



Pelham Village Centers Study Committee

A sub-committee of the Planning Board

REPORT of Findings – final report October 7th, 2010

Thomas RC Hartman, Study Committee Chair
Nora Maroulis
Dan Robb

Presented to: Warren Hall, Planning Board Chair



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EXECUTIVE SUMMARY of Findings

In the Fall of 2009, Warren Hall asked Tom Hartman to assist him in preparing a study to explore the possibilities for developing Village Center by-laws. Nora Maroulis and Dan Robb offered their support in the effort. The Pioneer Valley Planning Commission has provided a grant with assistance from Jessica Allan. This report is a summary of that effort and includes minutes of meetings, a brief summary of the recommendations and findings. This report will be utilized by the Planning Board in developing by-laws that ultimately are to be explored in a Public Hearing with the goal of being voted on at Town Meeting in April 2011.

The intent of this sub-committee to the planning board has been to explore the various ways that the Town of Pelham can physically be improved by zoning bylaws, as well as to poll various committees and residents to better understand what is desired. How can the town be further developed as a village while also maintaining the fundamental characteristics of our small town?

SUMMARY OF MEETINGS AND PROCESS

The minutes of five meetings are included in this report. We met with the Community Hall Committee, the School Committee, the Library Trustees, the Zoning Board of Appeals, and the Selectmen. Additionally, yet not formalized in meeting minutes, the Historical Commission has addressed a portion of these topics in their meetings. Both Tom Hartman and Dan Robb are members of the Historical Commission. Dan Robb is an associate member of the ZBA, and Nora Maroulis is a member of the School Committee and Library Trustees.

The work of the Growth Study Committee in 2006 was heavily relied upon for a summary of past efforts and provided sound and robust basis for moving ahead.

TWO CENTERS

It appears that there are currently two Village Centers. The first is the historic Town Hall Complex at the top of the hill. The second is West Pelham in association with the school, library and denser housing areas. Please note that no maps of the areas have formally been drawn to date, and that one of the first tasks in association with Public Hearings is to determine what the boundaries of a Village Center zone would be. In concept, the two centers could be described as:

Historic Center- Anchored by the Old Town Hall, the building with the longest running town meeting in the Nation, this area is a source of pride in the town and region. However, there is little town activity on a day-to-day basis other than the use of the Rhodes Building, a former schoolhouse that now serves as the Town's administrative offices, and the heavy use of the Department of Public Works garages and sheds, behind

the administrative offices. This first Village Center, if defined as we see it, would extend slightly west of the Rhodes building up to Rte 202, and then North and South a slight distance to include potential areas of mixed uses and greater density. Currently, the Town Hall Complex is designated a Registered Historical Landmark, and any changes in the vicinity would not affect the Old Town Hall, Historical Society Museum (Old Church), or the Burial Ground. One possible effect of defining this historic center as a Village Center would be to encourage greater use by townspeople of the resources afforded by its historic buildings and lands at the top of the ridge.

West Pelham-The greatest potential for a vibrant Village Center is at the bottom of the hill on Amherst Road in the proximity of the School, Community Hall, and Library. Currently, the greatest civic activity is centered in the buildings served by the back parking area adjacent to the Library. The intersection of North/South Valley Roads and Amherst Road is a heavily trafficked area with little to no pedestrian activity. This part of town is the densest in Pelham, and has the closest proximity to Amherst. North Valley Road is the route for numerous residents of Shutesbury and Wendell, and as the Library Trustees noted, the Library is often frequented by Shutesbury residents on their way home or into Amherst. The boundary of this potential Village Center may begin at the Amherst Town line at Amherst Road and extend east up to Arnold Road. To the North natural boundaries such as Amethyst Brook or Buffam Brook may serve as the boundary, while to the South Jones Road down through South Valley may complete the Village Center.

PAST EFFORTS & DIMENSIONAL REQUIREMENTS

The Pelham Growth Study Report provides a variety of recommendations, of which a few will be summarized below. A copy is available at the Library. In particular, in Appendix V, comparisons of several town zoning dimensional regulations in the context of public water and private sewer are highlighted. This is relevant to West Pelham, which has public water from Amherst and private sewers.

The recommendation for Phase II of that report was to have a lot size requirement of approximately 35,000 square feet and a frontage requirement of 125 feet. Currently, the zoning is for 88,000 sf and 200 feet of frontage.

Setbacks are not particularly addressed in the Growth Study Report, and currently the front yard requirement is 50', while the side and rear are 30'. At the side yard, this would place 60' between buildings. Most of the West Pelham building lots are currently existing and non-conforming in all aspects. For the purposes of this report, a 15' side yard setback is proposed, the rear is unchanged, and the front yard reduced to 35'. This is a topic of future discussion at a public hearing or informational meeting with the Planning Board.

BY-LAWS USES

The current zoning and current uses in town are largely limited to residential. Please see Meeting Minute #5 where Joe Larson provides an excellent summary of recent zoning changes. In our discussions of the Study Committee, a singular question was proposed, “Should it be possible for a business such as a dentist or lawyer to purchase a house and run a business there without living in it?” Currently, this could be done as an accessory use to a primary residence, but if we as a Town want to create and support a village, what types of business uses of dwellings should we encourage? What activities provide tax revenue without adding costs? Will there be enough tax revenue to matter, or is this simply a “quality of space” discussion? The sample by-laws attached to this report provide a variety of uses and suggested by-laws to complement them. For the purpose of this executive summary, we imagined that low-impact manufacturing, professional, or educational activities might be suitable kinds of businesses to encourage in a newly imagined Pelham Village Center. The opportunity for merchant activities, however, are limited by the speed of the road, lack of available parking, the relative isolation of Pelham, and the intense competition from businesses on Rte 9, and was only briefly considered.

ROADS AND SIDEWALKS

One clear and prominent aspect of typical by-laws employed to encourage vibrant Village Centers is, “To encourage pedestrian activity by creating a positive pedestrian experience.” (see model by-laws). At present, however, walking from the Pelham library to the Amherst town line (where the sidewalk begins) is not a positive experience. In fact, it is a risk to life and limb. If you doubt this statement, try it. A good sidewalk, beginning at the town line on Amherst Road and running uphill to the school, or further, would do much to alleviate this.

The vehicular traffic on Amherst Road is another concern. It is brisk, more often than not exceeds the speed limit, and often consists of heavy truck traffic. Mass Highway conducts traffic counts every other year, and the average is about 2,000 vehicles per day – which is about half of what Pine Street has in Amherst. This figure is surprising low, and perhaps this figure is taken at the intersection of 202 and Amherst Road and perhaps does not include the local traffic such as trips heading up North Valley Road. (the study cites “west of 202” <http://www.mhd.state.ma.us/default.asp?pgid=content/traffic01&sid=about#para8>)

The Planning Board is being supported by PVPC in conducting traffic studies that will show both count and speed. We will request that the survey be conducted above Arnold Road, and below Harkness. Additionally we will request that South Valley Road be sampled beyond the Library parking lot.

The speed of vehicles on Amherst Road has been expressed as a concern in all of the meetings. In particular, Community Hall has extremely limited parking and a need to connect across the street to the parking at the lower lot. There is the potential of legally

defining Amherst Road in the area of West Pelham as “Thickly Settled.” This designation carries a 30 mph speed limit, in comparison to the current 40 mph. The requirement for an area being so defined is that the structures be 200 or fewer feet apart for 1/8 of a mile, and based on mapping the area in West Pelham appears to meet this requirement. Furthermore, West Pelham Center, with a school, library, police, and fire department all situated in close proximity to a very busy four-way intersection on a steep hill, would seem to beg for a reduced speed limit. What process is required to accomplish this task is uncertain, but it is the recommendation of this study that it should be vigorously explored and implemented. <http://www.motorists.org/ma/ma2.html>. In addition, the school zone speed limit of 20 mph (when school is in session) with flashing lights is routinely ignored.

Amherst Road is still a “county” road in that the legislation that did away with Hampshire County government did not explicitly transfer authority over the county roads to the towns (which was the case with Berkshire County and possibly others). The last I knew the Hampshire Council of Governments in Northampton inherited the approval process. Amherst Road is not a state or country road in the way that Rte 9 or 202 are. Further information is needed on how “Thickly Settled” could be facilitated if desired by the Town.

In our meetings we have discussed the very dangerous intersection at Amherst and Harkness Roads. The sight lines coming off Harkness and it is not possible to see oncoming traffic. Perhaps if there is work performed in this area, the sightlines can be improved, or even a traffic light be installed.

In summary: Creating a safe walking area within the Village Center is a priority.

AMENITIES IN TOWN

Well beyond the consideration of zoning and road issues are the simple possibilities of buying a sandwich, catching a bus, or sending a package in Pelham. In our discussions with the Library Trustees, it became clear that they were interested in having an overnight package drop box or mail box at the Library entrance.

Some time ago, public bus transportation was attempted in Pelham, but was promptly shut down due to a lack of existent riders. Our understanding is that this occurred prior to the new Library being open. Perhaps it is time to try again with a stop at the library parking lot, the civic center of Pelham.

Ideally, adjacent to this lot would be a small store – a place to buy a sandwich or stamps, and perhaps to meet with others for a cup of coffee. There is a parcel of land adjacent to the parking lot that the Town owns that is being held for septic reserve. The development

potential of this parcel should be explored in concert with the next topic, a sewer connection for the Village Center of West Pelham.

SEWER CONSIDERATIONS

The Pelham Growth Study committee was formed at the request of the Selectboard in direct reaction to a developer's proposal (several years ago) that a sewer line be extended down North Valley Road to serve houses he hoped to build there. Previously, there had been interest in connecting the Amherst water treatment facility just south of Arnold Road with the Amherst Sewer line. This topic raises profound and justified concerns for those in Pelham determined to limit unwarranted development. The fear is that a sewer would allow development to go unchecked and destroy the character of Pelham by allowing construction of large buildings that could not otherwise be supported by septic systems in this wet region. In other words, sewers could permit lots of bedrooms, condominiums, huge houses on small lots, etc.

There is one mechanism that can assist in ensuring responsible development of West Pelham, and this is the possible implementation of a State Historic District. Such a district has been discussed by the Historical Commission as a potential mechanism for preserving the unique character of West Pelham.

At the Mass Historical Commission website there is a document that explains how a State Historic District works. Essentially, an existing building could not be torn down and replaced without the approval of a local historic district commission, or the people of Pelham. For further information, go to, "There's a Difference: Understanding National Register Districts and Local Historic Districts" <http://www.sec.state.ma.us/mhc/mhcpdf/difference.pdf>

This particular topic has relevance to the Village center in the context of reducing dimensional requirements for lots such as lot size, coverage, frontage and setbacks. Please reference the Growth Study report for a comparison between towns that have public water and sewer and those that have public water and private septic as West Pelham does.



Pelham Village Centers Study Committee
A sub-committee of the Planning Board

Meeting Minutes of March 3rd, 2010
MEETING #1 of 2010
7:00 pm at Community Hall

Present: (CH) Lorraine Lynch, Linda Hanscom, Emma Weaver, Elva Andersen
(VC) Tom Hartman, Dan Robb, Nora Maroulis

The purpose of the meeting was to review the activities and intent of the Village Center Committee with members of the Community Hall Committee.

The Planning Board has received a grant to develop by-laws from the Pioneer Valley Planning Commission for the purpose of establishing village centers. The grant expires in September, and the intent is to bring a set of by-laws for consideration to the Fall Town Meeting.

We reviewed the history of Community Hall and discussed the potential needs that could be fulfilled by the development of a Village Center by law. The focus of discussion was the road, lighting, parking and pedestrian connections to the Library. In summary:

- There is a need for more parking, and safer parking – especially for older people. Currently there is space for about 4 cars, and at times the need can be 5x or more and vehicles end up on North Valley road.
- The “overflow” parking across the street at the library is completely disconnected and there is no lighting to aid walking at night
- There is no crosswalk
- Traffic speeds are fast

It is apparent that the external needs of Community Hall can be addressed within the scope of study of this committee to make recommendations to the Town for future capital projects rather than develop by-laws to assist a town owned property.

Respectfully submitted, Thomas RC Hartman
Please provide corrections or revisions as required in advance of our next meeting.



Pelham Village Centers Study Committee
A sub-committee of the Planning Board

Meeting Minutes of June 3, 2010
MEETING #2 of 2010
6:00 pm at the School

Present:

School Committee- Debbie Gould (chair), Kathy Weilerstein, Rena Moore, Maria Geryk, Lisa Desjarlais,

Also present-Bill Martell (Selectmen), Fred Vanderbeck (Finance), Ben Storrow (Hampshire Gazette)

Village Center - Tom Hartman, Nora Maroulis (also a member of the School Committee)

The purpose of the meeting was to review the activities and intent of the Village Center Committee with the Pelham Elementary School Committee.

Tom introduced the context of the Village Center Committee and that the conclusion of the effort will be a recommendation to the Planning Board for a zoning change proposal to Town Meeting.

With respect to the school, the bylaws implications are negligible, while the surrounding context of village center improvements can have a beneficial effect on the school. Infrastructure such as sidewalks, full week and better utilization of the play areas, and reduced speed limits were discussed.

ACTION: Tom asked that the School Committee consider what measures and improvements would best benefit the school and village center context and forward any recommendations to him at Tom@ColdhamAndHartman.com.

Respectfully submitted, Thomas RC Hartman

Please provide corrections or revisions as required in advance of our next meeting.



Pelham Village Centers Study Committee
A sub-committee of the Planning Board

Meeting Minutes of June 23, 2010
MEETING #3 of 2010
7:00 pm at the Library

Present:

Library Trustees- Marianne Reiff, Francine Ozereko, Blair Bigelow, Adam Noitz,
Village Center - Tom Hartman, Nora Maroulis (also a Library Trustee)

The purpose of the meeting was to review the activities and intent of the Village Center Committee with the Library Trustees.

Tom introduced the context of the Village Center Committee and that the conclusion of the effort will be a recommendation to the Planning Board for a zoning change proposal to Town Meeting.

The technical recommendations regarding zoning bylaws have no direct effect on the function or context of the library, however, the improved context of a village center will be beneficial.

NOTE: Tom, Marianne and Francine are neighbors on Amherst Road at the town line. We discussed truck traffic and “jake brakes”.

TRANSPORTATION: The extension of public transportation up from Heatherstone Road would be beneficial to the library. It was noted that although an extension of public transportation has been previously attempted, it was before the library was functioning. The Town of Pelham pays for public transportation. Residents of other towns utilize the library, such as residents of Shutesbury on the way up North Valley.

AMENITIES: An overnight box, such as a UPS box, would be a welcome addition from the perspective of the trustees.

ACTION: Tom asked that the Library Trustees consider what measures and improvements would best benefit the library and village center context and forward any recommendations to him at Tom@ColdhamAndHartman.com.

Respectfully submitted, Thomas RC Hartman

Please provide corrections or revisions as required in advance of our next meeting.



Pelham Village Centers Study Committee
A sub-committee of the Planning Board

Meeting Minutes of June 24, 2010
MEETING #4 of 2010
7:00 pm at the Library

Present:

Zoning Board of Appeals- Jeff Eiseman, Joe Larson, Ruth Elcan
Village Center - Tom Hartman, Dan Robb (also an associate of the ZBA)

The purpose of the meeting was to review the activities and intent of the Village Center Committee with the Zoning Board of Appeals.

Tom introduced the context of the Village Center Committee and that the conclusion of the effort will be a recommendation to the Planning Board for a zoning change proposal to Town Meeting.

The discussion of the meeting explored various interrelationships between the Planning Board and the ZBA and how the ZBA's role is to interpret the zoning bylaws. In the recent past, there has been one bylaw change- see Meeting minutes #5.

We discussed various uses, such as a dentist's office in a village center. Currently this use could only be possible in association with a prime residence. What would be the appropriate hours of operation, parking requirements, dimensional requirements, etc... The differences between "by right" and "special permit" were discussed as well.

Thickly settled, as a mechanism to reduce the speed limit to 30 mph was presented by Tom in the context of distances between buildings. The density and setback requirements of a village center will likely vary from the current zoning requirements. The Growth Study report was referenced for review, especially in the interest of duplexes.

An interesting comment regarding the village center:

TWO USES:

Want to: Library

Have to: School

Respectfully submitted, Thomas RC Hartman

Please provide corrections or revisions as required in advance of our next meeting.



Pelham Village Centers Study Committee
A sub-committee of the Planning Board

Meeting Minutes of June 28, 2010
MEETING #5 of 2010
7:30 pm at the Rhodes Building

Present:

Selectmen- Ed Martin (Chair), Bill Martell, Jim Huber & Lori Krikorian (Town Administrator)
Also present- Jessica Allen (PVPC), Rick Adamcek (DPW Superintendent), Joe Larson (Historical Commission and ZBA), Bill Pula (Board of Health), John Trickey (Finance)
Village Center - Tom Hartman, Dan Robb, Warren Hall (Planning Board-Chair)

The purpose of the meeting was to review the activities and intent of the Village Center Committee with the Selectmen. Tom provided a summary of activities to date that include meeting with the Community Hall Committee, School Committee, Library Trustees, and the ZBA.

In particular, we have established a focus of two village centers- the historic center at the top of the hill, and the current municipal center at the Library, School and Community Hall.

The following is a summary of the discussion:

TRAFFIC STUDY- Warren and Tom described that PVPC will be providing a traffic study once the college students return to study both speed and volume on Amherst Road and South Valley Road. Rick A said that Mass Highway has done traffic studies in the past.

ACTION: Tom to obtain studies from Rick.

PREVIOUS WORK ON THE TOPIC- Bill Pula and Joe Larson referenced past studies that have been prepared including:

Growth Study – Judy Eiseman, Chair

Master Plan- Tilman Lucas, Chair- reference Joe's comments in a separate document

Forest Overlay- Wayne Feiden, Consultant

ACTION: Tom to draw from those studies in the report to the Planning Board.

TIMELINE- A timeline was presented that might allow for a zoning proposal for a Village Center to be on the Fall Meeting schedule, but it is unlikely. The timeline and sequence need to follow Chapter 40a, which requires the Planning Board hold a hearing upon receiving the Village Center Study recommendations, the hearing to be advertised and sent to abutting towns, etc..

The grant being provided by PVPC expires in September, and the intent is to hold a public meeting at that time if possible and to complete the Village Center Study in that timeframe. Additional support may be available to the Planning Board afterwards in the actual deliberations about the zoning change and hearings in preparation for a vote at Town Meeting in the Spring of 2011.

WHAT HAS CHANGED SINCE THE GROWTH STUDY?

Jim Huber asked what has changed since two years ago when a similar topic was addressed as part of a growth study? Since then, there has been a zoning change with respect to the Vet Clinic on Rte 9. Joe Larson offers a complete perspective on his comments at the end of these minutes.

ZONING OF INFRASTRUCTURE?

We discussed that the Study Committee is particularly focused on zoning changes, while much of the discussion with groups has involved more infrastructure aspects such as adequate parking and lighting at the Community Hall, amenities such as overnight pickup at the Library, and sidewalks and reduced speed limits in association with the school, library, and pedestrian friendly aspects of zoning changes.

The boundaries of the two village centers were not discussed, but a critical topic to be expored in advance of a public hearing. The residents of the potential areas need to be deliberately engaged in the process.

Respectfully submitted, Thomas RC Hartman

Please provide corrections or revisions as required in advance of our next meeting.

To: Tom Hartman, Dan Robb, Warren Hall

From: Joe Larson

July 17, 2010

Gentlemen:

I thought that it might be useful to spell out more completely the thoughts that I expressed at the Selectmen's meeting when we discussed the Village Center concept. I add an additional item at the end.

Background I – Home Occupation Permits

The town has for many years agreed to the issuance of Special Permits for Home Occupations at any location in Pelham. For these permits the Zoning Board of Appeals has been designated as the Permit Granting Authority. In the entire history of the Home Occupation Special Permits the ZBA has denied only one applicant and that was for public safety concerns (home real estate office on a sharp curve located in a hill on North Valley Road where it ices badly in the winter). Once a permit has been issued no permittee has been denied a renewal. No abutters have sought to have a ZBA granted permit denied or revoked after the permit has been exercised.

This suggests to me that the townspeople are satisfied with:

. Conduct of an occupation in conjunction with a residence as long as the abutters have

- the opportunity for public input with regard to the conditions that are applied by the ZBA in the permit granting process.*
0. *Their experience with the conditions following the exercise of a permit.*
 0. *The effectiveness of oversight of the activity by a resident owner.*

Background II – Limited Business District

At the October 25, 2006 Special Town Meeting the voters of Pelham, for the first time, agreed to the establish different zoning districts in Pelham. Prior to this date the entire town was a single zoning district where all lots were treated the same. These districts were located on a map and spelled out in Article II (§125-1) of the Code of Pelham (R-residential, WSP-water supply protection). At this 2006 Special Town Meeting the voters accepted the creation of a “Limited Business” district where a resident may conduct a use called a “major home occupation”. Such a use is established by Special Permit/Site Plan Approval by the ZBA. The ZBA is required by the Code to make a determination whether the proposed “major home occupation” is of a size, scale, character, and use compatible to and harmonious with the existing neighborhood. The location of this first Limited Business District is the single lot fronting the north side of Route 9 in the southwest corner of the town. Subsequent to the approval by the Attorney General of Town Meeting action an application for a Major Home Occupation permit was granted by the ZBA for that lot.

In the nearly four years of the existence of that district and the activity under the Major Home Occupation permit there have been no complaints about this use in the new district. This suggests that the townspeople have the same three elements of satisfaction with this district, and permitting process, as they have had with the Home Occupation Permit process.

Home Occupation vs. Major Home Occupation

The Major Home Occupation, as allowed in the Limited Business District, differs from a Home Occupation significantly, especially from the viewpoint of an applicant who seeks financial and other assistance in funding and operating the activity:

- A Home Occupation Permit is issued for 1 to 3 years by the ZBA and must be renewed at each expiration date. The initial application and each renewal involves a \$100 fee, public hearing, and the potential for denial. A Major Home Occupation Permit is granted once, with one fee payment, to an applicant for as long as he or she wishes to exercise it and reside on the property. A termination would require a complaint followed by a showing that one or more of the conditions of the permit had been violated. This is a significant advantage to the applicant when in applying for financial loans.*
- A Home Occupation may only be carried on by members of the family living on the premises. A Major Home Occupation may employ as many as 7 full-time equivalent employees and an unlimited number of family members and unpaid volunteers. This is a major advantage for operating a business.*
- A Home Occupation can be conducted in a structure on the lot that is separate from the residence, if approved by the ZBA. A Major Home Occupation is explicitly allows the permittee, by right, to use a structure that is separate from the residence.*

Recommendations

- That the Planning Board approach the Village Center Concept by proposing an amendment to the Code of Pelham that would designate of a portion of West Pelham as a Limited Business District having the same the same requirements as the Route 9 Limited Business District. I believe that applying to West Pelham an approach that has already been accepted by the voters is more likely to succeed than would be an untested alternative.*
- In contrast to the Route 9 Limited Business District, West Pelham is the most densely settled area of the town. It has a high proportion of homes and structures of established historic significance. For these reasons, it will be wise to provide the*

owners of these properties a means to describe for themselves, in regulations, the specific characteristics of their neighborhood that the ZBA must incorporate when it makes its determination of the suitability of an application for a Major Home Occupation permit. The strongest tool that Massachusetts law offers to the current owners to do this is to establish a West Pelham Local Historic District, under MGL Chapter 40C. I recommend that this be done prior to, or concurrent with, the proposal for a West Pelham Limited Business District.

Personal Comments

As a 20+ year member of the ZBA, and former member of the Planning Board, I recognize that creating a Local Historic District may be regarded by some as tying the hands of the ZBA and the Planning Board. The process for establishing a Local Historic District provides for input from the landowners in determining the appearance and general character of their neighborhood.

*But a zoning change in West Pelham will impact more people than a change in any other part of the town. West Pelham is the major daily gateway for nearly all residents of the town, plus visitors and prospective new residents. Its character and appearance is the impression that travelers carry away as they pass through our town. **Because** creation of a Local Historic District engages the resident landowners more firmly than any other legal mechanism, I believe that it can be highly advantageous to the residents of West Pelham.*

Note: Dan Robb suggests “Because it would afford the resident landowners the opportunity to define precisely the parameters that the ZBA would follow in determining whether or not a proposed major home occupation would be appropriate for West Pelham.”

MODEL MIXED USE REDEVELOPMENT BYLAW

Prepared by the Pioneer Valley Planning Commission

Note: *This Model Zoning Bylaw is most applicable when the area is being redeveloped for commercial uses. For new development areas, please refer to the Model Mixed Use Redevelopment Bylaw.*

Comments added by Tom Hartman, 30 Aug 2010

1.0 MIXED USE REDEVELOPMENT – Should this be called Village Center Redevelopment?

The purposes of Mixed Use Developments are:

- 1.1 To enhance pride and confidence in the downtown area;
- 1.2 Allow for greater variety and flexibility in development forms;
- 1.3 Encourage the redevelopment of underutilized buildings for mixed uses;
- 1.4 Encourage more compact and efficient developments;
- 1.5 To create an attractive environment which is active throughout the day and evening;
- 1.6 To maintain a consistently high level of design quality;
- 1.7 Reduce traffic congestion and air pollution by providing opportunities for housing and employment in close proximity;
- 1.8 To encourage pedestrian activity by creating a positive pedestrian experience;
- 1.9 To protect property values through quality control;
- 1.10 To provide incentives for new and existing businesses in the downtown area.

2.0 GENERAL DESCRIPTION

A “Mixed Use Redevelopment” shall mean development containing a mixture of residential and non-residential uses, including townhouses, multifamily dwellings, business uses and industrial uses. A Mixed Use Redevelopment may be allowed by special permit to exceed the normal density requirements for the district to the extent authorized by this bylaw provided that standards for pedestrian friendly design are met.

3.0 USES ALLOWED BY SPECIAL PERMIT

Mixed Use Redevelopments (MURs) shall be permitted in districts zoned for commercial uses, upon issuance of a Special Permit with Site Plan Approval from the Planning Board. Special Permit applicants are encouraged to submit concept plans showing all anticipated uses and development phases to the Planning Board prior to filing of the special permit application.

In a Mixed Use Redevelopment, the following uses may be allowed by Special Permit:

- a. Apartments;
- b. Hotels;
- c. Bed-and-breakfast establishments;
- d. Townhouses-single family dwellings connected by one or more walls;
- e. Business uses which are permitted in the underlying district;
- f. Industrial uses which are permitted in the underlying district.

4.0 CONDITIONS FOR CERTAIN USES WITHIN MIXED USE REDEVELOPMENTS

Within a mixed use development, the following uses shall not be allowed as free standing buildings, and shall not provide drive-through service windows:

- a. Fast food restaurants;
- b. High turnover sit-down restaurants;
- c. Banks.

5.0 CONDITIONS FOR RESIDENTIAL USES IN COMMERCIAL BUILDINGS

Residential uses are permitted on all floors or levels in buildings in the Mixed Use Redevelopment except on the street level or first floor of structures or buildings used for commercial purposes.

6.0 DENSITY AND DIMENSIONAL REGULATIONS

If the proposed project complies with the standards specified in Section _____ (*Dimensional Table of Zoning Bylaw*), the following density and dimensional requirements may be substituted for those requirements required in the district:

- a. The minimum lot size for all dwelling units may be reduced by ten (10) percent below the lot size required in (*Dimensional Table of Zoning Bylaw*); currently this is 88,000 sf.
- b. The minimum total land area for a residential portion of a Mixed Use Redevelopment shall be five (5) acres;
- c. There shall be no frontage requirements within the residential Mixed Use Redevelopment; currently frontage is 200'
- d. Minimum setback, rear and side yard requirements specified in the (*Dimensional Table of Zoning Bylaw*) shall pertain only to the periphery of the residential Mixed Use Redevelopment; currently front setback is 50 and side/rear are 30
- e. The maximum number of dwelling units per structure shall be six (6);
- f. No dwellings shall be permitted on the street level.

Thomas Hartman 8/30/10 5:22 PM
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From the Growth Study report (May, 2006) Appendix V it is noted that with respect to Village Center District Zoning, that Brookfield (Worcester County) and Cummington (Hampshire County) smaller lot sizes are allowed with public water and private septic- lot sizes are 30,000 sf and frontage is 150'.

Thomas Hartman 8/30/10 5:26 PM
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SETBACK RECOMMENDATIONS- Frontage 30', side and rear 15'???

Thomas Hartman 8/30/10 5:26 PM
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7.0 BICYCLE ACCESS AND CIRCULATION

(Refer to standards included in Section 1.3 and 1.4 of the Model Parking Bylaw)

8.0 PARKING LOT REQUIREMENTS

(Refer to standards set forth in the Model Parking Bylaw)

9.0 DESIGN FOR TRANSIT ACCESSIBILITY

(Refer to standards set forth in the Appendix to the Model Zoning Bylaw for Site Plan and Design Approval)

Thomas Hartman 8/30/10 5:30 PM

Deleted: <#>BUILDING SETBACK REQUIREMENTS

A maximum building setback requirement of _____ feet shall be established, compatible with existing structures.

The Village Center Overlay District

Model Bylaw

The following model bylaw was developed to supplement the original TND Model Bylaw developed for the Toolkit. The original model covers all of the essential aspects of TND, but is more limited in its application to wholesale redevelopment of large areas or greenfield development. As such, that model bylaw is difficult to apply to the more common problem associated with today's aging village centers, which are often characterized by pre-existing non-conforming uses and commercial "strip" centers. This model will help practitioners zone for a more gradual or piecemeal revitalization of existing centers that currently have little to no mixed use and limited walkable options for customers and residents. The bylaw anticipates that most redevelopment will take place on smaller lots of different ownership, but also anticipates that there may be opportunities for larger scale revitalization efforts.

This model is packaged as an overlay district assuming that the focus in many communities will be on "business" districts that may be wide spread throughout the community. Using an overlay approach, therefore, will allow local planners to target areas of interest without creating problems in the same district elsewhere in the city or town.

One of the challenges associated with a piecemeal approach to TND is appropriately integrating open space or civic use into the district. Requiring civic use as part of redevelopment would create significant practical and legal barriers to implementation. Furthermore, a piecemeal approach to developing open space in a village context might create a fragmented resource that fails to serve as a functional public amenity. This model bylaw therefore provides the opportunity to earn significant density bonuses for the addition of open space or civic uses through a voluntary Special Permit process. Importantly, the Special Permit is offered for larger sites where the coordinated development of several buildings along with open space can achieve many of the classic TND objectives.

Many of the design elements included in this model are the same as or similar to those in the Mill Redevelopment Bylaw, as these areas share the overarching goal of creating a compact walkable neighborhood. Due to all of the design considerations associated with this bylaw, it is highly recommended that the language for these guidelines emerge from a charrette or similar public outreach process. This outreach process will also help identify the appropriate permitting vehicle (Special Permit, Site Plan Review, by-right) depending on how strongly residents feel about the need for discretion or more rigid approaches.

Another important note regarding this bylaw is that it assumes there are certain common regulatory elements elsewhere in the Zoning Bylaw. For example, this bylaw references both a Site Plan Review section and the community's essential Special Permit procedures that most communities will have in early sections of the bylaw or ordinance. Referencing these sections made it easier to present the most important sections of this bylaw without being distracted by several pages of plan requirements, permit procedures and basic findings.

1. Purpose

[INSERT NAME OF CITY/TOWN] finds that the revitalization of our village centers will benefit the general health and welfare of our residents and the region by fulfilling existing housing, transportation and employment needs. Therefore, the Town implements this bylaw and designates certain zoning districts as Village Center Overlay Districts to encourage economic and residential growth that fits the character of the Town.

The purposes of the Village Center Overlay District are to:

- A. Build upon the historic development patterns in existing village centers to create attractive, walkable neighborhoods;
- B. Encourage adaptive reuse of abandoned, vacant or underutilized buildings or structures where appropriate;
- C. Allow for a mix of new land uses that are appropriate to both the needs of the community and the scale of surrounding neighborhoods;
- D. Provide incentives to develop larger parcels at higher densities and in a coordinated, planned approach;
- E. Maintain a consistently high level of design quality throughout the district.

Commentary: The purposes listed above are used as part of the decision making criteria for the Planning Board, so communities must be careful to craft these according to their vision for the village center district. Where the district may be used to leverage affordable housing development, these goals should be clearly incorporated into this section.

2. Establishment

The Village Center Overlay District is hereby established and consists of those areas shown on [INSERT TITLE OF MAP] on file with the Town/City Clerk and dated [INSERT DATE MAP IS ADOPTED BY THE CITY/TOWN].

3. Definitions

Civic Use: a land use that provides a public, cultural, or institutional benefit to the community. Specific uses may include, but shall not be limited to, government offices, religious institutions, educational institutions, and medical facilities (not including veterinary operations). For the purposes of this bylaw, civic uses shall not include open space as defined below.

Personal Services: services for everyday affairs including barber shops, beauty salons, laundrettes, dry cleaning, shoe repair and other similar service businesses.

Open Space: In the context of an application for a Village Center Overlay District Special Permit, this term denotes open areas set aside for public use as part of a coordinated site development process. Specific requirements for ownership and maintenance are provided in Section 9.

Transparency: The amount of transparent space that occupies a building façade including standard street-level windows and doorway windows.

4. Authority

The Planning Board shall act as the administering authority for any Site Plan Review procedure associated with this bylaw (INSERT REFERENCE TO EXISTING SITE PLAN REVIEW SECTION]). The Planning Board shall also serve as the Special Permit Granting Authority for any use that requires a Special Permit in the underlying district, any use requiring a Special Permit pursuant to Section 5, and any applicant seeking a Village Center Overlay District (VCOD) Special Permit subject to Section 9. Where standards or other requirements listed as part of this overlay district may conflict with those in the underlying district, the overlay provisions shall apply.

Commentary: This section clearly identifies a single agency, in this case the Planning Board, as the primary oversight for all permit review. This approach provides continuity for any permit submittals within the overlay district. Also, the section clearly establishes that the provisions of the overlay shall apply where any conflicts may exist elsewhere in the Zoning Bylaw/Ordinance.

5. Use Provisions

- A. The following uses are allowed by-right subject to any Site Plan Review requirements listed [REFERENCE EXISTING SITE PLAN REVIEW BYLAW] and all applicable density and design provisions listed in this bylaw.
- 1) Multi-family Dwellings above non-residential use (ownership units);
 - 2) Apartments above non-residential use (rental units);
 - 3) Convenience Stores;
 - 4) Pharmacies;
 - 5) Cafés (including cyber-café);
 - 6) Art Galleries;
 - 7) Grocery Stores;
 - 8) Business or Professional Offices;
 - 9) Retail Sales and Services;
 - 10) Personal Services;
 - 11) Restaurants, except the use of drive-up windows;
 - 12) Taverns;
 - 13) Outdoor seating associated with Restaurants or Cafés subject to applicable licensing requirements;
 - 14) Artist live/work space;

Commentary: The uses listed above illustrate the types of land uses that may be considered conducive to village center redevelopment. Including multiple by-right uses provides many opportunities for property owners to redevelop through an administrative permit process. These uses should be examined carefully against all uses in a city/town's use table as well as those allowed in the underlying districts to ensure that all desirable uses are included.

- B. The following uses are allowed only through the granting of a Special Permit by the Planning Board pursuant to the procedures outlined in [REFERENCE EXISTING STANDARD SPECIAL PERMIT REQUIREMENTS].

- 1) Two-Family Homes;
- 2) Multi-Family Homes;
- 3) Apartment Complexes;
- 4) Movie House (maximum of two screens);
- 5) Liquor Stores
- 6) Outdoor Markets subject to applicable licensing requirements;
- 7) Indoor Recreational Facilities;

Commentary: These uses are provided to illustrate the sort of land uses that may or may not be compatible with the district depending on site specific conditions. Of particular interest are the two-family homes, multi-family homes and apartment complexes. The rationale for including these as Special Permit uses is to ensure that areas better suited for mixed use are not overcome by an aggressive housing market. Established “Main Street” environments will need to maintain a multi-story mixed use profile in order to harness the full economic potential of the area. If communities are concerned about the political pressures associated with this approach, the overlay could be divided into two sub-districts. The outer portions of the overlay could then become their own sub-district in which housing of all types are allowed by-right.

C. The following uses are prohibited in the Village Center Overlay District

- 1) Single Family Homes;
- 2) One-story buildings;
- 3) Retail operations with more than [ten thousand (10,000) square feet] of gross floor area on any individual floor.

Commentary: The prohibited uses above are designed to protect the village center against inefficient uses of land. These standards will send a clear message to the development community that density is an integral component of any proposal.

6. Dimensional Requirements

- A. Setbacks for Non-residential and Mixed Use: Setbacks for non-residential or mixed use buildings shall fall within the range of [zero (0) to eighteen (18) feet] and shall be subject to the site design standards in Section 8.
- B. Setbacks for Residential Uses (Exclusive): The setbacks for proposed development that is exclusively residential shall comply with the setback requirements in the underlying zoning districts.

Commentary: Although this model bylaw defaults to the underlying zoning for residential development, local practitioners may want to closely examine the existing housing in the area to ensure that older, attractive neighborhoods are not left “non-conforming” within the overlay as a result of this default approach. If larger existing old home could set a reasonable standard for the area, and current zoning has made them non-conforming, this overlay approach is a good opportunity to re-establish these as an integral element to the streetscapes surrounding a village core.

- C. Height Limitations for Non-residential and Mixed Use: Building height for mixed use or non-residential use shall not exceed [thirty-five (35) feet] and no building shall have more than [three (3)] stories.

Commentary: Height limitations in this provision ensure a “human” or “village” scale to the district by restricting building height to three stories. However, they also serve to lay the foundation for higher density incentives listed in Section 9 where the height may be increased to 50 feet for larger lot, coordinated development.

- D. Height Limitations for Residential Uses (Exclusive): Building height limits for proposed development that is exclusively residential shall comply with the restrictions in the underlying zoning districts.

Commentary: See Commentary under “B” above.

7. Parking Requirements

The base parking standards for the underlying Zoning Districts shall apply to individual uses in the Village Center Overlay District. As part of a Site Plan Approval or Special Permit process within this overlay district, the applicant may request reductions to minimum requirements or alternative methods for meeting the required parking. Available innovative parking strategies include:

A. Shared On-Site Parking

- 1) Non-competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demands for non-competing uses. Up to [75%] of the requirements for the predominant use may be waived by the Planning Board if the applicant can demonstrate that the peak demands for two uses do not overlap.
- 2) Competing Uses. In mixed-use developments, applicants may propose a reduction in parking requirements where peak demands do overlap. In these cases, the Planning Board may reduce the parking requirements of the predominant use by up to [30%].

B. Off-Site Parking

Separate from, or in conjunction with Shared Parking provisions, an applicant may use off-site parking to satisfy their parking requirements in accordance with the following conditions:

- 1) Off-site parking shall be within [five hundred (500)] feet of the property for which it is being requested.
- 2) Off-site parking spaces provided by a separate private property owner shall be subject to a legally binding agreement that will be presented to the Planning Board as a condition of the Special Permit. Where an agreement shall expire within a specified timeline, the applicant or current property owner shall continue to provide evidence to the Zoning Enforcement Agent that the agreement has been extended.

8. Design Standards

The Design Standards in this section shall be applied to development within the Village Center Overlay District where applicable.

A. Buildings

- 1) All buildings shall have a principal façade and entry (with operable doors) facing a street or open space. Buildings may have more than one principal façade and/or entry;
- 2) Building finish materials shall be appropriate to traditional New England architecture and may include, but shall not be limited to brick or high-quality brick face, wood, stone or high-quality stone-face. Vinyl, unfinished metal or fiberglass as a primary finished surface shall not be used;
- 3) Blank walls adjacent to streets, alleys or open spaces shall not be permitted. Where windows are not possible or appropriate to the intended use, vertical articulation in the form of raised or recessed surfaces shall be used to break up blank walls;
- 4) New retail buildings shall have one of the following features along the front surface at intervals sufficient to provide continuity to pedestrians: awning, marquee, arcade and/or colonnade;
- 5) Flat roofs may be allowed on multi-story buildings as long as the roofline projects outward from the building surface as a decorative cornice or parapet; and
- 6) Larger buildings with multiple non-residential tenants on the first floor shall articulate the façade in a manner that distinguishes the location of these tenants through the use of decorative raised or depressed vertical surfaces, variations in acceptable signage, awnings, marquees, colonnades or arcades.

B. Signs

- 1) Primary signs shall be flat against the façade, or mounted projecting from the façade;
- 2) Signs that project from buildings shall have at least ten (10) feet of clearance from the ground level;
- 3) Signs shall be externally lit from the front. Back lighting of signs shall not be used;
- 4) Neon, flashing signs, moving signs and roof signs shall not be used;
- 5) Temporary signs with a specific date of expiration, such as sandwich boards, shall be allowed, after approval by the Zoning Enforcement Officer;
- 6) Signs shall be made of attractive materials consistent with the character of the district. Materials may include wood (painted or natural), stone, copper, brass, galvanized steel, painted canvas or paint/engraved on façade surface;
- 7) Signs may only be incorporated into the skirt of awnings and not on the primary angled surface.

C. Site Design

- 1) Parking areas shall be located in the rear of buildings;
- 2) Street level frontage shall be devoted to entrances, shop windows or other displays;

- 3) Clear pedestrian pathways shall be provided between buildings on the same lot and between buildings on adjacent lots to ensure a continuous pedestrian pathway throughout the district;
- 4) Where residential neighborhoods abut commercial, office or mixed use developments, appropriate transitional features shall be used and may include landscaping, open space or parks, or streets with clearly designed pedestrian features;
- 5) Primary entrances to proposed and existing buildings are situated on pedestrian amenities (e.g., sidewalks, plazas or open space) with a minimum width of 10 feet;
- 6) Setbacks are consistent with the fabric of the existing street and do not preclude pedestrian access;
- 7) Adequate access for loading and emergency vehicles is maintained on one side of the building; and
- 8) Adequate natural lighting and air circulation for businesses and residents is maintained.

Commentary: The range of setbacks and minimum sidewalk width listed above assume that the right-of-way will not be providing any pedestrian amenity for the site. For example, if the right of way is owned by the state, then the community will need to rely exclusively on their power to regulate design within the front setback for pedestrian movement. If the community does own the right of way and has five-foot sidewalks along the edge of pavement, then the minimum setbacks can be reduced to account for those sidewalks. In the end, the pedestrian realm must be at least ten feet wide to have a properly functioning sidewalk that includes primary walking space, space for landscaping or street trees, space for lighting, signage areas, etc.

9. Village Center Overlay District Special Permit

Applicants may apply for, and the Planning Board may grant, a Village Center Overlay District (VCOD) Special Permit subject to the following provisions.

- A. Purpose: In addition to those purposes listed in Section 1 of this bylaw, the purpose of a VCOD Special Permit is to provide the opportunity to develop pockets of higher density, coordinated mixed use developments that include a diverse use profile and act as centers of commerce and activity within the overlay district.
- B. Eligibility: To be eligible to apply for a VCOD Special Permit, the site must contain at least [three (3)] acres of contiguous buildable land. For the purposes of this bylaw, land may be considered contiguous if it is separated by a road or by public open space that does not separate parcels in common ownership by more than two hundred (200) feet;

Commentary: Communities will want to carefully consider the size of the tract that can be included in the Special Permit process. Planning for the overlay should therefore include a comprehensive inventory of each lot size in the district to ensure that opportunities for these higher densities are not lost.

- C. Use Profile: An applicant for a VCOD Special Permit shall restrict the development to a specific general use profile that complies with the parameters listed below. The area of a particular use, other than public open space, shall be determined by dividing its Gross Floor Area (GFA) by the total GFA in the development. The Planning Board shall include continued compliance with the proposed use profile as a condition of any Special Permit granted under this Section of the Bylaw.

- 1) The development area shall not contain residential use in more than [ten percent (10%)] of the total ground floor area;
- 2) The development area shall not contain more than [sixty percent (60%)] residential use;
- 3) The proposed development area shall not contain more than [forty percent (40%)] office use;
- 4) The proposed development area shall not contain more than [forty percent (40%)] retail use; and
- 5) The proposed development area shall not contain more than [thirty percent (30%)] service industry use.
- 6) The proposed development area shall contain a minimum of [five percent (5%)] civic use and shall design at least [twenty percent (20%)] of the site as open space accessible to the public.

- D. Height Bonuses: Upon petition by an applicant for a VCOD Special Permit, the Planning Board may allow for maximum building heights to be [fifty (50) feet]. The Planning Board shall not allow for buildings to have more than [four and a half (4.5) stories] above the street level grade. Applicants may increase the overall density of their project to meet these height limitation increases provided that the applicant complies with all other requirements of this bylaw including, without limitation, those for parking, design and other dimensional requirements.

Commentary: This bonus is the perhaps the most critical feature of this Special Permit process as it will act as the primary incentive for developers to create well-planned designs and to include civic uses along with open space. Local practitioners will need to make sure that the gap between the density allowed by-right and the density allowed by Special Permit is large enough to entice owners of larger sites into the Special Permit process. This bylaw allows for an additional one and a half stories to be developed above grade. However, where planners feel that higher buildings may be acceptable to the community, these higher densities should be pursued as part of the Special Permit process. Often, historic non-conforming buildings may provide a crucial point of reference to determining the ultimate height bonus that could be allowed. Where an existing landmark building is sixty feet tall, for example, this height is a good candidate for the building height bonus.

- E. Frontage: As part of a VCOD Special Permit application, the Planning Board may authorize frontage as low as [forty (40)] feet.

Commentary: The flexibility for frontage is designed to accommodate the often irregular patterns of physical ownership in coordinated or campus style developments. In these situations, it may be necessary to allow for irregularly shaped lots such as the so-called “flag” or “pork chop” lots. Communities should also examine requirements for “lot width” to ensure that these irregular lot configurations can take place.

- F. Additional Design Standards: In addition to those design standards listed in Section 8 of this bylaw, applications for a VCOD Special Permit shall also meet the following standards:

- 1) Buildings

- (a) Newly constructed building façades for non-residential use shall have a transparency of at least sixty percent (60%)
- 2) Signs
 - (a) Freestanding directory signs may be permitted as part of a VCOD Special Permit application where several non-residential operations are accessed through a common vehicular entrance. Such freestanding signs shall not exceed eight (8) feet in height, six (6) feet in width and each tenant shall be allowed a maximum of four and a half (4.5) square feet to display the company or agency name.
- 3) Site Design
 - (a) Buildings shall be arranged in a manner that optimizes the ability of residents and consumers to access public spaces and pedestrian amenities.
 - (b) Buildings shall be oriented toward each other in a way that minimizes conflicts between pedestrians and automobiles.
 - (c) Open space provided pursuant to Section 9.C of this bylaw shall be designed as a public gathering place. Arcades, courtyards, parks, greens or other common areas shall be located in a manner that connects buildings to each other and to public sidewalks without interruption from parking areas or automobile travel lanes to the greatest practicable extent.
 - (d) Features that may be used to create open space areas acceptable to the Planning Board may include, without limitation, fixed benches, fixed tables, fountains, pathways, bikeways, bicycle racks, period lighting, shade trees, perennial gardens, picnic areas, and/or trash receptacles.
- G. Open Space Ownership and Maintenance: As a condition of a Special Permit, the Planning Board shall require an applicant to document ownership of open space within the proposed development and to provide a detailed maintenance schedule to ensure the long term care of open space areas.
- H. Application Process and Requirements: Applicants for a VCOD Special Permit shall comply with the Special Permit Procedures outlined in [REFERENCE STANDARD SPECIAL PERMIT SECTION OF ZONING BYLAW] and shall provide all applicable information for a Full Site Plan Review pursuant to [REFERENCE STANDARD SITE PLAN REVIEW SECTION OF ZONING BYLAW]
- I. Decision: The Planning Board may approve an application for a VCOD Special Permit with those conditions specified in this bylaw pursuant to the following criteria:
 - 1) Proposed development is consistent with the purposes listed in Section 1 and Section 9.A of this bylaw;
 - 2) All applicable standards for use, parking and dimensional requirements are met;

- 3) All applicable design standards listed in Section 8 are met;
- 4) All applicable additional design standards listed in Section 9.E are met;
- 4) Where multiple structures are proposed, the site design reflects a thoughtful arrangement of elements that will facilitate the movement of pedestrians between structures through the use of sidewalks, internal walkways, alleys or open space features as required in Section 9.E.3;
- 5) The applicant has provided adequate documentation to ensure that the use profile within the development shall permanently comply with those restrictions listed in Section 9.C; and
- 6) The applicant has provided adequate documentation to ensure that the required open space within a proposed development shall be adequately and permanently maintained.

10.0 Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

Cape Cod Commission Model Bylaws and Regulations

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

Background

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

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

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

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

At issue for all Cape towns is the preservation and, in many cases, the resurrection of the functional and successful development of a central village center(s). This bylaw/ordinance is designed to assist the Cape towns in revitalizing and strengthening their village centers through the use of flexible dimensional and use standards.

This model bylaw offers two possible approaches for encouraging village-style development. One approach allows towns to significantly relax dimensional standards within the area(s) designated as

village centers. An alternative approach is for towns to prescribe specific dimensional standards (perhaps with some flexibility) following an analysis of the dimensional standards of those structures that are deemed desirable in terms of form and function. This option requires towns to actually measure the setbacks, height and bulk of those structures that residents believe reflect the desired development pattern. Following these measurements, towns could adjust this regulation to more accurately mirror conditions as they exist today and those that they desire be replicated for the future. Please note that a sample of actual measurements from selected Cape Cod villages accompanies this regulation.

The annotations and commentary which follow use the numbering and headings of the model bylaw/ordinance. The annotations and commentary will not be part of your bylaw/ordinance, but will serve as a "legislative history" of the intent of the drafters and the interpretation to be given to terms and provisions.

Despite the drafters' best intentions, there is no true "model" bylaw/ordinance, particularly in an area as diverse as Cape Cod. Towns are encouraged to revise the text and annotations within this bylaw/ordinance as they determine appropriate.

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

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

02.0 Definitions

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

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

An overlay district is a type of district that lies on top of another, like a bedspread over a blanket. The

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

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

02.2 Special Permits (See Section 08.0).

Option 1:

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

Option 2:

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

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

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

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

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

03.0 Pre-Application Conference Requirement:

03.1 Timing. Prior to the submission of an application for a special permit under this

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

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

Commentary: The purpose of a pre-application conference is to give the SPGA advance notice of an application for development within the overlay district and remove, to the extent possible, some of the "pressure" that Boards experience once a formal special permit has been applied for. The conference is further designed to educate both the SPGA and the applicant as to the project and the likely concerns raised by the project. Note that there are no formal filing requirements proposed in this model regulation. Towns are free to articulate specific filing requirements although it is recommended that these requirements be kept to a minimum for this pre-filing phase.

Finally, towns with site plan review regulations that require pre-application meetings may wish to substitute the above-noted process with their existing site plan review regulations.

04.0 Site Planning Standards and Filing Requirements:

04.1 Access. New curb cuts on existing public ways shall be minimized. To the extent feasible, access to businesses shall be provided through one of the following methods: (a) through a common driveway serving adjacent lots or premises; (b) through an existing side or rear street thus avoiding the principal thoroughfare or (c) through a cul-de-sac or loop road shared by adjacent lots or premises.

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

- (a). Parking areas shall be located to the side and rear of the structure. No parking area shall be designed such that parking is within the required or authorized front yard setback.
- (b). To the extent possible, parking areas shall be shared with adjacent businesses.
- (c). Parking areas shall include provisions for the "parking" of bicycles in

locations that are safely segregated from automobile traffic and parking.

(d). Parking areas shall include adequate provisions for on-site retention and treatment of stormwater.

(e). Parking areas serving all structures other than those solely for residential use shall be paved, unless an alternative surface is approved by the SPGA.

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

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

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

(b). Large parking areas (e.g. greater than 20 parking spaces) shall be separated by landscaped islands of eight (8) to ten (10) feet in width. In addition, a minimum of one (1) shade tree shall be planted for every three (3) parking spaces required or built, within appropriate locations on the lot(s). Note that the exact location of the tree plantings is not specified. Rather, the most appropriate location of plantings shall be considered, including use of plantings to buffer neighboring properties, along the street frontage and pedestrian ways. Trees planted within parking areas shall be planted in protected pervious plots of at least 60 square feet of area.

(c). Exposed storage areas, machinery, garbage "dumpsters," service areas, truckloading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods compatible with the goals of this regulation.

(d). To ensure that landscaped areas are maintained, the SPGA shall include as a provision of any special permit granted that a condition of said special permit is the maintenance of the landscaping as approved by the SPGA. The beneficiary of any special permit under this regulation shall replace any tree or shrub that dies within one (1) growing season. Replacement trees or shrubs shall be of similar type and size to the one(s) approved as part of the

original approval.

04.5 Plan Filing Requirements. Unless determined by the SPGA at the pre-application conference that some of the following requirements are not necessary to reach a decision on the merits of the application, the following plans/items shall be submitted. Plans shall be prepared by a registered architect, landscape architect and/or professional engineer licensed in the Commonwealth of Massachusetts.

- (a) A locus inset within the plans noted below identifying the site of the proposed development at a scale of 1" = 1,000';
- (b) The plan view location and dimensions of all existing and proposed buildings on the lot(s) subject to this application on a plan not to exceed 1" = 40', clearly showing the relationship between proposed development and existing structures within a radius of eight (800) hundred feet;
- (c) The profile/elevation view showing location and dimensions of all existing and proposed buildings as viewed from front, side and rear yards following completion of the proposed project on a plan not to exceed 1" = 40';
- (d) The location and dimension of all existing and proposed buildings, parking areas, bicycle racks, roads, sidewalks, open spaces and utilities, including underground utility lines, water, sewer, electric power, telephone, gas, outdoor illumination and cable television within a radius of eight (800) hundred feet of the locus on a plan not to exceed 1" = 100';
- (e) The location, species and dimensions of trees and other landscaped features, both existing and proposed, within a radius of eight (800) hundred feet of the locus on a plan not to exceed 1" = 100';
- (f) In concert with the requirements of Section 04.4, the location, species and dimensions of trees and other landscaped features proposed on the lot(s) on a plan not to exceed 1" = 20'.

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

This bylaw/ordinance incorporates the belief that prescribing minimum landscaping requirements has not resulted in desirable parking lots on, as well as off, Cape Cod. As a result, the landscaping and appearance standards noted above grant flexibility to the applicant and the SPGA to design and develop off-street parking areas that are attractive and in keeping with the goals of this regulation and the character of the village. Thus the standards noted above should be considered as minimum

standards. For example, please note that the ratio of 1 tree per 3 spaces is considered a minimum requirement; a far greater number of trees should ordinarily be provided.

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

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

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

Introduction to Sections 05.0 through 07.0.

As noted in the background discussion, this regulation rejects the "one size fits all" approach to village development on Cape Cod. No two villages are the same; no two villages would benefit identically from the same regulation. As a result, this model bylaw/ordinance requires each town adopting its contents to establish appropriate standards for height, bulk, setback and parking requirements. While suggestions are provided below, the actual requirements are presented as "blanks." Towns, under the leadership of the planning board, Chamber of Commerce or a combination of entities are encouraged to establish appropriate requirements for their villages. These requirements should, ideally, reflect past development patterns and future planning goals. They should include provisions for structures and uses that the town would like to see repeated, and delete provisions for structures and uses that the town would not want to see constructed in the future.

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

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

Finally, applicants for a special permit under this regulation, as well as the SPGA, are reminded that

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

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

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

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

05.1 Height

Option 1:

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

Option 2:

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

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

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

The purpose of Option 2 is to allow the applicant and the SPGA flexibility as to the height of new or rehabilitated structures within the Overlay District. For example, if the height limitation in the

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

05.2 Bulk

Option 1:

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

Option 2:

To accomplish the purposes of this bylaw/ordinance, the SPGA is authorized to allow an increase in (floor area ratio) or (square footage) of structures either in existence or as re-constructed up to ____% above that provided for in the underlying zoning district. This increase may be granted in conjunction with a reduction in required on-site parking spaces as provided for in Section 05.0, below. The SPGA shall allow the (floor area ratio) or (square footage) increase only upon a finding that the additional useable square footage is necessary to reflect the scale of adjacent structures, to maintain the area's character and/or to rehabilitate or develop a structure or parcel within the Overlay District that would otherwise unlikely be rehabilitated or developed. The SPGA must further find that the relaxation of said bulk standards will not interfere or negatively impact abutting properties, particularly property used or zoned for residential purposes.

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

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

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

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

overall character and scale.

The SPGA may also include as a factor for granting a special permit for bulk expansion issues relating to the structure's or parcel's economic viability without such an expansion. For example, after consideration of the factors noted above, the SPGA may grant a special permit for bulk expansion if it believes, based on information submitted to it by the applicant, that the parcel or structure is unlikely to be used or developed without a relaxation of bulk standards.

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

05.3 Setback

Option 1:

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

Option 2:

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

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

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

Option 2 is intended to provide maximum flexibility to the applicant and the SPGA regarding the imposition of front, side and/or rear setback requirements so as to encourage consistency with the area's overall scale and character. As with Sections 05.1 and 05.2, above, the SPGA is required to ensure that the use of these flexible provisions will not negatively impact abutting properties. For example, while the relaxation of rear yard setback requirements from 10 feet to 5 feet may be in

keeping with the development pattern of the area, the SPGA should not grant the 5-foot reduction if the abutting property is used for residential purposes and would be negatively affected by the setback reduction.

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

06.0 Parking Requirements within the Village Development Overlay District

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

(AUTHOR'S NOTE: Determination of the allowable range of parking space reduction requires completion of a general survey of the number of parking spaces within, or within reasonable walking distance, of the village.)

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

This section is considered critical to allowing pre-existing and new structures to expand and be built within the Overlay District without being constrained by strict off-street parking requirements.

A note of caution, however. Relaxation of underlying standards, regardless of the standard, entails some risk that the SPGA will be held to arguments that it has established a "precedent" when it relaxes the parking requirements for a particular structure. Note, however, that each application is to be reviewed as a new and unique application. Precedent is only relevant if the SPGA acts arbitrarily in subsequent decisions. For example, the SPGA may grant a parking reduction of 40 percent to applicant "A" and then, based on legitimate and substantive reasons, deny a parking reduction to applicant "B." Note the importance of the legitimate and substantive reasons for the denial to applicant "B." Based on this scenario, the SPGA is not and should not be considered bound in future decisions by its past decision with applicant "A."

Finally, it is recognized that in some instances, new construction may trigger parking requirements that the applicant can not meet due to lack of available off-street land. In these situations, and where the town has determined that there is a general shortage of off-street parking within the Village, an option exists for towns to require payment to an "off-street parking fund." The fund would be

established by Town Meeting/Town Council as a separate and distinct fund for the development of public, off-street parking within the Town and/or designated village. To establish this requirement, town planners should determine the land and construction costs of an individual parking space within designated villages. Once determined, an "off-street parking fund" bylaw/ordinance could be drafted linked to the Village-Style Development Bylaw/Ordinance. This linkage would require the provision of off-street parking, or if not possible due to land constraints, the set-aside of equivalent funds in a special fund intended to create public, off-street parking. Town Meeting/Town Council should then be petitioned to adopt the parking fund regulation.

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

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

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

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

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

(AUTHOR'S NOTE: The above noted list are examples and for illustration only).

Commentary: This Section allows towns to expand the list of non-residential uses allowed by special permit within the Overlay District. It is recommended that these uses include commercial, as opposed to industrial, uses that will assist the town to strengthen its village centers either by attracting new commercial activities or encouraging the expansion of existing activities that have been successful in

restoring or otherwise aiding the development of the village center. It is recommended that the list of non-residential activities allowed by special permit be developed with recognition that Section 07.1, above, encourages the establishment of residential uses within the Overlay District. In other words, the list of non-residential uses should be compatible with the goal of encouraging residential uses within the Overlay District and generally compatible with the form of buildings that are encouraged in the District.

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

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

Commentary: This Section presents several criteria for the SPGA to consider in the grant or denial of a special permit. These criteria are in addition to those set forth throughout the regulation. As noted previously, towns with strong special permit language may wish to substitute their current language for that noted above, or simply reference their current language in place of Section 08.0, above.

09.0 Review by Special Permit Granting Authority (SPGA): The Planning Board shall be designated as the SPGA under this bylaw/ordinance. In reviewing a proposed development under this bylaw, the SPGA shall apply the criteria for special permits noted throughout this regulation, in addition to other relevant special permit criteria provided for in the zoning bylaw/ordinance.

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

10.0 Severability:

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

Commentary: This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In

addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.

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[Model Bylaws and Regulations](#) Page

CHAPTER 40A. ZONING

Chapter 40A: Section 5. Adoption or change of zoning ordinances or by-laws; procedure

Section 5. Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided.

Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law **by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.**

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent

The Town Growth Study Committee, as a committee of the Board of Selectmen, would present any proposal for adoption or amendment to a zoning by-law to the Board of Selectmen.

The Board of Selectmen, within 14 days of receiving the proposal, would submit it to the Planning Board for their review and for Public Hearing.

Within 65 days of receiving the proposal, the Planning Board would hold a Public Hearing.

The Public Hearing would be advertised two successive weeks; the first publication at least 14 days prior to the date of the Public Hearing.

Notice would also be posted in a conspicuous place in the town hall for a period of not less than fourteen days.

by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the **planning board of each abutting cities and towns.** The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Notice would also be sent to the Planning Boards in abutting towns

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board

has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or **if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.**

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be

Town Meeting may not vote on a proposed zoning by-law until either

(1) The planning board submits a written or oral report presenting its recommendations on the proposal to the town meeting, or

(2) The Planning Board issues no report and at least twenty-one days have elapsed between the Planning Board hearing and the town meeting.

If Town Meeting fails to vote within six months after the planning Board Hearing, no Town Meeting action can be taken until another Public Hearing is held. Notice and reporting requirements will apply to this subsequent Public Hearing.

Zoning Bylaws can be adopted or amended only with a 2/3 vote by Town Meeting.

A by law proposal which fails cannot be reconsidered for a period of two years, unless the Planning Board makes a final written or oral report recommending the adoption or amendment

furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

of such proposed by-law.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or **town meeting**; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

Effective date is the date town meeting voted the adoption or change provided that the proper posting, publication, or the delivery of the by-law as described above is subsequently accomplished..

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.