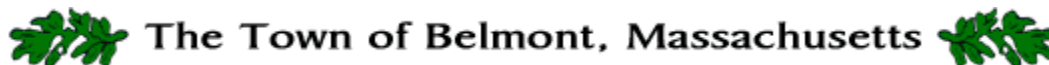


SECTION 1. GENERAL



SECTION 1. GENERAL

1.1 Title and Authority

This By-Law shall be known and may be cited as the “Zoning By-Law of the Town of Belmont, Massachusetts” and is adopted in accordance with and pursuant to the provisions of Massachusetts General Law, Chapter 40A, as amended by Chapter 808 of the Acts of 1975 as amended.

1.2 Purposes

The purposes of this By-Law 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 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 Town, including consideration of the recommendations of the comprehensive 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 these purposes under the provisions of Massachusetts General Law, Chapter 40A.

Regulations adopted pursuant to these purposes may include, but are not limited to, restricting, prohibiting, permitting or regulating the use, alteration, height, area and location of buildings and structures and the use of premises in the Town of Belmont.

1.3 Basic Requirements

Any building or structure hereinafter erected, reconstructed, altered, enlarged, or moved or any use of premises hereinafter established, altered or expanded in the Town of Belmont shall be in conformity with the provisions of this By-Law, with the following exceptions:

- certain nonconforming buildings, as provided in Section 1.5;
- certain aspects of agricultural, educational, and religious uses, as provided at Section 3 of Chapter 40A, Massachusetts General Law.

Any use not specifically or generically enumerated in a district herein shall be deemed prohibited.

1.4 Definitions and Abbreviations

In this By-Law, the following terms shall have the following meanings, unless a contrary meaning is

required by the context or is specifically prescribed.

Accessory Building - A building devoted exclusively to an accessory use as herein defined, and not attached to a principal building by any roofed structure.

Accessory Use - An activity incidental to and located on the same premises as a principal use conducted by the same person or his agent. No use (other than parking) shall be considered "accessory" unless functionally dependent on and occupying less land area than the principal use to which it is related and occupying less than one-half as much habitable floor area as that principal use.

Apartment House - A dwelling containing no fewer than five dwelling units.

Arterial Street - Any State-numbered highway, any other street segment with right-of-way width of 60 feet or more, and the following named streets:

Belmont Street	Leonard Street
Blanchard Road	Lexington Street
Bright Road	Mill Street
Brighton Street (e. of Pleasant)	Trapelo Road
Cross Street	Winter Street
Lake Street	

Base Flood - The flood having a 1% chance of being equaled or exceeded in any given year. The Base Flood is sometimes referred to as the 100-year flood.

Basement - A portion of a building partially underground, but having less than one-half of its clear height below grade (see cellar).

Block - An area of land of one or more lots, bounded by streets or ways, but with no streets or ways within the area.

Building - A roofed structure enclosing useful space.

Cellar - A portion of a building partially underground, having one-half or more than one-half of its clear height below grade (see basement).

Child Care, Large Family - A 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 children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Office of Child Care Services; provided however, that the number of children under the age of sixteen in a large family child care home shall not exceed ten, including participating children living in the residence. A large family child care home shall have at least one additional approved care giver present when the total number of children participating in such child care exceeds six. Large family child care 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.

Note: §1.4 was amended by Article 5 at the 1999 Second Special Town Meeting.

CMR - Code of Massachusetts Regulations.

Commercial Vehicle - A vehicle that has ladders, tools, stock or supplies, lettering or advertising

that covers an area greater than 18 by 24 inches on either side visible from the outside, or any vehicle with a GVW of 10,000 lbs. or more. Use of a tarpaulin or like cover shall not exempt a vehicle from this definition.

Note: §1.4 was amended by Article 26 at the 2001 Annual Town Meeting.

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 preschool, or known under any other name, which receives children not of common parentage under seven years of age, or under 16 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. Day care center shall not include: any part of a public school system; any part of a private, organized educational system unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday School conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefore provided, in the last two instances, such arrangement or care shall not be for more than five children including participating children living in the residence.

DEP - Massachusetts Department of Environmental Protection (formerly the Department of Environmental Quality Engineering or DEQE).

Note: §1.4 was amended by Article 26 at the 1995 Annual Town Meeting.

Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Dwelling - A building containing one or more dwelling units separated by side yards from any other structure or structures except accessory buildings.

Dwelling Unit - A building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both refrigerator and sink) not shared with any other unit; or quarters for up to five persons in a dormitory, congregate dwelling, or similar group dwelling.

EPA - U.S. Environmental Protection Agency.

de-Mounted Wireless Telecommunications Facility - A Wireless Telecommunications Facility, other than a Roof-Mounted Wireless Telecommunications Facility, mounted on, erected on or supported in whole or in part by an existing building or structure, occupied or used primarily for purposes other than wireless telecommunication.

Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.

Family - One or more persons, including domestic employees, occupying a dwelling unit and living as a single nonprofit housekeeping unit; provided that if five or more persons of the group occupying said dwelling are not kindred to each other, as defined by civil law, they shall not be deemed to constitute a family.

Family Day Care Home - Any private resident 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 children under 16 years of age if such children have special needs; provided however, in either case, that the total number of children under 16 in a family day care home shall not exceed six,

including participating children living in the residence. 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.

FEMA - Federal Emergency Management Agency.

FIRM - Flood Insurance Rate Map.

Floodplain - The area of land susceptible to flooding or inundation from a particular body of water, including a pond, a river or a stream during a Base Flood.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation of more than one foot at any point.

Floor Area, Gross - The sum of the horizontal areas of the several floors of all buildings on the same lot, measured from the exterior face of exterior walls, including basements and any interior parking and loading areas, but not including cellars or areas having less than six feet floor-to-ceiling height.

Floor Area Ratio - The ratio of gross floor area to lot area of the premises. In determining gross floor area for these purposes only, any building area having floor-to-ceiling height in excess of 15 feet shall be counted twice.

Free-Standing Wireless Telecommunications Facility - A Wireless Telecommunications Facility mounted on, erected on or supported by any free-standing monopole, lattice tower, or similar free-standing structure.

§1.4 was amended by Article 25 at the 1998 Annual Town Meeting.

G.L. - Massachusetts General Law.

Grade - The average of the finished ground level adjoining the building at all exterior walls.

Ground Floor - The floor which is nearest to the average grade of the sidewalk or ground adjoining the building.

Habitable Floor - Any floor usable for living purposes including areas for eating, sleeping, working, cooking, recreation or any combination of these uses. A floor used only for storage purposes is not a "Habitable Floor."

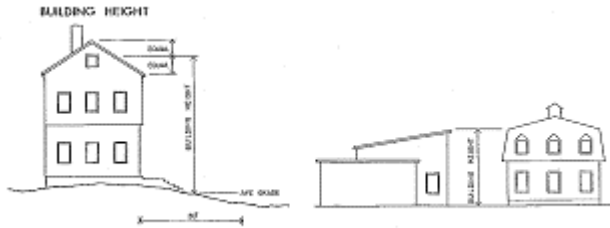
Height, Building - The vertical distance from the average finished grade within 20 feet of the structure on the street side(s) of a building to:

- the highest point of the roof or parapet for flat or shed roofs;
- the midpoint between the lowest and highest points of the roof for gable, hip and gambrel roofs (upper roof pitch 4" per foot or greater); or
- the point of change in roof slope for mansard roofs (upper roof pitch under 4" per foot),

provided that no part of a garage shall exceed 15 feet in height and no part of a tool shed, noncommercial greenhouse or similar accessory structure shall exceed 10 feet in height.

Note: §1.4 was amended by Article 31 at the 1991 Annual Town Meeting.

(diagram on next page)
 (Height, Building – continued from previous page)



Interior Wireless Telecommunications Facility - A Wireless Telecommunications Facility mounted inside, erected inside or supported entirely within an existing building or structure, occupied or used primarily for other purposes, and not visible from any public way or adjoining property.

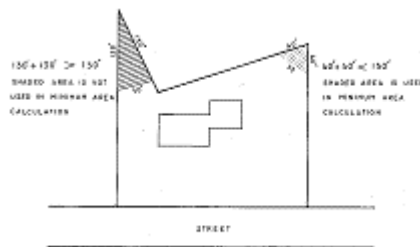
Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.

Lodging and Boarding - Rental of not more than three rooms without separate cooking facilities, as an accessory use within a dwelling, if not resulting in more than four unrelated persons being accommodated on the premises.

Lot - The whole area of a single parcel of land under one ownership. Whenever such a parcel is divided on a plan which has been placed on file at the Middlesex South District Registry of Deeds at Cambridge, the term lot as used in this By-Law shall mean a lot as shown on such plan.

Lot Area - The horizontal area of a lot exclusive of any area in a street or recorded way open to public use. At least 90% of the lot area required for compliance shall also be exclusive of areas subject to protection under the Wetlands Protection Act, Section 40, Chapter 131, Massachusetts General Law, for reasons other than being subject to flooding. If the distance between any two points on lot lines is less than 50 feet, as measured in a straight line, the smaller portion of the lot as divided by that line shall not be included in lot area unless the two points are separated by less than 150 feet measured along lot lines.

LOT AREA



Lot Coverage - Percentage of total lot area covered by structures or roofed.

Lot Frontage - The boundary of a lot on land coinciding with a street line if there are both rights of access and potential vehicular access across that boundary to a potential building site. Measured continuously along one street line between side lot lines. In the case of corner lots, measured on the street designated by the owner or, failing that, by the Building Inspector as the frontage street, between the side lot line and the midpoint of the corner radius.

Motor Vehicle Service Station - Premises devoted primarily to retail sale of fuels and lubricants and/or washing of motor vehicles, with any repair services or other sales or services of secondary importance.

NPDES - National Pollution Discharge Elimination System.

Open Space - An open area on a lot, unbuilt on, containing landscape materials, pedestrian walks, patios, recreational facilities, but excluding driveways and parking spaces.

Parking Space - An area in a building or on a lot available for parking one automobile, exclusive of passageways and driveways appurtenant thereto, and having free and unimpeded access to a street over unobstructed passageways or driveways.

Patio - A paved recreational area, not elevated above adjacent existing grade, separated by plant material or structures from all driveways and not itself to be used for parking.

Note: §1.4 was amended by Article 19 at the 2000 Annual Town Meeting.

Premises - A lot together with all structures, buildings, and uses thereon and including any water bodies and watercourses or parts thereof.

Restaurant - A facility for the sale of food and drink ready for consumption without further processing, whether or not for consumption on the premises, except where such sales are clearly incidental to other activities on the premises.

Roof-Mounted Wireless Telecommunications Facility - A Wireless Telecommunications Facility mounted on, erected on or supported in whole or in part by the roof of an existing building or structure, occupied or used primarily for purposes other than wireless telecommunication.

Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.

Satellite Antenna - A device or instrument, other than a Wireless Telecommunications Facility, for the transmittal or reception of television or other electronic communications.

Note: §1.4 was amended by Article 24 at the 1996 Annual Town Meeting.

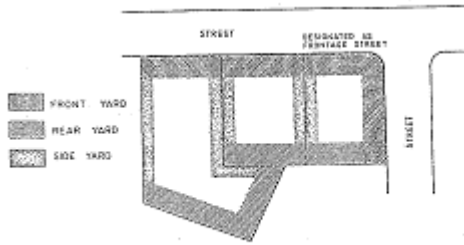
Note: §1.4 was further amended by Article 26 at the 1998 Annual Town Meeting.

School-Aged Child Care Home - Any private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, school-aged children, when such children are not required to attend school; provided, however, that the total number of children in a school-aged child care home during the portion of the year when school is in session shall not exceed eight, and during the summer months when school is not in session shall not exceed six, including in each case participating children living in the residence. School-aged child care home shall not mean a private residence used for informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. The phrase 'school-aged children' shall mean children age 7 and older, not to exceed 14 years of age; however, special needs children shall qualify if not more than 16 years of age.

Note: §1.4 was amended by Article 39 at the 1994 Annual Town Meeting.

Setback - An area open to the sky, located between a street or other property line and any structure or element thereof other than a fence, wall, other customary yard accessory, or projection of two feet or less such as belt courses, chimneys, eaves, gutters, sills, pilasters, lintels, or ornamental features. Setback is measured perpendicular to the street or property line.

SETBACK



Setback, Front - A setback taken from a street line. Typically, corner and through lots must provide two front setbacks.

Setback, Rear - A setback taken from a rear property line, that is, typically a line or set of lines approximately parallel to the street frontage, and separating lots whose frontage is established on different streets. Setbacks on irregularly shaped lots where “side” versus “rear” is indeterminate shall be construed as rear setbacks.

Setback, Side - A setback taken from a side property line, typically a line or set of lines which intersect a street line, separating lots whose frontage is established on the same street. Corner lots commonly have one side setback and one rear setback.

Sign - Any device designed to inform or attract the attention of persons not on the premises on which the device is located, including any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights. The following, however, shall not be considered signs within the context of this By-Law:

flags and insignia of any government except when displayed in connection with commercial promotion;

b) legal notices, or informational signs erected or required by government bodies;

temporary signs inside display windows, covering not more than 50% of window area, illuminated by building illumination only;

standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline;

carved or other integral devices identifying the building name or date of erection, but not identifying occupants, and not illuminated; or

f) on-premises devices not exceeding four square feet, guiding traffic and parking, but bearing no advertising matter.

Sign, Accessory - Any sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. A sign on the exterior of a structure which advertises a product or service on more than 25% of the total area of the sign, which product or service does not constitute at least 25% of the gross sales made on the premises on which the sign is erected or maintained, is not an accessory sign.

Sign, Area of -

a) The area of a sign shall be considered to include all lettering, wording, and accompanying

designs and symbols, together with the background on which they are displayed, any frame around the sign and any "cutouts" or extensions, but shall not include any background on which they are displayed, any frame around the sign and any "cutouts" or extensions, but shall not include any supporting structure or bracing.

- b) The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols.
- c) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- d) In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be counted.

Sign, Non-Accessory - Any sign not an accessory sign.

Sign, Standing - Any accessory sign that is not attached to a building.

Sign, Temporary - Any sign, including its supporting structure, intended to be maintained for a continuous period of not more than 100 days in any calendar year.

SPGA - Special Permit Granting Authority.

Story - That portion of a building, other than a cellar, included between the upper surface of a floor and upper surface of the floor or roof next above.

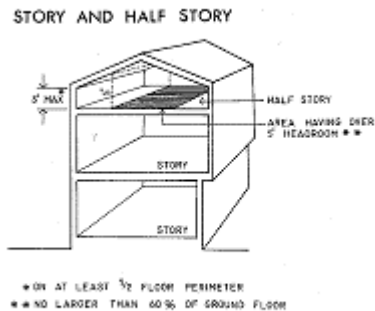
Story, Half - A space under a sloping roof where:

Note: §1.4 was amended by Article 22 at the 1998 Annual Town Meeting.

- a) the line of intersection of the rafter bottoms and the interior wall surface is not more than three feet above floor level on at least half the perimeter of the floor, and
- b) the potential space having headroom of five feet or more is not more than 60% as large as the ground floor.

(diagram on next page)

(Story, Half – continued from previous page)



Street - Either:

a public way or a way which the Town Clerk certifies is maintained and used as a public way, or

b) a way approved by the Board of Survey, or

a private way that has been and is continually used as a means of vehicular access to the lots fronting on it provided said private way is shown on a subdivision plan recorded prior to September 21, 1988.

Note: §1.4 was amended by Article 27 at the 1995 Annual Town Meeting.

Structure - Anything constructed or erected, the use of which requires fixed location on the ground, including buildings, mobile homes, signs, swimming pools, and tanks, but for purposes of this By-Law not including walls, fences, or paving.

Substantial Improvement - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either,

a) before the improvement or repairs is started, or

if the structure has been damaged, and is being restored, before the damage occurred. Substantial Improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term "Substantial Improvement" does not apply to either:

any improvements of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Swimming Pool - An artificial receptacle capable of containing a body of water, whether in or above ground, or created by artificial means from a natural watercourse, and all appurtenances, equipment, appliances and other facilities for its operation, maintenance or use, used or intended to be used by the owner or tenant thereof and his/her family and by friends invited to use it without payment of any fee, but not including portable or other pools incapable of containing a depth of water exceeding 24 inches at any point.

Watercourse - The natural channel of a stream or river through which springs, surface runoffs, and rain waters are carried during normal weather conditions.

Wetland - Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters, as defined in DEP Regulations adopted for implementation of the Wetlands Protection Act.

Wireless Telecommunications Facility - Any tower, antenna, or appurtenant structure or equipment used to provide wireless telecommunications services to individuals or institutions, but not including an amateur radio facility used in accordance with the terms of any amateur radio service license issued by the U.S. Federal Communications Commission, provided that (1) the facility is not used or licensed for any commercial purpose; and (2) the facility shall be removed upon loss or termination of such license.

Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.

1.5 Nonconformance

1.5.1 Continuation

Any lawful use of land, building or part thereof at the time of the adoption of this By-Law or any amendment thereto may be continued although such use does not conform to the provisions of the By-Law.

1.5.2 Alteration or Extension

Any structure occupied by a nonconforming use and any nonconforming sign may be structurally altered or extended provided that the Board of Appeals determines by the grant of a Special Permit that such alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

Note: §1.5.2 was amended by Article 28 at the 1995 Annual Town Meeting.

1.5.3 Discontinuance

A nonconforming use of a building or land which has been discontinued shall not thereafter be resumed. A nonconforming use shall be considered discontinued when the premises have been devoted to a conforming use, or when the premises have been vacant for a period of two years or when the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within two years.

1.5.4 Change of Use

A nonconforming use in a dimensionally conforming building may be changed to a permitted use or, if the Board of Appeals grants a Special Permit therefore, to a different nonconforming use, upon finding by the Board that the use is not more detrimental to the character of the district in which it is located.

Use of a dimensionally nonconforming building (e.g. one violating current yard requirements) may be changed to any other use permitted or allowed in the district in which the building is located, provided that the Board of Appeals determines by the grant of a Special Permit that such use is not substantially more detrimental to the neighborhood than the existing use.

1.5.5 Restoration

A building or structure which has been damaged by fire or other casualty to an extent less than 50% of the fair market value of the building or structure on the date of the damage may be restored to its original condition, regardless of any nonconformity of the structure or its use.

Building or structures damaged to a greater extent, if dimensionally nonconforming or containing a nonconforming use, may be restored to the original nonconforming configuration or use only provided such work is started within two years of the damage and completed within three years of the date of the damages, and further provided that there is no more than a 10% increase above the cubage of the original building, and no increase in nonconformance with setback requirements. Any proposed change of use is subject to section 1.5.4.

1.5.6 Alterations of Dwelling on Nonconforming Lot

As provided in the fourth paragraph of Section 6 of Chapter 40A, Massachusetts General Law, any increase in dimensional requirements (except height) shall not apply to a lot for single or two-family use if the lot was held in ownership separate from all adjoining land, and provided

that the lot complied with the former requirements, and had at least five thousand square feet lot area and fifty feet of frontage.

1.5.7 Single and Two-Family Residential Structures

Note: §1.5.7 was adopted under Article 2 at the 1994 Special Town Meeting.

In the following circumstances, alteration, reconstruction, extension or structural change (collectively "alteration") to a single or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right:

-) alteration to a structure which complies with all current setbacks, open space, lot coverage and building height requirements but is located on a lot with insufficient area; where the alteration will also comply with all of said current requirements;
- 2) alteration to a structure which complies with all current setbacks, open space, lot coverage and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements;
- 3) alteration to a structure which encroaches upon one or more required setbacks, where the alteration will comply with all current setbacks, open space, lot coverage and building height requirements (the provisions of this clause 3) shall apply regardless of whether the lot complies with current area and frontage requirements.

1.6 Variation

Where this By-Law imposes a greater restriction upon the use of buildings or premises than is imposed by existing provisions of law or other By-Laws, the provisions of this By-Law shall control. Where a provision of this By-Law may be in conflict with any other provision or provisions of this By-Law, the more stringent or greater requirements shall control.

SECTION 2. DISTRICTS



SECTION 2. DISTRICTS

2.1 Classes

The Town of Belmont is hereby divided into 13 classes of Districts:

Single Residence A	Local Business I
Single Residence B	Local Business II
Single Residence C	Local Business III
Single Residence D	General Business
General Residence	Parking Lot
Apartment House	McLean District
	Belmont Uplands District

Note: §2.1 was amended by Article 2 at the 1999 First Special Town Meeting.

Note: §2.1 was further amended by Article 5 at the 2002 Special Town Meeting.

2.2 Location

Said districts are located and bounded as shown on the Zoning Map of the Town of Belmont dated March 14, 1955, as amended which is on file with the Town Clerk. Said map with all explanatory matter thereon accompanies this By-Law and is hereby declared to be part hereof.

2.3 Boundaries

2.3.1 Street Boundaries

The boundaries between districts are, unless otherwise indicated, the centerlines of such streets, alleys, parkways or railroads through which the boundary lines run.

2.3.2 Mid-block Boundaries

Unless otherwise specified, a boundary line within a block less than 200 feet wide is a median line between the street lines of said block. Where a block is 200 feet or more in width, the boundary line between districts as indicated shall be 100 feet from the less restricted side of the block.

2.3.3 Dividing Existing Lots

Where a district boundary line divides a lot existing at the time such line is adopted, the regulation for any district in which the lot has frontage may be extended within the lot not more than 30 feet into the other district.

SECTION 3. USE REGULATIONS



SECTION 3. USE REGULATIONS

3.1 General Requirements

No building structure shall be erected, altered or used and no premises shall be used for any purpose or in any manner other than as regulated by Section 3.2 and as permitted and set forth in Section 3.3, Schedule of Use Regulations, herein and in accordance with the following notation:

Y	(Yes)	- Use Permitted
SPS	(Special Permit: Size)	- Use permitted, except requiring a Special Permit if new construction, additions or alterations result in more than 5,000 square feet gross floor area in any one or more business uses (as categorized in Section 3.3) on a lot or set of contiguous lots in the same ownership at any time subsequent to June 1, 1987, except for individual additions or alterations increasing floor area in business use on the lot or set of lots by less than 10%.
SP	(Special Permit)	- Use allowed under a Special Permit by the Board of Appeals as provided hereafter.
N	(No)	- Use Prohibited

Uses permitted and uses allowed on Special Permit shall be in conformity with all the density and dimensional regulations and any other pertinent requirements of this By-Law.

3.2 Interpretation

Where a use might be classified under more than one of the following categories, the more specific category shall determine permissibility. If equally specific, the more restrictive category shall govern. A use not classifiable under any listed category may be allowed only by Special Permit from the Board of Appeals, upon the Board's determination that the use is similar in its impacts on the neighborhood, the environs and the Town to a use which is permitted or allowed on Special Permit, and also that the test of Section 7.4.2, Special Permit Criteria, is met.

3.3 Schedule of Use Regulations

USES	DISTRICTS							
	SR- A,B,C,D	GR	AH	LB I	LB II	LB III	GB	PL
<u>AGRICULTURE</u>								
Keeping of livestock other than domestic pets	SP	SP	N	N	N	N	Y	N
Other agriculture	Y	Y	Y	Y	Y	Y	Y	Y
<u>BUSINESS</u>								
<i>Note:</i> see §3.5, Major Development, for business uses involving more than 40,000 square feet floor area								
Commercial off-street parking lots	N	N	N	N	N	N	SPS	SP
Motor vehicle repair, sales, and rental	N	N	N	N	SP	N	SP	N
Motor vehicle service station	N	N	N	N	SP	N	SP	N
Motorized equipment sales, service and rental including equipment powered by internal combustion engine over 10 hp	N	N	N	N	SPS	N	SPS	N
Restaurant	N	N	N	SP	SP	N	SP	N
Place of assembly, amusement, or athletic exercise	N	N	N	SP	SP	N	SPS	N
Other retail sales and services	N	N	N	SPS	SPS	SPS	SPS	N
Office	N	N	N	SPS	SPS	SPS	SPS	N
Manufacturing or fabrication of products of which the major portion is to be sold at retail on the premises and not more than 8 operatives are employed in the manufacturing or fabrication process	N	N	N	SPS	SPS	SPS	SPS	N
Other manufacturing and warehousing	N	N	N	N	N	N	SPS	N

3.3 Schedule of Use Regulations (continued)

USES	DISTRICTS							
	SR- A,B,C,D	GR	AH	LB I	LB II	LB III	GB	PL
<u>BUSINESS – (continued)</u>								
Wireless Telecommunications Facility (see §6.8) <i>Note: §3.3 was amended by Article 27 at the 1998 Annual Town Meeting.</i>	SP	SP	SP	SP	SP	SP	SP	SP
<u>PUBLIC AND SEMI-PUBLIC</u>								
Religious or educational use exempted from prohibition by Section 3 of Chapter 40A, G.L.	Y	Y	Y	Y	Y	Y	Y	Y
Private school conducted for profit, including nursery, dancing and music schools	SP	SP	N	Y	Y	SP	Y	N
Day care center and family day care home	SP	SP	SP	SP	SP	SP	SP	N
Child Care, Large Family <i>Note: §3.3 was amended by Article 6 at the 1999 Second Special Town Meeting.</i>	SP	SP	SP	SP	SP	SP	SP	N
Hospital or sanitarium	SP	SP	N	N	N	N	N	N
Philanthropic use	SP	SP	N	Y	Y	Y	Y	N
Private club or lodge owned by members and customarily conducted as a nonprofit activity:								
- operated for members only	SP	SP	N	Y	Y	SP	Y	N
- other	N	N	N	Y	Y	SP	Y	N
Municipal recreational use	Y	Y	Y	Y	Y	Y	Y	N
Municipal cemetery	SP	SP	N	N	N	N	Y	N
Other municipal use	SP	SP	SP	Y	Y	Y	Y	Y
School-aged child care home <i>Note: §3.3 was amended by Article 39 at the 1994 Annual Town Meeting.</i>	SP	SP	SP	SP	SP	SP	SP	N

3.3 Schedule of Use Regulations (continued)

USES	DISTRICTS							
	SR- A,B,C,D	GR	AH	LB I	LB II	LB III	GB	PL
<u>RESIDENTIAL</u>								
Detached single-family dwelling	Y	Y	N	SP	SP	SP	N	N
Two-family dwelling	N	Y	Y	SP	SP	SP	N	N
Conversion of large public buildings or public or private school buildings (see §6.3)	SP	SP	SP	SP	SP	SP	SP	N
Elderly housing (see §6.4)	SP	SP	SP	N	N	N	N	N
Cluster development (see §6.5)	SP	N	N	N	N	N	N	N
Other apartment house	N	N	SP	N	N	N	N	N
<u>ACCESSORY USES</u>								
Home occupation (see §3.4.2)	Y	Y	Y	Y	Y	Y	Y	N
Lodging and Boarding								
- for daily or weekly periods	SP	SP	SP	Y	Y	Y	Y	N
- for longer periods only	Y	Y	N	Y	Y	Y	Y	N
Sale of food or drink ready for consumption without further preparation	N	N	N	SP	SP	SP	SP	N
A noncommercial greenhouse; a tool shed used for the storage of tools, yard and household equipment or other similar accessory buildings none of which shall exceed 150 square feet of floor area or a height of 10 feet	Y	Y	Y	N	N	N	Y	N
Commercial provision for the care and recreation of dogs in completely fenced-in area for not more than one hour per day. The Board of Appeals shall consider the size and relationship of the lot to adjacent residential lots, and shall determine whether that size and relationship is adequate to <i>(continued on next page)</i>								

3.3 Schedule of Use Regulations (continued)

USES	DISTRICTS							
	SR- A,B,C,D	GR	AH	LB I	LB II	LB III	GB	PL
<u>ACCESSORY USES – (continued)</u>								
<i>(continued from previous page)</i> accommodate the use without imposing undue noise, visual, and traffic impacts on the adjacent residential lots; it shall, after (and if) making a determination of the adequacy, impose such conditions on hours of use, number of animals accommodated at a given time, fencing, screening or other measures to contain the activity and minimize its impacts <i>Note: §3.3 was amended by Article 29 at the 1995 Annual Town Meeting.</i>	SP	N	N	N	N	N	N	N
Swimming pools and tennis courts and other similar recreational facilities	Y	Y	SP	SP	SP	SP	N	N
Windmills	SP	SP	N	SP	SP	SP	SP	N
A garage for more than 3 vehicles or containing more than 660 square feet floor area	SP	SP	SP	Y	Y	Y	Y	Y
Open lot storage or parking of a boat, boat trailer, house trailer, camping trailer, motor home, commercial trailer, or commercial vehicle <i>Note: §3.3 was amended by Article 27 at the 2001 Annual Town Meeting.</i>	SP	SP	N	Y	Y	Y	Y	N
Open lot parking for not more than 3 vehicles accessory to a single-family dwelling, and not more than 2 vehicles per dwelling unit or 5 vehicles per structure for other dwellings	Y	Y	Y	Y	Y	Y	Y	Y
Open lot parking in excess of the above accessory to resident use	SP	SP	Y	Y	Y	Y	Y	Y

3.3 Schedule of Use Regulations (continued)

USES	DISTRICTS							
	SR- A,B,C,D	GR	AH	LB I	LB II	LB III	GB	PL
<u>ACCESSORY USES – (continued)</u>								
Satellite antenna with a receiving dish with a visually coherent surface of 8.5 square feet or less or a diameter of one meter (39.37") or less (see §4.3.5) <i>Note: §3.3 was amended by Article 26 at the 1996 Annual Town Meeting.</i> <i>Note: §3.3 was further amended by Article 18 at the 1999 Annual Town Meeting.</i>	Y	Y	Y	Y	Y	Y	Y	Y
Satellite antenna with a receiving dish with a visually coherent surface of 34 square feet or less or a diameter of two meters or less (see §4.3.5) <i>Note: §3.3 was amended by Article 25 at the 1996 Annual Town Meeting.</i> <i>Note: §3.3 was further amended by Article 18 at the 1999 Annual Town Meeting.</i>	SP	SP	SP	Y	Y	Y	Y	SP
Satellite antenna with a receiving dish with a visually coherent surface of more than 34 square feet or a diameter of more than two meters (see §4.3.5) <i>Note: §3.3 was amended by Article 25 at the 1996 Annual Town Meeting.</i> <i>Note: §3.3 was further amended by Article 18 at the 1999 Annual Town Meeting.</i>	SP	SP	SP	SP	SP	SP	SP	SP
Other uses customarily incidental to the principal uses herein	SP	SP	SP	Y	Y	Y	Y	Y
Interior Wireless Telecommunications Facility (see §6.8 and 7.3) <i>Note: §3.3 was amended by Article 28 at the 1998 Annual Town Meeting.</i>	Y	Y	Y	Y	Y	Y	Y	Y
Other Wireless Telecommunications Facility (see §6.8) <i>Note: §3.3 was amended by Article 28 at the 1998 Annual Town Meeting.</i>	SP	SP	SP	SP	SP	SP	SP	SP

3.4 Accessory Uses

3.4.1 Accessory Research or Scientific Development

Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be allowed upon the issuance of a Special Permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

3.4.2 Home Occupations

Home occupations are permitted within a dwelling (but not its accessory buildings), subject to the following:

- a) there is no exterior display or visible storage of supplies or equipment to be used on or off the premises or other variation from the residential character of the premises,
- b) no more than one third of the habitable floor area of the residence is to be used for home occupations,
- c) not more than one person who is not a member of the household is employed on the premises in the home occupations,
- d) the production of offensive noise, vibration, odors, fumes, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects shall be prohibited,
- e) no articles are sold or offered for sale on the premises,
- f) traffic generated, including pick up and deliveries, does not exceed that normally expected in that residential neighborhood, and
- g) all parking required to service home occupations is provided for off-street, other than within a required front yard.
- h) If a home occupation results in patrons or clients visiting the premises or if there is a sign indicating the occupation, such home occupation is allowable only upon Special Permit acted on by the Board of Appeals under the criteria in Section 7.4.2 of the Zoning By-Law.
- i) A Certificate of Occupancy is required prior to establishing a home occupation, or re-establishing one following termination, and shall be issued for a period of no greater than three years, to be extended only following determination by the Building Inspector that the use continues to comply with the Zoning By-Law.

Upon transfer of any beneficial interest in property in which alterations for a home occupation have been made, a Certificate of Compliance must be provided by the owner indicating that either there will be continued compliance with these provisions or that the home occupation is not to be continued.

Note: §3.4.2 was amended by Article 30 at the 1995 Annual Town Meeting.

3.5 Major Development

3.5.1 Applicability

Business developments as authorized in Section 3.3, Schedule of Use Regulations, require Concept Plan approval by Town Meeting under provisions of this Section prior to submittal for a Special Permit by the Board of Appeals, if resulting in more than 40,000 square feet gross floor area in any one or more business uses (as categorized in Section 3.3) on a lot or set of contiguous lots in the same ownership at any time subsequent to June 1, 1987, except for individual additions or alterations totaling less than 10% of the resultant gross floor area on the lot or set of lots.

3.5.2 Concept Plan Approval

Concept Plan approval shall be by two-thirds vote of the Town Meeting, approving the Plan and a finding that the Plan, subject to such conditions or limitations as the Town Meeting may stipulate, provides benefits to the Town which outweigh any adverse effects for the Town or the vicinity, after consideration of the criteria specified in Section 7.4.2.

Special Permits shall then be required, and shall be approved by the Board of Appeals only upon determination by that Board that the proposal is consistent with the approved Concept Plan, or in the event of an inconsistency, that the departure is necessitated by changed conditions or earlier error, and that the inconsistency does not result in less beneficial development, based on the considerations of Section 7.4.2, Special Permit Criteria.

3.5.3 Procedures

- a) Submittal. Five copies of the Concept Plan shall be filed with the Planning Board at least 60 days prior to the date of Town Meeting vote.
- b) Concept Plan Contents. A Concept Plan shall consist of the following:
 - 1) A schematic development plan, indicating boundaries of the lot, buildings, roads, drives, parking, reserved open space, existing topography and proposed grading, areas of retained vegetation and proposed planting areas, and a locus plan showing relation to nearby streets, zoning district boundaries, and water bodies.
 - 2) Floor plans and elevations of all existing and proposed structures.
 - 3) Materials indicating the proposed ultimate floor area in each use; time schedule for development; service improvements proposed at the developer's and those anticipated at the Town's expense.
 - 4) An estimate of peak hour vehicle trips onto and off of the site.
 - 5) Analysis indicating degree of consistency with each of the considerations of Section 7.4.2, Special Permit Criteria.

c) Study Model. Applicants are encouraged to provide a study model of the proposal for display prior to and at hearings and the Town Meeting.

3.5.4 Pre-Town Meeting Hearing

Prior to Town Meeting action, the Planning Board shall hold a public hearing on the Concept Plan with timing, notice and procedures the same as those required for a hearing on a Special Permit. In addition, the applicant shall be required to post conspicuous notice on the premises indicating the nature of the proposal and time and place of the hearing. The Planning Board shall report its recommendation to the Town Meeting, with a copy of the Concept Plan and the recommendation to be filed with the Town Clerk not less than 14 days prior to the Town Meeting vote on the Concept Plan.

3.5.5 Special Permit

Application for an initial Special Permit must be made not more than 12 months after the Town Meeting approval of the Concept Plan.

- **Last Updated:** Thursday, Feb 27, 2003

SECTION 4. INTENSITY REGULATIONS



SECTION 4. INTENSITY REGULATIONS

4.1 General Requirements

The erection, extension, alteration, or moving of a structure, and the creation or change in size or shape of a lot shall be permitted only in compliance with the intensity and dimensional requirements set forth herein, except as provided at Section 1.5, Nonconformance, and in Section 6, Chapter 40A, Massachusetts General Law, and except for lot line changes which create neither additional lots nor increase in nonconformity.

4.2 Schedule of Dimensional Regulations

4.2.1 Area Requirements

	MINIMUM LOT AREA	MINIMUM LOT FRONTAGE	MAXIMUM FLOOR AREA RATIO	MAXIMUM LOT COVERAGE	MINIMUM OPEN SPACE
DISTRICTS	SQ. FT.	FEET		% OF LOT	% OF LOT
SR-A	25,000	125	--	20%	50%
SR-B	12,000	90	--	25%	50%
SR-C	9,000	75	--	25%	50%
SR-D	25,000	125	--	20%	50%
GR	7,000 ²	70	--	30%	40%
AH	85,000 ²	100	--	30%	40%
LB I	--	20	1.25 ¹	--	--
LB II	--	20	1.05	35%	--
LB III	--	20	1.05	35%	--
GB	--	20	--	--	--
PL	--	--	--	--	--

1) In an LBI District, a floor area ratio up to a maximum of 1.5 may be allowed by Special Permit from the Board of Appeals (see §4.4).

2) But not less than 1,000 square feet per dwelling unit for multi-family dwellings in a GR District, 1,200 square feet per dwelling unit in an AH District.

4.2 Schedule of Dimensional Regulations (continued)

4.2.2 Linear Requirements

DISTRICTS	MINIMUM SETBACK DIMENSIONS FEET			MAXIMUM BUILDING HEIGHT	
	Front	Side	Rear	Feet	Stories
SR-A and SR-D Dwelling	30 ²	15	40 ^{3,4}	36 ⁵	2½ ⁵
Other	30 ²	15 ⁶	25 ⁶	36 ⁵	2½ ⁵
SR-B and SR-C Dwelling	25 ²	10	30 ^{3,4}	36 ⁵	2½ ⁵
Other	25 ²	10 ⁶	25 ⁶	36 ⁵	2½ ⁵
GR Dwelling	20 ²	10 ⁷	20 ³	36	2½
Other	20 ²	10 ⁷	12 ⁶	36 ⁵	2½ ⁵
AH	30	30	30	60	--
LB I ⁹	5	6 or none ⁹	6 or none ⁹	28	2 ^{10,11}
LB II ⁹	10	20 ⁹	20 ⁹	32	2 ¹⁰
LB III ⁹	10	20 ⁹	20 ⁹	28	2 ¹⁰
GB	5	6 or none ⁹	6 or none ⁹	36	--
PL	--	--	--	--	--

4.2.2 Schedule Footnotes:

1) Chimneys, towers and other projections not used for human occupation may exceed the height limitations herein provided that, except for single vertical freestanding tubular antennae; any such projection above the building exceeding 10 feet or 20% of the building height, whichever is greater, shall be allowed by Special Permit only.

2) No building need be set back more than 30% of the depth of the lot in a Single Residence A or D District, 25% of the lot depth in a Single Residence B or C District, nor 20% of the lot depth in a General Residence District, nor more than the average of the setbacks of the buildings on the lots contiguous thereto on either side, a vacant lot, a lot occupied by a building

set back more than the required minimum, or an intersecting street being counted as though occupied by a building set back at that minimum. However, in no case shall the setback be less than 10 feet in the General Residence District or 15 feet in Single Residence Districts.

3) On lots having depth of less than 100 feet, dwelling setback from the rear lot line shall equal not less than 40% of lot depth in the Single Residence A and D Districts, not less than 30% of lot depth in Single Residence B and C Districts, and not less than 20% of lot depth in General Residence Districts; but in no event shall the rear setback equal less than 25 feet in Single Residence Districts or less than 16 feet in General Residence Districts.

Note: §4.2.2 3) was amended by Article 30 at the 1994 Annual Town Meeting.

4) The Board of Appeals may grant a Special Permit reducing the rear setback requirement of corner lots and other unusually configured lots to not less than the side requirement, taking into consideration the configuration of the lot, and the effect upon the neighboring property.

5) Greater height is permitted provided the building setback from each street and lot line exceeds otherwise applicable requirements by 10 feet plus one foot for each foot of excess height, but in no case shall building height exceed 60 feet or 4 stories in height.

6) For accessory buildings, see Section 4.3.5. On lots having depth of less than 100 feet, principal building setback from the rear lot line shall equal not less than 25% of lot depth in Single Residence Districts or 15% of lot depth in General Residence Districts.

7) Side line setback may be reduced to zero for a dwelling sharing a party wall with another dwelling on the abutting lot, provided the opposite side line setback shall be at least 16 feet from the opposite lot side line.

8) Any structure used partly or wholly for dwelling purposes shall conform to the regulations for a General Residence District except for lot size.

9) Adjacent to Residential District, no less than building height or 20 feet, whichever is greater.

10) No more than two stories wholly or partially above grade.

11) In LBI Districts, a maximum building height of up to 32 feet and 3 stories may be allowed by Special Permit from the Board of Appeals, as provided in Section 4.4.

[Marker]4.3 Specific Requirements

4.3.1 Lot Width

Any lot to be used for a dwelling shall, between the street and the rear line of the dwelling, maintain a lot width measured between side lot lines no smaller than the required street frontage for the district in which the lot is located.

4.3.2 Unenclosed Porches

In Single Residence and General Residence Districts, unenclosed porches, except on multi-family dwellings, may be built five feet nearer the street line than the required setback.

4.3.3 Unenclosed Steps and Similar Projections

Subject to Section 4.3.8, the provisions of Section 4.2 shall not apply to unenclosed steps, unroofed porches, ramps for the handicapped or other similar features which are not more than

three feet high above the adjacent grade and which do not project more than four feet from the foundation wall and in no event are closer than four feet to a lot sideline and ten feet to a lot rearline.

4.3.4 Exception for Recorded Lots

As provided in Section 6 of Chapter 40A, Massachusetts General Law, any increase in the area, frontage, width, or setback requirements of this By-Law shall not apply to a lot to be used for single and two-family dwellings if at the time of its recording the lot was not held in common ownership with any adjoining land, conformed to then existing requirements, and had less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage.

Applicants seeking this exemption shall document to the Building Inspector the lot's eligibility for it, through copies of recorded deeds for that and adjoining properties as of the date of adoption of the requirements not being complied with.

In addition, in the General Residence District, the separate use of contiguous nonconforming lots for erection of single-family or two-family dwellings is permitted provided that each such lot was conforming at the time any instrument on which it was shown was first recorded in the Registry of Deeds, contains at least 5,000 square feet lot area and has 50 feet of frontage and is consistent in size and shape with the prevailing pattern in vicinity.

4.3.5 Location of Accessory Buildings

A private one-story garage for not more than three automobiles, a noncommercial greenhouse, or a tool shed used for the storage of tools, yard and household equipment, or other similar accessory buildings, none of which shall exceed 150 square feet of floor area (660 square feet for a garage) or a height of 10 feet (15 feet for a garage) may be built to within five feet of the side line and rear line of the lot and to within five feet of the principal building to which it is accessory.

A garage accessory to a dwelling shall cover not more than 40% of the rear yard of the lot. The rear yard for this paragraph is defined as the area between a line obtained by extending the rear line of the dwelling to each of the sidelines of the lot and the rear line of the lot. If any part of the garage is forward of the rear line of the dwelling, the garage shall conform to the setback, sideline and rear line requirements for a dwelling in the district in which the garage is located.

Additions to existing dwellings may extend beyond the front line of existing unattached garages provided said additions meet the requirements for setback, sideline, rearline setbacks and lot coverage and open space requirements for the respective zoning district. An accessory building shall be on the same lot as the building to which it is accessory.

Note: §4.3.5 was amended by Article 23 at the 1998 Annual Town Meeting.

A garage shall have a vehicular access from the street.

Satellite antenna with a receiving dish with a visually coherent surface of 8.5 square feet or less or a diameter of one meter or less may be built no closer than 5 feet from any lot line or on the structure to which it is accessory provided it is at least 5 feet from any lot line and, if pole mounted, is not more than 10 feet above the adjacent grade.

Note: §4.3.5 was amended by Article 28 at the 1996 Annual Town Meeting.

Note: §4.3.5 was further amended by Article 19 at the 1999 Annual Town Meeting.

Satellite antenna with a receiving dish with a visually coherent surface of more than 8.5 square feet or over one meter in diameter may be built no closer than 5 feet from the rear and side lines of a lot and not within the required front setback of the lot. In commercial or industrial zones any satellite dish located adjacent to Residential Districts shall be no closer than the required

setbacks in that District.

Note: §4.3.5 was amended by Article 27 at the 1996 Annual Town Meeting.

Note: §4.3.5 was further amended by Article 19 at the 1999 Annual Town Meeting.

4.3.6 Tennis Courts and Similar Recreational Facilities

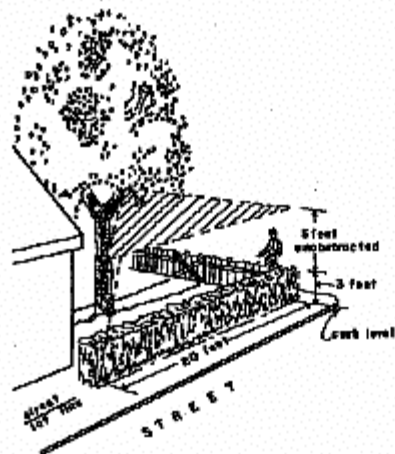
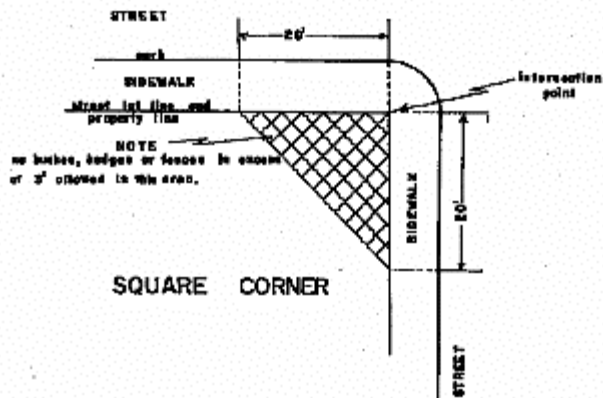
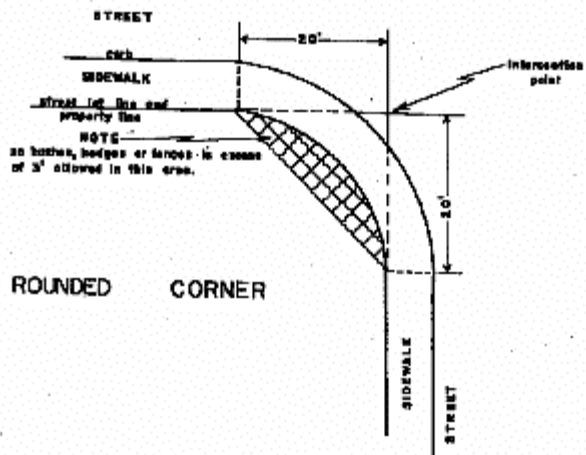
The regulations which apply to an accessory building in Section 4.3.5 shall also apply to a tennis court and other similar recreational facility as an accessory use. Where a tennis court or other facility is the principal use on a lot or is located in the front yard, the regulations of Section 4.2 shall apply.

4.3.7 Corner Setback

Between the property lines of intersecting streets and a line joining points on such lines 20 feet distant from their point of intersection or, in the case of a rounded corner, the point of intersection of their tangents, no building or structure in any district may be erected and no fence and no vegetation, except tree trunks, may be maintained or allowed to remain between a height of three feet and eight feet above the plane through their center line grades, except that for a business use in a Local Business I, Local Business II, Local Business III or General Business District no part of a building shall be built closer to the point of intersection of right-of-way lines than 10 feet.

(diagram on next page)

(Corner Setback - continued from previous page)



4.3.8 Multiple Buildings

More than one principal building other than a single-family or two-family dwelling may be erected

on a lot, subject to the requirements and procedures for Design and Site Plan Review in Section 7.3, provided that lot area and yard requirements are met for each building without counting any lot area or yard twice.

4.3.9 Lot Shape

No lot shall be created so as to be so irregularly shaped or extended that it has a "Shape Factor" in excess of twenty-two (22).

The Shape Factor equals the square of the lot perimeter divided by the lot area (before deduction for wetlands, etc.). That portion of the lot in excess of the required lot area may be excluded from the computation of Shape Factor using an imaginary lot line, provided that the entire required frontage is included in the portion used for the calculation.

4.4 Local Business I Exceptions

In the Local Business I District the Board of Appeals may authorize certain increased limits to building height and floor area ratio, as provided in Section 4.2. All such applications shall be subject to Design and Site Plan Review by the Planning Board, as provided in Section 7.3. In acting upon applications for such increases, the Board shall consider the following, in addition to the criteria for Special Permits generally (Section 7.4.2):

- a) whether and by how much building height or scale will exceed that of nearby structures,
- b) whether and by how much the building will exceed the height of trees in the vicinity,
- c) whether any potential intrusiveness has been resolved through increased yards, design of building form, or other means,
- d) whether any resulting building prominence is appropriate, in light of the functional or symbolic role of the structure,
- e) whether and by how much shadowing on abutting land or streets will be increased, or privacy will be diminished,
- f) whether there are fire protection concerns created by the increase,
- g) what the traffic consequences are of any increased floor area,
- h) whether the requested increase is necessary for the proposal to proceed, and
- i) what the community benefits are from the proposal, including consideration of taxes, employment, and service.

- **Last Updated:** Thursday, Mar 06, 2003

SECTION 5. GENERAL REGULATIONS



SECTION 5. GENERAL REGULATIONS

5.1 Off-Street Parking and Loading

5.1.1 Number of Spaces

a) Off-street parking must be provided to service all increases in parking demand resulting from new construction, additions, or change of use to one requiring more parking, without counting any existing spaces needed to meet requirements for the existing building and use. The number of spaces indicated in Section 5.1.2 shall be the basis for determining adequacy of provisions. Any existing spaces removed shall be replaced in kind unless they are either in excess of the number required or removed at the request of the Town. Parking spaces also serving as loading areas shall not be credited.

b) The number of spaces may be reduced to less than that stipulated below if, in acting on Design and Site Plan Review, the Planning Board determines that a smaller number would be adequate for all parking needs because of such special circumstances as shared parking for uses having peak parking demands at different times, unusual age or other characteristics of site users, or user sponsored demand reduction devices such as carpooling.

c) In the LB-I District, this requirement may, at the applicant's option, be satisfied through payment of an annual Access Fee in lieu of providing some or all of the required on-site parking spaces. The Access Fee per space shall equal \$500, indexed to the Boston Cost of Living Index subsequent to 1987. The Fees shall be held in an Enterprise Fund or other account restricting the use of those monies to the provision of off-street parking and non-automotive means of access serving LB-I Districts.

d) In the Local Business III Districts, legal on-street parking may be credited towards meeting these requirements if located between the premises side lot lines on the same side of the street.

5.1.2 Schedule of Requirements

a) Dwellings: two parking spaces for each dwelling unit therein, except one parking space for each dwelling unit having fewer than two bedrooms.

b) Places of public assembly: one parking space for each three persons capacity based on the Massachusetts State Building Code.

c) Hotels, motels, room and board, other commercial accommodations: one parking space for each guest unit, plus one parking space for each eight units or fraction thereof.

d) Restaurant: one parking space per 2 persons seating capacity.

- e) Commercial recreation: one parking space per two persons participant capacity, plus one space per three persons spectator capacity.
- f) Auto service station: three parking spaces plus three parking spaces per service bay.
- g) Other service establishments, retail businesses, and offices: one parking space per 250 square feet of ground floor gross floor area (350 square feet in the LB-I District) plus one space per 400 square feet gross floor area on other floors (600 square feet in the LB-I District), but not fewer than three spaces per separate enterprise. Excluded from these calculations shall be floor area used for parking or loading.
- h) Wholesale and industrial establishments: one parking space per 1.5 employees on the largest shift, but capable of expansion to not less than one space per 400 square feet gross floor area.
- i) Other uses: a number of spaces to be determined by the Building Inspector (or the Planning Board in cases referred to it for Design and Site Plan Review), based upon evidence from similar uses under similar circumstances.
- j) Mixed uses: requirements for each use are added, unless it is determined that a smaller number is adequate because of staggered hours.

5.1.3 Parking and Loading Area Location and Design

- a) Location. Required parking for nonresidential uses shall be either on the same premises as the activity it serves, or on a separate parcel if the parcel is located within 400 feet of the building entrance to be served and is in a zoning district permitting or allowing on Special Permit the activity it serves. Parking facilities for six or more cars serving nonresidential uses shall have no element, other than driveways approximately perpendicular to the street, located in the area between the street line and the front setback line.

In Single and General Residence Districts, no parking spaces shall be created within a required front yard between the side lines of the dwelling extended to the street, except on a driveway leading to, and no wider than, an attached garage, or on Special Permit from the Board of Appeals, to be granted only upon determination by the Board that feasible alternatives for providing necessary parking do not exist, and that effective use is to be made of plantings, grading, and location to minimize visual impacts, and that drainage is adequately provided for.

- b) Configuration. Dimensions of spaces and aisles shall adequately provide for clearance and movement, and for designated spaces shall accommodate needs of the handicapped. The Planning Board shall adopt, and may from time to time amend, standards for such dimensions, reflecting current vehicle sizes. Groups of not more than 30 parking spaces shall be separated by a six foot landscaped walk or divider.
- c) Construction. Off-street parking areas, loading areas, and access drives, if involving six or more parking spaces, shall be surfaced with at least two inches (2") of bituminous paving or comparable paving material unless the Planning Board approves an alternative surface which, because of only seasonal or periodic use, will adequately prevent dust, erosion, water accumulation, and unsightly conditions. Such parking areas shall be curbed and provide wheel stops where needed.
- d) Lighting. Lighting must comply with Section 5.4.3.
- e) Backing. All parking areas having six or more spaces shall be so designed that no vehicle will be required to back on a public way or driveway serving as access to 50 or more parking spaces in order to enter or exit from a parking space.

f) Egress Location. There shall be not more than two driveway openings onto any street from any single premises unless each driveway is separated from all other driveways serving 20 or more parking spaces, whether on or off the premises, by at least 250 feet (measured between centerlines at the street line) on arterial streets and 150 feet on other streets. No parcel of land shall be divided in a way precluding meeting this requirement, using deeded access easements across the lots being created for shared egresses if necessary. No driveway sideline shall be located within 20 feet of the street line of an intersecting way. Driveway egresses serving 20 or more parking spaces must have not less than 250 feet sight distance in each travel direction entering an arterial street and not less than 150 feet sight distance on other streets.

g) Egress Design. No driveway opening shall exceed 30 feet in width at the street line unless necessity of greater width is demonstrated by the applicant. Openings shall be graded and drainage facilities provided where necessary to prevent stormwater from ponding or running across any sidewalk. All driveway openings serving twenty or more parking spaces shall be constructed with a minimum edge radius of five feet on both sides.

h) Bicycle Racks. For premises requiring 40 or more parking spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per 20 parking spaces required or fraction thereof.

i) Loading. Loading or unloading shall not interfere with the public use of sidewalks, streets, or parking areas.

5.2 Signs

5.2.1 Intent and Purpose

It is recognized that signs perform important functions in the community which are essential for the public safety and general welfare, such as communicating messages, providing information about goods and services available, and providing orientation. It is further recognized that because of their potential detrimental impact on the visual and perceptual environment, signs must be regulated in order to:

- a) prevent hazards to vehicular and pedestrian traffic,
- b) prevent conditions which have a blighting influence and contribute to declining property values,
- c) provide for easy recognition and legibility of all permitted signs and other uses in the immediate vicinity,
- d) preserve the amenities and visual quality of the Town and curb the deterioration of the community environment, and
- e) conserve energy.

It is the intent of this Section 5.2 to protect property values, create a more attractive business climate, enhance and protect the physical appearance of the community, provide a more enjoyable and pleasing community and to encourage the most appropriate use of land.

5.2.2 Permits

No sign (other than a temporary sign in a window) shall be erected, altered or enlarged in a General or Local Business District until a permit has been issued by the Building Inspector, to be

issued only for signs complying with all applicable provisions of this By-Law.

5.2.3 General Requirements

- a) **Movement.** No sign shall contain any visible movable or moving parts (except for the hands of a traditional analog type, i.e., non-digital clock whose face does not exceed 36 inches in diameter), any moving, flashing, or animated lights, or any automatically changing written or pictorial matter or message.
- b) **Illumination.** No sign shall be illuminated between the hours of 10:00 p.m. and 6:00 a.m. unless the premises on which it is located are open for business. Signs may be illuminated only by the following means:
 - 1) By a white, steady stationary light shielded and directed solely at the sign;
 - 2) By interior non-exposed lights;
 - 3) By exposed neon or similar tube illumination.
- c) **Window Signs.** Permanent signs painted or placed on the inside of the glass of a window shall be permitted, provided that the aggregate area of such signs does not exceed 20% of the area of the window glass. Removable signs temporarily affixed to the window are permitted, provided that the aggregate area of the window covered by signs, including permanent signs, does not exceed 50%.
- d) **Temporary Signs.** Temporary signs must comply with the requirements for permanent signs, except signs for charitable and public safety purposes, which may be authorized by the Building Inspector despite noncompliance. Before a temporary sign (other than a temporary sign placed in a window) shall be erected, there shall be deposited with the Town Treasurer the sum of \$20.00 for each sign, and the Town Treasurer shall notify the Building Inspector. The deposit shall be refunded only upon the removal of the sign.
- e) **Removability.** No sign shall be painted or posted on the surface of any wall without an intermediary removable surface.
- f) **Non-accessory Signs.** The erection of non-accessory signs is not permitted.
- g) **Sign Location.** Signs attached to a roof and V-shaped signs attached to buildings are not permitted. Signs attached to a building must be either flat against the wall or perpendicular to the wall. If attached flat against the wall, the sign shall not project more than 12 inches outward or six inches upward from the wall or parapet of the building. If perpendicular to the building, the sign may not project more than five feet from the building, three feet over a public sidewalk, and shall be no less than two feet from the curb line.

The minimum vertical clearance to the underside of any sign projecting over a sidewalk or other pedestrian or vehicular passage shall be 10 feet above the surface of the sidewalk or passage.

5.2.4 District Regulations

- a) **All Districts.** In all zoning districts, the following are permitted:
 - 1) One sign displaying the street number and/or name of the occupant of the premises not exceeding 150 square inches in area. Such sign may include identification of a home occupation only if authorized on Special Permit from the Board of Appeals.

- 2) Temporary signs pertaining to the lease, sale or initial occupancy of a lot or building provided that the aggregate area of all such signs on the premises does not exceed nine square feet.
 - 3) One bulletin or announcement board, identification sign, or entrance marker for each public entrance to the premises of a church, synagogue, school, or other permitted nonresidential institutions.
 - 4) Standing signs accessory to a church, synagogue, school, or other permitted nonresidential institution. Two such signs are permitted for each such use, plus one additional sign for each additional street where the lot fronts on more than one street, each such sign not to exceed 18 square feet in area.
 - 5) Signs at Town boundaries and within a street right-of-way, if authorized on Special Permit by the Board of Selectmen, not exceeding five square feet in sign area indicating the meetings of any Town civic organization.
- b) Business Districts. In an area zoned as a Local Business or General Business District, the following are permitted in addition to signs permitted under Section 5.2.4~(a).
- 1) Attached Signs. One sign for each exterior wall of an establishment if such wall faces a public way, private way, or contains a public entrance. The area of the sign may not exceed the lesser of 10% of the wall area of such establishment or 65 square feet (12 square feet if projecting perpendicular to the wall). The Board of Selectmen may grant a Special Permit authorizing more than one identifying sign on an exterior wall provided that the aggregate area of such signs does not exceed the limits set forth herein.

Note: §5.2.4 b)1) was amended by Article 34 at the 1991 Annual Town Meeting.

- 2) Directories. One directory of the establishments occupying a building or identification of the principal such establishment at each public entrance to the building. Such directory shall not exceed 1.5 square feet in area for each establishment occupying the building.
- 3) Standing Signs. The Board of Selectmen may grant a Special Permit for erection of a standing sign not to exceed 30 square feet in area or 15 feet in height above the ground if it finds that the sign complies with the purposes of this By-Law. The Special Permit shall specify the size, type, and location of the sign and impose such other terms and conditions as deemed necessary to promote the purposes of this By-Law. Such signs shall be permitted for a term not to exceed five years, which may be renewable if so specified in the Special Permit.

Note: §5.2.4 b)3) was amended by Article 35 at the 1991 Annual Town Meeting.

- 4) Awnings. A metal or cloth awning, whether containing advertising or not, may be 7.5 feet from the ground and may project over the sidewalk more than three feet but in no event closer than two feet to the curb line, notwithstanding any provision herein to the contrary.

5.2.4 Nonconforming Signs

Signs made nonconforming as a result of change of use on the premises shall be made to conform or be removed within 60 days of becoming nonconforming. Signs made nonconforming as a result of By-Law change shall be subject to the requirements of Section 1.5, Nonconformance.

Landscaping

5.3.1 Applicability

Street, sideline, parking area, and district boundary plantings and screening shall be provided as specified below for any new nonresidential building, or Free-Standing Wireless Telecommunications Facility, or when any new building, addition, or change of use results in a parking increase of five or more spaces, or results in any loading or exterior storage area for equipment, materials, or supplies serving a nonresidential use. In performing Design and Site Plan Review under Section 7.3, the Planning Board may authorize alternatives to the following specifications, taking into consideration existing vegetation, topography, soils, and other site conditions, provided that equivalent screening, shading, and articulation are achieved.

Note: §5.3.1 was amended by Article 29 at the 1998 Annual Town Meeting.

5.3.2 Plantings

- a) Required plantings shall include both trees and evergreen shrubs, and preferably will include trees existing on the site. To be credited towards meeting these requirements, trees must be a least 2.5 inches caliper four feet above grade, be of a species common in the area, and be ones which reach an ultimate height of at least 30 feet. To be credited towards meeting these requirements, shrubs must be of an evergreen species common in the area, and be at least 36 inches in height at the time of building occupancy, and reach an ultimate height of at least five feet, except half those heights for street planting areas.
- b) Plantings shall be provided at the rate of at least one tree per 40 linear feet of planting area length, and at least one shrub per three feet. Plantings preferably will be grouped, not evenly spaced, and shall be located or trimmed to avoid blocking egress visibility. The planting area shall be at least three feet wide, unpaved except for access drives and walks essentially perpendicular to the area.

5.3.3 Requirements

- a) **Street Planting Area.** Street planting is required for nonresidential premises having a front yard setback of ten feet or more. Required street planting shall be provided within ten feet of the street property line along the entire street frontage except at drives.
- b) **Sideline Planting Area.** Sideline planting is required for premises having a front yard setback of ten feet or more. Required sideline planting shall be provided within five feet of the side lot line between the front lot line and the building setback (as built, not as required).
- c) **Parking Area Plantings.** Planting areas must comprise a minimum of 2% of the interior area of parking lots containing three or more rows of parking spaces. In such cases, a minimum of one tree and four shrubs exclusive of perimeter plantings must be planted for every 3,500 square feet of parking lot. Planting areas must each contain not less than 30 square feet of unpaved soil area. Trees and soil plots shall be so located as to provide visual relief and wind interruption within the parking area, and to assure safe patterns of internal circulation.
- d) **District Boundary Planting Area.** District boundary planting is required on any premises along the full length of any nonresidential district boundary abutting or extending into a Residential District and being developed for a use not permitted or allowed on Special Permit in that District, unless abutting property is determined by the Planning Board to be unbuildable or visually separated by topographic features. Required planting shall be located within ten feet of the boundary.

5.3.4 Screening

Any parking, loading, or storage area for equipment, materials, or supplies serving a nonresidential use or a Free-Standing Wireless Telecommunications Facility (including any appurtenant equipment storage building or structure), and any dumpster or similar trash receptacle shall be screened from any adjoining lot residentially used or zoned or in public use.

Screening shall consist of plantings as specified in Section 5.3.2 which, unless sufficiently dense to effectively obscure vision, must be supplemented with an opaque fence or wall at least five feet high.

Note: §5.3.4 was amended by Article 30 at the 1998 Annual Town Meeting.

5.3.5 Existing Vegetation

Wherever possible, the above requirements shall be met by retention of existing plants. If located within 25 feet of a street, no existing tree of 6 inches caliper or greater (measured four feet above grade), dense hedgerow of four or more feet in both depth and height, or existing earth berm providing similar visual screening shall be removed or have grade changed more than one foot unless dictated by plant health, access safety, or identification of the premises.

5.3.6 Exceptions

Where plant materials as required would harmfully obstruct a scenic view, substitution of additional low level plantings which will visually define the street edge or property line may be authorized, provided that proposed buildings are also designed and located to preserve that scenic view.

5.3.7 Maintenance

All plant materials required by this By-Law shall be maintained in a healthful condition. Dead limbs shall be promptly removed, and dead plants shall be replaced at the earliest appropriate season. Any fences required for screening shall be properly maintained.

5.3.8 Nonconforming Landscaping and Screening

a) Any improvement along the property boundary, including landscaping, screening, and fencing, legally erected and conforming to the requirement of this By-Law when so erected, may continue to be maintained, even though as a result of changes to this By-Law the boundary improvements no longer conform to its requirements, provided that such boundary improvements shall not be enlarged, redesigned or altered except so as to make them conform to said requirements, and further provided that any such boundary improvements which have been destroyed or damaged to such an extent that the cost of restoration would exceed 50% of the replacement value of the boundary improvements at the time of destruction or damage shall not be repaired, rebuilt or altered, except so as to make said boundary improvements conform to the requirements of this By-Law.

b) The exemption for nonconforming landscaping and screening herein granted shall terminate with respect to any boundary improvements which:

- 1) shall have been abandoned, or
- 2) shall not have been repaired or properly maintained for at least 60 days after notice to do so has been given by the Building Inspector.

5.4 Environmental Controls

5.4.1 Permitted Activity

No activity (except for warning devices, temporary construction or maintenance work, parades, special events, or similar special circumstances) shall be permitted in any district unless the following requirements are met. Applicants may be required to provide evidence of probable compliance, whether by example of similar facilities or by engineering analysis. Issuance of a permit on the basis of that evidence shall certify the Town's acceptance of the conformity of the basic structure and equipment, but future equipment changes and operating procedures must be such as to also comply with these requirements.

5.4.2 Noise

The requirement of the Belmont Noise By-Law (Article 23 of the General By-Laws) must be met.

5.4.3 Light and Glare

a) Lighting fixture types are defined as follows:

Type 1. No light cutoff.

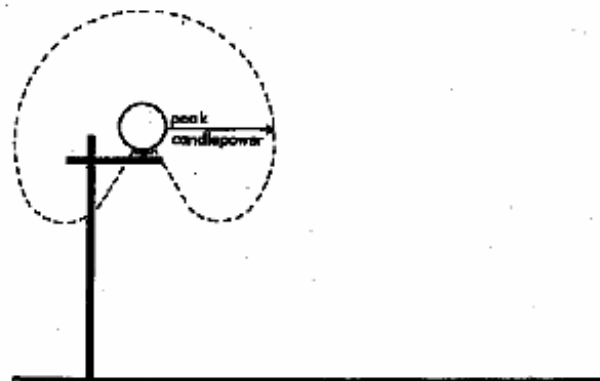
Type 2. Luminaire shielded such that peak candlepower is at an angle of 75 degrees or less from vertical, and essentially no light is emitted above the horizontal.

Type 3. Luminaire shielded such that total cutoff is at less than 90 degrees from vertical, and no light source is in direct view of an observer 5 feet above the ground at any point off the premises.

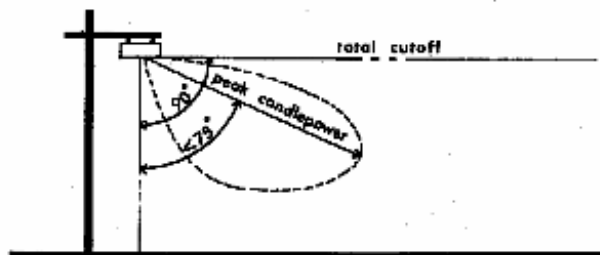
(diagram on next page)

(Light and Glare – continued from previous page)

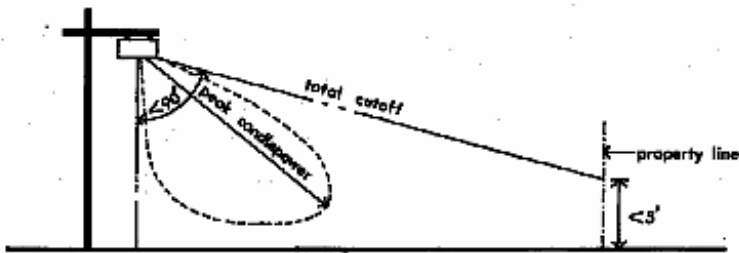
Lighting Fixture Types



TYPE 1: NO CUTOFF LUMINAIRE



TYPE 2: 90° CUTOFF LUMINAIRE



TYPE 3: LUMINAIRE WITH LESS THAN 90° CUTOFF

b) Lighting limitations. The following limitations shall be observed by all uses, unless granted a Special Permit under Section 5.4.8, upon determination by the SPGA that it is inherently infeasible for that use (e.g. public outdoor recreation) to meet these standards, and that all reasonable efforts have been made to avoid glare or light overspill onto residential premises.

LIGHTING LIMITATIONS	DISTRICTS	
	LB, GB, PL	Other
<u>Maximum Luminaire Mounting Height (feet)</u>		
Fixture Type 1	20	10
Fixture Type 2	30	15
Fixture Type 3	40	20
<u>Maximum Off-Site Overspill (foot-candles)</u>		
Fixture Type 1	0.3	0.2
Fixture Type 2	1.0	0.3
Fixture Type 3	3.0	0.5

c) No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either glare or flashing reflected from the sky.

d) An exterior lighting plan is required where compliance with these requirements is not apparent, and in all applications for a Special Permit for lighting, to include indication of location, mounting height, and orientation of luminaires, and sufficient technical information on the fixture to determine its type and resulting illumination levels.

5.4.4 Air Quality

a) Any use whose emissions are such as to cause it to be classified as a major new stationary source of air pollution, as defined by the U.S.E.P.A. under the Clean Air Act, and any use required to apply to DEP under 310 CMR 7.00 or to EPA under Section 112 of the Clean Air Act for permission to emit asbestos, benzene, beryllium, mercury, vinyl chloride, or radio nuclides shall be permitted only if granted a Special Permit under Section 5.4.8.

Note: §5.4.4 a) was amended by Article 26 at the 1995 Annual Town Meeting.

b) No emission of odorous gases or odoriferous matter in such quantities as to be offensive shall be permitted. Any process which involves the creation and/or emission of any odors shall be provided with a secondary safeguard system.

5.4.5 Hazardous Materials

Use of premises involving one or more of the following may be allowed only if granted a Special Permit under Section 5.4.8:

a) manufacturing as the principal use of the premises, if the products manufactured are either:

(i) when wastes, regulated as hazardous under Massachusetts General Law, Chapter 21C.;
or

(ii) substances listed on the Massachusetts Substance List contained in 105 CMR 670.000,

Appendix A;

- b) keeping of flammable fluids, solids, or gases in quantities exceeding four times that requiring licensure under 527 CMR 14.00, except for storage of fuel for consumption on the premises or by vehicles operated incidental to the principal use of the premises;
- c) any use for which licensure is required under 310 CMR 30.800 to transport, use, treat, store, or dispose of hazardous waste (but not those excluded under 310 CMR 30.801);
- d) any use whose waste generation requires the obtaining of an EPA identification number, except for small quantity generators, as defined under DEP Regulations, 310 CMR 30.351;

Note: §5.4.5 d) was amended by Article 26 at the 1995 Annual Town Meeting.

- e) discharge to surface water requiring a Permit under 314 CMR 3.00 ("NPDES Permit").

5.4.6 Vibration

No use shall be permitted which produces vibration which is discernible to the human sense of feeling (except as sound) at or beyond the boundaries of the premises for 3 minutes or more in any hour between 7:00 a.m. and 9:00 p.m. or for 30 seconds or more in any one hour between 9:00 p.m. and 7:00 a.m. Vibrations exceeding two-thirds the frequency/amplitude limitations established by the Board of Fire Prevention Regulations at 527 CMR 13.11 (18) shall, except for quarry activities within the jurisdiction of that Board, be deemed to be discernible without instruments.

5.4.7 Electrical Disturbances

No electrical disturbance shall be permitted which adversely affects the operation of any equipment other than that of the creator of such disturbance.

5.4.8 Special Permits

- a) Special Permit Granting Authority. The Special Permit Granting Authority (SPGA) for applications under Section 5.4 shall be the Board of Appeals, except that if another agency is designated under other provisions of this By-Law as SPGA for the use being applied for, that agency shall also act as SPGA under this Section.
- b) Submittals. Applicants shall submit such material, including technical analyses, as is reasonably necessary for the SPGA to make the determinations under (c) below. That may include, as germane, a lighting plan, documentation of air quality modelling, identification of any toxic or hazardous materials involved and substances to be emitted, a description of precautions, handling practices, monitoring, and recovery systems proposed, and, if appropriate, a hazard prevention and contingency response plan.
- c) Decision Criteria. Special Permits shall be granted if the SPGA finds that in light of peculiarities of location or circumstance, the proposed use will not cause harm or adverse disturbance to the environment or to other premises, will not jeopardize health or safety either on or off-premises, and that either any control or safety systems being relied upon are fail-safe or redundant, or it has been demonstrated that there would be no adverse health or safety consequences beyond the boundaries of the premises in the event of system failure, in light of on-site decay, dilution, or dispersion.

- **Last Updated:** Friday, Dec 20, 2002

SECTION 6. SPECIAL REGULATIONS



SECTION 6. SPECIAL REGULATIONS

6.1 Swimming Pools

Swimming pools must be compliant with all applicable State Building Codes (780 CMR: State Board of Building Regulations and Standards).

Note: §6.1 was amended by Article 20 at the 2000 Annual Town Meeting.

6.2 Earth Removal

The removal from any premises of more than 50 cubic yards of sand, gravel, stone, topsoil, or similar materials within any 12 month period shall be permitted only incidental to construction on the premises under a current Building Permit or, if authorized on Special Permit by the Board of Appeals, incidental to landscaping or site improvement in cases where no Building Permit is involved.

6.3 Public Building and School Conversion

The Board of Appeals may grant a Special Permit for the conversion of public buildings or school buildings to multi-family residential use subject to the requirements and conditions set forth below.

6.3.1 Objectives

The general objectives of permitting such conversions are:

- a) To provide for continued use of unused public buildings or public or private school buildings.
- b) To provide additional housing units

6.3.2 Buildings Eligible for Conversion

A public building or public or private school building located in any zoning district is eligible for conversion to multi-family use, but only provided it meets all of the following tests:

- a) It was originally constructed not less than 20 years prior to the filing of the application for Special Permit.
- b) It was used for not less than 15 years for public or school purposes.
- c) It contains not less than 10,000 square feet in gross floor area

6.3.3 Special Permit Criteria

Special Permits for building conversion shall be subject to the procedures and requirements of Section 7.3, Design and Site Plan Review. The proposal must be found by the Board of Appeals to meet all of the following, as well as complying with Section 7.3 and the criteria of Section 7.4.2:

- a) All the tests of Section 6.3.2 have been met.
- b) The conversion will result in not fewer than five additional dwelling units.
- c) There will be provided a minimum of 1,200 square feet of lot area per dwelling unit.
- d) Off-street parking shall be provided as required at Section 5.1.
- e) There will be not exterior enlargements or extensions of the building other than those necessary to comply with applicable health, building and fire codes except such incidental changes as may be approved by the Board of Appeals enhancing the residential building while being in harmony with the neighborhood.
- f) The proposed conversion will not create traffic hazards or volume greater than the capacity of the streets affected.
- g) The proposed conversion will not be detrimental or injurious to the neighborhood.
- h) Adequate and appropriate facilities will be provided for the proper operation of the converted building.
- i) The converted premises will be adequately landscaped and outdoor parking areas appropriately screened, all in harmony with the neighborhood.

6.3.4 Additional Conditions

The Board of Appeals may attach such additional conditions and limitations to a Special Permit granted under this Section as may be necessary to protect the neighborhood surrounding the property, and as may be necessary to encourage the most appropriate use of the land and building to be converted.

6.4 Elderly Housing

“Elderly Housing” as authorized in Section 3.3, Schedule of Use Regulations, shall comprise multi-family dwellings operated by the Belmont Housing Authority (BHA) for occupancy by elderly persons or elderly families (as defined in Section 26J, Massachusetts General Law, Chapter 121 (Ter. Ed.) or 42 U.S. Code, Section 1402, both as amended, and equivalent provisions of law from time to time in force).

6.5 Cluster Development

The Board of Appeals may grant a Special Permit for any tract of land in a Single Residence District to be developed as a Cluster Development subject to the requirements and conditions set forth below:

6.5.1 Objectives

The general objectives of Cluster Developments are to encourage:

- a) Preservation of open space for park, recreation, conservation or agricultural purposes.
- b) Better utilization of natural features of the land through a greater flexibility of design.
- c) More efficient provision of municipal services.

6.5.2 Tract Size

The minimum tract areas upon which Cluster Developments may be allowed in the various Single Residence Districts are:

- Single Residence A - 180,000 square feet
- Single Residence B - 120,000 square feet
- Single Residence C - 84,000 square feet
- Single Residence D - 180,000 square feet

6.5.3 Number of Dwelling Units

The maximum number of dwelling units allowed within any Cluster Development shall be the number determined by dividing 85% of the area of the tract, exclusive of any wetlands or floodplain, by the minimum lot size permitted in the Single Residence District(s) within which the Cluster is located.

6.5.4 Open Land

a) The area of open land shall equal at least 25% of the total area of the Cluster Development tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all the residents of the Cluster.

Provision shall be made so that the open land shall be readily accessible to the owners and occupants of the lots in the Cluster, and owned by a corporation, association or trust whose owners or beneficiaries are all the owners and occupants of the lots, or by the Town, or otherwise as the Board of Appeals may direct in accordance with Massachusetts General Law, Chapter 40A.

b) In all cases, a perpetual restriction of the type described in Massachusetts General Law, Chapter 184, Section 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land.

Such restriction shall provide that the open land shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Board of Appeals shall prescribe and may contain such additional restrictions on development and use of the open land as the Board of Appeals may deem appropriate after considering any comments which the Conservation Commission may choose to submit.

c) If a Special Permit is issued, the Board of Appeals may impose as a condition that the open land shall be conveyed by the applicant free of any mortgage interest or security interest and subject to a perpetual restriction of the type described in Section 6.5.4 a) prior to the issuance by the Building Inspector of a Building Permit for any dwelling or structure.

6.5.5 Dimensional Regulations

Except as otherwise provided in this Section, a Cluster Development tract shall comply with the frontage, setback, distance between buildings and building heights set forth in the Schedule of

Dimensional Regulations contained in Section 4.2 of this By-Law. If the Cluster Development is divided into one or more individual lots, the frontage of each lot on a street or on a private road or way within the Cluster Development tract shall be as specified by the Board of Appeals consistent with fire safety, aesthetics and the character of the Cluster Development tract.

6.5.6 Attached Dwelling Units

The Board of Appeals may in its discretion allow a Cluster Development to consist in whole or in part of attached dwelling units if such units are not inconsistent with the aesthetics and physical appearance of the other buildings in the immediate vicinity.

6.5.7 Limitation of Subdivision

No lot shown on a plan for which a Permit is granted under this Section may be further subdivided and a notation to this effect shall be shown on the plan.

6.5.8 Design and Site Plan Review

Cluster Developments, whether or not containing attached dwelling units, are subject to the Design and Site Plan Review procedures and requirements of Section 7.3 of this By-Law.

6.5.9 Amendments

Following the granting by the Board of Appeals of a Permit under this Section, it may, upon application and for good cause shown after notice and a public hearing as required for granting a Special Permit, amend the plan solely to make changes in lot lines shown on the plan, provided, however, that no such amendment shall:

- a) Grant any reduction in the size or change in location of the open land as provided in the Permit;
- b) Grant any change in the layout of the ways as provided in the Permit;
- c) Increase the number of lots as provided in the Permit; or
- d) Decrease the dimensional requirements of any lot below the minimum dimensions permitted by this By-Law.

6.6 Floodplain District

6.6.1 Purposes

The purposes of this Section are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve natural flood control characteristics, to maintain the flood storage capacity of the floodplain, and to bring the Town of Belmont into compliance with the National Flood Insurance Program (42 U.S. Code 4001-4128), and regulations adopted pursuant thereto.

6.6.2 District Delineation

The Floodplain District consists of all special flood hazard areas designed as Zones A, AO, or A1-A30, on the most recent Belmont Flood Insurance Rate Map (FIRM) and the Flood Boundary and Floodway Maps ("Floodway Map") published by FEMA under the National Flood Insurance Program. The maps as well as the accompanying Flood Insurance Study, Town of Belmont

dated December 15, 1981 (the Study) are incorporated herein by reference. A copy of the FIRM and Floodway Map and the Study are on file with the Town Clerk.

6.6.3 Use Regulations

- a) The Floodplain District shall be considered as overlying other districts. Any uses permitted or allowed by Special Permit in the portions of the districts so overlaid shall continue to be permitted or allowed by Special Permit, subject to the provisions of this Section.
- b) Except as provided below, the following shall be prohibited in the Floodplain District:
 - 1) New buildings or structures.
 - 2) Filling, dumping, excavation, removal, or transfer of any earth material which will restrict or increase flood water flow or reduce the flood water storage capacity.
- c) The following shall be permitted in the Floodplain District:
 - 1) Land use for conservation of water, plants, and wildlife.
 - 2) Recreation, including play areas, wildlife reserves, golf, boating, and fishing where otherwise legally permitted.
 - 3) Grazing, farming, forestry, and nurseries.
 - 4) Proper operation and maintenance of dams and other water control structures, including temporary alteration of water level for emergency purposes.
 - 5) Addition or alteration to an existing structure, but if constituting a substantial improvement (see definition), only if authorized by Special Permit from the Board of Appeals.

6.6.4 Requirements

All development in this district, including structural and nonstructural activities, whether permitted by right or allowed by Special Permit, must be in compliance with the following:

- 780 CMR 744.0 of the Massachusetts State Building Code, which addresses construction in floodplains and floodways;
- 310 CMR 10.00, Wetlands Protection, Department of Environmental Protection;
- 302 CMR 6.00, Inland Wetlands Restriction, Department of Environmental Protection;
- Title 5, minimum requirements for the subsurface disposal of sanitary sewage, Department of Environmental Protection.

Note: §6.6.4 was amended by Article 26 at the 1995 Annual Town Meeting.

6.6.5 Floodway Requirements

- a) In Zones A, the best available floodway data shall be used to prohibit encroachments in floodways which would result in any increase in the base flood discharge. In Zones A1-30, and AE along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvement, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all

other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

b) In the regulatory floodways designated on the Belmont FIRM or Flood Boundary and Floodway Map no encroachments in the floodway shall be permitted which would result in any increase in the base flood discharge level.

6.6.6 Special Permit

Upon their receipt, applications for Special Permits in the Floodplain District shall be referred to the Planning Board, Board of Health, and Conservation Commission for their review and comment. Special Permits for substantial improvements within the Floodplain District shall be approved only upon the Board of Appeals making the following determinations:

- a) All requirements of Section 6.6 Floodplain District are complied with.
- b) No substantial increase in hazard to occupants of the premises or to others will result from the proposed improvements.
- c) Reasonable efforts have been made, relative to the scale of the proposed improvements, to reduce any existing hazard or noncompliance with these requirements.

6.6.7 Waiver

If satisfied, based on a Letter of Map Amendment or Letter of Map Revision obtained by the applicant from FEMA, that the site of a proposed development or improvement is above the Base Flood Elevation shown on the FIRM, the Building Inspector may waive compliance with this Section, and a copy of such waiver shall be filed with the Town Clerk.

Note: §6.6.7 was amended by Article 31 at the 1995 Annual Town Meeting.

6.7 Motor Vehicle Service Stations

Motor Vehicle Service Stations shall be granted a Special Permit only in conformity with the following:

6.7.1 Location

No location shall be approved if a vehicular entrance or exit will be so located as to create an unusual hazard. Sight distance shall be at least 250 feet in each travel direction. No vehicular entrance or exit will be so located so as to cross a major pedestrian flow, such as on sidewalks servicing churches, schools, recreation areas, or compact retail districts.

6.7.2 Egress Design

Driveway sidelines shall be separated from the sidelines of intersecting streets and other driveways on the premises by not less than 40 feet and from other lot lines by not less than 10 feet. Entrances and exits together shall occupy not more than 40% of the lot frontage, and shall be clearly channeled through use of curbed planting areas or similar devices.

6.7.3 Queues

There shall be adequate space off-street for not fewer than two vehicles to await service per filling lane.

6.7.4 Setbacks

No service building shall be located within 40 feet of a street line, and no pump or other dispensing device, movable sign or display, or temporary or permanent storage of merchandise shall be located within 20 feet of a street line.

6.7.5 Parking

Any parking or vehicle storage proposed in excess of the requirements of Section 5.1.2 must be justified in applying for a Special Permit, and may be subject to setback and screening requirements.

6.8 Wireless Telecommunications Facilities

Note: §6.8 was adopted under Article 31 at the 1998 Annual Town Meeting.

6.8.1 Use Regulations

No Wireless Telecommunications Facility shall be permitted to be constructed unless such Facility has completed Design and Site Plan Review pursuant to Section 6.8.4 and 7.3 and, if required by Section 3.3, a Special Permit has been issued pursuant to Sections 6.8.5 and 7.4.

No Wireless Telecommunications Facility, other than an Interior Wireless Telecommunications Facility, shall be permitted in any Historic District subject to the provisions of Article 15 of the General By-Laws of the Town.

6.8.2 Dimensional Regulations

Except as otherwise provided in paragraph (d) of this subsection, all Wireless Telecommunications Facilities shall be required to comply with all applicable requirements set forth in Section 4.

- a) No Free-Standing Wireless Telecommunications Facility shall be permitted to be located within 500 feet of any Historic District subject to the provisions of Article 15 of the General By-Laws of the Town.
- b) Except as otherwise permitted in this subsection, no Wireless Telecommunications Facility or appurtenant equipment storage building or structure, other than an Interior Wireless Telecommunications Facility, shall be permitted to be located within 50 feet of a single or two-family dwelling.
- c) A Wireless Telecommunications Facility or appurtenant equipment storage building or structure that is accessory to a principal use other than a single or two-family dwelling, may be permitted to be located within 50 feet of a single or two-family dwelling; provided, however, that, if such dwelling is located within a Single Residence or General Residence District, no such Facility, building or structure shall be permitted to be located within 25 feet of such dwelling.
- d) No Free-Standing Wireless Telecommunications Facility shall exceed 100 feet in height.

6.8.3 Performance Standards

- a) All Wireless Telecommunications Facilities shall, at all times, be in compliance with all applicable standards of Federal law, State regulations including, but not limited to the Regulations of the Department of Public Health, 105 CMR 122.000, the State Building Code and

the published standards of the Electronic Industries Association.

- 1) Prior to any significant change to an approved Wireless Telecommunications Facility or associated equipment, notice of such change shall be given to the Building Inspector, together with documentation or other evidence showing that the Facility will continue to be in compliance with such standards.
- 2) At least annually, the operator of an approved Wireless Telecommunications Facility shall certify to the Building Inspector that the Facility continues to be in compliance with such standards.
 - b) Except as otherwise authorized by the Board of Appeals, a Free-Standing Wireless Telecommunications Facility shall be completely fenced for security within an area no greater than 25 feet in radius from the base of the Facility tower, to a height of 6 feet. Such fencing shall be compatible with the character of the property and neighboring properties, and shall not be of barbed wire or razor wire.
 - c) All Wireless Telecommunications Facilities shall be constructed utilizing materials colors and textures that minimize the visual impact of the proposed Facility on the Town, the District and neighborhood in which the Facility is located, and adjoining properties. A Façade-Mounted Wireless Telecommunications Facility shall utilize materials, colors and textures that minimize the viewer's ability to distinguish the Facility from the building surface adjacent to it. Where appropriate, plantings and screening shall also be utilized to minimize such visual impact.
 - d) Except as specifically authorized by a Special Permit or required by the U.S. Federal Aviation Administration, no Wireless Telecommunications Facility shall incorporate any artificial exterior lighting.
 - e) No Wireless Telecommunications Facility shall incorporate any signs except for those essential for the provision of safety or ownership information. Each Wireless Telecommunications Facility shall incorporate a sign, approved by the Planning Board, providing essential emergency response information including, at a minimum, a telephone number that can be used to contact the Facility operator's representative at all times.
 - f) Any Free-Standing Wireless Telecommunications Facility shall be designed so that, in the event of a structural failure, such Facility shall collapse and fall entirely within the boundaries of the lot on which it is located. Such design shall be certified by a professional engineer.
 - g) Except in an emergency, no servicing of a Wireless Telecommunications Facility or associated equipment, other than an Interior Wireless Telecommunications Facility, shall occur except during hours authorized by Special Permit.
 - h) All Wireless Telecommunications Facilities shall comply with Article 23 of the General By-Laws of the Town of Belmont, governing sources of noise.

6.8.4 Submission Requirements for Design and Site Plan Review

In addition to the documents required to be submitted pursuant to Section 7.7.3, each application for Design and Site Plan Review of a Wireless Telecommunications Facility shall be accompanied by ten copies of the following:

- a) Copies of all required franchises, licenses or other federal, state or local permits required for the operation of the proposed Facility or appurtenant equipment;
- b) Plans and elevations demonstrating compliance with the Dimensional Regulations set forth

in Section 6.8.2; and

- c) Examples or renderings of the materials, colors and textures proposed to be used.

6.8.5 Special Permit Standards and Submission Requirements

- a) Submission Requirements for Special Permits

Each application for a Special Permit for a Wireless Telecommunications Facility shall be accompanied by fifteen copies of the following:

- 1) The owner's deed to the lot or lots upon which the Facility is proposed to be located, together with evidence of the Applicant's control of the Facility's proposed location.
- 2) An inventory of existing and approved Wireless Telecommunications Facilities owned or operated by the Applicant and located within two miles of the Belmont town line, as well as Facilities for which an application for approval has been filed with any governing authority, together with maps of existing or expected service coverage from such Facilities.
- 3) Evidence of the need for the proposed Facility and of how the proposed Facility addressed that need.
- 4) For any proposed Free-Standing Wireless Telecommunications Facility, evidence that the need for such a Facility cannot be addressed by a Facility other than a Free-Standing Wireless Telecommunications Facility.
- 5) A discussion of the feasibility of addressing such need with a Wireless Telecommunications Facility located on municipally-owned property.
- 6) For any proposed Free-Standing Wireless Telecommunications Facility, evidence that a crane, balloon or other temporary representation of the height of the Facility has been brought to the site and kept in place for not less than 72 consecutive hours, together with photographs of such representation taken from a sufficient number of locations suitable for evaluating the visual impact of the proposed Facility on the Town, the District and neighborhood in which the Facility is proposed to be located, and adjoining properties.
- 7) Proposed hours during which the Facility and associated equipment may be serviced, and a description of regular maintenance procedures.

- b) Special Permit Standards

Notwithstanding the provisions of Section 7.4.2, a Special Permit for a Wireless Telecommunications Facility shall be issued if, upon submission of all required materials and documents and compliance with the procedures set forth in Section 7.4.3, the Board of Appeals finds that:

- 1) The proposed Wireless Telecommunications Facility is reasonably necessary for the convenience or welfare of the public; and
- 2) The interests of the public convenience or welfare have been appropriately balanced against the interest of the Town, the District and neighborhood in which the Wireless Telecommunications Facility is proposed to be located, and adjoining properties.

Such Special Permit shall be subject to any limitations imposed pursuant to Section 7.4.4.

c) Factors to Consider in Special Permit Decision

In making any Special Permit decision pursuant to this Section, the Board of Appeals shall consider, in addition to the preferred qualities set forth in Section 7.4 a) through d) the following:

- 1) The height of the proposed Facility;
- 2) The proposed Facility's proximity to residential structures;
- 3) The nature and uses of adjacent and nearby properties;
- 4) Surrounding topography including, in particular, features that affect the provision of wireless telecommunication services;
- 5) Surrounding tree coverage and foliage;
- 6) The availability of existing structures and buildings so as to avoid the need for Free-Standing Wireless Telecommunication Facilities;
- 7) The good faith efforts of the applicant to locate the proposed Facility on an existing structure or building or to use a less visual obtrusive site or facility design;
- 8) The availability of alternative technology not requiring the siting of the proposed Facility or permitting the utilization of a less obtrusive site or Facility design;
- 9) Any wireless telecommunications service benefits to the Town and its residents;
- 10) The good faith efforts of the Applicant to avoid making the proposed Facility a principal use of the lot.
- 11) Potential interference with other electronic devices within the Town.

Note: §6.8.5.c) was amended by Article 31 at the 1998 Annual Town Meeting.

6.8.6 Removal of Abandoned Wireless Telecommunications Facilities

Any Wireless Telecommunications Facility that is not operated, or that is not in compliance with Section 6.8.3 a)2) for a continuous period of six months shall be considered abandoned, and the Building Inspector may, be appropriate notice sent by certified mail, order that such Facility be removed within 30 days. At the time of removal, the Facility and all associated debris shall be removed from the premises. Any Special Permit issued pursuant to Section 6.8.5 shall require the holder of such Special Permit to post a bond or other surety, specifically approved by Town Counsel, in an amount sufficient to guarantee the removal of the Facility in accordance with this Section and the lawful disposal of any components thereof. In the event that the posted amount does not cover the cost of such removal and disposal, the Town may place a lien upon the premises covering the difference in cost.

6.9 Affordable Housing

Note: §6.9 was adopted under Article 2 at the 1999 Special Town Meeting.

The Planning Board may grant a Special Permit for any tract of land in a General Residence District located adjacent to the McLean District, which Special Permit shall allow:

- a) the construction and use of an apartment house or other multi-family dwellings which contain at least 25% "affordable units" as defined in Section 6A.2.2 b) and which contain up to 40 dwelling units overall; and
- b) the modification of any intensity or dimensional requirement set forth in Section 4.2 or Section 4.3 as necessary in the determination of the Planning Board to permit such development to contain the greatest practical number of affordable units, but in no event so as to allow more than 40 dwelling units overall.

- **Last Updated:** Friday, Dec 20, 2002

SECTION 6A. McLEAN DISTRICT



SECTION 6A. McLEAN DISTRICT

Note: §6A was adopted under Article 2 at the 1999 Special Town Meeting.

There are six (6) Subdistricts within the McLean District: Residential Subdistrict (divided into Zone 1A and 1B and Zone 2); Senior Living Subdistrict; Research and Development Subdistrict; McLean Institutional Subdistrict; Open Space Subdistrict and the Cemetery Subdistrict.

6A.1 Allowed Uses

6A.1.1 Residential Subdistricts

Within the Residential Subdistricts, side-by-side attached single-family dwellings (and the conversion of structures existing as of the date of adoption hereof to single-family or multi-family dwellings) shall be allowed, as well as private club or lodge facilities used exclusively by residents with a maximum aggregate gross floor area of 16,000 square feet (provided that such facilities are located within the first floor of existing buildings that are rehabilitated and reused and that dwelling units are located within the upper floors of such buildings) and those other accessory uses permitted in the Single Residence A, B, C and D Districts, other than lodging and boarding (provided, however, that accessory parking shall be limited as provided in Section 6A.3 and accessory structures shall only be allowed by Special Permit issued by the Planning Board).

6A.1.2 Senior Living Subdistrict

Within the Senior Living Subdistrict, a continuing care retirement community shall be allowed, which shall be defined as development comprised of housing and other associated services operated or sponsored as a coordinated unit by a corporation or organization having as its principal purpose the provision of housing and associated services, including those designed to provide for medical care and assistance with activities of daily living, for elderly persons. A continuing care retirement community may include one or more of the following types of facilities:

a) **Independent Living Facilities.** Independent Living Facilities provide private living and dining accommodations to persons fifty-five (55) years of age or older, and may include the provision of common areas, social and educational programs, and psychological counseling and crisis intervention as needed, all with the purpose of providing an environment in which older persons can continue to derive the personal and psychological benefits of independent living while also enjoying the substantial social and educational benefits of community living. Home health care facilities for the provision of medical, nutritional, social, psychological and educational services for the residents of the Independent Living Facilities are permitted.

b) **Assisted Living Facilities.** Assisted Living Facilities provide a sheltered living environment for persons fifty-five (55) years of age or older, and may include such services as housekeeping, cooking and common dining, social, psychological, and educational programs, programs for

Alzheimer care, assistance with personal needs, and crisis intervention, all with the purpose of assisting each resident to continue to develop and to lead a productive and fulfilling life.

- c) **Nursing Care Facilities.** Nursing Care Facilities are those facilities licensed or approved by the applicable state or federal agency to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. Nursing Care Facilities may include medical and therapeutic and ancillary support and rehabilitation services, including but not limited to, food services, programs for Alzheimer care, social, psychological, and educational programs, and twenty-four hour supervision as appropriate.
- d) **Multipurpose Senior Facilities.** Multipurpose Senior Facilities provide social, educational, medical and therapeutic, wellness, counseling, recreational, outreach, and other activities for residents of the Independent Living Facilities, the Assisted Living Facilities and the Nursing Care Facilities. Multipurpose Senior Facilities may include a beauty parlor/barber shop, convenience store, ice cream parlor, bank, exercise center, and other such services ancillary to a senior living community, so long as such services are provided exclusively for staff, residents and their guests.
-) **Day Care and Similar Programs.** Adult Day Care Facilities and Respite Care Facilities shall be allowed; provided, however, that such uses shall not serve more than 100 persons per day.

6A.1.3 Research and Development Subdistrict

Within the Research and Development Subdistrict, offices for and laboratories for research and development, including but not limited to, research and development in the fields of biology, chemistry, electronics, engineering, geology, medicine, pharmaceutical, physics, computer research and technology shall be allowed.

6A.1.4 McLean Institutional Subdistrict

Within the McLean Institutional Subdistrict, psychiatric hospital use, including clinical, research and teaching programming in the nature of McLean Hospital's current operations as of the effective date of this By-Law, shall be the principal use. To the extent consistent with such principal use, the following non-psychiatric medical uses are also allowed, but such uses in the aggregate shall not exceed 30% of the gross floor area within the Subdistrict: clinics, educational facilities, outpatient services, research and development laboratories and other types of hospital uses and residential programs and professional offices for doctors and other hospital professionals or paraprofessionals; further provided, however, that the following non-psychiatric medical uses in the aggregate shall not exceed 25,000 square feet in gross floor area: clinics, outpatient services and professional offices for doctors, other hospital professionals and paraprofessionals. Uses accessory to psychiatric hospital use and serving the needs of patients or employees are also allowed including overnight accommodations for visitors, cafeterias, fitness centers or gymnasiums, library, art gallery, places of worship, automatic teller machines and auditoriums so long as such services are provided exclusively for staff, residents and their guests.

6A.1.5 Open Space Subdistrict

Within the Open Space Subdistrict, passive recreational uses shall be allowed; provided that the existing building known as Mill Street Lodge can be used as a facility for marketing dwellings in the Residential Subdistricts; the existing building known as Pleasant Street Lodge can be used as a facility for marketing units or space within the Senior Living Subdistrict or Research and Development Subdistrict; and accessory outdoor parking, trails and visitor and interpretative facilities are allowed within publicly-owned land within the Subdistrict. Except as expressly

provided herein, the lands within the Open Space Subdistrict shall be continued in an undeveloped and natural condition. Except as expressly provided herein, cutting, removing or destroying trees (other than the removal of diseased or damaged trees), altering the natural topography and constructing or locating structures within the Subdistrict shall not be allowed. Such land shall not be used for residential, industrial, institutional or commercial use, except that construction and use of vehicular and pedestrian access ways shall be allowed (only within those areas identified as "Vehicular Access Easement" on the Zoning Map) and the installation and maintenance of underground utilities and underground communication connections shall be allowed (only to the extent that such utilities and connections are located and constructed in a manner which minimizes the impact on the conservation values of the property). Continuation and replacement of existing utility and communication facilities shall be allowed. Continuation of the existing recreational field shall be allowed. Use of existing buildings within publicly-owned land within the Subdistrict for cemetery purposes shall be allowed.

6A.1.6 Cemetery Subdistrict

Within the Cemetery Subdistrict, cemetery and associated interment uses, structures, including offices, garage, maintenance buildings and columbariums together with landscaping, pathways, access drives and accessory parking shall be allowed. The installation and maintenance of underground utilities and underground communication connections shall be allowed (only to the extent that such utilities and connections are located and constructed in a manner which minimizes the impact on the conservation values of the property). Continuation and replacement of existing utility and communication facilities shall be allowed.

6A.2 Dimensional Requirements

Gross floor area shall have the meaning set forth in this By-Law except that such area shall include all structures within the Subdistrict (except for preserved structures of historic significance which are vacant, unused and unoccupied and structures on privately-owned land used by the Town for public purposes), not within a given lot, and except that interior parking areas shall be excluded.

6A.2.1 Residential Subdistricts

The dimensional requirements applicable to the Residential Subdistricts are:

- a) Maximum building height of 2.5 stories and 36 feet. For the purposes of this Section 6A, "height" shall mean the vertical distance from the average natural grade adjoining the building at all exterior walls to the highest point of the roof. Notwithstanding the foregoing, for purposes of determining the height of no more than 12 buildings in Zone 1A (each of which must have its side with its greatest height from grade turned more than 90° away from the northern boundary of the Subdistrict) and no more than 20 buildings in Zone 2, an alternative height limit shall be applied: the vertical distance from the average natural grade adjoining the building on the side that has the highest average natural grade to the highest point of the roof shall not exceed 36 feet and the vertical distance from the average natural grade adjoining the building on the side that has the lowest average natural grade to the highest point of the roof shall not exceed 50 feet. For buildings using this alternative height limit, a floor having a ceiling elevation at or below the average natural grade adjoining the building on the side that has the highest average natural grade shall not be considered a story. Each dwelling unit shall be considered a separate building for the purpose of determining height hereunder. No flat or shed roofs shall be allowed on buildings or building elements of more than one story.
- b) Maximum number of dwelling units and gross floor area.
 - 1) in Zone 1A, maximum of 33 units and a maximum total gross floor area of 99,000 square

feet.

2) in Zone 1B, maximum of 22 units and a maximum total gross floor area of 66,000 square feet.

3) in Zone 2, maximum of 56 units and a maximum total gross floor area of 168,000 square feet.

4) notwithstanding the provisions of subsections b) 1), b) 2), and b) 3), an additional 11 dwelling units may be constructed as an historic preservation bonus based on rehabilitation and reuse of buildings consistent with the United States Secretary of the Interior's Standards and Guidelines for Rehabilitation; five such units shall be earned based on preservation and restoration of the existing building known as Upham Building and shall be located in Zone 2; four such units shall be earned based on rehabilitation and reuse of the existing building known as Garage Building and shall be located in Zone 1A or 1B; one such unit shall be earned based on rehabilitation and reuse of the existing building known as Hope Cottage and shall be located in Zone 2 and one such unit shall be earned based on rehabilitation and reuse of the existing building known as South Cottage and shall be located in Zone 2. Such units shall not have a maximum gross floor area so long as they are located in the existing buildings as preserved and restored. Such units shall have a maximum average gross floor area of 3,000 square feet if they are located outside the buildings preserved and restored.

c) Minimum open space of 60% of lot area within Zone 1A and minimum open space of 40% of lot area within Zone 1B and Zone 2.

d) Maximum lot coverage of 20% of lot area within Zone 1A and Zone 1B and maximum lot coverage of 30% of lot area within Zone 2.

e) Maximum impervious surface coverage of 40% of lot area within Zone 1A and maximum impervious surface coverage of 60% of lot area within Zone 1B and Zone 2. For the purposes of this Section 6A, "impervious surface coverage" shall mean the total area of all surfaces which reduce or prevent the absorption of stormwater into land (including buildings, parking lots, driveways and sidewalks).

f) Minimum setback from buildings to the Subdistrict boundary line of 15 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan Review), nor any parking areas may be placed within such setback.

g) Minimum setback from buildings to common driveways of 15 feet.

h) Along the northerly boundary of Zone 1A, for 400 feet from the northeast corner of the Subdistrict, and along the easterly boundary of Zone 1A, for 200 feet from the northeast corner of the Subdistrict, the following shall apply:

1) The area within 30 feet of such portions of such boundaries shall be maintained in an undeveloped and natural condition, except for the landscaping described below.

2) If structures are located in Zone 1A within 100 feet of such portions of such boundaries, there shall be landscape buffering, including evergreen trees of substantial size (12 to 15 feet in height) upon planting, along both sides of such portions of such boundaries (to the extent permitted by the Town, where on Town property), which shall (a) provide a dense visual screening of such structures from view from the adjacent land in the Open Space Subdistrict; (b)

be designed in a manner consistent as feasible with the natural appearance of the area, and (c) be designed in a manner consistent as feasible with the continued life and health of the existing trees. Such landscape buffering may include the removal of invasive plants and their replacement with other native species.

6A.2.2 Senior Living Subdistrict

The dimensional requirements applicable to the Senior Living Subdistrict are:

- a) Maximum building height of 5 stories and 58 feet, except that one building may extend as high as 6 stories and 67 feet; provided that in such case the Planning Board determines that the siting and design of the building having such additional height shall be such that its roof elevation does not exceed the roof elevation of the 5 story building in the Subdistrict with the highest roof elevation and takes into consideration the tree line in the vicinity of such building; provided, further that a parking structure shall have a maximum height of 5 stories and 45 feet. For purposes of determining the height of a building in the Subdistrict, if and only if the lowest floor of the building is used for parking, then an alternative height limit shall be applied: the vertical distance from the average natural grade adjoining the building on the side that has the highest average natural grade to the highest point of the roof shall not exceed 58 feet and the vertical distance from the average natural grade adjoining the building on the side that has the lowest average natural grade to the highest point of the roof shall not exceed 68 feet. For buildings using this alternative height limit, a floor having a ceiling elevation at or below the average natural grade adjoining the building on the side that has the highest average natural grade shall not be considered a story.
- b) Maximum number of 480 units, at least 30 non-nursing care units of which must be set aside on a continuing basis as affordable units, and no more than a total gross floor area of 600,000 square feet; provided, however, that an additional 6 units having a total gross floor area of no more than 6,000 square feet may be constructed as a historic preservation bonus based on rehabilitation and reuse of buildings consistent with the United States Secretary of the Interior's Standards and Guidelines for Rehabilitation; two such units shall be earned based on rehabilitation and reuse of the existing building known as Chapel Building; and four such units shall be earned based on rehabilitation and reuse of the existing building known as Office Building. Of the 486 units, no more than 400 shall be Independent Living Facilities, no more than 150 shall be Assisted Living Facilities and no more than 150 shall be nursing care beds within Nursing Care Facilities. "Affordable units" shall mean units which are rented or sold to, and occupied by, households with annual incomes of up to 120% of the median area household income, as such median is defined by the United States Department of Housing and Urban Development. The availability of the affordable units may be phased in by approval of the Planning Board in connection with Design and Site Plan Review.
- c) Multipurpose Senior Facilities (not including customary common areas for the residential units) cannot exceed 10% of the total allowable gross floor area and shall be included within such total allowable gross floor area.
- d) Minimum open space of 30% of lot area within the Subdistrict.
- e) Maximum lot coverage of 40% of lot area within the Subdistrict.
- f) Maximum impervious surface coverage of 70% of lot area within the Subdistrict.
- g) Minimum setback from buildings to the Subdistrict boundary line of 10 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan Review), nor any parking areas, may be placed within

such setback.

6A.2.3 Research and Development Subdistrict

The dimensional requirements applicable to the Research and Development Subdistrict are:

- a) Maximum building height of 4 stories and 67 feet; except that a parking structure shall have a maximum height of 5 stories and 45 feet.
- b) Maximum gross floor area of 150,000 square feet.
- c) Minimum open space of 30% of lot area within Subdistrict.
- d) Maximum lot coverage of 40% of lot area within Subdistrict.
- e) Maximum impervious surface coverage of 70% of lot area within Subdistrict.
- f) Minimum setback from buildings to the Subdistrict boundary line of 15 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan Review), nor any parking areas, may be placed within such setback.

6A.2.4 McLean Institutional Subdistrict

The dimensional requirements applicable to the McLean Institutional Subdistrict are:

- a) Maximum building height of 4 stories and 67 feet.
- b) Maximum gross floor area of 668,000 square feet.
- c) Minimum setback from buildings to the Subdistrict boundary line of 15 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan Review), nor any parking areas, may be placed within such setback.
- d) The area within the Subdistrict shown on the Zoning Map as "Conservation Buffer" shall be maintained as open space in an undeveloped and natural condition and no building, fences, walls or paving shall be located in such area.

6A.2.5 Cemetery Subdistrict.

The dimensional requirements applicable to the Cemetery Subdistrict are:

- a) Maximum gross floor area of 2,450 square feet.
- b) Minimum setback from buildings to the Subdistrict boundary line of 15 feet. Minimum setback from buildings to public streets of 30 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan Review), nor any parking areas, may be placed within such setbacks.

6A.3 Parking and Access Requirements

6A.3.1 Maximum Number of Spaces.

Accessory parking for the uses allowed in the Residential Subdistricts, the Senior Living Subdistrict, the Research and Development Subdistrict, the McLean Institutional Subdistrict, and the Cemetery Subdistrict shall be allowed provided that such parking may not exceed the limits set out in the following table.

Residential Subdistricts	Two inside parking spaces and two outside parking spaces per dwelling and 122 parking spaces for guests.
Senior Living Subdistrict	One parking space per unit and 50 parking spaces for staff and guests.
Research and Development Subdistrict	Three and one-half parking spaces per 1,000 square feet of gross floor area.
McLean Institutional Subdistrict	For existing uses and structures 853 parking spaces. For new construction, as follows: 3 per 1,000 square feet of gross floor area; provided, however, that the total of parking spaces added for all new construction may not exceed 150 spaces.
Open Space Subdistrict (privately-owned lands)	Five parking spaces adjacent to the Mill Street Lodge; five parking spaces adjacent to the Pleasant Street Lodge.
Cemetery Subdistrict	Seven parking spaces.

The accessory use parking of commercial vehicles shall be further restricted as follows in the several Subdistricts.

- a) Residential Subdistricts - by Special Permit only.
- b) Senior Living Subdistricts – prohibited.
- c) Research and Development Subdistrict – permissible if parked indoors or in a parking garage overnight.
- d) McLean Institutional Subdistrict – permissible.
- e) Open Space Subdistrict – prohibited.
- f) Cemetery Subdistrict – prohibited except for Town-owned vehicles.

Note: §6A.3.1 was amended by Article 28 at the 2001 Annual Town Meeting.

6A.3.2 Parking Location and Layout

Parking must be located in the same Subdistrict as the use it serves. Parking space sizes shall conform to the rules and requirements generally applicable to the Town of Belmont as established from time to time by the Planning Board. Inside parking spaces in the Residential Subdistricts shall be located within a dwelling or an attached garage (no garage shall contain more than two spaces). Outside parking spaces in the Residential Subdistricts shall be located

within a driveway leading to the garage. Guest parking spaces in the Residential Subdistricts shall be outside and shall be located in clusters of no more than 6 spaces each, such clusters to be located as approved by the Planning Board in connection with Design and Site Plan Review. No more than 350 parking spaces in the Senior Living Subdistrict may be outdoor surface spaces; the remainder must be located within a parking garage or other building. No more than 350 parking spaces in the Research and Development Subdistrict may be outdoor surface spaces, the remainder must be located within a parking garage or other building.

6A.3.3 Access Limitations

Vehicular access to the Residential Subdistricts and the McLean Institutional Subdistrict shall be via Mill Street, except in case of emergency access. Vehicular access to the Senior Living Subdistrict and the Research and Development Subdistrict shall be via Pleasant Street, except in case of emergency access.

6A.4 Design and Site Plan Review

Any activity requiring a Building Permit in any Subdistrict, and any proposed construction of a vehicular access way across land in the Open Space Subdistrict, shall require Design and Site Plan Approval by the Planning Board pursuant to this Section 6A.4 (the provisions of Section 7.3 of this By-Law shall not apply except as provided below).

The Planning Board shall promulgate rules requiring any applicant for Design and Site Plan Review under this Section 6A.4 to pay a review fee, in an amount to be determined by the Planning Board to cover the reasonable costs of the Planning Board for the employment of any independent consultants determined to be needed to assist in the review of the application for Site Plan Approval. Such consultants shall be qualified professionals in the relevant fields of expertise determined by the Planning Board.

The objectives of Design and Site Plan Review under this Section 6A.4 shall be to:

- a) obtain appropriate evidence that a traffic monitoring and mitigation program agreement has been entered into with the Town;
- b) obtain appropriate evidence that the proponent or other party has placed into escrow the funds required pursuant to any traffic monitoring and mitigation program agreement entered into with the Town;
- c) determine the adequacy of measures proposed to mitigate construction period impacts on the natural features of the site, on neighboring premises and on the Town roadway system;
- d) determine the adequacy of measures proposed to mitigate the effects of the development on significant natural and landscape features of the site, including the preservation of specimen trees;
- e) determine the appropriateness of the proposed design and materials of proposed buildings;
- f) determine the adequacy of measures proposed to limit peak offsite stormwater runoff to predevelopment levels and to protect water quality in accordance with State stormwater management standards, including adherence to the criteria set forth in Section 6A.5;
- g) determine the adequacy of measures proposed to prevent adverse erosion or sedimentation effects on the natural features of the site or on neighboring premises;

- h) where applicable, obtain appropriate evidence of compliance with all applicable regulatory and licensing requirements with respect to the handling of potentially hazardous materials, including biologic or radioactive materials;
- i) determine that adequate measures have been taken for the private maintenance and management of the development (including roadway maintenance and repair, maintenance of landscape elements and natural open space, maintenance and repair of stormwater management facilities and common utilities, snow removal, trash removal and recycling);
- j) determine that the adjoining premises within and outside of the McLean District will be protected against seriously detrimental uses by provision for surface water drainage, sound and light buffers, prevention of undue solar reflection and glare and preservation of views, light and air;
- k) determine that there will be no serious hazard to vehicles or pedestrians within the site or on adjacent streets or sidewalks;
- l) determine the adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the buildings;
- m) determine the appropriateness of the proposed methods of disposal of refuse and other wastes resulting from the uses permitted on the site, including size, location and landscape screening of dumpsters or other trash receptacles;
- n) determine that the height and bulk of the proposed buildings will not be injurious to surrounding property outside of the McLean District, including appropriate location and screening of non-habitable roof elements;
- o) determine the adequacy of the lighting, landscape planting (including adequate buffers along Subdistrict boundaries) and other exterior construction features in relation to the proposed use of the site and the interests of the safety, convenience and welfare of the public;
- p) determine the appropriateness of the relationship of structures and open spaces to the natural landscape and existing buildings, including the relationship between structures in Zone~1A and the adjacent publicly-owned land in the Open Space Subdistrict;
- q) obtain appropriate evidence of compliance of the proposal with the applicable requirements of this By-Law other than this Section 6A.4; and
- r) obtain appropriate evidence of compliance of the proposal with any non-zoning agreements entered into with the Town of Belmont regarding land in the McLean District.

Any applicant for Design and Site Plan Review shall submit ten copies of a preliminary concept plan for review by the Planning Board prior to submission of a formal application. The preliminary review shall provide an opportunity for the applicant to identify early in the process the preferences of the Planning Board relative to the development of the site. The preliminary concept plan should show the proposed location and size of all buildings, parking areas, driveways and undisturbed natural areas. When the applicant submits a preliminary concept plan to the Planning Board, the applicant shall at the same time provide a copy of such submission to the Conservation Commission, the Historic District Commission, the Community Development Office, the Town Administrator, the Police Department and the Fire Department (the "Commenting Agencies"). The Planning Board will provide advice and guidance to the applicant

after an opportunity for the Commenting Agencies and the public to provide written comments on the preliminary concept plan.

Each application for Design and Site Plan Review under this Section 6A.4 shall be accompanied by ten copies of the documents described in Section 7.3.3. In addition, the application shall also be accompanied by ten copies of: (i) plans showing the existing and proposed topography in two foot contours and showing subsurface conditions; (ii) a construction management program including plans for construction vehicle access routes, on-site construction worker parking, designation of material storage methods and locations, and designation of construction hours; (iii) a development phasing plan, setting forth the anticipated timing of construction and occupancy of the proposed development; (iv) plans showing anticipated views of the proposed development from public locations outside of the McLean District; (v) a reasonably scaled model of the proposed development; (vi) plans indicating specimen trees and other existing vegetation to be preserved; (vii) a traffic circulation plan; (viii) an erosion and sedimentation mitigation plan; (ix) evidence of property ownership; (x) a stormwater management plan, including the calculations described in Section 6A.5 a) and setting forth all proposed facilities and performance standards in sufficient detail to permit the Planning Board to evaluate the proposed development in accordance with the provisions of Section 6A.5; (xi) a written statement of the manner in which the proposal meets each of the objectives set forth above; (xii) evidence that the proposal complies with any non-zoning agreements entered into with the Town of Belmont regarding land in the McLean District; and (xiii) evidence that a crane, balloon or other temporary representation of the height of each proposed structure has been brought to the site and kept in place for not less than 72 hours, together with photographs of such representation taken from a sufficient number of locations suitable for evaluating the visual impacts of each proposed structure in accordance with the objectives set forth above. Where applicable, plans shall be prepared by a registered architect, landscape architect, land surveyor or professional engineer.

The Planning Board or its designee shall review a submitted application for completeness and shall notify the applicant within thirty (30) days of its submission whether the application is complete or, if not, what items are missing. If the Planning Board fails to so notify the applicant within such time, the application shall be deemed complete; provided that nothing herein shall be interpreted to limit the ability of the Planning Board to require additional information. The time for holding a public hearing shall not commence until the Planning Board has received a complete application. Upon receiving notice that an application is complete, the applicant shall provide a copy of the complete application to the Commenting Agencies. After an application has been submitted, no tree removal, grading, filling, construction of roads or installation of utilities shall occur with respect to the proposed area of development until the application has been approved by the Planning Board.

In reviewing an application of Design and Site Plan Review under this Section 6A.4, the Planning Board shall follow the procedures established in the first two paragraphs of Section 7.3.5. Notice of the public hearing shall be provided to the Commenting Agencies inviting written comments and recommendations. An application may be denied where (a) an application is incomplete or (b) no reasonable conditions will ensure that the proposed development is consistent with the objectives set forth in this Section 6A.4. Such a denial shall be in writing and shall set forth the reasons therefor. It is the intent of this Section 6A.4 that an application for Design and Site Plan Review hereunder shall be approved if such application, as affected by such reasonable conditions as the Planning Board may impose, is consistent with the objectives in this Section 6A.4 and all other requirements of this Section~6A. The Planning Board may impose such reasonable conditions on its approval as it shall deem appropriate to assure the continuing consistency of the development with the objectives set forth herein. The Planning Board may require the posting of a bond or other reasonable security as a condition of its approval as it shall deem appropriate to assure compliance with the approval and its conditions.

An appeal from a decision of the Planning Board may be filed with Superior Court or Land Court under Massachusetts General Law, Chapter 40A, Section 17, within twenty days of the filing of

the decision with the Town Clerk. Any proposed amendment to an approval under this Section 6A.4 shall follow the procedures set forth herein for an initial application. Notwithstanding any provisions hereof to the contrary, Design and Site Plan Approval shall not be required for alterations or repairs to an existing building which do not increase the height, bulk or footprint thereof, which are not being performed to provide for its use for a substantially different purpose and which do not violate the conditions contained within any prior Design and Site Plan Approval applicable to such building; provided that the proponent must nonetheless obtain the Planning Board's approval of a construction mitigation plan appropriate for the scope of the proposed alteration or repair prior to the issuance of a Building Permit. If Design and Site Plan Approval is required for alterations or repairs, the Planning Board shall only require such information as reasonably necessary given the scope of proposed alteration or repair.

6A.5 Stormwater Management Facilities

Stormwater management facilities shall comply with the following requirements:

- a) Calculations for pre-and post-development runoff based on the 100-year, 24-hour storm event shall be submitted to the Town Engineer upon application for Design and Site Plan Review.
- b) Where possible, roof drainage shall be piped directly into the ground via infiltration trenches and/or dry wells. Where possible, roads and paving areas shall be designed to allow absorption of runoff into adjacent pervious areas.
- c) Additional detention of post-development impervious surface discharge shall be provided to assure that peak storm discharge can be accommodated by and not prohibit additional discharge to the limited hydraulic capacity of the existing Town off-site storm drainage system.
- d) Stormwater management solutions shall be kept local within each Zone to minimize accumulation and the need for larger structures.
- e) Stormwater runoff shall be retained by open detention basins or by an underground chamber system similar to Cultec Contractor Chamber Systems, or equal. At least 50% of the required detention in each Zone shall be by underground chambers.
- f) Open detention basins shall have a water storage depth of no more than 3 feet at peak in the event of the 100-year storm. All detention basins or chambers shall have a controlled outlet so as not to exceed the capacity of the existing Town drainage system. Any exposed concrete retaining wall surfaces (both sides) shall be finished with natural stone to assure a visually attractive structure.
- g) Underground chambers in all traffic and parking areas shall be heavy duty and structurally capable of withstanding highway H-20 loading or the heaviest fire department vehicle whichever is greater. Chambers shall be aligned parallel to the contours. In so far as possible, underground chambers shall be constructed under proposed roadways and parking areas or within building foundations so as to limit the disturbance of existing natural open space.
- h) Excess roof drainage shall be piped directly to the underground detention chambers, while runoff from road and parking areas shall be passed through water quality inlets/deep sump catch basins to remove trash, debris and some amount of sediment and oil and grease from stormwater runoff. Stormwater discharge from the underground chambers shall be through a weir box or other device to carefully regulate discharge flows to the Town's storm drainage system.

- i) Disruption to existing tree cover and vegetation shall be minimized.
- j) All stormwater management facilities shall be the least visually obtrusive.
- k) Structures shall have all appurtenances carefully integrated to minimize visual presence.
- l) Dikes, berms and other required grading, shall be blended with the terrain and appropriately vegetated and landscaped.
- m) All walls, pipe structures and appurtenances shall be designed to assure public safety by devices which prevent climbing and other hazards.
- n) Open detention basins shall have retaining walls having a height (measured at the point of maximum vertical distance from grade) no greater than 4 feet and a length no greater than 100 feet.
- o) Redirection of stormwater shall not have an adverse effect on wetland areas within the McLean District.
- p) Open detention basins shall have sufficient outlet capacity to drain within five days following the 100-year storm event.

6A.6 Coordination with Other Provisions of By-Law

Where this Section 6A imposes a greater restriction upon uses or structures than is imposed by the remaining provisions of this By-Law, the provisions of this Section 6A shall control. Within the McLean District, more than one principal building may be erected on a lot, subject to the limitations of Section 4.3.5 and Section 4.3.6 regarding accessory buildings and recreational facilities, and subject to Design and Site Plan Review and the other limitations set forth in this Section 6A. The provisions of Section 5 and Section 6 of this By-Law shall apply to uses and structures within the McLean District, except that Sections 5.1.1 and 5.1.2 shall not apply. Within the McLean District, Wireless Telecommunications Facilities shall be allowed by Special Permit in accordance with Section 6.8.

6A.7 Validity

The invalidity of any section or provision of this Section 6A shall not invalidate any other section or provision hereof.

- **Last Updated:** Friday, Dec 20, 2002

SECTION 6B. BELMONT UPLANDS DISTRICT



The Town of Belmont, Massachusetts



SECTION 6B. BELMONT UPLANDS DISTRICT

Note: §6B was adopted under Article 5 at the 2002 Special Town Meeting.

6B.1 Allowed Uses

No building structure shall be erected, altered or used and no premises shall be used for any purpose or in any manner other than as set forth in this Section 6B.1, Allowed Uses. Any use not included in this Section 6B.1 as an allowed use is prohibited in the Belmont Uplands District.

6B.1.1 Office Uses

Buildings to house offices and accessory uses for business or professional uses are allowed provided that medical offices, where the principal use of which are to provide diagnoses and outpatient care on a routine basis for one or more physicians, dentists, or other health care providers are permitted only to the extent that such offices do not occupy more than 33% of the total net usable square feet of the building. Day care is a permitted accessory use, provided that such use is substantially for the tenants of the building.

6B.1.2 Research and Development Uses

Offices and laboratories for research and development, including but not limited to, research and development in the fields of biology, chemistry, electronics, engineering, geology, medicine, pharmaceutical, physics, computer research and technology are allowed pursuant to all applicable federal, state and local regulations.

6B.1.3 Open Space Uses

Passive recreational uses, trails and accessory parking and visitor and interpretative structures, including without limitation, non-habitable kiosks, trail signage, engraved boulders, benches, are allowed.

6B.1.4 Structured Parking Facilities

Structured parking facilities accessory to a permitted use are allowed.

6B.1.5 Wireless Telecommunications Facilities

Wireless Telecommunications Facilities are allowed by Special Permit in accordance with Section 6.8., provided however, Interior Wireless Telecommunications Facilities are allowed as an accessory use provided such Facilities have completed Design and Site Plan Review pursuant to Section 6.8.4, Section 6B.6 and Section 6B.8. No Roof-Mounted Wireless Telecommunications Facility shall exceed the maximum building height provided in Section 6B.2. However, Roof-Mounted Wireless Telecommunications Facilities can exceed such height by Special Permit.

6B.2 Dimensional Requirements

The dimensional requirements applicable to the Belmont Uplands District are:

- a) Minimum lot area of 9 acres;
- b) Minimum lot frontage of 500 feet;
- c) Minimum front setback of 65 feet;
- d) Minimum side setback of 40 feet;
- e) Minimum rear setback of 40 feet.
- f) Maximum building height of 4 stories and 98 feet (including mechanical penthouses, exhaust pipes and vents and related non-habitable space); except that a parking structure shall have a maximum height of 3 stories and 36 feet.
- g) Maximum gross floor area of 245,000 square feet, excluding the square footage of any structured parking, mechanical penthouses, exhaust pipes and vents and related non-habitable space.
- h) Minimum open space of 65%.
- i) Maximum floor area ratio of 1.0.
- j) Maximum lot coverage of 20%.
- k) Maximum impervious surface coverage of 35%.

For purposes of calculating items (a) and (h) – (k), lot and lot area shall mean the whole area of a parcel or parcels of land under one ownership (including land within the layout of a private way) notwithstanding that a portion of such parcel(s) of land are separated from the remaining portion of the parcel(s) of land by a private way or that a portion of such parcel(s) are located in another City or Town provided such land across a private way or in another City or Town is permanently restricted to passive Open Space and/or Open Space Uses.

6B.3 Parking and Access Requirements

6B.3.1 Maximum Number of Spaces

Accessory parking for the uses allowed in the Belmont Uplands District are allowed provided that such parking may not exceed 3.25 parking spaces per 1,000 square feet of gross floor area.

6B.3.2 Bicycle Racks

For premises requiring 40 or more parking spaces, bicycle racks facilitating locking shall be provided to accommodate one bike per 20 parking spaces required.

6B.3.3 Parking Location and Layout

Parking shall be located on the same lot as the use it serves provided that the Planning Board, as part of the approval required under Section 6B.6 of this By-Law, may, in its discretion, permit

reasonable off-site parking as long as such off-site parking is secured through a long-term written agreement and has the substantial likelihood of reducing on-site impervious surfaces, does not create new impervious surfaces elsewhere and will not negatively impact adjacent Town streets and intersections. Parking space sizes shall conform to the rules and requirements generally applicable to the Town of Belmont in Section 5.1 and as established from time to time by the Planning Board. No more than 110 parking spaces may be outdoor spaces and outside of the footprint of the garage; the remainder must be located on, within or below a parking garage or other building.

6B.4 Signs

In the Belmont Uplands District, signs are permitted in accordance with the requirements set forth in Section 5.2.4 a) and b).

6B.5 Lighting

In the Belmont Uplands District, the lighting limitation provisions of Section 5.4.3 b) applicable in a General Business District shall apply provided, however, that primary exterior roadway and parking fixtures shall be full cut off (current IESNA definition), not exceeding 175 watts.

Secondary exterior fixtures shall be selected by the developer, and approved by the Planning Board, in a manner that mitigates glare above the horizontal and off site. Garage rooftop and interior garage fixtures shall be located and shielded to eliminate direct glare onto the surrounding terrain beyond 100 feet from the garage structure or the property line, whichever is closer.

6B.6 Design and Site Plan Review

Any activity requiring a Building Permit in the Belmont Uplands District shall require Design and Site Plan Approval by the Planning Board pursuant to this Section 6B.6 and Section 6B.8 (the provisions of Section 3.5 and 7.3 of this By-Law shall not apply except as provided below).

The Planning Board shall promulgate rules requiring any applicant for Design and Site Plan Review under this Section 6B.6 to pay a review fee, in an amount to be determined by the Planning Board to cover the reasonable costs of the Planning Board for the employment of any independent consultants (including but not limited to attorneys) determined to be needed to assist in the review of the application for Site Plan Approval. Such consultants shall be qualified professionals in the relevant fields of expertise determined by the Planning Board.

The objectives of Design and Site Plan Review under this Section 6B.6 are:

a) to obtain appropriate evidence that traffic impacts of a project will be identified through a traffic study and then appropriately mitigated through mitigation plans funded and constructed by a project proponent, including but not limited to programs to limit vehicle trips to the project site, such as a required Transportation Demand Management (TDM) plan, and/or physical improvements to the impacted on-site and off-site roadways and intersections that are identified in the traffic studies prepared regarding the proposed project. A TDM shall consider, at a minimum:

1) Ridesharing Programs, including but not limited to, carpool/vanpool matching programs through the local Transportation Management Association (TMA); joint programs with area commercial tenants; dissemination of promotional materials to employees' newsletters about the program; coordination with CARAVAN which leases commuter vans and provides administrative and organizational assistance; preferential parking for carpoolers; and guaranteed ride home program;

- 2) Alternative Work Schedules;
- 3) Public Transportation including, but not limited to, subsidized passes for public transportation and consultation with public transit authorities to establish bus service to project site;
- 4) Bicycle Facilities including, but not limited to, inclusion of bicycle racks and/or bicycle storage lockers and showering facilities as part of a project.
 - b) to determine that the architecture of the building(s) and any parking garages reflect the prominence of the buildings on the site and in the neighborhood, including, but not limited to determination on the appropriateness of the building materials proposed for the facades of all buildings and parking structures.
 - c) to determine that measures proposed to mitigate construction period impacts on the wetlands and floodplain areas on the site, on adjoining premises and on the Town roadway system are adequate;
 - d) to determine the adequacy of measures proposed to mitigate the effects of the development on wetlands and floodplain areas on the site and on adjoining properties;
 - e) to determine the adequacy of measures proposed to limit peak off-site stormwater runoff to predevelopment levels and to protect water quality in accordance with the Massachusetts Department of Environmental Protection ("MADEP") stormwater management standards, including adherence to the criteria set forth in Section 6B.7;
 - f) where applicable, to obtain appropriate evidence of compliance with all applicable federal, state and local regulatory and licensing requirements with respect to the handling of potentially hazardous materials, including biologic or radioactive materials;
 - g) to determine that adequate measures have been taken for the private construction, maintenance and management of the natural open space on the site, including the creation of an acceptable Open Space Maintenance Plan and Agreement by which the applicant (including future successors and assigns) agrees to undertake the proper construction, maintenance and management of the natural open space on the site;
 - h) to determine that the adjoining premises within and outside of the Belmont Uplands District will be protected against seriously detrimental uses by provision for stormwater drainage, sound and light buffers, prevention of undue solar reflection and glare and preservation of views, light and air;
 - i) to determine that there will be no serious hazard to vehicles or pedestrians within the site or on adjacent streets or sidewalks and to determine that the development shall promote the use of public transportation;
 - j) to determine the adequacy of the proposed methods of commercial removal of refuse and other wastes resulting from the uses permitted on the site, including size, location and landscape screening of dumpsters or other trash receptacles;
 - k) to determine the adequacy of lighting, landscape planting, preservation of specimen trees (where reasonable), location and screening and/or camouflaging of non-habitable roof elements and other exterior construction features in relation to the proposed use of the site and the interests of the safety, convenience and welfare of the public;

- l) to determine there is adequate provision for municipal water and sewer to service the site;
- m) to determine that the height and bulk of the proposed buildings on a project site comply with the dimensional requirements of Section 6B.2 and to obtain appropriate evidence of compliance of the proposal with the applicable requirements of this By-Law other than this Section 6B.6;
- n) to obtain appropriate evidence of compliance of the proposal, or satisfactory assurances of compliance, with any non-zoning agreements entered into with the Town of Belmont regarding land in the Belmont Uplands District; and
- o) to obtain appropriate evidence that any proposed Conservation Restriction or wetland restoration programs will adequately protect and/or restore the resources intended.

6B.7 Stormwater Management Facilities

Stormwater Management Facilities shall comply with the following requirements:

- a) Pre- and post-development runoff rates from the site during the 2-, 10-, 25- and 100-year storm events shall be calculated and compared in order to demonstrate post-development discharge rates do not exceed the pre-development discharge rates. These calculations shall be submitted with the application for Design and Site Plan Review under Section 6B.6.
- b) Where possible, a portion of building roof drainage shall be piped directly to an underground infiltration system to be sized to meet MADEP groundwater recharge requirements for the site. Once the required MADEP groundwater recharge volumes are met, an overflow pipe from the infiltration system to the adjacent stormwater management systems may convey excess stormwater flows. Underground infiltration systems shall be constructed under proposed parking areas or building foundations so as to limit the disturbance of existing natural open space.
- c) Stormwater runoff from the on-site paved areas will be collected and conveyed through deep sump catch basins and storm drain pipes to adjacent stormwater management systems. The pipe capacity of the storm drain system shall be designed to convey the 10-year storm frequency.
- d) Open detention basins and other Best Management Practices (BMPs) shall detain at a minimum the difference in pre- versus post-development stormwater discharge rates from the site.
- e) Open detention basins shall have adequate storage volume to contain the peak elevation during the 100-year storm event within its top of bank.
- f) Compensatory storage volumes provided due to loss in floodplain storage of Little River shall result in a minimum net increase of 1.5 times the existing volume impacted.
- g) Disruption to existing tree cover and vegetation shall be minimized.
- h) Dikes, berms and other required grading shall be blended with the terrain and landscaped and appropriately vegetated with wetland and indigenous species.
- i) All walls, pipe structures and appurtenances shall be designed to assure public safety by devices which prevent climbing and other hazards.

j) Creation of an acceptable Stormwater Facilities Maintenance Plan and Agreement by which the applicant agrees to manage and to maintain the Stormwater Facilities servicing the site.

6B.8 Site Plan Review Procedures

Each application for Design and Site Plan Review under Section 6B.6 shall be accompanied by ten copies of the documents described in Section 7.3.3. In addition, the application shall also be accompanied by ten copies of:

- i) plans showing the existing and proposed topography in two foot contours and showing underground utilities;
- ii) a construction management program including, but not limited to, plans for construction vehicle access routes, on-site construction worker parking, designation of material storage methods and locations, and designation of construction hours;
- iii) a development plan, setting forth the anticipated timing of construction and occupancy of the proposed development;
- iv) plans showing anticipated views of the proposed development from public locations outside of the Belmont Uplands District;
- v) plans indicating the location of wetlands and floodplains, if any, and other existing vegetation to be preserved;
- vi) an erosion and sedimentation control plan;
- vii) evidence of property ownership;
- viii) a stormwater management plan, including the calculations described in Section 6B.7(a) and setting forth all proposed facilities and performance standards in sufficient detail to permit the Planning Board to evaluate the proposed development in accordance with the provisions of Section 6B.7;
- ix) a written statement of the manner in which the proposal meets each of the objectives set forth above;
- x) evidence that the proposal complies with any non-zoning agreements entered into with the Town of Belmont regarding land in the Belmont Uplands District; and
- xi) evidence that a view shed analysis has been performed using a digitally created representation of the height of each proposed structure for the site, together with photographs of such representation taken from a sufficient number of locations suitable for evaluating the visual impacts of each proposed structure in accordance with the objectives set forth above; and
- xii) the Planning Board may, in its discretion, require a traffic study which shall include an impact study on those roadways and intersections reasonably believed to be likely impacted by the project, as well as any mitigation proposals to reduce or eliminate the identified impacts.

Where applicable, plans shall be prepared by a registered architect, landscape architect, land surveyor or professional engineer. After an application has been submitted, no tree removal, grading, filling, construction of roads or installation of utilities shall occur with respect to the proposed area of development until the application has been approved by the Planning Board.

In reviewing an application for Design and Site Plan Review under this Section 6B.8, the Planning Board shall follow the procedures established in the first two paragraphs of Section 7.3.5. Notice of the public hearing shall be provided to the appropriate boards and departments inviting written comments and recommendations. An application may be denied where (a) an application is incomplete or (b) no reasonable conditions can be imposed which will insure that the proposed development is consistent with the objectives set forth in Section 6B.6 and applicable sections of the Belmont Zoning By-Law. Such a denial shall be in writing and shall set forth the reasons therefore. It is the intent of Section 6B.6 and this Section 6B.7 that an application for Design and Site Plan Review shall be approved if such application, as affected by such reasonable conditions as the Planning Board may impose, is consistent with the objectives in Section 6B.6 and all other requirements of this Section 6B and the Belmont Zoning By-Law.

The Planning Board may impose such reasonable conditions on its approval, as it shall deem appropriate to assure the continuing consistency of the development with the objections set forth herein. The Planning Board may require the posting of a performance guaranty as a condition of its approval as it shall deem appropriate to insure compliance with the approval and its conditions.

An appeal from a decision of the Planning Board granting or denying Site Plan Approval may be filed with Superior Court or Land Court under Massachusetts General Law, Chapter 40A, Section 17, within twenty days of the filing of the decision with the Town Clerk. Any proposed amendment to an approval under Section 6B.6 and this Section 6B.8 shall follow the procedures set forth herein for an initial application.

6B.9 Coordination with Other Provisions of By-Law

This Section 6B together with the rest of this By-Law constitute the zoning regulations for the Belmont Uplands District. Where conflicts exist between this Section 6B and the rest of this By-Law, the provisions of this Section shall govern. Except where specifically indicated in this Section, the provisions of this Section supersede Sections 3 (Use Regulations), 4 (Intensity Regulations) and 5.1.1 (Parking – Number of Spaces), 5.1.2 (Parking – Schedule of Requirements), 5.1.3 a) (Parking and Loading Area Location and Design, Location), 5.3.3 c) (Landscaping for Parking Area Plantings) 6.6.3 b) (Floodplain District, Use Regulations) and 7.3 (Design and Site Plan Review).

6B.10 Validity

The invalidity of any section or provision of this Section 6B shall not invalidate any other section or provision hereof.

- **Last Updated:** Friday, Dec 20, 2002

SECTION 7. ADMINISTRATION

 The Town of Belmont, Massachusetts 

SECTION 7. ADMINISTRATION

7.1 Enforcement and Penalty

7.1.1 Enforcement

The Building Inspector shall enforce this By-Law in the manner and with the powers as provided in Massachusetts General Law, Chapter 40A and this By-Law. The Chief of the Fire Department shall refer to the Building Inspector all violations of this By-Law that are discovered in the course of inspections by that department or otherwise.

If the Building Inspector is requested in writing to enforce a provision or provisions of this By-Law against any person allegedly in violation of the same and such officer declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.

7.1.2 Penalty

Any person violating any provision of this By-Law shall be subject to a fine not exceeding \$300.00 for each offense. Each day or part thereof that any violation continues shall constitute a separate offense.

Note: §7.1.2 was amended by Article 29 at the 1992 Annual Town Meeting.

7.1.3 Non-Criminal Disposition

Note: §7.1.3 was adopted under Article 28 at the 1992 Annual Town Meeting.

In addition to the procedure for enforcement described above, the provisions of this By-Law may also be enforced by non-criminal disposition as provided in Massachusetts General Law, Chapter 40, Section 21D (Section 21D). The penalty for such violation shall be \$50.00 for the first offense, \$100.00 for the second offense and \$200.00 for the third and each subsequent offense. Each Day or part thereof shall constitute a separate offense.

“Enforcing person” as used in this Section 7.1.3 shall mean the Building Inspector and any other Town employee designated by the Board of Selectmen as an enforcing person.

Any enforcing person taking cognizance of a violation of this By-Law or any rule or regulation adopted hereunder shall give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof for the non-criminal disposition thereof in accordance with the provisions of Section 21D. The provisions of Section 21D are incorporated herein by reference.

7.2 Compliance

7.2.1 Conformity Required

Buildings or structures may not be erected, substantially altered, moved or changed in use and land may not be substantially altered or changed in principal use without certification by the Building Inspector that such action is in compliance with then applicable zoning, or without review by him regarding whether all necessary permits have been received from those governmental agencies from which approval is required by federal, state, or local law. Issuance of a Building Permit or Certification of Use and Occupancy, where required under the Commonwealth of Massachusetts State Building Code, may serve as such certification.

7.2.2 Vested Rights Limitation

Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized by the Permit is commenced within a period of not less than six months after the issuance of the Permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.3 Design and Site Plan Review

7.3.1 Objectives

The objectives of the Design and Site Plan Review procedure shall be to:

- a) determine that the specific site is an appropriate location for the proposed use, structure or condition;
- b) determine that the adjoining premises will be protected against seriously detrimental uses by provision for surface water drainage, sound and light buffers and preservation of views, light and air;
- c) determine that there will be no serious hazard to vehicles or pedestrians within the site or on adjacent streets or sidewalks;
- d) determine the adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the buildings;
- e) determine the adequacy of the proposed methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- f) determine that the height and bulk of the proposed buildings will not be injurious to surrounding property;
- g) determine the adequacy of the lighting, planting and other exterior construction features in relation to the proposed uses of the site and the interests of the safety, convenience and welfare of the public;
- h) where appropriate, consider the relationship of structures and open space to the natural landscape and existing buildings.

7.3.2 Applicability

Applications for the following shall be subject to Design and Site Plan Review.

- a) Special Permits for public building and school conversion, elderly housing, cluster development, and major business development.

- b) All other applications for a new building or addition in Business Districts if creating either 1,000 square feet gross floor area, or resulting in six or more parking spaces on the premises, if that development also entails alteration to the number of parking spaces, or to the configuration of parking, screening, egress, utilities, drainage, or lighting on the premises.
- c) Change of use in a General Business District on property abutting a residential district or directly opposite a residential district and separated therefrom by a street.

Note: §7.3.2 was amended by Article 32 at the 1995 Annual Town Meeting.

- d) Wireless Telecommunications Facilities.

Note: §7.3.2 was further amended by Article 32 at the 1998 Annual Town Meeting.

7.3.3 Design and Site Plan Review Submittals

With each application which requires Design and Site Plan Review, ten copies of the following documents shall be attached unless, prior to submittal, the Planning Board has determined that certain materials are not germane to the decision being made, and authorizes their omission:

- a) Detailed site plan or plans at 1"=20' or other scale approved in advance by the Board, showing buildings, roads, walks, and other open space. All land uses shall be designated. All landscaping and site development details, including walls, fences, planting, outdoor lighting, street furniture and ground surface materials, shall be indicated. Boundary streets and points of vehicular and pedestrian access shall be shown indicating proposed new paving, planting and lighting by the Town, and existing right-of-way development which is to remain. Adjacent structures shall be shown. All utilities, easements or service facilities, insofar as they relate to work or service provided by the Town or by others, shall be shown. Proposed site grading, including typical existing and proposed grades at parcel lines shall be shown. There shall be a clear indication of those areas of the site that are proposed to be developed by others, and of easements to be provided.
- b) All building plans, sections, and elevations at 1/8" to 1' – 0" or other sufficiently large scale.
- c) A written statement of the proposal including, the number and size of dwelling units, number of seats or table capacity for restaurants, clubhouses, or places of public assembly, anticipated number and frequency of events at clubhouses, places of public assembly, or anticipated pupil enrollment and use schedule for schools for profit, number of parking spaces, square footage of site, buildings, and open space not occupied by driveway or parking. The Planning Board may, at its discretion, require that the written statement include an estimate of municipal revenues and costs expected to be generated by the project, including anticipated real estate valuation and public service needs.

7.3.4 Special Permit Procedure for Design and Site Plan Review

The Board of Appeals shall refer five copies of all applications for Special Permits requiring Design and Site Plan Review to the Planning Board for review and recommendation. The Planning Board recommendation shall be made within 30 days of the close of the public hearing. The Planning Board shall endorse a copy of the drawings reviewed and return it to the Board of Appeals together with its recommendation.

After the public hearing and receipt of the Planning Board recommendation, or lapsing of the time for its receipt, the Board of Appeals shall determine if the objectives as stated in Section 7.3.1 above are satisfied. If it is so satisfied, the Board of Appeals may issue a Special Permit, subject to appropriate conditions, safeguards, or limitations.

7.3.5 Building Permit Procedure

Where Design and Site Plan Review is required but a Special Permit is not, the Planning Board shall hold a public hearing within 65 days of receiving the application. Notice of the public hearing shall be sent by mail, postage prepaid, to the applicant, abutters and owners of land directly opposite of any public or private street or way within 300 feet of the property line, including owners of land in another municipality, all as they appear in the most recent applicable tax list as certified to the Board by the Assessors.

Within 90 days following the public hearing, the Planning Board shall act on the application, approving it if it is determined to be consistent with the objectives outline in Section 7.3.1, to the extent applicable, and disapproving it if it is not. Approval may be made subject to such reasonable conditions, modifications and restrictions as the Board may deem necessary to ensure consistency with those objectives.

Denial of the application shall be in writing, stating the reasons for such denial, which reasons shall include a statement of the respect in which any elements and any particular features of the proposals are deemed by the Board to be unsuitable and detrimental to the neighborhood under the standards set forth in Section 7.3.1 hereof.

7.4 Special Permits

7.4.1 Special Permit Granting Authority

At various places in this By-Law, authority for acting on particular Special Permits is assigned to the Board of Selectmen, the Planning Board, or the Board of Appeals. Where no agency is specifically designated, the Board of Appeals shall act as the Special Permit Granting Authority (SPGA).

7.4.2 Special Permit Criteria

The following shall be the basis for decisions on Special Permits, except as may be more specifically provided elsewhere in this By-Law. Special Permits shall be granted only if the Special Permit Granting Authority determines that the proposal's benefits to the Town will outweigh any adverse effects for the Town or the vicinity, after consideration of the following preferred qualities, among other things:

- a) Location.
 - 1) Providing adequate water, sewerage, drainage for this location should pose no special public problems.
 - 2) The site should be able to accommodate the proposal without substantial environmental damage due to wetland loss, habitat disturbance, or damage to valuable trees or other natural assets.
- b) Activity Type and Mix.
 - 1) Residential proposal should serve housing needs of local residents, or broaden the diversity of housing within the Town.
- c) Visual Consequences.
 - 1) Views from public ways and developed properties should be considerably treated in the site arrangement and building design.

- 2) Visibility of parking and service areas from public streets should be minimized through site arrangement, and such area should be screened from abutting premises.
- 3) Departure from the architectural scale of buildings on abutting and nearby premises should be minimized, except where the departure would serve some townscape purpose.
- d) Access.
 - 1) Access to the location should increase existing traffic (average daily, unless the Board of Appeals specifies otherwise) by no more than 10% at any point, taking into consideration any special access provisions committed (ride-sharing, etc.).
 - 2) Pedestrian and vehicular movement to, from, and within the site should be safe and convenient, and arranged so as not to disturb abutting properties.
- e) Process.
 - 1) Where possible, the proposal should have been developed in consultation with those likely to be substantially impacted by it.
 - 2) Mitigation or, where that is inadequate, offsetting compensatory actions, should be used to ameliorate negative consequences for other parties or the Town.

At the time of application, the applicant shall submit documentation regarding each of the above considerations which are germane, including information regarding consultative efforts made with any neighborhood groups or other affected parties. The Special Permit Granting Authority shall refer such documentation to the Town Engineer, Planning Board, Conservation Commission, or other authorities, as appropriate, for technical review and comment.

7.4.3 Procedure

a) Each application for Special Permit shall be filed by the petitioner with the Town Clerk. Ten copies of said application, including one having the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Special Permit Granting Authority, together with ten copies of any supporting plans or other materials. If Site Plan Review is required, a total of fifteen copies of the application and supporting plans or other material shall be required.

Note: §7.4.3 a) was amended by Article 33 at the 1995 Annual Town Meeting.

b) Where the Board of Appeals is the Special Permit Granting Authority, it shall refer notice of all applications immediately upon receipt to the Planning Board. Failure of the Planning Board to make recommendation within 35 days of receipt of the application shall be deemed lack of opposition thereto.

c) The Special Permit Granting Authority shall hold a public hearing within 65 days of the filing of the application and shall render a decision within 90 days from the date of the public hearing. The required time limits for a public hearing and for rendering a final decision may be extended by written agreement between the petitioner and the Special Permit Granting Authority. A copy of such agreement shall be filed in the Office of the Town Clerk.

d) Failure of the Special Permit Granting Authority to take final action within 90 days from the date of the public hearing or within any extended time, if applicable, as provided in Section 7.4.3 c) of the By-Law, shall be deemed to be a grant of the Special Permit, subject to the following requirements:

- 1) The petitioner who seeks such approval by reason of the failure of the Special Permit Granting Authority to act within such time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 90 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest.
- 2) The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, Section 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the Special Permit Granting Authority failed to act within the time prescribed.
- 3) After the expiration of 20 days without notice of appeal to a court of competent jurisdiction under Massachusetts General Law, Chapter 40A, Section 17, or, if appeals have been taken, after receipt of certified records of the Court indicating that such approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Special Permit Granting Authority failed to take action and that the approval resulting from such failure has become final. Such certificate shall be forwarded by the Town Clerk to the petitioner.
- e) Upon the granting of a Special Permit, or any extension, modification of renewal thereof, whether by decision of the Special Permit Granting Authority, constructive grant, or decision of a Court, the procedures set forth in the final paragraph of Section 7.5.3 of this By-Law shall apply.

7.4.4 Special Permit Limitations

A Special Permit, if granted, shall be subject to any general or specific rules prescribed herein, and may be made subject to appropriate conditions, safeguards, and limitations on time or use. A Special Permit shall lapse within a two-year period or a shorter period if so specified by the Board, including any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Law, Chapter 40A, 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 within the period except for good cause.

7.5 Board of Appeals

7.5.1 Membership

There shall be a Board of Appeals consisting of five regular and three associate members to be appointed by the Board of Selectmen as provided in Massachusetts General Law, Chapter 40A. All members shall be residents of the Town. In making the appointments, the Board of Selectmen shall consider those persons best qualified to carry out the statutory responsibilities of the Board. One regular member shall be appointed each year for a term of five years. One associate member shall be appointed each year for a term of three years. In case of absence, inability to act or conflict of interest on the part of any member or in the event of a vacancy on the Board, the chairperson of the Board of Appeals may designate an associate member to serve. Any member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. No regular or associate member of the Board of Appeals shall represent before such Board any party or interest in any matter pending before it.

7.5.2 Powers

The Board of Appeals shall act as a Permit Granting Authority and a Special Permit Granting Authority and shall have the following powers in accordance with the provisions of Massachusetts General Law, Chapter 40A and this By-Law.

Appeals - To hear and decide an appeal taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from the Building Inspector under the provisions of Massachusetts General Law, Chapter 40A and/or this By-Law, by the Metropolitan Area Planning Council or by any person including an officer or board of the Town of Belmont or of an abutting town aggrieved by an order or decision of the Building Inspector in violation of any provision of Massachusetts General Law, Chapter 40A or of this By-Law.

Special Permits - To hear and decide on application for Special Permits as provided in this By-Law in cases where the Board of Appeals is designated as Special Permit Granting Authority.

Variations - To hear and decide a petition with respect to particular land or structures for a Variance from the terms of this By-Law, where the Board specifically finds that owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures 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 petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of this By-Law.

Variations authorizing a use or activity not otherwise permitted in a particular zoning district may be granted only for accessory uses, and uses within existing structures without extension thereof except that the Board of Appeals upon petition may modify a Use Variance granted prior to January 1, 1976.

Note: §7.5.2 was amended by Article 36 at the 1991 Annual Town Meeting.

In acting on Variations, the Board of Appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structures but excluding any condition, safeguard or limitation based upon the continued ownership of the land or structure to which the Variance pertains by the applicant, petitioner or any owner. If the rights authorized by a Variance are not exercised within one year of the date of the authorization, they shall lapse and may be reestablished only after a new notice and hearing.

Pursuant to the provisions of Massachusetts General Law, Chapter 44, Section 53G, the Board of Appeals shall promulgate rules requiring any applicant for a Special Permit pursuant to Section 6.8.5 to pay a review fee, in an amount to be determined by the Board of Appeals, to cover the reasonable costs of the Board of Appeals for the employment of any independent consultants determined to be needed to assist in the review of the Special Permit application. Such consultants shall be qualified professionals in the relevant fields of expertise determined by the Board of Appeals.

Note: §7.5.2 was further amended by Article 33 at the 1998 Annual Town Meeting.

7.5.3 Procedure

a) Hearing. In the case of every appeal made to the Board of Appeals, every petition for a Variance and every application for a Special Permit to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property line including owners of land in another municipality all as they appear on the most recent applicable tax lists, the Planning Board and the Planning Board of every abutting municipality. The Assessors shall certify to the Board the names and addresses of the parties in

interest.

b) Filing. A petition for a Variance and an application for a Special Permit to the Board of Appeals shall be filed by the petitioner with the Town Clerk and a copy of said petition or application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Board of Appeals. A notice of appeal from a decision of the Building Inspector shall specify the grounds for such appeal and shall be filed by the petitioner with the Town Clerk, and a copy of said notice of appeal, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the office or board whose order or decision is being appealed and to the Board of Appeals.

Any such petition, application or appeal shall include ten copies of said petition, application or appeal and any supporting plans or other materials. If Site Plan Review is required, a total of fifteen copies of the petition, application or appeal and supporting plans or other material shall be required.

Note: §7.5.3. b) was amended by Article 34 at the 1995 Annual Town Meeting.

c) Time limits. The Board of Appeals shall hold a hearing on any appeal, petition for a Variance, or application for a Special Permit, within 65 days of the Board's receipt of the notice of appeal, petition or application. The decision of the Board shall be made within 100 days after the date of filing of an appeal or petition, except in regard to applications for Special Permits, on which the Board shall render a decision within 90 days from the date of the public hearing.

The required time limits for a public hearing and for rendering a decision may be extended by written agreement between the petitioner and the Board of Appeals. A copy of such agreement shall be filed in the Office of the Town Clerk.

Failure by the Board of Appeals to act within 100 days after the date of the filing of the appeal or petition as the case may be, or within such extended time as is applicable, and failure by the Board to render a decision within 90 days of the required public hearing on a Special Permit application or within such extended time as is applicable, shall be deemed to be the grant of the appeal, petition or application, subject to the following requirements:

1) The petitioner who seeks such approval by reason of the failure of the Board to act within the time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 100 days in the case of appeals and Variance petitions, and said 90 days in the case of Special Permit applications, or any extended time if applicable, of such approval and that notice has been sent by the petitioner to parties in interest.

2) The petitioner shall send such notice to parties in interest by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, Section 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the Board failed to act within the time prescribed.

3) After the expiration of 20 days without notice of appeal to a Court of competent jurisdiction, or, if appeal has been taken, after receipt of certified records of the Court indicating that such approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded by the Town Clerk to the petitioner.

) Documentation. Upon the granting for a Variance or Special Permit, or any extension, modification or renewal thereof, the Board shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the Board containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such Variance or Permit and certifying that copies of the decision and all

plans referred to in the decision have been filed with the Planning Board and Town Clerk. No Variance or Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, and if it is a Variance or Special Permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the Special Permit or petition for the Variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed and no appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the names of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

7.6 Repetitive Petitions

7.6.1 To Town Meeting

No proposed change in this By-Law which has been unfavorably acted upon by the Town Meeting shall be considered by the Town Meeting within two years after the date of such unfavorable action unless adoption of the proposed change has been recommended in the final report of the Planning Board to the Town Meeting.

7.6.2 To Board of Appeals or other SPGA

No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or other Special Permit Granting Authority shall be acted favorably upon within two years after the date of final unfavorable action unless:

- 1) all but one of the members of the Planning Board consent to a re-petition after notice is given to parties in interest of the time and place of the proceedings to consider consent, and
- 2) the Board of Appeals or other SPGA finds specific and material changes in the conditions upon which the previous unfavorable action was based, described such changes in its records and similarly consents.

7.7 Amendment

This By-Law may be amended from time to time at an Annual or Special Town Meeting. An amendment may be initiated by the submission to the Board of Selectmen of a proposed change by the Board of Selectmen, the Board of Appeals, an individual owning land in the Town to be affected by the amendment, registered voters of the Town pursuant to Massachusetts General Law, Chapter 39, Section 10, the Planning Board and the Metropolitan Area Planning Council. Within 14 days of the receipt of the proposed change, the Board of Selectmen shall submit it to the Planning Board. A public hearing shall be held by the Planning Board within 65 days after the proposed change is submitted to the Board. The Town Meeting shall not act upon any zoning amendment until the same has been reported on by the Planning Board as herein provided or until 21 days has elapsed after the Planning Board hearing without submission of such report.

Any petition for the alteration of the boundaries of any zoning district shall be accompanied by an accurate plan, size 20" by 30", at a scale no smaller than 80 feet to the inch showing the changes proposed by the petition. The Planning Board in its report to the Town on any petition to alter the boundaries of any zoning district or on its own initiative shall file with the Town a similar plan showing the changes recommended. No action shall be taken by the Town except as to

acceptance without amendment of the plan filed by the petitioner, or plan filed by the Planning Board as aforesaid, or on some modification of either plan, made or approved by the Town Engineer.

7.8 Validity

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

7.9 Effective Date

The effective date of an amendment to this By-Law shall be the date on which such amendment was adopted by a favorable two-thirds vote of Town Meeting, subject to its publication in a Town bulletin or pamphlet and posting or publication in a newspaper as provided in Massachusetts General Law, Chapter 40, Section 32.

- **Last Updated:** Friday, Dec 20, 2002