

## SECTION 11

### SPECIAL PERMITS AND VARIANCES

#### **11.1 Purpose:**

The purpose of this section is to set forth the procedures and conditions which shall apply to all applications for special permits and variances. Requirements and conditions in addition to those specified in this section shall apply when so specified in other sections of this ordinance. Uses for which site plan review is required shall be subject to the requirements of this section and of Section 12. Special permits are covered in Sections 11.3 through 11.6 below. Variances are covered in Sections 11.7 through 11.9.

#### **11.2 Authority**

The City Council shall be the special permit granting authority (SPGA) for all proposed projects with uses requiring a Special Permit under Section 5 which are designated with a "P". The Planning Board shall be the special permit granting authority (SPGA) for all proposed projects with uses requiring a Special Permit under Section 5 which are designated with a "PB", and for all projects which require Site Plan Approval under Section 12.2 of this ordinance.

The Board of Appeals shall have the authority to grant variances. That applications to the Board of Appeals for special permits pursuant to Section 7 herein shall not require review by the Planning Board, Conservation Commission or City Engineer but one copy of the application and accompanying materials shall be filed with those departments under Section 11 but in all other respects shall follow the requirements for notice and hearing in Section 11

(amended 10/04/1999; amended 6/13/2005)

#### **11.3 Procedures for Special Permits**

1. The applicant shall submit a written application for a special permit with 19 copies to the City Clerk. The application shall also be subject to Rules and Regulations adopted by the City Council pursuant to G.L. Chapter 40A, Section 9, and incorporated herein. No application shall be accepted or considered complete that does not have any necessary variances required from the Board of Appeals. All appeal periods associated with granted

variances must be expired before an application is submitted. If there is a dispute between the building commissioner and the petitioners on whether a variance is necessary this dispute must be presented to the Board of Appeals for resolution. No application with such disputed variances shall be considered complete and shall not be accepted until the Board of Appeals makes a decision. (amended 10/21/1997, 5/15/2001).

2. The City Clerk, within three (3) business days of receipt of the application, shall distribute nine (9) copies of the application and all other required special permit submission materials to the City Council, (8) copies to the Planning Board and one (1) copy each to the Conservation Commission and the City Engineer for review and comment. (amended 10/21/1997).
3. Boards and departments may transmit comments and recommendations to the City Council within 30 days of receipt of the application. Failure to comment will be deemed a lack of objection.
4. The City Council may provide for a schedule of fees in connection with the special permit procedure in accordance with state law.
5. The City Council shall, within sixty-five (65) days of the filing of the application, hold a public hearing, notice of which shall be published in a local newspaper once in each of two successive weeks with the first publication to be not less than fourteen (14) days before the date of the hearing and shall be mailed to all "parties of interest" as defined in the General Laws, Chapter 40A, Section 11, and to any other property owners deemed by the City Council to be affected thereby.

"Notice shall be given by mail, postage prepaid by the City Clerk". The list of persons to be notified shall be prepared by the applicant, certified by the Office of Assessors.

6. The City Council shall, within ninety (90) days following the public hearings, but not until it has received comments from the Planning Board, Conservation Commission, and City Engineer, or until 30 days have elapsed without such reports being submitted, issue its findings in writing as to the conditions specified in Section 11.5 below and in other sections of this ordinance, and shall certify in writing that the application is approved as submitted, approved subject to modification, or denied.
7. If the City Council fails to issue its findings within ninety (90) days, the application shall be deemed approved. The special permit shall not become effective until the City Council has been notified by the applicant of the book and page number as recorded in the Registry of Deeds.

8. Approval of the special permit shall require a two-thirds (2/3) vote of the City Council.
9. If the application is denied, the applicant shall not submit substantially the same proposal for two (2) years except as provided under G.L., Chapter 40A.
10. Special permits granted under this section shall lapse within two (2) years, excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if construction has not been begun. The City Council may grant an extension of good cause and shall grant an extension if the delay has been caused by the need to seek other permits.
11. Construction or operations under a special permit shall conform to any subsequent amendment to this ordinance unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
12. The City Council, by a two-thirds (2/3) vote, shall have the power to modify, amend or rescind its approval of a Special Permit, or to require a change in the approved Special Permit as a condition of its retaining the status of an approved Special Permit. All of the provisions of the issuance of a Special Permit, relating to its submission and approval, shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval of a Special Permit which has been changed under this section. (added 12/1/1992).

#### **11.4 Contents of the Application for Special Permits**

Any application for special permit shall include the following items, as well as a completed Form "A" - Submission Checklist for applications Requiring a Special Permit. A copy of said Form "A" is included in Section 15 - Illustration Addendum of this ordinance (amended 10/21/1997):

1. Name and address of the applicant.
2. Statement certifying ownership or prospective ownership of the premises involved, or evidence that the applicant has permission of the owner to make such application.

3. Legal description of, and street address, if there is one, or otherwise description of the location of the premises involved.
4. Plans of the proposed project, drawn to scale and dimensionally correct. Plans to be submitted are all those applicable to the establishment of the conditions specified in Section 11.5 below and in other sections of this bylaw where specific conditions are established. Such plans may include, if applicable, building plans, plot plans, traffic circulation plans, topographical plans, and studies such as traffic generation and parking utilization.
5. Evidence as required to show the effects of the proposed project upon traffic, road capacity and city utilities.
6. Evidence as to the status of all permit applications to other City, State or Federal agencies concerning the project, including agencies such as the Board of Appeals, the Conservation Commission, and the Mass Division of Environmental Quality Engineering.
7. A table on plans displaying all associated use and dimensional regulations and corresponding proposal specifications. All additional information as required elsewhere in this ordinance.
8. Any plans submitted, deemed as a commercial facility as defined under Title III of the Americans with Disabilities Act (ADA), public accommodation as defined under Title III of the Americans with Disabilities Act (ADA), private club not under Title II of the Civil Rights Act of 1964, or public entity, as defined under Title III of the Americans with Disabilities Act (ADA), with the application shall contain a statement signed by the architect of record as follows: 'These Plans as submitted: 1. \_\_\_\_\_ Conform to the MAAB Laws and Regulations, 2. \_\_\_\_\_ Conform to the ADA Law and regulations, 3. \_\_\_\_\_ Do not conform at this time, 4. Waivers will be filed for the following issue(s) \_\_\_\_\_. Certified' with the architect's name and stamp affixed thereto. (added 4/25/2005)

### **11.5 Conditions for Special Permits**

The City Council shall not issue a special permit unless it finds that the use which is the subject of the application will meet the conditions specified below, and in addition any and all conditions specified for the permit elsewhere in this ordinance.

1. Satisfactory provision and arrangements of ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe. If traffic due to the proposed use is projected to exceed the capacity of existing roadways, a service road or divided entrance drive may be required by the City Council.
2. Adequacy of the capacity of water, sewerage and drainage facilities to service the proposed use.
3. Adequate off-street parking and loading areas where required with particular attention to the items in Section 11.5.1 and the noise, glare, or odor effects of the proposed use on adjoining properties and properties generally in the district.
4. Satisfactory provision of refuse collection, disposal and service areas, with particular reference to impacts on adjacent uses.
5. Exterior lighting with reference to glare, traffic safety, and compatibility and harmony with properties in the district.
6. Yards and other open space and landscaping are provided as required and reasonable steps have been taken to insure the privacy of adjacent existing uses.
7. The proposed use is in general compatibility in scale and character with adjacent properties and other property in the district.
8. The proposed use or structure will not be adverse to the general purposes of this ordinance.
9. The Council shall also impose such additional conditions of those specified in this Ordinance as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Ordinance, including but not limited to the following: Front, side or rear yards greater than the minimum required by this ordinance, screening, buffers, or planting strip, fences, or walls, as specified by the Council modification of the exterior appearance of the structure; limitation upon the size, number of occupants, method and time of operation, or extent of facilities; regulation of number and location of drives, accessways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required in the ordinance.

10. All application requirements for review and approval of a Special Permit, cited in Section 11, shall apply to any expansion or extension of a use granted a Special Permit under the provisions of said Section, i.e., drive-up customer service facility. (added 2/16/1993; amended 7/28/2003).

#### **11.6 Additional Conditions for Special Permits for Specific Uses and Conditions**

In addition to the conditions in the foregoing section, the following conditions shall apply to special permits for the specific uses and conditions listed below.

1. Customary home occupation or office, comprising not more than 25 percent of the floor area of the dwelling unit. (Section 5.1.54).

Off street parking for employees and clients in an amount and manner to be deemed sufficient by the City Council is provided and is screened from adjacent properties in a way that light, glare and adverse visual impacts from parked cars and associated lighting are not greater than would occur with exclusive single family use of the site.

2. Wholesale establishments, warehouses and distribution centers (Section 5.1.42) and Truck Terminals, truck freight yards, and freight terminals (Section 5.1.50 and 49).

Trucking associated with the facility does not use any street in a residential district.

All structures and parked trucks are located not less than three hundred (300) feet from any existing residential lot line.

3. Exception to Screening Requirements in Buffer Zones (6.2.6.(6)).

The alternative screening device will screen the use from adjacent residential areas at least as effectively as would the devices required in Section (6.2.6.(6)).

4. Reconstruction of a non-conforming use or structure damages by fire or other natural cause (7.6.2).

The reconstructed structure or use will not be more detrimental to the neighborhood than the use or structure which it replaces. The City Council shall consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewerage capacity, noise, odor, scale, character, and visual effects.

5. Reduction in Required Off-Street Parking Stalls for Mixed Uses (8.2.5)

The hours of parking needs for individual uses comprising the mixed use development will sufficiently differ so that a lower number of parking spaces than normally required will serve the operating needs of the development.

6. Parking Facilities on a Lot Separate from the Use to be Served

The parking facilities are located within five hundred (500) feet of the use to be served. (5.1.72 and 8.3.2)

Suitable arrangements, such as common ownership, long term lease or easement, have been made to assure the permanent provision of the parking facility.

7. Exceptions to Landscaping Requirements for Parking Facilities Containing Twenty (20) or More Stalls (Section 8.6.2)

The area, location and type of landscaping proposed will be at least as satisfactory in suitability to the soil or topography of the site, visual appearance, and maintenance requirements as the landscaping required in Section 8.6.2.

8. Reduction in Required Loading Spaces for Mixed Uses (Section 8.7.1)

The hours of parking needs for individual uses comprising the mixed use development will be sufficiently different so that a lower number of parking spaces than normally required will adequately serve the operating needs of the development.

9. Cluster Development

Standards as set forth in Section 10.

10. Drive-up Customer Service Facility

A drive-up customer service facility shall be permitted, subject to the granting of a special permit, only when accessory to a use permitted by right or special permit in the underlying zoning district. All signs related to Drive-up customer service facilities shall be permitted by Special Permit by the City Council in accordance with the Development Standards of this Section.

- a. Findings. A special permit shall not be granted for a drive-up customer service facility unless the City Council, in addition to the findings required by Section 11 of the Woburn Zoning Ordinance, makes the following additional findings:
1. The design and location of the facility will not contribute to increased congestion on public or private streets or alleys adjacent to the subject property.
  2. The design and location of the facility will not impede access to or exit from the parking lot serving the business, impair normal circulation within the parking lot or impede pedestrian movement.
  3. The design and location of the facility will not create a nuisance for adjacent properties.
- b. Development Standards:
1. Drive-up customer service facilities shall provide a minimum of eight (8) stacking spaces (within the site) before the order board or transaction window for restaurant, fast food and shall provide a minimum of five (5) stacking spaces (within the site) for all other uses. In addition, the facility shall provide another four (4) stacking spaces between an order board and the transaction window. If the facility has two transaction windows the required stacking spaces may be evenly split between each of the windows, however if a facility has five(5) stacking spaces no transaction window shall have less than two (2) stacking spaces. The area of stacking spaces and driving lane provided for vehicles waiting for drive-up customer service, that is physically separated from other traffic and pedestrian circulation on the site shall be called a stacking lane.
  2. Stacking spaces shall be a minimum of ten (10) feet in width along straight portions, and twelve (12) feet in width along curved segments and twenty (20) feet in length.
  3. Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: (a) separate drive –through traffic from site circulation, (b) not impede or impair access into or out of parking spaces, (c) not impede or impair vehicle or pedestrian traffic movement, and (d) minimize conflicts between pedestrian and vehicular traffic by physical and visual separation between pedestrian ways and stacking lanes and driveways, or at the crossing of the two. Stacking lanes shall not interfere with required loading and trash storage areas and loading or trash operations shall not impede or impair vehicle movement within stacking lanes.
  4. All stacking lanes shall be separate from other vehicular and pedestrian circulation aisles and parking spaces.

5. Any drive-up customer service facility speaker and/or sound system shall not be audible above daytime ambient noise levels beyond the property boundaries.
6. All menu boards or canopy signs related to Drive-up customer service facilities shall be reviewed by the Special Permit Granting Authority with regard to the aesthetic appearance of the sign, its relation with the overall signage on the lot including number and type of signs, and its overall impact on the surrounding area. Menu Boards and Canopy signs shall comply with Sections 13.3, 13.4.2 through 13.4.9, 13.5 of the Woburn Zoning Ordinance. All other signs at drive-up customer facilities shall comply with the requirements of Section 13 of the Woburn Zoning Ordinance.

Drive-up customer service facilities shall be limited to no more than two menu boards per facility and shall be located adjacent to the driveway leading to a drive through window. The menu board shall be located in such a way that the operator of a motor vehicle can read the sign from the vehicle. Menu boards shall not exceed eight feet in height and nine feet in width and may be free standing or attached to the building. Menu boards shall be at least five feet from the property line and shall not exceed 50 square feet in sign area. The area of the menu boards shall not be counted towards the maximum allowable signage.

Drive-up customer service facilities shall be limited to no more than one canopy sign at the location of drive-up customer service facilities. The canopy sign shall be located in such a way that the operator of a motor vehicle can read the sign from the vehicle. Signs shall be at least five feet from the property line and shall not exceed 50 square feet in sign area. The area of the canopy sign shall not be counted towards the maximum allowable signage.

(Added 7/28/2003; amended 8/22/2006)

11. Dwelling Units Above First Story in Commercial Structures in the B-D District.
  1. A parking plan shall be approved by the City Council to ensure that adequate on-site and off-site parking, including parking in a municipal parking lot within 500 feet of the locus, is available to serve the unit and which would not create an undue burden on municipal parking facilities.
  2. That if at the time of application the locus has open space there shall be no reduction in excess of ten percent (10%) of the open space.

(Added 2/8/2007)

### **11.7 Procedures for Variances**

An application for variance shall be made to the Board of Appeals. After a public hearing noticed and held according to Ch. 40A, Section 11, the Board of Appeals shall issue a decision. Provisions regarding notification of applicant, date of effectiveness, extension and conditions contained in Ch. 40A, Sections 10 and 11 shall apply. Any plans submitted, deemed as a commercial facility as defined under Title III of the Americans with Disabilities Act (ADA), public accommodation as defined under Title III of the Americans with Disabilities Act (ADA), private club not under Title II of the Civil Rights Act of 1964, or public entity, as defined under Title III of the Americans with Disabilities Act (ADA), with the application shall contain a statement signed by the architect of record as follows: 'These Plans as submitted: 1. \_\_\_\_\_ Conform to the MAAB Laws and Regulations, 2. \_\_\_\_\_ Conform to the ADA Law and regulations, 3. \_\_\_\_\_ Do not conform at this time, 4. Waivers will be filed for the following issue(s) \_\_\_\_\_'. Certified' with the architect's name and stamp affixed thereto. (amended 4/25/2005)

### **11.8 Standards for Variances**

In granting any variance, the Board of Appeals shall apply the standards for granting of variances as set forth in Ch. 40A, Section 10. In particular, the Board of Appeals may grant a variance where it specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of this ordinance.

**11.9** No use variance shall be granted.

### **11.10 List of Variances**

The Chairperson of the Woburn Board of Appeals or his/her designee shall forward a summary of each decision to the Woburn City Council, the Woburn Daily Times Chronicle and the Woburn Advocate of all variances that the Board allows or denies within seven (7) business days after filing the decision with the City Clerk. Notification shall consist of a list of variances granted or denied and copies of each signed decision. (added 6/19/2002)

### **11.11 Affordable Housing Requirement**

1. Whenever an application under this section for a Special Permit from the City Council seeks approval for the development of more than two units of Townhouse, Garden, or Elevator apartments as specified under Sections 5.1.3(a) through 3(d), and Section 5.1.4; or any application for a Special Permit to create more than two units of Townhouse, Garden, or Elevator apartments under Section 5.1.69, Section 5.1.70, or Section 7.3, under the zoning classification for the subject parcel existing at the time of application, the City Council shall require as a condition of any such special permit, the provision on site and within the development of affordable housing units equal to ten (10%) percent of the development's total number of dwelling units. The affordable housing units to be provided shall remain affordable in perpetuity, be equivalent in size, quality, and characteristics to the other units within the development, including tenure type, i.e., whether the overall development is intended for rental or homeownership. No certificate of occupancy for any market rate unit in the development shall be issued until certificates of occupancy have been issued for all affordable housing units. The monitoring of the affordability shall be the responsibility of the applicant and shall be supervised by the Woburn Housing Authority (WHA) in accordance with a Memorandum of Understanding (MOU) between the applicant and the WHA said MOU shall be presented to the City Council prior to final approval of the Special Permit by the City Council. [amended 11/24/2008]
2. The units required above shall be affordable to persons and households of low and moderate income as defined by MGL Chapter 40B, Section 20. The Applicant shall be responsible for preparing a Massachusetts Local Initiative Program, Units Only Application, administered by the Massachusetts Department of Housing and Community Development (DHCD) or, any successor program, or an application for any other program that provides for units that are deemed eligible by DHCD to be included under MGL Chapter 40B Section 20, under the direction of the Mayor or his designee, for execution and submission by the City of Woburn, and to complete all other work and fulfill all other requirements related thereto, to ensure that the units will be considered subsidized low and moderate income units as defined by MGL Ch.40B, Section 20.
5. The Applicant may request the City Council, as a condition of any such grant of a special permit, to meet the affordable housing requirements by providing off-site units within the same ward at a location or locations owned by, or under option to purchase by the petitioner and identified prior to the approval of and included as a condition of the special permit. The number of affordable housing units shall be equal to 10% of the requested

development's total number of dwelling units of both on-site and off-site dwelling units, and shall meet the requirements of Paragraph 2, above. The affordable units to be provided shall remain affordable in perpetuity, be equivalent in size, quality, and characteristics to the other units being developed, including tenure type, i.e., whether both the on-site and off-site units are intended for rental or homeownership. The monitoring of the affordability shall be the responsibility of the applicant and shall be supervised by the Woburn Housing Authority (WHA) in accordance with a Memorandum of Understanding (MOU) between the applicant and the WHA said MOU shall be presented to the City Council prior to final approval of the Special Permit by the City Council. Any special permit containing such a condition shall not become effective until a covenant, in a form approved by the City Solicitor, has been recorded in the Registry of Deeds, requiring the construction of such off-site affordable housing units. No certificate of occupancy for any market rate unit in the development shall be issued until certificates of occupancy have been issued for all off-site affordable housing units.

4. The Applicant may request the City Council, as a condition of any such grant of a special permit, to substitute a cash payment for the provision of some or all of the affordable housing units required under Section 1, above. Circumstances under which a cash payment request may be permitted include, but are not limited to: 1) the lack of shopping, schools, or other facilities near the proposed location, 2) the lack of access to public transportation, or 3) any other circumstance that may render the site unsuitable, in the City Council's opinion, as a site for affordable housing. Such payment shall be equivalent to the present value of the difference between the affordable rent or price as required under Section 2, above, and the projected market rent or price of the units as of the date the application is submitted. The City Council shall impose a reasonable fee on the applicant for the employment of outside consultant(s) under Chapter 44 Section 53G to determine the amount of said payment. Said payment shall be placed in the Affordable Housing Fund, as specified in Paragraph 5, below. If the Affordable Housing Fund has not yet established at the time of said payment, the payment shall be placed in such fund(s) as the Treasurer shall determine appropriate for the purpose of being held and used for affordable housing purposes.
5. An Affordable Housing Fund shall be established in the City Treasury to receive all payments made under this Section, and shall be kept separate and apart from other monies by the City Treasurer. Any moneys in said fund shall be expended in accordance with the City Charter, to support the creation of low and moderate income housing units which meet the definition of "low or moderate income housing" as defined by MGL Chapter 40B,

Section 20. All moneys which are collected as a result of any contribution to this fund shall be transferred to the principal of said fund, and the City Treasurer shall be the custodian of the fund and shall deposit the proceeds in a bank or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the Commonwealth of Massachusetts, or in federal savings and loan associates situated in the Commonwealth. Any interest earned thereon shall be credited to and become a part of such fund. The cost of acquiring land or property for future affordable housing development by the City of Woburn or one of its public authorities is an allowed expenditure of funds held in the Affordable Housing Fund.

6. In the event that the requirements of this section impose a severe economic hardship on the Applicant, the Applicant may request the City Council to modify the requirements of this Section. Such hardship must be caused by the need to address unusual site conditions which will substantially increase the cost of development and provide ancillary public benefits to the City, including: 1) the need to remediate conditions of environmental contamination, 2) the need to preserve an existing structure of significant historic value, 3) the need to preserve a critical area of open space, or 4) any other unusual site condition which substantially increases the cost of development. Such modification shall be limited to a reduction in the number of affordable housing units to be provided under this Section, or acceptance of a cash payment less than the full amount specified in Paragraph 4, above, to be placed in the Affordable Housing Fund.
7. In determining the number of units to be provided in accordance with Paragraphs 1 and/or 3, above, a fractional unit of .5 or greater shall be regarded as a whole unit. When less than one unit is required, the Application may satisfy the requirements of this Section by making a cash payment, as specified in Section 4, above.

(added 6/26/2007)

[This page intentionally left blank]