may make a conditional determination that adequate capacity is dependent upon the construction of the traffic engineering improvement, or other method of traffic control.

The SPGA may make a condition of its approval of the special permit or special permit with site plan review that the start, or any stage, of the construction of the development, or the occupancy thereof, is dependent upon the start or completion of the traffic engineering improvement or of the start of another method of positive traffic control, such as a traffic control officer, on a permanent basis. A conditional approval shall be dependent upon at least a start of the physical construction of the traffic engineering improvement or the execution of an agreement with the Town of Lexington for another method of traffic control. Letters of support, or commitment, or approval, or the award of a contract are not considered as a start of construction. However, as the basis for making a conditional determination of adequacy, the SPGA may consider as evidence, that the traffic carrying capacity will be improved to a higher level of service, such letters of support, or commitment, or approval, or the award of a contract for construction of the traffic engineering improvement, or a proposed agreement with the Town of Lexington for another method of traffic control.

12.3.4 TRIP REDUCTION REQUIREMENTS

As a condition of its approval of a special permit or a special permit with site plan review, the SPGA may require actions and programs by the owner and/or manager of a development to reduce the number of single occupant automobile trips made to a development, particularly during peak traffic hours. Such actions and programs may include:

- 1) providing a pass to employees for use on a public transportation system that serves the development site,
- 2) use of carpools and vanpools,
- 3) scheduling of hours of operation, such as flex-time, staggered work hours, and spread scheduling that reduces trips during peak traffic hours,
- 4) preferential parking locations and arrangements for vehicles other than single occupant automobiles,
- 5) restrictions on access to, or egress from, off-street parking areas during peak traffic hours, or
- 6) bicycle parking facilities, an other measures such as locker and shower facilities to encourage bicycle commuting.

Where such conditions are included, they shall include a reporting system which monitors the effectiveness of the trip reduction program. The SPGA may make a condition of the granting of the special permit or special permit with site plan review that:

- 1) such monitor be directly responsible to and report to the Zoning Officer, and
- 2) the applicant be responsible for the cost of providing such monitoring system.

If the Zoning Officer determines that the conditions of the special permit or special permit with site plan review are not being met, he/she shall order the applicant to bring the development into compliance or shall take such other corrective enforcement action as may be needed to insure compliance.

SECTION 13. SIGNS

13.1 ADMINISTRATION

13.1.1 APPLICABILITY

All outdoor signs, and window signs are subject to the regulations of this By-Law unless specifically excluded in Section 13.2.1.

13.1.2 APPLICATION

All persons desiring to erect a sign shall apply to the Building Commissioner for a building permit, except that persons desiring to erect a sign in accordance with Sections 13.2.2, 13.2.4 or 13.4.2 need not apply for a permit.

All applications for permits shall include, at least, a drawing to scale showing the following:

- a. The proposed sign.
- b. All existing signs maintained on the premises.
- c. A plot plan and a sketch of the building facade indicating the location of the proposed and any existing signs.
- d. for construction, lighting, and wiring in accordance with the State Building Code.

13.1.3 BUILDING COMMISSIONER ACTION

The Building Commissioner shall issue a building permit provided the proposed sign complies with this By-Law, the State Building Code, requirements of the Historic Districts Commission (where applicable) and any other applicable laws, by-laws or regulations.

13.1.4 SPECIAL PERMITS

In particular instances the SPGA may issue Special Permits for more or larger signs than are provided herein or for signs of types or for purposes not provided herein and not specifically prohibited herein, including temporary signs, if it is determined that the architecture of the building, the location of the building with reference to the street or the nature of the establishment is such that the sign should be permitted in the public interest. In granting such permission, the SPGA shall specify the size and location of the sign or signs and impose such other terms and restrictions as it may be deemed to be in the public interest. Any applicant under this provision shall provide the information required in Section 13.1.2 above and specific information in the form of perspectives, renderings, photographs or other representations sufficient to show the nature of the proposed sign, its effect on the immediate surroundings and the reasons for allowing it.

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13.2 GENERAL REGULATIONS

The provisions of Section 13.2 shall apply to signs in all zoning districts. Additional specific regulations for residential and business districts are set forth in Sections 13.3 and 13.4 respectively.

13.2.1 PERMITTED GOVERNMENT OR SPECIAL SIGNS

Any sign owned and installed by a governmental agency, or required by any law, governmental order or regulation is not subject to this By-Law. Signs mounted on registered motor vehicles or carried by hand are not subject to this By-Law.

SECTION 13. SIGNS

13.2.2 RESIDENCES

Two signs, up to one square foot in area each, are permitted per residential building indicating the name and address of the occupants therein.

13.2.3 RELIGIOUS INSTITUTIONS

Two signs identifying churches, synagogues, and other similar religious uses are permitted on each street frontage, one of which may not exceed 20 square feet in area and the other of which may not exceed 10 square feet in area. One sign may be a standing sign used for notices and announcements of events at the religious institution.

13.2.4 REAL ESTATE SIGNS

One real estate sign, not over six (6) square feet in area advertising the sale or rental of the premises on which it is located is permitted. Real estate signs not more than 20 square feet in area and not more than 10 feet in any dimension may be erected on subdivisions of land as defined in General Laws, Chapter 41, Section 81-L, solely to advertise the selling of land or buildings in said subdivision, but not more than one sign shall face the same street.

13.2.5 ILLUMINATION

No sign shall be illuminated between the hours of 12:00 midnight and 6:00 a.m., except signs on premises open for business, and then only upon issuance of a special permit by the SPGA. Exterior illumination of signs shall be shielded, directed solely at the sign, and be steady and stationary. ~~No internal illumination of a sign is permitted except upon issuance of a special permit by the SPGA.~~ ^{interior} The illumination of any sign shall not exceed 150 foot lamberts.

13.2.6 SIGNS CANNOT INTERFERE WITH TRAFFIC

No sign, including window displays, or their illuminators shall by reason of its location, shape, size or color interfere with traffic or be confused with or obstruct the view or the effectiveness of any official traffic sign, traffic signal or traffic marking. No red or green lights shall be used on any sign if, in the opinion of the Building Commissioner with the advice of the Chief of Police, such lights would create a driving hazard.

13.2.7 CONSTRUCTION

No sign shall be painted or posted directly on the exterior surface of any wall. All exterior, attached signs, except awning signs, shall be painted, posted or otherwise securely affixed to a substantial intermediary removable surface and such surface shall be securely affixed to the wall of the building. The foregoing, however, shall not prevent installation of a sign by individual letters or devices cut into or securely affixed to the exterior wall of a building, provided that such letters or devices have a minimum depth of projection of one fourth (1/4) of an inch. The construction of the sign shall comply with the State Building Code.

13.2.8 MAINTENANCE

Every sign shall be maintained in good condition. If a sign shows corrosion or deteriorated paint over 25% of the area of one side or if damage to the sign causes the loss of 10% of its substance or if the sign suffers damage or deterioration which creates a risk of harm to the person or property of another, it shall be repaired or removed.

13.2.9 PROHIBITED SIGNS

The following types of signs are prohibited.

- a. Signs which incorporate in any manner flashing, moving or intermittent lighting, excluding public

SECTION 13. SIGNS

- service signs showing time and temperature.
- b. Wind signs, including banners, pennants, spinners, streamers, and other wind actuated components. However a single flag or banner, such as one containing advertising matter, for each establishment or business on the lot, may be allowed in a commercial zoning district provided the Board of Appeals grants a special permit for it under the provisions of subparagraph 13.1.4. As provided in subparagraph 13.2.1, a government flag is not subject to this provision.
 - c. String lights used in connection with commercial premises with the exception of temporary lighting for holiday decoration.
 - d. Signs erected so as to obstruct any door, openable window or fire escape on a building.
 - e. Billboards or non-accessory signs.

13.3 RESIDENTIAL DISTRICTS

13.3.1 MULTI-FAMILY DWELLING DEVELOPMENTS

A sign not exceeding 12 square feet in area is permitted identifying developments in an RM, or RD district.

13.4 BUSINESS DISTRICTS

Accessory signs on business establishments in business districts that comply with the following provisions are permitted.

13.4.1 WALL SIGNS

- a. One principal wall sign is permitted on the front of the establishment to which it relates. The width of such a sign above the first floor of a building shall not exceed three feet.
- b. A secondary wall sign may be installed marking a direct entrance on a parking lot or another street in addition to the front wall sign. There shall be not more than two such secondary wall signs. Said sign shall have a width no greater than 50% of the maximum permissible width for the principal wall sign.
- Replace* c. No wall sign shall be more than three feet in overall height.
- d. In buildings where the first story is substantially above grade and the basement is only partially below street grade, one sign for each level is allowed if each sign has only one half of the area that would be permitted for a single sign.
- e. In addition to the above signs each building may have one directory sign affixed to the exterior wall, window or door of the building. Such directory sign shall provide not more than one square foot for each occupant of the building.
- f. Wall signs shall either be affixed to a wall and parallel to it or affixed to the roof above a wall and be parallel to the wall. They shall not project more than twelve (12) inches from the face of such wall.
- g. No wall sign shall project above the highest line of the main roof or parapet on the wall to which it is attached, whichever is higher.

13.4.2 WINDOW SIGNS

Replace [Removable signs on the inside of windows or transparent doors are permitted.

13.4.3 PROJECTING SIGNS

Replace In particular instances the SPGA may issue Special Permits for projecting signs in accordance with Section 13.1.4, if it is determined that the architecture of the building, the location of the building with

SECTION 13. SIGNS

reference to the street or the nature of the establishment is such that the sign should be permitted in the public interest. No establishment shall be permitted more than one projecting sign.

13.4.4 STANDING SIGNS

The following standing signs are permitted:

- a. Standing signs permitted under Sections 13.2.2, 13.2.3, and 13.2.4.
- b. During the construction of a building a standing sign may be erected on the premises identifying the building, the owner, the contractors, the architects and the engineers. Such a sign shall not exceed 20 square feet in area or 10 feet in any direction. Such sign shall be removed promptly after the completion of the building.
- c. In particular instances the SPGA may issue Special Permits for standing signs in accordance with Section 13.1.4, if it is determined that the architecture of the building, the location of the building with reference to the street or the nature of the establishment is such that the sign should be permitted in the public interest. No establishment shall be permitted more than one standing sign other than signs directing traffic flow.

13.4.5 SIGNS AT GASOLINE FILLING STATIONS AND GARAGES

Gasoline filling stations and garages may divide the one wall sign affixed to the front wall of the building to which they are entitled as hereinabove provided, into separate wall signs indicating the separate operations or departments of the business, provided however, that the total of the widths of the separate signs shall not exceed the maximum width permitted under this By-Law for a single wall sign on such wall. In addition, one sign indicating the brand of gasoline being sold may be erected of such type, in such location, and in such manner as the SPGA may allow by special permit. The standard type of gasoline pump bearing thereon in usual size and form, the name or type of gasoline and the price thereof shall not be deemed to be a sign within the meaning of this By-Law.

13.5 NONCONFORMANCE OF SIGNS

Signs legally existing on the effective date of this section may continue to be maintained, provided however, that no such sign shall be enlarged.

TABLE 2. SCHEDULE OF DIMENSIONAL CONTROLS

Districts	RO	RS&RT	RM & RD(a)	CN	CRS	CS	CB	CLO	CRO	CM
	Uses permitted in RS & RT Districts shall Conform to Provisions of Subparagraph 7.1.2									
Minimum Lot Area in square feet	30,000	15,500	125,000	15,500	15,500	20,000	NR	30,000	5 acres	3 acres
Minimum Lot Frontage in feet	150	125	100	125	125	125	20	175	300	200
Minimum Front Yard in feet(b) (c) (j) (k)	30	30	50	30	30	30	NR(d)	50	100	75
Minimum Side Yard in feet (k)	15 (e)	15 (e)	40	20	20	15	NR	30	50	30
Minimum Rear Yard in feet (k)	15 (e)	15 (e)	40	20	20	20	10	30	50	50
Minimum Side and Rear Yard Adjacent to, or Front Yard Facing a Residential District in feet (f)	15	15	40	30	30	30	30	50	100	100
Maximum Floor Area Ratio (F.A.R.)	NR (i)	NR (i)	NR (i)	0.20	0.20	0.20	2.0	0.25	0.15	0.15
Maximum % Site Coverage	15% (g)	15% (g)	25%	20%	25%	25%	NR	20%	25%	25%
Maximum Height Stories	2.5	2.5	2.5	3	3	3	2	3	3	3
Public & Institutional Buildings, height in feet	40	40	40	45	45	45	30	45	45	45
Maximum Height in Stories	2.5	2.5	NR	1	2	2	2	2	3	3
Other Buildings, Height in feet	40	40	40	15	25	25	25	30	45	45

(footnotes on next page)

TABLE 2. SCHEDULE OF DIMENSIONAL CONTROLS

FOOTNOTES TO TABLE 2, SCHEDULE OF DIMENSIONAL CONTROLS

As used in the Schedule of Dimensional Controls, symbol "NR" means no requirements, "s.f." means square feet, and "ft." means linear feet.

- a. Development of new multi-family dwellings is not permitted in the RM district; these standards apply to RM districts in existence in January, 1985. Minimum Lot areas in RM districts shall be 3,000 sq. ft. per dwelling unit containing one room used for sleeping; 3,500 sq.ft. per unit with two such rooms; and 4,000 sq. ft. per unit with three or more such rooms. For RD districts see Section 8.3 and Section 9.
- b. Where lawfully adopted building lines require yards in excess of these requirements, the building line shall govern.
- c. The minimum front yard for any other street, which is not the frontage street (see definition), shall be two thirds of that required for the frontage street provided the street was in existence on January 1, 1987. In the case of a street laid out after January 1, 1987, or in the case of non-residential uses (see Table 1, lines 2.11 through 4.14) located in the RO, RS or RT districts, the minimum front yard facing all streets shall be the same as that for the frontage street.
- d. Except 10 ft. yard on Muzzey Street, Raymond Street, Vinebrook Road and Wallis Court for lots abutting these streets.
- e. For institutional uses (see Table 1, lines 2.11 through 2.19) the minimum setback for a building shall be the greater of 25 feet or a distance equal to the height of the building as defined in subsection 7.5. For other non-residential uses (see Table 1, lines 3.11 through 3.15 and 4.11 through 4.14), increase the required side yard to 20 ft. plus 1 ft. for every 1/2 acre (or fraction thereof) over 1/2 acre lot area.
- f. See Section 10, Transition, Screening, Landscaping.
- g. Applicable only to uses permitted by Special Permit.
- h. Reserved
- i. For institutional uses (see Table 1), lines 2.11 through 2.19, the maximum Floor Area Ratio shall be 0.25.
- j. Along the southwesterly side of Bedford Street between the Northern Circumferential Highway (Route 128) and Hartwell Avenue there shall be a front yard of 233 feet measured from the base line of Bedford Street as shown on the Commonwealth of Massachusetts layout 4689, date June 3, 1958, and shown as auxiliary base line "F" on the State Highway Alteration layout 5016, dated August 30, 1960.
- k. A structure in a planned residential development must comply with subsection 9.2.5, Minimum Yard Setback on Perimeter of Tract. A dwelling which has a gross floor area of 2500 square feet or more is required to have a greater minimum side and rear yard; see paragraph 9.2.12.

EXPLANATION OF SYMBOLS:

MINIMUM REQUIRED FRONT YARD



MINIMUM REQUIRED REAR YARD



MINIMUM REQUIRED SIDE YARD



DEPTH OF FRONT, REAR OR SIDE YARD GREATER THAN THE REQUIRED MINIMUM

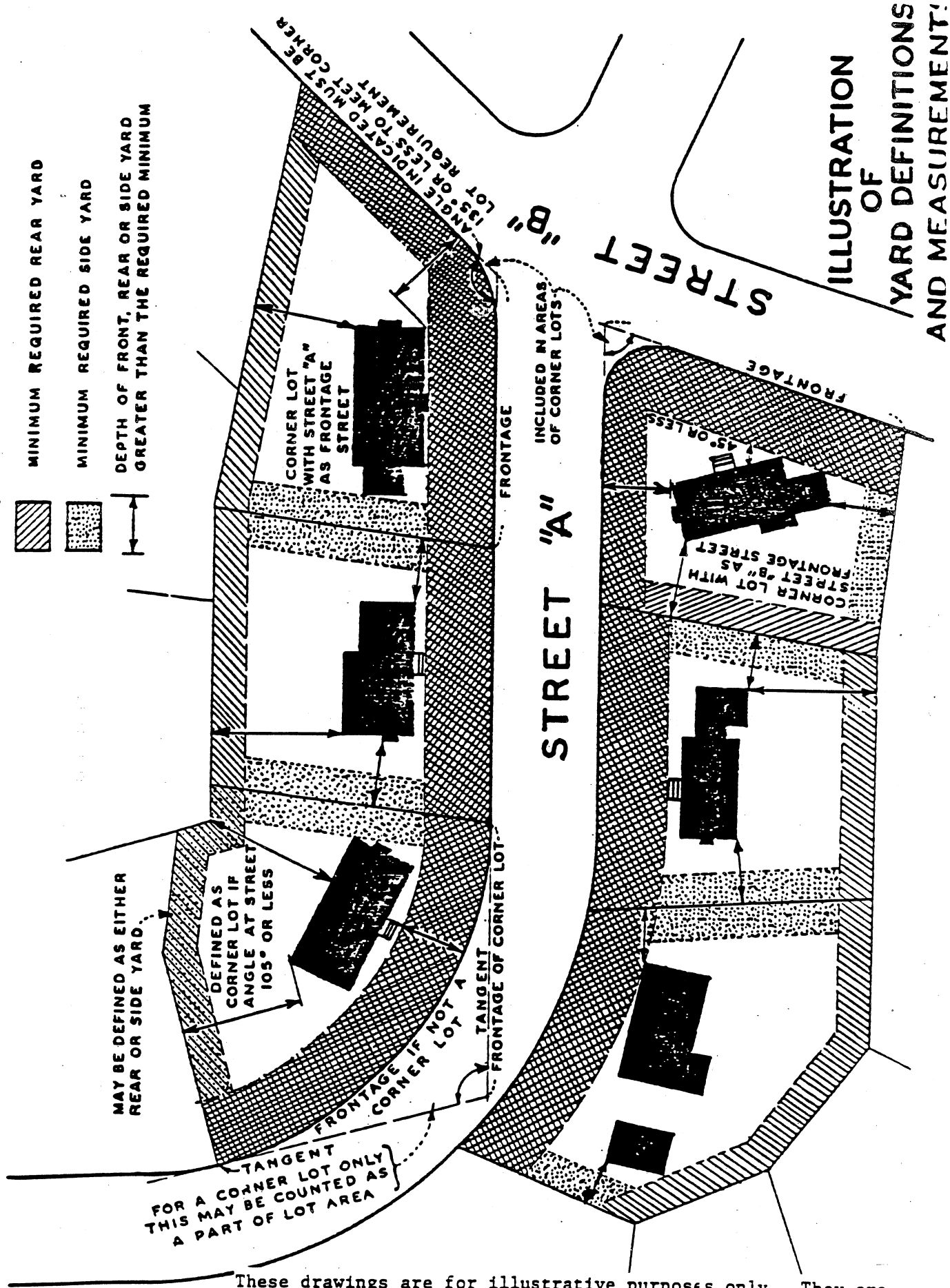
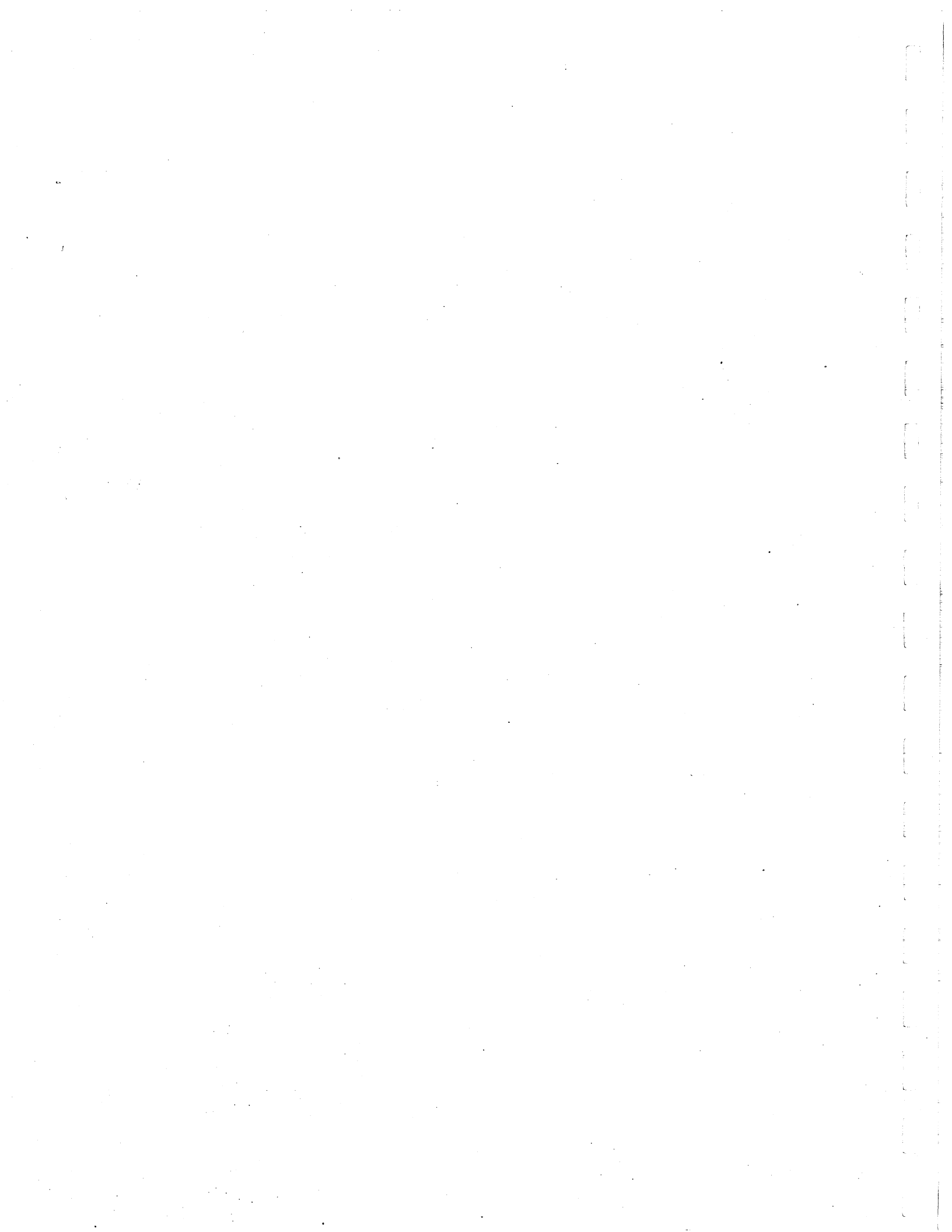


ILLUSTRATION OF YARD DEFINITIONS AND MEASUREMENTS

TANGENT FOR A CORNER LOT ONLY THIS MAY BE COUNTED AS A PART OF LOT AREA

These drawings are for illustrative purposes only. They are not legally-adopted parts of the Zoning By-Law as voted by the Town Meeting.



APPENDIX I

LEGISLATIVE PURPOSES AND PREAMBLE TO CHAPTER 808, ACTS OF 1975

SECTION 2A. The purposes of this act are to facilitate, encourage, and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments in accordance with the provisions of Article 89 of the Amendments to the Constitution and to achieve greater implementation of the powers granted to the municipalities thereunder.

This act is designed to provide standardized procedures for the administration and promulgation of municipal zoning laws. This section is designed to suggest objectives for which zoning might be established which include, but are not limited to, the following:- to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the city or town, including consideration of the recommendations of the master plan, if any, adopted by the planning board and the comprehensive plan, if any, of the regional planning agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives. Said regulations may include but are not limited to restricting, prohibiting, permitting or regulating:

1. use of land, including wetlands and lands deemed subject to seasonal or periodic flooding;
2. size, height, bulk, location and use of structures, including buildings and signs except that billboards, signs and other advertizing devices are also subject to the provisions of section twenty-nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D;
3. uses of bodies of water, including water courses;
4. noxious uses;
5. areas and dimensions of land and bodies of water to be occupied or unoccupied by uses and structures, courts, yards and open spaces;
6. density of population and intensity of use;
7. accessory facilities and uses, such as vehicle parking and loading, landscaping and open space; and
8. the development of the natural, scenic and aesthetic qualities of the community.

APPENDIX II

Excerpt from the Zoning Act - Chapter 40A, General Laws

Section 5. Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

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

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

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote.

After approval of zoning by-laws by the attorney general, or adoption of zoning ordinances by the city council, a copy of the latest effective zoning ordinances or by-laws shall be sent by the city or town clerk to the department of community affairs. A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceeding and no state, regional, county, or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter 40 and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.



