

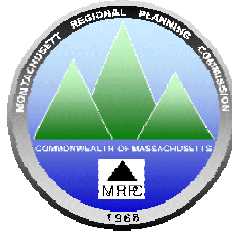
# WESTMINSTER, MASSACHUSETTS



## ANALYSIS OF TABLE OF USE SCHEDULE AND DIMENSIONAL REGULATIONS IN INDUSTRIAL AND COMMERCIAL ZONES

SUBMITTED TO THE  
WESTMINSTER PLANNING BOARD  
BY

MONTACHUSETT REGIONAL PLANNING COMMISSION



AND

WILLIAM SCANLAN, AICP

FUNDING PROVIDED BY THE  
MASS. PERMIT REGULATORY OFFICE  
CHAPTER 43D TECHNICAL ASSISTANCE GRANT PROGRAM

JANUARY 7, 2010

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## INTRODUCTION

The Town of Westminster is always looking for new opportunities to create jobs for residents, broaden the tax base, and enhance Westminster as a viable place to live and work. In May 2008, there was a majority vote at Annual Town Meeting to accept the provisions of Chapter 43D of the MA General Laws, as amended, pursuant to Section 11 of Chapter 205 of the Acts of 2006. The vote approved the filing of an application with the state's Interagency Permitting Board (IPB) to designate three priority development sites within the community (Fitchburg Road, Simplex Drive, and Westminster Business Park). The Expedited Permitting Program gives the Town the ability to promote commercial development on these sites by offering expedited local permitting where permitting decisions must be rendered within 180 days. By adopting Chapter 43D and designating priority development sites, the Town received a Chapter 43D Technical Assistance Grant.

Utilizing some of its Chapter 43D Technical Assistance Grant funds, the Town signed a contract with the Montachusett Regional Planning Commission (MRPC) in July 2009. MRPC, as a unit of government, is exempt from MGL Chapter 30B procurement. Westminster and the MRPC entered into an "inter-governmental agreement", enabling the MRPC to deliver the planning services in an expeditious manner with a completion date of December 2009.

MRPC's work involved researching potential options concerning modification to the Use Table and the Dimensional Table exclusively for the industrial and commercial zones. MRPC's consultant, William Scanlan, assisted with this effort as part of MRPC's contract with the federal Economic Development Administration to provide economic development technical assistance to member communities. Results include the identification of discrepancies, redundancies, and ideas that could enhance the Use Table and Dimensional Table to further promote economic development.

MRPC's work also included researching other zoning options to promote economic development in Westminster, including a Village District Bylaw, Historic District Bylaw, Demolition Delay bylaw, and an Infill Development bylaw. Sample materials and bylaws have been included as attachments. These are land use tools that would not only improve the Town's tax base, but would also help to retain the character of the community.

Upon request of the town, MRPC conducted a review of the Mixed Use Commercial Overlay District Bylaw that was proposed at the Westminster Town Meeting in the spring of 2009. As a result, MRPC staff incorporated edits/comments into the document for the Town to consider if it decides to bring the bylaw back to a future Town Meeting. Recommendations include language to allow multiple structures per lot as part of a special permit application, various Performance Conditions, and a Pre-Application Conference requirement. MRPC's sub-consultant (Attorney Mark Goldstein) provided a legal review to insure the bylaw can withstand legal challenge.

In conclusion, MRPC has the ability to offer an independent third-party perspective. Its long-standing expertise in municipal and regional issues makes it uniquely positioned to add valuable information and analysis that can be utilized by Westminster. This was supplemented by community meetings to gather input from local officials, boards, and committees. In fact, MRPC attended several meetings with: representative of the Planning Board and the Zoning Enforcement Officer in July, August, and again in September, 2009 (the Planning Board Chairman also attended the July meeting); with the Planning Board in October and December; and with the newly formed

Westminster Mixed Use Overlay Committee on three separate occasions (October, November, and December).

Toward this end, we envision that MRPC can fulfill a needed role to help local officials move from any internal debate to mutual agreements. MRPC is willing to help Westminster navigate through a process of local discussions concerning the Town's commercial and industrial zones that will eventually lead to successful outcomes.

# CHAPTER 1

## ANALYSIS OF USE AND DIMENSIONAL TABLES

The following is an analysis of zoning requirements for Westminster’s commercial and industrial districts. The overall intent is to examine the Use and Dimensional Tables to identify internal inconsistencies and to make recommendations for removing zoning impediments to economic development. This section includes changes suggested by the Planning Board during discussions of these issues at its October 13th and December 7th meetings.

The Use Table contains a thorough list of possible land uses that should cover most situations in Westminster. The intent of this analysis is not to re-structure the entire Table, but rather to examine the method of approval in commercial and industrial districts. For many low-impact land uses, the Use Table specifies that an applicant must obtain a special permit; however, a simpler site plan approval can achieve a careful review of a proposed development without jeopardizing the outcome from the applicant’s perspective. In addition, this report contains several new definitions to clarify how certain uses will be classified to remove doubt whether, or how, these uses will be permitted.

The dimensional standards for Commercial districts seem reasonable for the three commercial classifications in Westminster. Standards for Industrial districts, however, seem restrictive in some respects. This paper offers suggestions for making more intensive use of valuable industrial land.

### A. Zoning Classification

Westminster’s zoning scheme consists of three Commercial districts, two Industrial districts, and three Residential districts. Map 1 displays the current Zoning classification, and Table 1 contains the acreage each district occupies.

**Table 1**  
**Zoning Scheme**

<b>District</b>	<b>Name</b>	<b>Area Acres</b>	<b>Percent of Town</b>
R – I		6,561.1	27.5%
R – II		11,050.5	46.3%
R – III		4,553.7	19.1%
C – I	Highway Business	597.3	2.5%
C – II	Neighborhood Business	22.5	0.1%
C – III	Downtown Business	13.0	0.05%
I – I		858.5	3.6%
I – II		194.5	0.8%

Source: MRPC Zoning Layer, dated 2008

Residential districts make up the lion's share of Westminster's land area, occupying 22,183.4 acres or 93.0% of the Town. Westminster has very little land zoned for commercial purposes, 630.7 acres, or 2.6% of the Town. Highway Business makes up the majority of this land, nearly 596 acres, most of which is adjacent to Route 2. C-II and C-III consists of small areas that probably reflect existing development; there appears to be little vacant land in the C-II or C-III category. Approximately 4.4% of Westminster is zoned for industry, with I-I providing 858.6 acres.

Combined, Commercial and Industrial district make-up 7.0% of the Town. Absent a desire to re-zone other land for economic purposes, the best way to promote economic growth is to use commercial and industrial land more efficiently, consistent with residents' preferences for maintaining its New England character and preserving environmental quality.

## **B. Use Table Revisions for Commercial and Industrial Districts**

### Special Permits vs. By-Right Uses

- ❖ The main thrust of the recommendations is to reduce the number of special permits in the Table to send a clear signal that the Town supports economic growth. A special permit requirement may cause a business to look to another community that has a more certain approval process.
- ❖ If a use is not desirable in certain districts, just say No. This will remove the Board of Appeals from potentially divisive situations where the public opposes a project, but the Board may feel that it does not have sufficient reasons to deny the project.
- ❖ Many uses currently require a special permit in I-I and I-II districts. The logic of this is unclear since such districts are generally good locations for projects that have noise, outdoor storage, or significant truck traffic.
- ❖ Developers will prefer to propose a project where it is permitted by right rather than face the uncertainty of the special permit process.
- ❖ Site plan review provides strong authority to review and modify any proposed commercial or industrial use. Reputable developers will comply with appropriate mitigation during site plan review and will work with the Board to make the project an asset to the community. Of course, this will change the reviewing authority from the Board of Appeals (for special permits) to the Planning Board (for site plan review). Given the ZBA's heavy workload, reducing the number of special permits may be a welcome relief for the Board.
- ❖ Potentially detrimental uses may still be authorized by special permit where it may be desirable to have the power to deny a proposal. Examples include kennels, recycling facilities, and airports.
- ❖ Denial of special permits often causes costly litigation for the Town.

### C. Definitions

The following commercial and industrial land uses have definitions in the Zoning Bylaw:

Adult Uses	Home Occupation
Hotel and Motel	Marina
Self Service Storage (Mini-Warehouse) Facility	

The following terms appear in the Bylaw and should have definitions to aid the Zoning Enforcement Officer in determining how to classify a proposed use. Broad definitions can include uses with like characteristics to reduce the number of individual lines in the Use Table.

1. Research and Development Laboratory
2. “Service Business” and “Personal Services” both appear in the Use Table and seem to have similar meanings. To avoid confusion, the term Service Business may be deleted from the Use Table and a definition added for Personal Services.
3. Business Services
4. Recognized Profession

Personal Services: Businesses where the primary occupation is the repair, care of, maintenance, or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Personal service establishments shall include but need not be limited to barber shops, beauty salons and manicurists, laundry, dry cleaning and other garment servicing establishments, tailors, dressmaking shops, shoe repair shops, watch repair shops, opticians, tanning salons, and other similar places of business; but not including offices of physicians, dentists, and veterinarians.

Business Services: Establishments primarily engaged in rendering services to other businesses, such as photo copying, printing, and blueprinting shops, advertising firms, mail and packaging services, data processing and office support services, janitorial and building maintenance, employment agencies, protective services, office equipment repair and leasing, and other similar services.

Profession, Recognized: Architecture, engineering, law, medicine, dentistry, veterinary medicine, music, planning, landscape architecture, accounting, financial services, or other activity in which specialized services to clients are performed by persons possessing a degree from a recognized institution of higher learning demonstrating successful completion of a prolonged course of specialized intellectual instruction and study, and also possessing evidence of professional capability such as membership in a professional society requiring standards of qualification for admission.

Research and Development Laboratory: A facility primarily engaged in conducting scientific research, experimental design, and prototype development of devices or products in the physical, engineering, or life sciences, such as agriculture, electronics, computer instrumentation, biology, biotechnology, chemistry, photonics, medicine, pharmacy, veterinary, and other allied subjects. This use does not involve the fabrication, mass manufacture, or processing of the products.

## **D. Zoning Recommendations**

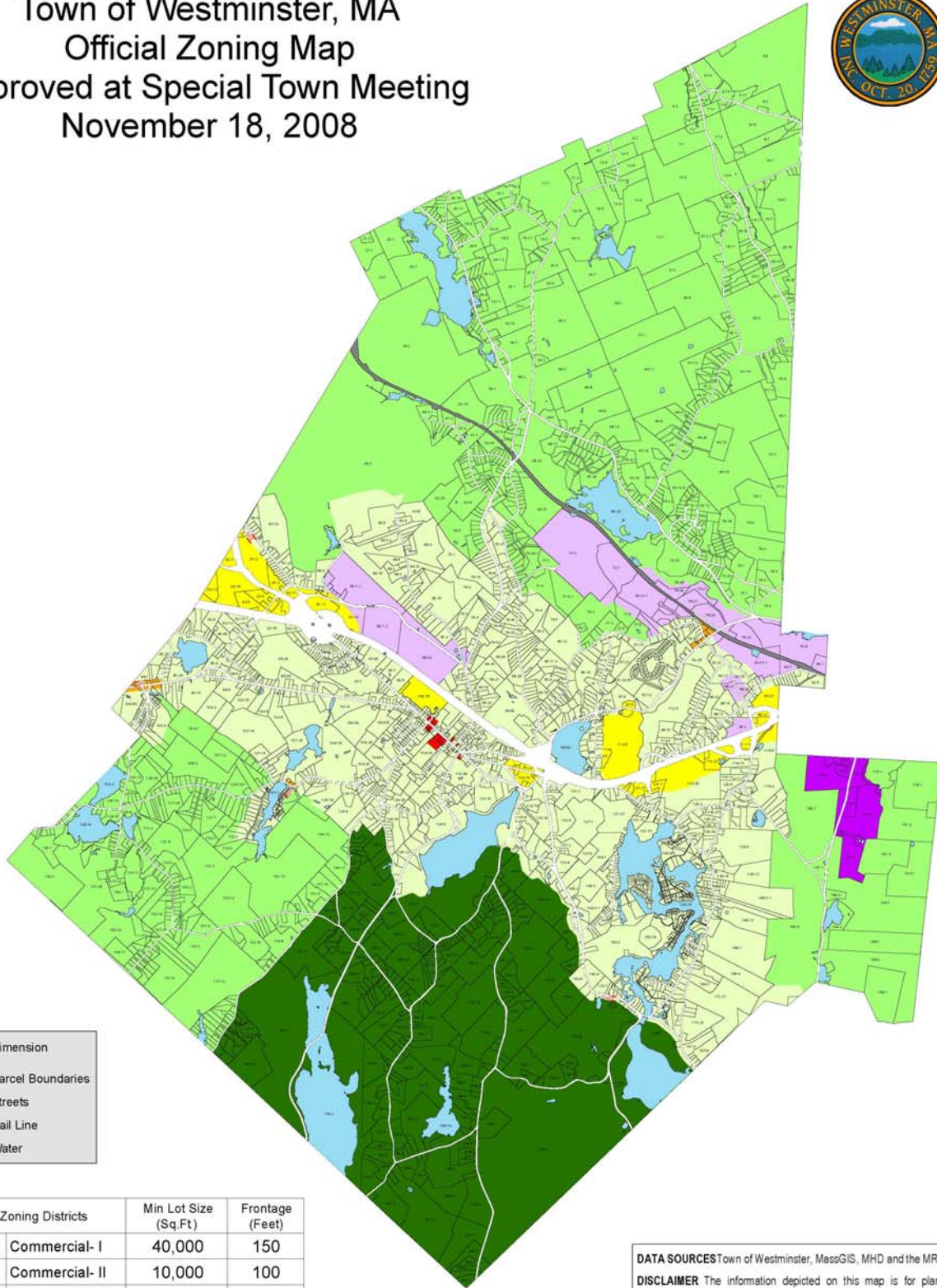
The Official Zoning Map on the following page displays the zoning districts in place as of December 2009. C-I districts occur at locations adjacent to Route 2 to capture highway oriented businesses and to provide a wide variety of goods and services for local residents. C-II districts make up only 0.1% of the Town and occur as small lots along Route 2A and Ellis Road. Because of small lot sizes and proximity to residential neighborhoods, these districts should primarily allow convenience services to meet local needs. The C-III (Downtown Business) district includes a few lots devoted to commercial services in the mixed-use town center. Most of the center is zoned Residential-I, which makes many commercial properties nonconforming and restricts commercial growth. Chapter 2 of this report contains recommendations for creating a more inclusive Village district to recognize the wide variety of activity that occurs here and to offer special protections to preserve its historic character. I-I and I-II districts occupy extensive areas along Route 2, the railroad, and Route 31. These areas are appropriate for a wide variety of commercial and industrial development and offer opportunities to enhance the Town's tax base.

The Use Table shows recommendations for modifying the manner in which uses may be permitted in the various districts. Discussions with the Planning Board yielded a consensus that the existing Table is unnecessarily restrictive in requiring special permits where a site plan review process can be just as effective in managing development without discouraging economic growth. The Table shows preliminary changes that met with the Board's approval, but additional changes, based on public outreach prior to advancing the revised Table to a Town Meeting vote, are certainly welcome.

Dimensional requirements for Commercial districts seem reasonable and allow for development in keeping with Westminster's small-town character. Requirements for Industrial districts, however, are perhaps overly restrictive. Reducing depths of yard setback areas, increasing lot coverage, and allowing taller buildings can provide a more intensive use of valuable industrial land and yield a greater increase in the tax base without detrimental impacts on residential neighborhoods. Table 2 displays the effects of modifying some dimensional requirements in the industrial districts. The suggested changes will still allow for well-planned industrial parks while achieving a suburban scale that is consistent with town character.

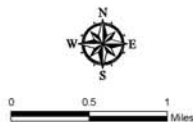


# Town of Westminster, MA Official Zoning Map Approved at Special Town Meeting November 18, 2008



Dimension  
 Parcel Boundaries  
 Streets  
 Rail Line  
 Water

Zoning Districts	Min Lot Size (Sq.Ft)	Frontage (Feet)
Commercial- I	40,000	150
Commercial- II	10,000	100
Commercial- III	----	----
Industrial- I	40,000	200
Industrial- II	40,000	100
Residential- I	50,000	150
Residential- II	60,000	175
Residential- III	86,000	200



**DATA SOURCE** Town of Westminster, MassGIS, MHD and the MRPC  
**DISCLAIMER** The information depicted on this map is for planning purposes only. All data are representational and are not adequate for boundary definition, regulatory interpretation, or parbased analysis.

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## E. Proposed Use Table Revisions<sup>1</sup>

Use	Residential			Commercial			Industrial	
	R-I	R-II	R-III	C-I	C-II	C-III	I-I	I-II
<b>B. Institutional, recreational and educational uses</b>								
(9) Hospital, infirmary, <del>nursing home, convalescent home, or assisted living facilities</del> <i>rehabilitative care facility</i>	SP	SP	SP	<del>SP</del> <b>Y</b>	<del>SP</del> <b>N</b>	<del>SP</del> <b>N</b>	<del>N</del> <b>Y</b>	<del>N</del> <b>Y</b>
<i>(9A) Nursing home, convalescent home, or assisted-living facility</i>	SP	SP	SP	<del>SP</del> <b>Y</b>	<del>SP</del> <b>N</b>	SP	N	N
(11) Trade, professional, or other school conducted as a private business for gain	SP	N	N	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(14) Entertainment and recreational facilities operated as a business for gain, including but not limited to bowling alley, skating rink, theater or sport arena or concert hall, provided that such use is housed indoors in sound-insulated structures	N	N	N	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
<b>D. Offices and laboratory</b>								
(1) Business, financial, professional or governmental offices	N	N	N	Y	Y	Y	Y	Y
(2) Offices and clinics for medical, psychiatric or other health services for the examination or treatment of persons as outpatients, including laboratories that are part of such office or clinic	N	N	N	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(3) Research and development laboratory or research facility, <i>excluding Biological Safety Level 3 and 4 facilities</i>	N	N	N	Y	Y	Y	Y	Y
(4) Radio or television studio	N	N	N	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(5) Radio or television transmission	N	SP	SP	SP	SP	SP	SP	SP
<b>E. Retail business and consumer service establishments</b>								
(1) Store for retail sale of merchandise, provided that all storage and sales of materials are conducted within a building and such building is no greater than 25,000 square feet of gross floor area	N	N	N	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(2) Retail store containing more than 25,000 square feet of gross floor area	N	N	N	N	N	N	N	N
(3) Eating places serving food and beverages to be consumed within the building	N	N	N	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(4) Brewery with restaurant and/or retail component	N	N	N	Y	Y	Y	Y	Y
(5) Stores for the sale <i>or rental</i> of boats, marine supplies and associated items	N	N	N	Y	<del>N</del> <b>Y</b>	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>
(6) <del>Service business</del> <i>Personal services</i> serving local needs <del>such as barbershops, beauty shops, shoe repair, self service laundry or dry cleaning or pick up agency</del> (Note: Subsection I (10) uses the term “personal services”. See proposed definition.)	N	N	N	Y	Y	Y	N	N
(7) Studios for arts and handicrafts, provided not more than 5 persons are employed at any 1 time on the premises	SP	SP	SP	Y	Y	Y	<del>SP</del> <b>Y</b>	<del>SP</del> <b>Y</b>

<sup>1</sup> Recommendations for deleting text appear in a strikethrough font, and new or replacement text appears in a bold, italics font.

Use	Residential			Commercial			Industrial	
	R-I	R-II	R-III	C-I	C-II	C-III	I-I	I-II
(8) Marinas, including sales and repair of boats and related supplies	SP	SP	SP	Y	Y	Y	<del>SP</del> N	<del>SP</del> N
(9) Mortuary, undertaking or funeral establishment	SP	N	N	Y	Y	Y	N	N
(10) Veterinary establishment, kennel, <i>pet grooming service</i> , or similar establishment	N	SP	SP	SP	SP	SP	SP	SP
(11) Store for retail sale of merchandise such as, but not limited to, lumberyards and building supply yards wherein merchandise is stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property at the property line where such materials are stored	N	N	N	Y	N	N	<del>SP</del> Y	<del>SP</del> Y
(12) Glass sales and repairs, including auto glass repair and service	N	N	N	Y	Y	Y	<del>SP</del> Y	<del>SP</del> Y
(13) Business services such as copy center or office machine repairs ( <b>Note: See proposed definition.</b> )	N	N	N	Y	Y	Y	Y	Y
(14) Adult bookstores, adult live entertainment, adult motion picture theater, adult mini motion picture theaters, adult video store, or adult paraphernalia store (also see 205-37.2)	N	N	N	N	N	N	SP	SP
(15) Self-storage (mini warehouse facilities)	N	N	N	N	N	N	<del>SP</del> Y	<del>SP</del> Y
<b>F. Automotive service and open air drive-in retail service</b>								
(1) Gasoline service stations, <i>may include convenience store</i>	N	N	N	<del>SP</del> Y	<del>SP</del> Y	SP	<del>SP</del> Y	<del>SP</del> Y
(2) Sale or rental of automobiles, <del>boats</del> , or other motor vehicles and accessory storage ( <b>Note: Boat sales and rentals will now appear in E (5) above to avoid confusion.</b> )	N	N	N	Y	N	N	<del>SP</del> Y	<del>SP</del> Y
(3) Automobile repair shops, provided that all major work is carried out within the building	N	N	N	Y	N	N	<del>SP</del> Y	<del>SP</del> Y
(4) Bus or other large vehicle storage or repair	N	N	N	N	N	N	Y	Y
(5) Car washing establishments	N	N	N	Y	Y	Y	<del>SP</del> Y	<del>SP</del> Y
(6) Sales places for flowers, garden supplies or agricultural produce partly or wholly outdoors, including commercial greenhouses, not exempted under MGL c. 40A, §3, on parcels of land less than 5 acres	SP	SP	SP	Y	Y	Y	<del>SP</del> Y	<del>SP</del> Y
(7) Drive-in banks	N	N	N	Y	Y	Y	Y	Y
(8) Drive-in eating places where the motorist does not have to leave his car or where food is normally consumed outside the building	N	N	N	Y	Y	Y	N	N
(9) Place for exhibition, fabrication, lettering or sale of gravestones	N	N	N	<del>SP</del> Y	<del>N</del> Y	<del>N</del> Y	Y	Y
<b>G. Industrial, wholesale and transportation uses</b>								
(1) Laundries and dry-cleaning plants	N	N	N	N	N	N	Y	Y
(2) Printing, binding, publishing and related arts and trades	N	N	N	N	N	N	Y	Y

Use	Residential			Commercial			Industrial	
	R-I	R-II	R-III	C-I	C-II	C-III	I-I	I-II
(3) Bottling of beverages, including spring water	N	N	N	N	N	N	Y	Y
(4) Plumbing, electrical or carpentry shop or other similar service or repair establishment	N	N	N	<del>SP</del> Y	<del>SP</del> Y	SP	Y	Y
(5) Place of manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor are effectively confined to the premises or are disposed of in a manner that does not create a nuisance or hazard to safety or health	N	N	N	N	N	N	Y	Y
(6) Wholesale business and storage in an enclosed and roofed structure	N	N	N	Y	N	N	Y	Y
(7) Wholesale business with outside storage	N	N	N	N	N	N	SP	SP
(8) Truck terminals, <i>warehousing and distribution facilities</i> (Note: new uses added.)	N	N	N	N	N	N	<del>SP</del> Y	<del>SP</del> Y
<i>(9) Contractor's office and storage yard, provided all materials and equipment are screened from ground level view from abutting streets and properties</i> (Note: new use added.)	N	N	N	Y	Y	N	Y	Y
<b>H. Other principal uses</b>								
(1) Mixed-use building containing retail, office, restaurant or consumer service establishments and residential dwelling unit(s)	N	N	N	N	Y	Y	N	N
(2) Open lot storage or sale of junk or salvaged materials	N	N	N	N	N	N	N	N
(3) Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to fire-fighting apparatus or other protective service	N	N	N	N	N	N	N	N
(4) Recycling facility	N	N	N	N	N	N	SP	SP
(5) Airports, air pads, private or commercial propeller jet, helicopter, glider planes, sale or rental of craft and storage	N	N	N	N	N	N	SP	SP
(6) Wireless communications towers and facilities	See §205-39.2							
<b>I. Accessory uses and off-street parking</b>								
(1) Private garage for residents of a dwelling on the same premises	Y	Y	Y	Y	Y	Y	Y	Y
(2) Private greenhouse, tool sheds, tennis courts, swimming pools, or other similar building or structure for domestic use	Y	Y	Y	Y	Y	Y	Y	Y
(3) The raising or keeping of animals, livestock or poultry as pets or for use by residents of the premises, provided that no sty, paddock, building or similar enclosure for any animal may be less than 50 feet from any lot line	Y	Y	Y	Y	Y	Y	Y	Y
(4) Customary home occupation of the office of a resident physician, dentist, attorney-at-law, architect, engineer or member of other recognized profession similar to the aforementioned, provided not more than 3 persons shall practice or be employed on the premises at any one time, and further provided that there is no external change which alters the residential appearance of the buildings, and further provided there is no exterior storage	Y	Y	Y	Y	Y	Y	Y	Y

Use	Residential			Commercial			Industrial	
	R-I	R-II	R-III	C-I	C-II	C-III	I-I	I-II
(5) The use of a portion of a dwelling or accessory building thereto by a resident builder, carpenter, painter, plumber, mason, electrician, or other artisan, or by a resident tree surgeon or landscape gardener for incidental work and storage in connection with their off-premises occupation, provided that there is no external change which alters the residential appearance of the buildings, and further provided there is no exterior storage of goods or materials	Y	Y	Y	Y	Y	Y	Y	Y
(6) Restaurants inside a building for the use of the primary occupants of the building, provided that there is no exterior evidence of the same	N	N	N	Y	Y	Y	Y	Y
(7) Restaurants primarily for the use of residents of an apartment building or group of apartment buildings, provided that there is no exterior evidence of the same	SP	N	N	Y	Y	Y	N	N
<del>(8) Beauty shop, barbershop, or newsstand for the resident under the same conditions as set forth in Subsection I (7) above. Note: This line duplicates I (10) below and can be deleted.</del>	<del>SP</del>	<del>N</del>	<del>N</del>	<del>Y</del>	<del>Y</del>	<del>Y</del>	<del>N</del>	<del>N</del>
(9) The use of a portion of a dwelling or accessory building thereto by the residents of the dwelling for an office or for the sale of antiques or like merchandise, provided that there is no exterior storage, that all work or sale of goods is carried on inside a building and that not more than 1 person shall be employed on the premises at any 1 time exclusive of the residents, and further provided there is no external change which alters the residential appearance of the buildings	Y	Y	Y	Y	Y	Y	Y	Y
(10) Personal services such as barbershops, beauty shops and like services, provided that there are no nonresidential employees, and further provided that there is no external change which alters the residential appearance of the buildings.	Y	Y	Y	Y	Y	Y	Y	Y
(11) Uses accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, provided that the proposed accessory use does not substantially derogate from the public good	SP	SP	SP	SP	SP	SP	SP	SP
(12) Family day-care service with no more than 6 children under 16 and no children sleeping overnight	Y	Y	Y	Y	Y	Y	<del>SP</del> N	<del>SP</del> N
(13) Retail use accessory to the principal manufacturing use	N	N	N	N	N	N	<del>SP</del> Y	<del>SP</del> Y

**Table 2**

**F. Proposed Dimensional Table Changes for I-I and I-II**

Zoning District	Minimum Lot Size Square Feet	Minimum Lot Frontage <sup>1,2</sup> Feet	Minimum Yard Depth <sup>3</sup>			Maximum Building Height <sup>4</sup>		Maximum Percentage of Lot Coverage <sup>10</sup> Percent
			Front <sup>5,6</sup> Feet	Rear <sup>5</sup> Feet	Side <sup>5</sup> Feet	Stories	Feet	
Residence Districts								
R-I	50,000 <sup>12</sup>	150 <sup>5,12</sup>	25	20	15	2½	35	20% <sup>5</sup>
R-II	60,000 <sup>15</sup>	175 <sup>5,15</sup>	30	20	15	2½	35	20% <sup>5</sup>
R-III	86,000	200	30	20	15	2½	35	20%
Commercial Districts								
C-I	40,000	150	40	40	20 <sup>7</sup>	2	30 <sup>8</sup>	--
C-II	10,000	100	25	20	20 <sup>7</sup>	2	30 <sup>8</sup>	--
C-III	--	--	15	20	10 <sup>7</sup>	2	30 <sup>8</sup>	--
Industrial Districts								
I-I	40,000	<del>200</del> 150	<del>80</del> 25	50	<del>30</del> <sup>9</sup> 15	<del>2</del> 4	50 <sup>8</sup>	<del>25%</del> 65%
I-II <sup>13</sup>	40,000	100 <sup>14</sup>	40 <sup>14</sup> 20	30 <sup>14</sup>	<del>20</del> <sup>9,14</sup> 15	<del>2</del> 4	50 <sup>8</sup>	65% <sup>14</sup>

1. With a height limit of 50' in I-I and I-II districts, restricting a building to two stories is self-defeating. Increasing the limit to four stories will provide greater opportunity for first class office and R&D space.
2. The setback requirements in I-I and I-II are very restrictive and provide little benefit. Reduced setbacks will enable more intensive use of valuable industrial land. See analysis on the following page.
3. The definition of lot coverage only includes area covered by structures. Under existing setbacks, it is not possible to achieve the maximum lot coverage percent. The Town should consider amending the definition to include parking areas and other impervious surfaces.

**Table 3**  
**G. Effects of Setback Requirements in I-I and I-II**  
**(Suggested changes are in bold)**

	Existing			Alternative	
	I-I	I-II		I-I	I-II
minimum lot size	40,000	40,000		40,000	40,000
minimum frontage	200	100		<b>150</b>	100
minimum front setback	80	40		<b>25</b>	<b>20</b>
front yard area	16,000	4,000		3,750	2,000
rear yard length	200	100		200	100
minimum rear yard setback	50	30		<b>40</b>	<b>20</b>
rear yard area	10,000	3,000		8,000	2,000
side yard length	70	330		202	360
minimum side yard setback	30	20		<b>20</b>	<b>15</b>
total 2 side yards	4,200	13,200		8,067	10,800
total yard area	30,200	20,200		19,817	14,800
building & parking area	9,800	19,800		20,183	25,200
max lot coverage %	25%	65%		<b>65%</b>	65%
max lot coverage sq. ft.	10,000	26,000		20,000	26,000
<b>Notes</b>	<b>1</b>	<b>2</b>		<b>3</b>	<b>4</b>
This analysis assumes a square or rectangular lot with the minimum frontage specified for the district, e.g. 200' x 200' in I-I and 100' x 400' in I-II.					
1. In I-I, the 80-foot front yard setback consumes a large portion of the lot. All required yards consume 30,200 sq. ft., leaving only 9,800 sq. ft. for lot coverage and forcing parking to locate in the front setback area. <sup>2</sup> The Town should address the issue of parking in the setback areas in a more consistent manner.					
2. In I-II, on a minimum sized 40,000-sq. ft. lot, it is not possible to achieve the maximum lot coverage of 26,000 sq. ft. because the required yards consume 20,200 sq. ft., leaving 19,800 sq. ft. 65% lot coverage also seems excessive since it does not include parking lots.					
3. Reducing the setback requirements and increasing the lot coverage percentage in I-I allows a more reasonable use of the land for buildings and parking.					
4. To achieve 65% lot coverage (26,000 sq. ft.) in I-II, it is necessary to reduce setbacks.					

<sup>2</sup> § 205-33 Location of parking spaces. No parking space shall be located within 20 feet of any property line in a C-I or I-I district. No parking in said districts shall be nearer than 50 feet of any property line abutting a residential district.

## **CHAPTER 2**

### **RECOMMENDATIONS TO IMPLEMENT ZONING BYLAWS**

The following is a description of recommendations to implement zoning bylaws to enhance economic development in the Town of Westminster. These include a Village District bylaw, Local Historic District bylaw, Demolition Delay bylaw, Infill Development bylaw, and the Development Overlay bylaw that the Town is currently considering. Sample bylaws that could be used as models have been included in the Appendices. These will help local officials gain an understanding of the range of possibilities available to the Town to manage growth. Generally, (with the exception of the Development Overlay Bylaw now under consideration) these recommendations could be characterized as long range strategies that could be implemented following community outreach and support.

#### **A. Village District Bylaw**

The Town should work to create and adopt a Village District Bylaw for areas within the community, most notably along Main Street where a mix of residential and commercial development already exists (See Zoning Map, page 7). This recommendation was also made in other reports, including the Greater Gardner Growth Plan (1999), the Westminster Master Plan (2001), and the Westminster Community Development Plan (2004), underscoring the potential benefits to the community if adopted and implemented.

There are ways to encourage economic development in the Town Center that are consistent with community character. If carefully designed, this type of bylaw could make the existing commercial uses legally conforming while encouraging new construction to be compatible with the setbacks and scale of existing structures. Moreover, a village district can help foster a well-planned, mixed-use, compact center in keeping with the character of a traditional New England village. It would help to create a place with a unique and positive identity, and provide opportunities for expansion of the Town's economic diversity and vitality.

This type of bylaw would also provide additional opportunity for people to shop, work, and utilize services in the vicinity of their residences; promote a pedestrian-friendly environment; and encourage growth of the local economy and jobs, including development of flexible space for small and emerging businesses. Examples of Village District Bylaws from Rutland and a Cape Cod model are in Appendix A.

The Planning Department/Planning Board would be responsible for preparing this bylaw. The timeframe for doing so could be 36 Months (January 2010 through December 2012).

#### **B. Local Historic District Bylaw**

It is important for the Town to promote economic development that is consistent with community character. The area around Westminster's town center was designated as a National Historic District through the National Register of Historic Places some time ago. A local historic district bylaw could offer the strongest form of protection for the preservation



of historic structures that contribute to Westminster's community character and aesthetics, thus increasing its potential for suitable economic development ventures. Such a bylaw would ensure that any proposed changes to exterior architectural features visible from a public way are reviewed by a locally appointed Historic District Commission.

For instance, if a building addition was proposed in a local historic district, the property owner would submit an application to the Historic District Commission. The Historic District Commission would hold a public hearing and make a determination on whether the new addition was appropriate. If the addition was appropriate, the Commission would issue a Certificate of Appropriateness, allowing the work to proceed. Features that are exempt from review depend on local preferences and often include: air conditioning units, storm doors, storm windows, paint color, and temporary structures. Examples of Historic District bylaws from Acton and Royalston are in Appendix B. Many Historic District Commissions have also prepared *Historic District Design Guidelines*, which clarify how proposed projects should respect the existing historic character.

Additional resources relating to historic preservation regulatory options are available to communities in Massachusetts. The Massachusetts Historical Commission published a thorough description of techniques other communities in the state have implemented in a report entitled *Preservation through Bylaws and Ordinances: Tools and Techniques for Preservation Used by Communities in Massachusetts*.

The Westminster Historical Commission would be responsible for leading the effort to create a Local Historic District with support from the Planning Department/Planning Board. The time frame for doing so could be 24 Months (January 2010 through December 2011).

### **C. Demolition Delay Bylaw**

The Town should consider adopting a Demolition Delay Bylaw. This would assist the Town to preserve and protect historically significant buildings through advance notice of their proposed demolition. Prior to receiving a demolition permit from the Building Inspector, the Historical Commission would determine if a building proposed for demolition possesses architectural, cultural, political, or economic value, or has been designated by the Commission as historically significant. After holding a public hearing, if the Commission determines the building is significant, a period of delay, which typically ranges from six months to one year, provides time to examine alternatives to demolition. The strategy encourages owners of preferably-preserved significant buildings to seek out persons who might be willing to purchase and preserve, rehabilitate, or restore such buildings rather than demolish them. In addition, it encourages the owner to develop alternatives to demolition, such as removal of non-historic portions, obtaining financial assistance for repairs, or considering new uses that may prove economically viable. Appendix C contains examples of demolition delay bylaws from Chatham and Arlington.

The Building Department could prepare the bylaw with assistance (as needed) from the Planning Department/Planning Board and Historical Commission. The time frame for doing so could be 24 Months (January 2010 through December 2011).

## **D. Infill Development Bylaw**

Infill Development is development on vacant or abandoned parcels in developed areas. One financial benefit of infill development for local governments is that it reduces the need to provide public infrastructure to support new development. Such a bylaw would permit development of parcels that do not meet current zoning regulations for frontage and lot size. An Infill Development Bylaw would maintain the existing character of the neighborhood buildings and structures, while permitting a flexible approach to development.

Infill Development has potential to provide a number of advantages to a community like Westminster. Often within more developed areas of a community, there exist vacant or under utilized lots that do not meet current zoning standards for lot frontage and area. Through the use of an infill development bylaw, these vacant nonconforming lots can be brought back into productive business use. This helps to concentrate development in areas where infrastructure, such as public transit, sewer, and water already exist, rather than in undeveloped areas, thereby encouraging retention of open space and preserving rural character. Infill development can also improve surrounding properties by eliminating vacant lots and abandoned buildings, which may be crime and public health hazards.

There are many ways to approach the drafting of an Infill Development Bylaw. First, the Town will need to identify areas of the community where infill development is desirable and decide whether or not this bylaw will apply town wide or as an overlay for specific areas. Secondly, the bylaw should contain guidelines that are appropriate for the unique characteristics of each area; guidelines typically regulate the density, size, and architectural design of new infill development. The Pioneer Valley Planning Commission developed a very inclusive bylaw that the Town could draw upon and perhaps use as a model. It can be found in Appendix D.

The Planning Department/Planning Board would be responsible for preparing the infill bylaw within the time frame of 36 Months (January 2010 through December 2012).

## **E. Development Overlay Bylaw**

The Westminster Mixed Use Overlay Committee and the Town should seriously consider adopting the Development Overlay Bylaw to accommodate retail development. A recent report conducted in June 2007 by Mullin Associates, Inc. titled “Westminster’s Future Economic Development Opportunities” indicated that based on current trends it is somewhat unlikely for industry to locate in Westminster in the foreseeable future due in part to available land that is readily developable at Devens and in the Worcester-Leominster corridor. However, since housing prices are more affordable in the Montachusett region than in surrounding areas, Westminster is expected to expand residentially over time. A larger population will enhance the potential for retail growth. In fact, according to 2008 U.S. Population Estimates, many communities within the Montachusett Region saw substantial population growth.

At the outset of this project, MRPC was asked to conduct a review of the Mixed Use Commercial Overlay (MUCO) District Bylaw that was proposed at Westminster Town Meeting in Spring 2009. MRPC staff incorporated edits and comments into the document for the Town to consider if it decides to bring the bylaw back to a future Town Meeting. Comments/edits include language to allow multiple structures per lot as part of a special permit application, various Performance Conditions, a Pre-Application Conference requirement, and presenting the option of drafting a preliminary traffic planning study. MRPC staff also attended meetings with the newly formed Westminster Mixed Use Overlay Committee concerning this work on a number of occasions (October 28<sup>th</sup>, November 4<sup>th</sup>, and December 16<sup>th</sup>). MRPC's sub-consultant (Attorney Mark Goldstein) provided legal review of the bylaw. Comments and edits made by MRPC and legal counsel for consideration can be found in Appendix E. It should be noted that the Westminster Town Planner has additional edits and comments for consideration that are not included in this particular document. The Town of Westminster should consider all relevant comments if this bylaw is brought back to Town Meeting.

Additionally, MRPC indicated to the Mixed Use Overlay Committee that, upon request and outside of this contract, MRPC could assist the Town to identify a traffic study area and perhaps conduct a preliminary traffic analysis. The Mixed Use Overlay Committee has taken responsibility for crafting the final version of the bylaw (if it decides to bring the bylaw back to town meeting).

**APPENDIX A**

**VILLAGE DISTRICT BYLAWS**

## **Rutland Village Center District**

*Add the following definition to Section 5, Definitions:*

**Village Center District** - A district established by Town Meeting as an area to establish a mixed-use village style development, and as shown on the Town Zoning map as amended from time to time.

*Add the Village Center District to Section 6, Classes of Districts, after Town Center Business District:*

Village Center District as designated herein and by legend on the Zoning Map.

*Add the following new Section 10A, Village Center (VC) District after Business District:*

### **§ 10A. Village Center (VC) District.**

#### **A. Purpose**

Village Center (VC) districts are target areas for small neighborhood-scale businesses including services, retail, restaurants, and meeting places. VC districts are intended to promote the development and re-development of the Town's village centers, to provide opportunities for business growth to primarily serve the neighborhood, and to provide a mix of uses and diversity of housing types in Rutland.

#### **B. Uses Allowed by Right in the VC District**

##### (1) Residential Uses

Recognizing that village-style development entails a mixture of uses, the Planning Board, upon Site Plan Approval, may authorize a mix of residential and non-residential uses within the same building in the Village Center District. Single and two family dwellings are allowed by right without Site Plan Approval.

##### (2) Exempt Uses

Municipal buildings, parks, playgrounds, churches, schools, post office or other exempt uses are allowed by right, with site plan approval from the Planning Board, subject to reasonable height and bulk regulations as applied by the Board.

##### (3) Non-Residential Uses

The following non-residential uses are allowed by right, with site plan approval from the Planning Board, so long as the new or expanded structure is less than 5,000 square feet of gross floor area. For structures greater than 5,000 square feet, refer to §C (1) below:

- (a) Retail sales;
- (b) Personal Service shops, including but not limited to barber, salon, cosmetologist, massage therapist;
- (c) Business or professional offices;
- (d) Banks and other financial institutions, and accessory drive-up windows;
- (e) Package store;
- (f) Non-profit clubs and lodges;

- (g) Produce markets, including outdoor display; and roadside farm stands, where produce is grown on or off the premises, provided the market or stand is set back 30 feet from the street line, and that off-street space is available to provide safe vehicular parking and access/egress;
- (h) Day care facility;
- (i) Ice cream stands, sit down restaurants, fast food restaurants, coffee and donut shops, and accessory drive-up windows;
- (j) Shop of a potter, sculptor, silversmith, photographer, graphic artist, cabinet maker, or similar artisan or craftsman;
- (k) Bed and breakfast establishments.

### **C. Special Permit Uses in VC Districts**

The following uses may be permitted upon issuance of a special permit from the Planning Board. Where the proposed use is to be located within an existing structure and no structural changes are proposed, and no alterations to the site are proposed, the Planning Board may waive the requirement for Site Plan Approval for non-residential uses and act directly on the special permit application.

#### (1) Floor Area greater than 5,000 square feet

Construction or expansion of the uses listed in section B (3) above resulting in a structure or structures containing greater than 5,000 square feet of floor area shall be allowed only upon grant of a special permit by the Planning Board.

#### (2) Non-Residential Uses

The Planning Board may allow the following non-residential uses of any size only upon the grant of a special permit:

- (a) Veterinary hospitals, clinics and grooming facilities; but not including kennels. Overnight stays of animals are permitted only if associated with medical procedures;
- (b) Gasoline and/or service stations;
- (c) An amusement enterprise, including but not limited to bowling alley, theater, performing arts center, skating or fitness clubs;
- (d) Hotel, motel or inn;
- (e) Small appliance or equipment repair, including but not limited to household appliances, lawnmowers, chain saws;
- (f) Dry cleaner or self-service coin-operated laundry;
- (g) Wireless communications facilities, but not including new towers, in accordance with Article VIII of this Bylaw.

#### (3) Residential Uses

As the intent of the Village Center District is to provide a mix of residential and non-residential uses, the Planning Board may approve multi-family residential uses (three or more dwelling units) by special permit where such units are in addition to business uses proposed on the site or where they complement existing non-residential uses in the District. As noted in section B (1) above, dwelling units are permitted on upper floors of structures by site plan approval from the Planning Board. In addition, Senior Housing may be permitted by grant of a special permit from the Planning Board in accordance with Article VII, section 48 of this Bylaw.

(4) Parking Reduction

The Planning Board may reduce the parking requirements specified for the use/structure proposed by up to 25% by special permit upon demonstration that adequate parking will be available to meet the demands of the existing and proposed use(s). The applicant may satisfy the parking needs of the premises by counting on-street spaces and/or entering into agreements with other property owners within three hundred feet (300') of the premises.

**D. Filing Requirements**

(1) Pre-Application Conference

The purpose of the pre-application conference is to inform the Planning Board as to the preliminary nature of the proposed project. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Board of the scale and overall design of the proposed project.

(2) Plan Filing Requirements

Unless the Planning Board determines at the pre-application conference that some of the following requirements are not necessary to reach a decision on the merits of the application, the applicant shall submit the following plans/items. Plans shall be prepared by a registered architect, landscape architect and professional engineer licensed in the Commonwealth of Massachusetts.

- (a) A locus map identifying the site of the proposed development at a scale of 1" = 1,000' or other reasonable scale to identify the site in context with surrounding roadways showing all existing buildings and the entirety of all abutting parcels of land;
- (b) A plan showing location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 100', clearly showing the relationship between proposed development and existing structures, parking areas, roads, driveways, sidewalks, open space, and utilities, including underground utility lines, water, sewer, electric power, telephone, gas, outdoor illumination and cable television within one hundred feet (100') of the premises;
- (c) Profiles/elevations showing location and dimensions of all existing and proposed buildings on the lot as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed a scale of 1"= 40';
- (d) The location, species and size of significant trees and other landscaped features, both existing and proposed, on the lot of the locus on a plan not to exceed a scale of 1"=100'.

**E. Site Planning Standards**

(1) Access

New curb cuts on existing public ways shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following methods:

- (a) through a common driveway serving adjacent lots or premises;
- (b) through an existing side or rear street thus avoiding the principal thoroughfare, or
- (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

(2) Parking

- (a) Parking areas shall be located to the side and rear of the structure. No parking area shall be within the front yard setback, except upon a finding of the Planning Board that no reasonable alternative exists, and the parking can be designed in a manner consistent with the traditional character of a village center;
- (b) To the extent possible, parking areas shall be shared with adjacent businesses.

(3) Landscaping and Appearance

Applicants shall incorporate appropriate landscaping and design elements into new and expanded development within the district. Landscape design plans should ordinarily be prepared by a landscape architect, although the Planning Board may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of the VC district.

- (a) A landscaped strip of at least the width of the side and rear setback may be required to buffer adjoining uses of different character. This buffer strip shall be planted with a combination of grass, appropriate height shrubs and trees; retention of naturally occurring vegetation is encouraged where appropriate. Driveways may cross lot lines to connect adjacent parking areas and facilitate internal vehicular and pedestrian circulation.
- (b) The Planning Board may require sidewalks along any portion of the lot with road frontage. A landscaped planting strip, continuous except for approved driveways, shall be established along the front lot line to visually separate buildings from the street. One tree shall be provided for each fifty feet (50') of frontage. Trees shall be placed at least three feet (3') from the edge of pavement, and at least two feet (2') from the sidewalk. When fully-grown, proposed trees shall have root systems that will not cause damage to adjacent sidewalks.
- (c) While landscaped islands are encouraged in small parking areas, large parking areas (greater than 25 parking spaces) shall have a minimum of 5% of the area of the lot in landscaped islands a minimum of six (6) feet in width. In all parking areas, a minimum of one (1) shade tree shall be planted for every five (5) parking spaces required. Trees within parking areas shall be planted in landscaped plots of at least 60 square feet of area.
- (d) Drainage systems shall be designed using Low Impact Development (LID) principles and techniques as set forth in the Planning Board's Subdivision Rules and Regulations. The Planning Board may authorize a conventional drainage system only where the applicant demonstrates that a LID design is infeasible or would have detrimental impacts on the neighborhood.
- (e) Exposed storage areas, machinery, garbage dumpsters, service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods.
- (f) To ensure that landscaped areas are maintained, the Planning Board shall include a condition of any site plan approval or special permit that the landscaping is maintained in a healthy condition and dead or diseased trees and shrubs are promptly replaced.
- (g) Ground floor space shall generally be reserved for pedestrian-oriented retail sales and services, with offices and housing above.
- (h) To the extent practicable, all wiring shall be placed underground to minimize the visual exposure of overhead wires and utility poles.



**F. Dimensional Requirements**

- (1) Lots for single and two family dwellings that are not in addition to business uses on the site shall conform to the dimensional requirements of the Residential 40 district.
- (2) A Village Development (see note 1) shall conform to the following dimensional requirements:

Minimum Lot Size:	10,000 sq. ft.
Additional Lot Area for Each Dwelling Unit Greater Than 2	6,000 sq. ft.
Minimum Frontage:	100'
Floor Area Ratio (2)	0.5
Yard Setbacks	
Minimum Front Setback (3)	20'
Maximum Front Setback (4)	20'
Minimum Side Setback	10'
Minimum Rear Setback	10'
Height	
Feet	50'
Stories	4
Minimum Open Space (5)	25%

Notes:

- (1) Village development: A development within a village center that may contain a variety of residential dwelling types, institutional uses, and commercial activities that is developed as part of a cohesive, pedestrian-scale neighborhood with consistent architectural character and a clearly defined streetscape. Single buildings and uses, such as single-family homes and stand-alone businesses, may be part of a village development if integrated into an existing village framework.
- (2) Floor Area Ratio (FAR): A number derived by dividing the gross floor area of the buildings on any lot by the total lot area, less wetlands and the area within the 100-year floodplain (net lot area). The floor area ratio multiplied by the net lot area produces the maximum amount of gross floor area that may be constructed on a lot. (Example: a 20,000 square foot building on a 40,000 square foot lot has an FAR of 0.5:  $20,000 / 40,000 = 0.5$ )
- (3) The minimum front setback shall apply along any state-numbered highway.
- (4) Maximum Front Setback (Build-to Line). A line which dictates the farthest distance the front of a building or a structure may be placed from the front lot line, measured parallel to the street right-of-way line on which the building fronts. Buildings with frontage on an interior roadway or non-state-numbered highway shall be set back no further than the maximum front setback. The Planning Board may authorize a greater setback due to topographic constraints (wetlands, steep slopes, etc.), to facilitate a consistent village design, or to minimize impacts on surrounding properties.
- (5) Open Space: The portion of the lot area not covered by any structure and not used for drives, parking, or storage. Man-made retention areas may be considered open space at the discretion of the Planning Board if they add to the open space amenities of the development. Open space shall be maintained in its natural state or landscaped with grass, trees, and shrubs.

**G. Special Permit Review Criteria**

The Planning Board shall grant a special permit only after finding that the proposed use will be consistent with the purpose and intent of this bylaw, and that the proposed use or structure is in conformance with the following criteria:

- (1) Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property.
- (2) The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities.
- (3) The project shall be compatible in character and scale with other properties in the district.
- (4) The project will not cause a nuisance due to air or water pollution, flooding, noise, dust, vibration, lighting, or visually offensive structures and accessories.
- (5) Construction will cause no more than minimal disturbance of existing land contours, and will, to the extent possible, preserve existing specimen trees and other desirable natural features.
- (6) The proposed project shall be consistent with Rutland's Master Plan.
- (7) The project shall comply with all Site Planning Standards of the VC district.
- (8) All permanent mechanical equipment and solid waste disposal facilities shall be screened from public view and from views from surrounding properties.

**H. As-Built Plan Required**

The Building Inspector shall not issue an occupancy permit until the Planning Board has reviewed and approved an as-built plan, certified by a Registered Professional Engineer. The Engineer shall certify that the work proposed on the approved site plan, including all associated off-site improvements, has been completed in accordance with the approved plan or with changes approved by the Board or its representative.

# Village-Style Development Bylaw/Ordinance for Towns in Barnstable County, Massachusetts

## Background

The Cape Cod Commission has created a model bylaw/ordinance for use by towns in Barnstable County to create new and/or strengthen existing village centers. The model was drafted by the environmental services firm of Horsley & Witten, Inc., in Barnstable, and the Boston law firm of Robinson & Cole. The regulation is presented to help Cape towns fulfill many of the recommendations presented in the 1994 publication, "Designing the Future to Honor the Past: Design Guidelines for Cape Cod." The design manual is available from the Cape Cod Commission in Barnstable.

The Cape's fifteen towns have in common many natural, social and economic traits. However, the historic development patterns and resulting architecture of the towns' village centers are quite different. Wellfleet and Falmouth, for example, have historic village centers, yet the centers have very different histories -- differences reflected in architecture, building size and overall development patterns. So too with the other thirteen towns: similar development of a central village, but with different designs, bulk of structures and layout of road and pedestrian ways.

Cape villages developed at different time periods and around different resources (i.e. agriculture, maritime industry, tourism). Their architecture and form generally reflect their periods of greatest growth. Understanding the historical development patterns is helpful in developing regulations that encourage compatible future growth.

Over the past several decades, however, many towns have seen a trend toward development in a style that is inconsistent with the Cape's historic village center, and some towns have felt a direct impact to the economic vitality of their "downtowns." This is the result of many independent factors. One likely factor has been the application of inflexible and, some argue, "suburban" zoning regulations that have prevented many village centers from developing and redeveloping in the form and format of the original settlement patterns.

At issue for all Cape towns is the preservation and, in many cases, the resurrection of the functional and successful development of a central village center(s). This

**02.1 Village Development (Overlay) District.** A(n) (overlay) district established by the Town Meeting/Town Council upon recommendation by the planning board as an area in which Cape Cod village style development should be encouraged.

*Commentary:* This bylaw/ordinance is drafted to be adopted as either a new, traditional zoning district or as an overlay district. The purpose and effectiveness of the regulation will not change regardless of the method chosen.

An overlay district is a type of district that lies on top of another, like a bedspread over a blanket. The blanket is the underlying zoning district, such as a commercial zone with minimum and maximum lot and structure sizes. In an overlay district, towns will superimpose a new level of requirements and opportunities over the underlying district. The overlay district in this regulation is established by the town, upon recommendation by the planning board, and should generally include pre-existing village centers, adjacent land areas that the community wants to include as a developed village center, as well as other areas in the community that the town wants to see developed as a village center.

Note that the use of an overlay district may help "call attention" to the goals of this regulation that would not otherwise be highlighted by means of a traditional zoning designation (e.g. a new or revised "business" zoning district). The purpose and intent of this regulation would not be diminished, however, if towns opted for a traditional zoning designation in lieu of the overlay district recommended here.

**02.2 Special Permits (See Section 08.0).**

**Option 1:**

Special permits shall be required for all uses and structures required to obtain a special permit by the (existing) (underlying) zoning district.

**Option 2:**

An increase of floor area by greater than \_\_\_\_\_ square feet through either the placement or construction of a new principal structure, a new accessory structure, or an addition to a principal or accessory structure shall be allowed only upon receipt of a special permit in accordance with this bylaw/ordinance and the zoning bylaw/ordinance of the town.

(AUTHOR'S NOTE: Determination of the increase of floor area that triggers a special permit requires completion of a general survey of the floor areas of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Two options are presented with regard to the issuance of special permits. Option 1 repeats existing requirements for a special permit, either based on use or size of structure.

premises; (b) through an existing side or rear street thus avoiding the principal thoroughfare or (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

04.2 Parking lot design. In addition to the provisions of Section 04.1, the following guidelines are included to ensure that new and renovated off-street parking areas are constructed in accordance with the village's character and the provisions of this bylaw/ordinance.

- (a). Parking areas shall be located to the side and rear of the structure. No parking area shall be designed such that parking is within the required or authorized front yard setback.
- (b). To the extent possible, parking areas shall be shared with adjacent businesses.
- (c). Parking areas shall include provisions for the "parking" of bicycles in locations that are safely segregated from automobile traffic and parking.
- (d). Parking areas shall include adequate provisions for on-site retention and treatment of stormwater.
- (e). Parking areas serving all structures other than those solely for residential use shall be paved, unless an alternative surface is approved by the SPGA.

04.3 Pedestrian Access. Provision for safe and convenient pedestrian access shall be incorporated into plans for new construction of buildings and parking areas and should be designed in concert with landscaping plans noted below. New construction should improve pedestrian access to building, sidewalks and parking areas and should be completed with considerations of pedestrian safety, handicapped access and visual quality.

04.4 Landscaping and appearance. A key provision of this bylaw/ordinance is ensuring that appropriate landscaping and design is incorporated into new and expanded development within the overlay district. Landscape design plans should ordinarily be prepared by a landscape architect, although the SPGA may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of this regulation.

- (a). A landscaped buffer strip may be required adjacent to adjoining uses. This buffer strip shall be planted with a combination of grass, appropriate height shrubs and shade trees.

telephone, gas, outdoor illumination and cable television within a radius of eight (800) hundred feet of the locus on a plan not to exceed 1"= 100';

(e) The location, species and dimensions of trees and other landscaped features, both existing and proposed, within a radius of eight (800) hundred feet of the locus on a plan not to exceed 1"=100';

(f) In concert with the requirements of Section 04.4, the location, species and dimensions of trees and other landscaped features proposed on the lot(s) on a plan not to exceed 1" = 20'.

*Commentary:* This regulation is designed to ensure that new or expanded development within the overlay district complies with the vision of community residents. It is recognized, however, that this regulation, if not properly applied, could result in structures and uses that threaten the very character it is designed to safeguard. Therefore, the regulation requires an applicant for a special permit to submit comprehensive plans and, where appropriate, landscape renderings, to satisfy the SPGA's concerns regarding the potential impacts resulting from the proposed project.

This bylaw/ordinance incorporates the belief that prescribing minimum landscaping requirements has not resulted in desirable parking lots on, as well as off, Cape Cod. As a result, the landscaping and appearance standards noted above grant flexibility to the applicant and the SPGA to design and develop off-street parking areas that are attractive and in keeping with the goals of this regulation and the character of the village. Thus the standards noted above should be considered as minimum standards. For example, please note that the ratio of 1 tree per 3 spaces is considered a minimum requirement; a far greater number of trees should ordinarily be provided.

Landscaping design suggestions, as well as grasses, shrubs and shade trees for use on Cape Cod are recommended in the 1994 publication "Designing the Future to Honor the Past," as may be amended from time to time and the 1995 publication, "Route 6A Vegetation Management Plan," as may be amended from time to time. Use of these publications, available from the Cape Cod Commission, is strongly suggested.

Note that the model regulation as written does not include requirements for architectural drawings. Rather, towns are encouraged to use their existing, or adopt new, historic district regulations to control and regulate building facades and design.

Finally, and as noted in Section 03.0, towns with site plan review regulations may wish to substitute or amend the filing requirements noted above with requirements currently adopted and successfully used for site plan review.

#### **Introduction to Sections 05.0 through 07.0.**

As noted in the background discussion, this regulation rejects the "one size fits all" approach to village development on Cape Cod. No two villages are the same; no two

Regardless of the approach taken, the report, either in its current form or as amended by Towns via their local comprehensive plans, should be used to provide guidance to applicants and Board members regarding design, development and re-development within designated village centers.

## **05.0 Height, Bulk and Setback within the Village Development Overlay District:**

### **05.1 Height**

#### Option 1:

The maximum height of any new or expanded existing structure shall be \_\_\_\_\_ feet or \_\_\_\_\_ stories, whichever is less.

#### Option 2:

To accomplish the purposes of this bylaw/ordinance, the special permit granting authority (SPGA) is authorized to allow an increase in height of structures either in existence, as re-constructed, or as new construction, up to \_\_\_\_\_% above that provided for in the underlying zoning district. This increase may be granted in conjunction with a reduction in required on-site parking spaces as provided for in Section 06.0, below. The SPGA shall allow this increase only upon a finding that the additional height is consistent with the scale of adjacent structures and is necessary to maintain the area's character. The SPGA must further find that the relaxation of height limitations will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

(AUTHOR'S NOTE: Determination of the allowable range of building height requires completion of a general survey of the heights of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Option 1 provides a strict and traditional method of regulating the height of structures within a zoning district.

The purpose of Option 2 is to allow the applicant and the SPGA flexibility as to the height of new or rehabilitated structures within the Overlay District. For example, if the height limitation in the underlying district is 35 feet, the provisions of this Section could allow the SPGA to increase the maximum height of structures up to a certain percentage. This increase does not automatically trigger a significant increase in required parking spaces; see Section 6.0 and accompanying commentary. Note that the SPGA, and therefore the applicant seeking an increase in allowable height, is required to demonstrate that the height increase is necessary to maintain neighborhood scale and character. The suggested range of maximum allowable heights within the Overlay District is between 35 feet and 50 feet. However, it is strongly recommended that the range be based on actual measurements from within the Town's current village(s).

For example, after consideration of the factors noted above, the SPGA may grant a special permit for bulk expansion if it believes, based on information submitted to it by the applicant, that the parcel or structure is unlikely to be used or developed without a relaxation of bulk standards.

Finally, please note that this model does not provide suggested maximum bulk limitations for individual towns or villages. Bulk, unlike height and setback standards, is extremely site specific--building specific--and precise standards, even ranges, are difficult to develop Cape-wide. As recommended throughout this regulation, however, towns should physically measure the bulks of structures within their village districts to establish general ranges. Those ranges, if based on actual measurements, could then be included within the regulation.

### 05.3 Setback

#### Option 1:

The front yard setback of any new or expanded existing structure shall be no more than \_\_\_\_\_ and no less than \_\_\_\_\_. The rear and side yard setbacks of any new or expanded existing structure shall be .

#### Option 2:

To accomplish the purposes of this bylaw/ordinance, the SPGA is authorized to allow a complete or partial reduction of front, side and rear setback standards for new or pre-existing structures. The SPGA shall allow the reduction of setback requirements only upon a finding that the setbacks as imposed by the underlying district would result, or have resulted, in construction of structures that are not in keeping with the area's scale and character. The SPGA must further find that the relaxation of said standards will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

(AUTHOR'S NOTE: Determination of the allowable range of setbacks requires completion of a general survey of the location and setbacks of existing developments within the village. This recommendation applies to both Option 1 as well as Option 2.)

*Commentary:* Option 1 provides a method of regulating the setback of structures within a zoning district, but it provides for a range of minimum and maximum setbacks based on the characteristic setbacks in the neighborhood.

Option 2 is intended to provide maximum flexibility to the applicant and the SPGA regarding the imposition of front, side and/or rear setback requirements so as to encourage consistency with the area's overall scale and character. As with Sections 05.1 and 05.2, above, the SPGA is required to ensure that the use of these flexible provisions will not negatively impact abutting properties. For example, while the relaxation of rear



Finally, it is recognized that in some instances, new construction may trigger parking requirements that the applicant can not meet due to lack of available off-street land. In these situations, and where the town has determined that there is a general shortage of off-street parking within the Village, an option exists for towns to require payment to an "off-street parking fund." The fund would be established by Town Meeting/Town Council as a separate and distinct fund for the development of public, off-street parking within the Town and/or designated village. To establish this requirement, town planners should determine the land and construction costs of an individual parking space within designated villages. Once determined, an "off-street parking fund" bylaw/ordinance could be drafted linked to the Village-Style Development Bylaw/Ordinance. This linkage would require the provision of off-street parking, or if not possible due to land constraints, the set-aside of equivalent funds in a special fund intended to create public, off-street parking. Town Meeting/Town Council should then be petitioned to adopt the parking fund regulation.

**07.0 Allowable Uses:** Recognizing that village-style development entails a mixture of uses, the SPGA is authorized to allow a mix of residential and non-residential land uses within the Village Development Overlay District.

**07.1 Residential uses.** The SPGA may grant approval for (single family, two-family, multi-family) residential uses at a density of one dwelling unit per \_\_\_\_\_ square feet within the Overlay District or a maximum of \_\_\_\_ units on the same lot. If residential uses are currently allowed in the underlying zoning district(s), the provisions of this Section shall apply to said residential uses only if this Section is less restrictive than the underlying district.

*Commentary:* This Section allows the development of a variety of residential housing units within the Overlay District at a density and type to be established by the town. Residential development within the District encourages an important link between commercial activities and appropriate scale and design of structures. More importantly, residential development within the District mirrors historic development patterns: residential structures interspersed with commercial uses and vice-versa: commercial structures with residential units typically secondary to the primary commercial use.

**07.2 Non-residential uses.** The SPGA may grant approval for non-residential uses within the Overlay District consistent with the provisions of the underlying zoning district(s) and with the following additional uses:

- a) retail sales;
- b) business or professional offices
- c) banks and other financial institutions
- d) restaurants or other places serving food, but not including fast food restaurants

*Commentary:* This Section establishes the planning board as the special permit granting authority under this regulation and connects the criteria for issuance of a special permit in this regulation with existing criteria within the zoning bylaw/ordinance.

#### **10.0 Severability:**

0.10.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

*Commentary:* This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.

**APPENDIX B**

**LOCAL HISTORIC DISTRICT BYLAWS**

# CHAPTER P

## LOCAL HISTORIC DISTRICT BYLAW

The Town of Acton hereby creates a Local Historic District, to be administered by an Historic District Commission as provided for under Massachusetts General Laws, Chapter 40C, as amended.

### P1. Purpose

The purpose of this bylaw is to aid in the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the Town of Acton, the maintenance and improvement of their settings and the encouragement of new building designs compatible with the historically significant architecture existing in the Local Historic District(s) when this Bylaw was first adopted in 1990. This Bylaw does not seek to establish an architectural museum, but instead to inform concerning the historical process of architectural growth and adaptation to heighten a sense of educated pride in our heritage.

### P2. Definitions

The terms defined in this section shall be capitalized throughout this Bylaw. Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. As used in this Bylaw the following terms shall have the following meaning:

- "Alteration"  
or "To Alter"**                      The act of the fact of rebuilding, reconstruction, restoration, replication, removal, demolition, and other similar activities.
- "Building"**                              A combination of materials forming a shelter for persons, animals or property.
- "Certificate"**                            A Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this Bylaw.
- "Commission"**                        The Historic District Commission as established in this Bylaw.
- "Construction" or  
"To Construct"**                      The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

<b>"Display Area"</b>	<i>The total surface area of a SIGN, including all lettering, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the SIGN. The DISPLAY AREA of an individual letter SIGN or irregular shaped SIGN shall be the area of the smallest rectangle into which the letters or shape will fit. Where SIGN faces are placed back to back and face in opposite directions, the DISPLAY AREA shall be defined as the area of one face of the SIGN.</i>
<b>"District"</b>	<i>The Local Historic District as established in this Bylaw consisting of one or more DISTRICT areas.</i>
<b>"Exterior Architectural Feature"</b>	<i>Such portion of the exterior of a BUILDING or STRUCTURE as is open to view from a public way or ways, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.</i>
<b>"Person Aggrieved":</b>	<i>The applicant; an owner of adjoining property; an owner of property within the same DISTRICT area; or an owner of property within 100 feet of said DISTRICT area and any charitable corporation in which one of its purposes is the preservation of historic structures or districts.</i>
<b>"Signs"</b>	<i>Any symbol, design or device used to identify or advertise any place of business, product, activity or person.</i>
<b>"Structure"</b>	<i>A combination of materials other than a BUILDING, including but not limited to a SIGN, fence, wall, terrace, walk or driveway.</i>
<b>"Substantially at Grade Level"</b>	<i>Located at the existing or altered surface of the earth or pavement which does not/will not exceed one foot in height above the surface of the earth or pavement.</i>
<b>"Temporary Structure or Building"</b>	<i>A BUILDING not to be in existence for a period of more than two years. A STRUCTURE not to be in existence for a period of more than one year.</i>

**P3. District**

The DISTRICT shall consist of one or more DISTRICT areas as listed in Section 13 (Appendices) of this Bylaw.

**P4. Commission**

- 4.1.1 The COMMISSION shall consist of seven (7) regular members appointed by the Board of Selectmen to staggered three (3) year terms, such that three members terms will expire in one year and two members terms will expire in the second and third year, and so forth.
- 4.2 The COMMISSION shall include among its regular or alternate members, if practical, an Acton property owner who resides in each of the three DISTRICT areas, one Acton resident chosen from two nominees put forward by the Board of Realtors covering Acton, one Acton resident chosen from two nominees put forward by the chapter of the American Institute of Architects covering Acton, and one Acton resident chosen from two nominees put forward by the Acton Historical Society. If within thirty days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the Board of Selectmen may proceed to make appointments as it desires.
- 4.3 The Board of Selectmen may at its sole discretion, appoint up to a maximum of four (4) alternate members to the COMMISSION for three (3) year terms. The available alternate member(s) with the longest continuous length of service as an alternate may be substituted and vote on a one for one basis, in place of any regular member(s) who may be absent or has/have an actual or apparent conflict of interest, or in the case of a vacancy in the regular memberships.
- 4.4 Each member shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed.
- 4.5 Meetings of the COMMISSION shall be held at the call of the Chairman, at the request of two members and in such other manner as the COMMISSION shall determine in its Rules and Regulations.
- 4.6 A quorum is necessary for the COMMISSION to conduct a meeting. At least four (4) members of the COMMISSION (or Alternate Members with voting rights as to a matter(s) under consideration) must be present.

**P5. Commission Powers and Duties**

- 5.1 The COMMISSION shall exercise its powers in administering and regulating the CONSTRUCTION and ALTERATION of any STRUCTURES or BUILDINGS within the DISTRICT as set forth under the procedures and criteria established in this Bylaw. In exercising its powers and duties hereunder, the COMMISSION shall pay due regard to the distinctive characteristics of each BUILDING, STRUCTURE and DISTRICT area.
- 5.2 The COMMISSION, after public hearing, may by vote of two thirds (2/3rds) of its regular members (not to include alternate members) from time to time adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this Bylaw or M.G.L. Chapter 40C, setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for CERTIFICATES, fees, hearing procedures and other matters. The COMMISSION shall file a copy of any such Rules and Regulations with the office of the Town Clerk.
- 5.3 The COMMISSION, after a public hearing duly posted and advertised at least 14 days in advance in a conspicuous place in Town Hall and in a newspaper of general circulation in Acton, may adopt and from time to time amend guidelines which set forth the designs for certain EXTERIOR ARCHITECTURAL FEATURES which will meet the requirements of the DISTRICT. No such design guidelines shall limit the right of an applicant for a CERTIFICATE to present other designs to the COMMISSION for approval.
- 5.4 The COMMISSION shall at the beginning of each fiscal year hold an organizational meeting and elect a Chairman, a Vice Chairman and Secretary, and file notice of such election with the office of the Town Clerk.
- 5.5 The COMMISSION shall keep a permanent public record of its resolutions, transactions, decisions and determinations and of the vote of each member participating therein.
- 5.6 The COMMISSION shall undertake educational efforts to explain to the public and property owners the merits and functions of a DISTRICT.

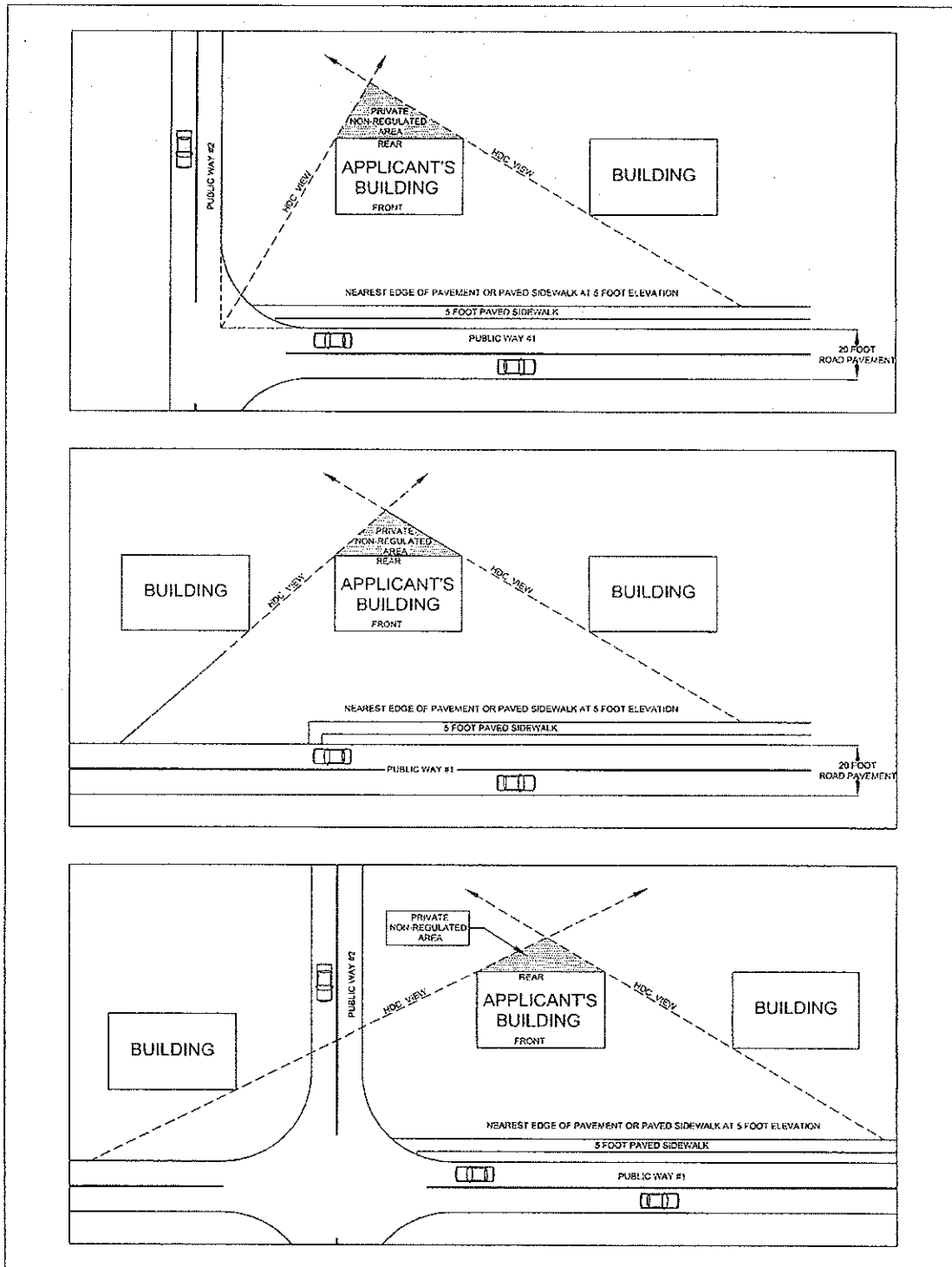
**P6. Alterations and Construction Prohibited Without Certificate**

**6.1** No BUILDING or STRUCTURE, or any part thereof, which is within a DISTRICT shall be CONSTRUCTED or ALTERED in any way which affects the EXTERIOR ARCHITECTURAL FEATURES visible to the unaided eye from any point at a five (5) foot elevation above the surface of the public way, on which the underlying lot or property has frontage, that is no closer to the BUILDING or STRUCTURE than the closest edge of pavement, or paved sidewalk if any unless the COMMISSION shall have first issued a CERTIFICATE with respect to such CONSTRUCTION or ALTERATION, except as this Bylaw otherwise provides

**6.1.1** The following conceptual drawings are included to illustrate the review jurisdiction limitation set forth in paragraph 6.1 above: The viewing areas shown would be similarly applied to all buildings or structures on a property.



**P6. Alterations and Construction Prohibited Without Certificate continued**



**P6. Alterations and Construction Prohibited Without Certificate continued**

- 6.2 Where a lot containing such BUILDING or STRUCTURE has frontage on more than one public way, the COMMISSION shall limit its review powers established under this BYLAW to the public way from which the view of the BUILDING or STRUCTURE is, in the opinion of the COMMISSION, most relevant to the integrity of the DISTRICT. The COMMISSION may, with due notice to the owners of those properties affected, make advance determinations of and provide the Town Clerk a list of its determinations as to which public way views are generally most relevant to the integrity of the various existing BUILDINGS in each DISTRICT. In the event it is proposed to rely upon a different view than the relevant and previously listed view when considering any particular application or complaint as to any BUILDING, the burden is upon the COMMISSION, as part of its decision, to adequately document in writing the reasons therefore.
- 6.3 No building permit for CONSTRUCTION of a BUILDING or STRUCTURE or for ALTERATION of an EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT and no demolition permit for demolition or removal of a BUILDING or STRUCTURE within a DISTRICT shall be issued by the Town or any department thereof until a CERTIFICATE as required under this Bylaw has been issued by the COMMISSION.

**P7. Procedures for Review of Applications**

- 7.1 Any person who desires to obtain a CERTIFICATE from the COMMISSION shall file with the Town Clerk and the COMMISSION an application for a CERTIFICATE of Appropriateness, or non-Applicability or of Hardship as the case may be. The application shall be accompanied by such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the COMMISSION to enable it to make a determination on the application. The date of the filing of an application shall be the date on which a copy of such application is received by the office of the Town Clerk.

**P7. Procedures for Review of Applications continued**

- 7.2 The COMMISSION may appoint one or more of its members to initially and privately screen applications for CERTIFICATES to informally determine whether any application includes and/or is submitted with sufficient information upon which the COMMISSION may reasonably take its required actions. Within fourteen (14) days following the first filing of an application for a CERTIFICATE with the Town Clerk, the COMMISSION or its appointee/s may determine without need for a public hearing, that insufficient information has been provided, in which case the application may be once returned to the submitting party, with written advice as to what was considered to be lacking, and the applicant will then thereafter be required to re-file the application before any further COMMISSION action is required. Any second filing of essentially the same application must be formally acted upon by the COMMISSION as is otherwise provided in this Bylaw.
- 7.3 The COMMISSION shall determine within fourteen (14) days of the filing of an application for a CERTIFICATE whether said application involves any EXTERIOR ARCHITECTURAL FEATURES which are within the jurisdiction of the COMMISSION.
- 7.4 If the COMMISSION determines that an application for a CERTIFICATE does not involve any EXTERIOR ARCHITECTURAL FEATURES, or involves an EXTERIOR ARCHITECTURAL FEATURE which is not subject to review by the COMMISSION under the provisions of this Bylaw, the COMMISSION shall forthwith issue a CERTIFICATE of Non-Applicability.
- 7.5 If the COMMISSION determines that such an application involves any EXTERIOR ARCHITECTURAL FEATURE subject to review under this Bylaw, it shall hold a public hearing on the application, except as may otherwise be provided in this Bylaw. The COMMISSION shall hold such a public hearing within forty-five (45) days from the date of the filing of the application. At least fourteen (14) days before said public hearing, public notice shall be given by posting in a conspicuous place in Town Hall and in a newspaper of general circulation in Acton. Such notice shall identify the time, place and purpose of the public hearing. Concurrently, a copy of said public notice shall be mailed to the applicant, to the owners of all adjoining properties and of other properties deemed by the COMMISSION to be materially affected thereby, all as they appear on the most recent applicable tax list, to the Planning Board, to any person filing a written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the COMMISSION shall deem entitled to notice.

**P7. Procedures for Review of Applications continued**

- 7.5.1** *A public hearing on an application for a CERTIFICATE need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application for a CERTIFICATE may be waived by the COMMISSION if the COMMISSION determines that the EXTERIOR ARCHITECTURAL FEATURE involved, or its category, is so insubstantial in its effect on the DISTRICT that it may be reviewed by the COMMISSION without a public hearing. If the COMMISSION dispenses with a public hearing on an application for a CERTIFICATE, notice of such application shall be given to the owners of all adjoining property and of other property deemed by the COMMISSION to be materially affected thereby as above provided, and ten (10) days shall elapse after the mailing of such notice before the COMMISSION may act upon such application.*
- 7.6** *The COMMISSION shall grant a CERTIFICATE, or issue a written decision, within sixty (60) days from the date the pertinent application was filed (or re-filed in the event the application was once returned for lack of information), unless the applicant consents in writing to a specific enlargement of time by which such an issuance may occur. In the absence of any such enlargement of time, should an issuance not be forthcoming within the prescribed time, the applicant is entitled as of right to a CERTIFICATE of Hardship.*
- 7.6.1** *If the CONSTRUCTION or ALTERATION for which an application for a CERTIFICATE of Appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a CERTIFICATE of Hardship, the COMMISSION shall determine whether, owing to conditions especially affecting the BUILDING or STRUCTURE involved, but not affecting the DISTRICT generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this Bylaw. If the Commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the COMMISSION shall issue a CERTIFICATE of Hardship.*

**P7. Procedures for Review of Applications continued**

- 7.7** *By the concurring vote of at least four members who were present throughout any relevant public hearing and the COMMISSION'S discussion leading up to its finding, the COMMISSION must adopt a specific written findings setting forth the basis on which it was initially determined that the application in question involved an EXTERIOR ARCHITECTURAL FEATURE subject to approval by the COMMISSION and may then:*
- A. Grant an appropriate CERTIFICATE for the work to be performed, to remain effective regardless of any subsequent change in the ownership of the property; or*
  - B. Grant an appropriate CERTIFICATE for the work to be performed, to remain effective regardless of any subsequent change in the ownership of the property, with conditions and limitations requiring architectural or plan modifications as to those matters not excluded under Section P9 of this Bylaw which are within the COMMISSION'S review jurisdiction; or*
  - C. Deny the application with a written statement of the basis for the denial, at which time it may provide written recommendations for changes not excluded from the jurisdiction of the COMMISSION by Section P9 of this Bylaw which, in a subsequent application, might be acceptable to the COMMISSION; or*
  - D. Deny the application with a fact specific written statement of the basis for the denial without further recommendations, if essentially the same application has previously been the subject of a prior denial accompanied by written recommendations pursuant to sub-paragraph 7.7C above.*
- 7.8** *Should the COMMISSION, during the course of reviewing an application, find that it does not have review jurisdiction under this Bylaw it shall make an appropriate finding of Non-Applicability.*
- 7.9** *Each CERTIFICATE or written decision upon an application by the COMMISSION shall be dated and signed by the Chairperson or such other person as the COMMISSION may designate and shall be deemed issued upon filing with the Town Clerk.*
- 7.10** *Each CERTIFICATE or written decision upon an application by the COMMISSION shall be promptly served on the applicant by the Town Clerk who shall promptly forward a copy thereof to the applicant at the address shown on the application, by first class mail, postage prepaid, and a copy shall be further provided to the Building Commissioner, Planning Board and Board of Selectmen.*

**P7. Procedures for Review of Applications continued**

**7.11** Nothing contained in this bylaw shall be deemed to preclude any person contemplating construction or alteration of a BUILDING or STRUCTURE within a DISTRICT from consulting informally with the COMMISSION before submitting any application referred to in this bylaw on any matter which might possibly be within the scope of the Bylaw. Nothing contained in this bylaw shall be deemed to preclude the COMMISSION from offering informal advice to a potential applicant prior to receiving an application. However, any such preliminary advice offered by the COMMISSION shall not be deemed to set a precedent nor in any way limit the COMMISSION in the exercise of its functions under this bylaw.

**P8. Criteria for Determinations**

- 8.1** In deliberating on applications for CERTIFICATES, the COMMISSION shall consider, among other things, the historic and architectural value and significance of the site, BUILDING or STRUCTURE; the general design, proportions, detailing, mass, arrangement, texture, and material of the EXTERIOR ARCHITECTURAL FEATURES involved; and the relation of such EXTERIOR ARCHITECTURAL FEATURES to similar features of BUILDINGS and STRUCTURES in the surrounding area.
- 8.2** In the case of new CONSTRUCTION or additions to existing BUILDINGS or STRUCTURES, the COMMISSION shall consider the appropriateness of the scale, shape and proportion of the BUILDINGS or STRUCTURE both in relation to the land area upon which the BUILDING or STRUCTURE is situated and in relation to BUILDINGS and STRUCTURES in the vicinity. The COMMISSION may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable statute or bylaw, however, such requirements shall not further limit the maximum floor area ratio and height of a BUILDING as defined and permitted in the Acton Zoning Bylaw.
- 8.3** When ruling on applications for CERTIFICATES on solar energy systems as defined in Section 1A of Chapter 40A, the COMMISSION shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.
- 8.4** The COMMISSION shall not consider interior arrangements or architectural features not subject to public view.
- 8.5** The COMMISSION shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the DISTRICT.

**P8. Criteria for Determinations continued**

**8.6** The COMMISSION may impose requirements on the screening and location of above ground features of septage systems. Such requirements shall not conflict with requirements of the Acton Board of Health.

**P9. Exclusions**

**9.1** The COMMISSION'S review jurisdiction shall not include the following:

**9.1.1** Temporary BUILDINGS, STRUCTURES, seasonal decorations or SIGNS subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the COMMISSION may reasonably specify.

**9.1.2** Terraces, walks, patios, driveways, sidewalks and similar STRUCTURES, provided that any such STRUCTURE is SUBSTANTIALLY AT GRADE LEVEL.

**9.1.3** The number of the residents' personally owned or leased and regularly used motor vehicles which may be routinely parked within the boundaries of a residential property. However, in those circumstances and notwithstanding the provisions of Section 9.1.2, the COMMISSION shall retain limited review jurisdiction in regard to measures that would minimize the visual impact, as viewed from the public way, of any expansion of, or portions of, driveways or other STRUCTURES SUBSTANTIALLY AT GRADE LEVEL which are intended as parking spaces for more than four (4) motor vehicles.

**9.1.4** Storm windows and doors, screen windows and doors, and window air conditioners.

**9.1.5** The color of paint applied to the exterior surfaces of BUILDINGS or STRUCTURES.

**9.1.6** The color of materials used on roofs.

**9.1.7** Signs of not more than two (2) square feet in DISPLAY AREA in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each BUILDING or STRUCTURE which is not more than six (6) square feet in DISPLAY AREA, consists of letters painted on wood without symbol or trademark and if illuminated is illuminated indirectly.

**P9. Exclusions continued**

- 9.1.8** *The reconstruction, substantially similar in exterior design, of a BUILDING, STRUCTURE or EXTERIOR ARCHITECTURAL FEATURE damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.*
- 9.1.9** *The point of access served by handicapped access ramps designed solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in M.G.L. c.22 s13A.*
- 9.1.10** *Non-traditional material(s), providing that the difference between such material(s) and traditional material(s) cannot, upon review by the COMMISSION, be reasonably discerned by the unaided eye from the viewpoint(s) upon which the COMMISSION's power of review is based.*
- 9.2** *Nothing in this Bylaw shall be construed to prevent the following;*
- 9.2.1** ***Ordinary maintenance, repair or replacement of any EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT which does not involve a change in design, material or the outward appearance thereof.***
- 9.2.2** *Landscaping with plants, trees or shrubs.*
- 9.2.3** *The meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe, unhealthful or dangerous condition.*
- 9.2.4** *Any CONSTRUCTION or ALTERATION under a permit duly issued prior to the effective date of this Bylaw.*
- 9.3** *Upon request the COMMISSION shall issue a CERTIFICATE of Non-Applicability with respect to CONSTRUCTION or ALTERATION in any category not subject to review by the COMMISSION in accordance with the above provisions.*

**P10. Categorical Approval**

- 10.1** *The COMMISSION may determine from time to time after a public hearing, duly advertised and posted at least fourteen (14) days in advance in a conspicuous place in Town Hall and in a newspaper of general circulation in Acton, that certain categories of EXTERIOR ARCHITECTURAL FEATURES, STRUCTURES or BUILDINGS under certain conditions may be CONSTRUCTED or ALTERED without review by the COMMISSION without causing substantial derogation from the intent and purpose of this Bylaw.*



**P11. Enforcement and Penalties**

- 11.1** No Building Permit shall be issued for the CONSTRUCTION or ALTERATION of any BUILDING or STRUCTURE wholly or partially in a DISTRICT unless a CERTIFICATE has first been issued by the COMMISSION when such a CERTIFICATE is required by this Bylaw.
- 11.2** No ALTERATION or CONSTRUCTION of any BUILDING or STRUCTURE wholly or partially in a DISTRICT for which a CERTIFICATE is required by this Bylaw shall deviate from the terms and conditions of such a CERTIFICATE.
- 11.3** The Building Commissioner of the Town of Acton shall enforce this Bylaw upon a determination by the COMMISSION that a violation exists, and subject to the approval of the Board of Selectmen, may institute proceedings in Superior Court pursuant to M.G.L. c.40C § 13 for injunctive or other relief and/or imposition of fines.
- 11.4** The COMMISSION, upon a written complaint challenging some enforcement action by the Building Commissioner, received by the Town Clerk within five (5) days following such decision, by a PERSON AGGRIEVED, or other citizen of or property owner in the Town of Acton, shall hold a timely public hearing to determine whether or not the Building Commissioner's action should be upheld, in whole or in part.
- 11.5** Whoever violates any of the provisions of this Bylaw shall be punishable by a fine of not less than \$10.00 nor more than \$500.00 for each offense under the provisions of M.G.L. c.40C § 13, or alternatively under #E45 of the Town of Acton Bylaws. Each day during any portion of which such violation continues to exist shall constitute a separate offense.

**P12. Appeals**

- 12.1** An appeal of a determination of the COMMISSION, except as to the propriety of a decision to invoke the provisions of M.G.L. c. 40C § 13 (institution of an action in Superior Court) by the Building Commissioner, may be taken by a PERSON AGGRIEVED by filing a written request with the Town Clerk, acting as an agent of the COMMISSION, within twenty (20) days of the issuance of a CERTIFICATE or a disapproval. In the event of such an appeal, the Acton Town Manager, or his delegate, shall make a timely request to the Metropolitan Area Planning Council that it promptly designate an arbitrator(s) with competence and experience in such matters to hear such an appeal. If such a person(s) is/are so designated he/she/they must hear the appeal in a timely manner and issue a written decision within forty-five (45) days of the request as specified in M.G.L. c. 40C § 12. The arbitration decision shall be binding on the parties, unless a Complaint seeking a further appeal is filed in Superior Court within twenty (20) days from the filing of the arbitration decision with the Town Clerk, pursuant to M.G.L. c. 40C § 12A.

**P.13. Validity and Separability**

**13.1** *The provisions of this Bylaw shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Bylaw shall continue to be in full force and effect.*

**P14. Appendices****Appendix 1: South Acton District**

*The South Acton District shall be a DISTRICT area under this Bylaw. The location and boundaries of the South Acton District are defined and shown on the Local Historic District Map of the Town of Acton, Sheet 1 - 1990 which is a part of this bylaw. Sheet 1 is based on the 1989 Town Atlas. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as otherwise apparent on Sheet 1.*

**Appendix 2: Acton Centre District**

*The Acton Centre District shall be a DISTRICT area under this Bylaw. The location and boundaries of the Acton Centre District are defined and shown on the Local Historic District Map of the Town of Acton, Sheet 2 - 1990 which is a part of this bylaw. Sheet 2 is based on the 1989 Town Atlas. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as otherwise apparent on Sheet 2.*

**Appendix 3: West Acton District**

*The West Acton District shall be a DISTRICT area under this Bylaw. The location and boundaries of the West Acton District are defined and shown on the Local Historic District Map of the Town of Acton, Sheet 3 - 1990 which is a part of this Bylaw. Sheet 3 is based on the 1989 Town Atlas. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as otherwise apparent on Sheet 3.*

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HISTORIC DISTRICT BYLAW  
ROYALSTON, MASSACHUSETTS

SECTION I Bylaw Premise

SECTION II District Boundaries

SECTION III Commission Organization and Powers

SECTION IV Enforcement and Penalties

SECTION V Appeals

SECTION VI Bylaw Amendments

SECTION I

PURPOSES AND VALIDITY

The purpose of this by-law is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of Royalston, or significant for their architecture, and the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

For the purposes and reasons as set forth in the Massachusetts General Laws Chapter 40C, as most recently amended, hereinafter cited as the HISTORIC DISTRICTS ACT; except for the ordinary maintenance, repair or replacement of any exterior architectural feature which does not involve a change in design, material, color or the outward appearance thereof, landscaping with plants, trees, or shrubs, or meeting requirements certified by a duly authorized public officer to be necessary for public safety because of unsafe or dangerous condition, no building or structure within the historic district shall be constructed or altered in any way that affects its exterior features unless the Royalston Historic District Commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

The provisions of this by-law shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

In case of any conflict between the wording of this text and the Massachusetts General Laws, the Massachusetts General Laws shall govern.

Where this by-law imposes a greater control upon setback, signs and other external features than is imposed by other by-laws of the Town of Royalston, the provisions of this by-law shall govern.

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## SECTION II

### HISTORIC DISTRICT BOUNDARIES

The location and boundaries of this district are hereby established as shown on a map entitled "Historic District Map of the Town of Royalston" dated January 1979. (on file in Town Clerk's Office)

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## SECTION III

### MEMBERSHIP

There is hereby established under Chapter 40C of the General Laws an Historic District Commission consisting of seven members and three alternate members, appointed by the Board of Selectmen, including one member, where possible, from two nominees submitted by the Royalston Historical Society, one member, where possible, from two nominees, one of whom shall be submitted by the Massachusetts State Chapter of the American Institute of Architects, and one member, where possible, from two nominees of the Board of Realtors covering Royalston. Where possible one or more of the members shall be a resident of an Historic District established in Royalston pursuant to the Historic Districts Act.\* When the Commission is first established, two members and one alternate shall be appointed for one year, two members and one alternate shall be appointed for two years, and three members and one alternate shall be appointed for three years. Successors shall each be appointed for a term of three years. Vacancies shall be filled within 60 days by the Board of Selectmen by appointment for the unexpired term. In the case of absence, inability to act, or unwillingness to act because of self-interest by a member, the Chairman shall designate an alternate member of the Commission to act for a specified time. All members shall serve without compensation. The Commission shall elect annually a Chairman and Vice-Chairman from its own number and a Secretary from within or without its number.

\* Additional membership suggestions: Lawyer, professional historian, additional residents of district, member of Planning Board, member of Conservation Commission, individuals interested in historic preservation.

### MEETINGS

Meetings of the Commission shall be held at the call of the Chairman or shall be called at the request of two (2) members of the Commission or in such other manner as the Commission shall determine in its rules. A majority of the members of the Commission shall constitute a quorum. The concurring vote of a majority of the members of the Commission shall be necessary to issue a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship.

### POWERS AND DUTIES

In passing upon matters before it, the Commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Commission shall consider the appropriateness of the size, scale and

shape of the same in relation to the land area upon which the building or structure is situated, to adjacent buildings and structures and to buildings and structures and to buildings and structures in the surrounding area.

The Commission may, in appropriate cases, impose dimensional and setback requirements in addition to those required by applicable by-law.

The reconstruction, substantially similar in design of a building, structure or external architectural feature damaged or destroyed by fire, storm or other disaster, must be begun within one year and carried forward with due diligence. If any of the exterior architectural features are changed in the reconstruction plans, then a certificate of appropriateness must be obtained from the Commission. If the structure is damaged beyond repair then the owner will clear area of all debris and complete landscaping to conform with surrounding area within one year.

The Commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, may be constructed or altered without review by the Commission without causing substantial derogation from the intent and purposes of this chapter.

The Commission may, after public hearing, set forth in such manner as it may determine the various designs of certain appurtenances, such as light fixtures, which will meet the requirements of a historic district and a roster of certain colors of paint and roofing materials which will meet the requirements of a historic district, but no such determination shall limit the right of an applicant to present other designs or colors to the Commission for its approval.

The Commission shall require appropriate drawings to show the nature and extent of proposed construction or alterations. The drawings need not be prepared by an architect.

The Commission may, subject to appropriations, employ clerical and technical assistants or consultants and incur other expenses appropriate to the carrying out of its work, and may accept money gifts and expend same for such purposes. The Commission may administer on behalf of the town any properties or easements, restrictions or other interests in real property which the town may have or may accept as gifts or otherwise and which the town may designate the Commission as the administrator thereof.

The Commission shall have, in addition to the powers, authority and duties granted to it by this bylaw, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of a town meeting.

The Commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of the Historic District Act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The Commission shall file a copy of any such rules and regulations with the Town Clerk.

The Commission should, when it feels a property is being neglected to the detriment of the architectural features of the building, meet with the owner of said property to discuss what steps can be taken.

The Commission shall keep an open mind toward alternative energy features being added to buildings within the district.

The Historic District Commission will act as the Local Historical Commission under the provisions of

Massachusetts Chapter 40, Section 8D.

The Commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the Historic District.

The Commission shall not consider interior arrangements or architectural features not subject to public view.

The Commission shall not extend its review to temporary signs, banners, streamers or placards or temporary structures approved by special permission of the selectmen.

The Commission shall not extend its review to events e.g. art shows, bazaars, church fairs, which are temporary in nature.

The Commission shall not extend its review to new storm or screen doors and windows installed in existing openings, nor to removable porch enclosures, room air conditioners, TV antennas and similar appurtenances except as they are part of new construction, additions or reconstruction.

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## SECTION IV

### ADMINISTRATION, ENFORCEMENT AND PENALTIES

#### Definitions

As used in this by-law, the word "altered" includes the words "rebuilt", "reconstructed", "restored", "removed", and "demolished", and the phrase "changed in exterior color". The word "building" means a combination of materials forming a shelter for persons, animals or property, the word "Commission" means the commission acting as the Historic District Commission; the word "constructed" includes the words "built", "installed", "enlarged" and "moved"; the words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including, but not limited to, the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures, and the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

#### Applications

Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, in such form as the Commission may reasonable determine, together with such plans, elevations, specifications, materials and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

#### Public Hearings

The Commission shall determine promptly, and in all events within fourteen (14) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

The Commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board of the Town, to any person filing written request for notice of hearing, such request to be renewed yearly in December and to such other persons as the Commission shall deem entitled to notice.

As soon as convenient after such public hearing, but in any event within sixty (60) days after the filing of such application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the Commission shall fail to make a determination within such period of time, the Commission shall thereupon issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the Commission if the Commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its effect in the historic district that it may be reviewed by the Commission without public hearing on the application; provided, however, that if the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as provided, and ten days shall elapse after the mailings of such notice before the Commission may act upon such application.

## Certificate

### A. Appropriateness

If the Commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for, or compatible with, the preservation or protection of the historic district, the Commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness, the Commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefore as set forth in the records of the Commission, to be issued to the applicant, and the Commission may make recommendations to the applicant with respect to appropriateness of design arrangement, texture, material and similar features. Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicants proposal which, if made, would make the application acceptable to the Commission. If, within fourteen (14) days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the Commission, the Commission shall cause a certificate of appropriateness to be issued to the applicant.

## B. Non-Applicability

In the case of a determination by the Commission that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural features, or involves an exterior architectural feature which is not then subject to review by the Commission in accordance with the provisions of Section III, the Commission shall cause a certificate of non-applicability to be issued to the applicant.

## C. Hardship

If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a certificate of hardship, the Commission shall determine whether, owing to conditions especially affecting the building or structures involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this by-law. If the Commission determines that owing to such conditions, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or in the event of failure to make a determination on an application within sixty (60) days after the filing of the application, the Commission shall cause a certificate of hardship to be issued to the applicant.

## Filing

The Commission shall file with the Town Clerk and with the Building Inspector a copy or notice of all certificates and determinations of disapproval issued by it. Each certificate issued by the Commission shall be dated and signed by its chairman, or such other person designated by the Commission to sign such certificates on its behalf

## Enforcement

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within the historic district and no demolition permit for demolition or removal of a building or structure within the historic district shall be issued by the Town or any department thereof until the certificate required by this section has been issued by the Commission.

The Worcester Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this by-law, and the determinations, rulings and regulations issued pursuant thereto, and may, upon the petition of the Board of Selectmen or of the Commission, restrain by injunction violations thereof; and, without limitation, such Court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

## Penalties

Whoever violates any of the provisions of this by-law shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense unless adequate progress is being made toward the correction of the violation.



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## SECTION V

### APPEALS

Any applicant aggrieved by a determination of the Commission, may within twenty (20) days after the filing of the notice of such determination with the Town Clerk, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the Town is a member. The finding of the person or persons making such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court as provided in the following section.

Any applicant aggrieved by a determination of the Commission, or by the finding of a person or persons making a review may, within twenty(20) days after the filing of such determination with the Town Clerk, appeal to the Worcester Superior Court sitting in equity. The Court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the decision of the Commission to be unsupported by the evidence, or to exceed the authority of the Commission, or may remand the case for further action by the Commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the Commission unless it shall appear to the Court that the Commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the Commission unless it shall appear to the Court that the appellant acted in bad faith or with malice in making the Appeal to the Court.

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## SECTION VI

### BY-LAW AMENDMENTS

Any by-law creating a historic district may, from time to time, be amended in any manner not inconsistent with the provisions of the Historic Districts Act by a two-thirds vote of a Town meeting, provided that the substance of such amendment has first been submitted to the Historic District commission having jurisdiction over such district for its recommendation and its recommendation has been received, or sixty (60) days have elapsed without such recommendation.

No by-law creating a historic district, or changing the boundaries of a historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the Town Clerk and has been recorded in the Worcester District Registry of Deeds.

A historic district may be enlarged or reduced or an additional historic district in the town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the Historic District Commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation report and hearing shall be by the Historic District Commission of the Town, instead of by a study committee unless the Commission

recommends otherwise and (c) if the district is to be reduced, written notice as above provided of the Commission's hearing on the proposal shall be given to said owners of each property in the district.

All by-laws creating a historic district adopted by the Town under authority of the Historic Districts Act, amendments thereto, maps and historic districts created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts Historical Commission.

March 1980

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**APPENDIX C**

**DEMOLITION DELAY BYLAWS**

## CHAPTER 19 -- DEMOLITION DELAY

### Sec.

- 19001. Intent and purpose
- 19003. Definition of terms
- 19005. Procedure
- 19007. Alternatives to demolition
- 19009. Expiration of demolition delay
- 190010. Expiration of findings
- 19011. Emergency demolition
- 19013. Enforcement and remedies

*History: The May, 1997 ATM adopted Article 11, a rewrite of General Bylaws. Approved by Attorney General September 10, 1997.*

*Amended May 12, 2003 ATM, Article 23 - §19005. Procedure, Subsection (d) (1). Approved by Attorney General August 26, 2003.*

*Amended May 12, 2003 ATM, Article 24 - Added §190010. Expiration of Findings. Portions of Article 24 approved by Attorney General August 26, 2003.*

*Amended May 12, 2003 ATM, Article 25 - §19005. Procedure, Subsection (b) (1). Approved by Attorney General August 26, 2003.*

### **§ 19001. Intent and purpose**

It is the intent and purpose of this chapter to preserve and protect from demolition, whenever possible, historically significant buildings or structures; to encourage owners of such buildings or structures to explore and develop alternatives to such demolition; and thereby to preserve the historic resources of the town, make the town a more attractive and desirable place in which to live, and so promote the general welfare.

### **§ 19003. Definition of terms**

The following terms, for the purposes of this chapter of these bylaws shall, unless another meaning is clearly apparent for the way in which the word is used, have the following meanings:

- (1) "building or structure" means any combination of materials forming a shelter or site for persons, property, or animals.
- (2) "building commissioner" means the person occupying the office of commissioner of buildings or otherwise authorized to issue demolition permits.
- (3) "commission" means the Chatham historical commission.
- (4) "demolition" means the act of pulling down, destroying, removing, or razing a building or structure, in whole or in part (including the demolition of exterior walls or roof), or commencing such work with the intent of completing the same, all as determined by the building commissioner; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair or an addition to any building or structure.
- (5) "historic district" means any historic district that may from time to time be established by federal, state, or local law, excluding the town historic business district.
- (6) "historically significant building or structure" means any building or structure located within the town which is, in whole or in part, seventy-five (75) years old or more, and -

- (A) which is listed on or is within an area listed on the National or State Register of Historic Places or is the subject of a pending application for such listing or,
  - (B) which is located within any historic district or,
- (C) which is or has been designated by the Chatham historical commission to be a historically significant building or structure, following a finding by the commission that such building or structure:
  - (i) is associated with one or more historical persons or events, or with the cultural, economic, social or political history of the Town or Commonwealth; or
  - (ii) possesses architectural value or significance in terms of period, style, method of construction, or association with an historically prominent architect or builder, either by itself or in conjunction with a group of buildings or structures.
- (7) "town" means any part of the Town of Chatham, excluding the area contained within the town historic business district established pursuant to Massachusetts General Laws, Chapter 641, of the Acts of 1985.

**§ 19005. Procedure**

- (a) (1) Before any building or structure whose age is seventy-five (75) years or more is the subject of demolition, a *Notice of Intent to Demolish* shall first be filed by the applicant and/or owner with the commission, and a copy of such notice shall promptly be forwarded by the commission to the building commissioner.
- (2) The said notice shall be in the form provided and established by the commission and shall include a copy of the demolition plan, a description of the building or structure to be demolished, the reasons for the demolition and the proposed reuse of the property.
- (3) If the applicant and/or owner is unable to specify the exact age of the building or structure, the notice shall so state and shall set forth the most approximate age known and the basis for such approximation.
- (b) (1) Within sixty-five (65) days of the date of filing of the *Notice of Intent to Demolish*, the commission shall hold a public hearing to --
  - (A) Determine if the subject building or structure is historically significant.
  - (B) Determine, if less than a complete demolition is proposed, whether the work to be done will materially diminish its historical significance.
  - (C) Explore alternatives to demolition.
- (2) Notice of the time, place and subject matter of the hearing shall be mailed to the applicant and/or owner and given by publication in a newspaper of general circulation in the town once each week for two (2) successive weeks, the first notice to appear at least fourteen (14) days before the day of the hearing (including the day of publication and excluding the day of the hearing).
- (c) (1) If after such hearing, and not later than fourteen (14) days therefrom, the commission determines by written finding that the building or structure is not historically significant, or where less than a

complete demolition is being proposed that the work to be done will not materially diminish its historical significance, then it shall promptly notify the applicant and/or owner of its determination and file a copy thereof with the building commissioner who may thereafter proceed with the proposed demolition in accordance with applicable law.

- (2) The failure of the commission to issue its written determination within fourteen (14) days after such hearing shall be deemed to constitute a determination that the building or structure is not historically significant.
- (d)
- (1) If after such hearing and within fourteen (14) days therefrom, the commission determines by written finding that the building or structure is historically significant and that the proposed work would materially diminish its historical significance, then the commission is hereby empowered to impose a demolition delay of up to three hundred and sixty five (365) days from the date of such determination.
  - (2) Written notice of its determination and the period of delay imposed shall be mailed promptly to the applicant and/or owner, and a copy thereof shall be furnished to the building commissioner who shall not issue a demolition permit during the period specified therein; provided, however, that such permit may be issued prior to the end of such period if the commission notifies the building commissioner that the applicant and/or owner (A) has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who has agreed to preserve, rehabilitate, restore or relocate same, or (B) has agreed to alternatives to demolition as set forth in section 19007.

**§ 19007. Alternatives to demolition**

- (a) (1) If the commission imposes a demolition delay as set forth in section 19005(d) and/or if alternatives to demolition are developed in the public hearing which are acceptable to the applicant and/or owner, then the commission is hereby empowered, in its discretion, to enter into an agreement with such applicant and/or owner providing for such alternatives and a time period for implementation of same.
- (2) A copy of said agreement shall be filed with the building commissioner and any other applicable town agency, and thereafter no work shall be done on the building or structure except in accordance with the terms of said agreement unless and until a new *Notice of Intent* is filed and processed hereunder.

**§ 19009. Expiration of demolition delay**

At the end of any period of demolition delay as set forth in this chapter, including any alternatives agreed upon pursuant to section 19007, the commission shall notify the building commissioner that the period of delay has expired, and the applicant and/or owner shall be entitled to apply for all necessary demolition permits to allow the work to go forward as set forth in the *Notice of Intent to Demolish*, and pursuant to applicable law.

**§ 19010. Expiration of Findings**

- (a) All determinations by written finding made by the Historical Commission pursuant to sections 19005. (c) (1) and 19005. (d) (1) & (2) above shall expire 2 (two) years from the date of the written finding if the work authorized has not commenced.

**§ 19011. Emergency demolition**

- (a) Nothing in this chapter shall restrict or prevent the building commissioner from ordering the immediate demolition of any building or structure which is determined to be imminently dangerous or unsafe to the public.
- (b) The building commissioner shall file a copy of any such order of emergency demolition with the commission.

**§ 19013. Enforcement and remedies**

- (a) The building commissioner and/or the commission shall be authorized to enforce the provisions of this chapter and to institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with same, including injunctive relief to enjoin and restrain any violations or threatened violations thereof.
- (b) No building permit shall be issued or be valid for a period of up to two (2) years after completion of such demolition with respect to any parcel or premises upon which a historically significant building or structure has been demolished by an intentional or grossly negligent violation of this chapter.
- (c) The remedies and enforcement procedures set forth in this section (19013) may be applied separately or in conjunction with one another, at the discretion of the building commissioner and/or the commission.

**[PLEASE SEE CHAPTER 1 FOR ADDITIONAL ENFORCEMENT AND PENALTIES.]**

## ARTICLE 6: HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT BUILDINGS

### Section 1. Intent and Purpose

This Bylaw is adopted for the purpose of preserving and protecting, through advance notice of their proposed demolition, significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the Town, to encourage owners of preferably-preserved significant buildings to seek out persons who might be willing to purchase and to preserve, rehabilitate, or restore such buildings rather than demolish them, and by furthering these purposes to promote the public welfare, to preserve the resources of the Town, and to make the Town a more attractive and desirable place in which to live. To achieve these purposes, the Arlington Historical Commission is empowered to advise the Arlington Building Inspector with respect to the issuance of permits for demolition, and the issuance of demolition permits for significant buildings is regulated as provided in this Bylaw.

### Section 2. Definitions

The following terms, when used whether or not capitalized in this Bylaw, shall have the meanings set forth below, unless the context otherwise requires.

A. "Building" Any combination of materials forming a shelter for persons, animals or property

B. "Significant Building" any building:

1. which is listed on, or is within an area listed on, the National Register of Historic Places, or which is the subject of a pending application for listing on said National Register, or

2. which is or has been listed on an Inventory provided to the Building Inspector by the Commission

C. "Preferably-Preserved Significant Building" any significant building which the Commission determines is in the public interest to be preserved or rehabilitated rather than to be demolished

D. "Commission" - the Arlington Historical Commission

E. "Commission Staff" - the chairperson of the Commission, or any person to whom the chairperson has delegated authority to act as Commission staff under this Bylaw

F. "Inventory" - a list of buildings on file at the Massachusetts Historical Commission that have been designated by the Commission to be significant buildings after a finding by the Commission that a building either

1. is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or Commonwealth, or

2. is historically or architecturally significant (in terms of period, style, method of building construction, or association with a famous architect or builder) either by itself or in the context of a group of buildings

G. "Building Inspector" the person occupying the office of Building Inspector or otherwise authorized to issue demolition permits

ART. 24, A.T.M., 5/1/89

H. "Application" an application for a permit for the demolition of a building which shall include a photograph of the building taken within the past year

I. "Permit" A permit issued by the Building Inspector for demolition of a building pursuant to an application therefor

ART. 31, A.T.M., 4/25/90

J. "Demolition" the act of pulling down, destroying, removing, or razing a building, or commencing the work of total or substantial destruction with the intent of completing the same. A structure is considered to be demolished if it is destroyed due to the owner's failure to maintain a watertight and secure structure. A structure shall also be considered to be demolished if more than twenty-five percent (25%) of the front or side elevations are removed or covered. Each elevation shall be calculated separately

K. "Business Day" a day which is not a legal municipal holiday, Saturday or Sunday

### Section 3. Procedure

A. The Building Inspector, on the day of receipt of an application for demolition of a listed significant building or within the next five successive business days, shall cause a copy of each such application for a demolition permit to be



forwarded to (or shall satisfy himself that a duplicate of such application has been submitted to) the Commission. No demolition permit shall be issued at that time. Within five business days of the receipt by the Building Inspector of said application he shall personally inspect the site of the proposed demolition to verify the accuracy of the information contained in the application with particular attention to the correctness of the address listed.

ART. 24, A.T.M., 5/1/89

B. The Commission shall fix a reasonable time, within 30 days of receiving a copy of such application, for a hearing on any application and shall give public notice thereof by publishing notice of time, place, and purpose of the hearing in a local newspaper at least fourteen days before said hearing and also, within seven days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed by the Commission to be affected thereby as they appear on the most recent local tax list, to the Arlington Historic Districts Commission and to such other persons as the Commission shall deem entitled to notice.

C. If, after such hearing, the Commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the Building Inspector within ten (10) days of such determination. Upon receipt of such notification, or after the expiration of fifteen (15) days from the date of the conduct of the hearing if he has not received notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations, issue the demolition permit.

D. If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building.

E. Upon a determination by the Commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the Commission shall so advise the applicant and the Building Inspector, and no demolition permit may be issued until at least twelve months after the date of the application for demolition.

ART. 31, A.T.M., 4/25/90

F. Notwithstanding the preceding sentence, the Building Inspector may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advice from the Commission to the effect that either

1. the Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building, or

2. the Commission is satisfied that for at least twelve months the owner has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.

ART. 31, A.T.M., 4/25/90

G. No permit for erection of a new structure on the site of an existing significant building may be issued prior to issuance of a permit for demolition of such existing building.

ART. 31, A.T.M., 4/25/90

H. No permit for erection of a new building, paving of drives or for parking shall be issued for two (2) years if a structure is demolished in violation of this bylaw.

#### Section 4. Emergency Demolition

Nothing in this article shall be construed to derogate in any way from the authority of the Inspector of Buildings derived from Chapter 143 of the General Laws. However, before acting pursuant to this chapter the Inspector of Buildings shall make every reasonable effort to inform the Chairperson of the Historical Commission of his intentions to cause demolition before he initiates same.

#### Section 5. Historic Districts Act

Nothing in this bylaw shall be deemed to conflict with the provisions of the Historic Districts Act, General Laws, Chapter 40C, with respect to requirements as to

notice, A hearing and issuance by the Arlington Historic District Commissions of a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship prior to demolition of any building in an historic district, provided, however, that any temporary building erected or maintained in an historic district pursuant to a certificate issued by the Arlington Historic District Commissions may be demolished in a manner not inconsistent with the terms of said certificate.

ART. 31, A.T.M., 4/25/90

#### Section 6. Severability

If any section, paragraph or part of this Bylaw is for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.

**APPENDIX D**

**INFILL DEVELOPMENT BYLAW**

# INFILL DEVELOPMENT OVERVIEW

## What is Infill Development?

- Infill Development is development on vacant parcels in developed areas. Compact development is promoted and undeveloped land is preserved. Infill is the development of vacant or abandoned land in an area that is otherwise built out.

## Developing Non-conforming Lots or what does infill development do?

- A proposed infill development bylaw will permit development of parcels that currently do not meet current zoning regulations for frontage and lot size.
- Infill Development encourages new development in such a way that developed areas maintain the existing character of the neighborhood buildings and structures, and would permit a flexible approach to development providing affordable housing, and possibly increasing property values.

*Basically, in terms of what will infill development do, the key here is that you want it to provide flexibility but you will want it to maintain the existing character of the neighborhood as well.*

**Possible Benefits of Infill Development.** Infill Development has potential to provide a number of advantages to a community.

- Often within more developed areas of a community, there exists vacant or under utilized lots that do not meet current zoning standards such as frontage and lot area. Through the use of an infill development bylaw, these vacant nonconforming lots can be brought back into productive use. *In other words, infill development can help bring out the potential of nonproductive or underproductive lots.*
- Development can be concentrated in areas where infrastructure such as public transit and sewer and water already exist, rather than in more undeveloped areas enhancing smart growth. One financial benefit of infill development for local governments is that it reduces the need to provide public infrastructure to support new development. *So, you want to have infill in areas with high density and that have water and sewer.*
- Infill development can improve surrounding properties by eliminating vacant lots and abandoned buildings, which may be crime and public health hazards. *It can also help to eliminate blight and make the area more attractive and a better place to live.*
- Third, infill development can provide a greater range of housing types. Whereas suburban development tends to create single-family homes, infill development can result in a variety of housing types, thereby increasing the appeal of neighborhoods. Larger projects often combine mixed commercial and residential uses, thus bringing new jobs as well.

**How will Infill Development “fit” in your community?** There are many ways to approach the drafting of an Infill Development Bylaw. Some questions to address while you consider Infill Development include:

- Identification of areas of the community where infill development is desired. Will this be a Town-Wide Bylaw or an overlay for specific areas in town? And what guidelines are appropriate for each of these areas; guidelines typically regulate the density, size, and architectural design of new infill development.
- Will the bylaw be include commercial/industrial and mixed uses?
- And, what will be the procedure for the Town to implement Infill Development? Potential Infill Development Bylaw Models should be reviewed. *Pioneer Valley Planning Commission developed a very inclusive bylaw.*

# MODEL INFILL DEVELOPMENT OVERLAY DISTRICT BYLAW

*Prepared by the Pioneer Valley Planning Commission*

## **6.2 Infill Development Overlay District**

### **6.20 Purpose**

The Infill Development Overlay District has been established to encourage infill and redevelopment in the downtown area to include parcels of land that do not meet the minimum dimensional requirements of the Zoning Bylaw as well as those that do meet the minimum requirements. It has been established to encourage development that maintains the character of existing neighborhood buildings and structures; to permit a flexible approach to providing affordable housing; to provide incentives for new and existing businesses in the downtown area; to increase property values in residential neighborhoods in the downtown area; and to foster well-planned, mixed-use, compact developments in the downtown area in keeping with the character of traditional New England villages by:

- a. Allowing a mix of uses in close proximity in the district within a limited area, including residential, retail, office, and light industrial;
- b. Preserving and restoring the overall character of the downtown area;
- c. Promoting a balance of land uses;
- d. Promoting the opportunity for people to work, meet, shop, and utilize services in the vicinity of their residences;
- e. Providing opportunities for the development of affordable housing;
- f. Providing opportunities for a mixture of uses in the same building;
- g. Promoting a positive pedestrian environment in the district;
- h. Facilitating integrated physical design;
- i. Promoting a high level of design quality;
- j. Encouraging the development of flexible space for small and emerging businesses;
- k. Facilitating development proposals responsive to current and future market conditions; and

- l. Encouraging the development of open spaces and parks within the district to accommodate workers, residents, pedestrians, and shoppers.

**6.21 District Boundaries**

The location and boundaries of the Infill Development Overlay District is hereby established as shown on a map entitled, "Infill Development Overlay District of the Town/City of \_\_\_\_\_, Massachusetts", dated \_\_\_\_\_, which accompanies and is hereby declared to be part of this bylaw.

**6.22 Residential Infill Development**

Within the boundaries of the Infill Development Overlay District, a lot with at least 5,000 square feet of area and fifty (50) feet of frontage may serve as the location for a single-family residential dwelling or two-family residential dwelling. A proposed Residential Infill Development shall demonstrate that the home shall be served by town water and sewer service upon completion of the proposed development and meet the following Performance Standards:

- a. The proposed dwelling is consistent in architectural style, scale, setbacks, and frontage with abutting structures, and those in the immediate neighborhood.
- b. Each lot will have access and utility service comparable to that serving nearby properties.
- c. No traffic congestion, health or safety limitations would be created by the development.

**6.23 Infill Development/Mixed Use Infill Development**

In the Districts within the boundaries of the Infill Development Overlay District, by Special Permit with Site Plan Approval from the Planning Board, a lot with at least 5,000 square feet of area and fifty (50) feet of frontage may serve as the location for an Infill Development or Mixed Use Infill Development. Any of the dimensional requirements of the Zoning Bylaw, such as lot frontage, width, building setbacks, etc. may also be reduced or eliminated by the Special Permit, provided that the Planning Board determines that the following Performance Standards have been met:

- a. The proposed building is consistent in architectural style, scale, setbacks, and frontage with abutting structures, and those in the immediate neighborhood.
- b. Each lot will have access and utility service comparable to that serving nearby properties.

- c. No traffic congestion, health or safety limitations would be created by the development.
- d. Access shall be provided to the extent feasible through an existing side street or a shared driveway; curb cuts shall be minimized.
- e. Pedestrian and vehicular traffic shall be separated; walkways shall be provided for access to adjacent properties and between businesses where feasible.

A Mixed Use Infill Development that proposes to have retail and residential uses within the same building on lots that meet the minimum dimensional requirements of the underlying zoning district shall be allowed by right if the following criteria are met:

- a. The retail use does not exceed 2,500 square feet of Gross Floor Area.
- b. No more than one residential dwelling unit is proposed.

Retail/residential Mixed Use Infill Development proposals within the same building on lots that meet the minimum dimensional requirements that exceed the above criteria shall be required to obtain a Special Permit with Site Plan Approval (see Section \_\_\_\_\_ of the Zoning Bylaw) from the Planning Board.

A proposed Infill Development/Mixed Use Infill Development shall demonstrate that the project shall be served by town water and sewer service upon completion of the proposed development.

#### **6.24 Use Regulations**

- a. All uses listed as "Y" in the underlying zoning district as shown in the Schedule of Use Regulations shall require Site Plan Approval from the Planning Board if the lot does not meet the minimum dimensional requirements of the underlying zoning district of the Zoning Bylaw.
- b. Proposed uses within the Infill Development Overlay District which require a Special Permit or Special Permit with Site Plan Approval shall continue to require all such approvals as are designated in the Schedule of Use Regulations. However, where such approval or review is also required as part of an application for a Mixed Use Infill Development, the applicant shall only be required to submit a single Special Permit or Special Permit with Site Plan Approval application for the purposes of gaining approval for all uses in such an application. See Section \_\_\_\_ of the Zoning Bylaw on the procedures and criteria required for the issuance of a Special Permit, and Section \_\_\_\_\_ on the procedures and criteria required for Site Plan Approval.

- c. Within a Mixed Use Infill Development, there shall be no restriction on combining different categories of use within the same building other than those restrictions imposed by the State Building Code or other federal, state, or local regulations.

## 6.25 Additional Standards

In Addition to the minimum standards of the underlying zoning district, the following standards shall apply to all uses allowed within the Infill Development Overlay District except single family and two-family residential development and any building used exclusively for agriculture, horticulture or floriculture. The Planning Board may waive these standards if deemed appropriate by the Board.

### 6.251 Landscape Standards

- a. Street trees shall be planted within the right-of-ways parallel to the street along all streets. Trees shall have a minimum height of six (6) feet and a minimum caliper of 2.5 inches at the time of planting. Where possible, a minimum of six (6) feet wide landscaped belt will be created to plant the street trees.
- b. Tree spacing shall be determined by species type. Large maturing trees shall be planted a minimum of 40 feet and a maximum of 50 feet on center. Small and medium maturing trees shall be planted a minimum of 10 feet and a maximum of 30 feet on center.
- c. Utilities shall be located in the street and not in the tree belt, wherever possible.

### 6.252 Parking Standards

The minimum off-street parking standards as specified in Section \_\_\_\_\_ of the Zoning Bylaw may be waived by the Planning Board where it can be demonstrated by the applicant that the proposed use will not have a negative traffic impact within the neighborhood. In addition to the requirements of Section \_\_\_\_\_, the following standards shall be met:

- a. Parking lots shall be located at the rear of or at the side of buildings wherever feasible.
- b. When two adjacent lots contain parking areas, it is encouraged to develop them as one parking area.



- c. Parking lot layout, landscaping, buffering, and screening shall prevent direct views of parked vehicles from streets and sidewalks, avoid spill-over light, glare, noise, or exhaust fumes onto adjacent properties wherever feasible.
- d. Parking lot layout shall take into consideration pedestrian circulation. Pedestrian crosswalks shall be provided, where necessary and appropriate, shall be distinguished by textured paving, and shall be integrated into the wider network of pedestrian walkways. Walkways must conform to requirements of the American with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB).

**6.26 Commonly Held Lots**

Any lot that is commonly held in ownership with an adjacent lot in this district may be treated as a single lot in accordance with this bylaw, provided that the total area of such lots is at least 5,000 square feet in area, the lots have a combined contiguous frontage of at least fifty (50) feet, and vacant of structures, parking facilities, or accessory uses.

**6.27 Fires and Natural Disasters**

In cases of fire or natural disaster, a structure in the Infill Development Overlay District that was destroyed may be rebuilt upon the same lot in accordance with this bylaw, provided that the new structure conforms to the use regulations of this bylaw and the reconstruction is completed and the structure is occupied within two years of such damage or destruction.

**6.28 Conflict with Other Laws**

All development activities within the Infill Development Overlay District shall comply with applicable laws, regulations, and standards of the town, except that in the event of a conflict between this bylaw and any such laws and regulations, the provisions of this Bylaw shall control, provided that they are consistent with state and federal law.

**6.29 Severability**

If any section or provision of this bylaw is found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other section or provision of this Bylaw.

## ZONING BYLAW AMENDMENTS ALSO REQUIRED:

Amend Definitions to include the following new definitions:

*GROSS FLOOR AREA - The sum of the horizontal areas of the several stories of a building, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall. Gross floor area shall exclude basements and attics. The surface area of tennis courts, swimming pools, driveways, parking spaces, decks, and porches is not included in the total floor area.*

*INFILL DEVELOPMENT - The development of new housing or other uses on scattered vacant sites in a built up area within the Infill Development Overlay District.*

*MIXED USE INFILL DEVELOPMENT - The development of a tract of land, building, or structure with two (2) or more different uses such as, but not limited to, residential, office, retail, institutional, entertainment, or light industrial, on scattered vacant sites in a built up area within the Infill Development Overlay District.*

*RESIDENTIAL INFILL DEVELOPMENT - The development of new single family or two-family housing on scattered vacant sites in a built up area within the Infill Development Overlay District.*

**APPENDIX E**

**DEVELOPMENT OVERLAY BYLAW**

**MRPC and ATTORNEY MARK GOLDSTEIN COMMENTS &  
EDITS FOR CONSIDERATION BY THE TOWN  
(COMMENTS/EDITS HIGHLIGHTED IN RED ITALICS)**

**I. Mixed Use Commercial Overlay District (MUCO)**

*Comment: The term “Mixed Use” generally indicates a residential component in bylaws researched by MRPC. The Westminster Town Planner has suggested that re-naming the bylaw “Development Overlay Bylaw” would be more appropriate since there is no residential component in this bylaw. MRPC staff is in agreement.*

**A. Purpose.** The purposes of the Mixed-Use Commercial Overlay District (MUCO) are to:

1. Create regulatory procedures for determining appropriate locations for uses defined herein.
2. Encourage mixed-use development, including professional and medical offices, theaters, restaurants and retail shops.
3. Encourage the mix of commercial uses that help to contain traffic within business and industrial areas and by so doing limit impacts to residential portions of the community.
4. Provide for development in a manner that strives to maintain the character of the immediate area and nearby neighborhoods while striving to conserve environmental features, woodlands, ~~wet areas~~ **wetlands**, open spaces, and views.
5. *Facilitate development proposals responsive to current and future market conditions.*
6. *Encourage the development of open spaces and parks within the district to accommodate workers, residents, pedestrians and shoppers.*
7. *Promote a balance of land uses and a high level of design quality.*
8. *Promote a positive pedestrian environment in the district.*
9. *Promote the opportunity for people to work, meet, shop, and utilize services in the vicinity of their residences.*

**B. Applicability.** The MUCO shall be construed as an overlay district, and it shall apply to such land areas as may from time to time be designated by Town Meeting in accordance with Mass. General Laws c. 40A, § 5, as amended. All requirements of the underlying zoning district(s) shall remain in full force and effect, except where the requirements of the MUCO are less restrictive or provide for uses or structures not otherwise available in the underlying district(s).

**C. Definitions of Terms.**

1. **Applicant** - The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The applicant must own or be the

beneficial owner of all the land included in the site or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

2. **Buffer** - An area within the MUCO adjacent to the property (boundary) lines, streams and ponds, which may not be developed except as provided herein.
3. **Development Schedule** - A schedule showing the order and timing of construction and the sequence of the improvements to be built or furnished on the site, separated into stages where applicable.
4. **Gross Non-Residential Floor Area** - The total non-residential floor area contained within exterior walls but does not include basement space used for heating, utilities, and storage.  
*Comment: It should be noted that this definition may conflict with the State Building Code (SBC) definition of Gross Floor Area. MRPC recommends that the bylaw incorporate the definition in the SBC, 780 CMR 1002.1. Attorney Goldstein is in agreement. The Building Code definition of Gross Floor Area is provided on the last page.*
5. **Open Space** - Any continuous, uninterrupted area of land containing no building, structure, or paving material on the surface that can be identified on the site plan.
6. **Professional Office** - The office of one skilled in an occupation that primarily services clients or patients rather than customers including but not limited to the office of a lawyer, doctor, dentist, architect, engineer, real estate agent, insurance agent or the studio of an artist, musician or teacher, ~~or the workroom of a tailor/dressmaker, decorator, or photographer.~~  
*Comment: To be consistent with MRPC's recommended changes to the Use Table, the last phrase of this definition which reads "or the workroom of a tailor/dressmaker, decorator, or photographer" should be deleted.*
7. **Regulations** - The applicable rules and regulations of the Special Permit Granting Authority (SPGA) relative to special permits and site plans.
8. **Theater** – As listed in Table of Use Regulations, Chapter 205, B. (14), for the purposes of this MUCO, to be defined as “movie theater.”
- ~~9. **Upland Acres** – Land without a wet area and not subject to flooding.  
*Comment: Upland Acres is not referred to in the text and MRPC recommends that it be removed. Attorney Goldstein also indicated that this section should be deleted.*~~
10. ~~**Wet Areas**~~ **Wetlands Protection Act** - All land subject to the provisions of M.G.L. c. 131, §40, the regulations of the Department of Environmental Protection, as amended, and/or to any local by-law or regulation that may be adopted from time to time.  
*Comment: Rather than use the term “Wet Areas”, use “Wetlands”. The definition refers to the Wetlands Protection Act in any case. However, “wet areas” only appears in the Purpose section. If there are no regulations in the Bylaw referring to wetlands, this definition could also be deleted. Attorney Goldstein stated that “This section should be labeled as Wetlands Protection Act. The remaining language is acceptable”.*

*Comment: Attorney Goldstein recommended adding a new heading labeled "Authority" indicating that the authority for reviewing and acting on MUCO special permits is the Planning Board as the Special Permit Granting Authority ("SPGA"). See below.*

**D. Authority.** The Planning Board shall act as the Special Permit Granting Authority (SPGA) in this MUCO district.

**E. Mixed Uses.** The use of property within a MUCO, if not allowed by the underlying zoning, may be authorized by a special permit issued by the *Planning Board* pursuant to this Section and in compliance with the standards set forth herein.

**F. Uses Allowed in Mixed-Use Commercial Overlay (MUCO) District.**

1. All uses listed in the Table of Use Regulations, Section B. "Institutional, recreational & educational uses;" Section D. "Offices and laboratory;" Section E. "Retail business and consumer service establishments" (except (14) Adult uses); and, Section F. "Automotive service and open-air drive-in retail service" (except (1-5) Automotive services and except (8) Drive-in eating places) provided, however, that the limitation on the square footage of retail stores set forth in Section B of the Table of Use Regulations shall not be applicable in the MUCO District, and retail stores containing in excess of 25,000 square feet of gross floor area, but no more than 150,000 sq. ft., shall be allowed by special permit as provided herein.

*Any use or combination of uses as above stated, can be allowed and may be acceptable in one or more principal structure(s), provided that a site containing multiple uses remains under common management and is maintained as such by that party.*

*The listing of allowed uses does not imply that the Town of Westminster would approve any mixture of these uses, unless it is clearly proven that the said mixture is compatible and that there will be no negative impacts on the environment, workers, residents, abutters, or the community.*

2. Open space, including parks for sports and/or recreation, bicycle paths and (non-motorized) multi-use trails. Total open space must comprise at least 50 percent of the project's land area. *Comment: Attorney Goldstein stated that open space includes lawn areas in front, side, and rear setbacks.*

**G. Design Conditions.**

1. Density: No building or structure shall be designed, arranged or constructed, and no building, structure or land shall be used, in whole or in part, which exceeds three thousand (3,000) square feet of gross floor area per 10,000 square feet of lot area or portion thereof, and no building in a MUCO district, whether attached or free-standing, shall exceed 150,000 sq. ft.

*Comment: Attorney Goldstein questioned if you can actually achieve a 1:3.3 ratio of floor area to lot area and still maintain 50% of space as listed in Section E (2). It may be possible to achieve a floor area ratio (FAR) of .3 and 50% open space, but multiple story buildings would probably be needed. For example, on a 20-acre site, 10 acres will be open*

*space and a two story building with an FAR of .3 occupies 3 acres, leaving 7 acres for parking, driveways, storage, etc.*

- A. Multiple Principal Structures: Applicants may propose more than one principal structure per lot as part of a Special Permit application. A principal structure is defined under this bylaw as a structure or group of structures in which the main or primary use of the premises occurs. The number of principal structures and their configuration on a single lot shall be determined in the special permit review process. Configuration of these structures is also subject to the Design Conditions listed in Section G of this bylaw.*
2. **Dimensional Requirements:** All dimensions shall comply with existing requirements in the Table of Land Space Requirements set forth in Section 205, Attachment 2 of the Zoning Bylaw, except that the Minimum Front Yard Depth shall be forty (40) feet.  
*COMMENT: "Dimensional Requirements" is unclear. Is it the underlying district regulations that apply for individual lots? Secondly, language could be added for more than one principal building on a lot such that each building does not need to comply with the area and frontage requirements. The 50% open space requirement, buffer, and FAR of .3 should alleviate concerns with intensity. Attorney Goldstein stated that "It would be quite difficult to have dimensional requirements when you are potentially going to have multiple principal structures on the same lot. Incorporating buffer zones and open space restrictions surrounding the structure, is really the only practical way to protect from close encroachment".*
3. **LEED Certified:** Projects constructed under this MUCO provision must meet the basic requirements of the U.S. Green Building Council's LEED (Leadership in Energy & Environmental Design) certification for new (commercial) construction.
4. **Landscaping:** A buffer area of at least twenty (20) feet shall be provided at the perimeter of the MUCO site. A one hundred (100)-foot buffer area, remaining in an undisturbed, natural state, shall be provided when the MUCO site is adjacent to property in residential use or a residential district. The Applicant shall file a landscape plan, prepared by a Landscape Architect, that demonstrates sufficient plantings *of a combination of grass, appropriate height shrubs, shade trees*, or other means will provide additional screening, if necessary, from adjacent properties and uses, that is deemed adequate by the SPGA.  
*Exposed storage areas, machinery, garbage "dumpsters", service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences, and other methods compatible with the purposes of the MUCO District.*
5. *To ensure that landscaped areas are maintained, the SPGA shall include as a condition of any special permit the obligation to maintain the landscaping approved by the SPGA. The beneficiary of any special permit under this regulation shall replace any tree or shrub that dies within one (1) growing season. Replacement trees or shrubs shall be of similar type and size to those approved as part of the original approval.*

*Comment: Attorney Goldstein indicated the Town may want to consider “a maintenance trust whereby the developer funds an account every year to ensure that enough funds are accumulated to replace and maintain the specified vegetation”.*

6. *Westminster’s Low Impact Development (LID) Bylaw shall be incorporated into the design and plans submitted by the Applicant.*
7. **Parking:** The applicant shall provide adequate parking to serve all anticipated uses on the property, and shall provide the method of computation of parking spaces. The Applicant shall conform to the parking requirements set forth in Article VIII of this Bylaw for all uses, except that for retail stores and services the Applicant shall provide a minimum of one space for each 200 square feet of gross floor area. The Applicant shall demonstrate sufficient off-street loading docks to ensure that all loading operations take place off the public way and in a location that reasonably protects adjoining properties and uses from any impacts. *To the extent feasible, parking areas shall be shared with adjacent businesses.*
8. **Pedestrian Access:** *Provision for safe and convenient pedestrian access shall be incorporated into plans for new buildings, and parking areas and should be designed in concert with landscaping plans. New construction should improve pedestrian access to buildings, sidewalks, and parking areas and should be completed with consideration for pedestrian safety, handicapped access, and visual quality.*
9. **Utilities:** All on-site services including electric, gas, telephone and water distribution lines shall be placed underground.
10. **Lighting:** Lighting fixtures should be installed to direct light downward so that there is no light bleed beyond twenty-five (25) feet of the parking area, loading area, and buildings, and that there is no light bleed above the parking lot lighting and tallest building structure.
11. **Signage.** All signs and awnings shall conform to the maximum area, height, number, setback and illumination requirements set forth in Section 205-42 of the Zoning Bylaw, except that:
  - a The top edge of any freestanding sign shall not be higher than fifty (50) feet vertical measured above the average level of the ground between the supports of such sign.
  - b No freestanding sign shall have a signboard area (or display area, if no signboard) exceeding five hundred (500) square feet of gross area, measured from the bottom to the top of the display elements and from exterior side to exterior side of display elements, and not including in such measurements any blank space between display elements. No display or signboard dimensions shall exceed twenty-four (24) feet for a freestanding sign.

#### ***H. Performance Conditions***

*The following standards apply to the construction and operation of uses within the district and are intended to identify impacts that require mitigation or are grounds for denial of the application.*



1. *WASTES. No objectionable or injurious wastes or other materials shall be discharged from a proposed project.*
2. *NOISE: Other than emergency signals and noise necessary for construction of buildings on the lot, no unreasonable or objectionable noise shall be transmitted beyond the lot from which it originates including the loading and unloading of trucks, nor shall any offensive odors, noxious, toxic or corrosive fumes or gases, dust, dirt or smoke be emitted into the air so as to endanger the public health or safety.*
3. *DANGEROUS MATERIAL. No material which is dangerous due to the possibility of explosion, fire hazard, radioactivity or other hazard shall be used, stored or manufactured except in accordance with applicable law.*
4. *STORMWATER MANAGEMENT. In order to help prevent harmful impacts from land development activities, Westminster's Low Impact Development (LID) Bylaw shall be incorporated in the design and plans submitted by the Applicant.*
5. *EMERGENCY / PUBLIC SAFETY ACCESS. Access to the MUCO site from any abutting public or private way, other than the access road, or by means of another access way not normally open to vehicular traffic, shall be permitted only for the purpose of allowing access to the development for emergency and public safety vehicles. Such access shall be subject to the approval of the Westminster Fire Department and Police Department.*
6. *APPROVAL. In order to grant approval of a MUCO, the Planning Board must make the following findings:*
  - (a) *That the site is adequate in size to support the proposed quantity of development.*
  - (b) *That the site is suitable in terms of topography, soils, other physical attributes, and location for the proposed uses.*
  - (c) *That the project's impact on neighborhood visual character is acceptable compared to benefits of the project.*
  - (d) *That the proposed method of sewage disposal, provision of water, and provision of surface water drainage are adequate and in accordance with Board of Health and DPW standards.*
  - (e) *That utilities and public services are adequate to serve the needs of the proposed uses.*
  - (f) *That the impacts on ground water and other natural resources are within acceptable levels.*
  - (g) *That the proposed uses within the MUCO are compatible with one another.*
  - (h) *That the proposed plan will not have adverse effects which outweigh its beneficial effects on either the neighborhood or the Town.*

- (i) *That the proposed development meets all other conditions and terms listed in this bylaw and the Site Plan Review Bylaw.*

*Comment: Attorney Goldstein indicated that the Town may want to include environmental factors under Section G. However, it appears that the MUCO bylaw and other provisions of the Zoning Bylaw have environmental factors covered adequately. But the Town may want to re-examine to be sure.*

*I. Pre-Application Conference Requirement:*

- 1. TIMING. Prior to the submission of an application for a special permit under this bylaw, the Applicant shall meet with the Planning Board at a public meeting to discuss the proposed development in general terms and to establish the plan filing requirements. It shall be the Applicant's responsibility to initiate the pre-application process. The Board shall meet with an Applicant within twenty-one (21) days of said request unless the meeting has been postponed or continued due to mutual agreement.*
- 2. FILING REQUIREMENTS. The purpose of the conference is to inform the SPGA as to the preliminary nature of the proposed project. As such, no formal filings are required for the pre-application conference. However, the Applicant should prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the scale and overall design of the proposed project. The more detail contained on the plan, the more productive and informative the meeting will be. The Pre-Application Conference will help the Applicant to avoid unnecessary deficiencies in the application and promote efficiency in the formal review and hearing process.*

*Comment – The purpose of a pre-application conference is to give the SPGA advance notice of an application within the overlay district and remove, to the extent possible, some of the “pressure” that Boards experience once a formal special permit has been applied for. The conference is designed to educate both the SPGA and the Applicant about the project and the likely concerns raised by the project. Note that there are no formal filing requirements proposed here. The Town may articulate specific requirements, although it is recommended that these be kept to a minimum for the pre-application phase.*

*Comment: Attorney Goldstein indicated that “The plans should be submitted 21 days prior to the Pre-Application process. This way you can disburse the plans to the other departments for review. You should also list how many plans/documents will be required to be filed by the applicant. Will 21 days or 65 days be enough time to review the information?” The section below addresses his concerns.*

- 3. DISTRIBUTION. The Applicant shall submit six (6) copies of preliminary or conceptual plans and drawings to the Planning Board twenty-one (21) days prior to the scheduled conference. The Board shall distribute the information to the Conservation Commission, Department of Public Works, Police Chief, Fire Chief, and Board of Selectmen.*

**J. Application.** An application for a special permit for construction within a MUCO shall be submitted to the SPGA on the required forms, accompanied by (a) the fees set forth below, (b) the following information and data, and (c) a development plan as described below:

1. All of the information required for site plan approval pursuant to Zoning Bylaw Section 205-34 *and all standards referenced herein.*
2. The name(s) and address(es) of the Applicant and all legal and beneficial owners of the site and an instrument executed by all persons owning property within the site consenting to the application for proposed development of the subject property.
3. Information regarding the number and kind of buildings and other structures (including signs) proposed, their location, the number of units planned for each use (office, retail, restaurant, theater), the type of material to be used in construction and other projections pertaining thereto. The architecture of the structures shall be sensitive to the area and abutting structures.
4. Areas to be set aside for building structures, parking areas, and any easements.
5. A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion.
6. A narrative report prepared by qualified professionals, detailing *environmental impacts* and the impact of the development on the Town's capacity to furnish services, including, but not limited to, roads, water and sanitation.

*Comment: Attorney Goldstein indicated that there is no listing concerning environmental impacts under I. Application. "Environmental impacts" was inserted above.*

7. A Traffic Study and all other information that the SPGA may reasonably require in a form acceptable to the Board to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.
8. *Any other requirements determined by the SPGA intended to reduce negative impacts from the development project.*

*Comment: Traffic studies can be helpful to communities entertaining large scale development. However, a more pro-active approach is to perform a preliminary planning study that defines a study area and assists in identifying potential traffic issues that might arise from the new zoning provisions. Upon request, MRPC is willing to assist the Town to identify a study area and conduct a preliminary traffic analysis.*

**K. Decision.** The Planning Board shall conduct a public hearing within sixty-five (65) days after filing of the application with the Board and Town Clerk. Said hearing shall be in compliance with M.G.L. c. 40A, §9 and the Rules and Regulations of the Planning Board. The decision of the Planning Board and any extension, modification, or renewal thereof, shall be filed with the Town Clerk within ninety (90) days following the closing of the public hearing. The Planning

Board may issue a Special Permit hereunder where it finds that the proposal is in harmony with the purpose and intent of the bylaw and the proposal shall be subject to general or specific provisions set forth herein. Any such permit issued may also impose reasonable conditions, safeguards and limitations of time and use as outlined in §205-50. The Planning Board reserves the right to amend, modify or revoke any permit granted for non-compliance of aforesaid conditions. *Comment: Attorney Goldstein had the following comments: "There is no time period to reapply if the application is denied. Should there be a waiting period of a year? There is no Massachusetts statute, which provides for a SPGA to rescind a MUCO. However, if the language is in the Bylaws, the court will more than likely enforce the Bylaw."*

## **Article 2: Mixed-Use Commercial Overlay District (MUCO) Amend Zoning Map**

To move that the Town vote to amend the Zoning Bylaw of the Town of Westminster by amending the Westminster Zoning Map adopted on November 27, 2007, by incorporating a new Mixed-Use Commercial Overlay district (MUCO) in the area of Simplex Drive; said area to include certain specified lots as shown on a map entitled "Proposed Zoning-Simplex Drive-MUCO District Boundaries" dated January 29, 2009, which is on file with the Town Clerk. The following parcels are included in the Mixed-Use Commercial Overlay district: Map 81, Lot 14; Map 80, Lot 1.1 and Map 69, Lot 16.

*Comment: Parcels Map 81, Lot 14 and Map 80, Lot 1.1 are designated as Chapter 43D Priority Development Sites. When this bylaw is submitted for legal review, it should be indicated as such since the town must render permitting decisions on priority development sites within 180 days.*

### State Building Code Definition of Gross Floor Area (780 CMR 1002.1)

*Comment: The following definition should replace the definition of Gross Floor Area in section C. above to avoid a conflict with the Building Code.*

**Gross Floor Area** - The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.