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**DRAFT**

## **Regulatory Diagnostic and Issues Report**

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In October 2008, the Southborough Planning Board engaged a consulting team led by Community Opportunities Group, Inc., to prepare a comprehensive revision of the Town's Zoning Bylaw and Subdivision Regulations. This process comes at the heels of efforts by the Planning Board and Master Plan Committee to develop a new Master Plan for the Town. Anticipating that the Master Plan would be completed by the end of last summer, the Planning Board requested an appropriation at the April 2008 Annual Town Meeting to hire a consultant to review, revise, and update the Zoning Bylaw and Subdivision Regulations. An important goal of revising the Town's development regulations is to achieve consistency with the major goals, recommendations, and policies of the new Master Plan.

This draft regulatory diagnostic report, our first submission to the Town, is based on our review of the Southborough Zoning Bylaw and Subdivision Regulations, our understanding of the Southborough Master Plan, and interviews with Town staff, local developers and their consultants. It does not attempt to identify every amendment that should be considered in order to improve the Zoning Bylaw or Subdivision Regulations. We have identified a selection of technical problems that should be addressed regardless of the Master Plan, for Southborough's Zoning Bylaw contains provisions that are obsolete, unclear, or in conflict with state law. However, a zoning revision process involves both technical editing and fundamental land use policy issues, and the policy issues are usually more difficult to resolve. Accordingly, our report focuses primarily on land use policy.

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## 1.0 ZONING OVERVIEW

The Southborough Zoning Bylaw (ZBL) is divided into six major sections:

- ◆ **Article I: Miscellaneous Provisions**, establishes the ZBL's purposes and scope of authority (§ 174-1) and includes definitions of terms (§ 174-2).
- ◆ **Article II: Establishment of Districts**, lists all of Southborough's use districts and overlay districts (§ 174-3), provides for the adoption of a Zoning Map (§ 174-4) and for its interpretation (§ 174-5).
- ◆ **Article III: Use Regulations**, is a comparatively large chapter with numerous sections. It contains a standard applicability provision (§ 174-6) and conflict of use classifications clause (§ 174-7), and it outlines all of the uses allowed as of right and by special permit in each district (§ 174-8, Schedule of Use Regulations). The subsection for each district includes both use regulations and basic dimensional requirements. Further, Article III includes basic development requirements and procedures, e.g., special permits (§ 174-9), common driveway applications (§ 174-9.1), site plan approval (§ 174-10), signs (§ 174-11), off-street parking (§ 174-12), lighting (§ 174-12.1), and landscaping (§ 174-13). In addition, Article III establishes a process for concept plan submissions and pre-permitting town meeting approval for any use so designated in the use regulations (§ 174-13.1). Article III also contains a provision for Major Residential Development (§ 174-13.2), which imposes a special permit requirement on residential developments of eight or more lots or dwelling units. Finally, Article III includes three sections devoted to water resource protection and stormwater management (§ 174-13.3, Lower Impact Development, § 173-13.4, Water Resource Protection, and § 174-13.5, Stormwater and Erosion Control).
- ◆ **Article IV: Dimensional Regulations**, includes a scope of authority provision (§ 174-14), an applicability provision and the Schedule of Dimensional Regulations (§ 174-15), the latter appearing in a table separated from the text of the ZBL and labeled Addendum 2, provisions for construction on lots created under the Town's former Residence C regulations (§ 174-16), and a section that essentially replicates portions of chapter 40A, section 6, concerning previously recorded lots (§ 174-17).
- ◆ **Article V: Nonconforming Uses and Structures**, tracks the provisions of chapter 40A, section 6, for the continuation, expansion or alteration of uses and structures that lawfully pre-existed the effective date of the ZBL and subsequent amendments to it (§§ 174-18 to 174-23).
- ◆ **Article VI: Administration**, contains fairly standard enforcement language (§ 174-24), provides for a Zoning Board of Appeals (ZBA) as required by chapter 40A (§ 174-25), and miscellaneous provisions pertaining to amendments, effective dates, and severability (§§ 174-26 to 174.28).

There is nothing particularly noteworthy about the organization of Southborough's ZBL. It needs some reformatting for ease of use, as discussed below, but in Southborough, the format and

organization of the ZBL are less problematic than some of its substantive provisions. The following sections of this report provide a discussion of issues identified during our review. In some cases, these issues also were mentioned in the Southborough Master Plan and by board members, staff, and external stakeholders familiar with Southborough's ZBL and permitting procedures.

## 1.1 FORMAT AND ORGANIZATION

A ZBL should be a "friendly" reference document for the average resident. Although town officials, professional staff, attorneys, and engineers need a well-organized code, the format and organization of a ZBL should make it possible for reasonably motivated residents to find the rules that apply to their own property and the property next door. A clearly written ZBL can still be "unfriendly" to users if it is poorly organized or formatted in a way that makes it hard to find information. Techniques to make a ZBL readable to a wide variety of audiences include:

- ◆ Providing a table of contents with article numbers, section numbers, and the numbers or letters for major subsections
- ◆ Providing an index;
- ◆ Adopting and applying a consistent numbering system and indenting each tier of a numbered outline;
- ◆ Following a consistent approach to cross-referencing;
- ◆ Citing the dates of adoption and amendment;
- ◆ Providing page layouts that include running headers, page numbering, the current date of the ZBL, and plenty of white space;
- ◆ Using tables and illustrations;
- ◆ Using bold type to signal major headings and sub-headings;
- ◆ Locating all definitions in a single section or, alternatively, listing all defined terms in a single section and for definitions located elsewhere, cross-referencing those sections so the reader knows how to find them; and
- ◆ Adopting a framework for dividing the contents of a ZBL into coherent sections.

Southborough's ZBL adheres to some of these principles. Major section headings are highlighted (in bold type), pages are numbered, the numbering system is reasonably consistent, and the General Code version of the ZBL ([www.eCode360.com](http://www.eCode360.com)) provides adoption and amendment dates as well as an index. However, neither the existing print version nor the version of the ZBL on the town's website includes some of these features. All of the existing formats appear in fairly dense page layouts that lack running headers and contain very few illustrations. In general, the

Southborough ZBL would meet the needs of a wider group of users if the document were designed for readability and ease of access.

### 1.1.1 Tables

Using tables to present comparative information, such as density and dimensional standards or use regulations, offers important advantages. First, a table reduces the risk of error as a ZBL is amended over time. If a use is listed in a table of use regulations as permitted in several districts and the community wants to convert it to a special permitted use in one district, the table can simply be amended by replacing “P” with “SP” in the column that applies to that district. By contrast, for an outline format that follows the traditional hierarchy of most to least restrictive districts, amending a use provision in a more restrictive district could lead to unintended consequences in one of the less restrictive districts. Such a change may require amendments to more than one section of the ZBL, yet sometimes the need for multiple amendments escapes even veteran planners. Tabular formats also make efficient use of space. Southborough’s present use regulations, excluding the overlay districts, occupy approximately 15 pages of the ZBL. Given the number of uses actually regulated in the ZBL, it is difficult to imagine that a table of use regulations together with footnotes would require as much space in the document.

Tables that convey information effectively include lines, colors, or shading, alone or in combination, as an aid to the reader. Multiple columns and rows need to be delineated in some manner or the table will be difficult to interpret. Simple techniques such as shading applied to every other column, or graduated shading to depict lower to higher density, provide graphic reinforcements that can help a reader interpret standards and understand relationships between them. Southborough’s existing Table of Dimensional Regulations (ZBL Addendum 2) contains only one type of delineation: separators between rows. The nine columns of standards include both primary and secondary headings in up to five lines of text, none divided or otherwise symbolized in a way that makes column breaks easy to perceive. This is an example of a simple-to-fix issue that needs little elaboration here. Suffice it to say that table design is no less important than the overall page design choices that need to be made to create a usable, understandable reference document.

Presenting standards in an outline format rather than a table is not an inferior approach; in fact, many planners prefer it. Each method involves trade-offs, and Southborough will need to decide whether to retain the existing outline method or move toward a system of tables for standards such as use and dimensional regulations. However, these methods should not be combined to present the same content. Currently, the Southborough ZBL lists the dimensional requirements for each use district in Article III, Use Regulations, and also includes a separate section, Article IV, Dimensional Regulations, which is the “parent” section for Addendum 2. The rationale for this arrangement is unclear. It creates the potential for confusion and inconsistency between sections. Some zoning ordinances locate all district use and dimensional regulations in one chapter or section, with each district constituting a distinct subsection, much like Southborough’s present ZBL. In these cases, the chapter or section title usually appears as “District Regulations” rather than “Use Regulations,” and any rules governing the interpretation of dimensional requirements, use classifications, and the like are contained in a separate section, e.g., “General Regulations.”

### 1.1.2 Access and Ease of Use

Experienced town officials and staff may be so familiar with the ZBL that they can find relatively obscure provisions with ease, but the homeowner who simply wants to understand the requirements for expanding a garage or constructing an in-ground swimming pool needs some basic navigation aids. A table of contents, an index, and possibly a quick reference guide would make the ZBL more accessible not only to residents, but also newly elected or appointed town officials, developers and their consultants, and non-resident landowners.

Southborough's ZBL is currently maintained by General Code, a commercial code service that provides online access via a link from the Town's website. The Planning Board's web page includes a downloadable PDF copy and a hyperlinked version as well. All three versions may be current, but since the formats are different, it is not clear that the two versions on the Town's website match the General Code version. For example, the General Code version contains parenthetical references to adoption and amendment dates, but the versions at town hall omit this content. While the commercial code service's searchable online system is not particularly difficult for experienced users to navigate, infrequent or rare users of the ZBL would most likely find it cumbersome and frustrating. As a result, the Town does need to maintain printed copies, and providing a PDF version will make it easier for many people to find the information they need, especially if the PDF version is bookmarked and hyperlinked. However, all versions in circulation should match in terms of format and features (an obviously, in terms of content). It may be difficult to assure this kind of consistency because the online systems provided by commercial code services often omit graphics, illustrations, and tables.

## 1.2 ZONING DISTRICTS

Southborough has eight use districts and three overlay districts. The ZBL does not describe the purposes and intent of the use districts, so one must draw inferences from the regulations that govern what can be done, and how much can be done, on land in each area. This section summarizes the major features of Southborough's zoning districts and identifies issues that need to be addressed during the ZBL revision process.

### 1.2.1 Residence A and Residence B Districts

The Residence A (RA) and Residence B (RB) Districts cover approximately 64 percent of the town's total area. Like many suburbs, Southborough's residential zoning scheme consists of districts with identical use regulations and different dimensional regulations. A majority of all residentially zoned land in Southborough is located in the lower-density (larger-lot) district. The RB district extends across the town south of the Massachusetts Turnpike, and to the north, it includes land along the west side of the Sudbury Reservoir, in the town center and Fayville village, and near the intersection of Route 85 and the Massachusetts Turnpike.

**Use Regulations.** Southborough provides for a fairly limited set of permitted ("by right") uses in these districts: detached single-family dwellings, accessory uses such as home occupations, garages for up to three vehicles, parking, the renting of rooms in an owner-occupied home, conservation and agricultural uses, and some of the so-called "Dover Amendment" uses that are exempt under state law, e.g., religious and public or non-profit educational uses. By special

permit from the Zoning Board of Appeals (ZBA), Southborough allows accessory apartments, single-family to two-family conversions of homes that are at least two years old at the time of the special permit application, animal hospitals and kennels, mobile homes occupied as a dwelling for more than 30 days per year, multi-family senior housing if owned by a public or non-profit “community housing organization,” (undefined in the ZBL), hospitals and nursing homes, a variety of outdoor recreation uses, a private school, nursery or kindergarten, and parking for more than three vehicles associated with the principal use of the lot. The special permit uses also refer to “riding stable,” and this needs to be reviewed during the zoning revision process. If conducted on five or more acres of land, a riding stable will most likely fall under the definition of “commercial agriculture” in M.G.L. c.40A, § 3 and would therefore be exempt from local zoning. Similarly, the term “private school, nursery, or kindergarten” should be clarified because if the use is operated by a public or non-profit organization, or if it is a licensed day care center with a pre-school education program, it may not be subjected to a special permit process.

**Dimensional and Density Regulations.** A conforming lot in the RA district includes at least one acre (43,540 sq. ft.) of land and at least 20,000 sq. ft. of upland, and meets the district’s minimum lot frontage requirement of 150 feet. In the RB district, the minimum lot area is 25,000 sq. ft. and 20,000 sq. ft. of upland, and the minimum frontage, 125 feet.<sup>1</sup> In addition to these basic dimensional controls, Southborough requires new lots to comply with a lot shape regulation. In the RA district, for example, the center of an imaginary circle 75 feet in diameter (50 percent of the minimum lot frontage requirement) must be able to pass from the front to the back of the lot and across at least 40 percent of the frontage without intersecting any side or rear lot line. A similar rule applies in the RB district. Lot shape regulations help to assure reasonable access and usable yard areas. They also play an important role in regulating the amount of development that can occur on a parcel of land. The more “regular” that lots must be in order to qualify as building lots, the more likely it is that a parcel will be divisible into fewer lots than could have been created with limited or no lot shape restrictions.

Southborough regulates built form and the development envelope on individual lots with minimum yard setbacks and maximum building height, much like other communities. Unlike a majority of Massachusetts towns, however, Southborough imposes a maximum floor area ratio (FAR) on all types of buildings, including single-family homes. In the RA district, the maximum FAR is 0.18, which means the total floor area on all floors of a single-family home – excluding attics, cellars, garages, and other space not intended for human occupancy – may not exceed 18 percent of the size of the lot, both expressed in sq. ft. The Town does not have other types of intensity of use controls that often apply in residential districts in other communities, such as a minimum open space requirement or a lot coverage (building coverage) requirement.

**Other Provisions.** Southborough requires a special permit from the Planning Board for any residential development with eight or more lots or dwelling units created within an eight-year period on a parcel or contiguous parcels that were held in common ownership in 1986. Known as

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<sup>1</sup> Until 1966, Southborough also had a Residence C (RC) District. When land previously included in the RC district was rezoned to RB, the Town preserved a series of basic dimensional controls to regulate construction on RC lots that had been legally created and recorded before the district was abolished. In general, these lots must have at least 15,000 sq. ft. of area and 100 feet of frontage.

Major Residential Development (MRD), this provision intends to promote alternatives to a conventional subdivision. It allows more design flexibility in the layout of lots and roadways, but in exchange, MRD requires developers to reserve some of the land as common open space and contribute to the production of affordable housing in Southborough. MRD also stands out because it offers Southborough's only mechanism for developing multi-family housing that is not age-restricted. Developers of small projects (fewer than eight units) have the option to apply for a flexible development special permit under MRD, and while they have to meet the bylaw's open space design criteria, they are exempt from the affordable housing requirement. This provision is discussed further in Section 1.4.1 of our report.

### 1.2.2 Business Districts

Southborough's two business districts – Business Village (BV) and Highway Business (BH) – are quite different from each other, and the differences between them relate directly to location. The BV District is Southborough's smallest use district. It includes just 44 acres of land in three locations: in the town center at the intersection of Route 30 (Boston Road/Main Street), East Main Street, and Newton Street; in Fayville village, around the intersection of Oak Hill Road and Route 9 (Turnpike Road); and in Cordaville village in the vicinity of the MBTA commuter rail station. By contrast, the BH District includes approximately 130 acres, most of it along Route 9. There is also a strip of BH land along Route 30 (Boston Road) between Route 9 and the town center. Due to the attention paid to these districts in Southborough's new master plan, we have devoted a special section of our report to the Business Districts (2.1.1). The information that follows here is an overview with some commentary.

**Use Regulations.** Unlike the Residence Districts, Southborough's two business districts do not have identical use regulations. In the BV district, Southborough allows any uses permitted in the Residence Districts (by right or by special permit), as well as a variety of small business uses in up to 2,000 sq. ft. of floor area: stores, offices, banks, restaurants, and some uses usually associated with industrial or general purpose commercial districts, e.g., a newspaper printing establishment or a medical testing laboratory. The ZBA has authority to grant special permits for most of the uses over which it has jurisdiction in the Residence Districts, but there are some exceptions. The Planning Board has special permit authority over a permitted business use that exceeds 2,000 sq. ft., multifamily housing for the elderly, hospitals and nursing homes, veterinary clinics, indoor recreation facilities, parking for more than three vehicles, a contractor's yard, and retail sale of goods produced on the premises by a very small manufacturing operation (limited to four employees).

Virtually all of the same permitted (by right) uses apply in the BH district, including uses allowed in the Residence Districts, but the size threshold for a business use special permit is much higher: 50,000 sq. ft. In addition, the BH district allows restaurants, hotels gas stations, auto sales, and auto repair facilities as of right. The ZBA has authority to grant special permits for business uses that exceed 50,000 sq. ft., and there is no upper limit on the size of a business use that could qualify for a special permit under the BH district's regulations. In general, most uses requiring a special permit in the BV district also require a special permit in the BH district.

**Dimensional and Intensity of Use Regulations.** Not surprisingly, Southborough has established different dimensional requirements for the BV and BH districts. Overall, the BV district's

dimensional and intensity regulations imply a preference for small-scale development that is compatible with adjacent residential uses, especially when coupled with the size limit on business uses allowed by right and the limited amount of land zoned for BV uses. It seems clear that Southborough favors having small businesses arranged relatively close together in these locations, for the minimum lot area is 10,000 sq. ft. and the minimum frontage requirement, 60 feet. In turn, the district's yard setbacks allow buildings to be located fairly close to the street (minimum of 10 feet, or 25 feet on Route 9), and the minimum side yard setback does not force wide separations between buildings (minimum of 10 feet, or 25 feet adjacent to a residential district). Ironically, Southborough has no regulations that directly or indirectly control bulk or intensity of use, e.g., no minimum FAR, no minimum open space ratio, and no lot coverage ratio. Presumably off-street parking requirements serve as a surrogate for controlling use intensity in this district. For residential uses in the BV district, RB regulations apply.

Development in the BH district requires a minimum lot area of one acre that includes at least 20,000 sq. ft. of upland, and a minimum lot frontage of 200 feet. Southborough requires deep yard setbacks of 50 feet on all sides of a building, and a front yard setback of 75 feet for lots with frontage on Route 9. In addition, projects in the BH district are subject to a maximum FAR of 0.60 and a maximum height of 45 feet and three stories. Together, these regulations express a preference for moderate-scale, highway-oriented business development. Like the BV district, residential uses in BH district are subject to requirements that apply in the RB district.

### 1.2.3 Industrial and Office Districts

Southborough has three office and industrial districts: Industrial Park (IP), Industrial (ID), and Research, Science, and Professional (SP). The IP district includes nearly 600 acres, mainly in contiguous parcels that form large tracts of industrial land north and south of Route 9 on the west side of town. Smaller pockets of IP land exist along the west side of Route 85 (Cordaville Road), south of Route 9, and on Northborough Road near the Marlborough line. The ID district includes approximately 200 acres in parcels along Route 9, in the Southville and Cordaville village areas, and on Newton Street north of the town center. The SP district consists of 135 acres between Main Street, Chestnut Hill Road, and Fisher Road in the northwest part of town. These three districts have conspicuously different use regulations, but the ID and IP districts have very similar dimensional requirements.

**Use Regulations.** An interesting facet of Southborough's zoning is the near-absence of permitted industrial uses in the industrial districts. Land in the IP district can be used as of right for offices, banks, printing operations, and wholesale distributors. Research and development with manufacturing as an accessory use is permitted, too, but subject to an unusually restrictive limit on accessory manufacturing: a maximum "density" of three employees per acre. All of these uses are subject to the same 50,000 sq. ft. cap on floor area that applies in the HB district, but the ZBA has authority to grant special permits for larger projects. Other permitted uses in this district include conservation uses, an accessory cafeteria for employees of a permitted business, and an accessory dwelling for a night watchperson or custodian. The ZBA can grant special permits not only for projects exceeding 50,000 sq. ft., but also for most uses that appear on the list of special permitted uses in other districts, including residential uses other than single-family dwellings. In addition, light manufacturing, hazardous waste storage and disposal facilities, heliports accessory to a permitted use, and adult uses are allowed by special permit.

By contrast, permitted uses in the ID district include all uses allowed in the Residence Districts, outdoor recreation facilities, a hospital or nursing home, a private nursery school or kindergarten, and a veterinary clinic; and subject to the 50,000 sq. ft. floor area cap, office buildings, hotels, restaurants, a medical testing laboratory, indoor recreation, sale of lumber and building supplies, stand-alone retail and retail associated with a manufacturing enterprise, printing operations, and automotive uses (gasoline stations and repair shops). The ZBA can grant a special permit for projects exceeding 50,000 sq. ft., wholesale distributors, hazardous waste storage and disposal facilities, research and development uses with accessory manufacturing, and light manufacturing.

It is difficult to discern the SP district's intent from a review of its use regulations. Here, Southborough allows uses permitted in the Residence Districts and uses typically accessory to an industrial use, e.g., an employee cafeteria or a custodian's dwelling, but no principal industrial or research and development uses. Many uses are allowed by special permit from the ZBA, however: special permitted uses found in most other zoning districts, and research and development uses with accessory manufacturing. Chestnut Hill Farm, protected in perpetuity by a conservation restriction purchased with Community Preservation Act (CPA) funds, makes up a large portion of the SP district. Perhaps the zoning designation for this area should be reconsidered as part of the comprehensive zoning revision process.

**Dimensional and Intensity of Use Regulations.** The lot dimensional and intensity of use regulations in the I and IP districts are virtually the same: a minimum lot of one acre, with at least 20,000 sq. ft. of upland, a minimum lot frontage of 200 feet, 50-ft. yard setbacks on all sides of a building, with a deeper (75 ft.) front setback for lots on Route 9, a maximum floor area ratio of 0.60, and a maximum building height of 45 feet and three stories. The only difference between these two districts is that for ID district lots with a boundary on Route 9 and frontage on a different street, the minimum yard setback next to Route 9 is 37.5 feet. By contrast, the minimum lot area in the SP district is 50 acres, with at least 20,000 sq. ft. of upland, and the required minimum lot frontage is 500 feet. Extremely deep yard setbacks of 150 feet in front and 200 feet on the side and rear apply in this district. The maximum building height is a residential standard of 35 feet and 2.5 stories, and the maximum floor area ratio is 0.40. These types of dimensional controls usually envision a campus-style development with large amounts of open space. Significantly, the SP district is the only nonresidential district in which residential uses are subject to RA dimensional regulations, but this makes sense because nearly all of the surrounding land is located in the RA district.

#### 1.2.4 Conservation Districts

Southborough's Conservation (C) District is the second largest and most restrictive of the eight use districts. It covers nearly 2,500 acres, or roughly 25 percent of the town, including land submerged beneath the Sudbury Reservoir. In fact, a majority of the C district is composed of the reservoir and surrounding state-owned land, but according to the Town's GIS zoning map, the Crane Swamp and some properties owned by the Conservation Commission have also been placed in the same zone. The ZBL's description of the C district boundaries could be hard for many readers to understand unless they were familiar with map referred to in the text (§ 174-4, Zoning Map): "For purposes of defining the boundaries of the Conservation District, the map entitled 'Planning Board, Town of Southborough, Worcester County, Massachusetts,' dated 1964,

James V. Sewall Company, Oldtown, Maine, is hereby, by reference, incorporated into and made a part of this chapter, and the Zoning Map, and all land shown on said map as green, shall be deemed to be in the Conservation District.”

Southborough allows a limited and predictable repertoire of uses in the C district: open space, passive recreation, wildlife management, farming (excluding a piggery or fur farm), and a roadside stand. By special permit from the ZBA, a garage for more than three vehicles could be constructed in the C district as well. Although this district has minimal use regulations, there are no associated dimensional requirements. The C district’s basic regulations and requirements, the manner of defining its boundaries, and the types of land included within the district should be reviewed during the zoning revision process. Among other matters, communities do not have zoning authority to prohibit “piggery or fur farm” in areas zoned for agriculture or on parcels of five acres or more in any zoning district. Boards of Health have some applicable jurisdiction, but agriculture on five or more acres is explicitly protected from local zoning control by M.G.L. c. 40A, § 3.

### 1.2.5 Overlay Districts

Southborough’s three overlay districts include the Wetland and Floodplain (WFP) District, the Critical Resource (CR) District, and the Wireless Communication Service (WCS) District.

- ◆ **Wetland and Floodplain District.** The WFP district is similar to the flood plain overlay district bylaws found in other communities, but it is somewhat unusual because the district boundaries are tied to several sources and standards. Under § 174-4 of the ZBL, the WFP district is described as follows:

For the purpose of defining the boundaries of Wetland and Floodplain Districts, the following maps on file in the office of the Town Clerk are hereby specifically, by reference, incorporated into and made a part of this chapter and the Zoning Map: Profiles — Main Stem Upper Sudbury River, and all land shown thereon at or below the one-hundred-year flood elevation along or sloping toward Sudbury River between Westborough-Hopkinton and Ashland Town lines is included in the WFP District, and Town of Southborough Natural Resources Map and all wetlands three acres or larger shown thereon are included in the Wetlands and Floodplain District.

In this district, the Town appears to allow expansion of homes, farm buildings and accessory structures that existed in 1985, up to a 25 percent maximum, as of right. However, the same provision calls for a special permit from the ZBA to expand accessory structures. The ZBA also has authority to grant special permits for new uses and structures that are allowed in the underlying district, provided that (a) the Planning Board, Board of Health, and Conservation Commission find that the land is not subject to flooding and (b) a registered professional engineer certifies that the project will not cause an increase in 100-year flood levels.

- ◆ **Critical Resource District.** Although the CR district has written regulations, it has no identity on the Zoning Map. According to § 174-8.10 of the ZBL, this district was created in 1993. Unlike most of Southborough’s zoning districts, the CR district includes a purpose statement,

but the statement is remarkably broad: “The purpose of the Critical Resource District is to ensure that lands critical to the environmental quality of the Town of Southborough are not physically developed prior to consideration of alternatives to such development.” It seems clear that Southborough intended to discourage development in areas located within the CR district. The regulations prohibit awarding density bonuses for a Major Residential Development and instruct the Planning Board to deny a special permit unless there is no other feasible alternative to development. In addition, the CD district’s regulations contain an unusual provision that imposes a stay on the issuance of a building permit for up to 120 days from the date that the special permit was granted.

- ◆ **Wireless Communication Service District.** In 1997, Southborough established the WCS overlay district in order to allow the construction of wireless communications towers on town-owned land. The ZBA serves as special permit granting authority. In general, the wireless communications facilities bylaw is unusually brief and does not contain many of the standards and conditions found in suburban counterparts elsewhere. Possibly the Town had few concerns about administering a wireless communications facilities bylaw because the overlay district is confined to municipal property, which means that Southborough serves both as permitting authority and land owner.

### 1.3 NON-CONFORMING USES AND STRUCTURES

Any community engaged in a comprehensive review and revision of its zoning bylaw needs to be conscious of the effects of zoning changes on properties that currently comply with local requirements. In most cases, communities try to design a major zoning update in ways that will minimize adverse impacts on existing zoning rights, especially the rights of individual homeowners. However, sometimes it is impossible to avoid putting some of today’s conforming properties into a state of non-conformity. In Massachusetts, all zoning bylaws and ordinances include a provision for non-conforming uses and structures: buildings and land uses that no longer comply with current zoning in one or more ways, but with a “grandfathered” right to continue, theoretically unabated forever, as long the use or structure stays as is. Non-conformity has also come to include non-conformity of a lot itself, i.e., in terms of land area. These and other rights are established in M.G.L. c. 40A, § 6, a byzantine provision that is the source of endless debate and interpretation in cities and towns, the courts, and law schools.

Non-conformity statutes exist throughout the nation. Their purpose is to define the rights of properties that existed before a local legislative body decided to change the zoning in some way, or to change it entirely. For example, a house, an office building, or a gas station might be functioning with non-compliant setbacks, height, or lot area from a significant zoning amendment that town meeting passed 40 years ago, or the use itself might have been non-conforming for all those years. The situation is usually easy when a property stands pat, although some planners and lawyers see non-conformity as a negative that should be phased out gradually in all instances. The problem occurs when a property owner wants to change a non-conforming structure or land use. Unfortunately, both the statute and case law are not always clear and consistent, and determining the degree of change a community is willing to accept is even more challenging.

Southborough regulates non-conforming uses and structures under Article V of the ZBL, which requires a special permit from the ZBA in order to change, extend, or otherwise expand a non-conforming use or structure. Like many communities, Southborough provides some allowable exceptions for single-family homes. Article V states that expansion or reconstruction of a one-family dwelling is allowed as of right when the structure to be altered:

- ◆ Complies with all current dimensional and height requirements, but does not meet the minimum lot area requirement;
- ◆ Complies with all dimensional and height requirements, but does not meet current frontage requirements; or
- ◆ Encroaches upon one or more of the minimum required setbacks, but the alteration will comply with all current setbacks and building height requirements.<sup>2</sup> The provision applies regardless of whether the lot complies with current area and frontage requirements.

The ZBL also contains provisions that largely track the statute. For example, grandfathered rights dissolve when a non-conforming use has been abandoned or discontinued for two years, or when a non-conforming use has been converted to a conforming use. In addition, a structure substantially damaged by fire or a natural catastrophe can be rebuilt to the same dimensions and in the same location as the original, but any expansion or change in location on the lot requires a special permit from the ZBA.

Zoning officers are frequently asked to determine whether a proposed expansion or alteration of a non-conforming property will increase the degree of non-conformity that currently exists. These decisions always involve interpretation of local zoning requirements and findings that must be made under M.G.L. c.40A, § 6. When the ZBA is asked to grant a special permit to extend or alter a non-conforming use, one of the criteria it must consider is whether the proposed project will be “substantially more detrimental to the neighborhood” than the existing non-conformity. Almost every community wrestles with non-conformity interpretation.

The Massachusetts Supreme Judicial Court recently issued a decision that has profound importance for non-conformity regulations throughout the Commonwealth. In *Bjorklund vs. Zoning Board of Appeals of Norwell* (2008), the Court held that under the so-called “second except” clause in M.G.L. c.40A, § 6, even though a proposed teardown and replacement house (quintupling the size of the tiny original dwelling) met all of the community’s current dimensional and height requirements, the project created an increase in non-conformity because the 0.8-acre lot involved did not comply with the community’s minimum one-acre requirement.<sup>3</sup>

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<sup>2</sup> N.B. this clause is unclear in its meaning and it appears to have at least a missing word. It needs to be rewritten for clarity of intent. 450 Mass. 357

<sup>3</sup> In M.G.L. c.40A, § 6, the “second except” clause reads: Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said

The decision by Justice Greaney drew a sharp distinction between small or minor home improvements and larger ones, such as a major addition or, as in *Bjorklund*, a teardown and replacement.

Earlier, the Land Court had upheld the Norwell ZBA's denial of the special permit on two grounds: the proposed house was an extension of non-conformity and it would be substantially more detrimental to the neighborhood. The SJC narrowed its review because the plaintiff (Bjorklund) did not challenge the Land Court's finding of substantial neighborhood detriment. As a result, the case centered on whether the proposed structure constituted an increase in non-conformity. The SJC concluded that yes, it did, citing doctrine from an earlier but less conclusive case.<sup>4</sup>

In Southborough, the single-family dwelling provisions in Article V should be run through the *Bjorklund* filter to ensure that there is no conflict. The first two "as of right" provisions (compliance with all dimensional requirements where there is non-conforming area or frontage) appear to be acceptable. Other non-conformity permutations may need to be revisited, however. These would include scenarios such as a sizeable expansion of a pre-existing, non-conforming structure on a lot with conforming area and frontage, extension of a structure along a setback line that does not meet current zoning requirement, or an addition that will result in extending the roof line in a house that already exceeds the maximum height limit. In general, the "as of right" extension or alteration of a non-conforming single-family home should be reviewed and edited.

## 1.4 TOPICS OF INTEREST

During our interviews with stakeholders and our own review of the ZBL, issues surfaced that will require policy direction from the Town. This section contains a sample of the issues we have identified or heard from others as concerns about Southborough's present regulatory controls.

### 1.4.1 Major Residential Development

One of the basic building blocks of Southborough's ZBL is § 174-13.2, Major Residential Development (MRD). For nearly 23 years, Southborough has deemed developments of eight or more residential lots or dwelling units to warrant the most detailed and discretionary type of scrutiny: a zoning special permit. Moving forward with a subdivision of land that triggers the eight-lot threshold is not allowed until the Planning Board grants a special permit. The ZBL also establishes an eight-year window of applicability in order to prevent or discourage "segmentation," i.e., dividing a project into small projects, each falling below the eight-unit threshold. There are also special provisions for larger projects involving repetitive subdivisions

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public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.

<sup>4</sup> See *Bjorklund v. Norwell Zoning Board of Appeals* (2008), 450 Mass. 357, and *Bransford v. Zoning Board of Appeals of Edgartown*, 444 Mass. 852 (2005).

(successive stages of subdividing within the original parcel of land), phased development, and other kinds of multi-year development scenarios.

Since the early 1980s, the MRD concept has become a commonly used tool to achieve some higher level of regulatory action, such as a special permit requirement, or an environmentally-sensitive building mode, such as mandatory cluster development. Close to a score of Massachusetts communities have similar provisions and use them effectively. A few examples include Groton, Ipswich, Newbury, Ashby, Lexington.

Southborough's MDR bylaw includes an option for flexible development: a cluster-like provision with flexible lot area, frontage, and other dimensional requirements to encourage development that is more protective of natural and cultural resources and more sensitively sited in the landscape. Some multi-family use is allowed in a flexible development option, although it is significantly limited. Like most MRD bylaws, flexible development in Southborough requires a dual plan submission, or a conventional subdivision plan and a flexible or cluster-type plan, each with the same number of dwelling units on the same site. Developers can state a preference for the type of project they want to build, conventional or flexible, but ultimately the Planning Board has authority to decide. The MRD section also contains site design criteria that vary by type of on-site sewage treatment: individual lot, shared septic, or package plant. Finally, the MRD provision contains inclusionary housing requirements and sets the bar at 12.5 percent of the total units in a project. A 10 percent density bonus is available for provision of extra affordable units.

In October 2008, the Massachusetts Appeals Court invalidated a bylaw very similar to Southborough's in *Wall Street Development Corporation v. Planning Board of Westwood*. Originally litigated by the developer in Land Court in 2005 after the Westwood Planning Board denied a special permit, the *Wall Street Development Corp.* decision has major implications for the future of MRD in Southborough and many communities throughout the state. The Westwood case was quite complicated, involving a consolidation of three cases and issues such as options for street access, the length of dead-end streets, an abutting subdivision, and the Board's restriction of a secondary means of egress. However, the portions of the ruling that pertain specifically to Westwood's MRD speak very much to the heart of the MRD concept and its dual submission requirement.

Judge Armstrong's decision in *Wall Street Development Corp.* raises issues of a potential violation of the uniformity clause in M.G.L. c.40A, § 4, which reads, in part: "Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." The uniformity clause was cited in the oft-quoted Appeals Court decision in *SCIT, Inc. v. Planning Board of Braintree* (1984), when the Court invalidated a zoning bylaw that required a special permit for any use in a particular business zone, i.e., without any uses being allowed as of right. Still, in the Westwood case, the Court placed even more emphasis on another issue, that of conflict with the Subdivision Control Law. In Judge Armstrong's words:

In our view the by-law and the power it gives to the board to reject so called "conventional plans" (i.e., plans in total compliance with applicable laws and regulations) may be more easily seen as presenting a facial conflict with the

subdivision control law, specifically with G.L. c. 41, § 81M, as amended by St.1957, c. 265: It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if such plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to the subdivisions of land..

Subdivision control with a complying plan is interpreted to trump the required special permit. This not only calls into question the MRD threshold concept, but also seems to weaken the dual submission requirement that exists in so many MRD laws, especially where the Planning Board has the ultimate authority to choose the preferred development type.

It is possible to modify Southborough's existing MRD provision in a way that at least partially addresses issues raised in *Wall Street Development Corp.*, such as allowing the proponent to choose the development type that will be constructed. In addition, it is possible to fine-tune the bylaw's submission requirements by relegating the conventional plan to be more of a "yield" plan, offering minimum detail only for purposes of demonstrating identical density to a flexible development. None of these measures, however, is sufficient to remove all risk from using the MRD in light of the Westwood decision.

Another alternative is to replace MRD with an improved cluster-type law with advanced land design principles and built-in incentives for developers to use it. This kind of provision would be in the form of an Open Space Residential Development (OSRD) by-law with the four-step design process. OSRD was conceived as an improvement on traditional cluster design, which often did a mediocre job of protecting the best open space and resources on a site. The concept was articulated and refined by planning design professionals such as Ian McHarg, Randall Arendt and others, starting nearly 20 years ago. They built upon the work of visionaries in the more distant past. In the four-step process, the first step is to identify the key features of the land and its resources to be protected. This is followed by careful siting of the houses, then by laying out the internal access roads, and then imposing the lotting scheme. The four-step approach is widely used now and it generally promotes better site planning. It is possible to create incentives for landowners or developers to use such a bylaw. Options range from making OSRD as-of-right or as-of-right with site plan review to retaining a special permit requirement but granting it for a concept plan, and increasing the use of density bonuses for extra open space or affordable housing.

#### **1.4.2 Plan Review**

Site plan approval in § 174-10 describes an administrative power that many Massachusetts communities assert under their home rule authority in order to evaluate and adjust the details of a project's site development plan when the activity is not otherwise regulated by the town. The project might be an as-of-right use which, absent site plan approval, could proceed straight to a building permit, or it might involve an accessory use such as creation or expansion of a parking lot, or reactivation of a dormant property that had been unused for years.

Through site plan approval, communities can regulate aspects of site development such as vehicular circulation, landscaping and screening, curb cuts, building placement, proximity to

environmentally sensitive areas, pedestrian access, impact on abutting properties, stormwater management and the like, for the purpose of protecting and enhancing public safety, neighborhood and community aesthetics, environmental quality and other considerations. Having standards within the law to address these issues is desirable for facilitating an efficient site plan approval process, both the reviewing authority and the applicant, and for protecting the town in the event of litigation. Due to the fact that site plan authority is not mentioned and authorized in the state zoning act (M.G.L. c. 40A), it is purely an administrative local power. Case law affirms that site plan review is a function of a building (not a special) permit, therefore requiring internal appeal to the ZBA.

Southborough's ZBL includes four site plan approval triggers:

- ◆ Any non-residential development that results in an increase in on-site parking;
- ◆ All activity subject to regulation under the ZBL's parking and loading and landscaping requirements in §§ 174-12 and 174-13;
- ◆ Reactivation of a use that had not been active for at least two years; and
- ◆ Multi-family elderly housing proposals.

Southborough's Site Plan Approval provision creates two distinct regulatory paths: Minor Plan Review and Major Plan Review. The former is handled by the Site Plan Review Committee (SPRC), a committee of professional staff headed by the Town Planner. The SPRC may also refer a case to the Planning Board. The latter review (Major) is handled by the Planning Board, a common arrangement almost everywhere. Minor Site Plan Review includes any new project or change to an existing one that results in less than 2,000 square feet of floor area or which results in a total of 5 to 19 parking spaces on-site, inclusive of pre-existing ones. Major Site Plan Approval includes essentially anything above 2,000 sq. ft. of floor area or 20 parking spaces.

The Site Plan Approval bylaw in Southborough is better and more detailed than most, but there are some concerns and suggestions for possible improvements.

- ◆ Paragraph B. (12) [c] compels the Committee to "approve, disapprove or refer to the Planning Board...all submittals for minor plan review...within 30 days of a completed application..." The word "disapprove" should be removed. There is strong case law that indicates that a site plan review cannot be disapproved simply because the reviewing parties do not like the project. It is more a matter of approval with modifying conditions; conditions are commonly crafted into site plan review decisions. A submission can, however, be rejected for incompleteness.
- ◆ Some of the submission requirements could be clearer. For example:
  - ◆ The Minor Site Plan Review requires "existing and proposed landscaping," but offers no guidance as to the level of graphic and/or specification detail would be sufficient for this de minimus plan approval. The corresponding standard for a Major Site Plan submission requires "Landscaping designation [design?], specific plantings." Does this mean a

detailed, final planting specifications list printed directly on the detailed graphic drawing, and complete with a landscape architect's stamp?

- ◆ Under Minor Site Plan submission: does the "Location of all wetlands" always imply 100' and 200' buffer lines (the same vagueness occurs with the Major Plan submission requirements)?
- ◆ Does "Stormwater drainage" mean even the most conceptual level of engineering design and drainage calculations, or does it imply only the most schematic indication of the type of system planned?
- ◆ Under Major Site Plan submission, the requirement for "Topography at 2' contour intervals" seems to indicate no requirement for finish grades, but it is not as clear as it could be to the engineer.
- ◆ The dividing line between Major and Minor Site Plan Review is set low, particularly the 2,000 square foot floor area threshold. This puts many projects into the Major Site plan and it can add to the regulatory costs for small applicant businesses and projects. Perhaps setting the threshold so low made practical sense when site plan review was created. However, a reasonable upward adjustment should be considered. We do not have a particular threshold to recommend at this time, but a quick survey of recent site plan reviews in Southborough might suggest a logical break point. Similarly, the trigger for any increase in parking with a non-residential use, even a single space, is over-regulation in the smallest instances.
- ◆ The Site Plan Approval section is not "green" in its outlook. The standards presented in section (D) could be expanded to incorporate, with Major Projects, consideration of green alternatives, inclusion of transportation-related facilities such as bus or van turnouts, pedestrian trail connections, bike racks, preferred parking for car pools, future electric plug-in stations; and possibly even building improvements such a low water consumption systems, roof gardens, energy efficiency, and LEED certification.

### 1.4.3 Frontage

Frontage is not only a matter of a development meeting the zoning definition of acceptable frontage and complying with a minimum metric for length of linear street frontage. Frontage is equally a matter of (vehicular) access being practical and real, as opposed to illusory or "on-paper-only" access. The courts have called this "vital access," and it is a complex regulatory topic accompanied by much case law involving every conceivable physical circumstance. The cases sometimes contain special situations, such as there being frontage on an adequate public way, but wetlands or some formidable man-made or natural feature or facility physically intervene between that way and the lot in question, thus rendering access impractical or worse.

The frontage/access issue operates in various settings: access to and within approval-not-required lots, access to and within subdivision lots, and provisions involving common driveway developments with pork chop or flag-shaped lots having less than the required street frontage. These scenarios have the effect of connecting zoning with Subdivision Control and Approval Not Required (ANR) authority. Frontage/access issues in a given case might involve driveways,

public ways, private ways, substandard public ways, or combinations of these, but what they all have in common is that access to the lot(s) from the frontage must be deemed adequate, or of “suitable width, grade and construction.” Applying this judgment uniformly at the local level can be a difficult proposition, and the courts, while taking pains to recognize that the determination of adequate access is hugely variable on a case basis, have been fairly consistent in upholding the general principle that adequate access is necessary.<sup>5</sup>

Southborough defines frontage as follows:

FRONTAGE - The distance along a continuous portion of a street line between intersections with lot side lines, provided that for lots abutting more than one (1) street, frontage shall be required and measured along one (1) street only, but the yard required by Article III hereof shall be provided along each street the lot abuts, and that for corner lots, frontage shall be measured to the intersection of street lines or to the middle of the corner rounding curve connecting such street lines, and further provided that a lot shall only be deemed to have "frontage" along any street to which it has both legal and physical access.

The last sentence alludes to legal and physical access, but provides no further guidance

It is important to understand that the case law in terms of adequacy of access occurs largely within the domain of Subdivision Control, which is an entirely separate sphere of law from zoning, and the great majority of those cases involve denials of ANR plans. Zoning cannot and should not veer into that track. However, in the interests of applying the frontage definition uniformly and fairly in zoning matters, the term “physical access” could benefit from being amended to a limited extent by affirming the requirement that access must be the equivalent of what the courts have deemed vital access. This means not only suitable width, grade and construction, but the absence of formidable environmental or physical barriers that make frontage access impractical or impossible. Moreover, the definition or other sections in the ZBL could be expanded to make it clear that this burden applies to flexible development projects, major residential development special permits, other special permits, frontage on ways within a development parcel, and all development regulatory actions within the authority of zoning.

#### **1.4.4 Lots Divided by Zoning District Boundaries**

Lots that are split by zoning district lines exist in many Massachusetts communities and they often present considerable regulatory challenges for a town. Various problems arise for split lots when two quite different sets of dimensional and use requirements apply to the property. These include determining how and from what point to measure required setbacks and yards, determining the correct method for calculating density or use intensity measures such as site coverage or floor area ratio, and establishing whether uses allowed or prohibited in the more restrictive use district take precedence. It is important to differentiate dimensional and use entitlements in split lot situations.

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<sup>5</sup> See, for example, *Gates v. Dighton Planning Board*, MA Appeals Ct. 2000; *Corcoran v. Sudbury Planning Board*, MA Trial Ct, 1989; *Perry v. Nantucket*, MA Appeals Ct. 1983; *McCarthy v. Edgartown Planning Board*, MA Trial Ct, 1980; *Fox v. Milton*, MA Appeals Ct. 1987.

Access limitations can present a substantial challenge for split lots, particularly if vehicular access must take place through a more restrictive zone, such as entry to an industrial district through a single-family residential zone, which is normally a prohibited scenario. When a parcel crosses municipal lines, the problems can become even more complicated. There is a substantial body of case law that provides helpful guidance to apply to various types of split lot conflicts, but the issue is still complex. It also is regulated by means of a broad range of local provisions throughout the state.

In Southborough, § 174-5, Interpretation of Boundaries, regulates split lots as follows:

D. Where a district boundary line divides a lot existing at the time such line is adopted, the regulations relating to the less restricted portion of such lot may extend not more than thirty (30) feet into the more restricted portion, provided that the lot has frontage in the less restricted district, and further provided that this Subsection D shall not apply to the boundaries of Wetland and Floodplain Districts.

In other words, if a divided parcel is part business and part residentially-zoned, the full range of zoning requirements for creation or expansion of a business development on the property may be applied only to a maximum 30' encroachment into the residential portion. This is the case if and only if the frontage access exists on the business (less restrictive) side of the lot. Southborough's limited conveyance of expansion rights on split lots is a reflection of a core value – to protect residential properties – but it conflicts to some extent with another community need, that of expanding the commercial revenue base of the town.

There is no uniform standard in these types of provisions; each town regulates in its own way.

- ◆ Needham uses the following method: “If a lot is located in more than one zoning district, the minimum area, frontage and all other dimensional requirements of the district in which fifty (50) percent or more of the lot is located shall apply throughout.”
- ◆ Lexington's bylaw seems to assume that the proposed building or use lies wholly within one of the districts which divide the lot, and it defines the point of measurement for dimensional standards by treating the district line as a lot line:

In the case of one lot which is divided by a district line ...which is proposed to be used for a building or use which is not permitted as a matter of right in both districts ...such building or use shall comply with the dimensional standards of Section 7, and Table 2 Schedule of Dimensional Controls, as if that portion of the lot in the district in which such building or use is permitted, were the lot and the district boundary line were a lot line.

Although there are not that many lots in more than one district, they nevertheless represent a significant zoning issue in Southborough, principally along the Route 9 corridor. There are other village and secondary highway locations where the provision could apply, too, but it is primarily a problem on Route 9. The length of Route 9 running for roughly one mile west of Route 85 is lined with the Business Highway and Industrial Districts in a configuration that is only 250' in width on either side of the highway. For much of this length, established subdivisions of varying

age abut and confine the business strip. East of Route 85 and running through the Fayville area, the Business Highway corridor on both sides of Route 9 (running for about 2 miles to the Framingham line) is not quite as narrow on average, but it is still a highly constricted district and abutted by subdivisions or neighborhoods in at least three locations, as well as the Sudbury Reservoir. When combined with a height limit of only 45' and three stories, it can be said that the Southborough corridor is tightly, even unrealistically, confined in two dimensions.

The split lot provision has occasional significance in this environment as a tool for zoning relief, particularly in the Route 9 corridor when a commercial property needs to expand and the land straddles the Business Highway district and a residential zone. The provision was invoked in the Walgreen's and Long Cadillac cases recently, when the commercial developments were allowed to encroach 30 feet into the residential portion of their respective parcels. Local officials have reported anecdotally that Southborough experienced some additional instances of split lot development in the more distant past. The provision acts as a kind of safety valve for commercial growth, but on a limited, "spot" basis. However, it falls far short of providing a long-term planning solution for the Route 9 corridor.

Some have suggested widening the Route 9 business strips because the town's revenue base is pressing and the highway is the obvious place to accommodate growth. However, the development of housing as a backdrop to much of the Route 9 corridor will most likely make widening the districts less feasible as the availability of land diminishes and the potential for land use conflict increases. One alternative for facilitating development along Route 9 is to increase the 45' height limit. This action might engender its own set of opponents, but it is an option that should not be dismissed. The existing floor area ratio of .60 in these districts is already enough to accommodate a one story increase. Moreover, taller buildings can be designed to "mask" their height through design solutions such as a recessed façade.

Some revision to Southborough's split lot rule should be considered as a means of prudently loosening the rigid 30 ft. standard, which can be criticized not only as being too limiting, but also too simplistic in its one-size-fits-all approach. The regulatory process under which a given project is being permitted in Southborough—special permit, major residential development, site plan review-- can be used to impose further protective measures and mitigations to help buffer the adjacent neighborhood from commercial expansion.

#### **1.4.5 Building Height**

Maximum allowable building height is of concern to Southborough's economic future and its potential for revenue growth. In some districts, most notably Business Highway, it can be seen as an impediment to prudent and desirable growth. Southborough's ZBL, like so many of in post-World War II suburbs of the United States, zoned its land for relatively low-density development and height in an era that was consciously land-consumptive because parcels of adequate development size were readily available. The vision, simplified, was to grow and prosper, while retaining a small-town feel. Build outward, not upward, but don't build all that much.

Over the years, the Southborough ZBL was adjusted to a limited degree to accommodate changing business and residential development modes, such as flexible development and the burgeoning of research and development uses in Massachusetts. But height restrictions have

remained at relatively low levels in Southborough, and in two or possibly three districts, they should be re-examined. We would not recommend dramatic increases in allowable height; the visual and physical impacts of significant height expansion do not appear to be what most residents of Southborough want. However, careful adjustments in logical locations could create real economic opportunity in Southborough.

As noted in the Route 9 corridor description in Section 1.4.4 of this report, the length of Route 9 running for roughly a mile west of Route 85 is lined with the BH and ID districts (mostly on the north and south sides of the road), in a configuration that is only 250' in width on either side of the highway. In many places, established subdivisions of varying age abut and confine the business strip. East of Route 85 and running through the Fayville area, the Business Highway corridor on both sides of Route 9 is not quite as narrow on the average, but it is still a highly constricted district and is abutted by subdivisions or neighborhoods in at least three locations, as well as the Sudbury Reservoir.

It is in the Business Highway district that height limitations are of most concern. The maximum height limit of 45 feet and three stories is quite confining in a corridor of such narrow proportions and with such limited likelihood of expanding horizontally. Lateral district expansion is further constrained in some spots by pronounced topographic features and steep downward slopes. The highway business zone is a commonly seen catch-all district, permitting a broad array of free-standing retail, office, hotel, restaurant and light manufacturing uses, with uses of under 50,000 sq. ft. floor area being allowed as of right, typically with site plan review, and those of more than 50,000 SF requiring a special permit. The existing FAR of 0.60 is a reasonably appropriate figure. In the closely connected Industrial District, which also has the 45' limit, the height issue is of less concern than in BH, only because this zone adds distribution and light manufacturing as allowed uses. Both are known for their large floor area expanse in low rise structures, often just one story high and usually not exceeding two stories. Otherwise, the two districts are very similar.

Changes to consider include increasing the allowable height in BH, and possibly in ID and IP, to 60 feet and four stories. This would allow a theoretical floor area increase of 25 percent. The 0.60 FAR might accommodate this change without upward adjustment, but this will need to be verified. Allowing a height increase could create a practical means of business expansion without taking the buildings to such heights that present serious public or abutter issues. In a related issue, the increased parking demand, especially in narrow corridor districts, will have to be addressed because full parking compliance will have significant site design and engineering impacts. Liberal use of reserve (deferred) parking designations, shared parking opportunities between compatible businesses, and tapping into regional transportation demand management programs and other techniques, should be explored as well. It is possible to create parking flexibility with the discretionary powers available to a special permit authority, but amendments to § 174.12 would be preferable.

In the Business Village districts, the current height limit is 35 feet and three stories as a reflection of village-scale buildings. In the town center area, this restriction is probably suitable. In the BV district at Southville Road and Cordaville Road/Route85, the existing height limit may be less appropriate. This node might be a logical one for carefully-controlled business expansion, or for compact mixed use. In order to consider amending the building height requirements in

Cordaville village without disturbing the existing height rule in the town center, the Cordaville BV zoning district may have to spin-off into a zoning designation, but this is not a major issue.

## 2.0 MASTER PLAN OPPORTUNITIES & CHALLENGES

### 2.1 BUSINESS DISTRICTS

#### 2.1.1 Village and Business Highway Uses

The Southborough Master Plan contains a number of recommendations that relate to these two districts. Land Use Goal #5, LU #4 specifically recommends allowing mixed-use projects in Business Village and Business Highway districts. This section will consider the Master Plan's recommendations and analyze and identify other issues concerning the use regulations in these two districts.

**Existing Uses.** The following uses are currently allowed under the Southborough Zoning Bylaw:

Use	Business Village		Business Highway	
	< 2,000 SF	> 2,000 SF	< 50,000 SF	> 50,000 SF
All uses permitted in the residential districts	Y	Y	Y	Y
Mobile home or travel trailer used as a dwelling or business quarter for 30 days or fewer per year	Y	Y	Y	SP
Retail sales and services which do not involve manufacturing on the premises	Y	PB SP	Y	SP
Newspaper, job printing, & publishing	Y	PB SP	Y	SP
Office, bank office building	Y	PB SP	Y	SP
Hotel or motel, restaurant (excluding drive-through food service establishments)	Y	PB SP	Y	SP
Clinic or medical testing laboratory	Y	PB SP	Y	SP
Dwelling on the premises for night watchman or janitor	Y	PB SP	Y	Y
Cafeteria on premises for use by employees and not general public	Y	PB SP	Y	Y
Major Residential Development	PB SP	PB SP	N	N
Multifamily dwelling if within a Major Residential Development	PB SP	PB SP	N	N
Hospital, nursing home, home for aged	PB SP	PB SP	SP	SP
Private school, nursery or kindergarten	PB SP	PB SP	SP	SP
Veterinarian, animal hospital, dog kennel	PB SP	PB SP	SP	SP
Multifamily housing for elderly, owned by a public or non-profit community organization	PB SP	PB SP	SP	SP
Private garage or parking for more than 3 cars or more than 1 truck or other commercial vehicle	PB SP	PB SP	SP	SP
Indoor recreation, athletic or exercise facility; theater for cultural arts (BH only)	PB SP	PB SP	SP	SP
Sale or storage of fuel, lumber, building materials	PB SP	PB SP	SP	SP

Use	Business Village		Business Highway	
and equipment, contractor's yard				
Retail sales and services involving manufacturing of products, the majority of which will be sold on the premises to consumers with not more than 4 persons engaged in manufacturing operations	PB SP	PB SP	Y	SP
Automotive service, gas station or repair garage, auto sales	PB SP	PB SP	Y	SP
Accessory apartment	ZBA SP	ZBA SP	SP	SP
Boat livery, cemetery, children's camp, golf course, private NP membership club, public utility, riding stable ski tow	ZBA SP	ZBA SP	SP	SP
Conversion of 1-family house in existence for 2 years or longer to a 2 family dwelling on a lot with a minimum of 15,000 SF	ZBA SP	ZBA SP	SP	SP
Mobile home or travel trailer used as dwelling or business quarters for more than 30 days in a year	ZBA SP	ZBA SP	SP	SP
Hazardous waste storage and disposal facilities	N	N	SP	SP

### 2.1.2 Mixed-use development

For both the BV and BH districts, enabling some type of mixed-use development is clearly a Master Plan priority. However, it will be important to recognize and distinguish between mixed-use development in the BV district and mixed-use development in the BH district. Based on the discussion of and recommendations for Southborough's villages, which include the BV-zoned areas, mixed-use most likely means development that contains different and complimentary land uses, which commonly include a retail and residential component (typically with the residential above the retail), and possibly other uses such as office, civic, or institutional. This type of arrangement is desirable for areas such as Southborough's downtown for several reasons: the residential development provides a local market for local businesses and also enlivens the area by creating more foot traffic; and retail and services establishments provide convenience for residents, and, if prosperous, also add to the vibrancy of the area. While Southborough may not want a bustling, busy downtown area or areas, the recommendations suggest that Southborough residents desire a greater level of activity, access, and convenience for reasons that include economic development, a more efficient land use pattern, and an overall quality of life.

In a Business Highway environment, however, mixed-use most likely means something different. Here, the rationale may also be for greater land use efficiency and for greater general economic development potential. However, this type of mixed-use development is less about creating a more vibrant, active street life and more about promoting pairing of complimentary land uses. A mixed-use building might be a more attractive location for certain companies, and could also be a more attractive potential product for a developer. The ZAC will have to further define what they mean by "mixed-use" for each type of district, considering the following:

- ◆ Types of allowed uses within mixed-use buildings for both the BV and BH districts;

- ◆ Additional minimum lot size and other dimensional requirements for mixed-use buildings;
- ◆ Whether to restrict certain uses –such as office– to the upper floors and reserving the ground floors for more active uses, such as retail.

### 2.1.3 Other Issues

**Business Village District.** The Business Village district could increase the number of by right uses to provide an incentive for new development or for more businesses or other establishments. One way to address this would be to make some uses that are appropriate in the Business Village allowed by right instead of by special permit, including:

- ◆ Private school, nursery or kindergarten
- ◆ Veterinarian, animal hospital, dog kennel (also, see last bullet point under “Issues – Shared”)
- ◆ Indoor recreation, athletic or exercise facility
- ◆ Residential uses (see next bullet point)

Additionally the following additional types of uses could be considered:

- ◆ Cultural uses, such as theaters, art galleries, and even small museums. We note that a “theater for cultural arts” is part of the “indoor recreation, athletic or exercise facility” use in the BH district, and is allowed by special permit. This use or a similar use could be extended to the BV district.
- ◆ Civic uses, recreational, or community facilities uses, such as libraries, community centers, parks, etc.
- ◆ Mixed-use buildings

There are no by right, permanent residential uses in the BV district except single-family development.<sup>6</sup> Currently, the following types of residential development are allowed by special permit:

- ◆ Multi-family dwellings if within an Major Residential Development (MRD) (Planning Board Special Permit)
- ◆ Accessory apartment (ZBA Special Permit)
- ◆ Conversion of a one-family house in existence for two years or longer to a two-family dwelling, on a lot with a minimum of 15,000 square feet

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<sup>6</sup> A mobile home or travel trailer used as a dwelling or business quarters for than thirty days per year or fewer in a year is a by right, but not a permanent, use in the BV district.

- ◆ A mobile home or travel trailer used as a dwelling or business quarters for more than thirty days per year

Residential uses are a critical component in a mixed-use district or development. Housing units and their occupants support local businesses and provide the foot traffic and general activity that is necessary for a successful mixed-use area. Also, because they are generally smaller, multi-family units, residential uses in mixed-use area also contribute the overall diversity of housing options within the entire community. While allowing mixed-use *buildings* (which may include housing units) as a by right use is one way to bring residential uses into the Business Village district, it will also be important to allow different types of residential uses in and of themselves. Besides the fact that they are not allowed as of right, the current residential uses in the BV district are very limited. A Major Residential Development would be extremely difficult if not impossible to create in a BV district and therefore using it for the creation of multi-family housing is highly unlikely. While allowing conversion of single-family homes to two-family dwellings is important, there are a limited number of these types of homes for conversion. For this reason, the Town should consider changing some special permit residential uses to by right uses and also adding new residential uses to the BV district. Possible changes and additions include:

- ◆ Making conversion of a one-family house in existence for two years or longer to a two-family dwelling a by right use (currently a ZBA Special Permit use). The Town will also want to consider whether the minimum lot size of 15,000 sq. ft. is appropriate here.
- ◆ Allowing multi-family dwellings (units per acre or other density controls to be decided)
- ◆ Allowing accessory apartments as of right
- ◆ Allowing residential units over ground floor retail or office uses in existing buildings and as a part of mixed-use buildings
- ◆ The 2,000 square foot threshold is not feasible for hotel or motel use. This use should either be removed, or the square foot threshold increased. Additionally, we question whether the BV district should allow motels at all – they typically have large parking lots along the street and thereby detract from the desired development pattern in traditional downtown areas.
- ◆ Some currently allowed uses may be contrary to the overall intent and purpose of the BV district. These include:
  - ◆ “Sale or storage of fuel, lumber, building material and equipment, contractor’s yard.”
  - ◆ Automotive sales (part of “Automotive service, gasoline station or repair garage, automotive sales.”)

#### **Business Highway District.**

- ◆ Like the Business Village district, the Business Highway district could consider switching the following from special permit to as of right uses:

- ◆ Private school, nursery or kindergarten
- ◆ Veterinarian, animal hospital, dog kennel
- ◆ Indoor recreation, athletic or exercise facility; theater for cultural arts
- ◆ Additionally the following types of uses could be considered:
  - ◆ Research and development uses
  - ◆ Distinguished and refined office uses, for example, medical offices, professional offices, etc.
  - ◆ Mixed-use buildings (types of allowed uses to be decided)
- ◆ The condition of having no more than four persons who may engage in manufacturing operations for retail sales and services which involve manufacturing of products should be reconsidered.

#### Issues – Shared

- ◆ Both the BV and BH district have square footage thresholds (2,000 and 50,000 square feet, respectively) above which most uses in either district require a special permit. Multiple participants in stakeholder interviews commented that this threshold is too low and is a disincentive to development, especially in the BH district. Although this is not strictly a use provision, it has an enormous effect on the type of uses that may gain approval for these districts.
- ◆ Currently allowed by right and special permit uses in both the BV and BH districts require review for language accuracy, relevancy/obsolescence, and overall appropriateness. These include:
  - ◆ “Retail sales and services which do not involve manufacturing on the premises.” Retail sales and services should be listed separately because they constitute two very different uses.
  - ◆ “Automotive service, gasoline station or repair garage, automotive sales.” While appropriate for the BH district, each of these uses should be considered separately for appropriateness within a BV district. Any sort of automotive sales would likely detract from the purpose and intent of the BV district.
  - ◆ “Hospital, nursing home, home for the aged.” Each of these uses should be considered separately for appropriateness and accuracy. This is particularly true for “home for the aged,” which requires updated terminology.
  - ◆ “Veterinarian, animal hospital, dog kennel.” These uses should be considered separately and individually reviewed for appropriateness in the BV district.

- ◆ “Private garage or parking for more than three cars or more than one truck or other commercial vehicle.” This should be reviewed for appropriateness within the BV district.
- ◆ “Dwelling on the premises for a night watchman or janitor.” This use may be out of date.
- ◆ “Cafeteria on the premises for use by employees and not the general public.” This use may be out of date.
- ◆ “Boat livery, cemetery, children’s camp, golf course, private NP membership club, public utility, riding stable ski tow.” This should be reviewed for relevance in both districts; some activities could (and probably should) be listed separately.

## 2.2 WORKING WITH INCENTIVES

### 2.2.1 Preservation and public amenities

Providing incentives through zoning is one of the ways that a local government can influence private-sector behavior. In most cases, this involves granting an expansion of development rights or development potential in return some public benefit or public good. The Southborough Master Plan includes a Land Use recommendation (Land Use Goal #6, LU-8) to “consider zoning incentives to encourage reinvestment and redevelopment of existing properties (e.g., density bonuses for preservation of buildings, streetscape improvements, or public amenities).” A well-crafted, effective zoning incentive needs to consider the following:

- ◆ **Purpose of the incentive.** This may be to increase public space, provide a safe pedestrian environment, increase open space, or to protect natural resources through the promotion of environmentally sensitive building practices (see 2.1.2. on “green” development and buildings, below).
- ◆ **Target area.** Incentives can be targeted to existing zoning districts or existing or new overlay districts. They can also apply to a type of special development such as Southborough’s major residential development or a similar open space residential development provision.
- ◆ **Target market.** An incentive for historic preservation in a largely single-family neighborhood would need to target individual property owners or small business owners. For sidewalk improvements in the Highway Business district, an incentive would target larger commercial developers.
- ◆ **Desired amenity.** This relates to the incentive’s purpose, but is more specific. The amenity may be a trail, bike path, sidewalks, pedestrian crossings, public plaza, or adoption of environmental standards or features into new construction.
- ◆ **Demand for incentive.** Consideration will need to be given as to whether there is enough demand from the target market to pursue the incentive. A market study or analysis of the target area may be necessary.

- ◆ **Local or neighborhood engagement and impact.** If incentives are to be introduced into residential areas, residents will need to be informed and engaged in the process of creating and implementing a new incentive.
- ◆ **Sufficient infrastructure.** If the incentive involves an increase in density, will the town's infrastructure support the potential level of development if fully built out? This is an especially important consideration for Southborough because the town lacks public sewerage.
- ◆ **Award and administration of incentive.** Southborough should consider how the incentive will work within existing regulations. Adding the incentive to an existing process (such as site plan approvals) will reduce the number of regulatory layers, however, it might not capture a targeted area. Targeting an incentive to an area or type of development where there is no process will mean creating one. For incentives where there are clear standards for exchange of development potential for public good (i.e. two additional units for the preservation of the exterior of a historic structure), the incentive could be awarded through an administrative review. However, when the incentive involves the provision of something that is difficult to quantify, such as a public trail, park, etc. some discretionary review will be required.

Options to create incentives for historic preservation are slightly different than those for public amenities such as open space, sidewalks, etc. This is because the desired amenity is the preservation or sensitive modification of an existing building, not a new public amenity. For this reason, we separate incentives for historic preservation from other types of incentives listed below. Also, the target areas or properties are identified differently. To realize zoning incentives for historic preservation, historic properties must be identified, either through a historic district or some type of list. Currently, Southborough does not have any historic districts. The town did complete a historic resources survey in 2000. Depending on the status and integrity of this survey, the town could use it to identify properties to which preservation incentives would apply. If this is not sufficient, or if Southborough wishes to consider properties or types of properties not captured by the survey, the town will have to create a new inventory or target district (such as historic districts) before incentives such as those listed below can be implemented.

- ◆ **Additional units in a single-family residence.** Such an incentive would trade the preservation of a historically significant house in a RA and/or RB district to be used as a multi-family structure. The maximum number of units would need to be determined. The provision could also waive additional parking requirements for the allowed units. This type of incentive would also introduce slightly more density into residential areas without a noticeable difference to the built environment.
- ◆ **Nonresidential uses in the residential districts.** This provision would allow a historically significant structure to be used for nonresidential uses (e.g. small-scale retail, office) within the RA and/or RB districts in exchange for the preserving a building's exterior. The provision could specify the other uses that would be allowed, and also the amount of floor area that can be used for nonresidential uses.

- ◆ **Special permit uses as of right in applicable zoning districts.** This would allow a special permit use in a designated zoning district (such as RA, RB, Business Village (BV) and possibility Business Highway (BH)), depending on where there are historically significant buildings) to be administered as of right. In this way, the developer or property owner gets an expedited permitting process in exchange for the preservation of a historically significant building.
- ◆ **Transfer of density or floor area ratio (FAR).** This provision would allow a property owner to quantify unused development potential on a site (e.g. a building with an FAR of 0.30 in a district that allows up to 0.60) and transfer or sell the unused potential to another site and/or owner. This would work in areas where there are historic buildings that do not utilize the entire allowed building envelope. Special considerations for this type of incentive include establishing a way to price unused development potential and setting up a system for the purchase and sale of such density “credits.”

Incentives for the production of public amenities such as open space, recreational facilities, or infrastructure improvements can be established based on Southborough’s existing zoning districts and development regulations (such as Major Residential Development) or by establishing an overlay district with which to target the incentive. Unlike incentives for historic preservation, the incentives below seek to influence new development or redevelopment, not preservation. Therefore, the incentive is a density bonus, or an expansion of development potential on a given site. Therefore, this type of incentive must only be targeted to areas where additional density is desirable and generally acceptable to the community. Density bonuses for existing zoning district for existing zoning provision include:

- ◆ An increase in FAR in exchange for public infrastructure improvements, such as sidewalks and pedestrian crossings. This type of incentive could be applied to the BV or BH districts, where there may be demand for additional density and where pedestrian infrastructure is necessary and appropriate. This would be especially powerful for the BV district if the boundaries are reconfigured to make the existing districts larger or incorporate other areas, such as Southborough’s two other “village” areas. If multi-family development is allowed as of right in the BV district, the incentive could also be for additional dwelling units in exchange for pedestrian facilities. The town will need to decide the formula or method by which to determine the amount of public amenity that must be provided per “X” amount of density. The Zoning Bylaw should also site standards and specifications to be used for the design of sidewalks and other pedestrian amenities.
- ◆ An increase in residential density in exchange for open space or recreational facilities. This type of incentive could be applied through the Major Residential Development process or whatever “cluster” provision takes it place. Although common open space is a mandatory output of a cluster-style development, Southborough could create an incentive to further increase the amount of open space that is preserved, or to encourage the provision of public recreational facilities or amenities such as a park, hiking or bike trail, or playing fields. Amenities such as open space and trails are driven by context, and therefore it would be difficult to create a strict formula for administering such an incentive. Therefore, this type of incentive will require some sort of discretionary review to determine an appropriate amenity in exchange for a certain amount of additional density. Since Southborough’s current MRD

provision requires a special permit, this type of incentive would fit well into the existing approvals process. Additionally, changes to MRD or creation of an OSRD bylaw should consider the creation of open space and public amenities incentives.

Establishing an overlay district is another way to set up an incentive for any of the public goods listed above: historic preservation, open space, recreational facilities, or public infrastructure. Instead of defining the target area by existing zoning districts or a list of eligible properties, a new overlay district would be created with the purpose of offering increased development potential for the desired public good. In addition to offering density bonuses, an overlay district could be used to allow mixed-use development in certain areas in exchange for a desired and appropriate amenity, if it is determined there is sufficient demand for this use in certain areas of Southborough.

Density bonuses could also be offered for adopting “green” development practices. These options are discussed in below.

### **2.2.2 Integrating “green” development practices into the Zoning Bylaw**

The Southborough Master Plan includes a recommendation to “Adopt policies to encourage green development practices and LEED certifiable technologies by the Town and private developers.” “Green” development and building are very broad terms that mean different things to different people. The most challenging aspect to incorporating “green” provisions into Southborough’s zoning bylaw may not be determining where they will go, but deciding just what they are. To do this, the town needs to define what is means by “green” development, which measures make sense for Southborough, and then develop a list of objectives and standards by which it will evaluate potential projects.

Standards to decrease environmental impacts and increase energy efficiency (two general aspects of “green” development) can be applied on a number of levels and to a number of development types. Improvements can be made to a building itself, addressing its mechanical systems and materials. Green considerations also apply to the building site and can include things like stormwater remediation. Green building measures should also be targeted to a specific building type, such commercial, office, residential, and municipal buildings. Therefore, for each building type and level of development, the town will need to come to agreement on the list of environmental and energy standards it wishes to either encourage or require.

Many people regard LEED (Leadership in Energy and Environmental Design) as the go-to source for environmentally progressive building standards. While LEED is a long-running and respected source for standards, they are not the only source. Also, while LEED has a relatively long history of providing standards for office and commercial development, its standards for residential development, including single-family homes, is are newer and have been used less. Therefore, LEED should be considered as a source for environmental standards, but not the only source.

A final consideration regarding environmental and energy standards is how they will affect the cost of development. If a requirement adds substantially to a developers’ cost, a well-intended environmental standard may have the unintended affect of discouraging development. For this

reason, developers and other industry-side professionals should be consulted and made part of the discussion of which environmental and energy standards Southborough will adopt of its own. There are also legal implications to developing building standards; the Building Inspector should be consulted in order to determine whether suggested standards would exceed local authority under the State Building Code.

Options to encourage or require green development (which may include LEED or LEED-like standards and practices) include:

- ◆ Offer a density bonus for integrating environmental standards into a project. In the same way that zoning incentives through density bonuses could encourage the preservation of historic buildings or the provision of public amenities, so could they encourage more environmentally-sensitive building and development practices. In this case, the Town could encourage developers to integrate green building and/or development standards into new projects. Consideration would need to be given to which zoning districts (or overlay district) the incentive would apply.
- ◆ Require green development standards through an amended Site Plan Approvals process. This approach would enhance site-level approval criteria (which are now fairly general), including stormwater remediation, transportation linkages, pedestrian facilities and connections, and landscaping and vegetation considerations. Section XX identified incorporating green development standards into Southborough's existing Section 174.10.D. Site plan approval triggers mean that most new non-residential construction projects and redevelopment projects would be subject to the new green development standards. However, with the exception of multi-family housing for the elderly, the standards would not apply to residential development in Southborough.
- ◆ Require green development standards as part of the special permit approvals process. Standards similar to those developed for a site plan approvals process could alternatively be applied to the requirements for special permit approval. This would likely encompass a greater range of projects than the site plan approvals approach. However, the Zoning Bylaw could specify whether the standards would only apply to some uses.
- ◆ Proceed with any of the options above, but create green building and development standards as a separate document that is referred to by the Zoning Bylaw, but is not part of it. While any of the options above could rely on standards that are part of the Zoning Bylaw, codifying the standards makes them difficult to change. An alternative approach would be to prepare a document that is referred to in appropriate sections by the ZBL, and amended and accepted as necessary

### **2.2.3 Encouraging transit-oriented development around MBTA Station**

Conventional definitions of transit-oriented development (TOD) include a number of elements. The basic concept of TOD is to create a "center" out of a transit node—which usually includes, but is not limited to, rail—by allowing greater residential and commercial densities, allowing mixed-use development, promoting the location of services and jobs, and creating linkages between different types of transportation with an emphasis of transit, walking, and biking.

Within large metropolitan areas, TODs can become town centers in and of themselves. While the Southborough Station on the MBTA's Worcester Line is not likely to become such a center, the station is a TOD opportunity nevertheless.

Southborough can enable and encourage TOD by establishing a TOD overlay district. A TOD overlay district would be superimposed over existing zoning, giving property owners within the overlay the option to follow an alternative set of use, density, and dimensional regulations, and possibly design standards or guidelines. Specifically, this overlay should include several key provisions:

- ◆ Allowance for a mix of uses, including residential, with an emphasis on pedestrian-oriented retail and service establishments on the ground floor
- ◆ Increased residential densities and expanded housing options (e.g. apartments, townhouses)
- ◆ Increased commercial densities
- ◆ Alternative dimensional requirements to bring buildings closer to the street and create an engaging, human-scale, and pedestrian-oriented environment
- ◆ Reduced parking standards for businesses and residences, including the opportunity for shared parking for two or more uses that can demonstrate different peak demands
- ◆ Pedestrian and bicycle infrastructure to connect the surrounding area with the rail station

Some of these measures are suggested for other places in the zoning bylaw. For instance, site plan review could contain criteria for bicycle and pedestrian infrastructure, and mixed-use development could be established in the Business Village and Business Highway districts. However, a TOD overlay district is a unique zoning provision for two reasons: it brings these elements together in one location, and more importantly, it allows for increased residential and commercial densities surrounding the transit station.

In crafting a TOD overlay, Southborough will want to consider carefully the following:

- ◆ Appropriate densities. Determining the "right" densities to allow in a TOD district will depend on a few things. First and foremost, the town needs to determine if there is a market for the projected development. While a transit station can help to boost real estate demand, it is not the sole source of demand. Therefore, some type of market analyses should be completed to help determine the amount of residential, commercial, and if applicable, light industrial, development the TOD area can sustain. Second, the town needs to confer with residents, businesses, and other property owners in the surrounding area about potential land use plans and build-out scenarios for the area, were a TOD overlay to be put in place. Allowing and promoting a concentration of development for the Southborough Station area would be a change for the town and therefore needs to be discussed early on and throughout the process of crafting an overlay district. This discussion could be part of a larger community conversation on the future of the Cordaville village area.

- ◆ Parking. Reduced parking standards are an essential part of a successful TOD because they allow for more concentrated development without sacrificing valuable land for surface parking. However, the Southborough Station is also a park-and-ride facility, with commuters driving from surrounding communities and from Southborough itself to park and ride the train. In order to sustain existing ridership, Southborough will most likely need to maintain its current level of parking. The site's existing surface parking lots are valuable redevelopment opportunities. However, removing surface parking and replacing it with a structure may not be financially feasible. This issue will require further analysis and investigation of funding options from state and federal sources.
- ◆ Affordable housing. A TOD overlay in Southborough should contain an inclusionary zoning provision. Packaging affordable housing together with transit makes sense because it locates transportation options and job opportunities proximate to the populations that would benefit most from them. In addition, it will allow the town to increase its supply of affordable housing. Southborough should confer with SHOPC, developers, and other communities to determine a feasible requirement for affordable housing.
- ◆ Boundaries of TOD overlay. Conventional transit-oriented design principles advise that the target area for a TOD should be a quarter mile radius from the transit station. Because the Southborough Station site is not a blank slate, other factors will figure into a determination of a TOD overlay's boundaries, such as: property ownership of key sites, the character of the built environment in the surrounding area, and the boundaries of the Cordaville village area. As with many aspects of crafting a TOD overlay, the boundaries of the district should be vetted with local stakeholders.
- ◆ Design guidelines or standards. Since one of the objectives of a TOD may be to create an inviting, pedestrian-oriented, and aesthetically-pleasing environment, Southborough will want to think about whether to create design guidelines or standards for a TOD overlay. Many design issues would be covered in the alternative set of dimensional regulations that would be created for the district. Other guidelines could go beyond the basic form of the buildings, although they need not be stylistically prescriptive. Instead they could provide rules or guidance on aspects such as the relationship of buildings to street, building massing, and fenestration, and also on aspects of the built environment such as streetscape or the configuration of parking. Alternatively, design standards or guidelines for a TOD overlay district could refer to design guidelines for the Cordaville village area, should Southborough decide to create such a document.
- ◆ Procedures for TOD overlay district. A property owner who elects to follow regulations for a TOD overlay district would be presented with a list of by right and special permit uses, as in any other zoning district. The town would need to decide who the Special Permit Granting Authority would be with the TOD overlay district. The overlay districts design standards or guidelines should provide site-level guidance or requirements. However, some projects in the TOD overlay district would also require site plan review. Care should be taken to ensure that site plan approval criteria compliment rather than conflict with design standards or guidelines for the TOD district.

## 2.3 FORM BASED CODES

Form-based codes are a method of regulating the built environment that emerged out of the New Urbanist movement. New Urbanism promotes a set of planning and design principles based on “traditional” city design. Some of the key principles of New Urbanist design and development are:

- ◆ A formalistic, gridded street network;
- ◆ Buildings built close to and defining the street;
- ◆ A variety of housing types within one district;
- ◆ A mix of uses within one district;
- ◆ Prominence given to civic structures and public spaces; and
- ◆ Exterior architectural features such as porches, balconies, and stoops intended to foster greater socialization.

Form-based codes (or form-based zoning as it is called by some) emerged as the regulating arm for New Urbanist principles and they have always accompanied New Urbanist projects. The first form-based code was exceedingly simple: a one-page poster that laid out regulations for building height, siting, and the treatment of yards and outbuildings, all in graphical format instead of text and tables. While this approach worked for private New Urbanist developments, many of the principles central to New Urbanist development—such as mixed-use areas, higher density housing, and buildings that front the street—are usually not permitted under conventional zoning. Therefore, to enable publicly-regulated New Urbanist development or redevelopment, some argued for a new method for regulating form and use.

Adopting a form-based code is not the only way to regulate the form of the built environment or implement any of the New Urbanist principles. Supporters of FBCs argue that it is better to adopt an entirely new code rather than amend and adjust existing zoning. However, conventional zoning, since its inception has always been used as a form-giving instrument. For example, conventional zoning was used to create the distinct urban forms for different parts of New York City starting as early as 1916. It is also important to note that conventional zoning is already widely used to regulate form through use of height, lot coverage, yards, and density regulations.

The following chart lists some of the advantages and disadvantages of form-based codes as compared to conventional zoning:

<b>Advantages</b>	<b>Disadvantages</b>
Based in a vision for an entire area that was developed with community input and support.	Usually better suited to urban environments where the relationship of building to streets, presence of public space, and mix of uses is of primary importance.

Advantages	Disadvantages
Greater control over the dimensional standards across an area (e.g. FBCs can clearly articulate different setback regulations for different streets within a single district).	Usually better suited to new development, although they have been and can be applied to an existing area to shape redevelopment and infill.
May be easier to comprehend and understand due to their highly visual nature.	True adoption of an FBC requires a whole-sale change from one type of zoning to the other.
	Questions of lawfulness in the state of Massachusetts.

### 2.3.1 Elements of a Form-Based Code

- ◆ FBCs are based on a **Regulating Plan**, a map that shows the disposition of each building site as it relates to other buildings streets, alleys, and open spaces. The plan also shows the typology of each building, which is usually one of a list of typologies chosen for the code during the design process. Each of the building typologies has a specific “frontage” which further defines the relationship between the building and street and helps to define the hierarchy of streets laid out in the plan. Additionally, the plan shows the “required building line,” which designates little or no setback between the building and the street, instead of the maximum setback requirements typical of conventional zoning codes.
- ◆ **Building Envelope Standards** further articulate the relationship between building, street, and general building form by specifying basic dimensional standards such as height, setback, and for some codes, floor-area ratio, and density. Uses for each building type may also be included in this section, and the code usually allows a vertical mix of uses. It is important to note that, though use is sometimes a less-prominent factor in a form-based code as compared to its role in conventional zoning, FBCs can be just as prescriptive of uses as conventional zoning. For example, SmartCode®—a model template form-based code that is adapted for particular municipalities—has “Building Function Standards” in addition to Building Envelope Standards, which are analogous to use requirements.
- ◆ **Elements** specify the type of street frontage, fenestration, and other general building features. An example of an Element might be a requirement that a certain percentage of the upper-story units on some building types have balconies or that lower stories along a certain street have awnings. Other common Elements might include porches and stoops for residential neighborhoods, and transparent first-floor shop fronts and arcades for commercial area.
- ◆ **Other standards** may include architectural, streetscape, and/or landscape standards. Such standards are by far the most prescriptive part of a form-based code, and can vary quite a bit between different communities.

Adopting an entire form-based code may not be the best option for smaller New England towns that only want to influence a certain district or area. However, New Urbanist or Traditional Neighborhood Design (TND) principles can be adopted through other zoning and regulatory methods besides form-based codes. These include the following:

- ◆ Creating a new zoning district based on form considerations of an area rather than use. This, essentially, is the idea behind form-based codes. Instead of drawing zoning district boundaries based on use, boundaries are drawn to regulate the overall development pattern or “fabric” of an area. Thus, a community could identify a “form area” and create a zoning district with dimensional requirements that promote that form. Use regulations would also apply. While a simple approach, creating new zoning districts is often politically very difficult for most communities. However, it is still a viable option to pursue a form-based approach to zoning.
- ◆ Creating a Traditional Neighborhood Design (TND) overlay. This would provide an additional set of rules to the underlying zoning district to enable many of the ideas espoused by New Urbanists such as buildings that face the street, a mix of uses with active ground floor uses, a variety of housing types, and higher overall densities. (Note that if Southborough decides to create a TOD overlay as discussed above, many of these considerations would also apply.)
- ◆ Adjusting existing zoning. In some instances, some of the same aspects of an FBC can be delivered through changing the existing zoning’s dimensional and use requirements. This works well where zoning district boundaries also represent a “form boundary” or an area that should have a similar development pattern and built features. A good example of this would be Southborough’s BV districts, which are as much about form as they are about use. In this case, setbacks could be adjusted to bring buildings closer to the street, use regulations could be changed to allow a mix of uses and a variety of housing types, and density regulations changed to allow more concentrated development. In addition, some design standards could be codified to regulate streetscapes and frontage types.
- ◆ Create design guidelines or design standards for a certain area. In addition to codified standards for zoning district, additional design guidelines or standards, can be created. These guidelines or standards could address more nuanced aspects of the built environment such as materials, fenestration, roof pitch, and architectural style. The level of prescriptiveness could vary between districts. Such guidelines or standards could be part of the zoning code or remain in a separate document that is referenced by the zoning code.

### 3.0 CLARIFICATIONS & TECHNICAL REFERENCE UPDATES

#### 3.1 ZONING BYLAWS

- ◆ §174-2 Definitions – BASEMENT – change “building” to “building story” or define height. Define “grade”
- ◆ §174-2 Definitions – CELLAR – change “building” to “building story” or define height. Define “grade”
- ◆ §174-2 Definitions – FRONTAGE – this definition could be clarified with a figure or graphic.
- ◆ §174-2 Definitions - YARD – this definition could be clarified with an amended figure or graphic. Define “setback,” refer to yard?
- ◆ §174-8.2 D(6) RA District– Irregularly shaped lots – clarify dimensional requirements
- ◆ §174-8.3 D(6) RB District– Irregularly shaped lots – clarify dimensional requirements.
- ◆ §174-13.3 LID & §174-13.5 Stormwater & Erosion Control - These sections have much in common, but the definitions vary, a potential source of confusion. For example, see “New Development”, “Alter” and “Redevelopment”.
- ◆ §174-13.5 Stormwater & Erosion Control: Includes a definition for “Better Site Design”, is this actually LID?
- ◆ §174-13.5 Stormwater & Erosion Control -DEP Stormwater Management Handbook sometimes referred to as Stormwater Management Manual
- ◆ §174-13.5 (I)(1)(e) Stormwater & Erosion Control - No net increase in volume across site boundary – is this practical for many projects?
- ◆ §174-13.5 (I)(1)(i) & (m) Stormwater & Erosion Control - Requirements for dust control redundant. Can these two be combined?
- ◆ §174-13.4 (B)(1)(a) Water Resources Protection – Update reference to “DEQE” to DEP
- ◆ §174-13.3 (D)(7) LID – Exemptions for Redevelopment:
  - ◆ Total impervious cover reduced by 40%. Should this really be total impervious cover reduced to 40%? For example, if cover was 100%, reducing by 40% would leave 60% impervious cover.

- ◆ Compare to rest of exemptions: When no reduction possible, LID for stormwater controls for 40% of impervious area. When combination of reduction and LID practices used, impervious area reduction should be 40% or more
- ◆ §174-13.5 (C) Stormwater & Erosion Control – Applicability: Activity that will increase amount of impervious surface >50% of the area. Does this mean area increased to 50% or total impervious surface >50% as a result of project?

For example: 1-acre lot, .25-acre impervious:

- ◆ Convert additional .13 acre to impervious
- ◆ Total impervious after is .38 acre
- ◆ Increase in impervious >50%, and Total impervious <50%
- ◆ Would this project be subject?
- ◆ Language needs clarification
- ◆ §174-8.9 WFP Wetland and Floodplain District – Confusing
- ◆ §174-8.9 WFP Wetland and Floodplain District – Date October 8, 1985 cf. to §174-9 (F)(6) date used is May 1975, should date be referenced at all? If so, date needs to be consistent in both sections.
- ◆ §174-13.4 – Update to reflect current regulations.
- ◆ 174-13.4 - Uses requiring Special Permit: Can B(1)(b) and B(1)(d) be combined?
- ◆ Addendum #1 Illustration of Setbacks – could be improved

### 3.2 SUBDIVISION REGULATIONS

- ◆ Update all definitions with current terminology.
- ◆ Add LID regulation specifics including standards?
- ◆ §244-9 B(1) – Update language, specifically “tracing paper”
- ◆ §244-10 A(1)(a) – Update language, specifically “sepia”
- ◆ §244-10 B – Update to include electronic media for submission.
- ◆ §244-10 B (15) Water mains and drains – Address ownership and future maintenance

- ◆ §244-10 B (17) – Survey standards should be updated
- ◆ §244-10 D (7) – Building siting and lot shape for solar energy potential – this has been largely ignored, should it moved to LID?
- ◆ §244-12 General Requirements – This entire section needs updating
- ◆ §244-13 A (4) Update language
- ◆ §244-13 A (7) Update language
- ◆ §244-16(B)(1) Drainage: Value of imperviousness cannot be less than 0.30. This may be in conflict with the LID bylaw where imperviousness could be less than 30%.

### 3.3 OPPORTUNITIES TO CONSOLIDATE

This table compares various provisions of Southborough's ZBL and Subdivision Regulations that may be appropriate for the Town to consolidate. It is intended to serve as a discussion document with the Master Plan Committee, other town boards, and professional staff.

Bylaw	Permit/Approval Issuing Authority	Applicability	Notes
Water Resource Protection (Section 174-13.4)	Board of Appeals	<ol style="list-style-type: none"> <li>1. Waste generation requiring DEP ID number (except small quantity generators).</li> <li>2. On-site sewage disposal having an estimated sewage flow greater than 15,000 gpd regardless of location, or greater than 1,500 gpd if within 500 feet of any surface water body.</li> <li>3. Rendering impervious more than 75% of lot area.</li> <li>4. Except for single family dwellings, on-site sewage disposal systems having an estimated sewage flow exceeding 120 gpd per 10,000 square feet of lot area.</li> <li>5. Discharge to surface water requiring a permit under 314 CMR 3.00 (NPDES permit).</li> </ol>	
Wetland and Floodplain District (Sec. 174-8.9)	Board of Appeals	<ol style="list-style-type: none"> <li>1. Within the overlay district, expansion of existing buildings, constructions/relocations of ways, alteration of watercourses, waterbodies and dams, fill, earth relocation, new uses and structures of expansions allowed in underlying district.</li> </ol>	
Lower Impact Development (Sec. 174-13.3)	Planning Board	<p>Required for the following:</p> <ol style="list-style-type: none"> <li>1. Any activity subject to Major Plan Review (§174-10);</li> <li>2. Any activity that will result in soil disturbance of one acre or more;</li> <li>3. Any residential development or redevelopment of five (5) or more acres of land proposed pursuant to the "Subdivision Control Law" G.L. c41 sec. 81K to 81GG inclusive, or proposed under a special permit process pursuant to G.L.c40A sec.9.</li> </ol>	

Bylaw	Permit/Approval Issuing Authority	Applicability	Notes
Stormwater and Erosion Control (Sec. 174-13.5)	Conservation Commission	<ol style="list-style-type: none"> <li>1. A Stormwater and Erosion Control Permit shall be required from the Commission for the following:</li> <li>2. Any activity subject to Major Plan Review (§174-10);</li> <li>3. Any activity that will result in soil disturbance of one acre or more, or more than fifty percent (50%) of the parcel lot, whichever is less;</li> <li>4. Any residential development or redevelopment of five (5) or more acres of land proposed pursuant to the "Subdivision Control Law" G.L. c41 sec. 81K to 81GG inclusive, or proposed under a special permit process pursuant to G.L.c40A sec.9</li> <li>5. Any activity that will increase the amount of impervious surfaces more than 50% of the area of a parcel or lot, and</li> <li>6. Any activity that will disturb land with 15% or greater slope and where the land disturbance is greater than or equal to 15,000 square feet within the sloped area.</li> </ol>	
Subdivision of Land (Chapter 244)	Planning Board	<ol style="list-style-type: none"> <li>1. No person shall make a subdivision within the meaning of the Subdivision Control Law or any land within the town, or proceed with the improvement for sale of lots in a subdivision, or the construction of ways, or preparation therefore, or the installation of utilities and municipal services therein, unless and until a definitive plan of such subdivision has been submitted and approved by the Planning Board.</li> </ol>	