

# Appendix H

## Sample Bylaws

### Part I: Demolition Delay Bylaws (Sample from Massachusetts communities)

#### TOWN OF WESTON

Intent and purpose: The Demolition Delay by-law is enacted for the purpose of preserving and protecting significant buildings within the Town of Weston which are outside Local Historic Districts. Such buildings reflect distinctive features of the architectural, cultural, economic, political or social history of the Town, and their preservation promotes the public welfare by making the Town a more attractive and desirable place to live and work.

The intent of the by-law is not to permanently prevent demolition, but rather, to provide an opportunity to develop preservation solutions for properties threatened with demolition. The by-law is intended to encourage owners and townspeople to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them, and to limit the detrimental effect of demolition on the historical architectural resources of the Town.

To achieve these purposes, the Weston Historical Commission ("the Commission") is empowered to advise the Building Inspector with respect to the issuance of permits for demolition of significant buildings, and, where appropriate and consistent with the intent and purpose of this by-law, to allow demolition under conditions designed to minimize the loss of distinctive features of significant buildings.

#### Definitions

- I. "Building" - any combination of materials forming a shelter for persons, animals, or property.
- II. "Demolition" – any act of pulling down, destroying, removing, razing or moving a building or any portion thereof, or commencing the work of moving or of total or substantial destruction of a building or portion thereof, with the intent of completing the same;
- III. "Significant Building" – any building or portion thereof which in whole or in part was constructed by 1945, or is of unknown age, and which meets one or more of the following three criteria:
  - A. is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application for listing on said National Register; or
  - B. is included within a "significant area" or "further study area" inventoried or outlined by the Commission in the 1993-1994 Historical Resources Survey; or
  - C. is documented on a Cultural Resources Inventory form prepared by the Commission; and, in addition, is determined by vote of the Commission to be of historical or architectural significance by reason of period, style, method or building construction, or by reason of its association with a particular architect, or a builder, or with a person or event of importance to the Town's history;
- IV. "Commission" - the Weston Historical Commission.
- V. "Business Day" - any day which is not a legal municipal holiday, Saturday or Sunday.

#### Procedure

- I. No demolition of a building, or any portion of a building, which was in existence as of January 1, 1945 or which is of an indeterminate age, shall be permitted except in conformity with the provisions of this by-law.

II. Upon receipt of an application for a demolition permit for any building, or portion thereof, which was in existence as of January 1, 1945 or which is of indeterminate age, the Building Inspector shall forward a copy thereof to the Commission within five (5) business days, and shall notify the applicant in writing of this action. No demolition permit shall be issued at that time.

III. Within twenty-one (21) business days of its receipt of a copy of an application for a demolition permit, the Commission shall make an Initial Determination as to the significance of the subject building. The Initial Determination shall be positive if the building, or a portion thereof, meets one or more of criteria (a) through (d) of the above definition of "Significant Building." Otherwise, the Initial Determination shall be in the negative. The Commission shall notify the applicant of the meeting at which it intends to make its Initial Determination at least seven (7) days in advance of said meeting, and the applicant shall be given an opportunity to make a presentation to the Commission.

IV. The Commission shall notify the Building Inspector and the applicant in writing within ten (10) business days of its Initial Determination. If the Initial Determination is in the negative, or if the Commission fails to notify the Building Inspector of its Initial Determination within the said ten (10) business days, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable law, by-laws, rules and regulations, issue a demolition permit.

V. If the Commission's Initial Determination is positive, the Commission shall, within thirty (30) days of its Determination, conduct a public hearing to determine whether the Significant Building is preferably preserved; the Commission shall give public notice of said hearing by publishing notice of the time, place, and purpose of the hearing in a newspaper of general circulation in the Town twice, the first notice to be published at least fourteen (14) days before the hearing and the second notice no more than seven (7) days before the hearing, and by mailing a copy of said notice to the applicant, to the owner of the premises on which the Significant Building is located (if other than the applicant) to the owners of all property within three hundred feet of the premises on which the Significant Building is located as appearing on the most recent tax list, and to such other persons as the Commission shall deem entitled to notice.

VI. If, after a public hearing, the Commission determines that 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 applicant, the owner, if other than the applicant, and the Building Inspector, in writing, within ten (10) business days of such determination. Upon receipt of such notice, or upon the expiration of ten (10) business days from the date of the close of the Commission's public hearing, without having received any notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, by-laws, rules and regulations, issue a demolition permit for the subject building.

VII. If, after the public hearing, the Commission determines that demolition of the Significant Building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered to be a preferably preserved building, and the Commission shall so advise the applicant, the owner if other than the applicant, and the Building Inspector, in writing, within (10) business days, and no demolition permit shall be issued until six months after the date of such determination by the Commission.

VIII. During the six-months delay period following the Commission's determination that a building is to be considered preferably preserved, the Commission shall notify the Massachusetts Historical Commission, the Town Planner, and any other interested party in an effort to obtain assistance in obtaining preservation funding or in finding an adaptive use of the building which will result in its preservation.

IX. Notwithstanding the preceding paragraphs, 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

- i. 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
- ii. the Commission is satisfied that for at least six 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;

iii. the Commission has determined that the proposed moving or demolition may be conducted in a specified manner so as not to be detrimental to the historical or architectural heritage or resources of the Town.

#### Responsibilities of the Owner

Once a Significant Building is determined to be a preferably preserved building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector. Should the owner fail to so secure the building, a subsequent destruction of the building at any time during the six month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a demolition in violation of this by-law.

#### Emergency Demolitions

Notwithstanding the following provisions, the Building Inspector may issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to deteriorating conditions. Prior to doing so, the Building Inspector shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Inspector shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.

No provision of this by-law is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

#### Historic Districts Act

Nothing in this by-law shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws, Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission 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.

#### Enforcement and Remedies

1. Except as provided below, whenever a significant building or any portion thereof has been voluntarily demolished in violation of this by-law, and for a period of two years after the date of completion of such demolition, no building permit shall be issued with respect to any premises upon which such demolition has occurred. As used herein, "premises" includes the parcel of land upon which the demolished significant building was located.

2. Notwithstanding the foregoing, whenever the Commission shall, on its own initiative, or on application of the landowner, determine that earlier reconstruction, restoration or other remediation of any demolition in violation of this by-law better serves the intent and purpose of this by-law, it may, prior to the expiration of said period of two years, but no sooner than six months from the date of completion of any demolition in violation of this by-law, authorize issuance of a building permit, upon such conditions as the Commission deems necessary or appropriate to effectuate the purposes of this by-law, and may so notify the Building Inspector pursuant to Section IX of this by-law.

## Severability

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

## TOWN OF DUXBURY

### Demolition of Historically Significant Buildings

#### Section 1. Purpose

This bylaw is adopted to protect and preserve the buildings and structures within the Town of Duxbury which reflect or constitute distinctive features of the architectural, cultural, economic, political or social history of the Town and to encourage the preservation and restoration rather than the demolition of such buildings and structures. By furthering these purposes, the public welfare shall be promoted, making the Town a more attractive place in which to live, learn and work.

To achieve this purpose, the Historical Commission is empowered to advise the Building Inspector with respect to the issuance of permits for demolition. The Commission is hereby required to offer its advice and expertise to owners of any building or structure within the Town.

#### Section 2. Definitions

“Building.” See Section 302 of the Duxbury Zoning Bylaw.

“Business day.” A day that is not a legal municipal holiday, Saturday or Sunday.

“Demolition.” The intentional act of pulling down, destroying, removing or razing a building or structure or commencing the work of total or substantial destruction with the intent of completing the same.

“Regulated Building or Structures.” This bylaw shall apply only to buildings or structures which in whole or in part were built seventy-five (75) years or more prior to the date of the application for a demolition permit and are:

- a) listed or eligible to be listed on the National Register of Historic Places or on the State Register of Historic Places; or
- b) is associated with one or more historic persons or events, or with the broad architectural, cultural, economic, political or social history of the Town; or
- c) is historically or architecturally significant in terms of period style, method of building construction or association with a significant architect or builder, either by itself or as part of a group of buildings.

#### Section 3. Procedures

No permit for the demolition of any building or structure shall be issued other than in conformity with this bylaw. Upon receipt of an application for a demolition permit, the Building Inspector shall forward a copy to the Historical Commission.

Within thirty (30) days of receiving the application for a demolition permit from the Building Inspector, the Historical Commission shall determine whether the building or structure is a “regulated building or structure” as defined under this bylaw. If the Commission determines that the building or structure is not regulated by this bylaw, it shall sign the permit immediately and forward it to the Building Inspector, who shall issue the permit.

If the Commission determines that the building or structure is regulated by this bylaw, it shall review the application for a demolition permit at a public hearing to be held within twenty (2) business days of determining that the building or structure is a regulated building or structure.

The Commission shall publish a notice of the hearing in a newspaper of local circulation during each of the two weeks preceding the date of the public hearing, noting the date, location, and subject of the hearing, the cost to be borne by the applicant.

Within fourteen (14) business days after the public hearing on the demolition permit, the Commission shall make its determination either to permit immediate demolition or delay demolition and notify the applicant in writing, stating its reasons with a copy to the Building Inspector.

If a determination is made that the building or structure is historically significant, meeting one of the three criteria of a "regulated building or structure," and that demolition should be delayed, the Building Inspector shall not issue a demolition permit for a period of six (6) months from the date of notification to the Building Inspector, unless the Commission informs the Building Inspector in writing prior to the expiration of the six-month period that the Commission is satisfied that the applicant has made a reasonable but unsuccessful effort to locate a purchaser to preserve, relocate or rehabilitate the building or structure.

In an emergency, nothing in this bylaw shall prohibit the Building Inspector from exercising the authority of M.G.L. c.143, but the Building Inspector shall make every reasonable effort to inform the Commission of his actions in such an emergency.

## TOWN OF WESTFORD

### A. Intent and Purpose

This by-law is adopted for the purpose of preserving and protecting 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 such buildings to seek out persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings rather than demolish them. To achieve these purposes the Westford Historical Commission (herein after the "Commission") is empowered to advise the Building Commissioner with respect to the issuance of permits for demolition of significant buildings.

### B. Definitions

1. Building – Any combination of materials capable of being used as a shelter for persons, animals or property.
2. Commission – The Westford Historical Commission.
3. Commissioner – The Westford Building Commissioner.
4. Demolition Permit – The permit issued by the Commissioner as required by the state building code for the demolition or removal of a building or structure; and
5. Historically Significant Building or Structure – Any building or structure which is (1) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town, the Commonwealth of Massachusetts or the United States of America; or (2) is historically or architecturally important by reason of period, age, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

### C. Regulated Buildings and Structures

1. A building or structure listed on, or is within an area listed on, the National Register of Historic Places or the State Register of Historic Places, or the subject of a pending application for

listing on either of said Registers; or

2. A building or structure located within 200 feet of the boundary line of any federal, state or local historic district; or

3. A building or structure included in the Inventory of the Historic Assets of the Commonwealth, or designated by the Commission for inclusion in said inventory including those buildings listed for which complete surveys may be pending; or

4. A building or structure determined by vote of the Commission to be historically or architecturally significant in terms of period, style, and method of building construction based on the following criteria:

a. Properties listed on the State Register of Historic Places and the Inventory of Historic Assets of the Commonwealth for the Town of Westford.

b. Properties in existence in or before 1921.

c. Properties that appear on the 1855 Symmes Maps.

1. No demolition permit shall be issued for a regulated building or structure without full compliance with the provisions of this by-law.

#### D. Procedure

1. The Commissioner shall forward a copy of each demolition permit application for all regulated buildings or structures identified in section (c) of this section to the Commission within seven (7) days after the filing of such application. No demolition permit shall be issued at that time.

2. Within thirty (30) days after the receipt of such application, the Commission shall determine whether the building or structure is historically significant. The applicant for the permit shall be entitled to make a presentation to the Commission if he or she makes a timely request in writing to the Commission.

3. A. If the Commission determines that the building or structure is not historically significant, it shall so notify the Commissioner and the applicant in writing and the Commissioner may issue a demolition permit.

B. If the Commission determines that the building or structure is historically significant, it shall notify the Commissioner and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. If the Commission fails to notify the Commissioner and the applicant of its determination within sixty (60) days after its receipt of the application, then the building or structure shall be deemed not historically significant and the Commissioner may issue a demolition permit.

4. Within thirty (30) days after the applicant is notified that the Commission has determined that a building or structure is historically significant, the applicant for the permit shall submit to the Commission seven (7) copies of a demolition plan which shall include the following information: (i) a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures; (ii) photographs of all street façade elevations; (iii) a description of the building or structure to be demolished; (iv) the reason for the proposed demolition and data supporting said reasons, including, where applicable, data sufficient to establish any economic justification for demolition; and (v) a brief description of the proposed reuse of the parcel on which the building or structure to be demolished is located.

5. The Commission shall hold a public hearing, within 30 days of receipt of the demolition plan referenced in paragraph four, with respect to the application for a demolition permit, 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, to any person filing 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. Within sixty (60) days after its receipt of the demolition

plan, the Commission shall file a written report with the Commissioner on the demolition plan which shall include the following: (i) a description of age, architectural style, historic association and importance of the building or structure to be demolished (ii) a determination as to whether or not the building or structure should preferably be preserved. The Commission shall determine that a building or structure should preferably be preserved only if it finds that the building or structure is an historically significant building or structure which, because of the important contribution made by such building or structure to the Town's historical and/or architectural resources, it is in the public interest to preserve, rehabilitate or restore.

6. If, following the demolition plan review, the Commission does not determine that the building or structure should preferably be preserved, or if the Commission fails to file a report with the Commissioner within the time limit set out in subparagraph (5) next above, then the Commissioner may issue a demolition permit.

7. If, following the demolition plan review, the Commission determines that the building or structure should preferably be preserved, then the Commissioner shall not issue a demolition permit for a period of six (6) months from the date of the filing of the Commission's report unless the Commission informs the Commissioner prior to the expiration of such six (6) month period that it is satisfied that the applicant for the demolition permit has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specific conditions approved by the Commission. During the six (6) month review period, the Commission shall invite the Applicant to participate in an investigation of alternatives to demolition.

#### E. Determination of Applicability

An owner of a regulated building or structure may petition the Commission for a determination of applicability of the bylaw. Within sixty (60) days after the receipt of such application, the Commission shall determine whether the building or structure is historically significant. The applicant for the permit shall be entitled to make a presentation to the Commission if he or she makes a timely request in writing to the Commission. The determination by the Commission of whether a regulated building or structure is historically significant shall be made in writing signed by the Commission and shall be binding on the Commission for a period of 5 years from the date thereof.

#### F. Emergency Demolition

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the Commissioner. If possible and as soon as practical after the receipt of such a request, the Commissioner shall arrange to have the property inspected by a board consisting of himself, the Chairman of the Commission and the Chairman of the Board of Health, and the Chief of the Fire Department, or their respective designees. After inspection of the building or structure and, to the extent possible, consultation with this Board, the Commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to immediate demolition of the building or structure which would protect the public health or safety. If the Commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition permit under the provision of this paragraph (E), they shall prepare a written report describing the condition of the building or structure and the basis for his decision to issue an emergency demolition permit with the Commission. Nothing in this paragraph (E) shall be inconsistent with the procedures for the demolition and/or securing of building and structures established by Chapter 143, section 6-10, of the Massachusetts General Laws. In the event that a

Board of Survey is convened under the provisions of Section 8 of said Chapter 143 with regard to any building or structure identified in paragraph (C) of this section, the Commissioner shall request the Chairman of the Commission or his designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the Commission.

G. Non-Compliance

1. The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity, as they deem necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.
2. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this bylaw for a period of twenty-two months after the date of the completion of such demolition. As used herein "premises" includes the parcel of land upon which the demolished significant building is located.
3. Upon a determination of the Commission that a building is a preferably preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Commissioner. Should the owner fail to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition for the purposes of section G2.
4. Anyone who demolished a building or structure identified in paragraph (C) of this section without first obtaining, and complying fully with the provisions of, a demolition permit, shall be subject to a fine of not less than one hundred (100) dollars nor more than three hundred (300) dollars.

H. Severability

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



## **Part II. Historic Preservation Incentive Bylaw**

### TOWN OF LEXINGTON

#### 4.4 HISTORIC PRESERVATION INCENTIVES

##### 4.4.1 GENERAL OBJECTIVES

- a. Encourage preservation of buildings, structures, sites and settings, and elements of historical or architectural significance.
- b. Establish eligibility criteria for buildings, structures, sites and settings, and elements attaining protected status under paragraph 4.4.2.
- c. Expand economic options for the owner/investor, by broadening the permitted uses in various zoning districts and removing barriers presented by development standards governing those permitted uses.
- d. Permit the flexibility of development options by modifying dimensional requirements that might be an impediment to historic preservation.
- e. Provide incentives to preserve contributory elements of historic or architectural significance, such as settings and sites, objects, monuments, trees or other elements.

##### 4.4.2 HISTORIC ELIGIBILITY DEFINED

- a. Any historic element, as defined below, may qualify for paragraph 4.4.2, Historic Preservation Incentives, if it is included on any of the following lists or surveys:
  1. National Register Of Historic Places
  2. State (Commonwealth Of Massachusetts) Register Of Historic Places
  - 3) Inclusion by the Lexington Historical Commission in its Comprehensive Cultural Resources Survey, or identification by that Commission of historic and/or architectural significance and thereby potential inclusion in the Comprehensive Cultural Resources Survey.
  - 4) Pending nominations in good standing to the National or State Registers
- b. Primary Qualifying Elements shall include the following: buildings, and other structures and outbuildings located on the property.
- c. Secondary Qualifying Elements shall include the following: sites and settings, objects, monuments, trees or any element of historical, architectural and/or cultural significance which indicates their contributory value in establishing historical context.
- d. Priority in granting special permits under these historic preservation incentives shall, in all cases, be placed upon keeping buildings and structures in place, rather than moving them to other locations, provided that the existing siting can be shown to represent valid historical setting and context. Moving of buildings, structures and elements to other locations shall be considered only if no other preservation measures are practical or reasonable on the existing site, or if the proposed removal is to return a building, structure or element to an original or more historically accurate location. The SPGA shall determine the validity of any such requests.

##### 4.4.3. SPECIAL PERMIT AUTHORIZED

The Board of Appeals, or the Planning Board where it is authorized to be the special permit granting authority (SPGA), may grant a special permit to authorize actions that would otherwise not comply with the provisions of this By-Law and that would allow the renovation, repair, adaptive reuse or, in limited instances, removal, of historic or architecturally significant buildings.

a. The following uses, identified by the line in which they appear in Section 4.2 of this By-Law that are not usually permitted in the districts identified below, may be allowed in those districts, provided the SPGA makes the findings listed in 4.4.4.:

1. 1.13 Residential/Institutional/Agricultural Uses; the conversion of single family residences in the RD, CB and CLO districts.
2. 1.14 the conversion of single family residences in the CB and CLO districts.
3. 1.187 the conversion of municipal buildings to residential use in the RM, CB and CLO districts.
4. 1.21 the creation of Rooming Units in the CB, CLO and CN districts.
5. 1.22 the creation of Accessory Apartments in the CB and CLO districts.
6. 1.23 the creation of Bed and Breakfast Homes in the RT, RM, RD, CN, CB, and CLO districts.
7. 1.24 General Home Occupation Uses with a maximum of one (1) employee other than an owner occupant and with a maximum of 4 customers per hour, as an average during the course of the business day, in all districts.
8. 1.25 Professional Office Home Occupation Uses with a maximum of one (1) employee other than an owner occupant, in all districts.
9. 6.14 Office Uses, Professional Services, in CN districts.
10. 6.15 Advertising/Editing, in CN and CB districts.
11. 6.16 Employment Agency and similar uses, in CN districts.
12. 6.17 Manufacturer's Representative and similar uses, in CN districts.
13. 6.18 Other Business and Administrative and similar uses, in CN districts.
14. 7.13 Professional and Business Services, Tailor, Dressmaker And Shoe Repair, in CLO districts.
15. 7.14 Real Estate Sales or Rental Office, in CS districts.
16. 7.18 Repair of Household Appliances, in CLO districts.
17. 7.28 Private Postal Service, in CB districts.

b. Modifying 6.2, Development Standards for Offices (6.21 – 6.26) and 7.3, Development Standards for Personal, Business Services (7.31 – 7.32), provided that any negative impacts to the surrounding area can be feasibly mitigated.

c. Modifying the standards in Table 2, Schedule Of Dimensional Controls, with regard to minimum: lot area; lot frontage; front, side and rear setbacks; maximum percentage of site coverage; and maximum height (stories).

d. Modifying the standards in Section Five (5), Supplementary Use Regulations, sub-sections 5.2, 5.3, 5.4, 5.5 inclusive.

e. Modifying the dimensional and intensity controls in Section Seven, 7.1 – 7.6, 7.9.1 and 7.9.2.

f. Modifying the landscaping, transition and screening requirements in Section Ten, 10.3 – 10.8.

g. Modifying the off-street parking and loading requirements in Section Eleven, 11.1 – 11.9, inclusive.

4.4.3.1. FINDINGS REQUIRED: In order to grant a special permit, the SPGA shall determine:

- a. that the uses authorized in 4.4.3. or the modification of standards and requirements authorized in 4.4.3 b. – g. are necessary to maintain the historic or architecturally significant building, structure or element on the site on which it was originally constructed or to relocate it back to such a site;
- b. that the proposed renovation, repair, adaptive reuse or removal preserves, to the maximum extent feasible, the historical and architectural features of the building, structure or element, said determination to be made by the SPGA;
- c. failure to grant the special permit is likely to result in inappropriate use or physical modification or pursuit of a demolition permit; and

d. that the proposed use will not generate negative impacts to the surrounding area or zoning district or that any negative impacts generated may be feasibly mitigated.

#### 4.4.3.2. CONTRIBUTORY LOTS

For one or more lots that do not otherwise qualify under paragraph 4.4.2 above and are shown on a definitive site development plan submitted by an applicant, the SPGA may grant a special permit to modify:

1. the standards in Table 2, Schedule Of Dimensional Controls,
2. the standards in Section Five (5), Supplementary Use Regulations, (entire section, covering the special uses identified),
3. the dimensional and intensity controls in Section Seven, Dimensional Controls, 7.1 - 7.5,
4. the landscaping, transition and screening requirements in Section Ten, Landscaping, Transition and Screening Requirements (entire section), or
5. the off-street parking and loading requirements in Section Eleven, Off-Street Parking and Loading (entire section) provided the SPGA makes a finding that such modifications are necessary to make historic preservation feasible on another lot within the same development on which a historic element, as defined in subparagraph 4.4.2. is located. The use of one or more lots that do not otherwise qualify may apply to a conventional or cluster subdivision (see Section 9) or to a two lot subdivision qualifying for a frontage reduction (see subsection 7.4.5)."

### Part III: Groundwater Protection Overlay District

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION DRINKING WATER PROGRAM MODEL GROUNDWATER PROTECTION DISTRICT BYLAW OR ORDINANCE

(Revised January 2002)

#### 1. PURPOSE OF DISTRICT

The purpose of this Groundwater Protection District is to:

- a. promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the (Town)(City) of \_\_\_\_\_;
  - c. preserve and protect existing and potential sources of drinking water supplies;
- A. conserve the natural resources of the (town)(city); and
- d. prevent temporary and permanent contamination of the environment.

#### 2. SCOPE OF AUTHORITY

The Groundwater Protection District is an overlay district superimposed on the zoning districts.

This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities/uses in a portion of one of the underlying zoning districts that fall within the Groundwater Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

#### 3. DEFINITIONS

For the purposes of this section, the following terms are defined below:

*Aquifer*: Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

*Groundwater Protection District*:<sup>1</sup> The zoning district defined to overlay other zoning districts in the (Town/City) of \_\_\_\_\_. The groundwater protection district may include specifically designated recharge areas.

*Hazardous Material*: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the (Town/City) of \_\_\_\_\_. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under Massachusetts General Laws Chapter(c.) 21C and 21E and 310 CMR 30.00.

*Impervious Surface*: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

*Landfill*: A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

*Non-sanitary wastewater*: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

*Open Dump*: A facility which is operated or maintained in violation of the Resource Conservation and Recovery Act (42 U.S.C. 4004(a)(b)), or the regulations and criteria for solid waste disposal.

*Potential Drinking Water Sources* <sup>2</sup>: Areas which could provide significant potable water in the future.

*Recharge Areas:*<sup>1</sup> Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include areas designated by DEP as Zone I, Zone II, or Zone III.

*Septage:* The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material which is a hazardous waste, pursuant to 310 CMR 30.000.

*Sludge:* The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

*Treatment Works:* Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

*Very Small Quantity Generator:* Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

*Waste Oil Retention Facility:* A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M.G.L. c. 21. s. 52A.

#### **4. ESTABLISHMENT AND DELINEATION OF GROUNDWATER PROTECTION DISTRICT**

For the purposes of this district, there are hereby established within the (Town/City) certain groundwater protection areas, consisting of aquifers or recharge areas which are delineated on a map. This map is at a scale of 1 inch to \_\_\_ feet and is entitled Groundwater Map Protection District<sup>3</sup>, (Town/City) of \_\_\_\_, dated \_\_\_\_\_. This map is hereby made a part of the (Town/City) zoning (bylaw) and is on file in the Office of the (Town/City) Clerk.

#### **5. DISTRICT BOUNDARY DISPUTES**

If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the (town/city) may engage<sup>4</sup> a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district<sup>5</sup> with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.

#### **6. PERMITTED USES**

The following uses are permitted<sup>6</sup> within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- i. conservation of soil, water, plants, and wildlife;
- ii. outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
- iii. foot, bicycle and/or horse paths, and bridges;
- iv. normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- v. maintenance, repair, and enlargement of any existing structure, subject to Section 7 and Section 8 of this bylaw;
- vi. residential development, subject to Section 7 and Section 8 of this bylaw;
- vii. farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 7 and Section 8 of this bylaw;

- viii. construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.
- ix. underground storage tanks related to the permitted activities are not categorically permitted.

## 7. PROHIBITED USES

The following uses are prohibited within the Groundwater Protection District <sup>7,8</sup>

- i. landfills and open dumps as defined in 310 CMR 19.006;
- ii. automobile graveyards and junkyards, as defined in M.G.L.c. 140B, §1;
- iii. landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L.c. 21, §26 through 53; M.G.L.c. 111, §17; M.G.L. c. 83, §6 and 7, and regulations promulgated thereunder;
- iv. <sup>9</sup> facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L.c. 21C and 310 CMR 30.00, except for:
  - a) very small quantity generators as defined under 310 CMR 30.000;
  - b) household hazardous waste centers and events under 310 CMR 30.390;
  - c. waste oil retention facilities required by M.G.L. c. 21, § 52A;
  - d) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- v. <sup>10</sup> petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
- vi. <sup>11</sup> storage of liquid hazardous materials, as defined in MGL.c. 21E, and/or liquid petroleum products unless such storage is:
  - a) above ground level, and;
  - b) on an impervious surface, and
  - c) either
    - (i) in container(s) or above ground tank(s) within a building, or;
    - (ii) outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
- vii. <sup>12</sup> storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- viii. <sup>13</sup> storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- ix. storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- x. earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within 4 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works<sup>14</sup>;
- xi. <sup>15</sup> discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
  - a) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - b) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);and
  - c) publicly owned treatment works.
- xii. stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the district;

- xiii. storage of commercial fertilizers, as defined in MGL Chapter 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

## **8. USES AND ACTIVITIES REQUIRING A SPECIAL PERMIT**

The following uses and activities are permitted<sup>16</sup> only upon the issuance of a Special Permit by the Special Permit Granting Authority<sup>17</sup> (SPGA) under such conditions as they may require:

- i.<sup>18</sup> enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
- ii.<sup>18</sup> those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section 7). Such activities shall require a special permit to prevent contamination of groundwater;
- iii. any use that will render impervious any lot or parcel more than 15% or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

## **9. PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT**

- A.** The Special Permit Granting Authority (SPGA) under this bylaw shall be the \_\_\_\_\_. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, and (Town/City) Engineer/Department of Public Works, and Planning Board that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other (Town/City) boards or agencies in its decision.
- B.** Upon receipt of the special permit application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, and (Town)(City) Engineer/Department of Public Works for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.
- C.** The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 7 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:
  - 1. in no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Groundwater Protection District; and
  - 2. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
    - b. The SPGA may adopt regulations<sup>19</sup> to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality.
- E.** The applicant shall file \_\_\_\_ copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
  - 1. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially

- hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
2. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
    - a) provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
    - b) provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
    - c) evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
    - d) proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
- F. The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the (Town/City) Boards, Departments, and Commissions.

Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL Chapter 40A, §11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and (Town/City) Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by 11.

#### **10. SEVERABILITY**

- D. Written notice of any violations of this (bylaw) shall be given by the (Zoning Enforcement Officer/ Building Inspector) to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.
- A copy of such notice shall be submitted to the (Town/City) Building Inspector, Board of Health, Conservation Commission, Engineer, Department of Public Works, and Water Department. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises. A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.



## FOOTNOTES

<sup>1</sup> The MA DEP defines three types of recharge areas to which certain regulations may apply. DEP Wellhead Protection Regulation, 310 CMR 22.21(2), apply to the Zone II. If the Zone II delineation has been waived by DEP, pursuant to 310 CMR 22.21(1)(f), the Zone III must be included in the District.

If these Zones are protected by the District, the following definitions should be included:

**Zone I:** The 100 to 400 foot protective radius around a public water system well or well-field which must be owned by the water supplier or controlled through a conservation restriction.

**Zone II:** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00.

**Zone III:** The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00.

<sup>2</sup> Sand and gravel areas that lie within medium to high yield aquifers are potential sources. Municipalities should conduct a hydro-geological study prior to defining an area as a potential water supply.

<sup>3</sup> The groundwater protection district map should be specifically identified in the text of the bylaw by name and date.

<sup>4</sup> It may be desirable to specify the licensing requirement for the professionals permitted to redefine district boundaries under this paragraph. For example, a registered land surveyor may be acceptable for the definition of watershed boundaries, but not acceptable for defining Zone II boundaries.

The Zone II is defined by hydro-geologic research, testing and field analysis; therefore, a professional engineer, hydrologist, geologist or soil scientist is required. The Zone II delineation and methodology must be approved by DEP. Licensing of these professionals is not required.

<sup>5</sup> For disputes which may arise related to Zone II areas, (if included in the District) the following provision would be appropriate: The determination of the location and extent of Zone II shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the DEP's Guidelines and Policies for Public Water Systems.

<sup>6</sup> Only uses related to the operation and maintenance of the public water supply are permitted in the Zone I defined in 310 Code of Massachusetts Regulations 22.00.

<sup>7</sup> Federal and State agencies and counties are not subject to local zoning regulations. This is a long established principle, recently reinforced by decisions of the MA Supreme Judicial Court (SJC).

<sup>8</sup> It may be the preference of counsel to include an "as of effective date" clause in relation to all prohibitions which reference state or federal statutes.

<sup>9</sup> Includes most vehicular maintenance facilities, dry cleaners, print and photo processing operations as well as many industrial uses. Refer to the MA Zoning Act, MGL Chapter 40A, Section 9 and Chapter 21D, Section 21.

<sup>10</sup> SIC Codes are established by the US Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and any other subsequent amendments.

<sup>11</sup> 310 CMR 22.21 allows for the replacement of existing tanks/systems for the keeping, dispensing or storing of gasoline consistent with state and local requirements. Above ground home heating oil tanks are not required to have a containment system. Home heating oil tanks may also be placed in a basement on an impervious surface.

<sup>12</sup> 310 CMR 32.30 and 32.31, prohibit storage within a 2,500' radius of existing or potential public water supply wells; unless stored in a watertight container, or a hydro-geological study determines that storage will not result in contamination. Long term storage requires written approval from the municipal Board of Health, other requirements may apply, see 32.30 and 32.31.

- <sup>13</sup> Uncovered storage of salt in water supply areas is forbidden by MGL Chapter 85 Section 7A
- <sup>14</sup> Utility works includes stormwater retention and , detention systems designed to mitigate stormwater impacts on groundwater quality.
- <sup>15</sup> Refer to Title 5, 310 CMR 15.00 for requirements governing septic system density.
- <sup>16</sup> A municipality may want to identify additional or more specific governed uses/activities or conditions that are especially relevant to its own situation.
- <sup>17</sup> MGL Chapter 40A, Section 9 specifies that the SPGA must be one of the following: Board of Selectmen; Board of Appeals; or Planning Board. Applications should be reviewed by all town or city boards, departments and commissions having an interest in or responsibility for review and approval of actions taken by the applicant.
- <sup>18</sup> Local conditions will affect how extensive this and similar provisions may become. If there are many industrial and commercial uses in a Groundwater Protection District, and their expansion is probable, specific conditions for expanding and altering their operations should be included.
- <sup>19</sup> The SPGA is encouraged to adopt regulations to administer this (bylaw). The SPGA should consider including performance and/or design standards in such regulations.

#### **Part IV: Local Development Corporations**

##### **AN ACT ESTABLISHING THE WELLESLEY HOUSING DEVELOPMENT CORPORATION (Chapter 311 of the Acts of 1998)**

SECTION 1. There is hereby established a nonprofit housing corporation to be known as the Wellesley Housing Development Corporation, which shall be subject to the supervision of the board of selectmen of the town of Wellesley. Said corporation shall be governed by a board of directors hereinafter referred to as the board. Said board, which is hereby established, shall consist of not less than five members who shall be residents of said town and who shall be appointed by the board of selectmen for staggered three year terms as designated by said board of selectmen. Such appointments shall be made on or before June 30. Members shall serve until their successors are appointed and qualified. Continuing members may act despite a vacancy in said board and, for this purpose, shall be deemed to constitute a full board. A vacancy in the board, however occurring, may be filled by said board of selectmen for the remainder of the unexpired portion of the term.

The board shall exercise its powers and perform its duties for the purpose of investigating and implementing alternatives for the provision of and providing affordable housing for persons of low, moderate and middle income and others whose needs may be identified from time to time in said town. The powers and duties of said board shall be alternative and supplemental to, and not in limitation of, the powers and duties of the Wellesley Housing Authority, established pursuant to chapter 121B of the General Laws. The liability of said board and its members shall be limited to the same extent as the liability of a public employer and public employees as provided in section 2 of chapter 258 of the General Laws.

SECTION 2. The board shall have the powers conferred by the provisions of paragraphs (a) to (i), inclusive, and paragraph (k) of section 9 of chapter 156B of the General Laws and the following powers; provided, however, that no such power shall be exercised either in a manner inconsistent with this act or any other general or special law or to carry on any activity which is not in furtherance of the purposes set forth herein:

(a) to adopt, amend and repeal corporate by-laws for the regulation and conduct of its business including, but not limited to, the call and conduct of its meetings, the number of members which shall constitute a quorum and the mode of voting by proxy;

(b) to elect a chairman and vice-chairman, each of whom shall be members of said board, and a secretary and a treasurer, who need not be members of said board and who may be the same person. The treasurer shall give bond for the faithful performance of his duties in a form and amount approved and affixed by the board of selectmen, the cost of which bond shall be paid from funds of said board. The chairman and, in his absence, the vice-chairman shall chair meetings of said board. The secretary shall be the custodian of all books, documents and papers filed with said board and of the minute book or journal of said board;

(c) with the approval of the board of selectmen, to make and execute all contracts and all other instruments necessary or convenient for the exercise of its power and functions, subject to approval of the town counsel as to form;

(d) with the approval of the board of selectmen, to acquire or lease, by purchase, gift or otherwise, and to own, hold and use, on such terms and conditions and in such manner as it may deem proper, and to exchange, grant options on, sell, transfer, convey, assign, lease, pledge, mortgage, encumber, grant liens on and security interests in, or to otherwise dispose of, on such

terms and conditions as it may deem proper, real, personal or mixed real and personal property or any interest, easements or rights therein and assets or revenues of said board, as may be necessary or appropriate to carry out its purposes, it being understood that said board's right to acquire or sell town owned real estate shall be subject to town meeting vote authorizing the same;

(e) with the approval of the board of selectmen, to enter into agreements or other transactions with the commonwealth or a political subdivision or public instrumentality thereof, the United States government or a federal, state or other governmental agency;

(f) with the approval of the board of selectmen, to borrow money and to execute notes therefor which shall not be deemed to be debts or obligations of said town, to hold mortgages and to invest any funds not required for immediate disbursement in such investments as may be lawful for fiduciaries in the commonwealth; provided, however, that said board shall have no stock;

(g) with the approval of the board of selectmen, to enter into contracts or agreements with, and to employ from time to time, contractors, architects, engineers, consultants, attorneys, accountants, construction, financial and other experts, superintendents, managers and such other agents and employees as may be necessary in its judgment and to fix their compensation;

(h) with the approval of the board of selectmen, to receive and hold funds appropriated by the town and other funds, property, labor and other things of value from any source, public or private, by gift, grant, bequest, loan or otherwise, either absolutely or in trust, and to expend or utilize the same on behalf of said board for any of its purposes or to act as an agent or conduit in administering or disbursing funds or financial or other aid from any source; provided, however, that all revenues collected or received by said board in connection with its activities, investments or transactions shall be expended only with the approval of said board of selectmen;

(i) to appear in its own behalf before boards, commissions, departments or other agencies of government, municipal, state or federal;

(j) to procure insurance against any loss in connection with the property or activities of said board, in such amounts and from such insurers as it may deem necessary or desirable and, with the approval of the board of selectmen, to indemnify its members or agents if and to the extent specified from time to time in the by-laws of said board and subject to and in the manner provided in section 6 of chapter 180 of the General Laws;

(k) to formulate and, with the approval of the board of selectmen, carry out or monitor plans for projects involving the acquisition or operation of housing facilities of any kind or nature and to construct, reconstruct, renovate, expand, extend, improve, repair, remodel, equip, furnish, maintain, manage and operate such facilities;

(l) with the approval of the board of selectmen, to fix and revise from time to time and to charge and collect rates, fees, rentals and other charges and sales prices for or in connection with the use, occupancy or other disposition of any housing facility or other property or portion thereof under its ownership or control;

(m) with the approval of the board of selectmen, to establish, impose, grant or amend, by deed, lease or other means or method, and to hold the benefit of, monitor, exercise and enforce lawful restrictions on the rental, sale, resale, use or occupancy of housing facilities or other property under its ownership or control or other facilities or property designated by said board of selectmen or restrictions with respect to the income of owners, tenants or occupants of such

housing facilities or other property or options and rights of first refusal with respect to such facilities or property and to waive, release or discharge any such rights or restrictions; provided, however, that the foregoing shall not apply to any town owned real estate or facilities except upon the vote of the town meeting so voting;

(n) with the approval of the board of selectmen, to enter into, perform or monitor agreements or other transactions with contractors, developers, brokers or other real estate professionals or any other person relating to the providing of affordable housing for persons of low and moderate income in the town;

(o) to do any and all things necessary or convenient to carry out its purposes and exercise the powers conferred by this act.

Said board may delegate to any subcommittee or member of the committee any action which said board is authorized to do or make. Said board may be a partner in any business enterprise which it would have power to conduct by itself.

SECTION 3. Notwithstanding the provisions of any general or special law to the contrary, the income, assets and activities of the board shall be exempt from all taxes and assessments and said board shall not be subject to any of the provisions of chapter 63 of the General Laws or to any taxes based upon or measured by property or income imposed by the commonwealth or by any political subdivision thereof. Said board may enter into agreements with the assessor of the town of Wellesley, with the approval of the board of selectmen, wherein said board shall undertake to make to said town annual payments in lieu of taxes in connection with any real property acquired and owned by said board, the amounts of such payments to be reasonable sums stipulated in such agreement or agreements or determined in accordance with a reasonable formula so stipulated.

SECTION 4. Without limiting the powers of the board, said board may receive, expend and utilize for its purposes all interests in town owned real estate and proceeds of the sale by the town of Wellesley of certain lands, properties, and surplus buildings, as voted by said town but not otherwise. In addition, said town may appropriate other funds for the carrying out by said board of its purposes as set forth herein. Any appropriation therefor may be raised by said town by taxation. At least annually, said board shall cause independent audits to be made of its books and records of said board, which annual audits shall be filed with the board of selectmen.

SECTION 5. In the event that the board shall be dissolved in accordance with law at any time, all property and interests therein, assets and rights of said board existing at such time shall be transferred to the town of Wellesley and title to all such property and all such rights shall vest in said town automatically without the need for further action or instrument, and said town shall, to the maximum extent permitted by law and acting by and through its board of selectmen, assume, hold and exercise the powers and duties of said board set forth herein with respect to such property and rights so transferred to said town.

SECTION 6. This act shall take effect upon its passage.

**Part V: Village Development Bylaw**  
Cape Cod Commission Model Bylaw Series

VILLAGE-STYLE DEVELOPMENT BYLAW

01.0 Purpose and Intent:

This bylaw enables the development and re-development of Cape Cod towns' village centers in keeping with their historic development patterns, including the size and spacing of structures and open spaces. This bylaw is intended to be used in conjunction with other regulations adopted by the town, including historic district regulations, site plan review and other local bylaws/ordinances designed to encourage appropriate and consistent patterns of village development on Cape Cod.

*Commentary: This bylaw does not regulate, per se, the physical appearance of new or reconstructed structures--that is best accomplished by historic district legislation and, to a lesser extent, site plan review regulations. Rather, this bylaw is designed to allow individual towns to relax and revise underlying regulatory controls on new and rehabilitated structures. Note again, this bylaw cannot be used to regulate and control the physical appearance of new or rehabilitated structures beyond their bulk, height or situation on a lot. However, proper use of this bylaw can assist towns to recreate historic village development patterns and provide for much needed "in-fill" within several of the Cape's village centers. "In-fill" is loosely defined as developing or expanding development within a village center to provide continuity and consistency with existing land uses and structures.*

02.0 Definitions

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

*Commentary: This bylaw 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

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 and the zoning bylaw of the town.

*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.*

*Option 2 establishes a special permit requirement based solely on size of structure. The threshold for when a special permit is required has been left blank; however, the suggested threshold is 5,000 square feet. Towns should consider carefully the level of development considered relevant for a special permit review, including whether it wants to include both principal and accessory structures as noted above, or only principal structures greater than a specified size (e.g. greater than 5,000 square feet).*

*(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.)*

02.3 Special Permit Granting Authority (SPGA). The special permit granting authority (SPGA) for this bylaw shall be the planning board.

03.0 Pre-Application Conference Requirement:

03.1 Timing. Prior to the submission of an application for a special permit under this regulation, the applicant shall meet with the SPGA at a public meeting to discuss the proposed development in general terms and establish the plan filing requirements. The SPGA shall meet with an applicant under this regulation within twenty-one (21) days following a written request submitted to the SPGA and the Town Clerk. If the SPGA fails to meet with an applicant who has requested such a meeting within twenty-one (21) days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a special permit application under this regulation without need for a pre-application conference.

03.2 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 is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the SPGA of the scale and overall design of the proposed project.

*Commentary: The purpose of a pre-application conference is to give the SPGA advance notice of an application for development 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 further designed to educate both the SPGA and the applicant as to the project and the likely concerns raised by the project. Note that there are no formal filing requirements proposed in this model regulation. Towns are free to articulate specific filing requirements although it is recommended that these requirements be kept to a minimum for this pre-filing phase. Finally, towns with site plan review regulations that require pre-application meetings may wish to substitute the above-noted process with their existing site plan review regulations.*

#### 04.0 Site Planning Standards and Filing Requirements:

04.1 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.

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.

- (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 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.
- (b). Large parking areas (e.g. greater than 20 parking spaces) shall be separated by landscaped islands of eight (8) to ten (10) feet in width. In addition, a minimum of one (1) shade tree shall be planted for every three (3) parking spaces required or built, within appropriate locations on the lot(s). Note that the exact location of the tree plantings is not specified. Rather, the most appropriate location of plantings shall be considered, including use of plantings to buffer neighboring properties, along the street frontage and pedestrian ways. Trees planted within parking areas shall be planted in protected pervious plots of at least 60 square feet of area.
- (c). Exposed storage areas, machinery, garbage "dumpsters," service areas, truckloading 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 goals of this regulation.
- (d). To ensure that landscaped areas are maintained, the SPGA shall include as a provision of any special permit granted that a condition of said special permit is the maintenance of the landscaping as 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 the one(s) approved as part of the original approval.



04.5 Plan Filing Requirements. Unless determined by the SPGA 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 following plans/items shall be submitted. Plans shall be prepared by a registered architect, landscape architect and/or professional engineer licensed in the Commonwealth of Massachusetts.

(a) A locus inset within the plans noted below identifying the site of the proposed development at a scale of 1" = 1,000';

(b) The plan view location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 40', clearly showing the relationship between proposed development and existing structures within a radius of eight (800) hundred feet;

(c) The profile/elevation view showing location and dimensions of all existing and proposed buildings as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed 1" = 40';

(d) The location and dimension of all existing and proposed buildings, parking areas, bicycle racks, roads, sidewalks, open spaces and utilities, including underground utility lines, water, sewer, electric power, 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 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 villages would benefit identically from the same regulation. As a result, this model bylaw requires each town adopting its contents to establish appropriate standards for height, bulk, setback and parking requirements. While suggestions are provided below, the actual requirements are presented as "blanks." Towns, under the leadership of the planning board, Chamber of Commerce or a combination of entities are encouraged to establish appropriate requirements for their villages. These requirements should, ideally, reflect past development patterns and future planning goals. They should include provisions for structures and uses that the town would like to see repeated, and delete provisions for structures and uses that the town would not want to see constructed in the future.

To establish appropriate numbers for use in this regulation, it is recommended that pre-existing structures be measured in terms of height, bulk, setback, exterior square footage and if possible, interior square footage (useable interior space) and parking. Measurements can be either physical (measurements with tape), determined from building or assessor department records, or a combination of both. Remember that the goal of these measurements is to establish what makes the village attractive as well as functional; what makes the village "work." Conversely, this process will help establish guidelines for avoiding whatever mistakes have occurred in the past. While everyone in the community may agree on the fact that a structure does not "fit" within the village, few may agree on why. This process should help identify why a building or a series of buildings do not belong and establish guidelines through this regulation to avoid repetition in the future.

Thus, one of the principal objectives of this regulation is the development and re-development of village centers in concert with historic and accepted development practices and styles. Note that exact symmetry with existing structures is not required, nor necessarily encouraged. Rather, consistency with the development style and bulk that is supported by the community is the primary goal.

Finally, applicants for a special permit under this regulation, as well as the SPGA, are reminded that the 1994 publication "Designing the Future to Honor the Past" provides an excellent overview of development and re-development strategies for the Cape's villages. These strategies may be incorporated directly into a Town's regulation or used as guidelines in reviewing the appropriateness of individual permit requests. For example, one of the recommendations, the placement of overhead wires underground, could be made a requirement of this regulation. To receive a special permit, an applicant would be required to place specified utilities underground, even though abutting properties used utilities from overhead wiring.

In the alternative, the SPGA could rely on the recommendation for underground utilities made in the report in a more general fashion. Applicants would be encouraged to submit plans that followed the guidelines contained in the publication, but would only be required to comply with those specifically presented in the bylaw.

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, 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.

*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).*

*(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.)*

### 05.2 Bulk

#### Option 1:

The maximum (floor area ratio) (square footage) of any new or expanded existing structure shall be \_\_\_\_\_ .

#### Option 2:

To accomplish the purposes of this bylaw, the SPGA is authorized to allow an increase in (floor area ratio) or (square footage) of structures either in existence or as re-constructed 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 05.0, below. The SPGA shall allow the (floor area ratio) or (square footage) increase only upon a finding that the additional useable square footage is necessary to reflect the scale of adjacent structures, to maintain the area's character and/or to rehabilitate or develop a structure or parcel

within the Overlay District that would otherwise unlikely be rehabilitated or developed. The SPGA must further find that the relaxation of said bulk standards will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

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

*The purpose of Option 2 is to allow the applicant and the SPGA flexibility as to the bulk--size--of new or expanded structures. This Section allows the SPGA to grant a percentage increase in the bulk of a structure over the underlying zoning's restriction on size. This expansion would, in many cases, require a relaxation of setback requirements, more fully discussed in Section 05.3, below.*

*Note that constraints on bulk expansion, unlike limitations on height expansion, is a function of available land area and abutting structure design and layout. In other words, in many cases, a structure simply will not be able to expand in bulk due to existing structures on either side, in the front or rear of the building. Where such expansion is possible, however, the SPGA and the applicant must demonstrate that the physical expansion/extension is in keeping with the neighborhood's or area's overall character and scale.*

*The SPGA may also include as a factor for granting a special permit for bulk expansion issues relating to the structure's or parcel's economic viability without such an expansion. 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, 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.

*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 yard setback requirements from 10 feet to 5 feet may be in keeping with the development pattern of the area, the SPGA should not grant the 5-foot reduction if the abutting property is used for residential purposes and would be negatively affected by the setback reduction.*

*The range of suggested front yard setbacks range is 0 to 25 feet. The range of suggested side yard setbacks is 0 (for common wall construction) to 25 feet and 0 to 25 feet for rear yard setbacks. However, it is strongly recommended that the range be based on actual measurements from within the Town's current village(s).*

*(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.)*

#### 06.0 Parking Requirements within the Village Development Overlay District

Recognizing that parking requirements in the underlying zoning district may hamper development of village-style land use and development, the SPGA is authorized to reduce the parking requirements specified for the use/structure proposed up to %. In determining the appropriate reduction, if any, the SPGA may give consideration to the hours of usage of the proposed use/structure, hours of usage of other uses/structures within the Village Development Overlay District, amount of "shared" parking with other uses, the opinions of merchants, residents and municipal officials as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use/structure, as well as other relevant information to assist the SPGA in determining the need for additional parking for motor vehicles.

*Commentary: This section allows the SPGA to reduce the parking requirements in the underlying zoning district up to a certain percentage. The suggested reduction range is between 10 and 50 percent.*

*This section is considered critical to allowing pre-existing and new structures to expand and be built within the Overlay District without being constrained by strict off-street parking requirements. A note of caution, however. Relaxation of underlying standards, regardless of the standard, entails some risk that the SPGA will be held to arguments that it has established a "precedent" when it relaxes the parking requirements for a particular structure. Note, however, that each application is to be reviewed as a new and unique application. Precedent is only relevant if the SPGA acts arbitrarily in subsequent decisions. For example, the SPGA may grant a parking reduction of 40 percent to applicant "A" and then, based on legitimate and substantive reasons, deny a parking reduction to applicant "B." Note the importance of the legitimate and substantive reasons for the denial to applicant "B." Based on this scenario, the SPGA is not and should not be considered bound in future decisions by its past decision with applicant "A."*

*Finally, it is recognized that in some instances, new construction may trigger parking requirements that the applicant cannot 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 could be drafted linked to the Village-Style Development Bylaw. 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 allows towns to expand the list of non-residential uses allowed by special permit within the Overlay District. It is recommended that these uses include commercial, as opposed to industrial, uses that will assist the town to strengthen its village centers either by attracting new commercial activities or encouraging the expansion of existing activities that have been successful in restoring or otherwise aiding the development of the village center. It is recommended that the list of non-residential activities allowed by special permit be developed with recognition that Section 07.1, above, encourages the establishment of residential uses within the Overlay District. In other words, the list of non-residential uses should be compatible with the goal of encouraging residential uses within the Overlay District and generally compatible with the form of buildings that are encouraged in the District.*

#### 08.0 Special Permit Standards and Criteria:

In addition to the specific criteria regarding the grant of a special permit contained within this regulation, the SPGA shall issue a special permit only after consideration of the following:

- (a) adequacy of the site in terms of the size for the proposed use(s);
- (b) suitability of the site for the proposed use(s);
- (c) impact on traffic and pedestrian flow and safety;
- (d) impact on the neighborhood visual character, including views and vistas;
- (e) adequacy of utilities, including sewage disposal, water supply and stormwater drainage;
- (f) degree to which the proposed project complies with the goals of the Town Comprehensive Plan and the provisions of this bylaw.

*Commentary: This Section presents several criteria for the SPGA to consider in the grant or denial of a special permit. These criteria are in addition to those set forth throughout the regulation. As noted previously, towns with strong special permit language may wish to substitute their current language for that*

*noted above, or simply reference their current language in place of Section 08.0, above.*

09.0 Review by Special Permit Granting Authority (SPGA):

The Planning Board shall be designated as the SPGA under this bylaw. In reviewing a proposed development under this bylaw, the SPGA shall apply the criteria for special permits noted throughout this regulation, in addition to other relevant special permit criteria provided for in the zoning bylaw.

*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.*

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.