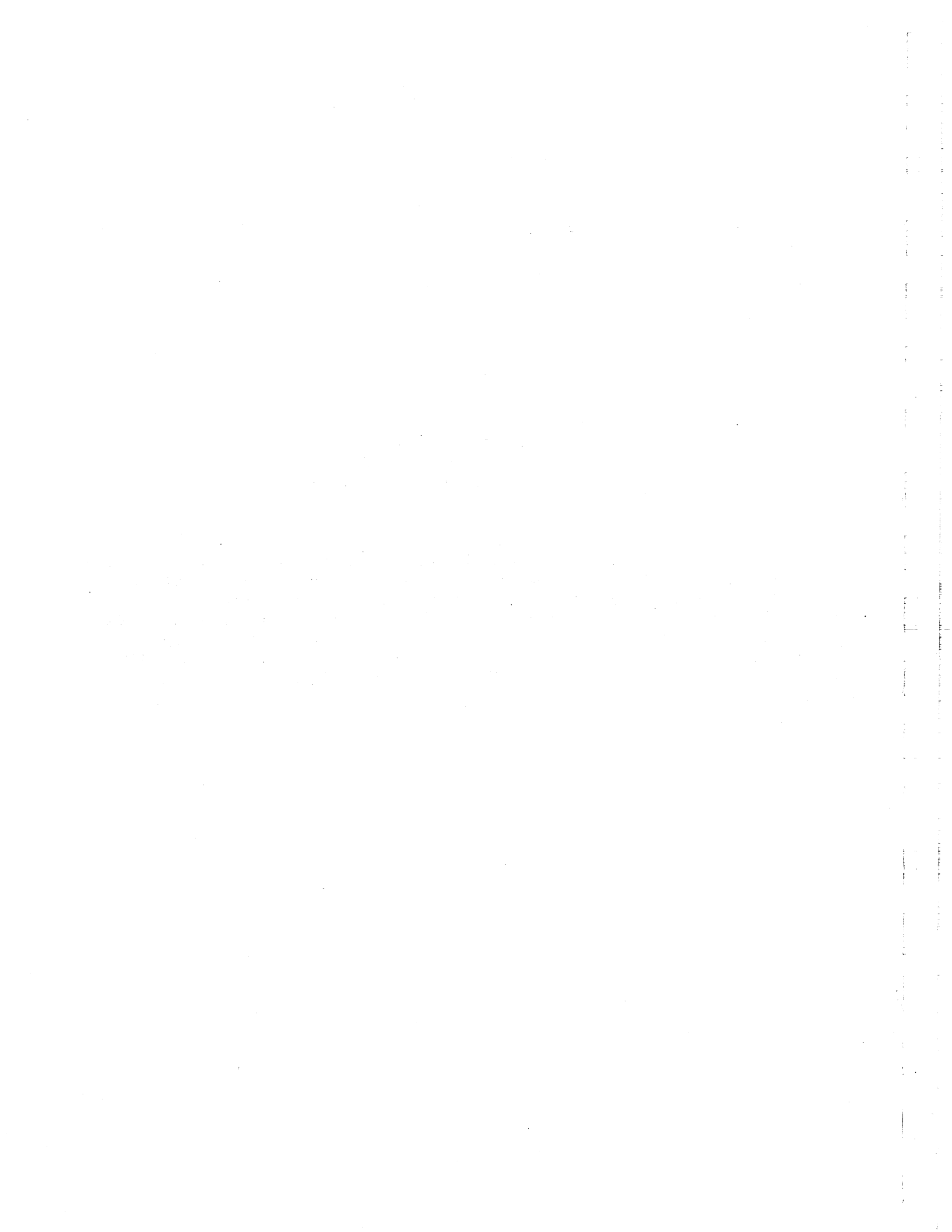


ZONING BY-LAW  
OF THE  
TOWN OF LEXINGTON, MASS

This edition includes  
all amendments adopted by the  
1998 ANNUAL TOWN MEETING  
These amendments are awaiting approval by the Attorney General.

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, 1991, 1992, 1993, 1995, 1996, and 1998 as adopted, approved and published have been incorporated.



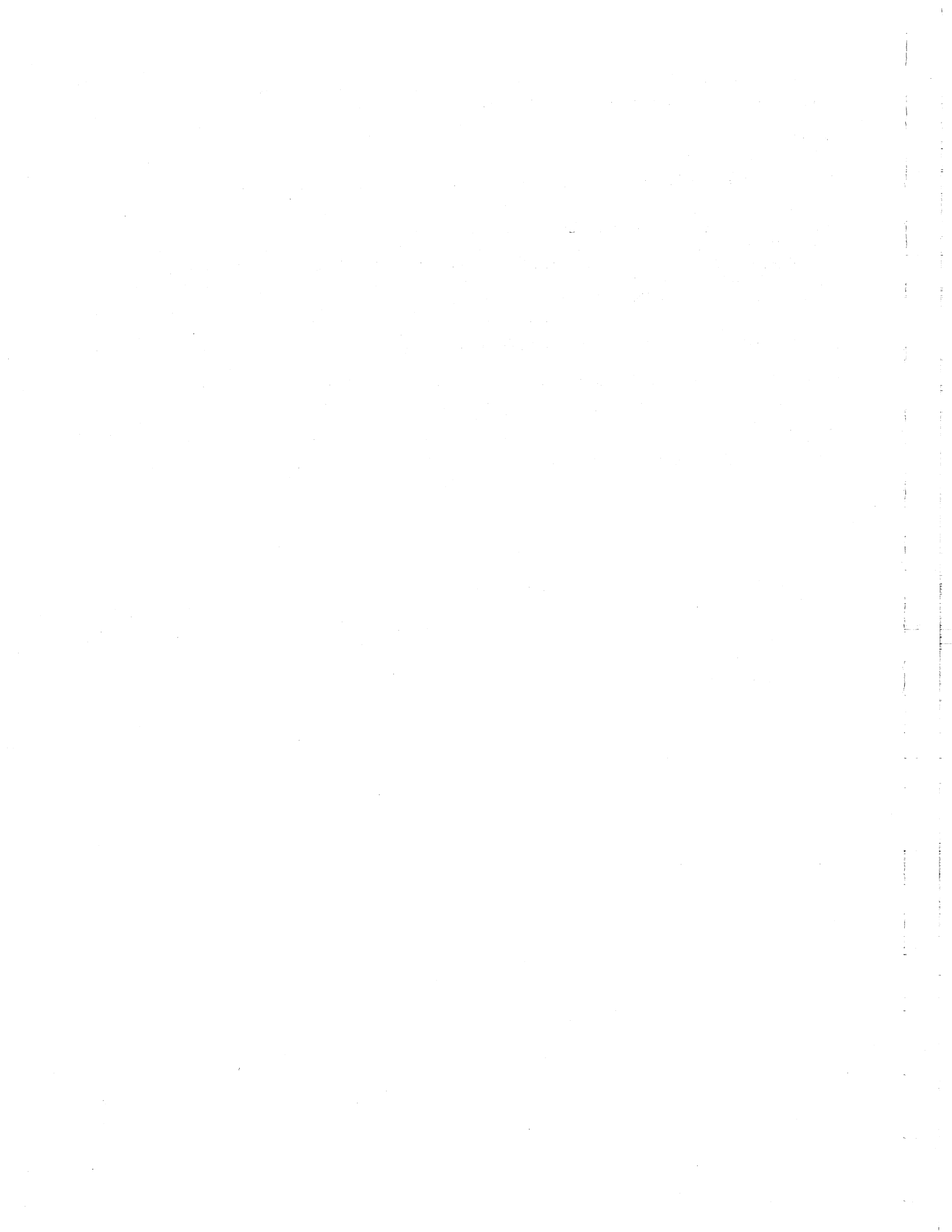


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## SECTION 1. PURPOSE, DISTRICTS, AUTHORITY

### 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
<b>A. STANDARD DISTRICTS</b>		
Residential Districts		
	RO	One Family Dwelling
	RS	One Family Dwelling
	RT	Two Family Dwelling
	RM	Multi-Family Dwelling
Commercial Districts		
	CN	Neighborhood Business
	CRS	Retail Shopping
	CS	Service Business
	CB	Central Business
	CLO	Local Office
	CRO	Regional Office
	CM	Manufacturing
<b>B. PLANNED DEVELOPMENT DISTRICT</b>		
	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 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.

**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.
- 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

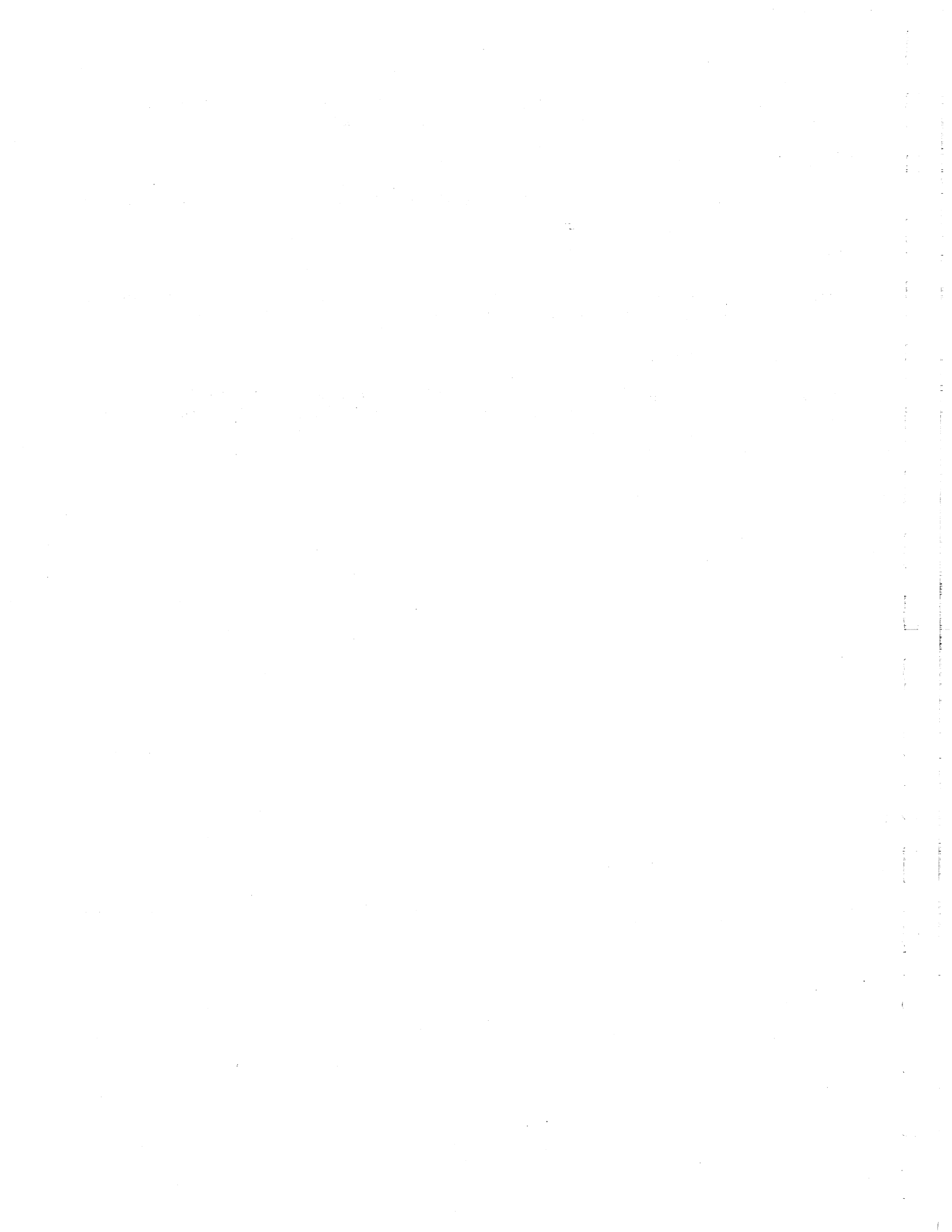
The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision hereof.

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.

ACT: (See Section 15, Wireless Communication Facilities, for definition.)

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.

ADEQUATE COVERAGE: (See Section 15, Wireless Communication Facilities, for definition.)

ANTENNA: (See Section 15, Wireless Communication Facilities, for definition.)

APARTMENT BUILDING: Same as "MULTI-FAMILY DWELLING"

ASSISTED LIVING RESIDENCE: See "LIVING FACILITIES FOR SENIORS"

ATTIC: A space directly under a sloping roof which is unfinished and which is not accessible by an approved stairway and is not designed or intended to be used for human occupancy.

AVAILABLE SPACE: (See Section 15, Wireless Communication Facilities, for definition.)

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. A basement shall have a floor-to-ceiling height of seven feet or greater.

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"

**CAMOUFLAGED:** (See Section 15, Wireless Communication Facilities, for definition.)

**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. A cellar shall have a floor-to-ceiling height of seven feet or greater.

**CARRIER:** (See Section 15, Wireless Communication Facilities, for definition.)

**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.

**CHANNEL:** (See Section 15, Wireless Communication Facilities, for definition.)

**CLUSTER SUBDIVISION:** A 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.

**CMR:** Code of Massachusetts Regulations - Regulations promulgated by agencies of the Commonwealth of Massachusetts

**CO-LOCATION:** (See Section 15, Wireless Communication Facilities, for definition.)

**COLOR RENDERING INDEX (CRI):** (See Section 14, Outdoor Lighting, for definition.)

**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.

**COMMUNICATION EQUIPMENT SHELTER:** (See Section 15, Wireless Communication Facilities, for definition.)

**CONCEALED:** (See Section 15, Wireless Communication Facilities, for definition.)

**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".

**CRAWL SPACE:** A space in a building similar to a basement or a cellar which has a floor-to-ceiling height less than seven feet.

**CUTOFF ANGLE:** CUTOFF ANGLE: (See Section 14, Outdoor Lighting, for definition.)

**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)

**DBM:** (See Section 15, Wireless Communication Facilities, for definition.)

**DECK:** An unroofed structure attached to or accessory to a building, constructed on a structural frame, open under, the top surface of which is elevated above the average level of the finished grade of the adjoining ground.

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

**DIRECT LIGHT:** (See Section 14, Outdoor Lighting, for definition.)

**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.

**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."

**FACILITY SITE:** (See Section 15, Wireless Communication Facilities, for definition.)

**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.

**FIXTURE:** (See Section 14, Outdoor Lighting, for definition.)

**FLOOR AREA, GROSS:** The sum, in square feet, of the horizontal areas of all stories 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. Gross floor area shall also include garages, basements, cellars, porches and half stories, but shall exclude crawl spaces, attics, and decks. 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, and fire escapes.
- 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 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.

**FULLY-SHIELDED LUMINAIRE:** (See Section 14, Outdoor Lighting, for definition.)

**GARAGE:** A space in a building designed and intended for the parking or storage of motor vehicles whether or not used for that purpose.

**GLARE:** (See Section 14, Outdoor Lighting, for definition.)

**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"

**HEIGHT OF LUMINAIRE:** (See Section 14, Outdoor Lighting, for definition.)

**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.

**INDIRECT LIGHT:** (See Section 14, Outdoor Lighting, for definition.)

**INTERIOR DRIVE:** A roadway which is privately owned and maintained and serves a 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.

**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.

**LAMP:** (See Section 14, Outdoor Lighting, for definition.)

**LEXHAB:** Acronym for the Lexington Housing Assistance Board created by Chapter 521 of the Acts of 1983 and appointed by the Board of Selectmen.

**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.

**LIGHT TRESPASS:** (See Section 14, Outdoor Lighting, for definition.)

**LIVING AREA OF ONE-FAMILY DWELLING UNIT:** Total Living Area is the total of all finished area on the first floor and above. Total Living Area does not include any area in a cellar, or basement, (See Definitions) Space in a half story (See Definition) which is finished and is accessed from permanent interior stairs, is included in the calculation of in total living area.



## LIVING FACILITIES FOR SENIORS

**ASSISTED LIVING RESIDENCE:** A non-institutional facility as defined by MGL Chapter 19D, providing room and board, which provides assistance with activities of daily living and personal care services for three or more non-related adults. See Subsection 5.6.1.

**ASSISTED LIVING UNIT:** One or more rooms in an Assisted Living Residence designed for and occupied by one or two individuals. See Subsection 5.6.1.

**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. See Subsection 5.6.1.

**CONTINUING CARE RETIREMENT COMMUNITY:** Includes combinations of independent living residence, congregate living facility, assisted living residence, and long-term care facility within a single facility or on the same tract, offering lifetime housing and a variety of health care, social, and recreational services. See Subsection 5.6.1.

**CONVALESCENT HOME:** Same as "LONG TERM CARE FACILITY"

**EXTENDED CARE FACILITY:** Same as "LONG TERM CARE FACILITY"

**INDEPENDENT LIVING RESIDENCE:** A dwelling that provides accommodations in dwelling units for elderly persons. These residences may include common areas, a common dining facility and space for the provision of social, psychological, and educational programs. See Subsection 5.6.1.

**INTERMEDIATE CARE FACILITY:** Same as "LONG TERM CARE FACILITY"

**LONG-TERM CARE FACILITY:** An institution or distinct part of an institution which is licensed by the Massachusetts Department of Public Health to provide 24-hour care under medical supervision to individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. See Subsection 5.6.1.

**LODGER:** Same as "ROOMER".

**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".

**LUMEN:** (See Section 14, Outdoor Lighting, for definition.)

**LUMINAIRE:** (See Section 14, Outdoor Lighting, for definition.)

**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.

**MGL:** Massachusetts General Laws

**MODIFICATION OF AN EXISTING FACILITY:** (See Section 15, Wireless Communication Facilities, for definition.)

**MONITORING:** (See Section 15, Wireless Communication Facilities, for definition.)

**MONOPOLE:** (See Section 15, Wireless Communication Facilities, for definition.)

**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.

**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.

**PORCH:** A roofed structure attached to or accessory to a building, which is open-sided or screened. The area of a porch shall be measured to the outer face of the posts or other structure supporting its roof.

**PRIVATE POSTAL SERVICES:** A retail use which includes private postal box rentals and mailing services. Such facility shall not be used as a distribution center, parcel delivery or commercial mail delivery center but shall remain as a retail convenience store for consumers.

**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.

**RADIO-FREQUENCY RADIATION (RFR):** (See Section 15, Wireless Communication Facilities, for definition.)

**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.

**RECYCLING COLLECTION STORE:** A recycling collection store is a center for the acceptance by donation, redemption or purchase of reusable domestic containers from the public. Reusable domestic container means containers used primarily in residences and made of materials including, but not limited to, paper, glass, metal or plastic that are intended for reuse, remanufacture or reconstruction. Reusable domestic container does not include refuse or hazardous materials.

**REPEATER:** (See Section 15, Wireless Communication Facilities, for definition.)

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

**REST HOME:** Same as "LONG TERM CARE FACILITY"

**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.

**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)

**SENIOR CITIZEN:** Same as "ELDERLY"

**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.

**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.

**SKILLED NURSING FACILITY:** Same as "LONG TERM CARE FACILITY"

**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 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 a cellar, a crawl space, or the uppermost portion so contained if under a sloping roof and not accessible, by an approved stairway, or not designed or intended 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. The area of a half story shall be the area within which the height from the floor to the bottom of the rafters is five feet or greater. Where this height occurs at an exterior wall, the horizontal measurement shall be from the exterior face of such wall.

**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.

**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.

**TOWER:** (See Section 15, Wireless Communication Facilities, for definition.)

**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."

**WIRELESS COMMUNICATION SERVICES:** (See Section 15, Wireless Communication Facilities, for definition.)

**WIRELESS COMMUNICATION FACILITY:** (See Section 15, Wireless Communication Facilities, for definition.)

**WIRELESS COMMUNICATION SERVICE PROVIDER:** (See Section 15, Wireless Communication Facilities, for definition.)

**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**

##### **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 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

Variations - 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 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.

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 (See Section 14, Outdoor Lighting), 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. imitations 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 (See Section 14, Outdoor Lighting), 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 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 (See Section 14, Outdoor Lighting), 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;
- 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 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 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 3.6.3.

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.

### 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.

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:

- 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.
- 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 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 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. Nonconforming Situations. 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 8.6 and 8.7 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 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 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.

**4.2 TABLE 1 PERMITTED USES AND DEVELOPMENT STANDARDS**

**PART A RESIDENTIAL, INSTITUTIONAL, AGRICULTURAL USES**

Line		RO RS	RT	RM	RD*	CN	CRS	CS	CB CLO	CRO	CM
*For uses permitted in RD districts, see subparagraphs 4.1.1 and 8.3.3											
1.	<b>RESIDENTIAL USES</b>										
1.1	<b>PERMITTED RESIDENTIAL USES</b> (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	Residential developments with three or more dwelling units. All residential developments with three or more dwelling units require a special permit with site plan review (SPS). See Section 9.	SPS	SPS	N***	SPS	N	N	N	N	N	N
	<b>TYPES OF DWELLINGS AND RESIDENTIAL FACILITIES</b> The types of dwellings and residential facilities permitted vary according to the type of district and the type (three alternatives) of residential developments with three or more dwelling units. Listed below, for information purposes, is a general summary. Subsection 9.2.2 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, assisted living residence, independent living residence	N	N	N***	SP*	N	N	N	N	N	N
	1.187 Conversion of a municipal building to residential use (see subsection 9.8)	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.										
1.2	ACCESSORY USES FOR RESIDENTIAL USES (See also line 5, accessory uses permitted in all residential, institutional, agricultural uses)										
1.21	Rooming units, without kitchen facilities, for not more than three persons in an existing dwelling, provided the building contains a dwelling unit occupied by a family	Y	Y	Y	SP	N	N	N	N	N	N
1.22	Accessory apartment in one-family dwelling (See subsection 5.2 elsewhere in this By-Law)	Y	Y	Y	SP	Y	N	N	N	N	N
1.23	Bed and Breakfast Home (see Section 5.5)	Y	N	N	N	N	N	N	N	N	N
1.24	Home occupation in which there is no exterior evidence of the occupation, no employee who is not also a resident in the dwelling, and not more than one customer or client visits the dwelling at one time.	Y	Y	Y	SP	Y	N	N	N	N	N
1.25	Home occupation, or office of a physician, dentist or other professional person, residing in the dwelling, provided there is no exterior evidence of the occupation and each employee is also a resident in the dwelling; may have customers or clients visit the dwelling.	SP	SP	SP	SP	Y	N	N	N	N	N
1.26	Tool shed, storage shed, garden house subject to the same dimensional controls as a principal building	Y	Y	Y	Y	Y	N	N	N	N	N
1.27	Greenhouse not used for commercial purposes subject to the same dimensional controls as a principal building	Y	Y	Y	Y	Y	N	N	N	N	N
1.28	Swimming pool (See subsection 5.8.1)	Y	Y	Y	SP	Y	N	N	N	N	N
1.29	Tennis court or court for a sport played with a racquet or paddle including handball. (See subsection 5.8.1)	SP	SP	SP	SP	Y	N	N	N	N	N
1.30	Satellite receiving antenna (See subsection 5.8.2)	Y	Y	Y	SP	Y	N	N	N	N	N
1.31	Off-street parking for automobiles. If outdoor parking spaces are provided for more than four automobiles for a dwelling unit, a special permit is required.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
1.32	An off-street parking space, which may be in a garage or outdoors, for not more than one commercial vehicle, not larger than 10,000 pounds, gross vehicle weight rating, which is used by a resident of the dwelling. Not more than one other commercial vehicle not in excess of 15,000 pounds, gross vehicle weight rating, which is used by a resident of the dwelling, may be parked in a garage only.	Y	Y	Y	N	N	N	N	N	N	N
1.33	Outdoor storage of not more than one unregistered automobile which shall be parked only in an area not within the minimum yard required for the principal dwelling and which is screened from the view of abutting lots and the street. This limitation does not apply to such vehicles stored within a building.	Y	Y	Y	Y	Y	N	N	N	N	N
1.34	Convenience business or other commercial uses in a multi-family development (see subsection 9.2.2)	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	Churches, synagogues, and temples (including associated dwellings for religious personnel and associated buildings used for religious purposes)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
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
<b>3. AGRICULTURAL, NATURAL RESOURCE USES</b>											
<b>3.1 PERMITTED AGRICULTURAL, NATURAL RESOURCE USES</b>											
3.11	Farm for the raising of crops	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3.12	Farm or ranch for the raising or boarding, breeding of cattle, poultry, horses or other livestock provided the area of the lot is at least five acres	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3.13	Commercial greenhouse or nursery with retail sales (See subsection 5.6)	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*
3.14	Roadside stand (for two year terms)	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*	SP*
3.15	Removal from a lot of earth materials for sale such as loam, sod, sand, gravel, stone, rock or clay	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											
<b>4. COMMERCIAL USES IN RESIDENTIAL DISTRICTS</b>											
4.1	PERMITTED COMMERCIAL USES IN RESIDENTIAL DISTRICTS					For permitted commercial uses in commercial districts, see Part B of this Table.					
4.11	Privately owned for profit recreational facilities for golf, tennis or swimming	SP	SP	SP	SP						
4.12	Horseback riding area, stables operated for profit	SP	SP	SP	SP						
4.13	Utility substation or pumping station provided no public business office is permitted and all outdoor storage of equipment or material is permanently screened from the view of adjoining lots and the street. (See Section 10)	Y	Y	Y	Y						
4.14	Seasonal sale of Christmas trees and wreaths	SP	SP	SP	SP						
4.15	Wireless communication facility (See Section 15)	SP	SP	SP	SP						
<b>5. ACCESSORY AND TEMPORARY USES PERMITTED FOR ALL RESIDENTIAL, INSTITUTIONAL AND AGRICULTURAL USES</b>											
5.11	Off-street parking, off-street loading (See Section 11)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5.12	Dwelling unit in institutional building for security, maintenance or administrative personnel	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.13	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	Y	Y	Y
5.14	Greenhouse not used for commercial purposes subject to the same dimensional controls as a principal building	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.15	Swimming pool (See subsection 5.8.1)	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y

5.16	Tennis court or court for a sport played with a racquet, includes handball (See subsection 5.8.1)	SP	SP	SP	SP	Y	Y	Y	Y	Y	Y
5.17	Satellite receiving antenna (See subsection 5.8.2)	Y	Y	Y	SP	Y	Y	Y	Y	Y	Y
5.18	Parking of trucks or other equipment to be used for the maintenance of buildings and grounds only; shall be parked only in a garage or in an 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)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
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						

TABLE 1 PERMITTED USES AND DEVELOPMENT STANDARDS (cont.)

PART B COMMERCIAL USES

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

Line	ALL COMMERCIAL USES	CN	CRS	CS	CB	CLO	CRO	CM
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
6.	OFFICE USES							
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
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
7.27	Pet grooming service provided that it shall be conducted entirely within the principal building and no pets shall be boarded overnight; where conducted as accessory to a kennel (line 7.26), those restrictions shall not apply	N	Y	Y	Y	N	N	N
7.28	Private postal services (see definition)	N	Y	Y	N	Y	Y	Y
7.29	Recycling collection store (see also paragraph 4.3.1)	N	N	SP	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 premises includes delicatessen or bakery, but not a take out or fast food service	Y	Y	N	Y	N	N	N
8.14	Package liquor store, with no consumption of beverages on the premises	N	SP	N	Y	N	N	N
8.15	Apparel, fabrics and accessories	Y	Y	N	Y	N	N	N
8.16	Furniture, home furnishings, home appliances and equipment, carpets	N	Y	N	Y	N	N	N

8.17	Other retail goods such as books, stationery, drugs, sporting goods, jewelry, photographic equipment and supplies, flowers, novelties, cards, footwear, and the like which are typically of a size that a customer can carry by hand	Y	Y	N	Y	N	N	N
8.18	Hardware, paint, wallpaper	Y	Y	Y	Y	N	N	N
8.19	Building materials	N	Y	Y	Y	N	N	N
8.20	Lawn and garden supplies and equipment	N	Y	Y	N	N	N	N
8.21	Sale or rental of equipment and supplies such as office furniture, to other businesses	N	Y	Y	N	N	N	N
8.3	DEVELOPMENT STANDARDS							
8.31	Stores with less than 2,000 square feet of floor area per establishment	Y	Y	Y	Y	Y	N	N
8.32	Stores with 2,000 or more square feet of floor area per establishment	N	Y	Y	Y	N	N	N
8.33	All sales or rental conducted entirely within a fully enclosed building; temporary display of products outdoors during operating hours permitted	Y	Y	Y	Y	Y	N	N
8.34	Sales or rental conducted in part outdoors with permanent display of products during non-operating hours; subject to screening requirements in Section 10.	N	Y	Y	Y	N	N	N
9.	EATING AND DRINKING, TRANSIENT ACCOMMODATIONS							
9.1	PERMITTED EATING AND DRINKING ESTABLISHMENTS, TRANSIENT ACCOMMODATIONS (Must also comply with operating and development standards)							
9.11	Restaurant	N	SP	N	SP	N	SP	SP
9.12	Fast food or take out service serving enough food to comprise a meal.	N	SP	N	SP	N	N	N
9.13	Take out or fast food service serving food or beverages, such as coffee, snacks, ice cream, or donuts, but not enough to comprise a meal.	SP	SP	SP	SP	N	N	N
9.14	Caterer or other establishment preparing meals for groups of people	N	N	SP	N	N	N	N
9.15	Drive-in or drive-thru food service establishment	N	N	N	N	N	N	N
9.16	Hotel, motel	N	N	N	SP	N	SP	SP
10	COMMERCIAL RECREATION, AMUSEMENT, ENTERTAINMENT							
10.1	PERMITTED COMMERCIAL RECREATION, AMUSEMENT, ENTERTAINMENT USES (Must also comply with operating and development standards)							
10.11	Movie theater (indoor)	N	N	N	Y	N	N	N
10.12	Indoor athletic and exercise facilities, weight reduction salon	N	N	Y	N	N	N	N
11.	MOTOR VEHICLE-RELATED SALES AND SERVICE USES							
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



15.	OPEN-AIR, SEASONAL AND SPECIAL EVENTS							
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
16.	ACCESSORY USES FOR COMMERCIAL USES							
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
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
17.	TEMPORARY USES							
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
18.	PROHIBITED USES: ALL COMMERCIAL AND RESIDENTIAL DISTRICTS							



18.1	Any use, structure, operation or activity not expressly permitted by this By-law or not accessory to a permitted use, structure, operation or activity	N	N	N	N	N	N	N
18.2	Any use, structure, operation or activity whether otherwise permitted or accessory to a permitted use, structure, operation, or activity or not, which may be disturbing, detrimental or hazardous to persons working or living in the neighborhood by reason of special danger of fire, explosion, pollution of water ways or ground water, corrosive or toxic fumes or materials, excessive heat, smoke, soot, obnoxious dust or glare, excessively bright or flashing lights, electromagnetic radiation excessive noise or vibration	N	N	N	N	N	N	N
18.3	The following uses are specifically prohibited. This is not intended to be an all inclusive list and the fact that a use, structure, operation or activity is not listed below does not mean it is permitted if it is excluded by 18.1 or 18.2. Prohibited uses are: junkyards (see definition), automobile graveyards, billboards.	N	N	N	N	N	N	N

4.3 SUPPLEMENTARY COMMERCIAL USE REGULATIONS

4.3.1 RECYCLING COLLECTION STORE

In a recycling collection store (see Definition) sorting, limited cleaning, compaction or shredding of containers or other light processing activities necessary for efficient temporary storage and subsequent shipment to a recycling processing facility is permitted.



## **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.
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 9.3.5, 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 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 facie 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 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 deterior-

ation 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 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 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 SPGA makes a determination that:
    - a. the architectural character of a detached one-family dwelling is maintained, and

- b. any enlargement or addition to the structure is minor, is consistent, in general, with the size of nearby one-family detached dwellings and does not increase either:
- 1) the site coverage of the existing structure by more than 25 percent, or
  - 2) the total gross floor area of the existing structure by more than 40 percent above the total gross floor area of the existing structure as of January 1, 1983. (See subparagraph 5.3.2.a.4. above.)

Any increase in the gross floor area constructed since January 1, 1983 shall be included in the calculation of the percentage increases above.

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.

#### 5.3.4 EXPANSION OF PRE-EXISTING, NONCONFORMING TWO-FAMILY DWELLING

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 to allow the expansion of a pre-existing, nonconforming two-family dwelling in an RS or an RO district provided the proposed expansion complies with the conditions and requirements set forth in subsection 5.3.2. to the maximum extent practicable.

### 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 9.2.9 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 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 9.3.5, 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 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.
- 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 LIVING FACILITIES FOR SENIORS

### 5.6.1 Types and Characteristics of Living Facilities for Seniors:

- a. **Assisted Living Residence:** Assisted Living Residences are for frail elders who do not require 24 hour skilled nursing care. Assisted Living Residences provide only single or double Assisted Living Units. The operator of an Assisted Living Facility may also provide optional services on the site, including but not limited to: local transportation; barber/beauty services, sundries for personal consumption and other amenities.
- b. **Assisted Living Unit:** One or more rooms in an Assisted Living Residence designed for and occupied by one or two individuals per bedroom as the private living quarters of such individuals.
- c. **Congregate Living Facility:** Each resident in a Congregate Living Facility has his/her own bedroom and may have a separate living room, kitchen, dining area, or bathroom, and may share dining, leisure, and other service facilities in common with other older persons, such as in a common dining facility.
- d. **Continuing Care Retirement Community:** Continuing Care Retirement Communities may include various types of living facilities for seniors within which residents can stay as their service and health care needs change.
- e. **Independent Living Residence:** In addition to separate dwelling units for elderly persons, an Independent Living Residence may include common areas and the provision of meals and social, psychological, and educational programs.
- f. **Long-term Care Facility:** Long Term Care Facilities provide assistance with Activities of Daily Living as defined by 651 CMR 12.02, as well as skilled nursing and medical care by a skilled nursing staff.

## 5.7 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.

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 (See Section 14, Outdoor 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.

## 5.8 ACCESSORY STRUCTURES

### 5.8.1 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. Screening at least five feet high shall be provided around the pool or court.
- c. 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.
- d. 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.

### 5.8.2 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 with a receiving dish with a diameter equal to or less than 3 feet may be installed in any district subject to subparagraph 7.5.2 Structures Other Than Buildings. A satellite receiving antenna with a receiving dish with a diameter greater than 3 feet 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 with a receiving dish with a diameter greater than 3 feet 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.
  - 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 5.8.2.b 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.

### **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, 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
- 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 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 nonconforming 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.

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:

- 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.

### 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.

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.

LOT WIDTH 7.2

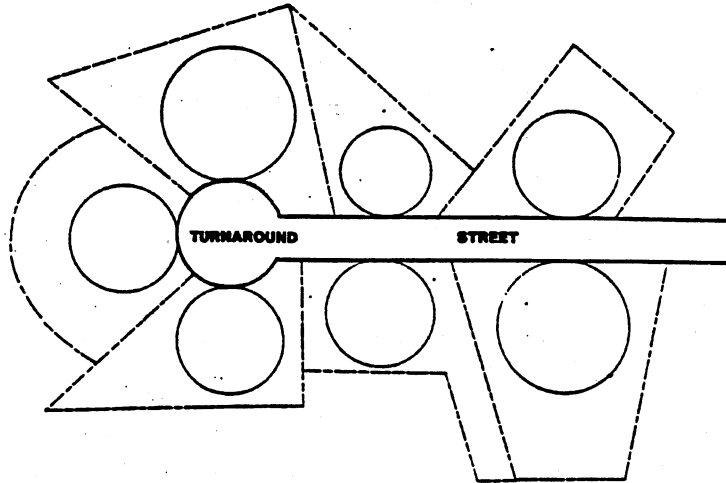
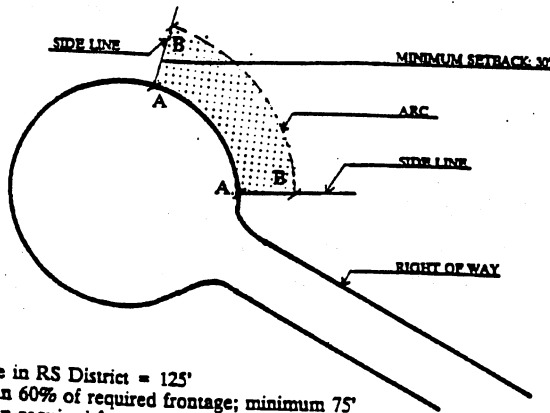
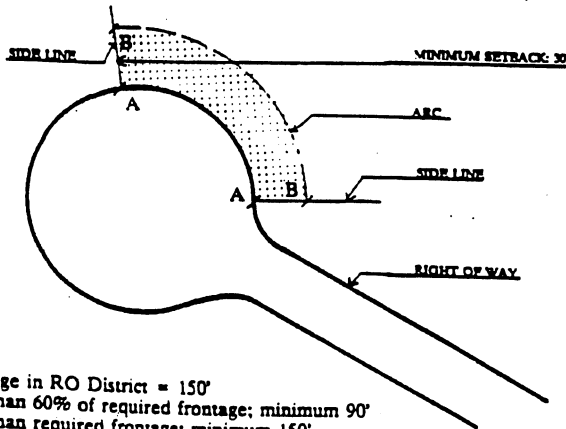


ILLUSTRATION 7.3.4 Frontage Reduction on Curves



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'

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 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 IN MORE THAN ONE DISTRICT OR MORE THAN ONE TOWN OR CITY**

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. In the case of one lot which is divided by a district line or the municipal boundary line between the Town of Lexington and an abutting town or city, which is proposed to be used for a building or use which is not permitted as a matter of right in both districts or municipalities, such building or use shall comply with the dimensional standards of Section 7, and Table 2 SCHEDULE OF DIMENSIONAL CONTROLS, as if that portion of the lot in the district in which such building or use is permitted, were the lot and the district boundary line were a lot line.

#### **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 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 LOT IN SEPARATE OWNERSHIP: In any district a lot, if used for a one-family or two-family dwelling, which:

- 1) at the time of recording or endorsement, as shown by the most recent instrument of record prior to the effective date of the zoning change from which the exemption is sought, was not held in common ownership with any adjoining land,
- 2) had at least 5,000 square feet of lot area and 50 feet of lot frontage, and
- 3) conformed to the then existing requirements for minimum lot area, minimum lot frontage, minimum lot width, minimum front yard, minimum side yard and minimum rear yard,

is not required to comply with the requirements of Table 2 for minimum lot area, minimum lot frontage, minimum lot width, minimum front yard, minimum side yard and minimum rear yard, and may be subject to the provisions of subparagraphs 7.4.1.a. and 7.4.1.b. below.



<b>a. AREA AND FRONTAGE EXEMPTIONS</b>			
	Lots laid out and recorded by plan or deed	Area at least	Frontage at least
	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>b. SIDE YARD EXEMPTIONS</b>		
The following shall apply to the above lots:		
	If actual lot frontage is:	Side yard must be
	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 9.5.6 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 percent 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 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.

**7.4.5 FRONTAGE REDUCTION, LOTS IN A SMALL SUBDIVISION**

The Planning Board may grant a special permit reducing the minimum lot frontage to not less than 50 percent of that otherwise required by Table 2 for lots in the RS and RO, One Family Dwelling, and RT, Two Family Dwelling, zoning districts, that: a) have frontage on a public street (see Definition of Street, subparagraph a.), and b) are in a proposed subdivision with not more than two lots, provided the Planning Board:

1. finds, on the basis of its approval of either:
  - a. a sketch plan or a preliminary site development plan, as defined in the Development Regulations, that a conventional subdivision could be laid out on the tract, that complies with all applicable requirements of this By-Law and the Development Regulations; or,
  - b. its approval and endorsement of a definitive subdivision plan; and
2. determines that granting such special permit:
  - a. will facilitate a development that minimizes the disruption of the existing natural features of the site, and
  - b. will be in the public interest, benefiting either the adjacent neighborhood or the town generally. In determining whether granting the special permit would be in the public interest, the Planning Board will rely on the objectives for residential development set

forth in subsection 9.1.1 of this By-Law and in subparagraph 3.1.2.2, Objectives and Criteria: Site Design of the Development Regulations. In determining whether a proposal by the applicant may benefit either the adjacent neighborhood or the town generally, the Planning Board may consider:

- 1) the conveyance of the fee, or other interest, in land within the proposed subdivision to the Town for use for conservation, recreation, or other public purpose;
- 2) the provision of improvements within the right-of-way of the street, that provides the frontage, or of improvements to public facilities near the proposed subdivision. Such improvements may include, but are not limited to, the initial construction, expansion or rehabilitation of the type of improvements and services described in Section 3.6, Required Improvements, of the Development Regulations and the maintenance or restoration of buildings and places of historic or architectural significance;
- 3) limitations on the use or design of buildings or the site as described in Section 2.4.3, Documents, Exhibits, of the Development Regulations;
- 4) in lieu of the provision of improvements within or near the right-of-way, or the transfer of interests in land within the proposed subdivision, the Planning Board may consider a financial contribution to a Town fund for any of the purposes identified in 1) through 3) above.

In granting such special permit, the Planning Board may include conditions that increase the minimum yard setback, and the affect size and location of dwellings within the subdivision.

In granting such special permit, the Planning Board may also act as the special permit granting authority and grant a special permit to allow a driveway to serve two lots as provided in subparagraph 11.8.c.

### 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, wireless communication facilities that are permitted as provided in section 15, 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, (except that a supporting post may be not more than six feet, six inches 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, wireless communication facilities that are permitted as provided in section 15, 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 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.
- 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)

## 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:

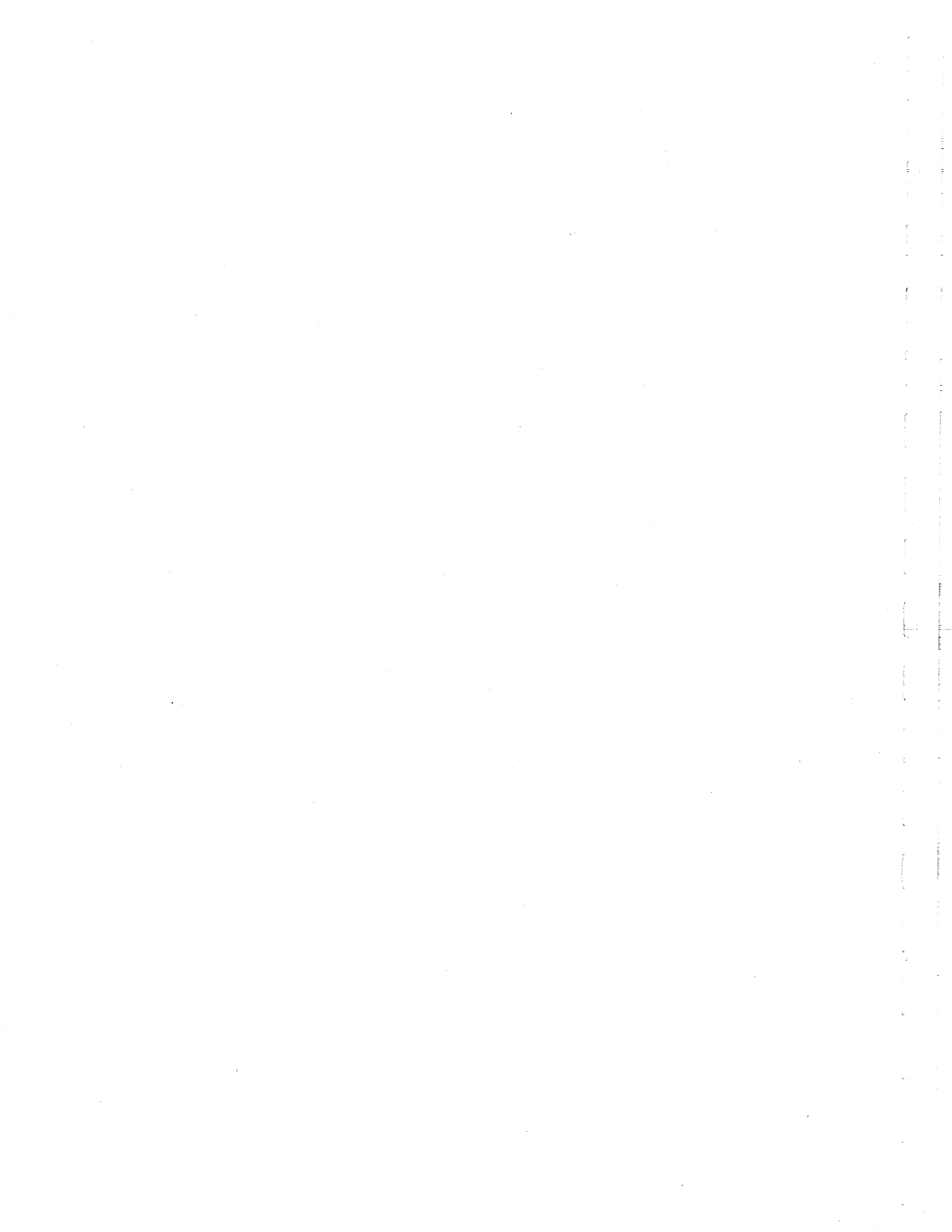
all parts of a lot located in a wetland, a Wetland Protection zoning district, and another district in which the principal use of the lot is not permitted. The map and the calculation shall be certified as to accuracy and shall bear the stamp of a Land Surveyor or Professional Engineer registered in 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 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 9.7.

**8.4 REZONING PROVISIONS APPLICABLE TO BOTH CD AND RD DISTRICTS****8.4.1 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 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 first session of the Town Meeting. 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.

**8.4.2 AMENDMENTS TO THE PRELIMINARY SITE DEVELOPMENT AND USE PLAN**

After the filing of the preliminary site development and use plan which accompanies a petition for a rezoning, the Town Meeting shall not take favorable action on a proposed amendment to the preliminary site development and use plan unless:

- a. at least seven days prior to the vote of the Town Meeting on the petition the Town Meeting Member proposing such amendment:
  1. has filed a copy of the proposed amendment with the Town Clerk and the Planning Board, and
  2. has sent a copy of the proposed amendment by registered mail to the petitioner,
- b. the Moderator shall determine that the proposed amendment is within the scope of the petition and the preliminary site development and use plan most recently filed as provided in paragraph 8.4.1, and
- c. at least two thirds of the Town Meeting vote favorably on the proposed amendment.

**8.5 SPECIAL PERMIT PROVISIONS APPLICABLE TO BOTH CD AND RD DISTRICTS****8.5.1 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.

**8.5.2 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.

#### 8.5.3 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.

#### 8.5.4 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 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.

#### 8.5.5 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.

### 8.6 WETLAND PROTECTION DISTRICT

#### 8.6.1 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.

#### 8.6.2 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.

#### 8.6.3 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.

#### 8.6.4 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 8.6.3, 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 8.6. 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.

#### 8.6.5 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.

#### 8.6.6 USES PROHIBITED WITHIN WETLAND DISTRICT

Except as provided in Sections 8.6.4 or 8.6.5 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.

#### 8.6.7 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 8.6.4 and 8.6.5.

#### 8.6.8 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.

### 8.7 NATIONAL FLOOD INSURANCE DISTRICT

#### 8.7.1 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.

#### 8.7.2 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.

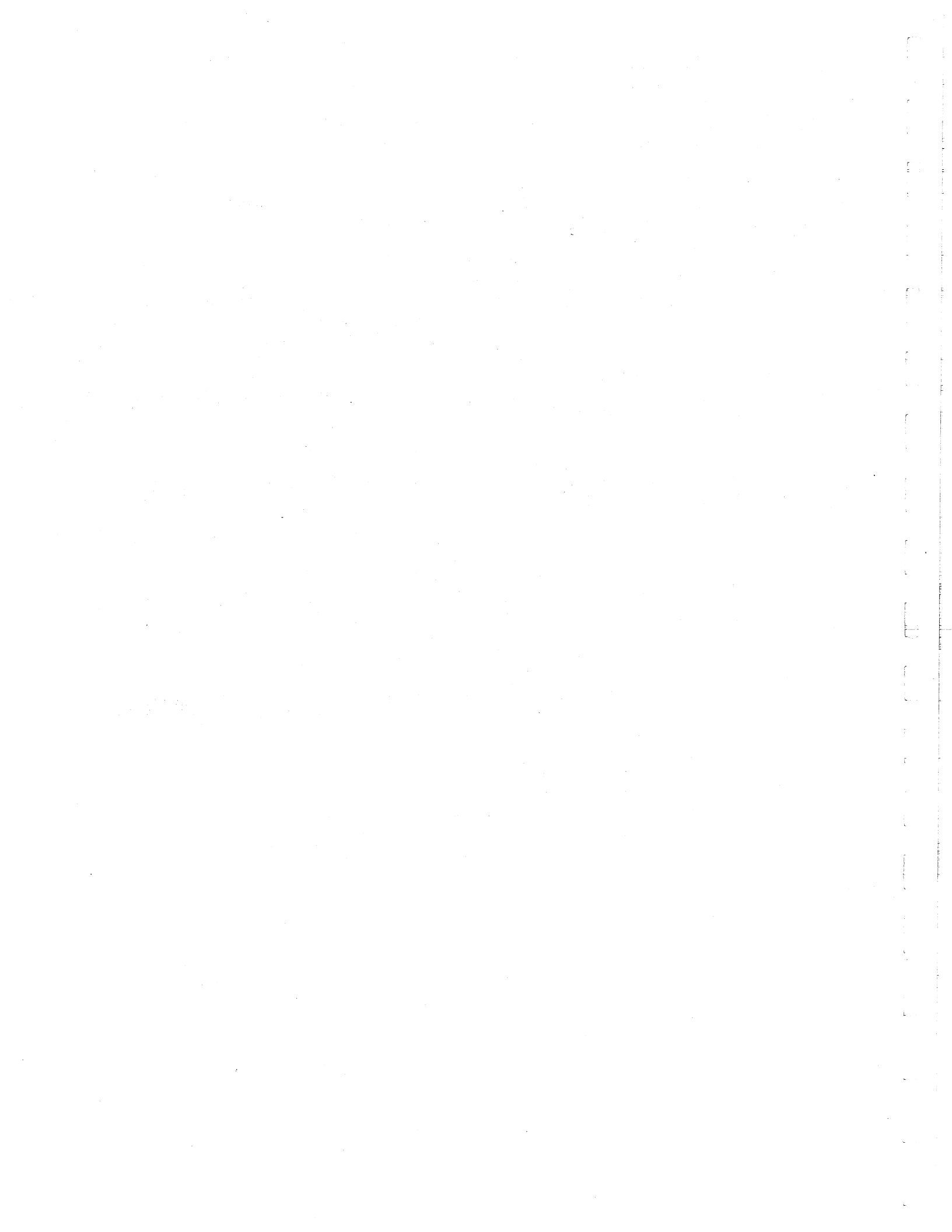
**8.7.3 AREAS INCLUDED**

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.).

**8.7.4 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 8.7.4a.
  
- 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 equipmentConstruction permitted within a floodway must comply with the requirement of Section 8.7.4a.
  
- 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. RESIDENTIAL DEVELOPMENTS**

### **9.1 OBJECTIVES AND APPLICABILITY**

9.1.1 The provisions of this section are intended to:

- a. ensure 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, park purposes, or public access to open space, 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.

9.1.3 In an RO, RS or RT district, a residential development of three or more dwelling units 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,
- d. a development with significant public benefit (DSPB).

9.1.4 The procedure for a cluster subdivision or a special residential development or a development with significant public benefit (DSPB) is not intended be used as an alternative to allow the construction of a conventional subdivision that could not otherwise comply with the standards and requirements set forth in this By-Law or in the "Development Regulations".

**9.2 SCHEDULE OF PERMITTED BUILDINGS, DENSITY AND DIMENSIONAL STANDARDS**

(Applicable to the residential development as a whole.)

		ZONING DISTRICT				
		RO		RS, RT		RD
Type of Development:		Conv.	Clus. Spec. DSPB	Conv.	Clus. Spec. DSPB	
9.2.1	Minimum Area of Tract to be Developed * No requirement for tract as a whole; individual lots must comply with Table 2; right-of-way must comply with Subdivision Regulations	NR*	100,000 sf	NR*	50,000 sf	125,000 sf
9.2.2	Types of Buildings* Permitted * See definitions in Section 2					
	a. One-Family Detached	Yes	Yes	Yes	Yes	Yes
	b. One-family Attached, *Yes in RT	No	SP	No*	SP*	Yes
	c. Accessory Apartment	Yes	Yes	Yes	Yes	Yes
	d. Two-family *Yes in RT	No	SP	No*	SP*	Yes
	e. Townhouse	No	SP	No	SP	Yes
	f. Three-, Four-Family	No	No**	No	No**	Yes
	g. Multi-Family	No	No**	No	No**	Yes
	h. Rooming House	No	No**	No	No**	Yes
	i. Group Quarters *Yes where accessory to a religious or educational use	No*	No*,**	No*	No*,**	Yes
	j. Independent Living Residence	No	No**	No	No**	Yes
	k. Assisted Living Residence	No	No**	No	No**	Yes
	l. Congregate Living Facility	No	No**	No	No**	Yes
	m. Long-Term Care Facility	No	No	No	No	Yes
	n. Conversion of Municipal Building (See 9.8) ** See also 9.5.6.c.	SPS	SPS	SPS	SPS	Yes
9.2.3	Minimum Frontage of the Tract on An Existing Street	50 ft.	100 ft.	50 ft.	100 ft.	100 ft.
9.2.4	Minimum Yard Setback on Perimeter of Tract					
	a. Front Yard					
	b. Side Yard, Rear Yard	NR*	NR*	NR*	NR*	40 ft
	*No requirement for development as a whole; individual buildings subject to Table 2	NR*	NR*	NR*	NR*	30 ft
9.2.5	Maximum Impervious Surface Ratio (See paragraph 7.9) *No requirement for a conventional subdivision as a whole; see 9.4.4 for individual lots	NR*	0.15	NR*	0.20	0.40
9.2.6	Minimum Common Open Space (See 9.3.4.) As Percentage of Developable Site Area (See 7.9.1.) ----- * At least 10 percent, but see also paragraph 9.5.7 and 9.6.7.	NR	Clus. 25%  ----- spec * DSPB *	NR	Clus. 25%  ----- spec * DSPB *	10%
9.2.7	Minimum Usable Open Space (See 9.3.5.) per Dwelling Unit, or Equivalent	5,000 sf	5,000 sf	3,500 sf	3,500 sf	1,500 sf
9.2.8	Maximum Height of Dwellings	40 ft	40 ft	40 ft	40 ft	40 ft

**9.2.9 EQUIVALENT DENSITY, RESIDENTIAL ACCOMMODATIONS NOT IN DWELLING UNITS**

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

- 1) 1,000 square feet of gross floor area in a long-term care facility
- 2) 1,200 square feet of gross floor area in group quarters, an assisted living residence facility or a congregate living facility that does not have dwelling units.

Where a residential facility that is not arranged in dwelling units provides at least one meal a day in a common dining area, served by a central kitchen, to the occupants of the living units, the presence of small cooking equipment for the convenience of occupants of the individual living units will not classify the living unit as a dwelling unit.

**9.3 GENERAL PROVISIONS APPLICABLE TO ALL RESIDENTIAL DEVELOPMENTS****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 exempt a subdivision from complying with the provisions of the "Development Regulations" and of the Subdivision Control Law.

**9.3.2 PARTS OF DWELLING UNITS BELOW GROUND**

No part of a dwelling unit, an assisted living unit or a rooming unit used for sleeping, cooking, dining or bathroom purposes may be located in a cellar. (See Definition.) A part of a dwelling unit, an assisted living unit or a rooming unit used for such purposes may be located in a basement (See Definition.), 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.

**9.3.3 NON-RESIDENTIAL USES**

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

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

**9.3.4 COMMON OPEN SPACE****9.3.4.1 PURPOSE**

Common open space is intended to provide open, natural area on a site for the general use of most, or all, the occupants of a residential development with three or more dwelling units. It is intended to provide for the active and passive recreational use and visual enjoyment of the occupants of a residential development and, in some cases, for residents of the adjacent neighborhood and the public generally.

**9.3.4.2 LOCATION, CONDITION**

Where required or provided, common open space shall be land that:

- a. may be in one or more parcels of a size and shape appropriate for the intended use;
- b. meets the requirements for developable site area as that term is defined in paragraph 7.9.1; and
- c. all occupants of a development have the right to use.

**9.3.4.3 OWNERSHIP**

Common open space may be conveyed to:

- 1) and accepted by the Town to ensure its perpetual use as open space, conservation, recreation or park land; or

- 2) a legal association comprised of the owners of the development, which may include homeowners or owners of condominium or cooperative units; or
- 3) 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 ensure its perpetual use as open space, conservation, recreation or park land.

#### 9.3.4.4 ACCESSORY PARKING OR STRUCTURES

A maximum of 20 percent of common open space may be devoted to parking or structures used for, or accessory to, active outdoor recreation provided such parking or structures are consistent with the open space uses of such land.

#### 9.3.5 USABLE OPEN SPACE

##### 9.3.5.1 PURPOSE

Usable open space is intended to provide outdoor space for the recreational and leisure time use of, and in close proximity to, the occupants of dwelling units in a residential development with three or more dwelling units.

##### 9.3.5.2 AMOUNT OF USABLE OPEN SPACE REQUIRED

The minimum amount of usable open space provided shall be as set forth in the schedule in subsection 9.2.7.

##### 9.3.5.3 QUALIFYING USABLE OPEN SPACE

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

###### a. USABILITY

The area must have a surface that 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:

- 1) the slope of the finished grade is more than 10 percent, or
- 2) the land does not meet the requirements for developable site area as that term is defined in paragraph 7.9.1.

###### b. LOCATION

The nearest part of the area 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, or a space designated for the exclusive use of one dwelling unit, or
- 2) qualifies as common open space as provided in paragraph 9.3.4.

###### c. SIZE AND SHAPE

It has a minimum horizontal area of 600 square feet and no dimension is less than 20 feet.

###### d. STRUCTURES AND FACILITIES

It shall be open to the sky, and may include unroofed facilities such as a tennis court, swimming pool or similar open air recreational facilities. Accessory structures related to such unroofed facilities may be located within the area.

###### e. ACCESS

The access to usable open space shall conform to the same standards set forth in a. 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.



#### 9.3.5.4 RELATIONSHIP BETWEEN USABLE AND COMMON OPEN SPACE

Common open space will qualify as usable open space provided it meets the criteria set forth in paragraph 9.3.5.3. Usable open space will qualify as common open space provided it is not on a privately owned lot, or on a space designated for the exclusive use of one dwelling unit.

#### 9.3.6 STREETS, DRIVES

##### 9.3.6.1 OBJECTIVE

The objective of this section is that adequate access for fire-fighting, medical and other emergency operations be provided from the public street system to each development with three or more dwelling units.

##### 9.3.6.2 CONNECTION TO PUBLIC STREET SYSTEM

Each street (See Definition.) and interior drive (See Definition.), or system of streets or interior drives, within a residential development with three or more dwelling units shall connect to a public street.

##### 9.3.6.3 MEANING OF "DEAD-END" STREET

A dead-end street or dead-end interior drive is one which has only one means of entrance and exit to a through public street. (See Definition of THROUGH STREET.)

##### 9.3.6.4 LENGTH, MEASUREMENT OF DEAD-END STREET

A dead-end street or dead-end interior drive shall not extend more than 650 feet from:

- a. a through public street, or
- b. a street or interior drive that intersects with a through public street in at least two places that are not less than 125 feet apart provided such street or interior drive is constructed in accordance with the standards for streets and rights-of-way set forth in the Subdivision Regulations,

The length of a dead-end street or dead-end interior drive and the distance between the intersection of streets shall be measured as described further in the Planning Board's Subdivision Regulations.

In the case where an existing through street connects to another public street in two places but that public street is itself a dead-end street, the through street shall be considered to be a dead-end street.

##### 9.3.6.5 TWO MEANS OF ACCESS

Where there are more than 10 dwellings in a cluster subdivision or a special residential development or more than 20 dwelling units in an RD, Planned Residential Development, district served by a dead-end street or dead-end interior drive, two means of access connected to the public street system, suitable for fire-fighting, medical and other emergency vehicles, shall be provided to each dwelling or dwelling unit. One means of access shall be a street or interior drive that complies with the standards for streets and rights-of-way set forth in the Subdivision Regulations. If not another street, the second means of access may be a paved way, subject to the approval of the Fire Chief, that:

- a. is at least 10 feet wide, and constructed in a manner suitable for fire-fighting equipment,
- b. has provision for snow removal and other maintenance to assure year round access, and
- c. may have a gate or other barrier to restrict general motor vehicle traffic provided there is an easy means of opening such gate or barrier for emergency vehicles.

##### 9.3.6.6 MINIMUM YARD FOR STREET OR INTERIOR DRIVE IN RD DISTRICT

If a street or interior drive in an RD, Planned Residential District, is located in a minimum yard required by 9.2.4, there shall be a screen of densely planted vegetation and/or an opaque fence adjacent to the lot line, as provided in Section 10 of this By-Law, for such distance as the Planning Board may determine in order to provide protection for abutting residential lots.

**9.3.7 ACCESSORY APARTMENT**

An accessory apartment, as described in subsection 5.2 of this By-Law, may be created in a detached, one-family dwelling in a residential development with three or more dwelling units. In general the provisions of subsections 5.2.1 through 5.2.4 of this By-Law shall apply, with the following exceptions:

- a. the lot area in a conventional subdivision shall be at least the minimum required by Table 2, Schedule of Dimensional Controls, for the zoning district in which the lot is located. (See also paragraph 9.4.3. which requires a greater lot area for larger houses.) The lot area in a cluster subdivision, a special residential development or a development with significant public benefit may be such size as the SPGA may approve;
- b. the dwelling may be newly constructed and does not need to have been constructed by January 1, 1983;
- c. the maximum floor area of the accessory apartment shall be:
  - 1) not more than 1,200 square feet, or
  - 2) not more than 30 percent of the living area of the dwelling, whichever is less.
- d. paragraph 5.2.2.b.2, which prohibits enlargement of existing dwellings, shall not apply.

**9.3.8 EQUIVALENT DENSITY**

The maximum density of a facility permitted by 9.2.2 h, i, k, l, or m. in which living units or other accommodations are not dwelling units, (See Definition.) shall be determined by paragraph 9.2.9 Equivalent Density.

**9.4 CONVENTIONAL SUBDIVISION**

**9.4.1 MEANING OF "CONVENTIONAL SUBDIVISION"**

A conventional subdivision is a residential development with three or more dwelling units in which a tract of land is divided into lots for constructing single family detached dwellings. (See also the Definition, Conventional Subdivision.)

**9.4.2 DIMENSIONAL STANDARDS**

A conventional subdivision shall comply with the applicable dimensional standards set forth in subsection 9.2 and elsewhere in Section 9 for the residential development as a whole. Each lot created within a conventional subdivision must comply with the dimensional standards set forth in Table 2 and elsewhere in this By-Law.

**9.4.3 ACCESSORY APARTMENT**

If an accessory apartment is included in a dwelling, as provided in paragraph 9.3.7, and if the dwelling has a gross floor area that is 6,200 square feet or more, the minimum lot area shall be 20,000 square feet in the RS district and 35,000 square feet in the RO district. If the dwelling in which the accessory apartment is included has a gross floor area that is less than 6,200 square feet, the minimum lot area shall be 15,500 square feet in the RS district and 30,000 square feet in the RO district.

**9.4.4 ADDITIONAL STANDARDS APPLICABLE TO CONVENTIONAL SUBDIVISIONS**

In addition to the dimensional standards set forth in subsection 9.2 that apply to a 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	25 feet	25 feet

(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.)

## 9.5 CLUSTER SUBDIVISION, SPECIAL RESIDENTIAL DEVELOPMENT

### 9.5.1 MEANING OF TERMS

A "cluster subdivision" is a residential development with three or more dwelling units in which a tract of land is divided into: 1) lots for constructing dwellings in one or more groups and 2) common open space. The common open space may be in one or more locations and may separate groups of dwellings from each other. (See also the Definition, Cluster Subdivision.)

A "special residential development" is a residential development with three or more dwelling units in which a tract of land is divided into: 1) one or more lots for constructing dwellings in one or more groups and 2) common open space. A "special residential development" may have one or more lots used for developments in:

- a. condominium ownership,
- b. cooperative ownership, or
- c. one ownership where individual dwelling units are rented.

A "special residential development" is intended to provide greater flexibility than a cluster subdivision to respond to special site or development considerations.

### 9.5.2 OBJECTIVES

The objectives of this section are to allow flexibility in the standards and procedures for residential development with three or more dwelling units that are a cluster subdivision or a special residential development to:

- a. promote development proposals based on an evaluation of the characteristics of individual sites that is difficult to achieve by applying pre-determined, largely geometric standards;
- b. promote the retention and enhancement of the outstanding natural features of open land and of existing man made enhancements to it;
- c. promote an improved design relationship between new buildings and public facilities and common open space;
- d. permit approval of a development based on an evaluation of the projected impacts of the development.

### 9.5.3 MAXIMUM DEVELOPMENT BASED ON IMPACT

#### 9.5.3.1 OBJECTIVE

The objective of this section, and of section 9.6. Developments with Significant Public Benefit, is to base the amount of development allowed on the projected impacts of the development on the adjacent neighborhood and municipal facilities and services.

#### 9.5.3.2 MAXIMUM DEVELOPMENT BASED ON IMPACT

The projected impacts of a cluster subdivision or a special residential development shall not be greater than the total projected impacts of one-family detached dwellings that could be constructed on individual lots in a conventional subdivision on the tract according to the procedure described in this section. The maximum development permitted in a cluster or special residential development may not exceed ANY of the total impacts that are projected to occur from such one-family detached dwellings based on the following impact measures each considered separately:

- a. Gross Floor Area of Dwelling Units
- b. Living Area of Dwelling Units
- c. Site Coverage of Dwelling Units
- d. Total Number of Occupants of Dwelling Units

e. Vehicular Trip Generation from Dwelling Units

The maximum development permitted is not to be based on the number of dwelling units. The number of dwelling units permitted is not predetermined; it is the number that occurs in a development when none of the impact measures, each considered separately, exceeds the total impact that is projected to occur in a conventional subdivision on the tract according to the procedure described in this section.

9.5.3.3 NO ENTITLEMENT TO MAXIMUM DEVELOPMENT

An applicant is not entitled to the maximum development described in paragraph 9.5.3.2 nor is the applicant entitled to approval of a cluster subdivision or special residential development. The amount of development permitted, as calculated by any of the impact measures, will be based on the Planning Board's evaluation of the proposed development and the extent to which it complies with the criteria set forth in paragraph 9.5.5.

9.5.4 CALCULATION OF IMPACT OF DEVELOPMENT

9.5.4.1 MEASURES OF THE IMPACT OF DWELLING UNITS

For the purpose of the calculations required elsewhere in this section, the impact of a one-family detached dwelling constructed on a lot in a conventional subdivision is determined to be:

- a. Gross Floor Area of One-family Dwelling Unit: 7,200 square feet;
- b. Living Area of One-family Dwelling Unit: 4,700 square feet;
- c. Site Coverage of One-family Dwelling Unit: 2,900 square feet;
- d. Total Number of Occupants of One-family Dwelling Unit: 5 persons
- e. Number of Vehicle Trips Generated by a One-family Dwelling Unit: 15 trips

9.5.4.2 IMPACTS OF OTHER TYPES OF DWELLING UNITS

The Planning Board shall periodically publish the projected total number of occupants in, and the number of motor vehicle trips generated by, other types of dwelling units. Those other types of dwelling units shall include:

- a. One-family Detached\*,
- b. One-family Attached\*,
- c. Two-family\*, and
- d. Townhouse\*.

\* (See definition in Section 2.)

The Planning Board shall periodically tabulate and publish data on such other types of dwelling units:

- a. that have been constructed in the preceding 10 years, or
- b. on the 25 most recently constructed dwelling units of that type,

whichever results in the greater number of dwelling units in the sample.

In estimating the projected total number of occupants in, and the number of vehicular trips generated by, other types of dwelling units, the Planning Board shall consider the size of the dwelling units, the number of bedrooms and other physical and economic characteristics of the dwelling units. In projecting:

- a. the total number of occupants in other types of dwellings, the Planning Board shall consider data reported in the Town Census conducted by the Town Clerk in the most recent calendar year;
- b. the total number of vehicle trips, the Planning Board shall use the estimates of trip generation outlined in paragraph 12.2.4.a, trip generation, of this By-Law.

9.5.4.3 CALCULATION OF MAXIMUM DEVELOPMENT

The maximum development permitted in a cluster or special residential development shall be determined by using the following procedure:

STEP ONE:

- 1) calculate the maximum number of dwellings in a conventional subdivision by the following formula:

divide the area of the lot by the minimum lot area for the district in which the lot is located (RO=30,000 s.f., RS and RT=15,500 s.f.) provided any fraction thereof may be included in the calculation;

**STEP TWO**

- 2) calculate the total gross floor area of all dwellings in a cluster or special residential development by multiplying 7,200 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;
- 3) calculate the total living area of all dwellings in a cluster or special residential development by multiplying 4,700 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;
- 4) calculate the total site coverage of all dwellings in a cluster or special residential development by multiplying 2,900 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;

**STEP THREE**

- 5) calculate the projected total number of occupants of all dwellings in a cluster or special residential development by multiplying five persons by the maximum number of dwellings in a conventional subdivision in 1) above.

To determine the projected number of total occupants of "other types of dwelling units" (9.5.4.2), the applicant shall furnish a schedule showing the number of proposed dwelling units, according to:

- a. the type of structure,
  - b. the number of bedrooms,
  - c. the living area, and
  - d. the projected rent or sales price
- of each proposed dwelling unit.

Based on the data available to it, as described in paragraph 9.5.4.2, the Planning Board shall determine the projected total number of occupants in "other types of dwelling units" referred to in paragraph 9.5.4.2 that corresponds most closely to the schedule furnished by the applicant. The projected total number of occupants shall be the median in the data range.

**STEP FOUR**

- 6) Calculate the projected total number of vehicle trips generated from all dwellings in a cluster or special residential development by multiplying 15 vehicles times the maximum number of dwellings in a conventional subdivision. (See 1) above.)

Based on the schedule furnished by the applicant, described in 5) a. and b. above, and on the data available to it, as described in paragraph 9.5.4.2, the Planning Board shall estimate the total number of vehicle trips generated from the "other types of dwellings" referred to in paragraph 9.5.4.2 that corresponds most closely to the schedule furnished by the applicant.

<p><i>This worksheet is for illustrative purposes only. It is not legally adopted by the Town Meeting as a part of the Zoning Bylaw.</i></p> <p><b>WORKSHEET FOR CALCULATION OF PARAGRAPH 9.5.4.3 CALCULATION OF MAXIMUM DEVELOPMENT</b></p>			
<b>STEP ONE</b>			
<p>(1) Area of the lot  _____</p>	<p>(2) Divide (1) by minimum lot area for the district (RO=30,000 sf, RS and RT=15,500 sf)</p>	<p>(3) _____ Maximum number of dwellings in a conventional development</p>	
<b>STEP TWO</b>			
Total gross floor area of all dwellings	7,200 square feet X	_____ (3)	= _____ Square Feet
Total living area of all dwellings	4,700 square feet X	_____ (3)	= _____ Square Feet
Total site coverage of all dwellings	2,900 square feet X	_____ (3)	= _____ Square Feet
<b>STEP THREE</b>			
Projected total number of occupants of all dwellings	5 persons X	_____ (3)	= _____ Persons
<b>STEP FOUR</b>			
Projected total number of vehicle trips generated from all dwellings	15 trips X	_____ (3)	= _____ Vehicular trips

For assistance in determining the estimated occupancy of other types of housing, contact the Planning Department.

**9.5.4.4 EFFECT OF IMPACT MEASURES ON AN APPROVED DEVELOPMENT**

- a. **OCCUPANCY AND NUMBER OF MOTOR VEHICLE TRIPS:** The calculation of impact measures for occupancy and number of motor vehicle trips is only for the purposes of estimating impacts for approval of a development application. The median of the population and motor vehicle trip generation data series, as described in paragraphs 9.5.4.2 and 9.5.4.3, is determined to be an adequate measure of the impact of a typical dwelling unit. This method of estimating impacts assumes that the actual occupancy, either initially or later, of any one dwelling unit may be higher or lower than the typical dwelling unit used in these calculations. Neither the initial occupancy nor any change in the later occupancy of, or the number of motor vehicle trips generated from, any dwelling unit, shall affect the occupancy or limit the ownership or use of motor vehicles in that dwelling unit.
  
- b. **GROSS FLOOR AREA, LIVING AREA, SITE COVERAGE:** The total gross floor area, living area, site coverage of all dwellings, as determined by the calculation of impact measures in paragraph 9.5.4.3, is the maximum for approved development. After the granting of a special permit approving the development, no building permit shall be issued for any dwelling that would result in the maximum specified in the approval being exceeded.

**9.5.5 CRITERIA FOR APPROVAL**

Prior to the approval of a cluster subdivision or a special residential development, in addition to the findings and determinations required by paragraph 3.4.2 of this By-Law, the Planning Board shall determine that the proposed development meets the following criteria:

- a. the common open space includes:
  - 1) some, or all, of the outstanding natural features of the site and of the man made features, such as but not limited to stone walls, that enhance the land form;
  - 2) land that also meets the standards for usable open space;
  - 3) land that increases visual amenities for residents of the development and of the adjacent neighborhood;
- b. the common open space is readily accessible by one or more paths or entry points specifically designed for access purposes;
- c. the dwellings are sited and oriented in a complementary relationship to:
  - 1) each other,
  - 2) the common open space, and
  - 3) the adjacent properties. If the development includes other types of dwellings, such as semi-attached dwellings or townhouses, those types of dwellings shall relate to the predominant characteristics of the adjacent one-family detached dwellings with respect to scale, mass, setback, proportions and materials;
- d. negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;
- e. where opportunities exist, improved access is provided to, or additional links and connections are developed to, a town system of public facilities, such as open space, recreation facilities, footpaths or bicycle paths;
- 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,
  - 2) alternatively, if one-family attached dwellings and/or townhouses (See 9.2.2b. or e. 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;
- h. where there are sufficient dwellings units, the layout of the street(s) and interior drive(s) will accommodate vehicles, other than automobiles, that are used in local transportation services.

**9.5.6 SPECIAL PERMITS, DIMENSIONAL STANDARDS, WAIVERS, TYPES OF HOUSING**

The Planning Board, acting as SPGA, may, as part of the grant of a special permit with site plan review, also grant a special permit to:

- a. modify the standards:
  - 1) in Table 2, Schedule of Dimensional Controls, 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;
  - 2) the provisions of 7.1.4 relative to the number of dwellings on a lot;
  - 3) the minimum lot width in subsection 7.2.2;
  - 4) the provisions in subsection 7.2.3 relative to contiguous developable site area;
  - 5) in subparagraph 11.4.1 relative to the location of off-street parking spaces;
  - 6) in subsection 11.6 relative to setbacks required for parking spaces and driveways; and
  - 7) in subparagraph 6.2.5 relative to the subdivision of land in relation to lots or buildings that are nonconforming or would not comply with this By-Law as a result of the proposed development;  
all as they may apply to individual dwellings or lots within a cluster subdivision or a special residential development:
- b. permit the types of buildings identified in 9.2.2 as allowed by special permit;

- c. allow an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit, to be converted to a three-, or four-family dwelling, a multi-family dwelling, a rooming house, a group quarters, an independent living residence, an assisted living residence, or a congregate living facility, provided the Planning Board determines that:
  - 1) the structure can be modified for a residential use that does not have adverse impacts on the adjacent single family neighborhood;
  - 2) the exterior character of the structure is maintained and is compatible with the adjacent neighborhood of single-family dwellings;
  - 3) modification of the existing structure maintains more of the site open than the alternative of removal of the structure and further subdivision of the lot into house lots;
- d. allow a driveway on one lot to lead to a parking space on another lot, or to allow a driveway to straddle a lot line, as provided in paragraph 11.8.c.

#### 9.5.7 COMMON OPEN SPACE

In granting a special permit with site plan review for a special residential development, the Planning Board may require a greater amount of common space than the minimum 10 per cent required by line 9.2.6. In making that determination, the Planning Board shall consider the need to protect the natural features of the site, the type of housing to be constructed and its relationship to common open space, and potential public access to and use of the open space.

#### 9.5.8 ACCESSORY APARTMENT IN CLUSTER SUBDIVISION, SPECIAL RESIDENTIAL DEVELOPMENT

If an accessory apartment is included in a dwelling, as provided in paragraph 9.3.7, in a cluster subdivision or special residential development, it shall be considered to be one of the other types of dwelling units and included in the calculation of the maximum development permitted based on the various impact measures. (See subsection 9.5.4.3.)

### 9.6 DEVELOPMENTS WITH SIGNIFICANT PUBLIC BENEFIT (DSPB)

#### 9.6.1 MEANING OF TERM

A development with significant public benefit (DSPB) is a cluster subdivision or a special residential development (See subsection 9.5.) in which the Planning Board has determined that there are sufficient benefits to the adjacent neighborhood and the town generally to warrant an increase in the maximum development permitted.

#### 9.6.2 OBJECTIVES

The objectives of this section are to allow additional flexibility in the standards and procedures for approval and to provide incentives for applicants to propose a development with significant public benefit and to:

- a. encourage the provision of more public facilities and services that benefit the adjacent neighborhood and the town generally;
- b. encourage types of housing that meet the needs of age groups, income groups, or persons with special needs, that are not adequately served by large single family dwellings;
- c. encourage a greater degree of review of the design features of a residential development;
- d. require a higher qualitative standard:
  - 1) of building design, and
  - 2) in the provision of public facilities and the provision of open space;
- e. further the objectives set forth in paragraph 9.1.1;

than would otherwise apply in the administration of zoning and subdivision regulations.



### 9.6.3 MAXIMUM DEVELOPMENT

#### 9.6.3.1 MAXIMUM DEVELOPMENT INCENTIVE

The maximum development permitted in a development with significant public benefit may not exceed that permitted in a cluster or special residential development (See subsection 9.5.4.2.) by more than 25 percent for ANY of the following impact measures each considered separately:

- a. Gross Floor Area of Dwelling Units
- b. Living Area of Dwelling Units
- c. Site Coverage of Dwelling Units
- d. Total Number of Occupants of Dwelling Units
- e. Vehicular Trip Generation from Dwelling Units

#### 9.6.3.2 NO ENTITLEMENT TO MAXIMUM DEVELOPMENT INCENTIVE

An applicant is not entitled to the maximum development described in paragraph 9.6.3.1. The amount of development permitted, as calculated by any of the impact measures, will be based on the Planning Board's evaluation of the proposed development and the extent to which it complies with the criteria set forth in paragraph 9.6.5.

### 9.6.4 SIGNIFICANT PUBLIC BENEFIT DEFINED

#### 9.6.4.1 QUALIFYING SIGNIFICANT PUBLIC BENEFIT

A significant public benefit shall be a benefit to the adjacent neighborhood and the town generally as determined by the Planning Board. In general a qualifying public benefit shall be:

- 1) improvements in the adjacent neighborhood similar to the required improvements on the site — such required improvements being those identified elsewhere in this By-Law or in subsection 3.6 of the Subdivision Regulations, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings;
- 2) improvements on the site that are, in the opinion of the Planning Board, well in excess of those otherwise required;
- 3) restrictions on, or special design or development features of, uses and buildings permitted in the zoning district.

A significant public benefit may be one or more of the following as determined by the Planning Board after consultation with the board, committee, commission, department or official indicated and such others as the Planning Board may determine:

- a. preservation of a historic structure or place — with the Historical Commission and, as applicable, the Historic Districts Commission;
- b. protection of open land that is dry and otherwise developable, and potentially an important addition to the inventory of open space in the town — with the Conservation Commission and the Recreation Committee. All of such open land shall be accessible to the public. The type of private homeowners association reserve, allowed in 9.3.4.3 2), from which the public could be excluded, shall not qualify;
- c. provision of public recreation facilities — with the Recreation Committee;
- d. installation of paths to provide pedestrian and bicycle access to open space or other public facilities in the adjacent neighborhood — with the Recreation Committee, the Bicycle Advisory Committee and the Conservation Commission;
- e. installation of street trees or other landscaping features within the right of way of a public street, or a street previously approved under the Subdivision Regulations, — with the Superintendent of Parks and Trees;
- f. placement underground of electric power lines and communication lines, such as, but not limited to telephone, security alarm and cable TV lines — with the Town Engineer;
- g. provision of housing units for low- and moderate-income households — with LEXHAB or the Lexington Housing Authority, and as applicable, the Human Services Committee or the Council on Aging;

- h. provision of housing units that, upon initial occupancy would cost more than low- and moderate-income households could afford but, due to deed restrictions or other legally binding restrictions: 1) could be afforded by households whose annual income is not greater than the median income for the Boston Metropolitan Area, and 2) are projected to be affordable by low- and moderate-income households within 15 years — with LEXHAB or the Lexington Housing Authority;
- i. provision of housing units that are of a size or type that meet the needs of segments of the town's population that, due to age or special needs, are not adequately served by large single family dwellings — with LEXHAB or the Lexington Housing Authority, and as applicable, the Human Services Committee or the Council on Aging;
- j. provision of facilities for alternate transportation services that do not rely on the use of single occupant automobiles — with the Transportation Advisory Committee. The alternate transportation services may include a financial contribution to a service provided by the Town of Lexington, or a service provided by others and coordinated by the Town;
- k. provision of transportation facilities, such as a walk, or path, or traffic engineering improvements — with the Town Engineer, the Transportation Advisory Committee, the Recreation Committee or the Bicycle Advisory Committee;
- l. provision of a utility or underground facility, including but not limited to water service, sanitary sewer service, storm water management systems, or the expansion in the capacity of an existing facility or system — with the Town Engineer.

#### 9.6.4.2 IMPROVEMENTS BENEFITING ADJACENT NEIGHBORHOOD

Qualifying improvements shall generally include those that benefit the adjacent neighborhood or are provided on the site. If the Planning Board first determines that the type of improvements listed in 9.6.4.1. are not needed or cannot be provided in the adjacent neighborhood, or on the site, the Planning Board may consider instead a financial contribution to one or more Town funds established for the purposes listed in 9.6.4.1.

#### 9.6.4.3 IMPROVEMENTS NOT QUALIFYING AS SIGNIFICANT PUBLIC BENEFIT

A significant public benefit shall not include any required improvement identified elsewhere in this By-Law or in subsection 3.6 of the Subdivision Regulations, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings. A waiver from the requirements of the Subdivision Regulations or of the usual requirements of this By-Law for a conventional subdivision shall not be considered to be a significant public benefit.

#### 9.6.5 CRITERIA FOR APPROVAL

Prior to the approval of a development with a significant public benefit, the Planning Board shall determine, in addition to the findings and determinations required by paragraph 3.4.2 of this By-Law, and paragraph 9.5.5, criteria for approval of a cluster subdivision or a special residential development, that the proposed development meets the following criteria:

- a. that there are sufficient benefits to the adjacent neighborhood and the town generally to warrant an increase in the maximum development permitted; and
- b. that legally binding documents have been submitted to ensure the completion and continued availability of any proposed improvement or special condition that qualifies as a significant public benefit.

#### 9.6.6 SPECIAL PERMITS, TYPES OF HOUSING, DIMENSIONAL STANDARDS, WAIVERS

The Planning Board, acting as SPGA, and as part of the grant of a special permit with site plan review to approve a development with significant public benefit, may also grant any of the special permits described in subparagraph 9.5.6.

#### 9.6.7 COMMON OPEN SPACE

The public shall have access to all common open space in a development with significant public benefit. The provisions of paragraph 9.3.4.3 2) that allow common open space in a cluster subdivision or a special residential

development to be owned by a legal association comprised of the owners of the development, which may exclude the public, shall not apply in a development with significant public benefit.

### 9.7 SPECIAL PERMITS: PROCEDURES. CRITERIA

#### 9.7.1 SPS REQUIRED

No residential development with three or more dwelling units 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 detailed review of residential developments with three or more dwelling units which have a substantial impact upon the character of the town, adjacent residential areas and the provision of public facilities and services.

#### 9.7.2 SPGA

The Planning Board shall be the Special Permit Granting Authority for all residential development with three or more dwelling units 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 9.8 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.

#### 9.7.3 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 and where the Planning Board is the SPGA, as the Planning Board may describe in its Development Regulations.

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 with site plan review and the definitive subdivision plan shall be held concurrently.

#### 9.7.4 SPECIAL PERMIT PROVISIONS

In addition to the conditions cited in paragraph 3.4.3, the SPGA may grant a special permit with site plan review for the development of a 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 9.5.5 and 9.6.5, 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. that, where applicable, the special permit shall incorporate by reference, any legally binding document that has been submitted to ensure the completion and continued availability of any proposed improvement or special condition;
- c. The SPGA may require that the amount of development be less than that shown on the definitive site development plan if it determines that the criteria contained in subsections 9.5.5 or 9.6.5 so require.

#### 9.7.5 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 subsections 9.5.5 or 9.6.5.

#### 9.7.6 REVISION OF SPECIAL PERMIT

Subsequent to a special permit with site plan review granted by the SPGA under the provisions of this section, minor revisions may be made from time to time in accordance with applicable law, by-laws, and regulations, but

the residential development with three or more dwelling units approved under such SPS shall otherwise be constructed in accordance with the approved definitive site development plan. 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.

## 9.8 CONVERSION OF MUNICIPAL BUILDINGS AND SURPLUS MUNICIPAL LAND

### 9.8.1 GENERAL OBJECTIVES

This section is intended to allow the conversion of municipal buildings and the development of land on which they are situated and of surplus municipal land in a manner which:

- a. encourages practical residential development in the reuse of existing structures;
- b. is compatible with the adjacent neighborhood;
- c. encourages development of economically priced housing and a variety of types of housing; and
- d. fosters flexibility and creativity in the disposition of surplus municipal property.

### 9.8.2 MODIFIED RD PROCEDURE

The conversion of a municipal building or the development of surplus municipal land shall follow the same procedures for the rezoning of land for the RD, Planned Residential Development, district with the following exceptions:

- a. the minimum size of the RD, Planned Residential Development, district and Minimum Area of the Tract to be Developed specified in line 9.2.1 and in Table 2 may be less than 125,000 square feet; and
- b. the Minimum Frontage of the Tract on An Existing Street specified in line 9.2.3 and in Table 2 may be less than 100 feet.

### 9.8.3 SPGA

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

## **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 3.6.3.

### **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-

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 that abuts a residential use, 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 in a non-residential district and 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												
		RO	RS	RT	RD	RM	CN	CRS	CS	CB	CLO	CRO	CM	Street Line
DISTRICT IN WHICH LOT IS LOCATED														
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)												

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 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 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.

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.

#### 10.9.2 SCREENING OF MECHANICAL EQUIPMENT

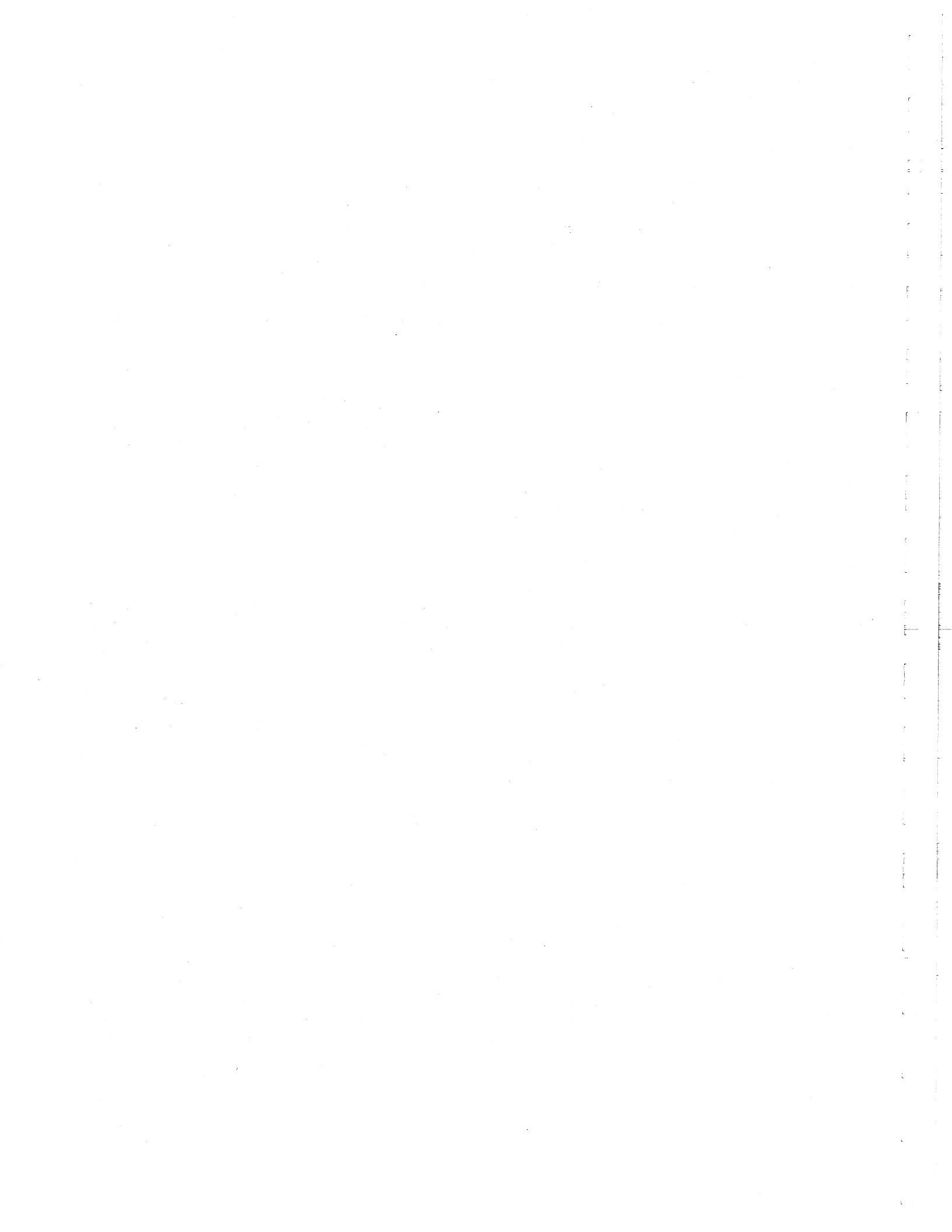
In all districts, on non-residential properties, all air conditioning equipment, transformers, elevator equipment or similar mechanical equipment on any roof or building or on the ground shall be screened from public view. The SPGA or its designee may require additional screening in such manner and of 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 (See Section 14, Outdoor 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.

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)
<b>1) Residential Uses</b>	
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, independent living residence	.75/bedroom
f. Assisted living residence, group care facility, long-term care facility	.4 per living unit
g. Rooming house, group quarters	0.5 per bed
<b>2) Institutional, Educational &amp; Recreational Uses</b>	
a. Elementary, secondary schools	2/classroom
b. College, technical school	As needed
c. Day care center, school age child care program, nursery school, kindergarten	1/500 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	1/600 s.f.
g. Parks, athletic fields, tennis and pool facilities, golf courses, recreation centers, other institutional uses	As needed
<b>3) Agricultural Uses</b>	
a. Greenhouses, nursery, roadside stand	1 per 1,000 s.f. of display area whether indoors or outdoors
<b>4) Office Uses</b>	
a. Office uses (except as otherwise classified)	1/250 s.f.
b. Medical office, out-patient clinic	1 per 200 s.f., in CB 1/250 s.f.
<b>5) Retail Business</b>	
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
b. Private postal services	1/200 s.f. or 1/50 mail boxes, whichever is great
<b>6) Other Commercial Uses</b>	
a. Funeral parlor	1 per 4 seats in the largest assembly area
b. Motor vehicle related sales and service uses	2 per bay, work station or pump island

7) Eating Establishments	
a. Restaurant, fast food, and other eating establishments not otherwise classified	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
b. Take-out food service	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	1 per guest room
b. Commercial amusements	1 per 4 seats in the largest assembly area
9) Transient Accommodations	
a. Hotel, motel	1 per guest room
b. Convention center	1 per 4 seats in the largest assembly area
10) Manufacturing, Research Uses	
a. Manufacturing, research laboratory	1 per 500 s.f.
11) Construction, Storage, Distribution and Industrial Service Uses	1 per 1,000 s.f.
12) All Other Permitted Use	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. The method of calculating the number of required parking spaces and loading bays set forth in the previous sentence shall not apply to a municipal elementary or secondary school. 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.

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.

TYPE OF USE	LOADING FACTOR 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:

Total Number of Spaces	Spaces for Handicapped
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
1,001 - 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.

#### 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; DRIVEWAYS11.6.1 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 and driveway 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 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:				
District	Residential district line	Street line	All other lot lines	Wall of a principal building
RS, RO, RT	N.R.	25	5	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.

#### 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.

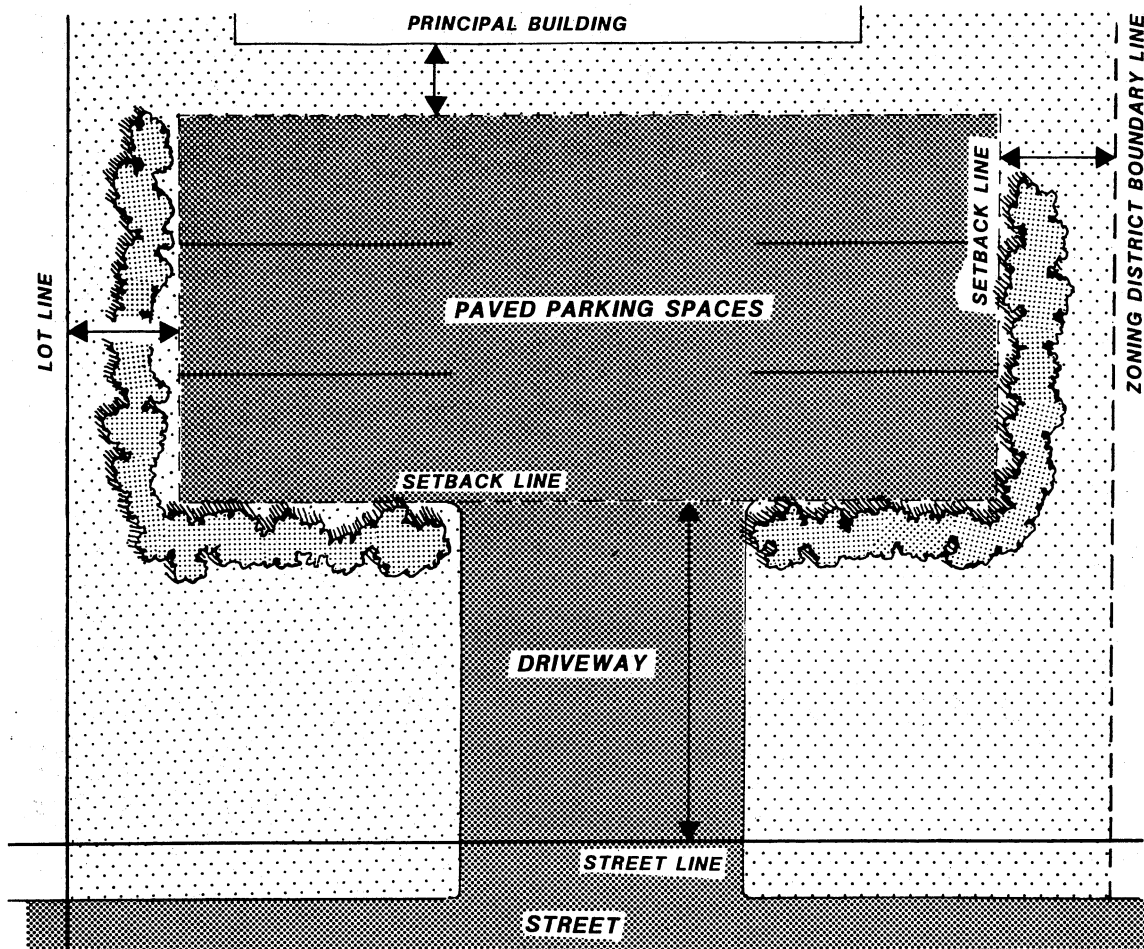
### 11.7 DESIGN STANDARDS

#### 11.7.1 EXCEPTION FOR ONE-FAMILY, TWO-FAMILY DWELLING

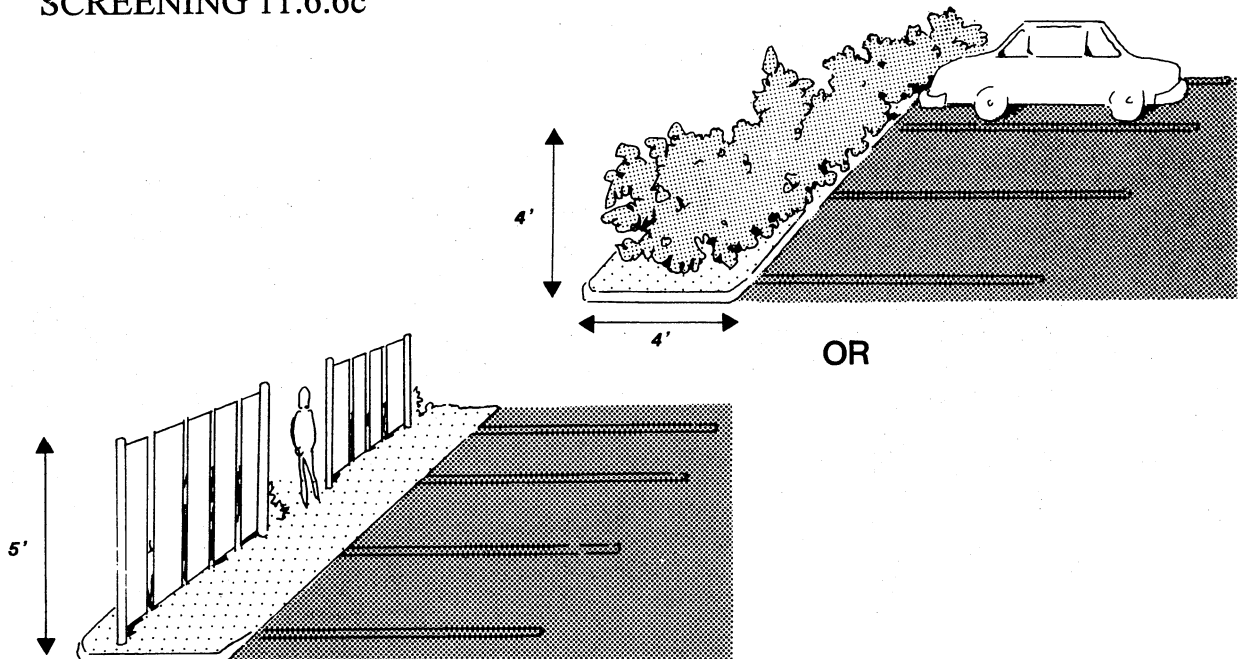
The provisions of paragraph 11.7.2e (backing into a public street), 11.7.5 (marking of pavement), 11.7.6c (moving of vehicles) and 11.7.7 (surfacing, drainage) shall not apply where parking is provided for any one-family or two-family dwelling.



### DISTANCES 11.6

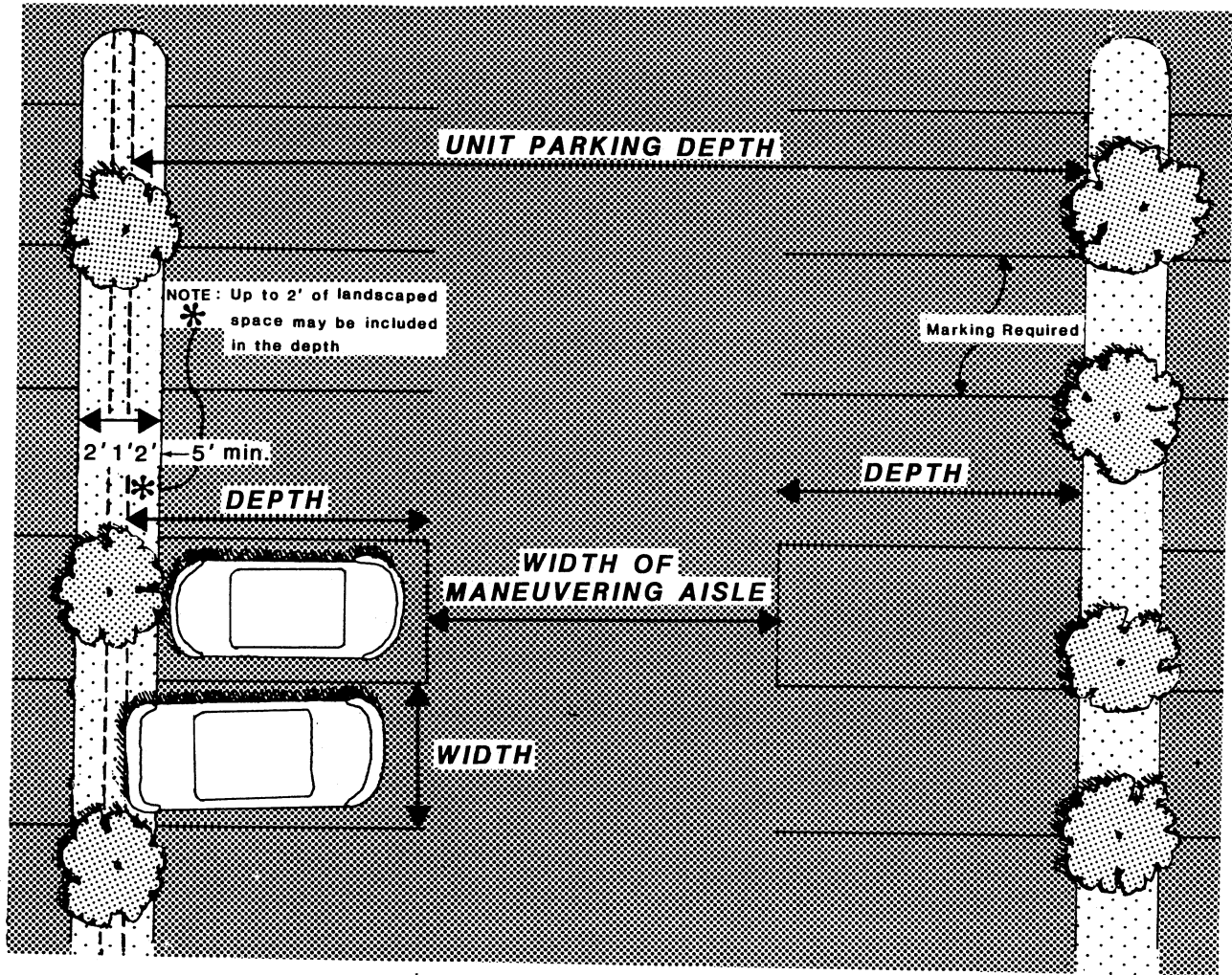


### SCREENING 11.6.6c

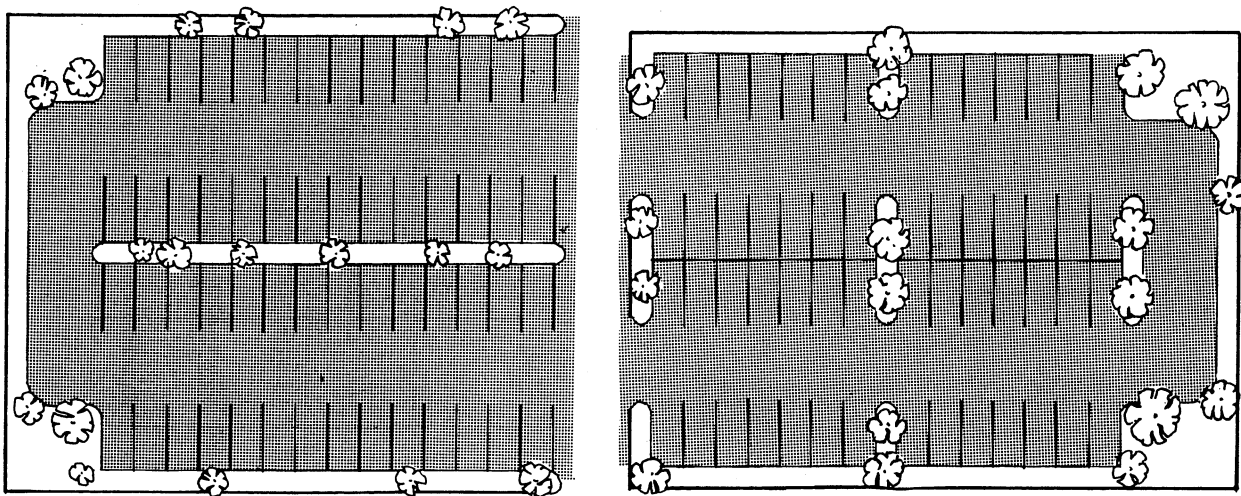


These drawings are for illustrative purposes only. They are not legally adopted parts of the Zoning By-Law as voted by the Town Meeting.

### 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.

## 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			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.

- c. 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.
- d. 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.
- e. 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".
- f. Where access or egress is provided for a parking lot (5 or more spaces), or 1 or more loading bays, 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.

## 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 percent. The maximum grade of any outdoor driveway shall be twelve per cent.

#### 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 subsection 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 subdivision for which a special permit with site plan review (SPS) or a special permit, as provided in subsection 7.4.5, Frontage Reduction, Lots in a Small Subdivision is required and the Planning Board is the SPGA, the Planning Board may grant the special permit for the driveway location.
- 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 11.8d. 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 or renovation of an existing building with the result that:

- 1) there 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,
- 3) the number of parking spaces is increased by 25 or more and there are 50 or more parking spaces, including any existing parking spaces, on the lot,

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).

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, Fifth 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 traveled 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
  - 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 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.

### **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.

#### **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 11:00 p.m. 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. 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 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.
- 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

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

#### 13.4.3 PROJECTING SIGNS

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 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.

## **SECTION 14. OUTDOOR LIGHTING**

### **14.1 OBJECTIVES**

The regulation of outdoor lighting is intended to:

- a. enhance public safety and welfare by providing for adequate and appropriate outdoor lighting,
- b. provide for lighting that will complement the character of the town,
- c. reduce glare,
- d. minimize light trespass, and
- e. reduce the cost and waste of unnecessary energy consumption.

### **14.2 APPLICABILITY, TERMINOLOGY**

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

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

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

#### **14.2.2 TERMINOLOGY**

In addition to the terms defined in Section 2, Definitions, of this By-Law, the following words, which are technical terms applying to lighting, which are set forth below, shall have the meaning indicated below. Although set forth here for convenience, the terms shall have the same effect as if set forth in Section 2, Definitions.

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

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

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

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

**FULLY-SHIELDED LUMINAIRE:** A lamp and fixture assembly designed with a cutoff angle of 90°, so that no direct light is emitted above a horizontal plane.

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

**HEIGHT OF LUMINAIRE:** The vertical distance from the finished grade of the ground directly below to the lowest direct light emitting part of the luminaire.

**INDIRECT LIGHT:** Direct light that has been reflected off other surfaces not part of the luminaire.

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

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

**LUMEN:** A measure of light energy generated by a light source. One foot candle is one lumen per square foot. For purposes of this By-Law, the lumen output shall be the initial lumen output of a lamp, as rated by the manufacturer.

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

### 14.3 LIGHTING PLAN

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

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

### 14.4 CONTROL OF GLARE AND LIGHT TRESPASS

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

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

14.4.3 Paragraph 14.4.1, above, shall not apply to any luminaire intended solely to illuminate any freestanding sign or the walls of any building but such luminaire shall be shielded so that its direct light is confined to the surface of such sign or building.

### 14.5 LAMPS

14.5.1 Lamp types shall be selected for optimum color rendering as measured by their color rendering index (CRI), as listed by the lamp manufacturer. Lamps with a color rendering index lower than 50 are not permitted. This paragraph shall not apply to temporary decorative lighting which may include colored lamps, such as holiday lighting.

### 14.6 HOURS OF OPERATION

14.6.1 Outdoor lighting shall not be illuminated between 11:00 p.m. and 6:00 a.m. with the following exceptions:

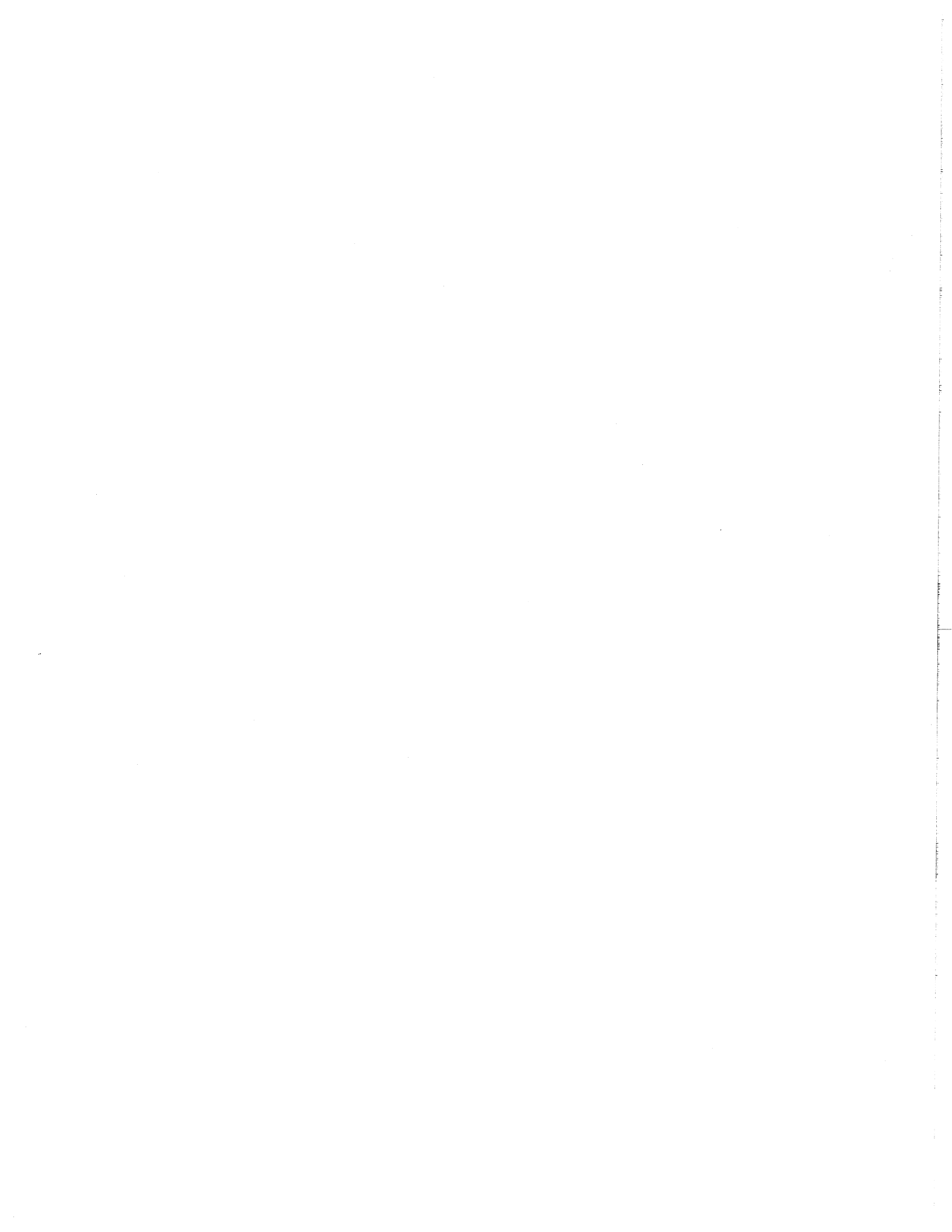
- a. if the use is being operated, such as a business open to customers, or where employees are working or where an institution or place of public assembly is conducting an activity, normal illumination shall be allowed during the activity and for not more than one half hour after the activity ceases;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



14.7 SPECIAL PERMITS

In accordance with Section 3, the Board of Appeals, acting as the special permit granting authority, may grant a special permit modifying the requirements of this Section, provided it determines that such modification is consistent with the objectives set forth in paragraph 14.1, in the following cases:

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



## **SECTION 15. WIRELESS COMMUNICATION FACILITIES**

### **15.1 OBJECTIVES**

This Section permits the use of wireless communication facilities within the town, regulates their impacts and accommodates their location and use in a manner intended to:

- a. protect the scenic, historic, environmental and natural or man-made resources of the town,
- b. protect property values,
- c. minimize any adverse impacts on the residents of the town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community,
- d. provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of wireless communications facilities,
- e. provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities,
- f. encourage the use of certain existing structures and towers,
- g. minimize the total number and height of towers located within the community,
- h. require tower sharing and clustering of wireless communication facilities where they reinforce the other Objectives in this Section, and
- i. be in compliance with the federal Telecommunications Act of 1996.

### **15.2 APPLICABILITY, TERMINOLOGY**

#### **15.2.1 APPLICABILITY**

The requirements of this section shall apply to all wireless communications facilities, except where Federal or State Law or Regulations exempt certain users or uses from all or portions of the provisions of this Section.

No wireless communication facility shall be considered exempt from this Section by sharing a tower or other structure with such exempt uses.

#### **15.2.2 TERMINOLOGY**

In addition to the terms defined in Section 2, Definitions, of this By-Law, the following words, which are technical terms applying to wireless communication facilities, shall have the meaning indicated below. Although set forth here for convenience, the terms shall have the same effect as if set forth in Section 2, Definitions.

**ACT:** The Federal Telecommunications Act of 1996.

**ADEQUATE COVERAGE:** The geographic area in which the carrier provides a level of service expected by the Federal Communications Commission under its license or authority.

**ANTENNA:** A device by which electromagnetic waves are sent or received (whether a dish, rod, mast, pole, set of wires, plate, panel, line, cable or other arrangement serving such purpose).

**AVAILABLE SPACE:** The space on a tower or other structure to which antennas of a wireless communication service provider are able to fit structurally and be able to provide adequate coverage.

**CAMOUFLAGED:** A wireless service facility that is placed within an existing or proposed structure disguised, painted, colored, or hidden by a compatible part of an existing or proposed structure, or made to resemble an architectural feature of the building or structure on which it is placed.

**CARRIER:** A company, authorized by the FCC, that provides wireless communications services.

**CHANNEL:** One of the assigned bands of radio frequencies as defined in the ACT, licensed to the Service Provider for wireless service use.

**CO-LOCATION:** The use of a single mount by more than one carrier and/or several mounts on a building or structure by more than one carrier. Each service on a co-location is a separate wireless service facility.

**COMMUNICATION EQUIPMENT SHELTER:** A structure designed principally to enclose equipment used in connection with wireless communication transmission, and/or reception.

**CONCEALED:** A wireless service facility within a building or other structure, which is not visible from outside the structure.

**DBM:** A unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one (1) milliwatt.

**FACILITY SITE:** A lot or parcel, or any part thereof, which is owned or leased by one or more personal communication wireless service providers and upon which one or more wireless communication facility(s) and required landscaping are located.

**MODIFICATION OF AN EXISTING FACILITY:** Any material change or proposed change to a facility including but not limited to power input or output, number of antennas, change in antenna type or model, repositioning of antenna(s), or change in number of channels per antenna above the maximum number approved under an existing permit or special permit.

**MONITORING:** The measurement, by the use of instruments away from the antenna, of the electromagnetic radiation from a site as a whole, or from individual wireless communication facilities, towers, antennas, repeaters or associated power supplies and generators.

**MONOPOLE:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal, or a wooden pole with below grade foundations.

**RADIO-FREQUENCY RADIATION (RFR):** The electromagnetic emissions from wireless service facilities.

**REPEATER:** A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage from the primary sending and receiving site in a wireless communications network.

**TOWER:** A structure or framework, or monopole, that is designed to support wireless communication transmitting, receiving and/or relaying antennas and/or equipment

**WIRELESS COMMUNICATION SERVICES:** Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the ACT.

**WIRELESS COMMUNICATION FACILITY:** All equipment buildings, and structures with which a wireless communication service carrier broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof.

**WIRELESS COMMUNICATION SERVICE PROVIDER:** An entity licensed by the Federal Communication Commission (FCC) to provide wireless communication services to individuals, businesses or institutions.

### 15.3 LOCATION OF FACILITIES

#### 15.3.1 CRITERIA, PRIORITY FOR LOCATION OF FACILITIES

Wireless communication facilities shall be located according to the following priorities:

1. within an existing structure concealed,

2. within an existing structure and camouflaged,
3. camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design,
4. co-located with existing wireless communication service facilities,
5. on Town of Lexington owned land which complies with other requirements of this section and where visual impact can be minimized and mitigated,
6. if adequately demonstrated to the SPGA in the special permit process that each of the five types of locations is not feasible, erection of a new facility which complies with the other requirements of this section and where visual impact can be minimized and mitigated.

Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether sites are available and, if applicable, under what conditions.

#### 15.3.2 LOCATIONS WHERE FACILITIES ARE PERMITTED BY RIGHT

A concealed wireless communication facility may be installed in a structure on a lot in a commercial district provided all the requirements for wireless communications facility building permit are met.

#### 15.3.3 LOCATIONS WHERE FACILITIES ARE PERMITTED BY SPECIAL PERMIT

A wireless communication facility may be installed in the locations indicated in subparagraphs 15.3.3.1 through 15.3.3.5 provided all prescribed conditions are met and the SPGA grants a special permit.

##### 15.3.3.1 MULTI-FAMILY DWELLING

A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which a multi-family dwelling or group care facility (or other residential use listed in line 1.186 of Table 1, Permitted Uses and Development Standards), is the principal use provided all residents of such multi-family dwelling or group care facility (or other residential use listed in line 1.186 of Table 1, Permitted Uses and Development Standards) receive 30 days notice before the application for a special permit is submitted.

##### 15.3.3.2 INSTITUTIONAL, AGRICULTURAL, NATURAL RESOURCE or COMMERCIAL USES IN RESIDENTIAL DISTRICTS

A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which an Institutional, Agricultural, Natural Resource or Commercial Uses in A Residential District (as provided in subsections 2, 3, and 4 respectively of Table 1, Permitted Uses and Development Standards) is the principal use.

A wireless communication facility may be installed if it is co-located with an existing electrical power transmission line tower, an existing nonconforming transmitting or receiving tower, or a water tower, provided that the wireless communication facility is camouflaged and does not exceed the height of the tower as of January 1, 1998.

For the purposes of this section, an electrical power transmission tower, an existing transmitting or receiving tower or antenna for commercial activities other than a wireless communications facility (as provided in line 14.13 of Table 1, Permitted Uses and Development Standards) shall be considered to be a commercial use in a residential district.

##### 15.3.3.3 MUNICIPALLY OWNED LAND IN RESIDENTIAL DISTRICTS

A wireless communication facility may be installed in residential districts:

- a. on municipally owned land if it is camouflaged and does not exceed the height controls under Section 7.5.2.
- b. on a municipally owned water tower if it is camouflaged and does not exceed the height of the water tower by more than 5 feet.

#### 15.3.3.4 ~~MUNICIPALLY OWNED LAND IN COMMERCIAL DISTRICTS~~

~~A wireless communication facility may be installed in commercial districts:~~

- ~~a. on municipally owned land if it does not exceed the height controls under Section 7.5.2.~~
- ~~b. on municipally owned land in the CM District if it does not exceed the height controls under Section 7.5.2, by more than 25 feet.~~

#### 15.3.3.5 USES IN COMMERCIAL DISTRICTS

A wireless communication facility may be installed on a lot in a commercial district provided the wireless communication facility is camouflaged and does not exceed the height controls under section 7.5.2.

#### 15.3.4 LOCATIONS WITH NON CONFORMING SITUATIONS

The SPGA may grant a special permit to:

- a. modify a pre-existing nonconforming wireless communication facility, subject to the provisions of Section 6 of this By-Law; or
- b. allow an existing wireless communication facility to be reconstructed with a replacement wireless communication facility if it decreases the degree of nonconformity.

### 15.4 DIMENSIONAL, SCREENING AND OTHER SITE DEVELOPMENT REQUIREMENTS

#### 15.4.1 SHELTERS AND ACCESSORY BUILDINGS

Any communication equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.

#### 15.4.2 SETBACKS

Any new tower shall be set back at least one (1) times the height of the tower plus ten feet from each lot line of the site on which the tower is located. Any non-concealed antenna shall be set back at least one (1) time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. In nonresidential districts or on Town of Lexington owned land, the SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.

#### 15.4.3 SECURITY, SIGNS

The area around the wireless communication facility shall be completely secure from trespass or vandalism. A sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a 24-hour emergency telephone number. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.

#### 15.4.4 LIGHTING

Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communication facility is permitted except for manually operated emergency lights for use when operating personnel are on site.

#### 15.4.5 NEW TOWERS

Any new freestanding tower shall be of a monopole construction. New towers shall not exceed the minimum height necessary to provide adequate coverage within the Town of Lexington. Erection of a new tower that exceeds the height restrictions listed in Section 15.3 is not permitted unless the applicant demonstrates in the special permit process that adequate coverage within the town of Lexington can not be met for the locations permitted under Section 15.3.

## 15.5 JUSTIFICATION OF NEED

### 15.5.1 COVERAGE AREA

The applicant shall provide a map of the geographic area in which the proposed facility will provide adequate coverage.

### 15.5.2 ADEQUACY OF OTHER FACILITY SITES CONTROLLED BY THE APPLICANT

The applicant shall provide written documentation of any facility sites in the town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.

### 15.5.3 CAPACITY OF EXISTING FACILITY SITES

The applicant shall provide written documentation that it has examined all facility sites located in the town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.

### 15.5.4 ADEQUATE COVERAGE THROUGH THE LEAST DISRUPTIVE MEANS

The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this Bylaw) in which it can provide adequate coverage in conjunction with all facility sites listed above.

## 15.6 APPLICATION, PERMITS AND SPECIAL PERMITS

### 15.6.1 APPLICANT

The applicant or co-applicant for any permit for a wireless communications facility must be a licensed carrier who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit.

### 15.6.2 REVIEW BY THE DESIGN ADVISORY COMMITTEE

The Town of Lexington's Design Advisory Committee shall review an applicant's site plans and make recommendations to the Director of Inspectional Services for By Right Permit applications and to the SPGA for Special Permits. The Design Advisory Committee will make comment on whether the site plans show that a proposed wireless communications facility will be concealed for a By Right Permit if built according to the plans, or whether the site plans show that a proposed wireless communications facility will be concealed, or sufficiently camouflaged for a Special Permit if built according to the plans.

### 15.6.3 REVIEW BY THE CABLE TELEVISION AND COMMUNICATIONS ADVISORY COMMITTEE

The board of Selectmen's Cable Television and Communications Advisory Committee shall review an applicant's application and make recommendations to the Director of Inspectional Services for By Right Permit applications and to the SPGA for Special Permits. The Cable Television and Communications Advisory Committee will make comment as to the application's adherence to the provisions of Section 15. The Committee may recommend that a consultant be hired by the SPGA (at the applicant's expense) if technical expertise is needed.

### 15.6.4 PERMITS

Each application for a Permit must contain site plans with sufficient detail that would enable the Town to determine whether the proposed facility meets the requirements of Section 15.

### 15.6.5 SPECIAL PERMIT GRANTING AUTHORITY (SPGA)

The Board of Appeals shall be the SPGA for permits under this Section.

### 15.6.6 WIRELESS COMMUNICATIONS FACILITY REGULATIONS

The SPGA shall maintain a set of regulations that contains the necessary policies, procedures, and standards to implement the provisions of this section.

### 15.6.7 APPROVAL CRITERIA

A special permit shall be granted under this section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this By-Law and the SPGA's Regulations. In addition, the SPGA shall make all the applicable findings before granting the special permit, as follows:

- a. that the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit,
- b. that the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage,
- c. that the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views, residential property values, natural or man-made resources,
- d. that the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities,
- e. that the facility shall comply with the appropriate FCC Regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant, and
- f. that the applicant has agreed to rent or lease available space on any tower it controls within Lexington or its contiguous towns, under the terms of a fair-market lease, without discrimination to other wireless service providers.

If a special permit is granted, in addition to such terms and conditions as may be authorized by subsection 3.3.3 of this By-Law, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

### 15.6.8 TERM OF PERMIT

Each Special Permit shall be valid for a fixed or conditional period of time as determined by the Special Permit Granting Authority. A special permit for any wireless communication service facility that exceeds height provisions of Section 7.5.2 shall be valid for a maximum of fifteen years. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.

All permitted and special permitted wireless communications facility carriers shall periodically file with the Town, every five years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

### 15.7 REMOVAL REQUIREMENTS

Any wireless service facility that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial guarantee acceptable to the SPGA, to cover the cost of removal of the facility and the remediation of the landscape, should the facility cease to operate.



**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%
Public & Institutional Buildings Maximum Height: In stories: In feet:	2.5 40	2.5 40	2.5 40	3 45	3 45	3 45	2 30	3 45	3 45	3 45
Other Buildings, Maximum Height: In stories: In feet:	2.5 40	2.5 40	NR 40	1 15	2 25	2 25	2 25	2 30	3 45	3 45

**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.

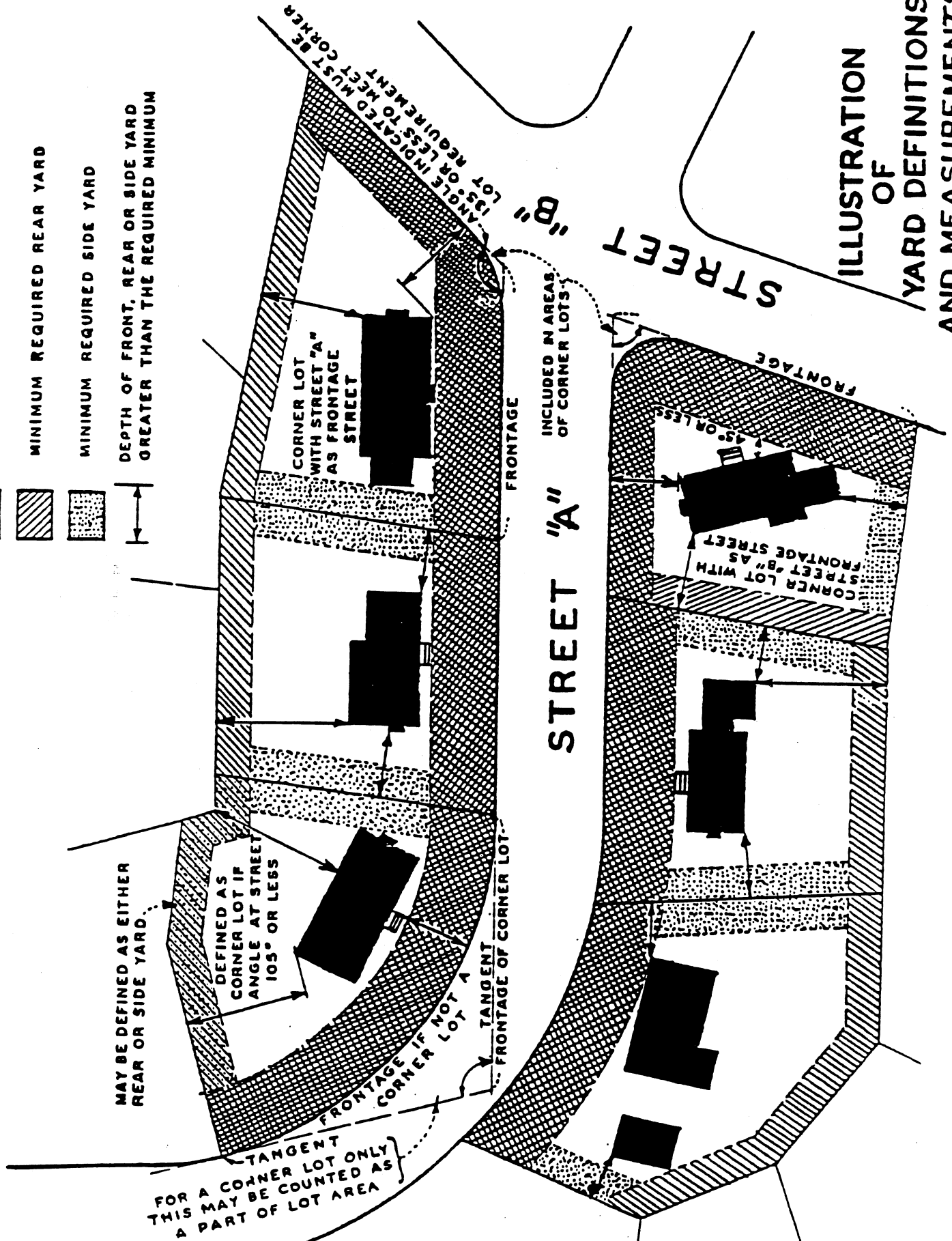
- a. Development of new multi-family dwellings is not permitted in the RM district; these standards apply to RM districts in existence in January, 1985. Minimum Lot areas in RM districts shall be 3,000 sq. ft. per dwelling unit containing one room used for sleeping; 3,500 sq. ft. per unit with two such 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 residential development with 3 or more dwelling units must comply with subsection 9.2.4, 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 9.4.4.

# EXPLANATION OF SYMBOLS:

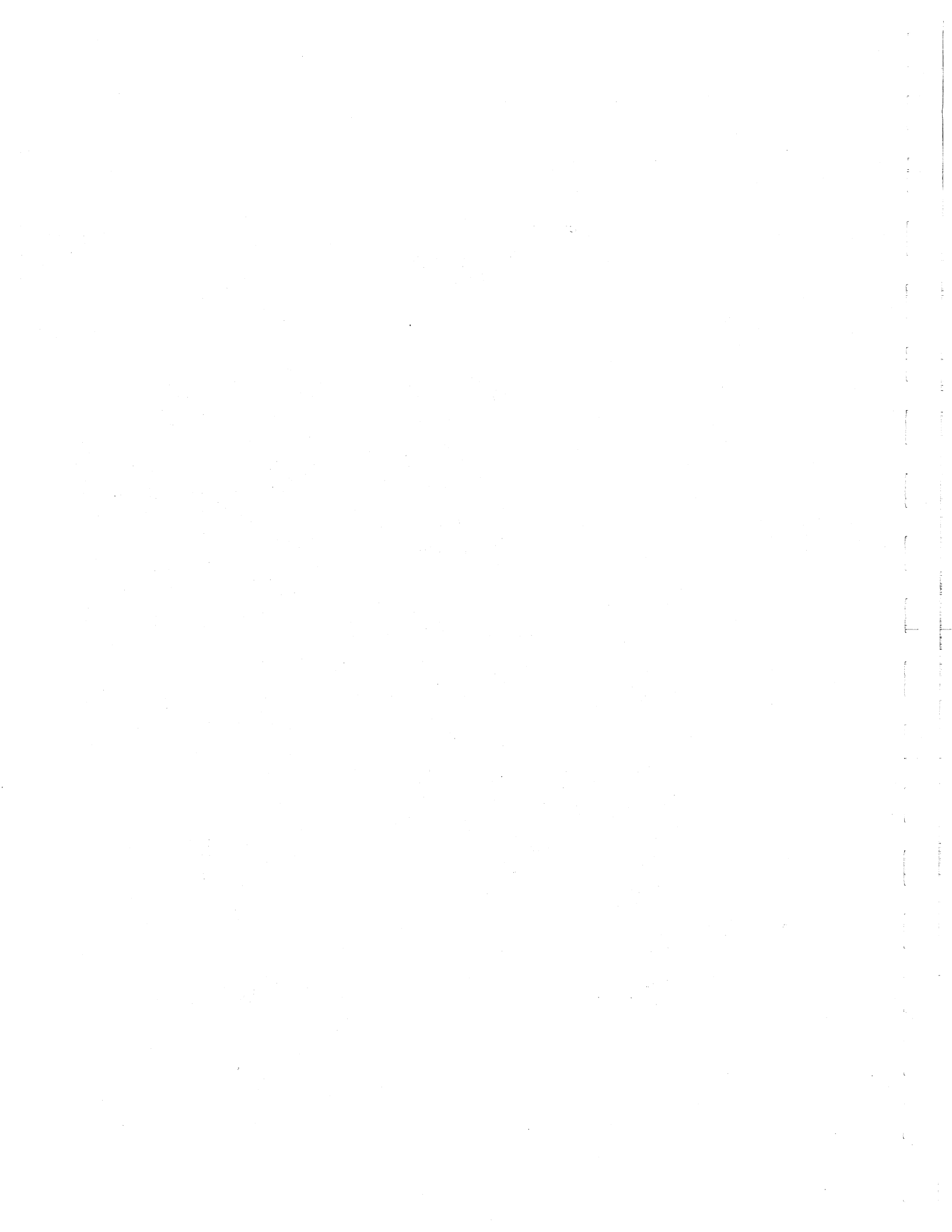
-  MINIMUM REQUIRED FRONT YARD
-  MINIMUM REQUIRED REAR YARD
-  MINIMUM REQUIRED SIDE YARD
-  DEPTH OF FRONT, REAR OR SIDE YARD GREATER THAN THE REQUIRED MINIMUM



# ILLUSTRATION OF YARD DEFINITIONS AND MEASUREMENTS

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 advertising 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 32 and 32 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.

