

## ZONING

### ARTICLE I

#### Miscellaneous Provisions

##### **§ 174-1. Purpose; scope.**

- A. This Zoning Chapter of the Town of Southborough, Massachusetts, has been adopted and from time to time amended and recodified under the authority of Chapter 40A and other relevant provisions of the the General Laws of Massachusetts for the purpose of protecting and promoting the health, safety, convenience and welfare of the current and future inhabitants of Southborough and for other purposes contained in § 2A of Chapter 808, Acts of 1975.
- B. This Zoning Chapter divides the Town of Southborough into districts, in which the location, construction, occupancy and use of buildings, structures, premises and land is regulated and restricted as provided hereinafter.

##### **§ 174-2. Definitions.**

- A. Unless the context clearly indicates otherwise, the word "shall" is intended to be mandatory, the word "may" is merely permissive, the singular includes the plural, and the present tense includes the future, and other words and phrases have the following meanings.
- B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ABUTTER - One who abuts

ABUTTING- Having a common property line with, contiguous to, fronting upon or within three hundred (300) feet of any property line thereof.

ACCESSORY APARTMENT - A subsidiary dwelling unit created within or as an extension to a single-family dwelling or a structure accessory thereto, with separate cooking, sleeping and bathroom facilities.

ACCESSORY BUILDING OR USE - A building, structure or use customarily incidental and subordinate to the principal permitted use of the building or land, located on the same lot as the principal permitted building or use, and not prohibited by this chapter. No detached accessory structure shall be closer than six (6) feet to a primary structure.

For the purpose of this chapter, any area on a lot used for the landing and take-off of aircraft, as defined by M.G.L. Chapter 90, Section 35, or helicopters (except as allowed in the Industrial Park District by Special Permit re:174-8.6 C) on a regular or intermittent basis shall NOT be considered an accessory to use and therefore not allowed as an accessory or principal use in any zoning district.

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**ALTERATIONS, MINIMUM EXTERIOR** - External alterations limited to those necessary to comply with applicable building, fire or health codes and not enlarging the usable area of a building or changing its character.

**BASEMENT** - That part of a building which is partly below and partly above grade, and having at least one - half (1/2) its height above grade.

**BUILDING** - A structure having a roof and intended or used as a shelter for humans, animals or goods, to be construed as if followed by the words "or any part thereof." Buildings which are touching, structurally connected or attached shall be considered as one (1) "building."

**CELLAR** - That part of a building which is partly or completely below grade, and having at least one-half (1/2) its height below grade.

**CUSTOMARY HOME OCCUPATION** - The use of a portion, not exceeding twenty-five percent (25%), of a one-family home, including the accessory buildings, by persons resident therein for a gainful occupation that is clearly incidental and secondary to the use as a residence; that does not generate a significant increase in traffic, noise, smoke, vibration, dust, odors, glare, unsightliness or other effects not normally produced by a residence; that involves no exterior display or storage of goods, tools, materials or equipment or the parking of more than one (1) commercial vehicle; that gives no exterior indication of such occupation, other than one (1) sign not over four (4) square feet; that involves only motive power normally found in a home; that does not employ more than two (2) persons not resident therein; that involves the exercise of artistic, domestic, personal or professional skills; and that requires the approval of the Board of Health for disposal of any waste generated by such occupation that differs in quantity or composition from domestic solid or liquid waste.

**DOG KENNEL** - The keeping for sale or boarding purposes, including convalescence or treatment, of more than three (3) dogs that are more than six (6) months old.

**DWELLING, MULTIFAMILY** - A dwelling containing two (2) or more dwelling units.

**DWELLING UNIT** - Living quarters for a single family.

**FAMILY** - Any number of individuals related by blood, marriage or adoption, and not more than six (6) individuals not so related, living together as a single housekeeping unit. [The limit on the number of unrelated individuals shall not apply to foster children under sixteen (16) years of age.]

**FARM** - Land or premises used to raise agricultural, silvicultural or horticultural products, livestock, poultry and dairy products, other than piggeries, dog kennels, riding stables and the raising of carnivorous fur-bearing animals.

**FLOOR AREA, GROSS** - The aggregate horizontal area, in square feet, of all floors of a building or several buildings on the same lot, measured from the interior faces of walls

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enclosing each building, exclusive of stair and elevator wells, garages, basement and other areas used only for storage or for services incidental to the operation and maintenance of such a building or buildings. In the absence of information as to what portion of the building will be used for such storage and services, eighty percent (80%) of the aggregate floor area shall be deemed to be the floor area for the purposes of computing the required off-street parking and loading spaces.

**FLOOR AREA RATIO** - The ratio of the aggregate gross floor area of all floors of a building or buildings on a lot to the total lot area. The gross floor area shall not include unenclosed porches, cellars, attics or garages not used for human occupancy.

**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.

**FUR FARM** - The keeping or raising of carnivorous fur-bearing animals for commercial purposes.

**GARAGE** – A garage in the Residence A and Residence B Districts shall be considered an accessory use to a home or building.

**HEIGHT** - The vertical difference between the average of the mean finished ground elevations of all sides of the building or structure and the elevation of the highest point of the roof for flat roofs, to the declivity of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. This definition shall not include signs and the structural features exempt by § 174-15 hereof and extending not more than twenty (20) feet above the permitted height. For buildings subject to site plan approval under § 174-10 hereof, the average finished ground elevation shall not be raised above the original natural ground through fill or regrading to more than two (2) feet above the center-line grade of the frontage street opposite the proposed building, unless the approved site plan provides for such buildup.

**HOUSING FOR THE ELDERLY** - Housing with occupancy of each dwelling unit reserved to no more than two (2) persons, one (1) of whom must either be fifty-five (55) years of age or older or handicapped.

**IMPERVIOUS** - Impenetrable by surface water.

**INDIVIDUAL** - A human being.

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**JUNKYARD** - Premises used for the collecting, storage and sale of wastepaper, rags, scrap metal or discarded materials or for collecting, dismantling, storage, salvage and sale of used machinery, vehicles or parts thereof.

**LOT** - A single tract of land in identical ownership throughout with definite boundaries ascertainable through a recorded plan or deed.

**MAJOR RESIDENTIAL DEVELOPMENT** - Refer to §174-13.2A.

**MOBILE HOME** - A structure, transportable in one (1) or more units, built on a permanent chassis, equipped with wheels for towing to its destination, provided with internal heating, plumbing and electrical systems and designed to be used as a dwelling when connected to the required utilities, with or without a foundation.

**NONCONFORMING BUILDING, LOT OR USE** - A legally existing building, lot, location of building on a lot or use of buildings or land which does not conform to the zoning regulations for the district in which it is located.

**NONPROFIT COMMUNITY HOUSING ORGANIZATION** - A Massachusetts corporation or foundation, no part of the net earnings of which inures to the benefit of any private shareholder or individual, established by Southborough residents for the sole purpose of providing housing facilities and services.

**ONE-FAMILY HOUSE** - A detached dwelling intended and designed to be occupied by a single family.

**OPEN SPACE** – Open Space shall mean that portion of the lot area that is not covered by any structure and not used for drives, parking, storage or display. Wetlands, ponds and man-made retention areas shall not be considered open space for the purpose of calculating the requirements of this bylaw. Subsurface sewage disposal systems shall not be allowed within designated open space except that areas designated for reserve or expansion of an individual or shared system shall be allowed only if in the opinion of the Board of Health no other options are available or if in the opinion of the Planning Board it would be beneficial to the overall layout of the development. All open space shall be stabilized with natural vegetative cover. Open Space shall be permanently protected by recorded deed.

**PERSON** - One (1) or several individuals, a family, firm, partnership, association, corporation, company or institutional organization of any kind.

**PIGGERY** - The keeping of five (5) or more pigs over one (1) year old.

**PREMISES** - A lot, with all buildings, structures, improvements and uses thereon.

**RESTAURANT** - An establishment primarily for serving by a waiter or waitress, and consumption of meals at tables or at a counter, on the premises.

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**ROADSIDE STAND** - A structure erected and used exclusively for the sale of flowers or farm and garden products, the majority of which, by value, have been grown on the premises or within the Town of Southborough. The structure may be located within the minimum required front yard, but at least twelve (12) feet from the nearest street line, if built of wood and other readily movable materials, without a foundation, integral heating or permanent utility connections, and not over three hundred fifty (350) square feet gross floor area.

**STORY** - The part of a building between the top of any floor and the top of the floor or roof next above, including a basement, but excluding a cellar or attic.

**STORY, HALF** - That part of a building under a gable or sloping roof in which the intersection of the bottom of the rafters with the interior faces of the outside walls is four (4) feet or less above the floor level or that part of a building if more than half of its exterior wall is below the mean finished ground elevation, and excluding a cellar or attic used solely for utilities, services or storage and not for sustained human occupancy.

**STREET** - A public way laid out for vehicular traffic; a private way laid out and approved under the authority of the Subdivision Control Law, Chapter 41 of the General Laws; a way which the Town Clerk certifies has been used and maintained as a public way; or a way in existence when the Subdivision Control Law went into effect in the Town of Southborough and having, in the opinion of the Planning Board, adequate width, construction and grades for the needs of the existing and future buildings and uses abutting thereon or to be served thereby.

**STRUCTURE** – A man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds and the like, provided that signs, utility poles and small decorative or accessory structures not over three (3) feet in height or six (6) feet in any dimension, such as sculptures, mailboxes, birdbaths, benches and the like shall not be subject to the yard requirements of this chapter if located at least five (5) feet from side or rear lot lines. Fences that are not over six (6) feet in height shall not be considered structures.

**TOXIC OR HAZARDOUS MATERIALS** - Substances listed on the Massachusetts Substance List contained in 105 CMR 670, Appendix A, substances regulated as hazardous under M.G.L.A. C. 21C, as amended, and regulated substances defined under Subtitle 1, §9001, of the Resource Conservation and Recovery Act, as amended.

**TRAILER** - A wheeled vehicle designed to be towed and having no own motive power, including, without limitations, camping or travel trailers equipped to be used for business, for transportation of goods or for living or sleeping purposes, but not as a dwelling in a permanent location.

**VEHICULAR USE AREA** - Includes all areas used for the circulation, parking and/or display of any and all types of vehicles, boats or heavy construction equipment, whether self-propelled or not, and all land upon which vehicles traverse as a function of the

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primary uses. Driveways and parking spaces serving single-family residential uses shall be an exception to this definition.

**WIDTH** - The straight-line distance between lot lines parallel to a line connecting lot corners at frontage street and applicable for the entire front yard or setback depth.

**WIRELESS COMMUNICATIONS TOWER** - A structure (with antennas, if any) designated to facilitate the following types of services: cellular telephone service, personal communications service, and enhanced specialized mobile radio service.

**YARD** - A strip of land, unoccupied by buildings or structures, between a street or a lot line and a line parallel thereto at a depth equal to the minimum distance to the nearest part of any building or structure, measured at right angles to such street or lot line. If a lot is triangular or wedge-shaped, it shall have no rear yard, while on an irregular-shaped lot, the rear yard shall be adjacent to the lot line most nearly opposite the frontage street. The minimum required yard may also be referred to as the required setback. (See Addendum # 1, Page # 82)

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**ARTICLE II  
Establishment of Districts****§ 174-3. Districts enumerated.**

For the purpose of this chapter, the Town of Southborough is hereby divided into the following classes of districts:

- A. Residence A Districts, which may be referred to as RA Districts.
- B. Residence B Districts, referred to as RB Districts.
- C. (Reserved)<sup>1</sup>
- D. Industrial Districts, referred to as ID Districts.
- E. Industrial Park Districts, referred to as IP Districts.
- F. Conservation Districts, referred to as C Districts.
- G. Wetland and Floodplain Districts, referred to as WFP Districts.
- H. Research, Scientific and Professional Districts, referred to as SP Districts.
- I. Critical Resource Districts, referred to as CR Districts.
- J. Business Village Districts, referred to as BV Districts.
- K. Business Highway Districts, referred to as BH Districts.
- L. Wireless Communication Service Districts, referred to as WCS Districts.

**§ 174-4. Zoning Map.**

The location and boundaries of zoning districts are as shown on the Zoning Map of the Town of Southborough, dated April 9, 1984, as from time to time amended by votes of the Town Meeting, which map hereby is incorporated into and made a part of this chapter. The original Zoning Map, signed by the Planning Board and the Town Clerk, shall be in custody of the Town Clerk, and facsimile copies thereof shall be reproduced for distribution and sale with this chapter. Whenever the Zoning Map is amended, a notation of the Article and date of the town vote of such an amendment shall be entered on the Zoning Map as soon as possible upon approval of the amendment by the Attorney General, but any delay in showing the amendment shall not affect its validity. The addition of new streets or other geographic features to the Zoning Map to facilitate orientation may be undertaken from time to time without action by the town and without changing district boundaries. For the purpose of defining the boundaries of

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<sup>1</sup> Editor's Note: Former Subsection C, Business Districts, was repealed 4-14-1986 ATM, Art.49

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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 (3) acres or larger shown thereon are included in the Wetlands and Floodplain District. For the 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.

**§ 174-5. Interpretation of Boundaries.**

- A. Where a right-of-way, street, railroad or watercourse is shown on the map as a district boundary, the center line thereof shall be the boundary line.
- B. Where a district boundary is shown approximately parallel to a street, it shall be deemed parallel to the exterior street line and at such distance there from as indicated on the Zoning Map.
- C. Where district boundary lines specifically follow property lines as indicated on the Zoning Map, the location of said lines shall be deemed to be established to coincide with those property lines as they existed at the time said boundary lines were adopted.
- 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.



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**ARTICLE III  
Use Regulations****§ 174-6. Applicability.**

No land in any district shall hereafter be used or occupied and no building or structure shall hereafter be occupied, used or erected or the use of buildings and land altered except as set forth in the following Schedule of Use Regulations or as specifically regulated or provided otherwise under other sections hereof, provided that the accessory uses and buildings not enumerated in the schedule but necessarily or customarily incidental to a principal use, including the signs otherwise allowed, shall be deemed to fall into the same category as such principal use. Streets and easements for public services are a permitted use in all districts, except the Wetland and Floodplain Districts.

**§ 174-7. Conflict of classifications.**

Where an activity may be classified under more than one (1) use listed in the Schedule of Use Regulations, the more specific classification shall apply, and if equally specific, the more restrictive classification shall govern.

**§ 174-8. Schedule of Use Regulations**

- A. No building or structure shall be constructed and no building, structure or land or part thereof shall be used for any purpose or in any manner other than for one (1) or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by special permit in said district and so authorized.
- B. Further, no building shall be constructed and no building, structure or land or any part thereof shall be used and no lot shall be changed in size or shape unless in conformity with the regulations set forth for each district.
- C. The following notes apply to all districts:
  - (1) All uses and buildings for which off-street parking is required, other than one- and two-family dwellings, shall be subject to the site plan review and approval by the Planning Board, as provided in § 174-10.
  - (2) Not more than one (1) principal permitted use shall be located on any lot, provided that a multiple occupancy building used for the same category of use, such as retail sales and services, light manufacturing or offices in a business district or Industrial Park District shall be deemed to be in a single principal permitted use. The Board of Appeals may, by Special Permit, allow several different uses if otherwise permitted in the district or several buildings on the same lot if such uses or buildings are deemed to be compatible, meet the requirements of § 174-9 and result in improved circulation and land use patterns.

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- (3) For uses subject to a Special Permit, refer also to § 174-9, Special Permit requirements.
- (4) (Reserved)
- (5) Any lot created after April 8, 1996, in any zoning district except the BV Business Village District shall contain a minimum lot area of twenty thousand (20,000) square feet exclusive of wetlands as defined in the Wetlands Protection Act, MGL C. 131, § 40. Lots created under the Major Residential Development Bylaw (§ 174-13.2) flexible development provision that are less than twenty thousand (20,000) square feet shall be entirely exclusive of wetlands.

**§174-8.1. C Conservation District**

## A. Permitted uses are as follows:

- (1) Park, open space, noncommercial recreation, fishing and hunting where legally permitted, wildlife management and conservation area.
- (2) Agriculture, horticulture, floriculture or viticulture, except piggeries and fur farms.
- (3) Temporary nonresidential structure accessory to farming, fishing or similar permitted use of the land.
- (4) Signs as permitted under § 174-11.
- (5) Roadside stand.

## B. Uses by Special Permit are as follows:

- (1) Private garage or parking for more than three (3) cars or one (1) truck or other commercial vehicle. (Note: For uses subject to a special permit, refer also to § 174-9, Special Permit requirements.)

## C. Uses prohibited. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited. (Note: New or expanded uses required by the Metropolitan District Commission or other public agency having jurisdiction there for the purposes of water supply, drainage and land or water conservation are permissible in the Conservation District.)

**§174-8.2. RA Residence A District**

## A Permitted uses are as follows:

- (1) All uses permitted in the Conservation District.
- (2) One-family houses.

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- (3) Religious uses, public or nonprofit school.
- (4) Public or nonprofit library, museum, art gallery or a similar cultural institution.
- (5) Town or other government building.
- (6) Renting of rooms or furnishing of board to not more than four (4) persons by a resident family in a one-family house.
- (7) Mobile home or travel trailer used as a dwelling for thirty (30) days or fewer in a year.
- (8) Construction of private garage or private parking for not more than three (3) vehicles, that is accessory to a permitted principal use and on the same lot as such use. One vehicle may be a truck or other commercial vehicle.
- (9) Customary home occupation.
- (10) Parking in a garage or out of doors for employees, customers, clients, occupants or students, accessory to a permitted principal use and on the same lot as such use.

## B. Uses by Special Permit are as follows:

- (1) Accessory apartment.
- (2) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
- (3) Hospital, nursing home, home for the aged.
- (4) Private school, nursery or kindergarten.
- (5) Veterinarian, animal hospital, dog kennel.
- (6) Conversion of a one-family house in existence for two (2) years or longer to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (7) Mobile home or travel trailer used as a dwelling for more than thirty (30) days in a year.
- (8) Multifamily housing for the elderly, owned by a public or a nonprofit community housing organization.
- (9) Other multifamily dwellings if within a major residential development. (Note: Special Permit from the Planning Board.)
- (10) Major residential development. (Note: Special permit from the Planning Board.)

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- (11) Office-type trailer or mobile home used as business quarters.
  - (12) Private garage or parking for more than three (3) vehicles, that is accessory to a permitted principal use and on the same lot as such use.
- C. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.
- D. Development standards are as follows:
- (1) Minimum lot area: forty-three thousand five hundred sixty (43,560) square feet; twenty thousand (20,000) square feet exclusive of wetlands.
  - (2) Minimum frontage: one hundred fifty (150) feet.
  - (3) Minimum setbacks:
    - (a) Front: thirty-five (35) feet.
    - (b) Rear: fifty (50) feet; ten (10) feet for accessory buildings and swimming pools.
    - (c) Side: twenty-five (25) feet; ten (10) feet for accessory buildings and swimming pools.
    - (d) Other street: thirty-five (35) feet.
  - (4) Maximum height: thirty-five (35) feet, two and one-half (2 1/2) stories [seventeen (17) feet, one story for accessory buildings
  - (5) Maximum floor area ratio: eighteen-hundredths (0.18).
  - (6) Irregularly shaped lots. In the RA District, no lot shall be considered a building lot unless the center of a seventy-five (75) foot diameter circle can be passed along a continuous line from the lot frontage to the rear yard setback without the circumference intersecting any lot lines and unless the center of the seventy-five foot diameter circle can be passed along forty percent (40%) of the required frontage without the circumference intersecting any side or rear lot line. This Subsection D(6) shall not apply to an existing lot or existing dwelling or a dwelling for which a building permit has been issued as of the effective date of adoption of this Subsection D(6), or to any alteration, extension or structural change thereto.

**§ 174-8.3. RB Residence B District.**

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- A. Permitted uses are the uses permitted in the Residence A (RA) District.
- B. Uses by Special Permit are all uses permitted by Special Permit in the Residence A (RA) District.
- C. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.
- D. Development standards are as follows:
- (1) Minimum lot area: twenty-five thousand (25,000) square feet; minimum twenty thousand (20,000) square feet exclusive of wetlands.
  - (2) Minimum frontage: one hundred twenty-five (125) feet.
  - (3) Minimum setbacks:
    - (a) Front: thirty (30) feet.
    - (b) Rear: thirty-five (35) feet; ten (10) feet for accessory buildings and swimming pools.
    - (c) Side: fifteen (15) feet; ten (10) feet for accessory buildings and swimming pools.
    - (d) Other street: thirty (30) feet.
  - (4) Maximum height: thirty-five (35) feet, two and one-half (2 1/2) stories [seventeen (17) feet, one (1) story for accessory buildings].
  - (5) Maximum floor area ratio: thirty-hundredths (.30).
  - (6) Irregularly shaped lots. In the RB District, no lot shall be considered a building lot unless the center of a sixty two and five-tenths (62.5) foot diameter circle can be passed along a continuous line from the lot frontage to the rear yard setback without the circumference intersecting any lot lines and unless the center of the sixty two and five-tenths (62.5) foot diameter circle can be passed along forty percent (40%) of the required frontage without the circumference intersecting any side or rear lot line. This Subsection D(6) shall not apply to an existing lot, existing dwelling or a dwelling for which a building permit has been issued as of the effective date of adoption of this Subsection D(6), or to any alteration, extension or structural change thereto.
- E. Residence C Districts were discontinued in 1966; however, lots laid out and recorded in Residence B Districts prior to the discontinuance may be built onto the following dimensions for one-family houses:

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- (1) Minimum lot area: fifteen thousand (15,000) square feet.
- (2) Minimum frontage: one hundred (100) feet.
- (3) Minimum setbacks:
  - (a) Front: twenty-five (25) feet.
  - (b) Rear: thirty (30) feet; ten (10) feet for accessory buildings and swimming pools.
  - (c) Side: ten (10) feet.
- (4) Maximum height: thirty-five (35) feet, two and one-half (2 1/2) stories [one (1) story for accessory buildings].
- (5) Maximum floor area ratio: forty-five-hundredths (0.45).

**§ 174-8.4. BV Business Village District.**

## A. Permitted uses are as follows:

- (1) All uses permitted in the residential districts (RA and RB).
- (2) A mobile home or travel trailer used as a dwelling or business quarters for thirty (30) days or fewer in a year.

## B. Permitted uses up to two thousand (2,000) square feet are as follows:

- (1) Retail sales and services which do not involve manufacturing on the premises.
- (2) Newspaper, job printing and publishing.
- (3) Office, bank, office building.
- (4) Hotel or motel, restaurant (excluding drive-through food service establishments).
- (5) Clinic or medical testing laboratory.
- (6) Dwelling on the premises for a night watchman or janitor.
- (7) Cafeteria on the premises for use by employees and not the general public.

## C. Permitted uses by Special Permit from the Planning Board are as follows:

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- (1) All uses listed in Subsection B that are greater than two thousand (2,000) square feet.
- (2) Major residential development.
- (3) Multifamily dwellings if within a major residential development.
- (4) Hospital, nursing home, home for the aged.
- (5) Private school, nursery or kindergarten.
- (6) Veterinarian, animal hospital, dog kennel.
- (7) Multifamily housing for the elderly, owned by a public or a nonprofit community organization.
- (8) Private garage or parking for more than three (3) cars or more than one (1) truck or other commercial vehicle.
- (9) Indoor recreation, athletic or exercise facility.
- (10) Sale or storage of fuel, lumber, building materials and equipment, contractor's yard.
- (11) Retail sales and services involving manufacturing of products, the majority of which will be sold on the premises to consumers, with not more than four (4) persons engaged in manufacturing operations.
- (12) Automotive service, gasoline station or repair garage, automotive sales.

D. Uses by Special Permit from the Zoning Board of Appeals are as follows:

- (1) Accessory Apartment.
- (2) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
- (3) Conversion of a one-family house in existence for two (2) years or longer to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (4) A mobile home or travel trailer used as a dwelling or business quarters for more than thirty (30) days in a year.

E. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.

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F. Development standards (Note: Also refer to § 174-10.1, Village Business District plan review.) are as follows:

- (1) Minimum lot area: ten thousand (10,000) square feet.
- (2) Minimum frontage: sixty (60) feet.
- (3) Minimum setbacks:
  - (a) Front: ten (10) feet; twenty-five (25) feet if on Route 9.
  - (b) Rear: thirty-five (35) feet.
  - (c) Side: ten (10) feet; twenty-five (25) feet if adjacent to a residential district.
  - (d) Other street: ten (10) feet; twenty-five (25) feet if on Route 9.
- (4) Maximum height: thirty-five (35) feet, three (3) stories.
- (5) Residential dwellings. Residential dwellings in the Business Village District must comply with RB District standards.

**§ 174-8.5. BH Highway Business District.**

A. Permitted uses are as follows:

- (1) All uses permitted in the Residential Districts.
- (2) Dwelling on the premises for a night watchman or janitor.
- (3) Cafeteria on the premises for use by employees and not for the general public.

B. Permitted uses up to fifty thousand (50,000) square feet are as follows:

- (1) Office-type trailer or mobile home used as business quarters for thirty (30) days or fewer in a year.
- (2) Retail sales and services which do not involve manufacturing on the premises.
- (3) Retail sales and services involving manufacturing of products, the majority of which will be sold on the premises to consumers, with not more than four (4) persons engaged in manufacturing operations.
- (4) Newspaper, job printing and publishing.
- (5) Office, bank, office building.
- (6) Hotel or motel, restaurant (excluding drive-through food service establishments).



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- (7) Clinic or medical testing laboratory.
- (8) Automotive service, gasoline station or repair garage, automotive sales.

## C. Uses permitted by Special Permit are as follows:

- (1) All uses allowed in Subsection B that exceed fifty thousand (50,000) square feet.
- (2) Accessory apartment.
- (3) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
- (4) Hospital, nursing home, home for the aged.
- (5) Private school, nursery or kindergarten.
- (6) Veterinarian, animal hospital, dog kennel.
- (7) Conversion of a one-family house in existence for two (2) years or longer to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (8) Mobile home or travel trailer used as a dwelling or business quarters for more than thirty (30) days in a year.
- (9) Multifamily housing for the elderly, owned by a public or a nonprofit community housing organization.
- (10) Private garage or parking for more than three (3) cars or more than one (1) truck or other commercial vehicle.
- (11) Indoor recreation, athletic or exercise facility; theater for cultural arts.
- (12) Sale or storage of fuel, lumber, building materials and equipment, contractors yard.
- (13) Hazardous waste storage and disposal facilities, other than small generators, as defined by the Environmental Protection Agency and the Commonwealth of Massachusetts, except that a special permit may be issued for such a facility upon approval by the appropriate federal and state agencies, review and comment by the Southborough Board of Health, Conservation Commission, Planning Board and Fire and Police Chiefs, following a duly advertised public hearing and in accordance with the Hazardous Waste Facilities Siting Law.

## D. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.

## E. Development standards are as follows:

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- (1) Minimum lot area: forty-three thousand five hundred sixty (43,560) square feet [minimum twenty thousand (20,000) square feet exclusive of wetlands].
- (2) Minimum frontage: two hundred (200) feet.
- (3) Minimum setbacks:
  - (a) Front: fifty (50) feet; seventy-five (75) feet if on Route 9.
  - (b) Rear: fifty (50) feet.
  - (c) Side: fifty (50) feet.
  - (d) Other street: twenty-five (25) feet; thirty-seven and one-half (37 1/2) feet if on Route 9.
- (4) Maximum height: forty-five (45) feet, three (3) stories.
- (5) Maximum floor area ratio: sixty-hundredths (.60).
- (6) Residential dwellings. Residential dwellings in the Highway Business District must comply with RB District standards.

**§174-8.6. IP Industrial Park District.**

## A. Permitted uses are as follows:

- (1) All uses permitted in the Conservation District.
- (2) Dwelling on the premises for a night watchman or janitor.
- (3) Cafeteria on the premises for use by employees and not for the general public.

## B. Uses permitted up to fifty thousand (50,000) square feet are as follows:

- (1) Newspaper, job printing and publishing.
- (2) Office, bank, office building.
- (3) Wholesale distribution and storage within a building other than a solid waste transfer station.
- (4) Scientific research and development, including manufacturing, instruction and other activities clearly incidental thereto at the maximum density of three (3) employees per acre of lot and with a direct access to an arterial street, as defined by the Town of Southborough Planning Board.

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## C. Uses requiring a Special Permit are as follows:

- (1) All uses permitted in Subsection B that exceed fifty thousand (50,000) square feet.
- (2) Accessory apartment.
- (3) Conversion of a one-family house in existence for two (2) years or longer to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (4) Mobile home or travel trailer used as a dwelling or business quarters for more than thirty (30) days in a year.
- (5) Multifamily housing for the elderly, owned by a public or nonprofit community housing organization.
- (6) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
- (7) Hospital, nursing home, home for the aged.
- (8) Private school nursery or kindergarten.
- (9) Veterinarian, animal hospital, dog kennel.
- (10) Private garage or parking for more than three (3) cars or more than one (1) truck or other commercial vehicle.
- (11) Light manufacturing, fabrication, assembly and processing utilizing electric or other similar quiet motive power and processes and generating no adverse impacts on the neighborhood and properties therein.
- (12) Hazardous waste storage and disposal facilities, other than small generators, as defined by the Environmental Protection Agency and the Commonwealth of Massachusetts, except that a special permit may be issued for such a facility upon approval by the appropriate federal and state agencies, review and comment by the Southborough Board of Health, Conservation Commission, Planning Board and Fire and Police Chiefs, following a duly advertised public hearing and in accordance with the Hazardous Waste Facilities Siting Law.
- (13) Adult bookstore, adult video store, adult paraphernalia store, adult motion-picture theater, adult live entertainment (see § 174-9-I).
- (14) Heliport or landing place for helicopter not including storage or maintenance facilities as an accessory use to a permitted principal use.

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- D. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.
- E. Development standards are as follows:
- (1) Minimum lot area: forty-three thousand five hundred sixty (43,560) square feet [minimum twenty thousand (20,000) square feet exclusive of wetlands].
  - (2) Minimum frontage: two hundred (200) feet.
  - (3) Minimum setbacks:
    - (a) Front: fifty (50) feet; seventy-five (75) feet if on Route 9.
    - (b) Rear: fifty (50) feet.
    - (c) Side: fifty (50) feet.
    - (d) Other street: fifty (50) feet.
  - (4) Maximum height: forty-five (45) feet, three (3) stories.
  - (5) Maximum floor area ratio: sixty-hundredths (.60).

**§ 174-8.7. ID Industrial District.**

- A. Permitted uses are as follows:
- (1) All uses permitted in residential districts.
  - (2) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
  - (3) Hospital, nursing home, home for the aged.
  - (4) Private school, nursery or kindergarten.
  - (5) Veterinarian, animal hospital, dog kennel.
  - (6) Dwelling on the premises for a night watchman or janitor.
  - (7) Cafeteria on the premises for use by employees and not for the general public.
- B. Uses permitted up to fifty thousand (50,000) square feet are as follows:
- (1) Private garage or parking for more than three (3) cars or more than one (1) truck or other commercial vehicle.

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- (2) Indoor recreation, athletic or exercise facility; theater for cultural arts.
- (3) Sale or storage of fuel, lumber, building materials and equipment, contractor's yard.
- (4) Retail sales and services which do not involve manufacturing on the premises.
- (5) Retail sales and services involving manufacturing of products, the majority of which will be sold on the premises to consumers, with not more than four (4) persons engaged in manufacturing operations.
- (6) Newspaper, job printing and publishing.
- (7) Office, bank, office building.
- (8) Hotel or motel, restaurant (excluding drive-through food service establishments).
- (9) Clinic or medical testing laboratory.
- (10) Automotive service, gasoline station or repair garage, automotive sales.

## C. Uses requiring a Special Permit are as follows:

- (1) All uses permitted in Subsection B that exceed fifty thousand (50,000) square feet.
- (2) Accessory apartment.
- (3) Conversion of one-family house in existence for two (2) years or longer to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (4) Mobile home or travel trailer used as a dwelling or business quarters for more than thirty (30) days in a year.
- (5) Multifamily housing for the elderly, owned by a public or nonprofit community housing organization.
- (6) Major residential development. (Note: Special Permit from the Planning Board.)
- (7) Multifamily dwellings, if within a major residential development.  
(Note: Special Permit from the Planning Board.)
- (8) (Reserved)<sup>1</sup>

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Editor's Note: Former Subsection C (8), Bottling plant, was repealed 4-8-1996 ATM, Art. 56<sup>1</sup>

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- (9) Wholesale distribution and storage within a building, other than a solid waste transfer business; warehousing (excluding trucking terminals with through shipping).
  - (10) Hazardous waste storage and disposal facilities, other than small generators, as defined by the Environmental Protection Agency and the Commonwealth of Massachusetts, except that a special permit may be issued for such a facility upon approval by the appropriate federal and state agencies, review and comment by the Southborough Board of Health, Conservation Commission, Planning Board and Fire and Police Chiefs, following a duly advertised public hearing and in accordance with the Hazardous Waste Facilities Siting Law.
  - (11) (Reserved)
  - (12) Scientific research and development, including manufacturing, instruction and other activities clearly incidental thereto, and with direct access to an arterial street, as defined by the Town of Southborough Planning Board.
  - (13) Light manufacturing, fabrication, assembly and processing utilizing electric or other similar quiet motive power and processes and generating no adverse impacts on the neighborhood and the properties therein.
- D. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.
- E. Development standards are as follows:
- (1) Minimum lot area: forty-three thousand five hundred sixty (43,560) square feet [minimum, twenty thousand (20,000) square feet exclusive of wetlands].
  - (2) Minimum frontage: two hundred (200) feet.
  - (3) Minimum setbacks:
    - (a) Front: fifty (50) feet; seventy-five (75) feet if on Route 9.
    - (b) Rear: fifty (50) feet.
    - (c) Side: fifty (50) feet.
    - (d) Other street: twenty-five (25) feet; thirty-seven and one-half (37.5) feet if on Route 9.
  - (4) Maximum height: forty-five (45) feet, three (3) stories.
  - (5) Maximum floor area ratio: sixty-hundredths (.60).
  - (6) Residential dwellings. Residential dwellings in the ID District must comply with the standards of the RB District.

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**§ 174-8.8. SP Research, Scientific and Professional District.**

## A. Permitted uses are as follows:

- (1) All uses permitted in residential districts.
- (2) Office-type trailer or mobile home used as business quarters for thirty (30) days or fewer.
- (3) Dwelling on the premises for a night watchman or janitor.
- (4) Cafeteria on the premises for use by employees and not for the general public.

## B. Uses permitted by Special Permit are as follows:

- (1) Accessory apartment.
- (2) Boat livery, cemetery, children's camp, golf course, private nonprofit membership club, public utility, riding stable, ski tow.
- (3) Hospital, nursing home, home for the aged.
- (4) Private school, nursery or Kindergarten.
- (5) Veterinarian, animal hospital, dog kennel.
- (6) Conversion of a one-family dwelling, in existence for two (2) years or longer, to a two-family dwelling, on a lot with a minimum of fifteen thousand (15,000) square feet.
- (7) Mobile home or travel trailer used as a dwelling or business quarters for more than thirty (30) days in a year.
- (8) Multifamily housing for the elderly, owned by a public or a nonprofit community housing organization.
- (9) Other multifamily dwellings, if within a major residential development. (Note: Special Permit from the Planning Board.)
- (10) Major residential development. (Note: Special permit from the Planning Board.)
- (11) Private garage or parking for more than three (3) cars or more than one (1) truck or other commercial vehicle.
- (12) Scientific research and development, including manufacturing, instruction and other activities clearly incidental thereto, at the maximum density of three (3) employees per acre of lot and with direct access to an arterial street, as defined by the Town of Southborough Planning Board.

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- C. Prohibited uses. All uses which are not listed above, legally nonconforming or otherwise allowable by the provisions of the zoning regulations are prohibited.
- D. Development standards are as follows:
- (1) Minimum lot area: fifty (50) acres; minimum twenty thousand (20,000) square feet exclusive of wetlands.
  - (2) Minimum frontage: five hundred (500) feet.
  - (3) Minimum setbacks:
    - (a) Front: one hundred fifty (150) feet.
    - (b) Rear: two hundred (200) feet.
    - (c) Other street: two hundred (200) feet.
  - (4) Maximum height: thirty-five (35) feet, three (3) stories.
  - (5) Maximum floor area ratio: forty-hundredths (.40).
  - (6) Residential dwellings. Residential dwellings in the SP District must comply with the standards of the RA District.

**§ 174-8.9. WFP Wetland and Floodplain District.**

The Wetland and Floodplain (WFP) District is considered to be an overlay district, superimposed on other districts. Any uses permitted in the portions of other districts so overlaid are permitted and may be continued, but no new buildings, structures, earth relocation or excavation or fill shall be permitted, except as is otherwise specifically permitted in the Schedule of Use Regulations and except that dwellings, farm buildings and buildings and structures accessory thereto may be expanded in ground coverage by not more than twenty-five percent (25%) compared to the area covered by all buildings on a lot as of October 8, 1985. The expansion of accessory structures shall require a special permit from the Board of Appeals, as shall the relocation or new construction of ways and the alteration of watercourses, water bodies and dams. In Wetland and Floodplain Districts, fill, earth relocation, new uses and structures or expansions thereof permissible in the underlying district may be permitted by the Board of Appeals by special permit upon referral to the Board of Health, Conservation Commission and Planning Board and a finding that the land is not subject to flooding or otherwise unsuitable for the proposed structures or uses and that, according to a certificate signed by a registered professional engineer, there will be no increase in one-hundred-year flood levels as a result of the special permit.

**§ 174-8.10. CR Critical Resource District.**



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- A. Purpose. 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.
- B. Regulations. Critical Resource Districts, as shown on the Zoning Map, shall be considered to be superimposed over any other district established in this chapter. Land in a Critical Resource District may be used as otherwise permitted in the underlying district, subject to the following:
- (1) No density bonuses as authorized under § 174-13.2F shall be allowed for development within the Critical Resource District, but land within the district may be used to earn development bonuses for development to be located outside the district through transferring of development rights, as provided by § 174-13.2F.
  - (2) Submittals under major residential development must include a flexible development proposal.
  - (3) In acting on major residential development proposals, if the Planning Board determines that neither the basic development proposal before it nor any submitted alternatives can adequately protect scenic views, habitats, fragile natural environments or other critical environmental resources, it shall grant a special permit only either:
    - (a) Upon determination that nondevelopment alternatives for utilization of site value have been reasonably pursued and found to be infeasible, including transfer of development rights or sale of land or rights to the town or other organization having land preservation purposes; or
    - (b) Upon imposition of a stipulation that no building permit is to be issued under the Special Permit and no site preparation is to take place until either one hundred twenty (120) days lapse from the date of approval or a town meeting has earlier acted on a proposal for acquisition of fee or rights over part or all of the premises in question.

**§174-8.11 WCS Wireless Communication Service District.**

- A. PURPOSE. The purpose of this section is to establish a district in which wireless communications services may be provided while protecting, to the greatest extent possible, public health, safety and the general welfare. Specifically, the Wireless Communications Services District has been created to (a) protect the general public from hazards associated with wireless communications towers, and (b) minimize visual impacts from wireless communications towers on residential districts within Southborough. For the purposes of this section, “wireless communications services” shall mean the provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service. Such services, it is anticipated, will be provided via wireless communications towers, including antennas and accessory structures, if any.

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- B. LOCATION. The Wireless Communications Services District shall be located on all land owned by the Town of Southborough which is held in the care, custody, management and control of the Board of Selectmen, School Committee and Conservation Commission, and all land located in Highway Business Districts, Industrial Districts, and Industrial Park Districts. The Wireless Communications Services District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.
- C. SUBMITTAL REQUIREMENTS. As part of any application for a permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein in § 174-10, as may be amended. Applicants shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures.
- D. USE RESTRICTIONS. A wireless communications tower (including antennas and accessory structures, (if any) may be erected in a Wireless Communications Services District upon the issuance of a Special Permit by the Board of Appeals pursuant to § 174-9, subject to site plan approval, as set forth herein at § 174-10, as may be amended, and subject to all of the following conditions:
- (1) To the extent feasible, all service providers shall co-locate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten (10) year period) technically practicable.
  - (2) New towers shall be considered only upon a finding by the Board of Appeals that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.
  - (3) In no event shall any such tower be located closer to two (2) miles to any other such tower.
  - (4) Tower height shall not exceed Seventy Five (75) feet above the existing terrain.
  - (5) A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base.
  - (6) To the extent feasible, all network interconnections from the communications site shall be via land lines.
  - (7) Existing on-site vegetation shall be preserved to the maximum extent practicable.
  - (8) The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The Board of Appeals may impose reasonable conditions to ensure this result, including painting and lighting standards.

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- (9) Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.
  - (10) Applicants proposing to erect wireless communications towers, accessory facilities and structures on municipally-owned land or structures shall provide evidence of contractual authorization from the Town of Southborough to conduct wireless communications services on municipally-owned property.
- E. NON USE. All unused towers or parts thereof or accessory facilities and structures which have not been used for two (2) years shall be dismantled and removed at the owner's expense.
- F. EXEMPTIONS. Towers used for the purposes set forth in M.G.L.c.40A, Section 3. are exempt from the provisions of this Section.

**§ 174-9. Special Permit Requirements.**

In acting on applications for special permits, the special permit granting authority, whether the Board of Appeals or as otherwise designated by this chapter, shall conform to the procedural, decision making and filing requirements of Chapter 40A of the General Laws, shall make general and, as appropriate, specific findings as provided herein or called for by the subject matter and may impose conditions, limitations and safeguards. No special permit shall issue except upon a general finding that the use sought and its characteristics shall be in harmony with the intent and purpose of this chapter, shall not be in conflict with public health, safety, convenience and welfare and shall not be substantially detrimental or offensive to the neighborhood or destructive of property values herein. In addition, the following special requirements shall apply:

- A. Decision considerations. Special permits shall be granted only if the special permit granting authority determines that the proposal's benefits to the town will outweigh any adverse effects for the town or the vicinity, after consideration of the following preferred qualities, among other things:
- (1) Location.
    - (a) The proposal should be located near uses which are similar to the proposed use, or if not, the nearby uses should be ones likely to benefit from rather than be damaged by having the proposal nearby or be permanently buffered from it.
    - (b) Providing adequate water and drainage for this location should pose no special public problems.
    - (c) The site should be able to accommodate the proposal without substantial environmental damage due to wetland loss, habitat disturbance or damage to valuable trees or other natural assets.

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- (2) Activity type and mix.
    - (a) Nonresidential proposals should contribute to the diversity of services available locally.
    - (b) Residential proposals should serve housing needs of local residents.
  - (3) Visual consequences.
    - (a) Scenic views from public ways and developed properties should be considerately treated in the site arrangement and building design.
    - (b) Visibility of parking and service areas from public streets should be minimized through site arrangement, and such areas should be screened from abutting premises.
    - (c) Except on Route 9 and in special circumstances, domestic scale should be maintained in the building's design through massing devices, such as breaks in wall and roof planes and through the design of architectural features.
  - (4) Access.
    - (a) Access to the location should increase existing traffic by no more than ten percent (10%) at any point, taking into consideration any special access provisions committed (ride-sharing, etc.).
    - (b) Pedestrian and vehicular movement to, from and within the site should be safe and convenient and arranged so as not to disturb abutting properties.
  - (5) Development rate.
    - (a) Townwide, development should not outpace the ability of the town to provide necessary off-site services, including schools, water and local road capacity.
    - (b) Development making unusually large demands on service capacities should not be allowed to preempt smaller developments from gaining a fair share of that capacity.
- B. Accessory apartments. Special permits for accessory apartments may be issued upon referral of the application and receipt and consideration of a report, or after thirty-five (35) days elapse without such report, from the Board of Health, certifying that adequate provisions have been made in accordance with the requirements of the Board of Health for drainage and for the disposal of sewage and waste generated by the occupancy of the apartment, and from the Planning Board, describing the lot on which the dwelling is

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located, the neighborhood where it is located and the effect of the proposed apartment thereon, the adequacy of ingress and egress provisions, the recommendations of the Planning Board as to the advisability of granting the special permit and any restrictions that should be imposed as a condition thereof and the provisions for off-street parking in a manner consistent with the character of the premises. If the decision of the Board of Appeals differs from the recommendations of the Planning Board, the reasons therefore shall be stated in the decision. The accessory apartment shall comply with the following conditions and requirements:

- (1) The habitable floor area of the accessory unit shall not exceed twenty-five percent (25%) of the habitable floor area of the entire dwelling plus that of any accessory building used for the accessory dwelling.<sup>1</sup>
- (2) There is no other apartment on the lot on which the accessory apartment is proposed.
- (3) Not more than the required minimum exterior alterations have been or will be made to the one-family house and to any accessory buildings, and the site plan of the lot and floor plans of the dwelling thereon have been filed with the Building Inspector prior to the application to the Board of Appeals.
- (4) The total cumulative number of accessory apartments permitted by the Board of Appeals since January 1979 shall at no time exceed five percent (5%) of the total number of one-family houses in Southborough at the beginning of the year in which the application is filed, based on the Assessor's records. Residences containing apartments shall be counted as one-family houses for the purposes of this subsection.

C. Hazardous waste facilities. Special permits for hazardous waste facilities may be issued only in BV, BH, ID, IP and SP Districts upon site assignment by the Board of Health, approval by appropriate federal and state agencies, including the Hazardous Waste Facility Site Safety Council, and the conclusion of siting processes by the Local Assessment Committee, as provided in Chapter 21D of the General Laws. In considering a special permit for such a facility, the Board of Appeals shall give due weight to the findings and comments of the Planning Board, Conservation Commission, Fire Chief, Police Chief, Metropolitan District Commission and the Local Assessment Committee, including the imposition of conditions, limitations and safeguards called for in the recommendations of these agencies.

D. Large signs. See Section 174-11, E. Special Permits for Signs.

E. Nonconforming uses, lots and structures. Special permits may be issued for the

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<sup>1</sup> 2 Editor's Note This Article also provided for the redesignation of former Subsection B(4).(5) and (6) as Subsection B(2), (3) and (4), respectively.

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extension or alteration of legally nonconforming uses, structures and lots, including a change in the nonconforming use to another nonconforming use, provided that the Board of Appeals finds that such extension, alteration or change shall not be substantially more detrimental to the neighborhood, will not increase the extent of nonconformance in size or in impact and that the cost thereof shall not exceed fifty percent (50%) of the assessed value of the nonconforming structure at the time of application. No special permits under this subsection shall be granted for nonconforming signs subject to Chapter 93 or 93D of the General Laws.

F. Wetland and Floodplain District uses. Special permits may be issued for alterations, additions and new structures and uses in WFP Districts only when the following conditions are met:

- (1) The Board of Appeals finds no potential detrimental impact on the neighborhood, as provided in the lead-in of this section above.
- (2) The application is referred to the Planning Board, the Conservation Commission and the Board of Health, and their reports are received and given due consideration, or thirty-five (35) days elapse following the referral without the receipt of said reports.
- (3) No alteration, fill, additions or new construction will occur within the floodway, as defined by the Federal Emergency Management Administration.
- (4) The land is not, in fact, subject to flooding and not unsuitable for the purposes of the special permit due to topography, soils or hydrological conditions; if located in a floodplain, a registered professional engineer certifies that the proposed development shall not result in any increase of flood levels during the occurrence of a one-hundred-year flood and that adequate protection shall be provided against the effects of current, uplift, battering and washout.
- (5) If the special permit is for the construction or improvement of access to existing uses or to land not in a WFP District, it must be shown that there is no feasible alternate access and that the natural flow of watercourses will not be impeded or altered.
- (6) If the special permit is for the construction of a barn, garage or other accessory building or structure, the applicant shall prove, to the satisfaction of the Board of Appeals, that the special permit will not result in an increase of ground coverage by principal and accessory structures of more than twenty-five percent (25%), compared to the conditions in May 1975.
- (7) The Board of Appeals may consider compensatory storage and other mitigating measures acceptable to the Conservation Commission to meet the requirements of this Subsection F.

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- (8) If the special permit is for a dam, watercourse alteration, excavation, drainage or wetland improvements or mosquito control activities, the Board of Appeals shall consider also the broader impacts thereof and weigh any potential detrimental impacts against the benefits of the proposed improvements.

G. Two-family dwelling. The conversion of a one-family house which has been in existence for two (2) years or longer to a two-family dwelling is allowed by special permit from the Board of Appeals. The application will be considered after receipt of a report, or after thirty-five (35) days elapse without such a report, from the Board of Health certifying that adequate provisions have been made in accordance with the requirements of the Board of Health for drainage and the disposal of sewage and waste generated by the occupancy of the two-family dwelling. There shall also be a report from the Planning Board describing the lot on which the dwelling is located, the neighborhood where it is located and the effects of the proposed two-family dwelling thereon, the adequacy of ingress and egress provisions, any recommendations by the Planning Board as to the advisability of granting the special permit and any restrictions that should be imposed as conditions thereof and the provisions for off-street parking in a manner consistent with the character of the premises. If the decision of the Board of Appeals differs from the recommendations of the Planning Board, the reasons therefor shall be stated in the decision. The two-family dwelling shall comply with the following conditions and requirements:

- (1) The lot on which a one-family residence is to be converted to a two-family dwelling must be a minimum of fifteen thousand (15,000) square feet.
- (2) There must be no other apartment on the lot on which the two-family residence is proposed.
- (3) Not more than the required minimum exterior alterations have been or will be made to the one-family house and to any accessory buildings, and the site plan of the lot and floor plans of the dwelling thereon must be filed with the Building Inspector prior to the application to the Board of Appeals.

H. Multifamily housing for the elderly is allowed by special permit per the Schedule of Use Regulations, § 174-8.

- (1) The Zoning Board of Appeals shall grant a special permit for elderly housing only after considering the following criteria.
  - (a) No development shall exceed an average per site of a maximum three (3) units per contiguous acre exclusive of wetlands, and six (6) bedrooms per contiguous acre exclusive of wetlands. No unit shall have more than three (3) bedrooms. Any application submitted to the Zoning Board of Appeals for a Special Permit for Multifamily Housing for the Elderly prior to December 19, 1997 shall be exempt from the exclusion of wetlands when calculating the maximum number of units per site.

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- (b) Evidence shall be shown that, to the greatest extent possible, the development is offering to provide for the needs of Southborough residents of varying economic levels.
  - (c) The units shall have an exterior design that is consistent with the styles of the surrounding residential neighborhoods and the Town of Southborough in general.
  - (d) Wherever possible pedestrian connection to local services should be incorporated into the site design to lessen the dependency on the automobile.
  - (e) The plan shall be designed to maximize the preservation of the natural features of the site through the use of cluster housing, and/or creative site planning. Wherever possible existing vegetation should be retained throughout the site as a natural buffer to adjacent properties.
  - (f) The proposed development shall satisfy the criteria of this chapter (174-9) outlined in paragraph A., Decision considerations.
  - (g) The total cumulative number of units approved under this section by the Zoning Board of Appeals since January 1998 shall at no time exceed seven (7%) percent of the total number of one-family houses in Southborough at the beginning of the year in which the application is filed, based on the Assessor's records. Residences containing apartments shall be counted as one-family houses for the purpose of this subsection.
- (2) The granting of a Special Permit by the Zoning Board of Appeals for multifamily housing for the elderly does not relieve the applicant from receiving all other applicable approvals, including Conservation Commission, Board of Health, and Site Plan approval from the Planning Board (re:174-10).

## I. Adult uses.

- (1) Purpose and intent. This bylaw is enacted pursuant to MGL C. 40A, Section 9A, to serve the compelling interests of the Town of Southborough by preventing the clustering and concentration of adult entertainment enterprises as defined herein because of the deleterious effect on character and values of adjacent areas.
- (2) Definitions. As used in this section, the following terms shall have the meanings indicated:

**ADULT BOOKSTORE** - An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272, § 31.



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- ADULT VIDEO STORE - An establishment having as a substantial or significant portion of its stock- in-trade videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31.
- ADULT PARAPHERNALIA STORE - An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31.
- ADULT MOTION-PICTURE THEATRE - An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL C. 272 § 31
- (3) Special permit standards. No special permit may be granted by the Zoning Board of Appeals for an adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater unless the following conditions are satisfied:
- (a) No adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater may be located less than one thousand (1,000) feet from a residential zoning district, school, library, church or other religious use, child care facility, park, playground, recreational areas or another adult bookstore, adult video, adult paraphernalia store or adult motion-picture theater. The distance of one thousand (1,000) feet shall be measured from all property lines of the proposed adult use.
  - (b) No pictures, publications, videotapes, movies, covers or other implement, items or advertising that fall within the definition of adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater merchandise or are erotic, prurient or related to violence, sadism or sexual exploitation shall be displayed in the windows of or on the building of any adult bookstore, adult video store, adult paraphernalia store or adult motion-picture theater or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semipublic, outside such establishments.
  - (c) No special permit shall be issued to any person convicted of violating the provisions of MGL C. 119, § 63, or MGL C. 272, §28.
- (4) All existing adult bookstores, adult video stores, adult paraphernalia stores and adult motion- picture theaters shall apply for such special permit within ninety (90) days following the adoption of this subsection.
- (5) Any special permit granted under this section shall lapse within one (1) year of the date of the grant, not including the time required to pursue or await the termination of an appeal referred to in MGL C 40A, § 17, if substantial use thereof has not sooner commenced, except for good cause, or, in the case of permit for

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construction, if construction has not begun within one (1) year of the date of grant, except for good cause.

**§ 174-9.1. Common driveways.**

- A. Common driveways serving more than two (2) or more detached single-family dwellings shall not be allowed in any district unless evidence can be presented to the Planning Board that a common driveway would be more beneficial to the town than a conventional plan. The Planning Board, in considering the granting of a permit for a common driveway, must be assured the following minimum requirements have been met:
- (1) Frontage: each lot served by a permitted common driveway must have its own full required frontage on a public way.
  - (2) The design of common driveways shall assure adequate access for emergency and public safety vehicles to include turnaround provision in all seasons, provide water service, if available, including hydrants, and provide adequate drainage of surface waters.
  - (3) A declaration of covenants, easements and restrictions for the use and maintenance of said common driveways shall be required by the Planning Board and shall include satisfactory arrangements concerning driveway maintenance, snowplowing and restriction against future use as a public way. Said covenants, easements and restrictions shall be perpetual, run with the land and be recorded at the Registry of Deeds.
  - (4) In the best interest of public safety, the Planning Board may require the common driveway to be officially named, clearly identified with appropriate signage and with all residences within the way addressed to indicate this name.
- B. The Planning Board shall act on any request for a common driveway permit within thirty (30) days of application, in which time they will seek input from the Departments of Public Safety, Public Works, Board of Health and solicit comments from the Conservation Commission.
- C. Enforcement. To assure that the conditions of the common driveway permit are met to greatest extent possible, the following items must be satisfied prior to the issuance of an occupancy permit for any house on the common driveway:
- (1) A Town approved "Declaration of Common Driveway, Easement and Covenant" shall be signed by the buyer and filed with the Registry of Deeds. A "master covenant", designed by the Planning Board, could be used.
  - (2) It would be the responsibility of the developer to provide the Inspector of Buildings with the above required documentation, including, if appropriate, an engineering report asserting that all required work has been completed per the plans and conditions approved by the Planning Board.

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**§ 174-10. Site plan approval.**

- A. The purpose of the site plan review procedure is to encourage a desirable and compatible character of development within the Town of Southborough and to assure safety, promote logic, imagination and innovation in the design process while complying with all zoning requirements. The requirements of this section shall be applicable to the following:
- (1) Any nonresidential development that results in an increase in on-site parking.
  - (2) All modifications to existing development projects which fall within the applicability of the town's regulations for parking and loading (§ 174-12) or landscaping (§ 174-13).
  - (3) Any change in use or reactivation of a facility that has not been in use for a period of two (2) years.
  - (4) Multifamily housing for the elderly.
- B. Site plan review will be processed by one (1) of the following means:
- (1) Minor plan review. Any new development, or expansion in use other than a single-family or two-family residence which adds less than two thousand (2,000) square feet of floor area or which would require at least five (5) but fewer than twenty (20) parking spaces regardless of the number of parking spaces existing on the premises, or any change of use of a facility that totals less than two thousand (2,000) square feet shall be subject to minor plan review by the Site Plan Review Committee. The Site Plan Review Committee shall be chaired by the Town Planner and will consist of a Selectmen or its designee, Building Inspector, Highway Superintendent, Board of Health Agent, Superintendent of the Water Department, Police Chief and Fire Chief or their designee, who will meet at a regularly scheduled time and place to review plans. The Committee shall also seek the advice of the Conservation Commission in the review of all minor plan submissions.
    - (a) Minor plan review will require ten (10) copies of the site plan to be submitted to the office of the Planning Board, together with an application form and filing fee. All plans will be prepared at a scale no greater than one (1) inch equals forty (40) feet on standard twenty-four by thirty-six inch sheets and shall show, as a minimum:
      - [1] All existing and proposed buildings, including setbacks.
      - [2] Existing and proposed parking.
      - [3] Driveway openings.
      - [4] All property and street lines.

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- [5] Existing and proposed landscaping.
  - [6] Existing and proposed signs.
  - [7] Surfacing, indicating treatment of all surfaces.
  - [8] Location of all wetlands.
  - [9] Method of sewage disposal.
  - [10] Water supply.
  - [11] Stormwater drainage.
  - [12] Such other information as the Site Plan Review Committee may reasonably request.
- (b) Any dispute arising from the minor plan review process or any plan not receiving unanimous approval from the Site Plan Review Committee shall be referred to the Planning Board for action. The Committee may also refer any site plan that, due to unusual circumstances or a unique situation, it feels should be approved by the Planning Board. All site plans sent to the Planning Board by the Site Plan Review Committee for action will be handled through the minor plan review process.
- (c) The Site Plan Review Committee shall approve, disapprove or refer to the Planning Board all submittals for minor plan review within thirty (30) days of a completed application to the office of the Planning Board.
- (d) Where applicable, all other criteria and conditions of this section will govern minor plan review.
- (2) Major plan review. Any new development, or expansion in use other than a single-family or two-family residence which adds two thousand (2,000) square feet or more of floor area or which would require twenty (20) or more parking spaces, regardless of the number of parking spaces existing on the premises, or any change of use of a facility that totals two thousand (2,000) square feet or more shall be subject to major plan review by the Planning Board. The major site plan submission shall consist of the following elements:
- (a) Ownership, zoning, use and the general location of structure and topography within three hundred (300) feet of the property lines of the site or adjacent land contiguously owned with the site.
  - (b) All site features, existing or proposed, including but not limited to the following:

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- [1] Driveways, including widths.
- [2] Parking facilities, including dimensions thereof.
- [3] Loading facilities.
- [4] Service areas.
- [5] Street line, including widths.
- [6] Roadways, including widths.
- [7] Pedestrian walks, including widths and types of surface.
- [8] Landscaping designation, specific plantings.
- [9] Screening.
- [10] Signs, including proposed sizes, mounting heights, types and drafted design.
- [11] Lighting, including plan location and detail information, size, type and wattage.
- [12] Surfacing, indicating treatment of all surfaces.
- [13] Existing trees on the site which are a caliper of six (6) inches or larger.
- [14] Wetlands.
- [15] Drainage, including detailed design data, pipe sizing, etc.
- [16] Stone walls.
- [17] Topography at two-foot contour intervals.
- [18] Sewage disposal, including detailed design information.
- [19] Water supply.
- [20] Curbing.
- [21] Such other information as the Planning Board may reasonably request.

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- (c) The construction of the work as detailed on the site plan shall not deviate from the work shown on the approved site plan. Accordingly, the site plan shall contain a sufficient level of detail to ensure the constructability of the project. Supporting details and documentation shall be presented as part of the site plan submission.
  - (3) Incomplete applications for both the minor and major review shall not be accepted by the Planning Board. Following submission of a site plan to the Planning Board, the Board or its designee shall review the plan for completeness within three (3) business days of the submission. Completeness shall be based on the requirements of this subsection. If the submission is determined incomplete by the Planning Board or its agent, notice will be mailed to the applicant by certified mail within three (3) business days of the submission specifying the deficiencies.
- C. The plan shall be prepared by a professional engineer, land surveyor, architect or landscape architect registered to practice in the Commonwealth of Massachusetts and shall be submitted with eleven (11) copies to the office of the Planning Board, together with an application form and a filing fee, if any.
- D. Approval required.
- (1) Site plan approval shall be granted upon determination by the Planning Board that the following are complied with. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Southborough Planning Board's Rules and Regulations for the Subdivision of Land and shall be so designed that for the given location and type and extent of land use, the design of building form, building location, egress points, grading and other elements of the development shall be so as to:
    - (a) Minimize the volume of cut and fill, the number of removed trees six (6) inches in caliper and larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion and the threat of air or water pollution.
    - (b) Maximize pedestrian and vehicular safety and convenience within the site and egressing from it.
    - (c) Minimize obstruction of scenic views from publicly accessible locations.
    - (d) Minimize visual intrusion by minimizing the visibility of parking, storage or other outdoor service areas viewed from public ways or premises residentially used or zoned; minimizing glare from headlights through plantings or other screening, minimizing lighting intrusion through use of such devices as cutoff luminaires confining direct rays to the site; fixture

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mounting height not higher than twenty (20) feet except adjacent to Route 9; and avoiding unreasonable departure from the character of building in the vicinity.

- (2) The Planning Board shall adopt and from time to time amend reasonable regulations for the administration of these guidelines.
- E. The Planning Board shall hold a public hearing on the application for site plan approval, with a written notice of the time and place of said hearing being given the applicant and the Board of Selectmen. The applicant is responsible for sending this notice to the certified abutters by certified mail return receipt requested, at least ten (10) days before the scheduled hearing. The Planning Board shall not act on the application until it has received and given due consideration to the recommendations of the Board of Selectmen or until ten (10) days have elapsed after the public hearing without receipt of the Selectmen's comments.
- F. The Planning Board shall act on an application for site plan approval and shall notify, in writing, the applicant, the Board of Selectmen and the Building Inspector of its action within sixty (60) days of the receipt of the application. Failure of the Planning Board to so act and to notify the applicant within said sixty (60) days shall constitute approval of the site plan. The actions allowed by the site plan approval are authorized for a one-year period from the date of grant thereof. The applicant shall be granted a single one-year extension by applying to the Planning Board, in writing, prior to the date of expiration. If the actions permitted are not exercised or the approval not extended, they shall lapse, and a new application notice and hearing will be required.
- G. Any person aggrieved by the action of the Planning Board on a site plan approval application may appeal said action to the Zoning Board of Appeals as provided in Article VI hereof.
- H. Minor departures from the site plan as approved may be authorized by the Building Inspector after approval of the Site Plan Review Committee if required by engineering or other circumstances not foreseen at the time of plan approval. Any change increasing the size of any building or structure, changing the location of any building, parking or access road by more than ten (10) feet or reducing landscaping or screening may be made only through review by the Planning Board following the same procedures as for an original submittal. Any departure must be requested, in writing, with the basis for the change given. Any change authorized shall be recorded on the file copy of the site plan with the Building Inspector's signature and the date.
- I. The removal, fill or change of grade of earth materials, including soil, loam, sand or gravel, undertaken in order to construct or locate buildings, structures and such features accessory thereto as ways, driveways, areaways, walks or parking areas, and therefore exempt from regulations under Chapter 85 of this Code, is a part of construction and development process regulated by the Zoning Chapter. Except as necessary for the construction of detached one- or two-family dwellings and of features accessory thereto, the removal, fill or change of grade of earth materials for the purposes defined above

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shall be subject to approval under this section. Where the commencement of removal, fill or change of grade of earth materials precedes construction by three (3) months or more, the submission and approval of the site plan may be undertaken in two (2) stages, with the information for the first stage limited to property boundaries, existing and proposed topography at two-foot or lesser contour intervals, the character of the soil to be removed, added or relocated, the location and depth of any service and drainage conduits or pipes and the approximate location of any existing or proposed buildings, structures or physical features accessory thereto. Each stage shall be treated as a separate site plan for the purposes of this section, and the approval of Stage I of a site plan shall not be construed to assure the subsequent approval of Stage 2.

- J. Compliance. The issuance of an occupancy permit will not be given prior to the satisfactory completion of all elements and conditions of the approved site plan. A temporary occupancy permit may be issued after the satisfactory completion of all items essential to public health and safety and sufficient bonding acceptable to the Planning Board is provided to the town to cover all outstanding items.

**§ 174-10.1. Village Business District plan review.**

Within the Village Business District, major site plan approval shall be by special permit from the Planning Board, subject to the procedural requirements and decision criteria of § 174-9, Special permit requirements, and § 174-10, Site plan approval, and the following in addition to the above:

- A. Submittals must include floor plans and architectural elevations of all proposed buildings.
- B. Design shall comply with the following guidelines, except as provided at Subsection C below:
- (1) Scenic views, if any, visible from public ways should be preserved to the degree reasonably consistent with the given type and scale of use.
  - (2) Major dimensions of any building should be approximately parallel or perpendicular to one (1) or more nearby streets, if within one hundred (100) feet of such street.
  - (3) The appearance of primary wall and roof materials should match that of materials commonly found on existing buildings within the town.
  - (4) Except for buildings adjacent to Route 9, domestic scale should be produced through massing devices such as breaks in wall and roof planes and through design of architectural features.
  - (5) The building should not be made, in effect, a sign, through painting with bold patterns, checks or other graphics devices or use of unconventional building form.



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- (6) There should be some element of consistency with any buildings on abutting premises facing the same street, such as consistency in eave height, wall materials or window proportions.
- C. A design may be approved despite noncompliance with one (1) or more of the guidelines under Subsection B if one (1) or more of the following are determined to be true.
- (1) The proposal, despite not meeting the guidelines, is nevertheless appropriate to its context, considering the established character of the vicinity, the degree of departure of this proposal from that character and the functional or symbolic role the structure is proposed to play.
  - (2) The proposal will have minimal consequence for town appearance because of its low public visibility, owing to obscure location or screening.
  - (3) No better compliance would be reasonably possible, taking into consideration the basic use and intensity of the proposal.

**§174-11. Signs.**

- A. **PURPOSE.** The Town of Southborough regulates and restricts the use of signs and other identification devices within the Town for the purpose of:
- (1) Promoting public safety and convenience of the streets and roads, sidewalks and other pedestrian spaces, public property and private property within public view
  - (2) Preserving for the present and future inhabitants the natural, architectural and historical assets and other qualities which distinguish the Town as a highly desirable community,
  - (3) Protecting business viability, economic opportunity, property values, educational values, aesthetic integrity, village character, creativity and community appearance by exercising prudent control, and
  - (4) Encouraging compatibility and harmony with surrounding buildings, land and land uses.
- B. **DEFINITIONS.** As used in this Section (§174-11), the following words and terms shall have and include the following meanings:

**AGRICULTURAL SIGN** – A sign which has wording that may be changed periodically to advertise products raised or grown principally on the premises.

**AWNING SIGN** – Any and every sign displayed on an awning or canopy. An Awning or Canopy is any device, fixed or retractable, of any material, which extends over or otherwise covers a sidewalk, courtyard, walkway, eating area, driveway, or other area or

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space whether that area or space is intended for pedestrians, vehicles or other purposes.

**BANNER** – Any and every sign whatever the nature of the material or manner of composition, message or design, frequently displayed on a pole or staff which can be free standing or attached to a building or structure, and temporary or removable in nature. Official flags of governmental jurisdictions properly displayed shall not be considered as banners or otherwise considered as signs for the purposes of this Zoning Bylaw.

**BUSINESS ESTABLISHMENT** – Each separate place of business whether or not consisting of one or more buildings.

**FAÇADE OF THE BUSINESS ESTABLISHMENT** – That portion of the building wall facing a street or containing a public entrance, which corresponds to the height and width of the interior space rented or owned by the tenant of the business establishment.

**HEIGHT** - The maximum vertical distance measured from the finished grade to the highest point of the sign or its supporting structure, whichever is higher.

**INTERNALLY ILLUMINATED SIGN** - Each and every sign which utilizes translucent panels, canvas or other fabric, letters, devices including gas filled luminous tubes or other similar components to create an image by allowing light to pass through.

**LEGAL NON-CONFORMING SIGN** – Any non-conforming sign legally erected prior to the adoption of this section, or any amendment thereof.

**MOVING SIGNS** – Any and every sign any part of which moves, is designed to move, or to be moved, by any means.

**ROOF SIGN** – Any and every sign located above, or projecting above, the apex of the roof or the top of a parapet wall of any building, or which is painted or otherwise attached or affixed to a roof.

**SIGN** – Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or indicates any premises, persons, products, businesses or activities, or that conveys or is intended to convey any message whatever the nature of the material and manner of composition or construction. (Historical date plaques and markers approved by the Historical Commission and flags and insignias of governmental jurisdictions shall not be considered signs except when displayed for the purpose of commercial promotion.)

**STANDING SIGN** – Any and every freestanding sign erected on or affixed to the land and includes any and every sign that is not attached to a building.

**TEMPORARY SIGNS** – Any and every sign which by its design and/or use is temporary in nature, frequently composed of paper, posterboard and/or cardboard or other material

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attached so as to be visible through windows and glass doors or otherwise displayed on a property, typically containing messages relative to sale, lease, rental or construction of property, garage or yard sales and similar occasional uses, special sales, bazaars, dinners or other events.

TRAFFIC SIGNS – Any sign limited solely to directing traffic within or setting out restrictions on the use of parking areas.

TRAILER OR VEHICLE SIGNS – For the purposes of this Sign Bylaw a vehicle, motor vehicle or self-propelled vehicle shall be considered and regulated as a sign when or under such circumstances any such vehicle is not engaged in the usual business or work of the owner or lessee but is used for advertising purposes.

WALL SIGN – Any and every sign attached to a building and not considered to be a roof sign or window sign.

WINDOW SIGN – Any and every sign consisting of individual letters or graphics painted or otherwise similarly affixed directly to, or hanging behind, the glass surface of a window or door and designed to be visible from the outside of any building.

## C. GENERAL PROVISIONS

- (1) PERMIT NOT REQUIRED. The following types of signs do not require a permit from the Inspector of Buildings:
  - (a) Signs not exceeding four (4) square feet in area and bearing only property numbers, or names of residents of premises.
  - (b) Flags and insignia of any government, except when displayed in connection with commercial promotion.
  - (c) Legal notices, identification information or direction signs erected by governmental bodies.
  - (d) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights.
  - (e) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.
  - (f) In accordance with M.G.L. Chap. 94, section 295c. standard gasoline fuel pump signs on service station fuel pumps bearing thereon in usual size and form the name, type and price of the gasoline.
  - (g) Open/Closed signs not exceeding 2' x 3'; 1 per business.
  - (h) Open flags, not exceeding 3' x 5' and not containing any promotional logos or advertising; 1 per business.

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- (i) Temporary signs.
- (2) BASIC REQUIREMENTS, ALL DISTRICTS
- (a) The only signs allowed in the Town of Southborough are signs that advertise, call attention to or indicate the person occupying the premises on which the sign is erected or maintained or the business transacted thereon or that advertise the property itself or any part thereof as for sale or rent and which contain no other matter.
  - (b) Billboards and similar signs are specifically prohibited.
  - (c) Flashing, moving, changing message and animated signs are prohibited
  - (d) No sign may be illuminated between 10:00 PM and 6:00 AM except signs identifying police or fire stations or businesses open to serve the public on site.
  - (e) "No hunting, fishing, etc.," signs exceeding one (1) square foot are prohibited.
  - (f) Permits. No sign shall be erected or altered on the exterior of any building or on any land unless and until application for the erection or alteration of such sign has been filed with the Building Inspector, with such information and drawings as he may require, and permit for the erection of the sign has been issued by him.
  - (g) No sign may depict or represent any sexual conduct or state of sexual excitement as defined in G.L. c.272, Section 31, nor shall any such representations or depictions be placed upon or within the windows or walls of the premises so as to be visible to the public from the exterior of the premises.
  - (h) Banners, pennants, streamers, ribbons, spinners and other moving, fluttering, revolving or changing devices and strings of lights shall not be used as signs or parts thereof, provided that lights may be used as part of a religious celebration not connected to commercial promotion, and further provided that banners or similar devices may be used for temporary political signs.
- (3) ILLUMINATION OF SIGNS. Illumination shall be by white, steady, stationary light shielded and directed solely (or by silhouette) at the sign. The foregoing is applicable to signs exterior to a building and to permanent interior signs designed to be visible through a door or window. No sign may utilize translucent panels, canvas or other fabric, letters, devices or other similar components to create an image by allowing light to pass through, except for businesses fronting on Route

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9. The light, whether internal or illuminating the sign from the outside, shall not be placed, directed or arranged so as to throw a beam of light, glare or reflection on any street or highway, walk, or nearby properties of others in such a manner as to create a traffic hazard or nuisance. Illuminated signs are prohibited in residential and conservation districts.
- (4) **MAXIMUM NUMBER OF SIGNS ALLOWED.** Unless otherwise provided herein there shall be not more than two of the four following types of signs: wall, window, standing, or awning for each business establishment with the following exceptions:
- (a) If a business establishment has more than one public entrance at street level there may be additional signs at each such entrance, other than the wall to which the principal sign is attached. Such signs shall not exceed 15 square feet or 10% of the façade of the business establishment whichever is less. If a business establishment consists of more than one building, a secondary sign, not exceeding 15 square feet or 10% of the façade of the business establishment, whichever is less, may be affixed to a wall of each such building, not including the building to which the principal sign is attached.
  - (b) In addition to the foregoing sign or signs, one directory of the business establishments occupying a building may be attached to the exterior wall of the building at each public entrance to the building. Such directory shall not exceed an area determined on the basis on one square foot for each establishment occupying the building or six square feet in total area, whichever is less.
- (5) **MAXIMUM AREA OF SIGNS ALLOWED.** For purposes of determining the maximum size limitations, any intermediary removable surface to which a sign is attached shall be deemed part of the sign; and any sign composed of separate letters, numbers or symbols cut into or attached to a wall or painted on or otherwise attached to an awning, canopy or window shall be deemed to the extreme limits of the sign. A two-sided sign, with messages on opposite sides (back-to-back), will be deemed to be one (1) sign; a sign with faces at an angle to each other shall be deemed to consist of several signs, one (1) for each direction faced.

The sum of the areas of wall, window and awning signs of a business in the aggregate shall not exceed the lesser of the following two amounts:

- (a) 10% of the façade of the business establishment;
- (b) 50 square feet in Districts fronting on streets other than Route 9, or 75 square feet in Districts fronting on Route 9.

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- (6) **NON-CONFORMING SIGNS.** Any legal non-conforming sign may continue to be maintained but shall not be enlarged, reworded, redesigned or altered in any way unless it is brought into conformity with these requirements. Any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed 35 percent of the replacement value of the sign at the time of the destruction or damage, shall not be repaired or rebuilt or altered unless in conformity with this section.

The exemption herein granted shall terminate with respect to any sign which:

- (a) shall have been abandoned for six months or more; or
  - (b) advertises or calls attention to any products, businesses or activities which have not been carried on or sold for six months or more; or shall not have been repaired or properly maintained within 60 days after notice to that effect has been given by the Inspector of Buildings.
- (7) **CONSTRUCTION AND MAINTENANCE.** No sign shall be painted or posted directly on the exterior surface of any wall or roof. All signs must be painted, posted or otherwise securely attached to a substantial intermediary removable surface which shall be securely attached to the building. The foregoing, however, shall not prevent installation of a sign consisting of individual letters or devices securely attached to the building. The material and construction of any sign and intermediary surface and the manner of attaching the sign to the intermediary surface and the intermediary surface to the wall of the building shall be in accordance with applicable provisions of the State Building Code. All signs, together with their structural elements, shall be kept in good repair and in proper state or preservation to the reasonable satisfaction of the Inspector of Buildings. The Inspector of Buildings may order the removal of any sign that is not maintained in accordance with the provisions of this Zoning Bylaw.
- (8) **ROOF SIGNS.** No sign shall be erected or maintained on the roof of any building or structure in any district.
- (9) **STANDING SIGNS.** No standing sign shall be erected if, in the opinion of the Building Inspector, it creates a safety hazard to vehicular or pedestrian traffic.
- (10) **WALL SIGNS.** A wall sign shall be parallel to or perpendicular to a wall of the building and shall not project beyond the face of any other wall of the building, or above the top of the wall to which attached. A wall sign shall not project more than one foot, in the case of a sign parallel to the wall, or four feet in the case of a sign perpendicular to the wall, from the face of the wall to which attached, provided that in no case shall a perpendicular sign project into, on or over a public sidewalk, street or way.
- (11) **TEMPORARY SIGNS.** Temporary signs shall be removed promptly after the sale, event or reason for the sign message has been concluded. Temporary signs

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- shall not be maintained for more than a 30-day period, except as may be otherwise specifically provided below, as determined by the Inspector of Buildings, unless proper sign permits have been obtained. A temporary sign erected for the purpose of the sale, lease, rental or construction of real estate is not subject to the 30 day display limitation but shall be removed promptly after such sale, lease, rental or construction has been effected or completed. Temporary signs pertaining to construction shall not be erected prior to the commencement of work.
- (12) **TRAFFIC SIGNS.** The regulations contained herein shall not apply to traffic signs not exceeding four square feet in area.
- (13) **GASOLINE FILLING STATIONS AND GARAGES.** Gasoline filling stations and garages may, if they elect to do so, divide the principal sign area, to which they are entitled into separate signs attached to and parallel to the wall to which the principal sign may be attached and indicating the separate operations or departments of the business, provided, however, that the total size of the separate signs shall not exceed the maximum size permitted under this section for a single exterior sign on such wall. Signs displayed on structural canopies over gasoline pumps or gasoline pump islands shall be regulated as wall signs.
- (14) **AGRICULTURAL SIGNS.** One (1) sign not to exceed thirty-two (32) square feet shall be allowed and the wording may be changed periodically to advertise products raised or grown principally on the premises.
- (15) **AWNING SIGNS.** The following provisions shall apply to all awning signs:
- (a) Awning signs may only be located at the first floor level and must be painted on or attached flat against the surface of the awning or canopy and shall not extend beyond the valance or any other part of the awning or canopy nor be attached to or displayed on the sides or underside;
  - (b) The area of an awning sign shall not exceed 25% of the surface area of the awning or canopy eligible for placement of signs;
  - (c) Awning signs shall not be back lit or internally illuminated; and
  - (d) Awning signs shall not be used in combination with wall signs except as provided below.

An awning sign which:

- [1] consists of letters only, not more than eight inches (8") in height and includes no other form of graphic, logo or symbol; and

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- [2] is located only on the valance of the awning or canopy and no other sign, graphic, logo or symbol is displayed on the awning or canopy; and
- [3] does not occupy more than 50% of the horizontal length of the valance of the awning or canopy, shall not be subject to the limitations of C. General Provisions, Paragraph 4 - MAXIMUM NUMBER OF SIGNS ALLOWED; Paragraph 5 - MAXIMUM AREA OF SIGNS ALLOWED.

D. SIGN REGULATIONS. (See notes at end of Section D)

Sign Type	Maximum Height	Maximum Area	Maximum Number
RESIDENTIAL <sup>1</sup> , CONSERVATION DISTRICTS, RESEARCH, SCIENTIFIC AND PROFESSIONAL DISTRICT			
Standing or Wall	6 feet	4 sq. ft.	1 per lot
Temporary	6 feet	6 sq. ft.	1 per lot

BUSINESS VILLAGE DISTRICT

Standing	10 feet	25 sq. ft.	1 per building
Wall	15 feet	25 sq. ft.	1 per business
Awning	-----	25% of awning or canopy <sup>2</sup>	1 per business
Temporary	10 feet	15 sq. ft.	1 per building

HIGHWAY BUSINESS, INDUSTRIAL, INDUSTRIAL PARK DISTRICTS FRONTING STREETS OTHER THAN ROUTE 9

Standing	15 feet	75 sq. ft.	1 per lot
Wall	20 feet	50 sq. ft.	1 per business
Window(permanent)		10 sq. ft. <sup>3</sup>	1 per business
Awning		25% of awning or canopy <sup>2</sup>	1 per business
Temporary Window		25% of window <sup>4</sup>	
Temporary	10 feet	25 sq. ft.	1 per lot

HIGHWAY BUSINESS, INDUSTRIAL, INDUSTRIAL PARK DISTRICTS FRONTING ROUTE 9

Standing	25 feet	100 sq. ft.	1 per lot
Wall	20 feet	75 sq. ft. <sup>2</sup>	1 per business
Window(permanent)		10 sq. ft. <sup>3</sup>	1 per business



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Awning		25% of awning or canopy <sup>2</sup>	1 per business
Temporary Window		25% of window <sup>4</sup>	
Temporary	10 feet	25 sq. ft.	1 per lot

MUNICIPAL, STATE, FEDERAL OR PRIVATE EDUCATIONAL  
INSTITUTION, RELIGIOUS INSTITUTION WITHIN A RESIDENTIAL  
DISTRICT

Standing	6 feet	10 sq. ft.	1 per lot
Wall	15 feet	10 sq. ft.	1 per building
Awning Sign – not allowed			
Temporary	6 feet	12 sq. ft.	1 per lot

## Notes:

1 - Residential development within other districts in Town must comply with the sign regulations for residential district.

2 - Or 10% of the total area of the façade of the business establishment, whichever is less.

3 - Or 10% of the total area of exterior area of exterior windows of the business establishment excluding doors, whichever is less.

4 – Paper or posterboard only. Such signs shall not be placed on any window with a permanent window sign.

E. SPECIAL PERMITS FOR SIGNS. The Board of Appeals shall consider requests for special permits in accordance with § 174-9, § 174-11 and §174-25 of this Zoning bylaw. The Board of Appeals may grant a special permit for a sign not meeting limitations of sign height, maximum number of signs allowed, illuminations of signs, maximum area of signs allowed, and minimum setback, provided however, that the sign is otherwise in compliance with the provisions of this Section. In no case, however, shall approval be granted for:

- (1). A wall sign which exceeds in height the top of the wall;
- (2) A sign in a Residential District, except that a Special Permit may be granted for a sign at a legal nonconforming use.
- (3) A standing sign in Districts other than Residential, Conservation, Research, Scientific & Professional Districts which exceeds in height:
  - 15' in the Business Village Districts
  - 20' in Districts other than Business Village Districts fronting on streets other than Route 9
  - 25' in Districts other than Business Village Districts fronting on Route 9

or exceeds in area:

- 35 square feet in the Business Village Districts

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- 75 square feet in Districts other than Business Village Districts fronting on streets other than Route 9
  - 200 square feet in Districts other than Business Village Districts fronting on Route 9.
- (4) A wall sign in Districts other than Residential, Conservation, Research, Scientific & Professional Districts which exceeds in area:
- 35 square feet in Business Village Districts
  - 75 square feet in Districts other than Business Village Districts fronting on streets other than Route 9
  - 100 square feet in Districts other than Village Business Districts fronting on Route 9.

The Board of Appeals will not act on any special permit or variance application without first receiving a written report from the Planning Board. A favorable report of the Planning Board shall indicate that:

- (1) Sign scale is determined to be in reasonable relation to development scale, viewer distance and travel speed, and sign sizes on nearby structures.
- (2) Sign size, shape, and placement serves to define or enhance architectural elements of the building such as columns, sill lines, cornices, and roof edges, and do not unreasonably interrupt, obscure, or hide them.
- (3) Sign design is in harmony with other signage on the same or adjacent structures, and provides reasonable continuity in mounting location and height, proportions and materials.
- (4) Sign materials, colors, lettering style, illumination and form are reasonably compatible with building design, neighborhood context and use.
- (5) Sign size, location, design and illumination are not judged to present a safety hazard to vehicular or pedestrian traffic. An unfavorable report of the Planning Board shall indicate which of the above criteria were not met and shall state what modifications to the sign or signs could be made to render a favorable report.

#### **§ 174-12. Parking and loading regulations.**

- A. General requirements. There shall be provided off-street parking and loading facilities in accordance with the requirements of this section on the same lot as the use to which they are accessory, except that parking for nonresidential uses may be provided on a contiguous lot in the same ownership and zoning district as the lot on which the principal building or use is located. The Building Inspector shall interpret and apply the requirements for parking and loading spaces. Loading or parking layout for nonresidential uses shall be shown on and approved as part of a site plan under the provisions of § 174-10.

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B. Surfacing. Required vehicular use areas shall be paved with bituminous concrete unless serving a single-family dwelling. An alternative surface may be approved by the Planning Board upon its determination that drainage, erosion, siltation, dust and appearance will be satisfactorily controlled. Where an alternative to bituminous concrete is authorized by the Planning Board, the following shall be complied with:

- (1) Access drives shall be paved with bituminous concrete or other pavement authorized by the Planning Board for at least fifteen (15) feet inside of the street or property line unless the street itself is not paved.
- (2) Grading and materials selection shall assure that surface materials will not be carried into the street and that drainage is positively provided for.
- (3) If there are eight (8) or more parking spaces there shall be provisions for identifying individual spaces through use of segmented bumper strips or other similar permanent means.

C. Dimensional requirements.

- (1) Loading. Each loading space shall be not less than ten (10) feet in width, fourteen (14) feet in height and of such length that a truck or trailer occupying the space shall be entirely in the loading space and shall not project into any street, vehicular access way or pedestrian walk. The loading space may use common access driveways and aisles with parking spaces, where such access is adequate for both purposes. If located within fifty (50) feet of a residence district or if used frequently at night, loading spaces shall be enclosed. Loading spaces shall not be located within the required front yard.
- (2) Parking. Each parking space shall be at least nine and one-half (9 1/2) feet wide and eighteen (18) feet long, exclusive of aisles and maneuvering space; for parking at right angles to a central aisle, the width of the aisle shall not be less than twenty-two (22) feet, and an equal width shall be provided at each end of a row of parking spaces; for angle or herringbone parking at forty-five degrees (45') or sixty degrees (60') and one-way circulation, the width of aisles shall be consistent with the dimensions recommended by the Institute of Transportation Engineers, provided that for parking facilities for more than five (5) cars, the total area shall be not less than three hundred (300) square feet times the number of parking spaces. Unobstructed access to and from a street shall be provided and shall not require backing out into a street. Two (2) or more nonresidential uses may share a combined facility, provided that its continued availability is assured and the total number of spaces equals or exceeds the number required by this section. The number of parking spaces required by the Architectural Barriers Board located nearest to and to both sides of the entrance of a building used by the public and/or by employees shall be reserved for the exclusive use of handicapped persons and shall be identified by appropriate signs at each parking space and by the wheelchair symbol painted within each such parking space. Up

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to twenty-five percent (25%) of parking spaces dedicated to use by employees or occupants and not by the general public and up to fifteen percent (15%) of such spaces for use by customers, visitors or general public may be reduced to not less than seventeen by eight (17 x 8) feet and marked as being reserved for compact cars only.

D. Loading requirements. Not fewer than the number of loading spaces indicated in the following table shall be provided:

<b>Floor Area of Building or Structure (square feet)</b>	<b>Retail Trade, Wholesale Trade, Storage, Manufacturing</b>	<b>Consumer Service Offices, Hotels, Institutions Dormitories Other Nonresidential Uses</b>
5,000 to 15,000	1	0
15,001 to 50,000	1	1
50,001 to 100,000	2	1
100,001 to 150,000	3	2
150,001 to 300,000	4	3
Each additional 100,000 over 300,000		1 additional
Each additional 200,000 over 300,000		1 additional

E. Parking requirements. Off-street parking spaces shall be provided according to the following schedule, and not more than twenty-five percent (25%) of the required parking spaces, other than for dwellings, shall be located in the required front yard.

- (1) Dwellings: two (2) spaces for each dwelling unit containing one (1) or two (2) bedrooms, three (3) spaces for each dwelling unit containing three (3) or more bedrooms, plus one (1) space for each eighty (80) square feet of floor area devoted to a customary home occupation or a professional use.
- (2) Hotels, motels, board or rooming houses and other places providing overnight accommodations: one (1) space for each room accommodation, plus one (1) space for each two (2) employees, plus one (1) space for each four hundred (400) square feet of public meeting area and restaurant.
- (3) Restaurants and other places serving food or beverages: one (1) space for each three (3) seats, plus one (1) space for each employee, provided that drive-in establishments shall instead provide one (1) space for each fifty (50) square feet of gross floor area, plus one (1) space for each two (2) employees.

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- (4) Schools and colleges: two (2) spaces per classroom for elementary and intermediate; two and one-half (2 1/2) spaces per classroom for secondary, and one (1) space per two (2) students beyond secondary, none to be fewer than one (1) space per teacher and staff.
- (5) Banks and libraries: one (1) space for each two hundred fifty (250) square feet of floor area in public use, plus one (1) space for each five hundred (500) square feet of other gross floor area.
- (6) Hospitals, nursing homes, homes for the aged. Hospitals: one (1) space per bed; nursing homes: one (1) space per two (2) beds; homes for the aged: one (1) space per one and one-half (1 1/2) units.
- (7) Theaters, membership clubs and places of amusement, recreation and assembly (public or private): one (1) space per four (4) seats.
- (8) Retail stores and consumer service establishments: one (1) space for each one hundred fifty (150) square feet of gross floor area, exclusive of storage space.
- (9) Gasoline service stations: two (2) spaces for each lubrication pit, lift or bay, plus one (1) space for each employee.
- (10) Warehouses: one (1) space for each one thousand five hundred (1,500) square feet of gross floor area.
- (11) Medical and dental offices: one (1) space per two hundred (200) square feet gross floor area.
- (12) Industry, processing, manufacturing, assembly and research and development: one (1) space for each three hundred (300) square feet of floor area, plus space for company-owned trucks and vans and the required loading spaces.
- (13) All other offices and nonresidential uses: three and one-half (3 1/2) spaces for each one thousand (1,000) square feet of gross floor area.
- (14) Temporary reduction in the number of paved parking spaces. Whenever new or increased off-street parking spaces are required to be provided on premises subjected to a site plan review and approval by the Planning Board under the provisions of § 174-10 hereof and if, in the opinion of the Planning Board, based on evidence presented by the applicant, the full number of parking spaces will not be needed for at least three (3) years, the Planning Board may, in its approval of the site plan, temporarily reduce the number of parking spaces paved, designated, striped and graded, subject to the following requirements:
  - (a) The Planning Board shall have the right to review the temporary reduction every three (3) years or whenever evidence is presented to it that such review is warranted and shall have the right to require the paving and development of additional parking spaces up to the full number required by this chapter.

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- (b) The applicant shall be required to provide the entire area called for by this chapter and shall landscape, plant with grass or shrubbery and maintain as open space any part thereof not needed for parking.
- (c) In no case shall the number of parking spaces developed, paved, marked and available for parking be less than sixty percent (60%) of the total number of such spaces called for by this chapter, and no cars shall be parked on undeveloped reserved land, except in an emergency. The areas to be developed and paved and to be temporarily held as landscaped open space shall be clearly identified on the site plan, and their location and layout shall be consistent with § 174-10B, C and D. Anyone required to provide at least twelve (12) parking spaces and wishing to take advantage of this temporary reduction provision shall proceed in accordance with the provisions of this subsection and of § 174-10 hereof, even though not otherwise subject to its requirements.

F. Egress.

- (1) Any driveway likely to carry more than two hundred (200) trips per average business day must comply with the following unless the Board of Appeals grants a special permit for an alternative configuration, upon its determination that safety will be adequately protected, based on commonly employed engineering standards:

	<b>On Route 9</b>	<b>Other Locations</b>
Exiting vehicle unobstructed sight distance at edge of traveled way	500 feet	200 feet
Driveway center-line separation from other driveways serving two hundred (200) plus trips	300 feet	100 feet
Driveway center-line separation from intersecting street side-line	150 feet	50 feet
Maximum driveway width unless greater width justified by engineered design	24 feet	18 feet
Curb radius	50 feet	25 feet
Acceleration/deceleration lanes required	Yes	No

- (2) No existing parcel shall be divided into lots with frontage which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

§ 174-12.1 Outdoor Illumination

## ZONING

- A Purpose. This section recognizes the benefits of outdoor lighting and provides clear guidelines for its installation, so as to help maintain and compliment Southborough's character. The intent of this section is to encourage lighting that provides safety, utility and security; prevent glare on public roadways; protect the privacy of residents; promote energy-efficient outdoor lighting; limit the total allowable illumination of lots located in the Town of Southborough; and to reduce atmospheric light pollution. Appropriately regulated, and properly installed, outdoor lighting will contribute to the safety and welfare of the residents of the Southborough.
- B. Applicability. Outdoor illumination by flood or spot luminaires rated at nine hundred (900) lumens or more (which is approximately equal to one 60-watt incandescent light bulb) or by any other luminaires rated at one thousand eight hundred (1800) lumens or more (which is approximately equal to one 120-watt incandescent light bulb) shall be subject to the provisions of this Section, with the following exceptions: emergency lighting; hazard warning; temporary decorative or holiday lighting or public roadway illumination. It shall also not apply to any luminaire intended solely to illuminate any freestanding sign, flag or the walls of any building but such luminaire shall be shielded so that its direct light is confined to the surface of such sign, flag or building.

The replacement of existing fixtures shall be subject to the provisions of this Section; however, the replacement of existing nonconforming lamps or fixtures with the same or lower output nonconforming lamps or fixtures is exempted.

The Planning Board in performing review pursuant to Section 174-10, Site plan approval, may determine that special circumstances of the site, context or design make an alternative lighting design at least equally effective in meeting the purposes of this Section and in such cases, may modify the requirements of this Section.

- C. Definitions. For the purposes of this Section, the following terms shall be defined as indicated below. Although set forth here for convenience, the terms shall have the same effect as if set forth in Section 174-2 of this Bylaw.

Fixture: The assembly that houses a lamp or lamps, and which may include a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor, lens or diffuser lens.

Full Cutoff: A luminaire designed with an opaque shield surrounding and extending below the lamp, such that no direct light is emitted above a horizontal plane;

Glare: Light emitted from a luminaire with intensity great enough to produce annoyance, discomfort or a reduction in a viewer's ability to see, and in extreme cases causing momentary blindness.

Lamp: The component of a luminaire that produces the actual light.

Light Trespass: The shining of direct light produced by a luminaire beyond the boundaries of the lot on which it is located.

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Lumen: A measure of light energy generated by a light source. One foot candle is one lumen per square foot. For purposes of this Bylaw, the lumen output shall be the initial lumen output of a lamp, as rated by the manufacturer.

Luminaire: A complete lighting system, including a lamp or lamps and a fixture.

- D. Exterior Lighting Plan. Applications subject to the provisions of Section 174-10, Site plan approval, shall submit a lighting plan which shall include the following information, except to the extent waived by the Planning Board. All other lighting not subject to the provisions of said Section 174-10 does not require a lighting plan but shall meet the standards as set forth in this Section, unless as may otherwise be provided herein. The lighting plan shall include the following information:
- location, orientation and type of outdoor luminaire, including the height of the luminaire, both existing and proposed;
  - luminaire manufacturer's specification data, including lumen output and photometric data showing cutoff angles, as well as a description of all illuminating devices, fixtures, lamps, supports, reflectors, both existing and proposed; this may include but is not limited to, catalog cuts and illustrations by manufacturers;
  - type of lamp such as metal halide, compact fluorescent, high pressure sodium;
  - photometric plan showing the intensity of illumination expressed in footcandles at ground level within the interior of the property and at the property boundaries;
  - evidence that the plan complies with light trespass restrictions as set forth herein.
- E. Flickering and Flashing Lights. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.
- F. Wall Mounted Fixtures. In Nonresidential Districts, a luminaire attached to the exterior of a building or structure for area lighting shall be mounted no higher than fifteen (15) feet above grade and shall be shielded to control glare. "Wal-pac" lighting fixtures are prohibited.
- G. Pole Mounted Fixtures. Pole mounted exterior lighting fixture types are defined and restricted as follows:
- Type A. No light cutoff.
- Type B. Luminaire shielded such that peak candlepower is at an angle of 75 degrees or less from straight down, and essentially no light is emitted above the horizontal.

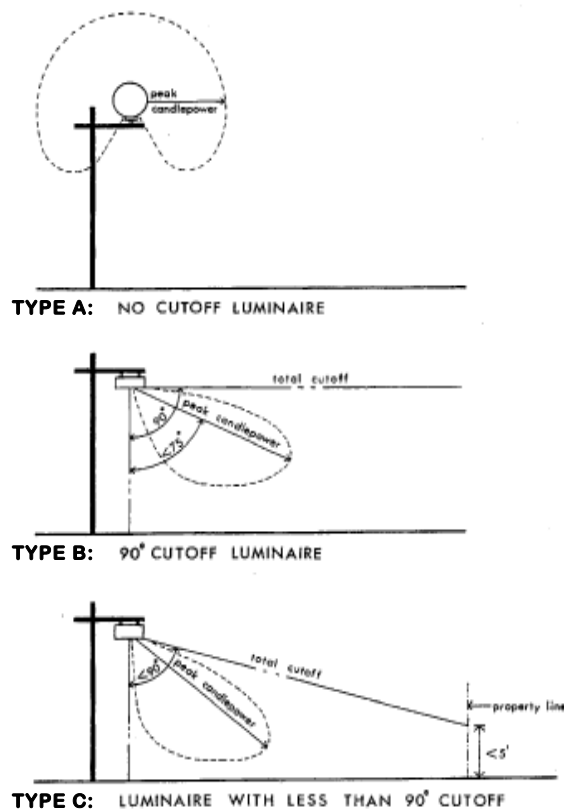


## ZONING

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

- H. Pole Mounted Fixtures Height Limitation. Illustrations of pole mounted exterior lighting fixture types are shown in Chart I herein. Pole mounted fixtures shall not exceed the applicable pole mounted height limitation set forth in Chart II in any district. The Type A pole mounted exterior lighting fixture is prohibited in all Nonresidential Districts, unless equipped with shields.

## CHART I. ILLUSTRATIONS



## CHART II. POLE MOUNTING HEIGHT LIMITATIONS

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	District	
	Residential	Nonresidential
	Maximum Luminaire Mounting Height (feet above grade "District" is that in which fixtures are located).	
Fixture Type A	10	Not allowed (unless shielded)
Fixture Type B	15	20
Fixture Type C	20	20

\*Feet above grade refers to the overall average grade of the area being illuminated.

- I. Ceiling Mounted Fixtures. In Nonresidential Districts, luminaires mounted on an exterior ceiling such as under a canopy shall be mounted with the refractor or lens flush with or recessed in the ceiling or fixture.
- J. Lighting Levels. Any luminaire with a lamp or lamps rated at a total of one thousand eight hundred (1800) lumens or more (which is approximately equal to one 120-watt incandescent light bulb) and all flood or spot luminaires rated at nine hundred (900) lumens or more (which is approximately equal to one 60-watt incandescent light bulb), shall not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of the luminaire. If any spot or flood luminaire rated 900 lumens or less is directed or focused such as to cause direct light from the luminaire to be cast toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions.

The Planning Board reserves the right to limit and regulate the amount of illumination on a project site between the hours of 10:00 p.m. and 6:00 a.m., while understanding the need for safety and security lighting.

- K. Light Trespass Limitations<sup>1</sup>. There shall be no light trespass by a luminaire beyond the property boundaries of the lot on which it is located.<sup>1</sup>

**§ 174-13. Landscaping.**

- A. Purpose and Applicability
  - (1) Purpose - The purpose of this section is to preserve and protect the community's ecological resources and to improve the appearance, environment, character, and value of the total community; and to protect nearby properties, thereby promoting the public health, safety and general welfare. It is intended to establish minimum standards for the design of landscapes for all land development projects requiring Planning Board approval. This section also ensures that any development will make landscaping an integral part of that plan.

<sup>1</sup> Except no limit within a street right-of-way.

## ZONING

- (2) Applicability – The requirements of this section shall apply as specified below to any new building, addition, or change of use in an existing structure that requires a parking increase of five (5) or more spaces, or is subject to Site Plan Review by the Planning Board. In performing site plan review under §174-10, the Planning Board may authorize alternatives to the following specifications, taking into consideration existing vegetation, topography, soils and other site conditions, provided that equivalent screening, shading and articulation are achieved.
- (3) Exceptions - The requirements of this section do not apply to developments or renovations in the Business Village District. However, the Planning Board may require landscaping as part of the site plan or special permit application within the Business Village District.

## B. Landscape Standards and Specifications.

- a. All submissions for projects subject to this section shall include a comprehensive landscape plan and planting schedule.
- b. The developer shall furnish and install all plant materials listed on the approved landscaping plan.
- c. Plant materials shall conform to the requirements described in the latest edition of *American Standard for Nursery Stock*, which is published by the American Association of Nurserymen.
- d. Shade trees must be a minimum of three (3) inches in caliper six (6) inches above grade, be of a species common in the area and be ones which reach an ultimate height of at least thirty (30) feet. Ornamental trees must be a minimum of eight (8) feet at the time of planting. (Eight (8) feet from the top of the root ball to the top of the tree). Shrubs must be at least thirty-six (36) inches in height at the time of building occupancy, reach an ultimate height of at least five (5) feet and be of a species common in the area.
- e. Do not use staking materials unless absolutely necessary. If staking is necessary, then the developer/property owner must remove staking materials after one full growing season.
- f. Property owners ensure the survival and health of required trees. If any plant material dies, the property owner must replace it within one hundred eighty (180) days.
- g. All plant materials required by this chapter shall be maintained in a healthful condition. Any and all fences required for screening shall be properly maintained.
- h. All planting areas shall be mulched with a three (3) to four (4) inch layer of bark mulch or other similar material to cover the complete planting area. However, in no case shall more than 25% of the planting area be strictly bare mulch.

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- i. A permanent water supply system, or other acceptable watering method, shall be provided for all planting areas. In order to protect the Town’s water supply, and encourage sound landscaping practices, the Town of Southborough recommends sustainable watering systems, such as: rainwater recycling systems, automatic shut-off devices, drought-tolerant native plant material, and careful irrigation scheduling, among others.

Plantings shall consist of at least one (1) tree per forty (40) linear feet of planting area length, except one (1) tree per twenty (20) linear feet of street planting area abutting Route 9, and at least one (1) shrub per three (3) feet. Plantings preferably will be grouped, not evenly spaced, and shall be located or trimmed to avoid blocking egress visibility. The planting area shall be unpaved except for access drives and walks essentially perpendicular to the area and shall be located wholly within the lot.

Applicants are encouraged to specify salt-tolerant species for street trees to prevent early plant loss due to winter road salt.

Invasive plants, as defined by the Massachusetts Invasive Plant Group, are “plants that have spread into native or minimally managed plant systems in Massachusetts. These plants cause economic or environmental harm by developing self-sustaining populations and becoming dominant and/or disruptive to those systems.” (Under this definition all synonyms, species, subspecies, varieties, forms, and cultivars of that species are included unless proven otherwise by a process of scientific evaluation.) The Town of Southborough encourages the use of native species in all landscaping plans. Please note that many of the invasive species listed below have native counterparts that could be considered.

The following invasive species of plants are prohibited from being planted:

<b><i>Ailanthus altissima</i></b>	<b>Tree of heaven</b>
<b><i>Berberis thunbergii</i></b>	<b>Japanese barberry</b>
<b><i>Celastrus orbiculatus</i></b>	<b>Asian or, Asiatic bittersweet, oriental bittersweet</b>
<b><i>Elaeagnus umbellata</i></b>	<b>Autumn olive</b>
<b><i>Frangula alnus</i></b>	<b>European buckthorn, glossy buckthorn</b>
<b><i>Lonicera x bella</i></b> Zabel [morrowii x tatarica]	<b>Bell’s honeysuckle</b>
<b><i>Lonicera japonica</i></b>	<b>Japanese honeysuckle</b>
<b><i>Lonicera morrowii</i></b>	<b>Morrow’s honeysuckle</b>
<b><i>Lythrum salicaria</i></b>	<b>Purple loosestrife</b>
<b><i>Phragmites australis</i></b> (Ceav.) Trin. ex Steud.	<b>common reed</b>
<b><i>Rhamnus cathartica</i></b>	<b>Common buckthorn</b>
<b><i>Robinia pseudoacacia</i></b>	<b>Black locust</b>
<b><i>Rosa multiflora</i></b>	<b>Multiflora rose</b>
<b><i>Acer platanooides</i></b>	<b>Norway maple</b>
<b><i>Acer pseudoplatanus</i></b>	<b>Sycamore maple</b>
<b><i>Euonymus alatus</i></b>	<b>Burning bush</b>
<b><i>Ligustrum species</i></b>	<b>Privet</b>
<b><i>Spiraea japonica</i></b>	<b>Japanese spirea</b>

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- C. Street planting area. Street planting is required for all nonresidential premises. Street plantings at the front of lots shall contribute to the creation of an impression of a separation of the street and the developed area of the site without necessarily eliminating visual contact between them. Street plantings adjoining or facing residential uses or residential zoning districts shall provide the strongest possible visual barriers between uses at the pedestrian level and a sense of separation. A landscaped buffer strip shall be a minimum of fifteen (15) feet in depth. The Planning Board may reduce or modify this requirement if in their judgment, strict compliance would create a hardship due to existing conditions such as lot size, location of existing buildings, or environmental conditions. Also refer to subsection H. Existing vegetation.
- D. Side and rear line planting area. A landscape buffer strip a minimum of ten (10) feet in width shall abut all side and rear property lines.
- E. Vehicular use area plantings. All new or expanded parking lots of five (5) or more spaces shall be required to comply with this Section. If an existing parking lot is expanded or improved to increase the number of spaces by five (5) or more, it shall comply with this Section within the expanded or improved portion.
- (1) Trees shall be planted at a rate of two (2) shade trees or three (3) ornamental trees for every ten (10) spaces or fraction thereof.
  - (2) Required trees shall be located within or adjacent to parking lots as tree islands, medians, and at the end of parking bays, traffic delineators, or between rows of parking spaces in a manner such that no parking space is located more than sixty (60) feet from a tree.
  - (3) Planting areas within parking areas shall provide a minimum of eighty-one (81) square feet per tree with a minimum inside dimension of nine (9) feet and a minimum prepared depth of eighteen (18) inches.

The exterior perimeter of all vehicular use areas shall be planted with a buffer strip at least five (5) feet in width, excluding accessways. Any vehicular use area abutting a lot that is residentially used or zoned shall be planted with a buffer strip at least ten (10) feet in width and shall be supplemented with an opaque fence or wall at least six (6) feet high, unless there is vegetation sufficiently dense to effectively obscure vision. Trees and soil plots shall be so located as to provide visual relief and wind interruption within the parking area and to assure safe patterns of internal circulation.

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Ratios of Parking Spaces to Trees (choose one (1) column of trees only)

# of Parking Spaces	# of Shade Trees	or # of Ornamental Trees	or # of Mixed Trees
10	2	3	3
15	3	5	4
20	4	6	5
25	5	8	6
30	6	9	7
35	7	11	8
40	8	12	9
45	9	14	10
50	10	15	11
55	11	17	13
60	12	18	14
65	13	20	15
70	14	21	16
75	15	23	18
80	16	24	19
85	17	26	20
90	18	27	21
95	19	29	23
100	20	30	24

To determine the number of trees needed for a number of parking spaces not shown on the chart above, use the following formulas (choose (1) only):

Shade trees: # of spaces x 20%

Ornamental trees: # of spaces x 30%

Mix of both: # of spaces x 25%

- F. Zoning District boundary planting area. A landscaped buffer strip, a minimum of twenty (20) feet in width is required on any nonresidential premises along the full length of any boundary abutting property that is residentially used or zoned except that in the Industrial Park District (IP) the buffer strip shall be a minimum of fifty (50) feet in width. The buffer strip shall contain existing vegetation and/or plantings that are sufficiently dense to adequately screen adjacent residential properties.
- G. Berms. When berms are used to meet the requirements for a buffer strip, they shall be planted with living vegetation. The minimum top width shall be five (5) feet with a minimum slope of 3:1. In no case shall more than 25% of the berm planting area be strictly bare mulch or non-living material.
- H. Existing vegetation. Wherever possible, the above requirements shall be met by retention of existing plants. If located within twenty-five (25) feet of a street, no existing tree of six (6) inches in caliper or greater [measured four (4) feet above grade], dense hedgerow of four (4) or more feet in both depth and height or existing earth berm

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providing similar visual screening shall be removed or have grade changed more than one (1) foot unless dictated by public health, access safety or identification of the premises.

- I. Exceptions. Where plant materials as required would harmfully obstruct a scenic view, substitution of additional low level plantings which will visually define the street edge or property line may be authorized, provided that proposed buildings are also designed and located to preserve that scenic view.
- J. Site distance restrictions. When an accessway intersects a public street or another access way, required plantings shall conform to the requirements of unobstructed site distance as outlined in the parking and loading regulations (§ 174-12F).
- K. Nonconforming landscaping and screening.
  - (1) Any improvement along the property boundary, including landscaping, screening and fencing, legally erected and conforming to the requirement of this chapter when so erected, may continue to be maintained, even though as a result of changes to this chapter the boundary improvements no longer conform to its requirements, provided that such boundary improvements shall not be enlarged, redesigned or altered except so as to make them conform to said requirements, and further provided that any such boundary improvements which have been destroyed or damaged to such an extent that the cost of restoration would exceed fifty percent (50%) of the replacement value of the boundary improvements at the time of destruction or damage, shall not be repaired, rebuilt or altered, except so as to make said boundary improvements conform to the requirements of this chapter.
  - (2) The exemption for nonconforming landscaping and screening herein granted shall terminate with respect to any boundary improvements which shall:
    - (a) Have been abandoned; or
    - (b) Not have been repaired or properly maintained for at least sixty (60) days after notice to that effect has been given by the Building Inspector.

**§ 174-13.1. Concept plans.**

- A. Applicability. Any use which is designated in § 174-8 as being subject to this Article requires concept plan approval by Town Meeting prior to being acted upon for special permit approval. Approval shall be by two-thirds vote of the Town Meeting and may be made with conditions or limitations. Special permits shall then be required and shall be approved by the special permit granting authority only upon determination by that authority that the proposal is consistent with the approved concept plan or, in the event of an inconsistency, that the departure is necessitated by changed conditions or earlier error and that the inconsistency does not result in less beneficial development, based on the considerations of Subsection B below.

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- B. Considerations. Compliance of the proposal with the considerations of § 174-9, Special permit requirements, shall be reported to the Town Meeting by the Planning Board and shall be the basis for subsequent special permit approval.
- C. Procedures.
- (1) Submittals. Five (5) copies of the concept plan shall be filed with the Planning Board.
  - (2) Concept plan contents. A concept plan should consist of the following:
    - (a) A schematic development plan, indicating boundaries of the lot, buildings, roads, drives, parking, reserved open space, existing topography and proposed grading, areas of retained vegetation and proposed planting areas, and a locus plan showing relation to nearby streets, zoning district boundaries and water bodies.
    - (b) Floor plans and elevations of all existing and proposed structures.
    - (c) Materials indicating the proposed ultimate floor area in each use; time schedule for development; service improvements proposed at the developer's and those anticipated at the town's expense.
    - (d) An estimate of peak hour trips on to and off of the site.
    - (e) Analysis indicating degree of consistency with each of the considerations of § 174-9, Special Permit Requirements.
- D. Pre-Town Meeting hearing. Prior to Town Meeting action, the Planning Board shall hold a public hearing on the concept plan with timing, notice and procedures the same as those required for a hearing on a Zoning Bylaw amendment. The Planning Board shall report its recommendation to the Town Meeting, with a copy of the concept plan and the recommendation to be filed with the Town Clerk not less than fourteen (14) days prior to the Town Meeting vote on the concept plan.
- E. Special permit. Application for an initial special permit must be made not more than twelve (12) months after the Town Meeting approval of the concept plan.



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**§ 174-13.2. Major residential development.**

## A. Applicability.

- (1) Special permit required. Major residential development, that is, the creation of eight (8) or more lots or construction of eight (8) or more dwelling units within an eight-year period from or on a property or set of contiguous properties in common ownership as of January 1, 1986, is allowed on special permit, as indicated in § 174-8, Schedule of Use Regulations. Applicants applying under this section must also concurrently file the application with the Southborough Housing Opportunity Partnership Committee (SHOPC).
- (2) Repetitive subdivision and phasing of large properties.
  - (a) Land outside a major residential development. Where a by-right subdivision of fewer than eight (8) lots (that is, a development under the threshold size for a major residential development) is first created on one (1) portion of a property, thereby leaving another portion of the same property remaining undeveloped, and if the applicant later wishes to subdivide this remaining portion thereby creating eight (8) or more lots overall within the eight-year period (as described in Subsection A(1) above), then the applicant may do so by applying for a special permit for a major residential development for the remaining portion. On large properties to be developed in phases, the applicant may apply for more than one (1) special permit with no time limit.
  - (b) Lots inside a major residential development. Lots created inside a major residential development, and made a part of the development, may not be further subdivided within eight (8) years except by amending the original special permit.
- (3) Flexible development option for small properties. Except as provided below, a development creating fewer than eight (8) lots or units does not require approval of a special permit, because it is below the threshold size. However, if an applicant wants to take advantage of this section's special features (such as flexible development) for a development of fewer than eight (8) lots, then the applicant may do so by applying for a special permit. In this case, all requirements of this section shall apply as if the development was a major residential development, with the one (1) exception, that affordable housing shall not be required under Subsection E.
- (4) Exceptions. The above requirements shall not be applicable if the lots are restricted from residential use.

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- (5) Subdivision approval. Subsequent to, or in conjunction with the granting of the special permit compliance with the rules and regulations regarding the subdivision of land must be met.<sup>1</sup>

B. Objectives. The objectives of the special permit for a major residential development are to:

- (1) Allow for greater flexibility and creativity in the design of residential developments.
- (2) Encourage the permanent preservation of open space, agricultural and forestry land and other natural resources.
- (3) Maintain the Town of Southborough's traditional New England rural character and land use pattern in which small villages contrast with open space and farmland.
- (4) Encourage more affordable and diverse housing types.
- (5) Protect scenic vistas.
- (6) Preserve unique and significant natural and historical resources.
- (7) Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- (8) Encourage a less sprawling form of development.
- (9) Encourage the development of passive and active recreation facilities.

C. Application requirements. The application requirements for the special permit for a major residential development are as follows:

- (1) Preliminary meeting. Prior to filing an application, the applicant shall meet with the Planning Board in order to promote better communication and avoid misunderstanding.
- (2) Intent of alternative plans. Applications for a special permit for major residential development shall include two (2) plans: a conventional plan and a flexible plan. The intent of this section is to approve the flexible plan wherever appropriate because the flexible plan is, in general, more capable than the conventional plan of meeting the objectives listed in Subsection B, as well as the design criteria listed in Subsection G(2). The purpose of the conventional plan is simply to establish the total number of lots or units allowed on the site, without bonuses, and consequently the number of lots allowed in the flexible plan, as provided in Subsection D(1).

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<sup>1</sup> 1 Editors Note: See Ch. 244, Subdivision of Land

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- (3) Submission materials. Applicants for major residential development shall file with the Planning Board seven (7) copies of the following, prepared by an interdisciplinary team, including a registered land surveyor, a professional engineer and a registered architect or landscape architect
- (a) Plans. The conventional and flexible plans described above, conforming to the information requirements for a preliminary subdivision plan under subdivision regulations of the Planning Board.<sup>1</sup>
  - (b) Natural conditions. Such plans shall also indicate:
    - [1] Topography, both existing and proposed.
    - [2] Existing wetland boundaries, which shall be delineated by registered professionals qualified under MGL C. 131, § 40, and/or Chapter 170, Wetlands Protection.
    - [3] Any critical areas, scenic views and vistas, as specified in Subsection F.
  - (c) Sewage disposal.
    - [1] If septic systems are proposed, then the submission shall include the results of soil evaluations and percolation tests at the rate of one (1) every five (5) acres, but in no case fewer than five (5) per major residential development. Soil evaluations shall be located to the satisfaction of the Planning Board so as to indicate the buildability of areas proposed either for development or for bonused reservation under Subsection F.
    - [2] If alternative sewage treatment systems are proposed, then the applicant shall meet with the Board of Health prior to submission to the Planning Board, in order to establish the submission requirements of the Board of Health for such a system.
  - (d) Comparative analysis. A written statement as to which of the two (2) plans (conventional or flexible) is preferred by the applicant. In addition, a brief written comparison of the impacts of a flexible development plan versus a conventional development plan. This comparison should discuss the specific site characteristics which make the preferred plan the best development option, (in the opinion of the applicant), based on the design criteria for major residential development in Subsection G(2).
  - (e) Other information. Any additional information necessary to make the determinations and assessments cited in Subsections F and G.

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<sup>1</sup> Editors Note: See Ch. 244, Subdivision of Land.

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- D. The Planning Board may authorize flexible development within a major residential development, with reduced requirements for the area and frontage of individual lots not having frontage on an existing public way, provided that the following are complied with:
- (1) Number of lots or units. The number of lots or units, excluding any bonus lots or units allowed under Subsection F, shall not exceed the number of lots in the conventional plan which shall be in full conformance with zoning, subdivision regulations and health codes. The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission and the Department of Public Works of the Town of Southborough in making said determination.
  - (2) General design criteria. Refer to Subsection G(2).
  - (3) Shape and dimension of lots. Provisions in § 174-8, Schedule of Use Regulations, governing the shape and dimensions of lots, shall apply when calculating the number of lots allowed in a conventional plan, as required by Subsection D(1) above. However, these provisions shall not apply when creating new lots within a flexible plan, unless otherwise specified in this section. The dimensional requirements for flexible lots are specified in Subsection D(4) below.
  - (4) Single-family requirements. The following provisions shall only apply to detached single-family dwellings on their own individual lots. Where more than one (1) detached single-family dwelling is on the same lot (for example, single-family condominiums), then they shall be treated as multifamily dwellings for the purpose of this section, and they shall be governed by the provisions of Subsection D(5) below.
    - (a) Site with individual septic systems on each lot.
      - [1] Lot area. In order to ensure adequate lot area for individual septic systems, the minimum lot area shall be two-thirds (2/3) of the minimum required in § 174-8, Schedule of Use Regulations, for each zoning district.
      - [2] Lot frontage. The minimum lot frontage in all zoning districts shall be eighty (80) feet, except as follows. Lots located on the turnaround of a dead-end street shall have a minimum frontage of fifty (50) feet, provided that a front building line is designated on the plan for such a lot, and also provided that the width of the lot at this building line is at least equal to the minimum frontage requirement.
      - [3] Front yard. Front yards shall be staggered to provide a variety in size of such yards. In all zoning districts, the minimum average of all front yards shall be twenty-five (25) feet; however, no front yard shall be less than twenty (20) feet.

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- [4] Side yard. The minimum side yard shall be twenty (20) feet in the Residence A District and ten (10) feet in all other districts; provided, however, that dwellings on abutting lots shall be no closer than thirty (30) feet which may be accomplished by staggering or other means.
  - [5] Rear yard. In all zoning districts the minimum rear yard shall be forty (40) feet or thirty (30) feet if backing up to common open space.
  - [6] Setback lines. The front, side and rear setback lines shall be shown on the definitive subdivision plan.
  - [7] Open space. In all zoning districts, a minimum of ten percent (10%) of the overall site area shall be preserved in a natural state, exclusive of wetlands, and twenty five percent (25%) overall shall be dedicated as common open space.
  - [8] Common areas. Refer to Subsection G(2) for design criteria for common areas.
- (b) Site with alternative sewage treatment systems. Based upon the reduced need for land on each lot if individual septic fields are no longer required and the benefits of consolidating this land into common preserved open space, the Planning Board may, at its discretion, approve the following:
- [1] Lot area. The minimum lot area shall be one-third (1/3) of the minimum required in § 174-8, Schedule of Use Regulations, for each zoning district. The reduction in lot area shall not be used to increase the total number of lots permitted in the overall site. All the site area saved through reduction in lot area shall be dedicated as common land or dedicated to the town.
  - [2] Lot frontage. The minimum lot frontage in all zoning districts shall be sixty-five (65) feet, except as follows: Lots located on the turnaround of a dead-end street shall have a minimum frontage of fifty (50) feet, provided that a front building line is designated on the plan for such a lot, and also provided that the width of the lot at this building line is at least equal to the minimum frontage requirement.
  - [3] Yards. The minimum yard dimensions shall be the same as for lots with septic systems, as provided under Subsection D(4)(a) above.
  - [4] Setback lines. The front, side and rear setback lines shall be shown on the definitive subdivision plan.
  - [5] Open space. In all zoning districts, a minimum of twenty percent (20%) of the site area shall be preserved in a natural state,

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exclusive of wetlands, and thirty-five percent (35%) overall shall be dedicated as common open space.

- [6] Common areas. Refer to Subsection G(2) for design criteria for common areas.
- (5) Multifamily requirements. The Planning Board may authorize inclusion of multifamily dwellings within a flexible development, subject to the following, unless authorized as housing for the elderly under § 174-9H. Where more than one (1) single-family detached dwelling is on the same lot, (for example, single-family condominiums), they shall be treated as multifamily dwellings for the purpose of this section and governed by the provisions of this subsection.
- (a) Number of dwelling units. The number of dwelling units allowed shall be governed by the provisions of Subsection D(1). More than one (1) structure may be allowed on a lot. § 174-8C(2) shall not apply.
  - (b) Types of units. To assure internal diversity and continuity with surrounding development, single-family dwellings (whether on their own individual lots or on a shared lot) are required within a multifamily development. Not more than two-thirds (2/3) of the dwelling units on any parcel developed subject to these provisions shall be in multifamily dwellings containing two (2) or more units. (Note: Housing for the elderly is not governed by this section).
  - (c) Layout of buildings. To maintain the visual scale of the community, each multifamily dwelling unit shall have its own exterior entrance; there shall be not more than four (4) dwelling units in any structure, and the multifamily structures shall be clustered in groups, with not more than sixteen (16) dwelling units in any group. Buildings within groups shall normally be separated from each other by not less than twice the required side yard, and there shall be not less than one thousand (1,000) feet separation between dwellings in any such group and any other multifamily dwellings on or off the premises, unless the Planning Board authorizes a reduction of up to one-third (1/3) in such requirements, upon its determination that doing so serves the objectives of the bylaw.
  - (d) Visual buffers. Visual separation from nearby premises shall be assured through providing yards of double the usually required dimension between any multifamily structure or parking area for six (6) or more cars and the boundaries of the major residential development, and through having any exterior lighting shielded and mounted not more than fifteen (15) feet high.
  - (e) Open space. To assure environmental benefit from the compact development which multifamily development facilitates, the site area which shall be preserved in a natural state, exclusive of wetlands, shall be a minimum of ten percent (10%) and shall increase in direct proportion to the

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percentage of multifamily units, up to a maximum requirement of twenty percent (20%) preserved area. In addition, a minimum of thirty-five percent (35%) overall shall be dedicated as common open space. Where appropriate, open space not to be preserved in its natural state shall be utilized for recreation to serve the needs of the Town.

## E. Affordable housing.

## (1) Provision of affordable units.

- (a) Number of units to be provided: All developments including a residential component which are subject to this Section shall be required to set aside a minimum of twelve and one-half percent (12.5%) of the total number of dwelling units provided as affordable housing.
- (b) Fractions: If, when applying the percentage to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if one-half (1/2) or greater, shall be rounded up to the next whole number. If the resulting number of affordable units includes a fraction of a unit less than one-half, the fraction shall be rounded down to the next whole number.
- (c) Sale, lease or rental of units to low-income households: Units set aside for sale, lease or rental to low-income households shall be restricted for occupancy by qualified households that meet the definition of "low" income set forth in this bylaw.
- (d) Affordability of rental and ownership units. Affordable rental and ownership units shall serve low-income households.
- (e) Relationship to the affordable housing inventory. It is intended that the affordable housing units serving low-income households that result from this bylaw be considered as Local Initiative Units in compliance with the requirements of the Commonwealth of Massachusetts Department of Housing and Community Development, as required for the ten-percent (10%) statutory requirement under MGL C. 40B. A low-income household is defined as having a total household or family income between fifty-one (51) percent and eighty (80) percent of the median income for the Boston Standard Metropolitan Statistical Area, as set forth in regulations promulgated from time to time by the U. S. Department of Housing and Urban Development, or by a similar federal agency created to replace it, as adopted by the Commonwealth of Massachusetts Department of Housing and Community Development.
- (f) Relationship to public funding programs. Developers may participate in public subsidy programs and still meet the requirements of this Section. Such participation will be subject to the approval of the subsidizing agency

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and to the unit price limitations of the funding program as well as those required by this Section. In case of conflicting price limitations, the lower price requirement shall prevail.

- (g) Relationships to other organizations. Subject to the approval of the Southborough Housing Opportunity Partnership Committee and the applicable subsidizing agency, developers may elect to work with a local nonprofit housing provider, such as the Southborough Housing Authority, to distribute, maintain or operate the units in accordance with the requirements and intent of this Section.
- (2) Affordability requirements
- (a) Duration of affordability. Affordable units shall be subject to restrictions that to the extent legally possible shall preserve the permanent affordability (in perpetuity) of the units as defined by this bylaw, but in no case shall be fewer than 50 years.
  - (b) Maximum rental price. Rents for the affordable units, excluding utilities (heat, water, electricity), shall not exceed 30% of the targeted annual gross household income, as determined by the Commonwealth of Massachusetts Department of Housing and Community Development. Specific prices shall be determined by the state or federal funding source, if applicable, and are subject to approval by the Southborough Housing Opportunity Partnership Committee.
  - (c) Maximum sales price. Housing costs, including monthly housing payments, principal and interest payments, real estate taxes, and insurance, shall not exceed 30% of the targeted gross household income. Specific prices shall be determined by the state or federal funding source, if applicable, and are subject to approval by the Southborough Housing Opportunity Partnership Committee.
  - (d) Resale prices. Subsequent resale prices shall be determined based on a percentage of the median income at the time of resale as determined by the federal Department of Housing and Urban Development and adopted by the Commonwealth of Massachusetts Department of Housing and Community Development. The resale price will be established based on a discount rate, which is the percentage of the median income for which the unit was originally sold. The method of resale price calculation shall be included as part of the deed restriction. Through agreement between the Southborough Housing Opportunity Partnership Committee and the developer or owner, this percentage may be increased or decreased by up to five per cent (5%) at the time of resale, in order to assure that the target income groups' ability to purchase will be kept in line with the unit's market appreciation and to provide a proper return on equity to the seller.



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- (e) Marketing plan. The affordable units must be rented or sold using marketing and selection guidelines approved by the Southborough Housing Opportunity Partnership Committee, and in accordance with state guidelines.
- (f) Preference for Town residents and persons employed within the Town. Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than seventy percent (70%) of the affordable units shall be initially offered to, in order of preference:
- To employees of the Town of Southborough for at least five (5) years;
  - Current residents of the Town of Southborough who have resided in the Town for a minimum of five (5) years and/or persons who, although not currently residents of the Town, have previously resided in the Town of Southborough for a minimum of five (5) years in the last fifteen (15) years.
- (3) Development Standards.
- (a) Location of affordable units. Affordable units shall be dispersed throughout the development so as to ensure a true mix of market-rate and affordable housing.
- (b) Comparability. Affordable units shall be to the extent possible externally indistinguishable from market rate units in the same development. Affordable units should be comparable to market rate units in terms of location, quality, character, and room size.
- (c) Unit size. Except as otherwise authorized by the Southborough Housing Opportunity Partnership Committee, affordable units shall contain one or more bedrooms. The mix of unit sizes among the affordable units shall be proportionate to that of the development as a whole.
- (d) Rights and privileges. The owners or renters of affordable units shall have all rights, privileges and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities within the development.
- (4) Incentive. To facilitate the objectives of this Section, modifications to the dimensional requirements in the applicable zoning district shall be permitted for projects subject to the requirements of this Section. The modifications shall be permitted as set forth below.
- (a) Density Bonus. The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary, upon approval, to permit up to three additional units in the project for each one affordable unit as required in Section E. 1.

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## (5) Alternative Methods of Affordability

- (a) This Section mandates that affordable units shall be provided onsite. However, in certain exceptional circumstances the Planning Board may, at the formal written request of the developer, consider an alternative method of compliance. In granting such authorization, the Town must find that the developer has demonstrated that building the required affordable units on-site would create a significant hardship, or that such alternate method of compliance is in the best interests of the Town. A significant hardship shall be defined as being of such significance that the property cannot physically accommodate the required affordable units and/or related requirements, such as height, setbacks, or parking. Hardship shall not be considered due to financial or marketing consideration. To have such a request considered, the burden of proof shall be on the developers, who must make full disclosure to the Planning Board of all relevant information. Approval of alternate methods of compliance shall be only for the methods described below.

Except as set forth below, affordable units provided through an alternate method shall comply in all other respects with the requirements of this Bylaw. The incentives described in Section IV are not available to development proposals in which the requirements of this Section are met using the cash contribution method of compliance.

- The following alternative methods of compliance, in order of preference by the Town, may be considered by the Town in rare, exceptional circumstances:
- Off-site Location: With authorization by the Planning Board as described above, affordable units may be constructed by the developer on an alternate site. The alternate site must be suitable for residential development and must be within the Town of Southborough, and must add to the Town's stock of affordable housing units. Off-site units shall be comparable in quality, size and type to the market-rate units being created, and of a number no fewer than the number of units that would have otherwise been provided on-site. Affordable off-site units allowed by this by-law may be located in an existing structure, provided that their construction constitutes a net increase in the number of dwelling units contained in the structure. Off-site units shall be subject to the same construction schedule as otherwise required if on-site as set forth in Section VI. (3).
- Cash Contribution: With authorization by the Planning Board as described above, developers may make a cash payment to the Town to be used only for the purposes of providing housing affordable to low-income households as defined by this Bylaw.

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For ownership developments, the financial contribution for each affordable unit shall be equal to the full purchase price of an affordable unit for a four-person low-income household as defined by this Bylaw and in accordance with the regulations and policies of the Department of Housing and Community Development. In order to include the value of the land, the financial contribution for each affordable unit shall also include an amount equal to the current year's assessed value of the land divided by the total number of units proposed, multiplied by the total number of affordable units.

For rental units, the financial contribution for each affordable unit shall be equal to the difference between the average market rental price for the market-rate units in the subject development and the rent affordable to a four-person low-income household as defined by this Ordinance, calculated over a term of 10 years. In order to include the value of the land, the financial contribution for each affordable unit shall also include an amount equal to the current year's assessed value of the land divided by the total number of units proposed, multiplied by the total number of affordable units.

Prior to the issuance of a final occupancy permit for any portion of the project, the contribution shall be payable in full, or a written agreement approved by the Planning Board and SHOPC must be recorded and filed with the Town Treasurer.

- (a) Administration outlined in M.G.L., Chapter 44, Section 53A, shall be restricted solely for the creation of affordable housing, located in the Town of Southborough, and as of funds. Funds donated to the Town in accordance with the provisions defined by this bylaw. The funds shall be kept in a separate account by the Town Treasurer. The Town Treasurer shall deposit the funds in a bank or invest the same in securities as are legal under the law of the Commonwealth of Massachusetts. Any interest earned shall be credited to and become part of the fund. Any moneys conveyed to the Town in accordance with this Section shall be expended only with approval of the majority of Town Meeting.
- (6) Enforcement
- (a) Legal restrictions. Affordable units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the Southborough Housing Opportunity Partnership Committee and Town Counsel. All condominium documents and fees shall be subject to review and approval by the Southborough Housing Opportunity Partnership Committee and Town Counsel.

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- (b) Timing of commitments. All contractual agreements with the Town and other documents necessary to ensure compliance with this Section shall be executed prior to and as a condition of the issuance of any approval required to commence construction.
- (c) Timing of construction. As a condition of the issuance of approval under this Section, the Southborough Housing Opportunity Partnership Committee may set a time schedule for the construction of both affordable and market-rate units. No Certificate of Occupancy shall be issued for any market-rate units in a development subject to the requirements of this Section until 25% of the affordable units required to be constructed have been issued a Certificate of Occupancy. No Certificate of Occupancy shall be issued to more than 75% of the market-rate units until 100% of the affordable units required to be constructed have obtained a Certificate of Occupancy.
- (7) Severability. In case any paragraph or part of this Section should be for any reason declared invalid or unconstitutional by any court of last resort, every other paragraph or part shall continue in full force and effect.
- (8) Exempt areas. Development within a Critical Resource District (§ 174-8.10) shall be exempt from the requirements of this section.

## F. Bonused development.

- (1) Discretionary bonus. The Planning Board may also authorize up to an additional ten-percent increase based on the following criteria, unless the Board explains in its decision why unusual circumstances cause the Board to act otherwise:
  - (a) Middle income units. For units designed for households having incomes not exceeding one hundred forty percent (140%) of the median family income for the Boston Region, as estimated by the HUD Regional Economist:
    - [1] Bonus: One (1) added lot or unit for each middle income unit, provided that the following requirements are met.
    - [2] Continuing affordability. The units shall be assured of continuing affordability for middle income households, for not less than ten (10) years.
    - [3] Local preference. The provisions of Subsection (E)(4) applicable to affordable units shall also apply to middle income units.
  - (b) On-site preservation of critical areas. For land otherwise eligible to be credited towards lot area but not so credited and either restricted under a conservation restriction or deeded to the town, if that land is determined by

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the Planning Board to be of critical importance for retention in an undeveloped state such as the following:

- [1] Land within two hundred (200) feet of existing major roads.
- [2] Land across which there are important scenic views from publicly accessible points.
- [3] Land of special habitat or ecological value and fragility.
- [4] Bonus: one (1) added lot or dwelling unit for each lot which could reasonably be expected to be developed in the restricted area under a conventional plan in full conformance with zoning, subdivision regulations, and health codes. In making this determination, the Planning Board shall seek the advice of the Conservation Commission and Board of Health.

- (c) Off-site preservation of critical areas. For land in Southborough not contiguous with the parcel to be developed, whether in the same ownership or not, if made part of the flexible development application and to be preserved under a conservation restriction or deeded to the town, if the Planning Board determines that the land is of critical importance for retention as provided under Subsection F(2)(b) above, and that the land being developed is not of critical importance for retention:

- [1] Bonus: one (1) added dwelling unit for each dwelling unit which could reasonably be expected to have been developed on the restricted parcel under a conventional plan in full conformance with zoning, subdivision regulations and health codes.
- [2] Critical resource bonus. In the case of land within the Critical Resource District proposed to be restricted, added dwelling units (which must be outside the district) shall equal double the number reasonably expected on a conventional plan for the restricted land.

#### G. Decision.

- (1) Procedure. The procedure for approval shall be as follows:
  - (a) Approval of flexible plan. The Planning Board shall approve or approve with conditions a special permit for major residential development for the flexible plan, provided that the Board determines that the flexible plan is at least as beneficial to the town as the conventional plan, based upon the considerations established under § 174-9, Special Permit Requirements, and Article IV of Chapter 244, Subdivision of Land, and the design criteria listed Subsection G(2) below.

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- (b) Approval of conventional plan. Only if the Board determines that the conventional plan is more beneficial to the town than the flexible plan shall the Board approve major residential envelopment for the conventional plan, provided that it meets all requirements of this section.
  - (c) Denial of both plans. Only if the Board determines that the flexible plan is not a good faith design or that the more beneficial plan does not conform to the requirements of this section shall the Board disapprove both plans.
- (2) General design criteria. The specific design requirements in each of the prior subsections shall be met. In addition, when evaluating the plans, the following general criteria shall be considered by the Planning Board as indicating design appropriate to the natural landscape and meeting the objectives of major residential development:
- (a) Layout of open and common land.
    - [1] The maximum number of lots or units shall be contiguous to the common land.
    - [2] Common land shall be arranged to protect valuable natural environments, such as streams, valleys, outstanding vegetation or scenic views.
    - [3] The common land shall be reasonably contiguous and coherent.
    - [4] If the tract of land abuts adjacent common land or other permanently protected open space, then the common land shall be connected with such adjacent common land and with such permanently protected open space.
    - [5] Where appropriate, and not detrimental to the natural features of the site, open space shall be utilized for recreation to serve Town needs.
  - (b) Ownership, maintenance and use restrictions on common land and facilities.
    - [1] The ownership and maintenance responsibilities of all private and/or common areas and facilities (including but not limited to open space, recreational facilities, roads and sewer treatment plants, if any) shall be subject to approval of the Planning Board, and in the case of sewer treatment plants, subject to the approval of the Board of Health.
    - [2] Private roads, if allowed by the Planning Board, shall be designed to the standards specified in Chapter 244, Subdivision of Land.

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- [3] Open land, if any, unless conveyed to the Town of Southborough, shall be covered by a recorded restriction enforceable by the Town of Southborough, provided that such land shall be kept in open space.
- (c) Buffer areas and view protection.
  - [1] Buffer areas shall be preserved and maintained to minimize conflict between residential and other uses.
  - [2] Buffers of natural vegetation shall be preserved or created adjacent to wetlands and surface waters.
  - [3] Scenic views and vistas shall be protected.
- (d) General site layout
- (e) Circulation.
  - [1] Street appearance and capacity shall be protected by avoiding development fronting such streets.
  - [2] The street system shall provide for safe and convenient movement of vehicles on and off the site and shall be designed to contribute to the overall aesthetic quality of the development.
  - [3] The pedestrian circulation system shall be designed to assure that pedestrians can move safely and easily on the site and between properties and activities within the site and neighborhood.
  - [4] Private roads, if any: refer to Subsection G(2)(b) above.
- (3) Subdivision approval. The granting of a special permit for a major residential development shall in no case be construed as an approval under Chapter 244, Subdivision of Land.
- (4) Subsequent changes. Subsequent to granting the special permit and approval of a definitive plan of subdivision, the Planning Board may permit, without initiating a new special permit proceeding, the relocation of lot lines within the development; change in the layout of streets; change in the use, ownership and layout of the common land; or change in any other conditions stated in the original special permit. The Planning Board shall require a new special permit if it determines that the proposed changes are substantial in nature and/or impact public health or safety.

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**§ 174-13.3.<sup>2</sup> LOWER IMPACT DEVELOPMENT**

- A. Purpose and Authority. This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the Bylaws of the federal Clean Water Act found at 40 CFR 122.34.

Environmental protection is a significant concern of the Town of Southborough. It is in the public interest to minimize the impacts associated with land development and to regulate post-development stormwater runoff discharges to control and minimize increases in stormwater runoff rates and volumes, post-construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with post development stormwater runoff. Lower Impact Development ( hereinafter LID) site planning and management of post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, and promote groundwater recharge to protect surface, groundwater, and drinking water supplies.

The purpose of this Bylaw is as follows:

- (1) To protect the quality and quantity of surface waters, reservoirs, and ground water, to maintain the integrity of aquatic living resources and ecosystems, and to preserve the physical integrity of receiving streams and water bodies;
- (2) To encourage a more efficient form of development that consumes less open land and protects existing topography, wildlife habitats, and natural features;
- (3) To require that new development, redevelopment and all land conversion activities maintain the natural hydrological characteristics of the land to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
- (4) To establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources, and
- (5) To minimize the total amount of disturbance of the land.

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<sup>2</sup> Editor's Note: Former Section 174 -13.3, Critical Resource District, added 4-14-1986 ATM Art. 38, was superseded 4-12-1993 ATM, Art. 43. See now Section 174-8.10, Critical Resource District.



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- B. Definitions. Terms not defined in this Bylaw shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning.

**ALTER** - Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as “alteration of drainage characteristics,” and “conducting land disturbance activities.”

**BIORETENTION AREAS** - Shallow depressions filled with engineered soils, topped with a thick layer of mulch, and planted with dense vegetation that reduce the overall amount of runoff to be treated by infiltrating stormwater to the ground.

**DISTURBED AREA** - an area, man-made or natural, where the existing condition has been or is proposed to be altered.

**INFILTRATION** - The act of conveying surface water into the ground to recharge groundwater and to reduce stormwater runoff from a project site.

**LOWER IMPACT DEVELOPMENT (LID)** - An ecosystem-based approach to land development and stormwater management that ensures that each development site is designed to protect, or restore, the natural hydrology of the site.

**LID MANAGEMENT** - The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

**LID TECHNIQUES** - Engineering measures that compensate for the reduced infiltration and storage characteristics of developed sites.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY** - The Policy issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

**MULTIFUNCTIONAL LANDSCAPE FEATURES** - Bioretention areas, swales, and conservation areas that mimic or replicate hydrologic functions and maintain the ecological/biological integrity of receiving streams and water bodies.

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**MUNICIPAL STORM DRAIN SYSTEM** - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Southborough.

**NEW DEVELOPMENT** - Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain significant alterations by man-made activities.

**NONPOINT SOURCE POLLUTION** - Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**OPERATION AND MAINTENANCE PLAN:** A plan that defines the functional, financial, and organizational mechanisms for the ongoing operation.

**PERSON** - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Southborough, and any other legal entity, its legal representatives, agents, or assigns.

**PRE-DEVELOPMENT** - The conditions that exist at the time that plans for the development of a tract of land are submitted to the Special Permit Granting Authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**POINT SOURCE** - Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

**POST-DEVELOPMENT** - The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

**RECHARGE** - The replenishment of underground water reserves.

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**REDEVELOPMENT** - Any construction, alteration, or improvement where the existing land use is commercial, industrial, institutional, or multi-family residential.

**RESOURCE AREA** - Any area protected under federal, state, or local law or regulation including without limitation: the Massachusetts Wetlands Protection Act and the Southborough Wetlands Protection Bylaw.

**RUNOFF**: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SEDIMENTATION** - A process of depositing material that has been suspended and transported in water.

**SITE** - the parcel of land being developed or a designated planning area in which the land development project is located.

- C. **Applicability.** This bylaw shall be applicable to all new development and redevelopment, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, any activity that will result in an increased amount of stormwater runoff or pollutants flowing from a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section D of this Bylaw. After (insert date of adoption here) the Planning Board shall not approve any application for development or re-development if the land or parcels of land were held in common ownership (including ownership by related or jointly-controlled persons or entities) and were subdivided or otherwise modified to avoid compliance. A development shall not be segmented or phased in a manner to avoid compliance with this By-Law. A LID Special Permit shall be required from the Planning Board for the following:

- (1) Any activity subject to Major Plan Review (§ 174-10);
- (2) Any activity that will result in soil disturbance of one acre or more;
- (3) Any residential development or redevelopment of five (5) or more acres of land proposed pursuant to “the Subdivision Control Law” G. L. c. 41 sec. 81K to 81GG inclusive, or proposed under a special permit process pursuant to G. L. c. 40A sec. 9.

- D. **Exemptions.**

- (1) Any activity that will disturb an area less than one acre.
- (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A

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- (3) Construction and associated grading of a way that has been approved by the Planning Board;
- (4) The maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures and utilities within or associated with public ways that have been approved by the appropriate authorities;
- (5) Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Special Permit Granting Authority;
- (6) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw.
- (7) Redevelopment projects are presumed to meet the specified LID requirements described in the LID Bylaw of the Town of Southborough if the total impervious cover is reduced by 40% from existing conditions. Where site conditions prevent the reduction in impervious cover, LID practices shall be implemented to provide stormwater controls for at least 40% of the site's impervious area. When a combination of impervious area reduction and implementation of LID techniques is used for redevelopment projects, the combination of impervious area reduction and the area controlled by a LID practice shall equal or exceed 40%.

## E. Special Permit Application and Procedure

- (1) The Planning Board shall be the special permit granting authority for the issuance of a LID Special Permit. Such special permits applications shall be submitted, considered, and issued only in accordance with the provisions of this Bylaw and MGL Ch. 40A, s. 9.
- (2) To obtain approval for a project subject to the provisions of this Bylaw, the applicant shall submit a LID Special Permit Application that meets the LID site design principles stated below, a LID Management Plan and an Operation and Maintenance Plan that complies with the requirements set forth herein and in the regulations adopted pursuant to this Bylaw.
  - (a) Preservation of the site's natural features and environmentally sensitive areas such as wetlands, native vegetation, mature trees, slopes, drainageways, permeable soils, flood plains, woodlands and soils to the greatest extent possible;
  - (b) **Minimization of grading and clearing;**

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- (c) Clustering of buildings;
- (d) Use of stormwater management components that provide filtration, treatment and infiltration such as vegetated areas that slow down runoff; maximizing infiltration and reducing contact with paved surfaces;
- (e) Creation of subwatersheds to treat and manage runoff in smaller, decentralized, low-tech stormwater management techniques to treat and recharge stormwater close to the source;
- (f) Emphasis of simple, nonstructural, low-tech, low-cost methods including open drainage systems, disconnection of roof runoff, and street sweeping;
- (g) Reduction of impervious surfaces wherever possible through alternative street design, such as omission of curbs and use of narrower streets, shared driveways and through the use of shared parking areas;
- (h) Reduction of any heat island effect;
- (i) Use of native plant vegetation (invasive species prohibited) in buffer strips and in rain gardens (small planted depressions that can trap and filter runoff). Naturalized, non-invasive plant species may be substituted for native plant vegetation subject to the Board's approval.
- (j) Techniques integrated into every aspect of site design to create a hydrologically functional lot or site, including the following:
  - a. Vegetated open channel systems along roads;
  - b. Rain gardens;
  - c. Buffer strips;
  - d. Use of roof gardens where practicable;
  - e. Use of amended soils that will store, filter and infiltrate runoff;
  - f. Bioretention areas;
  - g. Use of rain barrels and other cisterns to provide additional stormwater storage;

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## h. Use of permeable pavement.

- (3) The Planning Board may waive some of the requirements for a LID Special Permit application if it determines that some of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site. Waivers that are granted at the initial approval may not be binding if the reasons for which the waiver was granted are changed or no longer exist.
- (4) The applicant shall make all requests for waivers in writing. The applicant shall submit supporting technical information and documentation to demonstrate that some, or all, of the requirements are unnecessary because of minimal environmental impact or other reasons why such waiver/s should be granted. The Planning Board's decision to grant or deny waivers shall be in writing and shall set forth the reasons for the grant or denial.
- (5) At the time of application, the applicant shall provide in writing the name of the person who is responsible for the site disturbing activity which is the subject of the application. Said person shall ensure that the approved activity takes place in accordance with the application, plan and special permit requirements.

F. Entry. Filing an application for a special permit grants the Board, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting special permit. G. LID Management Plan.

## E. LID Management Plan.

- (1) The LID Management Plan shall contain sufficient information for the Planning Board to evaluate the environmental impact, effectiveness, and acceptability of the site planning process and the measures proposed by the applicant to reduce all adverse impacts from stormwater runoff to control and minimize increases in stormwater runoff rates and volumes, post-construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with post development stormwater runoff, and to minimize the impacts associated with land development. This plan shall be in accordance with the criteria established in this bylaw and the supporting regulations and must be prepared, stamped and signed by a professional engineer registered in Massachusetts, a Registered Land Surveyor, or a Massachusetts Licensed Soil Evaluator, as appropriate.
- (2) The LID Management Plan shall fully describe the project in drawings, narrative, and calculations. It shall meet the criteria set forth in the regulations adopted pursuant to this Bylaw.

H. Operation and Maintenance Plan Contents. The Operation and Maintenance Plan (O&M

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Plan) shall be designed to ensure compliance with the LID Special Permit, this Bylaw and to ensure that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The O&M Plan shall be prepared in accordance with the criteria established in the regulations adopted pursuant to this Bylaw, and shall be stamped and signed by a professional engineer registered in Massachusetts, and a Registered Land Surveyor, as appropriate. The O&M Plan shall remain on file with the Planning Board and shall be an ongoing requirement.

- I. Performance Standards: LID Criteria . The LID application and required plans shall meet the general performance criteria set forth in the regulations adopted pursuant to this Bylaw.
- J. Findings and Conditions of Approval
  - (1) The Board shall not approve any application for a LID Special Permit unless it finds that the following conditions have been met and the LID techniques listed herein have been employed to the maximum extent practicable to meet the stated purpose of this Bylaw.
    - (a) A separate special permit shall be required from the Planning Board when an area totaling one acre or more on any parcel or contiguous parcels in the same ownership will have the existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity or unless necessarily incidental to construction on the premises under a currently valid building permit or unless within streets which are either public or designated on an approved subdivision plan. The special permit shall require that run-off be controlled, erosion prevented and either a constructed surface or cover vegetation be provided not later than the first full spring season immediately following completion of the stripping operation. Any stripped area that is allowed to remain stripped through the winter shall have a temporary cover of winter rye or similar plant material for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.
    - (b) Measures shall be employed to minimize adverse impacts on wildlife habitats and corridors, natural or historic landscape features, and scenic vistas and views.
    - (c) Compliance with all applicable federal, state and local regulations and guidelines, including but not limited to the Stormwater Management Handbook as it may be amended, has been demonstrated.
  - (2) The Planning Board may require a cash performance guarantee to ensure compliance with these requirements and for the operation and maintenance of all permanent LID measures. With the approval of the Board upon the

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recommendation of Town Counsel and the Town Treasurer, as appropriate, the applicant may substitute an irrevocable letter of credit or performance bond in lieu of the cash performance guarantee. Any performance bond or letter of credit shall be executed and maintained by a financial institution, surety, or Guarantee Company qualified to do business in the Commonwealth of Massachusetts.

- (3) Prior to commencement of any land disturbing activity, the applicant shall record the special permit with the Registry of Deeds or Registry District of the Land Court, and the applicant shall submit to the Planning Board written proof of such recording.
- (4) At completion of the project, the owner shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and shall be certified by a professional engineer registered in Massachusetts.
- (5) Based upon the nature of the application the Board may impose requirements or limitations to minimize the impacts, if any, on abutting properties or uses.
- (6) The site planning process shall be documented and shall include the following steps: a) identify and map environmental resources, b) delineate potential building envelopes avoiding environmental resource areas and appropriate buffers, and c) develop methods to minimize impervious surfaces, and to protect and preserve open space.
- (7) All stormwater runoff generated from land development and land use conversion activities shall not discharge untreated stormwater runoff directly to a wetland, local water body, municipal drainage system, or abutting property, without adequate treatment.
- (8) The Planning Board may deny a LID Special Permit if it determines:
  - (a) The requirements set forth herein are not met, or
  - (b) The intent of the application is to circumvent other provisions of the Town's Zoning Code, rules, or regulations.

K. Enforcement. The Board or its authorized agent and the Town of Southborough shall have the power and duty to enforce this Bylaw, its regulations, decisions, orders, violation notices, and enforcement orders issued pursuant to this Bylaw, and may pursue all civil and criminal remedies for such violations.

- (1) Penalties. Any person who violates any provision of this Bylaw, regulation, or



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permit issued hereunder, shall be subject to fines, civil action, criminal prosecution, and tax liens, as appropriate and as lawfully established by the Town of Southborough.

- (2) **Tax Liens.** The Town of Southborough shall require the repayment of services provided to the responsible party that the responsible party was obligated to perform as set forth in the Operation and Maintenance Plan. If repayment is not made within thirty (30) days, the Town may impose a tax lien on the property of the responsible party or parties.

- L. **Severability.** Any determination that a particular provision or set of provisions in this Bylaw are invalid or unenforceable shall not render ineffective, unenforceable, or inapplicable the remainder of this Bylaw.

### **§ 174-13.4. Water Resource Protection.**

- A. **Design and operations guidelines.** To reduce risks of water contamination, the following design and operations guidelines shall be observed wherever germane in all new nonresidential construction.
  - (1) **Safeguards.** Provisions shall be made to protect against hazardous materials discharge or loss through corrosion, accidental damage, spillage or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, secure storage areas for hazardous materials and indoor storage provisions for corrodible or dissolvable materials.
  - (2) **Disposal.** Provisions shall be made to assure that any waste disposed on the site shall contain no hazardous materials in concentrations substantially greater than associated with normal household use.
  - (3) **Drainage.** Floor or lavatory drainage shall be directed to an impervious retention facility for controlled removal. Provision shall be made for on-site recharge of all stormwater runoff from impervious surfaces unless, following consultation with the Conservation Commission, the Building Inspector determines that either recharge is infeasible because of site conditions or is undesirable because of uncontrollable risks to water quality from such recharge. Recharge shall be by surface infiltration through vegetative surfaces unless otherwise approved by the Building Inspector following consultation with the Conservation Commission. Dry wells shall be used only where other methods are infeasible and shall employ oil, grease and sediment traps. Drainage from loading and unloading areas for hazardous materials shall be separately collected for safe disposal.
- B. **Uses requiring special permits.**
  - (1) The following shall be allowed only if granted a special permit from the special permit granting authority:

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- (a) Waste generation requiring the obtaining of an Environmental Protection Agency identification number, except for small quantity generators, as defined under DEQE regulations, 310 CMR 30.351.
  - (b) On-site sewage disposal having an estimated sewage flow greater than fifteen thousand (15,000) gallons per day, regardless of location, or greater than one thousand five hundred (1,500) gallons per day if within five hundred (500) feet of any surface water body.
  - (c) Rendering impervious more than seventy-five percent (75%) of lot area.
  - (d) Except for single-family dwellings, on-site sewage disposal systems having an estimated sewage flow exceeding one hundred twenty (120) gallons per day per ten thousand (10,000) square feet of lot area.
  - (e) Discharge to surface water requiring a permit under 314 CMR 3.00 (NPDES permit).
- (2) Change in activity resulting in crossing any of the thresholds of B(1)(a) through (d) shall constitute a change of use requiring a special permit.

## C. Special permit process.

- (1) Authority and procedure. The special permit granting authority (SPGA) shall be the Board of Appeals. Upon receipt of the special permit application, the SPGA shall transmit one (1) copy each to the Planning Board, the Conservation Commission, the Board of Health and the Building Inspector for their written recommendations. Failure to respond within thirty-five (35) days of transmittal shall indicate approval by said agencies.
- (2) Submittals. In applying for a Special Permit under this section, the information listed below shall be submitted unless the Board of Appeals, prior to formal application, determines that certain of these items are not germane:
  - (a) A complete list of all chemicals, pesticides, fuels or other potentially hazardous materials to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all storage containers or facilities from vandalism, corrosion and leakage and to provide for control of spills.
  - (b) A description of potentially hazardous wastes to be generated, including storage and disposal methods as in Subsection C(2)(a) above.
  - (c) For aboveground storage of hazardous materials or wastes, evidence of qualified professional supervision of design and installation of such storage facilities or containers.

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- (d) For disposal on-site of domestic wastewater with an estimated sewage flow greater than fifteen thousand (15,000) gallons per day, evidence of qualified professional supervision of design and installation, including an assessment of nitrate, phosphate and coliform bacteria impact on groundwater quality.
- (3) Special Permit criteria. Special Permits under this section shall be granted only if the SPGA determines that there is adequate assurance that there will be no violation of the Massachusetts Surface Water Quality Standards (314 CMR 4.00) and that groundwater quality resulting from on-site waste disposal, other operations on-site and natural recharge will not fall below federal or state standards for drinking water when averaged over the boundaries of the site or, if existing groundwater quality is already below those standards, on-site disposal or operations will result in no further deterioration and only if the SPGA determines that proposed control and response measures adequately and reliably mitigate risk to groundwater quality resulting from accident or system failure. In its decision, the SPGA shall explain any departures from the recommendations of other town agencies in its decision.
- (4) Conditions. Special Permits shall be granted only subject to such conditions as are necessary to assure adequate safeguarding of water quality, which may include the following, among others:
  - (a) Monitoring wells to be located downgradient of potential pollution sources, with periodic sampling to be provided to the Board of Health at the owner's expense.
  - (b) Pollutant source reduction, including limitations on use of parking area deicing materials and periodic cleaning or renovation of pollution control devices, such as catch basin sumps.

### **§ 174-13.5 STORMWATER and EROSION CONTROL**

- A. Purpose - Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Southborough to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town. The purpose of this Bylaw is to prevent or diminish these impacts by controlling runoff and preventing soil erosion and sedimentation resulting from site construction and development. This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the Bylaws of the federal Clean Water Act found at 40 CFR 122.34. Nothing in this Bylaw is intended to replace the requirements of either the Town of Southborough Wetlands Protection Bylaw, or any other Bylaw that has been or may be adopted by the Town of Southborough. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each applicable bylaw. The objectives of this Bylaw are to:

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- (1) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of wetland and water resources;
- (2) Require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics to provide recharge and to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establish minimum construction/alteration and post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality and for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff;
- (4) Establish design criteria for measures to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;
- (5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum construction/alteration and post-development stormwater management standards and to encourage the use of nonstructural stormwater management, stormwater site design practices or “low-impact development practices”, such as reducing impervious cover and the preservation of open space and other natural areas, to the maximum extent practicable;
- (6) Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
- (7) Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Bylaw; and
- (8) Establish administrative procedures and fees for the submission, review, approval, or disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up.

## B. Definitions

AGRICULTURE - The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and its implementing regulations (310 CMR 10.00).

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**APPLICANT** - Any "person" as defined below requesting a Stormwater and Erosion Control Permit for proposed land-disturbance activity.

**AUTHORIZED ENFORCEMENT AGENCY** - The Conservation Commission (hereinafter "the Commission") and its employees or agents or other employee of the Town of Southborough shall be in charge of enforcing the requirements of this bylaw.

**ALTER** - Any activity that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area and will measurably change the ability of a ground surface area to absorb water. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land disturbance activities."

**BETTER SITE DESIGN** - Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural stormwater management practices. Better site design includes conserving and protecting natural areas and green space, reducing impervious cover, and using natural features for stormwater management.

**BEST MANAGEMENT PRACTICE (BMP)** - Structural, non-structural, vegetative and managerial techniques that are recognized to be the most effective and practical means to reduce erosion and sediment, prevent or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

**CONSTRUCTION AND WASTE MATERIALS** - Excess or discarded building or construction site materials that may adversely impact water quality, including but not limited to concrete truck washout, chemicals, litter and sanitary waste.

**DISTURBED AREA** - An area, man-made or natural, where the existing condition has been or is proposed to be altered.

**ENVIRONMENTAL SITE MONITOR** - A Professional Engineer, or other trained professional selected by the Commission and retained by the holder of a Stormwater and Erosion Control Permit to periodically inspect the work and report to the Commission.

**EROSION** - A condition in which the earth's surface, including soil or rock fragment, is detached and moved away by the action of water, wind, ice, gravity or other natural means.

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**GENERAL STORMWATER MANAGEMENT PERMIT (GSMP)** - A permit issued for an application that meets a set of pre-determined standards outlined in the Regulations to be adopted by the Commission under this Bylaw. By meeting these pre-determined standards, the proposed project will be presumed to meet the requirements and intent of this Bylaw.

**HOTSPOT** - Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY** - The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 §40 and Massachusetts Clean Waters Act M.G.L. c. 21, §23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

**NEW DEVELOPMENT** - Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alteration by man-made activities.

**PERSON** - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Southborough, and any other legal entity, its legal representatives, agents, or assigns.

**PRE-DEVELOPMENT** - The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Conservation Commission. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**POST-DEVELOPMENT** - The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

**RECHARGE** - The replenishment of underground water reserves.

**REDEVELOPMENT** - Any construction, alteration, or improvement exceeding land disturbance of 5,000 square feet, where the existing land use is commercial, industrial, institutional, or multi-family residential.

**RUNOFF** - Rainfall, snowmelt, or irrigation water flowing over the ground surface.

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**SEDIMENT** - Solid material, whether mineral or organic, that is in suspension, is transported or has been moved from its site of origin by erosion.

**SEDIMENTATION** - A process of depositing material that has been suspended and transported in water.

**SLOPE** - The vertical rise divided by the horizontal distance and expressed as a fraction or percentage,

**STABILIZED** - The elimination of any erosion.

**STORMWATER MANAGEMENT HANDBOOK** - Stormwater Management Handbook, Volume One and Volume Two, prepared by the Mass. Department of Environmental Protection and the Mass. Office of Coastal Zone Management dated March 1997 as the same may be from time to time revised.

**STORMWATER MANAGEMENT PERMIT (SMP)** - A permit issued by the Conservation Commission, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious affects of uncontrolled and untreated stormwater runoff.

- C. **Applicability.** This bylaw shall be applicable to all new development and redevelopment, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, any activity that will result in an increased amount of stormwater runoff or pollutants flowing from a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section D of this Bylaw. After **April 10, 2006** the Commission shall not approve any application for development or re-development if the land or parcels of land were held in common ownership (including ownership by related or jointly-controlled persons or entities) and were subdivided or otherwise modified to avoid compliance. A development shall not be segmented or phased in a manner to avoid compliance with this By-Law. A Stormwater and Erosion Control Permit shall be required from the

Commission for the following:

- Any activity subject to Major Site Plan Review (§ 174-10);
- Any activity that will result in soil disturbance of one acre or more, or more than fifty percent (50%) of the parcel or lot, whichever is less;
- Any residential development or redevelopment of five (5) or more acres of land proposed pursuant to “the Subdivision Control Law” G. L. c. 41 sec. 81K to 81GG inclusive, or proposed under a special permit process pursuant to G. L. c. 40A sec. 9;
- Any activity that will increase the amount of impervious surfaces more than 50% of the area of a parcel or lot, and

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- 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.

## D. Exemptions. The following activities are exempt from the requirements of this Bylaw:

- (1) Normal maintenance of Town owned public land, ways and appurtenances;
- (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3;
- (3) Repair or replacement of septic systems when approved by the Board of Health for the protection of public health;
- (4) Normal maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 400 cubic yards of soil material, or alteration of drainage patterns;
- (5) The construction of fencing that will not alter existing terrain or drainage patterns;
- (6) Construction and associated grading of a way that has been approved by the Planning Board;
- (7) The maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways that have been approved by the appropriate authorities provided that written notice be filed with the Conservation Commission fourteen days (14) prior to commencement of activity;
- (8) The removal of earth products undertaken in connection with an agricultural use if the removal is necessary for or directly related to planting, cultivating or harvesting or the raising or care of animals, or
- (9) Activity in accordance with the terms of an existing Order of Conditions or Determination of Applicability issued by the Commission pursuant to M.G.L Ch. 131, Section 40, or the Southborough Wetlands Protection Bylaw, Chapter 170 of the Code of the Town of Southborough.

## E. Administration.

- (1) The Conservation Commission shall be the permit granting authority for the issuance of a Stormwater and Erosion Control Permit and shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Commission may be delegated in writing by the Commission to its employees or agents or other municipal employees as appropriate. Such permit



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- applications shall be submitted, considered, and issued only in accordance with the provisions of this Bylaw and the regulations adopted pursuant to this Bylaw.
- (2) Stormwater Regulations. The Commission shall adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater and Erosion Control Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.
  - (3) Right of Entry. Filing an application for a Stormwater and Erosion Control Permit grants the Commission or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.
  - (4) Stormwater Management Manual. The Commission will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy, for execution of the provisions of this Bylaw. This Policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Stormwater Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts's water quality standards.
  - (5) Application. To obtain approval for a project subject to the provisions of this Bylaw, the applicant shall submit a Stormwater Management and Erosion Control Plan and an Operation and Maintenance Plan prepared, stamped and signed by a professional engineer registered in Massachusetts, a Registered Land Surveyor, or a Massachusetts Licensed Soil Evaluator, as appropriate, that complies with the requirements set forth herein and in the regulations adopted pursuant to this Bylaw. The Operation and Maintenance plan (O&M Plan) shall be designed to ensure compliance with the Permit, this Bylaw, and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The O&M Plan shall remain on file with the Commission, the Planning Board, the Department of Public Works and the Town Engineer and shall be an ongoing requirement. The O&M Plan shall meet the criteria set forth in the regulations adopted pursuant to this Bylaw. The Plans shall fully describe the project in drawings, narrative, and calculations.
    - (a) At the time of application, the applicant shall provide in writing the name and the 24 hours a day and 7 days a week contact information of the person who is responsible for erosion and sediment control for the site disturbing activity which is the subject of the application. Said person shall ensure that the approved activity takes place in accordance with the application, plan and permit requirements.

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- F. Fees. The Commission shall establish fees to cover expenses incurred by the town in reviewing the application and monitoring permit compliance. The Commission is authorized to retain and charge the applicant fees to cover the cost of hiring a Registered Professional Engineer or other professional consultant to advise the Commission on any or all aspects of the project. The applicant for a Stormwater and Erosion Control Permit may be required to establish and maintain an escrow account to cover the costs of said consultants. Applicants shall pay review fees to the Commission before the review process may begin.
- G. Surety. The Commission may require a cash performance guaranty to ensure compliance with these requirements and for the long term operation and maintenance of all permanent erosion control and stormwater management measures. The form of the bond shall be approved by the Commission upon the recommendation of Town Counsel and the Town Treasurer, as appropriate. With the approval of the Commission upon the recommendation of Town Counsel and the Town Treasurer, as appropriate, the applicant may substitute an irrevocable letter of credit or performance bond in lieu of the cash performance guaranty. Any performance bond or letter of credit shall be executed and maintained by a financial institution, surety, or Guaranty Company qualified to do business in the Commonwealth of Massachusetts.
- H. Waivers.
- (1) The Commission may waive strict compliance with some of the requirements of this Bylaw or the rules and regulations promulgated hereunder, if it determines that some of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site and where such action:
    - (a) is allowed by federal, state and local statutes and/or regulations,
    - (b) is in the public interest, and
    - (c) is not inconsistent with the purpose and intent of this bylaw.
  - (2) Any request from an Applicant for a waiver of these rules shall be submitted, in writing, to the Commission at the time of submission of the application. Such requests shall clearly identify the provision/s of the rule from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or the specific information required to show strict compliance is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of this Bylaw and the rules and regulations promulgated hereunder.
- I. Findings and Conditions of Approval.

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- (1) The Commission shall not approve any application for a Stormwater and Erosion Control Permit unless it finds that BMPs will be employed to meet the following requirements:
  - (a) Compliance with all applicable federal, state and local regulations and guidelines, including but not limited to the Stormwater Management Handbook as it may be amended, has been demonstrated;
  - (b) Measures shall be employed to minimize adverse impacts on wildlife habitats and corridors, natural or historic landscape features, and scenic vistas and views;
  - (c) The duration of exposure of disturbed areas due to removal of vegetation, soil removal, and/or re-grading shall be set forth in a written time table and approved by the Commission;
  - (d) There shall be no net increase in the rate of stormwater runoff from the site;
  - (e) There shall be no net increase in the volume of stormwater runoff across the boundaries of the site unless provisions have been made to tie into the public storm drains, where available, with the approval of the appropriate parties or authorities or, the Commission has determined that all reasonable provisions have been made to minimize any changes in stormwater runoff at the site;
  - (f) There shall be no adverse impacts to abutting properties from any increase in volume of stormwater runoff including erosion, silting, flooding, sedimentation or impacts to wetlands, ground water levels or wells;
  - (g) Where the site is not proposed to be covered with gravel, hardscape, or a building or structure, a planting plan to ensure permanent re-vegetation of the site has been approved;
  - (h) Areas to be planted shall be loamed with not less than six inches (6") compacted depth of good quality loam and seeded with turf grass seed or other appropriate ground cover in accordance with good planting practice;
  - (i) Dust control shall be used during grading operations if the grading is to occur within five hundred (500') feet of an occupied residence or place of business, school, playground, park, cemetery, or place of worship;
  - (j) During construction, temporary erosion and sedimentation control measures will be employed in accordance with the approved plan;
  - (k) During construction, any site access from a paved public way shall be improved with a gravel apron of fifteen feet (15') wide and at least twenty-

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four feet (24') long to prevent unstable material from being transported onto the street by vehicle tires or by runoff;

- (l) Until a disturbed area is permanently stabilized, sediment in runoff water shall be trapped by using a siltation barrier, siltation fences, and/or sedimentation traps;
  - (m) Dust control shall be used during grading operations if the grading is to occur within five hundred (500) feet of the property line of an occupied residence or place of business. Dust control methods may consist of grading fine soils on calm days only or dampening the ground with water;
  - (n) Permanent erosion control and vegetative measures shall be in accordance with the approved plan, and
  - (o) Where applicable, homeowner's, facility or condominium documents shall provide for the long term operation and maintenance of all permanent erosion control and stormwater management measures, including surety.
- (2) Based upon the nature of the application the Commission may impose reasonable requirements or limitations to minimize the impacts, if any, on abutting properties or uses.
  - (3) Prior to commencement of any land disturbing activity, the applicant shall record the permit with the Registry of Deeds or Registry District of the Land Court, and shall submit to the Commission written proof of such recording.
  - (4) At completion of the project, the owner shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and shall be certified by a professional engineer registered in Massachusetts.

J. Actions by the Commission.

- (1) The Commission shall act on each application for a permit within ninety (90) days of the date of filing with the Commission and the Town Clerk, unless such application has been withdrawn from consideration.
- (2) The Commission may take any of the following actions as a result of an application for a Stormwater Management and Erosion Control Permit as more specifically defined as part of Stormwater Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.
- (3) A Stormwater and Erosion Control Permit may be disapproved if the Commission determines:

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- (a) The requirements of this Bylaw are not met, or
  - (b) The intent of the application is to circumvent other provisions of the Town's Zoning Code and regulations.
- (4) Appeals of Action by the Commission. A decision of the Commission shall be final. Relief of a decision by the Commission made under this Bylaw shall be reviewable by the Zoning Board of Appeals provided that such appeal is filed within ten (10) business days of the date the decision was filed with the Town Clerk. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.
- K. Enforcement. The Commission or its authorized agent and the Town of Southborough shall have the power and duty to enforce this bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- (1) Penalties. Any person who violates any provision of this Bylaw, regulation, or permit issued hereunder, shall be subject to fines, civil action, criminal prosecution, and tax liens, as appropriate and as lawfully established by the Town of Southborough.
  - (2) Tax Liens. The Town of Southborough shall require the repayment of services provided to the responsible party that the responsible party was obligated to perform as set forth in the Operation and Maintenance Plan. If repayment is not made within thirty (30) days, the Town may impose a tax lien on the property of the responsible party or parties.
  - (3) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the town may utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D in which case the Conservation Administrator, Conservation Agent or other authorized agent of the town shall be the enforcing person.
- L. Severability. Any determination that a particular provision or set of provisions in this Bylaw are invalid or unenforceable shall not render ineffective, unenforceable, or inapplicable the remainder of this Bylaw.

## **ARTICLE IV**

### **Dimensional Regulations**

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**§ 174-14. Compliance Required.**

- A. Any building or structure or use of a building, structure or land hereafter located, erected, commenced, expanded, altered or relocated, the lot on which it is to be located and the location of said building, structure or use on said lot shall comply with the requirements of this Article IV and of other applicable sections hereof. No lot shall be reduced in size, altered or subdivided and no part thereof conveyed or transferred if said lot or the buildings or structures thereon and the uses thereof already are or will be caused thereby to be not in compliance with the provisions of this chapter.
- B. If land is subdivided, transferred or conveyed in violation of this section, in addition to other remedies provided by law, no zoning, special, building or occupancy permit or variance shall be granted for either the land subdivided or conveyed or for the remainder of the original parcel until both meet the requirements of this section.

**§ 174-15. Applicability.**

The requirements of the following Schedule of Dimensional Regulations, including the footnotes thereto, apply to each district and to specific uses or structures within certain districts as indicated in said schedule.<sup>1</sup> The height limitations of said schedule do not apply to antennas, chimneys, silos, skylights, tanks, towers, ventilators and similar building features extending not more than twenty (20) feet above the height permitted in the district in which they are located and not used for human occupancy.

**§ 174-16. Residence C Districts.**

Any lot lawfully in existence on March 16, 1966, located in a Residence C District and conforming to the requirements for said districts then in effect, may be built upon for a one-family house and the uses and buildings accessory thereto, or the one-family use of such lot may be added to, expanded or structurally altered, provided that all said uses, buildings, expansion or alterations conform to the requirements of the bylaw for Residence C Districts in effect on March 16, 1966.

**§ 174-17. Previously recorded lots.**

As provided by M.G.L.A. C.40A, Section 6, certain previously recorded lots may be built upon during the period of time specified or forever, even though such lots do not meet the dimensional requirements of this chapter.

- A. Any lot which was in ownership separate from adjoining land at the time the dimensional requirements of this chapter were adopted and has not been since consolidated, altered or combined with other lots may be built upon for a one-family residence, provided that such a lot has at least five thousand (5,000) square feet in area and fifty (50) feet in frontage.

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<sup>1</sup> Editors Note: This reference to the Schedule of Dimensional Regulations was superceded 4-12-1993 ATM, ART 43 For current provisions see sections 174-8 through 174-8-10.

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- B. The use of lots shown on a plan endorsed by the Planning Board as not requiring approval under the Subdivision Control Law<sup>1</sup> shall be governed by the provisions of the Zoning Bylaw in effect at the time of submission of such a plan for a period of three (3) years from the date of Planning Board endorsement, even if such endorsement is delayed pending disposition of a court appeal.
- C. If a definitive subdivision plan or a preliminary plan followed within seven (7) months by a definitive plan is submitted for Planning Board approval and written notice of such submission is given to the Town Clerk, the land shown on such plan shall be governed by the provisions of the Zoning Bylaw in effect at the time of first submission while the plan is being processed and for eight (8) years from the date of Planning Board endorsement of plan approval [seven (7) years for plans submitted and approved prior to January 1, 1976], even if said endorsement is delayed pending the disposition of a court appeal.

## **ARTICLE V**

### **Nonconforming Uses and Structures**

#### **§ 174-18. Exemptions.**

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<sup>1</sup> Editor's Note: See Ch. 244. Subdivision of Land.

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Any structure lawfully erected and existing and any use lawfully being made of land or buildings which do not conform to this chapter, as adopted or as amended, may be continued to the same extent and for the same purpose but shall not be expanded or altered, except in conformance with this chapter. This exemption shall include buildings, structures and uses authorized by a building or special permit issued prior to the publication of the first hearing notice for an amendment to this chapter which would make them nonconforming, provided that the construction or use under such a permit is commenced within six (6) months after the permit is issued and, in case of construction, is continued to completion in a reasonably expeditious manner.

**§ 174-19. Extensions or alterations.**

- A. Nonconforming structures or uses shall not be extended or altered, except to make them conforming, unless the Board of Appeals authorizes such extension or alteration by Special Permit upon making findings as provided in §174-9E.
- B. Single Family Residential Structures: In the following circumstances, alterations, reconstruction, extension or structural change to a single family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right:
  - (1) Alteration to a structure which complies with all current setbacks, lot coverage and building height requirements but is located on a lot with insufficient area; where the alteration will also comply with all of said current requirements;
  - (2) Alteration to a structure which complies with all current setbacks, lot coverage and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements;
  - (3) Alteration to a structure which encroaches upon one or more required setbacks, where the alteration will comply with all current setbacks, open lot coverage and building height requirements. The provisions of this clause 3 shall apply regardless of whether the lot complies with current area and frontage requirements.

**§ 174-20. Restoration.**

No structure damaged by fire or other causes to the extent of more than seventy-five percent (75%) of its assessed valuation shall be repaired or rebuilt, except in conformity with this chapter; provided, however, that the provisions of this section shall not apply to a dwelling or to a garage or other accessory structure incidental to the use of such dwelling for human habitation which was in conformity with the existing law at the time said structure was erected.

**§ 174-21. Abandonment.**

A nonconforming use, including a nonaccessory sign, if discontinued for a period of two (2) or more years or abandoned shall not be reestablished, and any future use of the structure or premises shall conform to this chapter.



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### **§ 174-22. Reversion.**

Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

### **§ 174-23. Reconstruction.**

Structures damaged by fire or other accident or natural catastrophe to an extent of less than seventy-five percent (75%) of the assessed valuation preceding such damage may be rebuilt or restored to the same dimensions and in the same location as before the damage, but shall not be enlarged, altered or relocated except upon the issuance of a special permit as provided in § 174-19.

## **ARTICLE VI Administration**

### **§ 174-24. Enforcement and penalties.**

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This chapter shall be enforced by the Building Inspector, as provided for in M.G.L.A. C. 40A, § 7. No structure shall be erected, altered, demolished or moved and no land or structure shall be changed in use until and unless a permit has been issued therefor, certifying that the plans and the proposed use of land conform to this chapter. Whoever violates any provision of this chapter shall be punished by a fine not exceeding fifty dollars (\$50.) for each offense. Every day that a violation continues after its abatement has been ordered by the town and sufficient time has elapsed to permit abatement shall constitute a new offense.

**§ 174-25. Board of Appeals.**

- A. The Board of Selectmen shall appoint a Board of Appeals of five (5) members, who shall serve five-year terms, such that the term of one (1) member shall end each year. The Board of Selectmen shall also appoint two (2) associate members of the Board of Appeals, who shall be designated by the Chairman of the Board of Appeals to act when a member is absent or unable to participate for any reason. The Board of Appeals shall adopt and file with the Town Clerk rules consistent with the requirements of the General Laws, Chapter 40A, and with this chapter. The Board of Appeals shall act on the following classes of matters, and no zoning or building permit shall be issued that is inconsistent with a decision of the Board of Appeals or on any matter within the jurisdiction of or before the Board of Appeals until it has filed its decision thereon:
- (1) Appeals. Any person aggrieved by any order, decision or failure to act, believed to be in violation of the State Zoning Act or this chapter, including the action of the Board of Selectmen relative to a zoning permit or a site plan, may appeal such action or failure to act to the Board of Appeals, as provided by M.G.L.A. C. 40A, § 8, 14 and 15, and the Board of Appeals may reverse or affirm, wholly or in part, any such action or decision. The Board of Appeals shall to that end have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.
  - (2) Special Permits. Unless otherwise designated by this chapter, the Board of Appeals shall be the Special Permit granting authority and shall hear and decide requests for Special Permits as provided in § 174-8B, 174-9 and other sections of this chapter and in accordance with M.G.L.A. C. 40A, § 9, 11, 14, et al. Uses accessory to activities necessary for permitted scientific research and development may be authorized by special permit, whether or not on the same parcel as the principal use, provided that the Board of Appeals finds that such accessory use meets the general requirements of § 174-9.
  - (3) Variances. The Board of Appeals shall have the power to grant, upon appeal or upon petition, variances from the terms of this chapter, including use variances, where the Board finds that, due to circumstances relating to soil conditions, topography or shape of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which they are located, literal enforcement of this chapter would involve substantial hardship to the appellant or petitioner and that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially

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derogating from the intent or purpose of this chapter. The Board of Appeals may impose conditions, limitations and safeguards not based on the continued ownership by the applicant, petitioner or any owner. If the rights authorized by a variance are not exercised within one (1) year from the date of grant thereof, they shall lapse, and a new petition, notice and hearing will be required for their reestablishment.

- (4) Comprehensive permits. The Board of Appeals may issue comprehensive permits for publicly subsidized housing, as provided in M.G.L.A. C. 40B, § 21.

- B. Before acting on any appeal or application for a special or comprehensive permit or a variance, the Board of Appeals shall hold a public hearing, after publishing notices thereof twice in a newspaper of general circulation in Southborough and sending notices to abutters, all as provided in the General Laws, Chapter 40A. The Board of Appeals shall conform to time limits for its notices, public hearings, decisions and filing thereof as required by said Chapter 40A. The Board shall establish within its rules and may from time to time change by vote and file with the Town Clerk reasonable application fees to cover the costs of notices and hearings.

### **§ 174-26. Amendments.**

This chapter or any part thereof may be amended or repealed at a Town Meeting duly called after an advertised public hearing is held on the proposed amendment by the Planning Board and it submits a report thereon or twenty (20) days elapse without such report being submitted.

### **§ 174-27. When Effective.**

This chapter and any amendments thereto shall take effect as provided by law upon adoption by a Town Meeting, provided that it is subsequently approved by the Attorney General and published or ninety (90) days elapse without action by the Attorney General.

### **§ 174-28. Severability.**

If any provision of this chapter or in the administration thereof is declared invalid or void by a court of competent jurisdiction, this shall not invalidate or void any other section or provision hereof.

## **Addendum #1 Illustration of Setbacks**

**Addendum #2**  
**Schedule of Dimensional Regulations**

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