

# **TOWN OF HOPKINTON ZONING BYLAWS: CHAPTER 210**





## HOPKINTON ZONING BYLAWS: CHAPTER 210

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## ARTICLE I General Provisions

### § 210-1. Zoning districts. [Amended 3-3-1969 ATM, Article 38; 4-13-1978, Article 39, 5-4-2009 ATM, Article 25] Added 5-6-2014; ATM Article 31

A. The Town is hereby divided into the following zoning districts as shown on the Official Zoning Map:

|       |                                                                                |
|-------|--------------------------------------------------------------------------------|
| RA    | Residence A                                                                    |
| RB    | Residence B                                                                    |
| RLF   | Residence Lake Front                                                           |
| A     | Agriculture                                                                    |
| B     | Business                                                                       |
| BD    | Downtown Business [Added 5-7-2007 ATM, Article 25]                             |
| IA    | Industrial A [Added 5-7-2007 ATM, Article 26]                                  |
| IB    | Industrial B [Added 5-7-2007 ATM, Article 26]                                  |
| FP    | Floodplain                                                                     |
| BR    | Rural Business [Added 10-10-1984 STM, Article 20]                              |
| P     | Professional Office [Added 5-6-1996 ATM, Article 34]                           |
| OP    | Office Park District [Added 5-4-2009 ATM, Article 23]                          |
| HOD   | Hotel Overlay District [Added 5-4-2009 ATM, Article 24]                        |
| OSMUD | Open Space Mixed Use Development Overlay District [Added 5-4-2009, Article 25] |
| NMU   | Neighborhood Mixed Use District [Added 5-5-2014, Article 34]                   |

B. The Floodplain District and Water Resources Protection Overlay District overlie all other districts, and are shown on maps as referenced in this Chapter. All other zoning districts are shown on the Official Zoning Map. [Amended 5-4-2009 ATM, Article 25]

### § 210-2. Zoning Map.

- A. The Zoning Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter.
- B. The Official Zoning Map shall be located in the office of the Town Clerk, shall be identified by the signature and attestation of the Town Clerk, shall bear the Seal of the Town and shall contain the following legend: "This is to certify that this is the Official Zoning Map referred to in Article I of the Zoning Bylaw of the Town of Hopkinton, Massachusetts, duly adopted on (insert date of adoption)." [Amended 5-2-2000 ATM, Article 35]
- C. Changes in district boundaries or other matters portrayed on the Official Zoning Map shall be entered thereon within 10 days after the amendment affecting the change is voted, and a notation made as follows: "On (insert date), by official action of the Town, the following change(s) were made in the Official Zoning Map: (brief description of nature of changes)." Said notation shall be signed by and attested by the Town Clerk. [Amended 4-13-1978 ATM, Article 39; 5-2-2000 ATM, Article 35]
- D. No changes of any nature shall be made in the Official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Chapter and punishable under § 210-158 of this Chapter.

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- E. Regardless of the existence of purported copies of the Zoning Map which may be made or published from time to time, the Official Zoning Map located in the office of the Town Clerk shall be the final authority as to the current zoning status of all land, buildings and other structures in the town.

### **§ 210-3. General applicability.**

Except as may be otherwise provided herein, no building, structure or lot may be used, and no building structure or part thereof may be erected, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the district in which it is located.

### **§ 210-4. Definitions. [Amended 2012 ATM, Article 46]**

As used in this Chapter, the following terms shall have the meanings indicated:

**ACCESSORY USE** -- A building, structure or use that is customarily incidental and subordinate to the lawful principal use of the lot and is located on the same lot as the principal use or building. An accessory use must not be the primary use of the property but rather one that is subordinate and minor in significance, has a reasonable relationship with the primary use and is one that is usual to maintain in connection with the primary use of the lot. **[Amended 5-3-1999 ATM, Art. 23]**

**AFFORDABLE HOUSING UNIT** – A dwelling unit that qualifies as a Local Initiative Unit under the Commonwealth’s Local Initiative Program (760 CMR 45.00) and meets the requirements of a subsidized housing unit for purposes of listing in the Subsidized Housing Inventory under GL. C.40B Sec. 20-23. **[Added 5-7-2007 ATM, Article 30]**

**ANIMAL SHELTER** - A domestic charitable corporation kennel, as defined by M.G.L. c.140 §136A, but excluding a veterinary hospital or clinic. Such a facility may provide mission-oriented programs such as educational outreach, medical care and on-site training programs. **[Added 5-2-2016, Article 40]**

**ATHLETIC CLUB/HEALTH AND FITNESS CLUB** - A facility, whether or not operated for profit, that offers athletic and physical fitness activities such as tennis, swimming, and exercise and weight rooms, and which may include exercise therapy, rehabilitation and health-related services, and which may charge a fee for use of such facility and its services. Such club may include accessory restaurant or retail uses.

**APPEAL** -- An appeal to the Board of Appeals by any person aggrieved by an order or decision of the Inspector of Buildings or other administrative official, pursuant to MGL c. 40A, § 8 or 10. **[Added 5-5-2014 ATM, Article 34]**

**BED-AND-BREAKFAST ESTABLISHMENT** -- Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. **[Added 5-2-1994 ATM, Article 19]**

**BOARD OF APPEALS** -- The Board of Appeals of the Town of Hopkinton established by § 210-146 of this Chapter under the authority of MGL c.40A.

**BUILDING TRADE SHOP** -- An establishment for use by the practitioner of a building trade, such as a carpenter, welder, plumber, electrician, builder, mason, or similar occupation. **[Added 12-14-2009 STM, Article 4]**

**COMMERCIAL SOLAR PHOTOVOLTAIC INSTALLATION** -- A solar photovoltaic system which is not accessory to a permitted use. **[Amended 5-6-2013 ATM, Article 57]**

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**COMMON OWNERSHIP** - Common ownership shall mean ownership by the same person or persons or legal entities or ownership by any two or more persons or entities, when there is active or pervasive control of those legal persons or entities by the same controlling person and there is a confusing intermingling of activity among those persons while engaging in a common enterprise. **[Added 5-7-2007 ATM, Article 30]**

**CONFERENCE CENTER** -- A structure or series of structures for the purpose of providing conference, seminar or meeting facilities and/or recreation facilities, including but not limited to golf, tennis or dining. A residential dormitory component of a conference center shall be considered a separate use and is defined as providing living, sleeping and toilet facilities solely for the patrons of the conference center. **[Added 5-6-1996 ATM, Article 38]**

**CONTINUING CARE RETIREMENT COMMUNITY FACILITY / ASSISTED LIVING FACILITY / NURSING HOME FACILITY** – A facility providing living Accommodations for persons in need, generally those of advanced age or with sufficient mental and physical disabilities to require the level of medical care and services offered by such facility. These facilities generally provide or make available some combination of the following services and amenities: 1) residential units comprising one or more of the following: independent living units, assisted living units, nursing home units, or other types of residences which are generally associated with medical care; 2) medical nursing and other health-care services, including rehabilitation and wellness centers; 3) personal care assistance, for example, bathing, grooming, dressing, and toileting; 4) emergency assistance; 5) 24 hour staffing; 6) meals, usually in a designated or community dining area or restaurant; 7) housekeeping and laundry; 8) recreational and social activities supporting the mental and physical well being of residents; 9) educational and other instructional services and activities; 10) transportation services; 11) building and grounds maintenance; and, 12) various accessory products and services which may be appropriately offered to residents of the facility. **[Added 5-3-2010, Article 46]**

**DOG DAY CARE FACILITY** - A commercial boarding or training kennel, as defined by M.G.L. c.410, § 136A, that is used for the day care of dogs. Such facilities shall not offer animal sales or boarding or overnight stays of animals that are not the property of the owner of the facility. **[Added 5-2-2016, Article 39]**

**DWELLING UNIT** -- A room or group of rooms forming a habitable unit for one family with the facilities which are used or intended to be used for living, sleeping, cooking and eating.

**EARTH REMOVAL** -- Stripping, digging, excavating or blasting soil, loam, sand or gravel from one lot and removing or carrying it away from said lot to other lots or places.

**EAVE** -- The projecting lower edges of a roof overhanging the wall of a building. **[Added 5-6-1996 ATM, Article 38]**

**GROSS FLOOR AREA** -- The sum of the gross horizontal areas of the several floors of a building excluding areas used for accessory garage purposes and such basement and cellar areas as are devoted exclusively to uses accessory to the operation of the building. All dimensions shall be taken from the exterior faces of walls, including the exterior faces of enclosed porches. **[Amended 5-1-2017 ATM, Article 37]**

**HEALTH SERVICES FACILITY** -- A building that contains establishments dispensing health services for health maintenance and the outpatient diagnosis and treatment of medical, dental and physical conditions, including outpatient surgery. The term health services facility shall not include hospitals, urgent medical care requiring emergency transportation, nursing homes or extended-care facilities, but may include establishments providing support to the medical profession and patients, such as medical and dental laboratories, blood banks and oxygen and other miscellaneous types of medical supplies and services **[Added 2012 ATM, Article 46]**

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**HISTORIC STRUCTURE** -- Any structure which may be worthy of preservation by reason of the fact it may have been constructed, in whole or in part, 75 or more years prior to the application date, and it is determined by the Historical Commission to be either:

- (1) Associated in some material respect with a person or event which has contributed to the cultural, political, economic, social, or architectural history of the Town, the Commonwealth, or the United States of America; or
- (2) Historically or architecturally important (in terms of period, style, construction, or material association with an architect or builder), either by itself or in the context of a group of structures.  
**[Added 5-3-2010 ATM, Article 43]**

**HOME OCCUPATIONS** -- **[Added 4-13-1978 ATM, Article 39]**

A. The following limitations apply to all classes of home occupations as defined for the purposes of this Chapter, although the Board of Appeals may grant a special permit conditionally modifying such limitations:

- (1) The occupation is situated in the petitioner's dwelling.
- (2) There is no major structural change to the exterior nor any other external evidence of such home occupation, other than signage as permitted in Article XXVII, Signs. [Amended 5-4-2009 Article 18]
- (3) Not more than one person other than the resident shall be employed on the premises.
- (4) No more than four clients shall be scheduled in any one hour nor more than 16 in any one day and only between the hours of 8:00 a.m. and 8:00 p.m.
- (5) There shall be sufficient parking area on the lot to accommodate expected peak parking by the resident family, employees and clients.
- (6) No produce nor stock-in-trade shall be sold at retail except insofar as incidental to the home occupation (e.g. teaching supplies), or as specifically permitted in connection with farm uses or home retail occupations.

B. Home occupations are divided into the following classes:

- (1) Home professional office: office for the practice of a profession involving a high degree of training in the humanities, science or arts, such as medicine, law, engineering or fine arts.
- (2) Home personal service: personal services, such as insurance, notary public, real estate broker, dressmaking, beauty care, clerical services; studio for the teaching of fine or domestic arts and crafts; home care or therapy (for pay) for not more than three patients or children; home baker or caterer.
- (3) Home business workshop: the business or shop of a painter, carpenter, electrician or similar trade.
- (4) Home specialty retail: the sale of homemade products on the premises other than those permitted in connection with farm uses; or of collector's items, such as antiques, stamps, coins, etc.; provided that the Board of Appeals finds that the production or selection of the products depends

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on a special skill or knowledge of the resident and the access road and off-street parking are adequate and safe.

**HOTEL OR INN** – An establishment providing rooms for transient lodging accommodations where there is a central lobby and primary entrances to guest rooms off an interior corridor. **[Added 5-4-2009 ATM, Article 24]**

**INDOOR RECREATION** – A facility, within a permanent building or structure, designed and equipped for the conduct of sports, athletic and other leisure-time activities; provided that all activities are conducted entirely within the building and no noise generated within the facility may be heard at the property line. Such activities may include swimming, skating, indoor skydiving, soccer, bowling and other similar uses; but shall not include arcades and billiard halls unless accessory to another indoor recreation use. **[Added 5-4-2015 ATM, Article 32]**

**LAND USE** -- The purpose for which land or building is occupied or maintained, arranged, designed or intended.

**LAND USE REGULATIONS** -- The provisions of this Chapter governing the activities that may be conducted, whether unconditionally or upon grant of a special permit, in each of the various zoning districts. **[Amended 5-4-2009 ATM, Article 25]**

**LANDSCAPING BUSINESS AND STORAGE/STAGING FACILITY** -- A facility at which vehicles, trailers, equipment and supplies used in the landscape service business are stored. Such facility may constitute the location from which workers are dispatched to work on customer's property and at which their vehicles are stored while at work. Retail or wholesale sales shall not be conducted at the facility. Administrative functions associated with the landscape service business, such as scheduling, dispatching, and financial administration, may be conducted at the facility. **[Amended 5-1-2006 ATM, Article 34]**

**LOT** -- A single piece or parcel of land lying in a solid body under single, joint or several ownership and separated from contiguous land by property lines or street lines.

**LOT AREA** -- The area of a lot, not including any area in a public or private street nor any water area more than 10 feet from the shoreline.

**LOT COVERAGE** -- That percent or portion of the total lot area occupied by all buildings and structures thereon, including accessory buildings and structures.

**LOT FRONTAGE** -- **[Amended 4-15-1981 ATM, Article 33; 4-15-1988 ATM, Article 78; 5-1-1995 ATM, Article 34]**

- A. The linear extent of a lot measured along the street right-of-way from the intersection of one side lot line to the intersection of the other of the same lot. Frontage shall be measured in a continuous line along the street line between the points of intersection of the side lot lines with said street line. The frontage of a corner lot shall be measured along that side of the lot bordering the traveled way which is in front of and parallel to the front of the building or proposed building. Where a building has no front or is located diagonally, the owner may designate either street lot line as the frontage. The driveway providing the principal access to a lot shall be across the lot frontage as herein defined, subject to the provision, however, that if a lot has minimum lot frontage on more than one street, the driveway may enter the lot from any of such streets, subject to the approval of the Director of Municipal Inspections. The approval of the Director of Municipal Inspections shall be given only after issues concerning public safety, designated scenic roads and good planning principles have been considered.

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- B. Sixty percent of the lot frontage must have the following minimum depth measured at a ninety-degree angle from the front lot line. **[Amended 5-5-2003 ATM, Article 25, 5-7-2007 ATM, Article 26]**

| District                      | Minimum Frontage Depth (feet) |
|-------------------------------|-------------------------------|
| Residence A                   | 90                            |
| Residence B                   | 100                           |
| Residence RLF                 | 100                           |
| Agricultural                  | 120                           |
| Rural Business                | 120                           |
| Industrial A and Industrial B | 120                           |

**MAXIMUM HEIGHT** -- Vertical distance measured from the mean finished grade of all sides of the building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. The mean finished grade shall not be raised or lowered more than five feet above the mean center-line grade of the frontage street for the proposed building unless the building will be located more than 50 feet from the front property line. **[Amended 5-2-1994 ATM, Article 21]**

**MEDICAL OFFICE** -- A medical, dental, or psychiatric practice offering medical services on an outpatient basis. A medical office may contain associated in-house ancillary services such as in-house diagnostic testing facilities, medical counseling services, and similar services. **[Added 5-7-2012 ATM, Article 47]**

**NONCONFORMING USE** -- A use of a building or land that does not conform to all the land use regulations of this Chapter for the district in which it is located, which use was in existence and lawful at the time said land use regulations became effective.

**OFFICIAL ZONING MAP** -- That copy of the Town Zoning Map located in the office of the Town Clerk, signed by the Selectmen, attested by the Town Clerk and bearing the Seal of the Town and a certification of its status as the Official Zoning Map.

**OFF-STREET PARKING** -- That portion of a lot set aside for purposes of parking, including any necessary aisle space in said facility, but not including roadways or drives connecting said off-street parking space or lot with a street or thoroughfare.

**QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER** -- An individual or family with a household income that does not exceed 80% of the Hopkinton area median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD). **[Added 5-7-2007 ATM, Article 30]**

**REAR YARD DEPTH** -- The minimum distance from the rear lot line to the nearest part of the structure nearest to said line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

**RECYCLING CENTER** -- A parcel of land, with buildings, within which materials are stored, separated and processed for shipment and eventual reuse in new products. All storage, separation and processing for shipment shall be contained within enclosed buildings. No use which has outdoor storage, separation or

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processing for shipment shall be considered a recycling center. Recycling centers shall not include facilities where recyclables are processed and/or treated so as to be placed in a condition in which they may be used again in new products or establishments that store, process or treat hazardous wastes. This definition of recycling center shall not apply to a municipal facility for the collection of recyclable materials. **[Added 5-6-1996 ATM, Article 38]**

REGISTERED MARIJUANA DISPENSARY (RMD); (ALSO KNOWN AS A MEDICAL MARIJUANA TREATMENT CENTER) – A not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the sites of dispensing, cultivation and preparation of marijuana. **[Added 5-6-2014; ATM Article 31]**

RESTAURANT -- A retail food service establishment having, as its principal business, the preparation and sale of food or beverages, whether for consumption on or off the premises, that includes counter or table service and may include indoor or outdoor seating areas on the premises. **[Added 5-1-2017; ATM Article 33]**

SETBACK -- Shortest line or distance from the street line to the nearest portion of the first adjacent structure measured at a right angle from the street line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

SIDE YARD WIDTH -- The minimum distance from the side lot line to the nearest part of the structure nearest to said line. The term "structure," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that signs, retaining walls, fences, tents, poles, swing sets and the like are not to be considered structures. **[Amended 5-2-2000 ATM, Article 25]**

SINGLE-FAMILY DWELLING -- A detached dwelling unit, but not including a mobile home or trailer. **[Added 4-13-1978 ATM, Article 39, 5-4-2009 ATM, Article 25]**

SPECIAL PERMIT -- A right or permit granted by the Board of Appeals or Planning Board pursuant to the authority of MGL c. 40A, § 9, and of Article XXII of this Chapter, for a purpose specified in this Chapter as one subject to special permit, following upon review and conditions set by the Board. **[Amended 4-13-1978 ATM, Article 39; 4-15-1988 ATM, Article 80]**

STORAGE SHED – A one story structure, limited to not more than 120 sq. ft. of gross floor area and not exceeding 12 feet in height, for the storage of landscape materials, tools or other materials related to a residential use. Pool houses/cabanas, garages and barns or other structures housing animals shall not be considered storage sheds. **[Amended ATM 5-6-2013, Article 50; Amended 5-1-2017 ATM, Article 37]**

STREET LINE -- Common bound between street right-of-way, public or private, and abutting lot.

TOWER -- A monopole or lattice structure which is designed to serve as a mount for wireless communications facilities. **[Added 5-7-1998 ATM, Article 41]**

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TRAILER -- A mobile house or compartment constructed to be moved on two or more wheels and designed to be used for living purposes.

TRAILER PARK OR CAMP -- A lot used, designed or advertised as a parking space for two or more trailers used for living purposes. **[Amended 4-13-1978 ATM, Article 39]**

USE, NONCONFORMING -- See definition of "nonconforming use."

VARIANCE -- Relief from strict enforcement of one or more zoning bylaws granted by the Board of Appeals pursuant to authority under MGL c. 40A, §§ 10 and 14, and Article XXII of this Chapter. **[Amended 4-13-1978 ATM, Article 39; 5-3-1999 ATM, Article 24]**

VETERINARY CLINIC -- An establishment to provide medical care to animals of all types housed in a facility separate and apart from all other uses on that site. There shall be no outdoor facilities to house or exercise animals. **[Added 4-15-1988 ATM, Article 55]**

WIRELESS COMMUNICATIONS FACILITY -- A structure (with antennae, if any) designed to facilitate the following types of services: cellular telephone service, personal communications service and enhanced specialized mobile radio service. Types of structures facilitating these types of services include but are not limited to a tower, water storage tank, building and utility poles. **[Added 5-5-1997 ATM, Article 26; amended 5-7-1998 ATM, Article 41]**

ZONING DISTRICT -- One of the zones or districts into which the Town is divided for zoning purposes. See Article I, § 210-1. **[Amended 4-13-1978 ATM, Article 39]**

### ARTICLE II Residence A (RA) District

**§ 210-5. Size and setback requirements. [Amended 3-3-1965 ATM, Article 44; amended 3-12-1973 ATM, Article 26; 6-18-1973 STM, Article 12]**

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet with Town water.
- B. Minimum lot area: 22,500 square feet without Town water.
- C. Maximum lot coverage: 25%, except that lots which did not conform to the minimum lot area requirement on January 1, 1997, may have a maximum lot coverage requirement of 35%. **[Amended 5-5-1997 ATM, Article 23, 5-4-2009 ATM, Article 25]**
- D. Minimum lot frontage: 100 feet. **[Amended 5-2-2000 ATM, Article 26]**
- E. Minimum setback from street line: 40 feet.
- F. Minimum side yard width: 10 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet **[Amended 5-6-2013 ATM, Article 50]**
- G. Minimum rear yard depth: 20 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet **[Amended 5-6-2013 ATM, Article 50]**

**§ 210-6. Permitted uses. [Amended 4-14-1975 ATM, Article 38; 4-13-1978 ATM, Article 39; 4-14-1992 ATM, Article 33, 5-4-2009 ATM, Article 18, 5-4-2009 ATM, Article 25]**

The following land uses and building uses shall be permitted in an RA District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Single-family dwellings.
- B. Places of worship and other religious uses.
- C. Public schools, public libraries and museums, private schools for scholastic subjects only, including nursery schools.
- D. Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public benefits excluded).
- E. The renting of rooms or the furnishing of table board in an owner-occupied single family dwelling.
- F. Home professional office.
- G. Home personal service.

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- H. Municipal uses. **[5-7-2007 ATM, Article 27]**
- I. Agriculture, horticulture, floriculture or viticulture on any lot of 5 acres or more. Agriculture, horticulture, floriculture or viticulture on a lot of less than 5 acres, provided that: a) the sale of products or plants is confined primarily to those raised on the premises, b) the use is not noxious, injurious or offensive to the neighborhood, and c) farm animals are kept in an enclosure or building 50 feet or more from any street line and 30 feet or more from any side lot line. **[Amended 5-4-2009 ATM, Article 25]**
- J. Reserved **[5-4-2009 ATM, Article 18]**
- K. Accessory uses. **[5-4-2009 ATM, Article 25]**

### **§ 210-7. Uses allowed by special permit.**

The following uses shall be allowed in an RA District upon the granting of a special permit by the Board of Appeals. **[5-4-2009 ATM, Article 25]**

- A. Funeral homes. **[Added 4-11-1977 ATM, Article 41]**
- B. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. **[Added 4-14-1992 ATM, Article 33]**
- C. Above-ground structures or facilities related to the distribution, collection, transmission or disposal, for a fee, of water, sanitary sewage, gas, television services, data, telephone services or electric power; provided, however, that no special permit shall be required pursuant to this section for structures or facilities accessory to a residential use; for wireless communication facilities or the proposed extension in height, addition of cells, antenna or panels of a wireless communication facility, as defined in Section 210-4; for wind energy systems, meteorological towers or any part thereof, as defined in Section 210-197; or for commercial solar photovoltaic installations or any part thereof, as defined in Section 210-4. **[Added 5-1-2017 ATM, Article 32]**

### ARTICLE III Residence B (RB) District

#### **§ 210-8. Size and setback requirements. [Amended 3-3-1965 ATM, Article 44; 6-18-1973 STM, Article 13]**

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet. **[Amended 5-3-1999 ATM, Article 20]**
- B. (Reserved)
- C. Maximum lot coverage: 25%.
- D. Minimum lot frontage: 150 feet. **[Amended 5-2-2000 ATM, Article 26]**
- E. Minimum setback from street line: 50 feet.
- F. Minimum side yard width: 25 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet
- G. Minimum rear yard width: 20 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet

#### **§ 210-9. Permitted uses.**

The following land uses and building uses shall be permitted in an RB District. Any uses not so permitted are excluded unless otherwise permitted by law or by the terms hereof.

- A. All uses permitted in an RA District as set forth in § 210-6 above.

#### **§ 210-10. Uses allowed by special permit. [Amended 4-13-1978 ATM, Article 39]**

The following uses shall be allowed in an RB District upon the granting of a special permit by the Board of Appeals. **[Amended 5-4-2009 ATM, Article 25]**

- A. Funeral homes.
- B. Home specialty retail.
- C. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. **[Added 4-14-1992 ATM, Article 33]**
- D. Landscaping business and storage/staging facility. Such facility shall be an accessory use to the lawful principal use of the property and shall be located on the same property as the petitioner's dwelling. **[Amended 5-1-2006 ATM, Article 34]**
- E. Above-ground structures or facilities related to the distribution, collection, transmission or disposal, for a fee, of water, sanitary sewage, gas, television services, data, telephone services or electric power;

provided, however, that no special permit shall be required pursuant to this section for structures or facilities accessory to a residential use; for wireless communication facilities or the proposed extension in height, addition of cells, antenna or panels of a wireless communication facility, as defined in Section 210-4; for wind energy systems, meteorological towers or any part thereof, as defined in Section 210-197; or for commercial solar photovoltaic installations or any part thereof, as defined in Section 210-4. **[Added 5-1-2017 ATM, Article 32]**

### **ARTICLE IV Residence Lake Front (RLF) District**

#### **§ 210-11. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet. **[Amended 3-12-1973 ATM, Article 26; 5-3-1994 ATM, Article 28]**
- B. Maximum lot coverage: 25%.
- C. Minimum lot frontage: 150 feet. **[Amended 5-2-2000 ATM, Article 26]**
- D. Minimum setback from street line: 30 feet.
- E. Minimum side yard width: 25 feet, with the exception of the following:
  - (1) Storage sheds: 6 feet. **[Amended 5-6-2013 ATM, Article 50]**
- F. Minimum rear yard depth: 20 feet: with the exception of the following:
  - (1) Storage sheds: 6 feet. **[Amended 5-6-2013 ATM, Article 50]**

#### **§ 210-12. Permitted Uses.**

The following land uses and building uses shall be permitted in an RLF District. Any uses not so permitted are excluded unless otherwise permitted by law or by the terms hereof.

- A. All uses permitted in RA Districts as set forth in §210-6 above.
- B. All uses permitted in an RB District as set forth in § 210-9. **[Amended 4-13-1978 ATM, Article 39; 4-14-1992 ATM, Article 33; 5-1-2006 ATM Article 334; 5-4-2009 ATM, Article 25]**
- C. Private boat, canoe or motor boathouses
- D. Private bathhouses.
- E. Public recreational and educational uses.
- F. Accessory uses customarily incident to any permitted use of buildings, structures or land.

#### **§ 210-13. Uses allowed by special permit. [Amended 5-4-2009; ATM, Articles 18 and 25]**

The following uses shall be allowed in an RLF District upon the granting of a special permit by the Board of Appeals:

- A. Public boathouses for rental of boats and canoes.

- B. Public bathhouses.
- C. Commercial recreational uses of buildings, structures and land.
- D. Uses allowed by special permit in § 210-10, with the exception of § 210-10C and D.

**ARTICLE V**  
**Agricultural (A) District**  
**[Amended 3-3-1965 ATM, Article 44; 6-18-1973 STM, Article 14]**

**§ 210-14. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 60,000 square feet. **[Amended 5-3-1994 ATM, Article 29]**
- B. Minimum lot frontage: 200 feet. **[Amended 5-2-2000 ATM, Article 26]**
- C. Minimum setback from street line: 60 feet.
- D. Minimum side yard width: 30 feet, with the exception of the following:
  - (1) Storage sheds: 10 feet **[Amended 5-6-2013 ATM, Article 50]**
- E. Minimum rear yard depth: 30 feet with the exception of the following:
  - (1) Storage sheds: 10 feet **[Amended 5-6-2013 ATM, Article 50]**
- F. Maximum lot coverage: 25%. **[Added 5-4-1993 ATM, Article 18]**

**§ 210-15. Permitted uses. [Amended 4-13-1978 ATM, Article 39]**

The following land uses and building uses shall be permitted in an A District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Any use permitted in an RA District as set forth in §210-6 above.
- B. Any use permitted in an RB District as set forth in §§ 210-9 and 210-10 with the exception of §210-10C and D. **[5-1-06 ATM, Article 34, 5-4-2009 ATM, Article 25]**
- C. Any use permitted in an RLF District as set forth in §210-12. **[Amended 5-4-2009 ATM, Article 25]**
- D. Agriculture, horticulture, floriculture and viticulture. **[Amended 5-4-2009 ATM, Article 25]**
- E. Wood lots, portable wood working mills and machinery.
- F. Accessory uses. **[Amended 5-4-2009 ATM, Article 25]**
- G. Home business workshop.

**§ 210-16. Uses allowed by special permit.**

In addition to the foregoing permitted uses, the following uses shall be allowed in an A District upon the granting of a special permit by the Board of Appeals:

- A. Commercial saddle horses or riding stables.
- B. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities and elderly housing. **[Added 4-14-1992 ATM, Article 33]**
- C. Landscaping business and storage/staging facility. Such facility shall be an accessory use to the lawful principal use of the property and shall be located on the same property as the petitioner's dwelling. **[5-1-2006 ATM, Article 34]**
- D. Uses allowed by special permit in §210-13. **[Added 5-4-2009 ATM, Article 25]**

### **ARTICLE VI** **Business (B) District**

#### **§ 210-17. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet.
- B. Maximum lot coverage: 60%.
- C. Minimum setback from street line: 20 feet.
- D. Minimum side yard width: 10 feet.
- E. Minimum rear yard depth: 40 feet.
- F. Maximum building height: 35 feet.

#### **§ 210-18. Permitted uses.**

The following land uses and building uses shall be permitted in a B District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms.
- B. Retail stores and retail service shops.
- C. Business or professional offices, medical offices and banks.
- D. Municipal uses.
- E. Funeral homes and mortuaries.
- F. Restaurants. **[Amended 5-1-2017 ATM, Article 33]**
- G. Mixed use buildings comprised of retail space on the first floor, and office space or residential dwelling units on the second and third floors. The residential dwelling units shall have dedicated on-site parking spaces. No dwelling unit shall have less than 600 gross square feet.

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H. Accessory uses.

**§ 210-19. Uses allowed by special permit. [Amended 5-4-2009 ATM, Art. 25; 5-6-2015 ATM, Arc. 39]**

A. The following uses shall be allowed in a B District upon the granting of a Special Permit by the Board of Appeals:

- (1) Gasoline service stations and automobile repair garages operating in compliance with all federal, state, and municipal regulatory requirements, expressly including the accessory use of retail sale of propane; provided, however, that the maximum size of any propane storage tank authorized by Special Permit issued pursuant to this section shall not exceed 2,000 gallons.
- (2) Single and multifamily residences and buildings used for dwelling purposes; provided, however, that all residential uses shall comply with the dimensional requirements contained in Article II, Residence A (RA) District.
- (3) Live commercial entertainment.
- (4) Car wash facilities.
- (5) Theaters, halls and clubs.

B. The following uses shall be allowed in a B District upon the granting of a Special Permit by the Planning Board:

- (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
  - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
  - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
- (2) Off-street parking facility.
- (3) Registered Marijuana Dispensary (RMD).

**210-20. (Reserved)**

### **ARTICLE VIA Downtown Business (BD) District (Added 5-7-2007 ATM, Article 25)**

#### **§ 210-20.1. Size and setback requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot area: 15,000 square feet.
- B. Maximum lot coverage: 60%.
- C. Minimum setback from street line: 5 feet.
- D. Minimum side yard width: 0 feet adjacent to property used solely for non-residential purposes at the time of application; 10 feet adjacent to property used partially or wholly for residential purposes at the time of application, or zoned for residential purposes.
- E. Minimum rear yard depth: 20 feet adjacent to property used solely for non-residential purposes at the time of application; 30 feet adjacent to property used partially or wholly for residential purposes at the time of application, or zoned for residential purposes.
- F. Maximum building height: 35 feet.

#### **§ 210-20.2. Permitted uses. [Amended 5-4-2009 ATM, Article 18]**

The following land uses and building uses shall be permitted in a BD District. Any uses not so permitted are excluded, unless otherwise permitted by law or by the terms hereof.

- A. Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms.
- B. Retail stores and retail service shops.
- C. Business or professional offices, medical offices and banks.
- D. Municipal uses.
- E. Funeral homes and mortuaries.
- F. Restaurants. [Amended 5-1-2017 ATM, Article 33]
- G. Mixed use buildings comprised of retail space on the first floor, and office space or residential dwelling units on the second and third floors. The residential dwelling units shall have dedicated on-site parking spaces. No dwelling unit shall have less than 600 gross square feet.
- H. Accessory uses.

#### **§ 210-20.3. Uses allowed by special permit. [Amended 5-4-2009 ATM, Art. 25; 5-6-2015 ATM, Art. 39]**

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- A. The following uses shall be allowed in a BD District upon the granting of a Special Permit by the Board of Appeals:
- (1) Gasoline service stations and automobile repair garages operating in compliance with all federal, state, and municipal regulatory requirements, expressly including the accessory use of retail sale of propane; provided, however, that the maximum size of any propane storage tank authorized by Special Permit issued pursuant to this section shall not exceed 2,000 gallons.
  - (2) Single and multifamily residences and buildings used for dwelling purposes; provided, however, that all residential uses shall comply with the dimensional requirements contained in Article II, Residence A (RA) District.
  - (3) Live commercial entertainment.
  - (4) Car wash facilities.
  - (5) Theaters, halls and clubs.
- B. The following uses shall be allowed in a BD District upon the granting of a Special Permit by the Planning Board:
- (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
    - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
    - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
  - (2) Off-street parking facility.

### **§ 210-20.4. Off-street parking. [Amended 5-6-2015 ATM, Art. 34]**

In addition to the provisions contained in § 210-124, Off-street parking, the following shall apply:

- A. No off-street parking shall be located between the principal building and Main Street. Off-street parking may be located between the principal building and other streets only upon the grant of a special permit by the Planning Board. The Planning Board may grant the special permit only if it finds that:
- (1) The proposed parking will not be detrimental to the surrounding neighborhood, and
  - (2) The proposed location and design of the parking will enhance the downtown streetscape.

For the purposes of this subsection, the term “streetscape” shall refer to all elements that constitute the physical makeup of a street, and that as a group, define its character, including building facades, frontage and placement; the paved street; street furniture; landscaping, including trees and other plantings; awnings; signs and lighting.

### ARTICLE VII

#### Rural Business (BR) District

[Added 10-10-1984 STM, Art. 20; Amended 5-6-2014 ATM, Article 31]

#### § 210-21. Development and design objectives.

The purpose of the Rural Business (BR) District is to provide for appropriate development of commercial areas outside the center of town. Their location and design should be such that commercial activities can be performed without impeding local travel, disturbing residential neighborhoods or detracting from the appearance of the town, especially at any principal entrance thereto.

#### § 210-22. Dimensional requirements. [Amended 5-5-2003 ATM, Article 27]

The following size and setback requirements shall apply:

- A. Minimum lot area: 45,000 square feet.
- B. Maximum lot coverage: 25%.
- C. Minimum lot frontage: 200 feet.
- D. Minimum setback from street line: 50 feet.
- E. Minimum side yard width: 10 feet except that the side yard depth shall be 25 feet from abutting property used partially or wholly for residential purposes at the time of application. [Amended 5-2-2011 ATM, Article 47]
- F. Minimum rear yard depth: 20 feet except that the rear yard depth shall be 40 feet from residential district zoning boundaries. [Amended 5-4-2009 ATM, Article 25]
- G. Maximum building height: 35 feet. [Added 5-5-2003 ATM, Article 27]

#### § 210-23. Permitted uses. [Amended 5-4-2009 ATM, Article 18]

The following land uses and building uses shall be permitted in a BR District. Any uses not so permitted are excluded unless otherwise permitted by law or the terms hereof.

- A. Restaurants. [Amended 5-1-2017 ATM, Article 33]
- B. Retail stores, provided that not more than six employees are on the premises.
- C. Business, medical or professional offices and banks. [Amended 5-7-2012 ATM, Article 47]
- D. Retail business: retail service or public utility uses involving manufacturing, clearly incidental and accessory to a retail use, on the same premises, and the product is customarily sold on the premises, provided that not more than six operators are employed in such manufacturing. [Amended 4-8-1985 ATM, Article 15]
- E. On-site residence of owners or employees of a permitted use.
- F. Accessory uses. [Amended 5-4-2009 ATM, Article 25]
- G. Health services facility [Added 5-7-2012, Article 46]

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**§ 210-24. Uses allowed by special permit. [Amended 4-15-1988 ATM, Article 53 and Article 66; 5-2-1994 ATM, Article 18; 5-2-2005 ATM, Article 30; 5-4-2009 ATM, Article 25; 5-3-2010 ATM, Article 46; 5-6-2015 ATM, Article 39]**

- A. The following uses shall be allowed in the BR District upon the granting of a Special Permit by the Board of Appeals:
  - (1) Filling station and routine automobile maintenance, but not including major repairs.
  - (2) Single-family residence.
  - (3) Live commercial entertainment and places of assembly.
  - (4) Veterinary clinic.
  - (5) Continuing Care Retirement Community Facilities/Assisted Living Facilities/Nursing Home Facilities.
- B. The following uses shall be allowed in a BR District upon the granting of a Special Permit by the Planning Board:
  - (1) Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink; provided, however that:
    - a. An adequate dedicated area for at least four vehicles to queue shall be provided on the premises, and
    - b. Notification of the public hearing for such Special Permit shall be mailed to the owners of all properties within 1,000 feet of the premises.
  - (2) Registered Marijuana Dispensary (RMD).

**§ 210-25. Reserved. [Amended 5-6-1996 ATM, Article 37, 5-4-2009 ATM, Article 25]**

**§ 210-26. Design requirements. [Amended 5-6-1996 ATM, Article 37, 5-4-2009 ATM, Article 25, 5-2-2011 ATM, Article 47]**

- A. Loading zone: as for IA District, § 210-29.
- B. Outdoor storage or display of merchandise or equipment: as for IA District, § 210-30.
- C. Landscaping: A landscaped area 12 feet in depth shall be provided along the street frontage of a lot.
- D. Screening adjacent to residence districts. The minimum setback area adjacent to a lot in a Residence A, Residence B, Residence Lake Front or Agricultural district shall be maintained in a wooded state to provide effective year-round screening of abutting property. All outdoor activity in a BR District, including parking, shall be screened as viewed from the ground. Acceptable screening may be a band of dense natural woodland 20 or more feet wide, differences in elevation sufficient to shield the view as required, an opaque fence or wall or evergreens planted to form a dense hedge of the required height within three years.

### ARTICLE VIII

#### Industrial A (IA) District

[Added 5-7-07 ATM, Art. 26; Ammended 5-7-2018, ATM Art. 32]

**History: Previous Article VIII, Industrial District deleted in its entirety and Industrial A (IA) District added 5-7-2007 ATM, Art. 26; amended 5-5-2014, ATM, Article 28(1)]**

#### **§ 210-27. Development and design objectives.**

The zoning standards and controls in the Industrial A District are established to promote and maintain an ecological balance between the undeveloped natural resources, watersheds and residential neighborhoods in the Town and the new industrial buildings and uses that will be present in the area. As new buildings are developed, they should complement and enhance the natural beauty of the town. New industrial uses must recognize that the land abutting major highways will have two visual "front doors": the highway itself and the local roads. Buildings on such sites must be sited, planned, developed and maintained to present an attractive appearance from both directions.

#### **§ 210-28. Size and setback requirements.**

A. The following size and setback requirements shall apply:

- (1) Minimum lot frontage: 200 feet.
- (2) Minimum lot area: 60,000 square feet.
- (3) Maximum lot coverage: 40%.
- (4) Maximum gross floor area: 50% of lot area. **[Amended 5-1-2017 ATM, Article 37]**
- (5) Minimum setback from a property line abutting a street: 60 feet, which area must remain undeveloped and landscaped, except as hereafter provided.
- (6) Minimum side yard: 30 feet.
- (7) Minimum rear yard depth: 40 feet.

B. Yard and setback exceptions: No building or structure shall be erected or altered to be within 60 feet of an RA, RB, RLF or A District line, or within 40 feet of the right-of-way line of Routes 90 and 495.

#### **§ 210-29. Loading zone.**

Adequate off-street loading shall be provided only at the side or rear of the building. Such loading space shall be provided on the lot to service all loading requirements of the industry or use conducted thereon without requiring use of adjacent public streets, ways or required setback area thereof.

#### **§ 210-30. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. All storage or displays must be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-31. Landscaping and Screening.**

- A. All required setback areas shall be adequately and attractively landscaped with lawns and/or trees within one year of the completion of building construction on any lot and shall thereafter be maintained in an attractive manner.
- B. The minimum setback area to a residentially zoned district shall be maintained in a wooded state to provide effective year-round screening of abutting property.

### **§ 210-32. Limitation on principal front of buildings.**

The vertical distance, measured from the curb grade to the highest point of the principal front of a building or structure in the Industrial A District shall not exceed 60 feet; provided, however, that such vertical distance for a building or structure that is within 400 feet of the right of way of the portion of Hayward Street located to the west of South Street shall not exceed 40 feet.

### **§ 210-33. (Reserved)**

### **§ 210-34. Uses permitted by right.**

- A. The following land uses are permitted in an IA District.
  - (1) Research and development; Research centers and laboratories.
  - (2) Professional and medical offices. [**Amended 5-7-2012 ATM, Art. 47**]
  - (3) Manufacturing, assembly or processing plants for the following types of industries, provided that none of the activities in Subsection A(3)(a) through (k) will be offensive, injurious or noxious because of gas, dirt, sewage and refuse, vibration, smoke, fumes, dust, odors, discharge of harmful bacteria, radioactive material or chemicals into air, water or septic or site drainage systems, danger of fire or explosion, objectionable noise or other characteristics which are detrimental or offensive or which tend to reduce property values in the same or adjoining districts:
    - (a) Food and kindred products.
    - (b) Apparel and related products.
    - (c) Electronic and electrical products.
    - (d) Furniture and fixtures.
    - (e) Printing and publishing.
    - (f) Lumber and wood products.
    - (g) Paper converting products.
    - (h) Primary and fabricated metal industries.
    - (i) Machinery.

- (j) Transportation equipment.
- (k) Instruments and related products, or any other light manufacturing enterprise.
- (4) Warehousing for distribution.
- (5) Landscaping business and storage/staging facility.
- (6) Health club.
- (7) The preparation, packaging and warehousing for distribution of medical supplies for home intravenous therapy with accessory retail use, provided that the retail use occupies no more than 300 square feet of gross floor area in the aggregate on any one lot. **[Amended 5-1-2017 ATM, Article 37]**
- (8) Accessory uses, including but not limited to cafeterias.
- (9) Restaurants. **[Added 5-3-2010 ATM, Article 44; Amended 5-1-2017 ATM, Article 33]**
- (10) Health services facility. **[Added 5-7-2012 ATM, Article 46]**
- (11) Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M. **[Added 5-7-2012 ATM, Article 50]**
- (12) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 1 (involving specific combinations of work, practices, safety equipment and facilities appropriate for infectious agents that do not ordinarily cause human disease) or Level 2 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that can cause human disease, but whose potential for transmission is limited), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control. **[Added 5-7-2012 ATM, Art. 53]**

B. Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this article.

**§ 210-35. Uses allowed by special permit. [Amended 5-3-2010 ATM, Article 44; 2012 ATM, Article 46; 5-6-2015 ATM, Article 39; 5-6-2019 ATM, Article 33]**

A. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Board of Appeals.

- (1) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 3 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that may be transmitted by the respiratory route which can cause serious infection), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control.
- (2) Conference centers with or without a residential dormitory component.

- (3) Veterinary clinics.
  - (4) Automobile and truck rental and repair, but not including automobile and truck sales.
  - (5) As an accessory use, facilities for storage of gasoline, kerosene, fuel oil, volatile gases and other such substances, except as otherwise prohibited by this Chapter.
  - (6) Recycling centers; provided, however, that recycling activities are not located within 100 feet of a residential zoning district, and provided further that a buffer area containing natural material and forming an effective year-round screen between the recycling activities and the residential zoning district shall be required.
  - (7) Continuing care retirement community/assisted living facility/nursing home facility.
  - (8) Indoor recreation uses.
- B. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Planning Board:
- (1) Registered Marijuana Dispensary (RMD).

### **ARTICLE VIIIA Industrial B (IB) District**

**[Added 5-7-2007ATM, Article 26, Amended 5-4-2009 ATM, Article 18; Amended 5-5-2014, ATM Article 28(2); Amended 5-7-2018, ATM Article 33]**

#### **§ 210-37.1. Development and design objectives.**

The zoning standards and controls in the Industrial B District are established to promote and maintain an ecological balance between the undeveloped natural resources, watersheds and residential neighborhoods in the Town and the new industrial buildings and uses that will be present in the area. As new buildings are developed, they should complement and enhance the natural beauty of the town. New industrial uses must recognize that the land abutting major highways will have two visual "front doors": the highway itself and the local roads. Buildings on such sites must be sited, planned, developed and maintained to present an attractive appearance from both directions.

#### **§ 210-37.2. Size and setback requirements.**

A. The following size and setback requirements shall apply:

- (1) Minimum lot frontage: 200 feet.
- (2) Minimum lot area: 60,000 square feet.
- (3) Maximum lot coverage: 40%.
- (4) Maximum gross floor area: 50% of lot area. **[Amended 5-1-2017 ATM, Article 37]**
- (5) Minimum setback from a property line abutting a street: 60 feet, which area must remain undeveloped and landscaped, except as hereafter provided.

(6) Minimum side yard: 30 feet.

(7) Minimum rear yard depth: 40 feet.

- B. Yard and setback exceptions: No building or structure shall be erected or altered to be within 60 feet of an RA, RB, RLF or A District line, or within 40 feet of the right-of-way line of Routes 90 and 495.

### **§ 210-37.3. Loading zone.**

Adequate off-street loading shall be provided only at the side or rear of the building. Such loading space shall be provided on the lot to service all loading requirements of the industry or use conducted thereon without requiring use of adjacent public streets, ways or required setback area thereof.

### **§ 210-37.4. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. All storage or displays must be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-37.5. Landscaping and Screening.**

- A. All required setback areas shall be adequately and attractively landscaped with lawns and/or trees within one year of the completion of building construction on any lot and shall thereafter be maintained in an attractive manner.
- B. The minimum setback area to a residentially zoned district shall be maintained in a wooded state to provide effective year-round screening of abutting property.

### **§ 210-37.6. Limitation on principal front of buildings.**

The vertical distance, measured from the curb grade to the highest point of the principal front of a building or structure in the Industrial B District shall not exceed 45 feet.

### **§ 210-37.7. [Reserved] [Amended 5-4-2009 ATM, Article 18]**

### **§ 210-37.8. Uses permitted by right.**

- A. The following land uses are permitted in an IB District.

(1) Research and development; Research centers and laboratories.

(2) Professional and medical offices. **[Amended 2012 ATM, Article 47]**

(3) Manufacturing, assembly or processing plants for the following types of industries, provided that none of the above activities in Subsection A(3)(a) through (k) will be offensive, injurious or noxious because of gas, dirt, sewage and refuse, vibration, smoke, fumes, dust, odors, discharge of harmful bacteria, radioactive material or chemicals into air, water or septic or site drainage systems, danger of fire or explosion, objectionable noise or other characteristics which are detrimental or offensive or which tend to reduce property values in the same or adjoining districts.

(a) Food and kindred products.

- (b) Apparel and related products.
  - (c) Electronic and electrical products.
  - (d) Furniture and fixtures.
  - (e) Printing and publishing.
  - (f) Lumber and wood products.
  - (g) Paper converting products.
  - (h) Primary and fabricated metal industries.
  - (i) Machinery.
  - (j) Transportation equipment.
  - (k) Instruments and related products, or any other light manufacturing enterprise.
- (4) Warehousing for distribution.
  - (5) Health club.
  - (6) Landscaping business and storage/staging facility.
  - (7) The preparation, packaging and warehousing for distribution of medical supplies for home intravenous therapy with accessory retail use, provided that the retail use occupies no more than 300 square feet of gross floor area in the aggregate on any one lot.
  - (8) Accessory uses, including but not limited to cafeterias.
  - (9) Building trade shop. **[Added 12-14-2009, STM Article 4]**
  - (10) Health services facility. **[Added 5-7-2012 ATM, Article 46]**
  - (11) Restaurants that contain no more than 100 seats and that are not open for business after 11:00 PM. **[Added 5-7-2012 ATM, Article 49; Amended 5-1-2017 ATM, Article 33]**
  - (12) Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M. **[Added 5-7-2012 ATM, Article 50]**
  - (13) Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 1 (involving specific combinations of work, practices, safety equipment and facilities appropriate for infectious agents that do not ordinarily cause human disease) or Level 2 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that can cause human disease, but whose potential for transmission

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is limited), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control. **[Added 5-7-2012 ATM, Article 53]**

B. Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this article.

### **§ 210-37.9. Uses allowed by special permit. [Amended 5-4-2015 ATM, Article 39]**

The following uses shall be allowed in an IB District upon the grant of a Special Permit by the Board of Appeals:

- A. Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants with a Biosafety Level of Level 3 (involving specific combinations of work practices, safety equipment and facilities appropriate for infectious agents that may be transmitted by the respiratory route which can cause serious infection), as determined in accordance with the Guidelines of the U.S. Centers for Disease Control. **[Amended 5-7-2012 ATM, Article 53]**
  - B. Conference centers with or without a residential dormitory component.
  - C. Parking Facilities for Public School Buses Serving Hopkinton Residents. **[Amended 5-7-2012 ATM, Article 46, 5-6-2013, Article 52]**
  - D. Restaurants that contain more than 100 seats or are open for business after 11:00 PM. **[Amended 5-7-2012 ATM, Article 49; Amended 5-1-2017 ATM, Article 33]**
  - E. Veterinary clinics.
  - F. Automobile and truck rental and repair, but not including automobile and truck sales.
  - G. Facilities for storage as an accessory use of gasoline, kerosene, fuel oil, volatile gases and other such substances, unless prohibited elsewhere in this Chapter.
  - H. Recycling centers, provided that such activities on the lot are not located within 100 feet of a residential zoning district, and a buffer area containing natural material will form an effective year-round screen between the industrial uses and the residential zone.
  - I. Continuing care retirement community/assisted living facility/nursing home facility. **[Added 5-7-2012 ATM, Article 48]**
  - J. Indoor recreation uses. **[Added 5-6-2015 ATM, Article 32]**
- B. The following uses shall be allowed in an IA District upon the grant of a Special Permit by the Planning Board:
- (1) Registered Marijuana Dispensary (RMD). **[Added ATM 5-6-2014, Article 31]**

### ARTICLE IX

#### Professional Office (P) District

[Added 5-6-1996 ATM, Article 34, amended 5-4-2009 ATM, Article 18]

##### **§ 210-38. Development and design objectives.**

The Professional Office District is designed to accommodate the administrative, research and office uses which possess characteristics which are not detrimental to the owners and occupants of adjacent properties. The location and design of such professional office use should be such that it will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of an ecological balance between undeveloped natural resources and residential neighborhoods.

##### **§ 210-39. Permitted uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in a Professional Office District for any purpose except one or more of the following:

- A. Professional offices, administrative offices, clerical offices, establishments for research and development or laboratories.
- B. Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for the following types of industries: **[Amended 5-3-1999 ATM, Article 18]**
  - (2) Electronic and electrical products.
  - (3) Robotics and precision instruments.
  - (4) Computer related products.
  - (5) Printing and publishing.
  - (6) Medical equipment and devices.
  - (7) Telecommunications equipment and devices.
- C. Day-care center.
- D. Conference center.
- E. Agricultural and horticultural uses.
- F. Accessory uses customarily incidental to any use permitted herein, including but not limited to cafeterias, health clubs and automatic bank teller machines located within buildings on the site. Such accessory use shall not include restaurants open to the general public.

##### **§ 210-40. Uses allowed by special permit. [Amended 5-4-2009 ATM, Article 25]**

The following uses shall be allowed upon the grant of a special permit by the Board of Appeals:

- A. Genetic, biological and chemical research centers, laboratories and manufacturing and processing plants.

- B. Health services facility. **[Amended 2012 ATM, Article 46]**
- C. Residential dormitory component of a conference center.

### **§ 210-41. Prohibited uses.**

Any uses not so permitted are excluded unless otherwise permitted by law or the terms of this Chapter.

### **§ 210-42. Dimensional requirements.**

The following size and setback requirements shall apply:

- A. Minimum development site area: five acres. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.
- B. Minimum lot frontage for the development site on a public way: 50 feet.
- C. Minimum lot frontage within the development site: none, provided that the interior roads, which must provide adequate access for all buildings on the development site, shall not become public ways and are to be considered private access roads. Fifty feet of frontage is required for each lot if the roads are intended to be considered public ways.
- D. Minimum lot area for individual lots within the development site: none.
- E. Setback from development site property lines:
  - (1) Minimum setbacks of buildings and parking areas from development site property lines:
    - (a) One hundred feet from property line of property in a residentially zoned district.
    - (b) Fifty feet from property line of a commercial or industrially zoned property.
    - (c) Sixty feet from a street.
  - (2) The minimum setback area shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area required from a residentially zoned district shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped. Such area shall be wooded for the minimum required distance.
- F. Minimum setbacks of buildings from development site interior property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 35 feet or three stories in height.
- I. A minimum of 40% of the development site shall remain undeveloped open land.

### **§ 210-43. Outdoor storage and/or display of merchandise or equipment.**

No open storage or display shall be permitted in any setback area. Storage or display areas shall be adequately screened by a fence or landscaping so as not to be visible from any road or highway. No materials or equipment stored on a lot shall project above the eave line of the tallest building on the lot.

### **§ 210-44. Off-street parking.**

The requirements of § 210-124, Off-street parking, shall apply. The Planning Board, in the site plan approval process, may, however, permit buildings within the development site to share parking areas and may permit a portion of the required spaces to be set aside as reserve or planned spaces to be constructed as future needs require.

### **§ 210-45. Open land.**

- A. Adequate pedestrian access shall be provided to the open land. The open land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the open land. The open land may consist of a separate parcel and may be conveyed to a nonprofit organization, the purpose of which is the preservation of open space. If the open land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- B. The open land shall consist primarily of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the open land may be used solely by occupants of the development site or may be available for use by Town residents. The decision as to whether to permit Town residents to use the open land shall be that of the property owner. The open land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- C. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the open land.
- D. If detention or retention ponds are necessary for the construction of the buildings on the development site, such ponds shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such detention or retention areas shall be designed to appear as natural landforms.
- E. Areas set aside for planned or reserve parking spaces or fire lanes may not be considered to be open land.

### **§ 210-46. [Reserved] [Amended 5-4-2009 ATM, Article 18]**

### **§ 210-47. Design.**

Curb cuts on streets shall be minimized, and to the greatest extent possible, buildings shall be located away from streets and surrounding noncommercial or industrial uses. Parking lots shall include islands with shade trees. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized so that as many trees and natural features are retained as possible. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.

### **§ 210-48. Site plan review.**

The provisions of Article XX, Site Plan Review, shall apply. The site plan shall show the planned use of the entire development site. If development will be phased over time, a phasing plan shall be included.

### ARTICLE X

#### Floodplain District

[Added 11-22-1982 STM, Art. 20, ATM 5-3-2010, Art. 42; AMENDED 5/6/2014, Article 29 by amending in its entirety § 210-50 thru § 210-53]

#### **§ 210-49. Purpose.**

The purposes of the Floodplain District are to protect public health, safety and general welfare; to protect human life and property from the hazards of periodic flooding; to preserve natural flood control characteristics and the flood storage capacity of the floodplain; and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

#### **§ 210-50. District delineation.**

The Floodplain District is hereby established as an overlay district to all other Zoning Districts. The Floodplain District includes all special flood hazard areas within the Town of Hopkinton designated as Zone A or AE on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the Town of Hopkinton are panel numbers 25017C0489F, 25017C0493F, 25017C0494F, 25017C0513F, 25017C0602F, 25017C0605F, 25017C0606F, 25017C0610F, 25017C0626F, 25017C0627F, and 25017C0628F dated July 7, 2014; and 25017C0620E and 25017C0629E dated June 4, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and may be further defined by the July 2014 Middlesex County Flood Insurance Study (FIS) report. The FIRM and FIS report are incorporated herein by reference and shall be kept on file with the Town Clerk, the Planning Board, the Conservation Commission and the Director of Municipal Inspections.

#### **§ 210-51. Use regulations.**

Where there is a conflict between provisions of this article and other Zoning Bylaws, the more restrictive regulation shall be deemed to be applicable. All development in the Floodplain District, including structural and nonstructural activities, whether permitted by right or by Special Permit, shall be in compliance with those provisions of the Massachusetts State Building Code that address construction in floodplains and floodways; as well as regulations of the Department of Environmental Protection codified at 310 CMR 13.00, Inland Wetlands Restrictions, 310 CMR 10.00, Wetlands Protection, and 310 CMR 15.00, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage (Title 5), as such provisions and regulation may be amended from time to time.

#### **§ 210-52. Permitted uses.**

The following uses, which create a minimal risk of damage due to flooding and will not constitute obstructions to flood flow, shall be allowed by right in the Floodplain District if they are permitted in the underlying district and do not require structures, fill or storage of materials or equipment:

- A. Agricultural uses.
- B. Forestry and nursery uses.
- C. Outdoor recreational uses, including fishing, boating and play area.
- D. Conservation of water, plants and wildlife.

- E. Wildlife management areas, foot, bicycle and horse paths.
- F. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
- G. Buildings lawfully existing prior to the adoption of these provisions.

### **§ 210-53. Special Permits.**

- A. In the Floodplain District, except as authorized by a Special Permit granted by the Board of Appeals, no building or structure shall be erected, constructed or moved; no building or structure shall be enlarged by more than 30% of its ground floor area; and no dumping, filling or earth removal or transfer shall be permitted.
- B. Within 10 days of receipt of an application for a Special Permit pursuant to this section, the Board of Appeals shall transmit one copy of the development plan to the Conservation Commission, the Planning Board, the Board of Health and the Director of Municipal Inspections. Final action shall not be taken until reports have been received from these officials or until 35 days after transmittal of the development plan pursuant to this section, whichever occurs first.
- C. The Board of Appeals may issue a Special Permit pursuant to this section in accordance with the following provisions:
  - (1) The proposed use shall comply in all respects with all requirements applicable in the underlying Zoning District.
  - (2) All encroachments into the floodway, including fill, new construction, substantial improvement to existing structures and other development, shall be prohibited unless the applicant provides certification by a registered professional engineer demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood. For watercourses that have not had a regulatory floodway designated, the Board of Appeals shall use the best available Federal, State, local or other floodway data to prohibit encroachments into floodways that would result in any increase in flood levels within the community during the occurrence of a base flood discharge.
  - (3) In granting a Special Permit pursuant to this section, the Board of Appeals may specify such requirements and conditions as it deems necessary to protect the health, safety and welfare of the public.

### **§ 210-54. Subdivision standards.**

All subdivision proposals and other proposed new development shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Floodplain District established under this Chapter, it shall be reviewed to assure that:

- A. The proposal is designed so as to minimize the risk of damage due to flooding.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, and constructed so as to minimize or eliminate the risk of damage due to flooding.

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- C. Adequate drainage systems are provided in order to reduce exposure to flood hazards.
- D. Base flood elevation data (the level of the one-hundred-year flood) is provided for all proposals for development within the Floodplain District.

### **§ 210-55. Health regulation.**

The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Floodplain District established under this Chapter, shall require that:

- A. New and replacement water supply systems be designed to minimize or eliminate infiltration of floodwaters into the systems; and
- B. New and replacement sanitary sewage systems be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

### **§ 210-56. Conservation Commission duties.**

The duties of the Conservation Commission shall be as follows:

- A. Notify, in riverine situations, adjacent communities, the NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, and the NFIP Program Specialist, FEMA, Region 1, prior to any alteration or relocation of a watercourse where an order of conditions has been issued, and submit copies of such notification to the Federal Insurance Administration.[Amended ATM 5-3-2010, Art. 42]
- B. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

## **ARTICLE XI**

### **Flexible Community Development Bylaw [Added 5-7-2007 ATM, Art. 30]**

### **§ 210-57. Purpose and Intent.**

The purpose of this Article is to increase the inventory of affordable housing in Hopkinton. It is intended that the affordable housing units that result from this Article be considered as Local Initiative Program (LIP) units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development (DHCD) and that said units shall count toward the Town's requirements under G.L. c.40B sec. 20-23. Each affordable unit created in accordance with this Article shall have limitations governing its resale to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households.

### **§ 210-58. Applicability.**

- A. In all zoning districts, the inclusionary housing provisions of this section shall apply to the following uses, hereafter called the "development":
  - (1) Any project that results in a net increase of ten (10) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, with the exception of Article XIII A, Village Housing Development projects; and

- (2) Any division and/or subdivision of land held in common ownership as of the effective date of this Article, or anytime thereafter, into ten (10) or more dwelling units.

### **§ 210-59. Administration. [Amended 5 -6-2015 ATM, Art. 39]**

A development shall require the grant of a Special Permit from the Planning Board. A Special Permit shall be granted if the proposal meets the requirements of this Chapter. If a development requires a Special Permit pursuant to any other provision of this Chapter, a separate Special Permit shall not be required. The Planning Board shall prepare and, after a public hearing, adopt and file regulations with the Town Clerk, which shall include submission requirements, timelines, procedures and provisions necessary to implement this Article.

### **§ 210-60. Mandatory Provision of Affordable Units.**

- A. In each applicable development, one dwelling unit shall be established as an affordable housing unit for every ten (10) dwelling units in the development, in any one or combination of methods provided for below. For example, in a development of 10 to 19 units, 1 unit shall be affordable; in developments of 20 to 29 units, 2 units shall be affordable; and so on. The use of a combination of methods shall be approved by the Planning Board.
- (1) Constructed or rehabilitated on the development locus; or
  - (2) Constructed or rehabilitated on a locus different than the development; or
  - (3) An equivalent fees-in-lieu of payment may be made.
- B. For every affordable unit required, one additional market rate dwelling unit may be added to the total number of dwelling units in the development. For example, in a development of 20 units, two affordable units are required and the number of market rate units may be increased by two, for a total of 22 units.
- C. The Planning Board may allow a reduction in the dimensional requirements, including minimum lot area, frontage or setback requirements, applicable to the proposed development in order to accommodate the additional units on the site and to locate them within the areas most suitable for development. Such authorization for reduction shall be included in the special permit.

### **§ 210-61. Provisions Applicable to Affordable Housing Units On- and Off-Site.**

- A. All affordable units created, constructed or rehabilitated under this Article shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.
- B. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.
- C. Affordable housing units shall be provided coincident to the development of market-rate units.
- D. The deeds to the affordable housing units sold to income eligible buyers shall contain a restriction against renting or leasing of said unit(s) during the period for which the housing unit(s) contains a restriction on affordability.
- E. The applicant shall comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of an acceptable deed rider.

- F. The location of the off-site units to be provided shall be approved by the Planning Board, and shall be provided coincident to the development of the market-rate units or in accordance with an alternate schedule approved by the Planning Board. Exercise of this option shall not result in the destruction or demolition of existing structures, unless the Planning Board determines that: 1) such destruction or demolition is not detrimental to the neighborhood; and 2) where the proposed destruction or demolition of existing housing units is proposed, is consistent with the overall housing goals of the Town. When the Historic Preservation Bylaw (Chapter 125 of the Bylaws of the Town of Hopkinton) applies to the structure, the Planning Board shall consult with the Historical Commission before making a determination.

### **§ 210-62. Fees-in-Lieu-of Affordable Housing Unit Provision.**

- A. An applicant may contribute funds to the Town of Hopkinton Affordable Housing Trust Fund or Hopkinton Community Housing Task Force, Inc. (CHTF) to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.
- (1) Calculation of fee-in-lieu-of units. For each affordable unit not constructed or provided through one or a combination of the methods specified in this Article, the fee shall be an amount equal to the purchase price of a three-bedroom home that is affordable to a qualified affordable housing unit purchaser, as contained in the LIP guidelines regardless of what type of dwelling units are proposed, approved or constructed in the development. **[Amended 5-1-2017, Article 34]**
- (2) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to a schedule agreed upon by the Planning Board and the applicant.

### **§ 210-63. Conflict with Other Bylaws.**

The provisions of this Article shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

### **§ 210-64. through § 210-66. (Reserved)**

## **ARTICLE XII**

### **Water Resources Protection Overlay District**

**[Added 11-20-1989 STM, Art. 17; amended 5-7-1988 ATM, Art. 43;  
5-2-1994 ATM, Art. 22; 5-3-1999 ATM, Art. 25, 5-3-2004 ATM, Art. 31  
5-2-2005 ATM, Art. 28; 5-1-2006 ATM, Art. 16]**

### **§ 210-67. Purpose.**

The purpose of the Water Resources Protection Overlay District (WRPOD) is to:

- A. Promote the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Hopkinton and surrounding communities.
- B. Preserve and protect existing and potential sources of drinking water supplies.
- C. Conserve the natural resources of the Town.
- D. Prevent temporary and permanent contamination of the environment.

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### § 210-68. Applicability and Establishment of Districts.

- A. The WRPOD is an overlay district superimposed on the zoning districts established by the Hopkinton Zoning Bylaws. The WRPOD shall apply to all construction, reconstruction, or expansion of existing buildings and new or expanded uses the building permit for which is applied for after the date of publication of notice of the adoption of this Bylaw. Activities and uses located in an underlying zoning district and which is also located within the WRPOD must comply with the requirements of both the underlying district and the WRPOD. Uses prohibited in the underlying zoning district are not permitted in the WRPOD.
- B. For the purpose of this article, there is hereby established within the Town of Hopkinton an overlay district referred to as the WRPOD consisting of certain aquifer protection and recharge areas which are delineated on a map entitled "Water Resources Protection Overlay District, Town of Hopkinton," dated March 2011". This map is hereby made part of the Town of Hopkinton Zoning Bylaw and is on file with the office of the Town Clerk. **[Amended 5-7-2007 ATM, Art. 28, 5-2-2011 ATM, Art. 46]**
- C. When a portion of a lot is in the WRPOD, only the portion of the lot in the WRPOD shall be governed by this article.

### § 210-69. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**AQUIFER** -- A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**DEP** -- Massachusetts Department of Environmental Protection

**DISPOSAL** -- The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

**GROUNDWATER** -- All the water found beneath the surface of the ground. In this article, the term refers to the slowly moving subsurface water present in aquifers and recharge areas.

**HAZARDOUS MATERIAL** -- Any substance or mixture of physical, chemical, biological or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c.21C and c. 21E and 310 CMR 30.00.

**HAZARDOUS WASTE** -- Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

**IMPERVIOUS SURFACE** -- Material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**MINING** -- The removal or relocation of geologic materials, such as topsoil, sand, gravel, metallic ores or bedrock.

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**NONSANITARY WASTEWATER** – Any water-carried or liquid waste resulting from any process or industry, manufacture, trade, business or activity listed in 310 CMR 15.004 (6).

**POTENTIAL DRINKING WATER SOURCES** -- Areas which could provide significant potable water in the future.

**RECHARGE AREAS** -- Areas that collect precipitation or surface water and carry it to an aquifer. Recharge areas include DEP approved Zone I, Zone II, Zone III, Zone A, Zone B, or Zone C areas.

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

**WATER RESOURCES PROTECTION OVERLAY DISTRICT** – Those land areas designated on a map adopted pursuant to this bylaw that provide recharge to an existing, planned or potential public drinking water supply well or public surface water supply. **[Amended 5-2-2011 ATM, Art. 46]**

**WRPOD-1** – Land areas not within DEP approved Zones I, II, A, B or C but which are contained within the WRPOD. **[Added 5-7-2007 ATM, Art. 28]**

**ZONE A** - Land areas within a DEP approved Zone A and which are contained within the WRPOD. **[Added 5-2-2011 ATM, Art. 46]**

### **§ 210-70. Use regulations.**

- A. The WRPOD is established as an overlay district to other districts. Where there is a conflict between provisions of this article and other provisions of these zoning bylaws, the more restrictive regulation shall take precedence. Uses otherwise not permitted in the underlying zoning district shall not be permitted in the WRPOD. It is not the purpose of this article to broaden the permitted uses in the underlying districts, but, rather, to limit or regulate certain activities which may occur in a district. If a use is not listed as permitted or allowed by special permit in the underlying district, it shall not be considered a permitted use by this article.
- B. Permitted Uses. The following uses are permitted in the WRPOD, provided that all necessary permits, orders or approvals required by local, state or federal law shall have been also obtained. All other uses are prohibited, unless expressly authorized by the special permit provisions of this article.
  - (1) Any use or structure or any use or structure accessory thereto permitted by right or by special permit in the underlying district unless specifically subject to additional special permit regulation under Sec.210-70C or prohibited under Sec.210-70D.
  - (2) Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
  - (3) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to the provisions of Subsections C and D of this section.
  - (4) Conservation of soil, water, plants and wildlife.
  - (5) Foot, bicycle and/or horse paths and bridges.

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- (6) Normal operation and maintenance of existing water bodies and dams, splash ponds and other water control, supply and conservation devices.
  - (7) Maintenance, repair and enlargement of any existing structure, subject to the provisions of Subsections C and D of this section.
  - (8) Construction, maintenance, repair and enlargement of drinking water supply related facilities, such as but not limited to wells, pipelines, aqueducts and tunnels.
- C. Special permit uses. The following uses may be authorized by special permit upon the approval of the special permit granting authority and subject to such conditions as it may require, except that no special permit shall be required for items (2) and (4) within the WRPOD-1 area. **[Amended 5-7-2007 ATM, Art. 28]**
- (1) (Reserved)
  - (2) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, groundwater recharge shall be by storm water infiltration basins, similar system or dry wells. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all groundwater recharge areas shall be permanently maintained in full working order by the owner.
  - (3) Enlargement or alteration of pre-existing uses that do not conform to these regulations.
  - (4) Activities involving the handling of hazardous materials in quantities greater than those associated with normal household use, so long as same are permitted in the underlying zoning district and not prohibited by Subsection D of this section. Such activities shall require a special permit to prevent contamination of groundwater.
- D. The following uses are specifically prohibited in the areas indicated on the map as WRPOD and WRPOD-1, except that items (6), (7) and (11) shall not be prohibited in the WRPOD-1 area. **[Amended 5-7-2007 ATM, Art. 28, 5-2-2011 ATM, Art. 46]**
- (1) Placement of contaminated fill.
  - (2) Storage of hazardous materials and/or liquid petroleum products, with the exception of liquid propane, unless such storage is:
    - (a) Above ground level and on an impervious surface; and
    - (b) Either in above ground tanks or above ground container(s) within a building or outdoors in covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is greater.
  - (c) Below ground related to a subsurface parking facility. **[Added 5-5-2008 ATM, Art. 29]**
  - (3) Landfills and open dumps as defined in 310 CMR 19.006, salvage yards and other solid or hazardous waste disposal or incineration.

- (4) Discharge to the ground of nonsanitary wastewater, including industrial and commercial process wastewater, except:
  - (a) The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works.
  - (b) Treatment works approved by the DEP designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13).
  - (c) Publicly owned treatment works.
- (5) Earth removal consisting of the removal of soil, loam, sand, gravel or any other earth material, including mining activities, to within four feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, basements, roads or utility works.
- (6) Motor vehicle sales, lease, rental, service, washing and repair establishments and filling stations.
- (7) Truck terminal, which shall mean an area and building where trucks load and unload cargo and freight and where cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other modes of transportation, whether or not trucks and cargo are stored or parked overnight.
- (8) Metal plating or finishing.
- (9) Underground transmission lines for chemicals or liquid petroleum products. The provisions §210-70(D)(9) shall not apply to any existing facilities or any replacements of such existing facilities. **[Amended 5-5-2008 ATM, Art. 29]**
- (10) Automobile graveyards and junkyards as defined in MGL c. 140B, § 1.
- (11) Storage of more than one unregistered motor vehicle, with the exception of farm vehicles in accordance with MGL c. 90.
- (12) (Reserved)
- (13) Components of an individual sewage disposal system that are not located on the same property as the use that is served by the system.
- (14) Landfills receiving only wastewater and/or septage residuals, including those approved by the DEP pursuant to MGL c. 21, §§ 26 through 53, MGL c. 111, § 17, MGL c. 83, §§ 6 and 7, and regulations promulgated thereunder.
- (15) Facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.00, except for:
  - (a) Very small quantity generators as defined under 310 CMR 30.000.
  - (b) Household hazardous waste centers and events under 310 CMR 30.390.

- (c) Waste oil retention facilities required by MGL c. 21, § 52A.
  - (d) Water remediation treatment works approved by DEP for the treatment of contaminated waters.
  - (16) Petroleum, fuel oils and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
  - (17) Storage of sludge and septage.
  - (18) Storage of deicing chemicals and salt unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (19) Storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (20) Storage of commercial fertilizers, as defined in MGL c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - (21) The stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district.
- E. The following uses are specifically prohibited in the areas indicated on the map as Zone A: **[Added 5-2-2011 ATM, Art. 46]**
- (1) Solid waste combustion facilities or handling facilities.
  - (2) Junk and salvage operations.
  - (3) Stockpiling or disposal of snow removed from outside the district that contains deicing chemicals.
  - (4) Treatment or disposal works subject to 314 CMR 3.00 or 5.00, except for:
    - (a) The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
    - (b) Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with Title 5, 310 CMR 15.00, provided the facility owner demonstrates to the DEP's satisfaction that there are no feasible siting locations outside the Zone A. Any new facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent.
    - (c) Treatment works approved by the DEP designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13); and
    - (d) Discharge by public water system of waters incidental to water treatment process.

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- (5) Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to MGL c.21C and 310 CMR 30.000, except for:
  - (a) Very small quantity generators as defined by 310 CMR 30.000;
  - (b) Treatment works approved by the DEP designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.
- (6) Human or animal cemeteries or mausoleums.
- (7) Storage of road or parking lot deicing and sanding materials unless covered or contained.
- (8) Storage of fertilizers unless covered or contained.
- (9) Storage of animal manures, unless covered or contained.
- (10) Underground storage tanks.
- (11) Sand and gravel operations.
- (12) Motor vehicle repair operations.
- (13) Commercial car washes; the outdoor washing of commercial vehicles.

### **§ 210-71. Special permits.**

- A. The special permit granting authority (SPGA) shall be the Board of Appeals. **[Amended 5-4-2009 ATM, Art. 25]**
- B. If the location of the boundary of the WPROD in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the SPGA. Any application for special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to demonstrate that the location of the boundary of the WRPOD with respect to a parcel(s) of land is uncertain. The SPGA may engage a professional engineer, hydrologist, geologist, soil scientist and/or other appropriate expert consultant to determine more accurately the boundaries of the WRPOD with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.
- C. Application.
  - (1) Any person who desires to obtain a special permit pursuant to the provisions of this article shall submit a written application to the SPGA. Each application, together with a filing fee, shall contain a plan of the affected premises and a complete description of the proposed use, together with any supporting information and plans which the SPGA may require. The applicant shall file 10 copies of the application with the SPGA. The SPGA may refer the application and materials submitted to a consultant for review, at the expense of the applicant. The SPGA may adopt regulations to govern design features and more detailed submission requirements for projects. Such regulations shall be filed in the office of the Town Clerk.
  - (2) The submitted plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a Massachusetts registered professional engineer. All additional submittals shall be prepared by

qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:

- (a) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
- (b) For those activities using or storing such hazardous materials, a hazardous materials management plan prepared and filed with the Hazardous Materials Coordinator, Fire Chief and Board of Health. The plan shall include:
  - [1] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures.
  - [2] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces and appropriate containment devices.
  - [3] Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Regulations 310 CMR 30.00; and
  - [4] Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
- (c) Analysis by a Massachusetts registered professional engineer experienced in groundwater evaluation or by a qualified professional hydrogeologist, with an evaluation of the proposed use, including its probable effects or impact on surface and groundwater quality and quantity and natural flow patterns of watercourses.
- (3) The SPGA shall provide copies of the application to the Board of Health, Planning Board, Conservation Commission, Hazardous Waste Coordinator, Director of Municipal Inspections, Director of Public Works, Fire Chief and Board of Selectmen, each of which shall review the application and submit recommendations to the SPGA within 35 days or 5 business days prior to the date of the public hearing, whichever shall later occur of the referral date. Failure to submit recommendations to the SPGA within such time shall be deemed lack of opposition or no desire to comment.
- (4) The SPGA shall hold a public hearing in accordance with the provisions of this Chapter. **[Amended 5-6-2015 ATM, Article 39]**
- D. Findings by SPGA. The SPGA shall not issue a special permit unless it shall find that the proposed use meets the following standards, the purposes and standards specified in this article and any regulations or guidelines adopted by the SPGA. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards contained in this section. The proposed use must:
  - (1) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the WRPOD.

- (2) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.
  - (3) Not be in conflict with the purpose and intent of this article.
  - (4) Be appropriate taking into consideration the natural topography, soils and other characteristics of the site, including existing contamination on or near the site, and such remedial action or contingencies which may be available for inclusion as conditions in a special permit granted under this article.
- E. Special permit conditions. The special permit shall include sufficient conditions to satisfy the purposes of this article. The conditions may include, but are not limited to, analysis or monitoring of ground- and surface waters, hydrogeologic evaluation, erosion or siltation control, compaction, sedimentation control, drainage and recharge provisions and any other limitations or standards deemed necessary or appropriate by the SPGA. In making a determination regarding the issuance of a special permit, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality and quantity which would result if the control measures were to fail. The SPGA may require a bond, a fee pursuant to MGL c.44 s.53G, or other appropriate financial assurance mechanism(s), to ensure that the conditions included in the special permit are fulfilled.
- F. Special permit time limitations. A special permit granted under this section shall lapse upon the expiration of the maximum period of time authorized by M.G.L. c.40A, §9, which shall not include such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not sooner begun except for good cause; provided, however, that, prior to the expiration of such period, an applicant may request an extension of the term of a Special Permit from the SPGA, and the SPGA may extend such term as it deems appropriate.
- G. Effective date of special permit. No special permit shall take effect until a copy of the decision has been recorded in the Middlesex South Registry of Deeds or, for registered land, in the Land Registration Section of said Registry. Such decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal was filed, it has been dismissed or denied. A copy of the special permit with the appropriate recording information shall be provided to the SPGA forthwith after the recording of same.

### **§ 210-71A. Use variances.**

No variance shall be issued which would permit a use within the WRPOD which is expressly prohibited in subsection D of Section 210-70 of this article.

### **§ 210-71B. Enforcement.**

- A. Written notice of any violations of this bylaw shall be given by the Zoning Enforcement Officer to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.

- B. A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, and Department of Public Works. The cost of containment, clean-up, and any and all other actions necessary or appropriate to insure compliance shall be borne by the owner and operator of the premises.

### ARTICLE XIII

#### Garden Apartments in Residential Districts

[Added 3-11-1970 ATM, Art. 53; amended 3-12-1973 ATM, Arts. 27, 28, 29, 30 and 34; 4-14-1975 ATM, Arts. 32, 33, 34 and 35; 4-13-1978 ATM, Art. 39; 4-14-1986 ATM, Art. 37; 5-5-1997 ATM, Art. 22; 5-5-2003 ATM, Art. 22]

#### § 210-72. Planning, design, conservation and development objectives. [Amended 5-1-2006, Art. 35]

- A. General intent and purposes. It is the intent and purpose of this Article XIII to maintain a working balance in the Town of Hopkinton between the demand for new development and its rewards on the one hand, and the human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town changes. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this article shall provide for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for apartment development will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this article, the guiding principle in judging apartment proposals will be the variety and diversity in the proposed development and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.
- B. General objectives. The following planning, design, conservation and development objectives will apply to all proposals for apartment construction in Hopkinton:
- (1) To provide new housing for all citizens regardless of income, race, color, creed or other like characteristics.
  - (2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.
  - (3) To facilitate sound and orderly public and private development in Hopkinton by relating an apartment proposal to any public Master Plan for land use, conservation, streets or public facilities.
  - (4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of apartment structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.
  - (5) To conserve and preserve the significant and unique natural and historic features of the proposed site in their natural state and ensure or provide for their permanent protection from

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future encroachment or development. [Amended 5-1-2006 ATM, Art. 35; Amended 5-2-2016 ATM, Art. 33]

- (6) To give encouragement to owners and developers to produce the highest quality design in the apartment structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
- (7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.
- (8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

### § 210-73. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**BASEMENT** -- Any portion of a structure below the first story.

**CONDOMINIUM** -- A method of ownership whereby an individual may own separately one or more single dwelling units in an apartment building or project. Said individual and other owners of such apartment units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to his individual dwelling unit or units, vote on a proportional basis in all respects of his undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

**FLOOR AREA** -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

**GARDEN APARTMENTS** -- A multifamily residential land use consisting of multiple dwelling units on one single contiguous parcel.

**HALF-STORY** -- Any place under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

**SCREENING** -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

**STORY** -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

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USABLE LAND -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

### § 210-74. Regulations and requirements [Amended 5-2-2016 ATM, Art. 33]

- A. Use districts. Garden apartments, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this article.
- B. Requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant[Amended 5-2-2016 ATM, Art. 33]:
  - (1) Anyone wishing to build garden apartments may do so only on a site containing an area of not less than 10 acres of usable land, but not more than 30 acres of usable land per apartment project and/or application. The minimum lot frontage shall be 200 feet on a public road.
  - (2) Density shall be a maximum average of eight bedrooms per acre of usable land.
  - (3) The total ground floor area of apartments, garages and accessory buildings shall not exceed 20% of the site area.
  - (4) Garden apartment units may contain one or two bedrooms. One-bedroom units shall contain a minimum of 600 square feet of floor area. Two-bedroom units shall contain a minimum of 800 square feet of floor area. [Amended 5-4-2009 ATM, Art. 25]
  - (5) Buildings shall not exceed 2 ½ stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units shall not exceed 10% of the total number of dwelling units in the project.
  - (6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
  - (7) Setbacks. All buildings must be located a minimum of 100 feet from any side or rear lot line and 100 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, or would allow a historic structure to be preserved, the setback may be reduced. The Board may require no-cut easements, conservation restrictions, historic preservation restrictions or the like where the setback has been reduced. Buildings shall be located a minimum of 20 feet from interior roadways and driveways which are not considered streets or public roads. [Amended ATM 5-3-2010, Art. 43]
  - (8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner.
  - (9) Lighting. All lighting must be directed away from adjoining property.

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- (10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.
- (11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the town. **[Amended 5-2-2016 ATM, Art. 33]**
- (12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the subdivision rules and regulations of the Town of Hopkinton.
- (13) Recreation area. Suitable recreation space of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located.
- (14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. The screened area may be included in the required setback distances. The Planning Board may require suitable landscaping materials up to 50 feet in width if it determines that the additional width and screening is necessary in any location along the property lines. **[Amended 5-7-2007 ATM, Art. 29; Amended 5-2-2016 ATM, Art. 33]**
- (15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.
- (16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. Such distance shall include any garages or other accessory structures.
- (17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Chapter. All requests for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations. **[Amended 5-5-2003 ATM, Art. 22]**
- (18) Open space, as described in § 210-72B(5), shall consist of a minimum of 30% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this article that the open space shall generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state. The open space area as delineated and defined on the approved site plan shall not be developed or used for any purpose other than that depicted on the site plan. **[Amended 5-2-2016 ATM, Art. 33]**
- (19) Historic buildings and structures shall be retained and preserved to the extent feasible. Where the Planning Board has issued a special permit pursuant to § 210-117.2, Lots with Historic Structures, for any of the land subject to a Garden Apartment special permit or site plan

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application, the Board may authorize the reduction of any of the dimensional requirements of this Article in order to facilitate the preservation of an Historic Structure. **[Added 5-2-2011 ATM, Art. 44; Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75. Administration. [Amended 5-4-2009 ATM, Art. 25]**

A. Application procedure. The application procedure consists of two steps: application for garden apartment concept plan special permit approval to the Planning Board and application for garden apartment site plan approval to the Planning Board. A garden apartment site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law, nor a site plan under the provisions of Article XX of this Chapter. A garden apartment site plan shall be considered a technical administrative review of an approved concept plan. The garden apartment concept plan special permit is the special permit referred to in § 210-74A of this article.

(1) Concept plan special permit.

- (a) A record owner desiring to use land for garden apartments shall file with the Planning Board an application for a garden apartment concept plan special permit to use the land for garden apartments, together with such plans, drawings, specifications and additional information as set forth in the Garden Apartment Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this article, the Planning Board shall vote to adopt the Garden Apartment Submission Requirements and Procedures Manual after holding a public hearing.
- (b) Within seven days of receipt of the application for the garden apartment concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Consultant review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant. **[Amended 5-4-2009 ATM, Art. 25]**
- (c) The Planning Board shall hold a public hearing and file its decision in accordance with the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- (d) Approval criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:
  - [1] That the proposed development constitutes a desirable development in the neighborhood and in the town.
  - [2] That the proposed development will not be detrimental to the neighborhood or the town.
  - [3] That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan stage.
  - [4] That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic

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purposes, with the understanding that review of such items will be more detailed at the site plan stage.

[5] That the plan complies with the Master Plan.

[6] That the provisions of § 210-72A and B of this article have been met.

[7] That the Town of Hopkinton has not met the statutory goal to provide 10% of its housing stock as affordable housing pursuant to Sections 20 through 23 of Chapter 40B of the Massachusetts General laws. **[Amended 5-2-2016 ATM, Art. 33]**

- (e) Approval of the garden apartment concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the town.
  - (f) After a garden apartment concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.
- (2) Garden apartment site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a garden apartment site plan to the Planning Board. No garden apartment site plan application may be submitted unless a concept plan has been approved and is currently in effect. The garden apartment site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.
- (a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.
  - (b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by advertisement in a newspaper of general circulation in the town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.
  - (c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.
  - (d) Approval criteria.
    - [1] Before the Planning Board may approve the site plan, it shall determine each of the following:

- [a] That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements.
  - [b] That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.
  - [c] All of the provisions of this Chapter, including § 210-72A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.
- [2] If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- (e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:
  - [1] Phasing of the garden apartment site plan construction.
  - [2] Performance guarantee. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings. **[Amended 5-4-2009 ATM, Art. 25]**
  - [3] Off-site improvements to correct conditions directly caused by the garden apartment development.
  - [4] The duration of the Board's approval and a specified date of completion.
- B. Modifications to approved plan. The approved garden apartment site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.
- C. Completion.
  - (1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.
  - (2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.

- (3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guarantee, if any. **[Amended 5-2-2016 ATM, Art. 33]**

D. Appeal. Appeals of decisions made under this article shall be pursuant to MGL c. 40A, § 17.

### **ARTICLE XIII A** **Village Housing in Residential Districts** **[Added 5-3-2004 ATM, Art. 36]**

#### **§ 210-75.1. Planning, design, conservation and development objectives.**

- A. General intent and purposes. It is the intent and purpose of this Village Housing in Residential Districts Article to maintain a working balance in the Town of Hopkinton between the demand for new development and the provision of affordable housing and its rewards on the one hand, and the human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. The Town also understands the importance of providing for a variety of housing that meets the needs of all of its citizens, regardless of income. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town change. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the Town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this Article shall provide for the provision of affordable housing under the state guidelines for the creation of such units while providing for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for village housing will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this Article, the guiding principle in judging village housing proposals will be the variety and diversity of the proposed development of affordable housing units and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.
- B. General objectives. The following planning, design, conservation and development objectives will apply to all proposals for village housing construction in Hopkinton:
  - (1) To provide affordable housing for all citizens regardless of income, race, color, creed or other like characteristics.
  - (2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.
  - (3) To facilitate sound and orderly public and private development in Hopkinton by relating a village housing proposal to any public Master Plan for land use, conservation, streets or public facilities.

- (4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of housing structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.
  - (5) To conserve and preserve the significant and unique natural features of the proposed site in their natural state and ensure or provide for their permanent protection from future encroachment or development. **[Amended 5-2-2016 ATM, Art. 33]**
  - (6) To give encouragement to owners and developers to produce the highest quality design in the housing structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
  - (7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.
  - (8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.
- C. Criteria. Before the Planning Board may issue the special permit referred to in this Article, it shall determine each of the following:
- (1) That the proposed development constitutes a desirable development in the neighborhood and in the Town.
  - (2) That the proposed development will not be detrimental to the neighborhood or the Town.
  - (3) That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan review stage.
  - (4) That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage of surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes, with the understanding that review of such items will be more detailed at the site plan review stage.
  - (5) That the plan complies with the Master Plan.
  - (6) That all of the provisions of § 210-75.1 A and B of this Article have been met.
  - (7) That the Town of Hopkinton has not met the statutory goal to provide 10% of its housing stock as affordable housing pursuant to Sections 20 through 23 of Chapter 40B of the Massachusetts General Laws, as amended. **[Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75.2. Definitions. [Amended 5-4-2009 ATM, Art. 25]**

As used in this Article, the following terms shall have the meanings indicated:

**BASEMENT** -- Any portion of a structure below the first story.

**CONDOMINIUM** -- A method of ownership whereby an individual may own separately one or more single dwelling units in a building or project. Said individual and other owners of such dwelling units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to the individual dwelling unit or units, vote on a proportional basis in all respects based on the undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

**FLOOR AREA** -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside of the building, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

**HALF-STORY** -- Any space under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

**LOW OR MODERATE INCOME** -- A household with income at or below 80% of the area median income that applies to Hopkinton, as determined from time to time by the Department of Housing and Urban Development (HUD).

**SCREENING** -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

**STORY** -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

**USABLE LAND** -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

**VILLAGE HOUSING** -- A residential land use consisting of Affordable Housing Units on one single contiguous parcel.

### **§ 210-75.3. Regulations and requirements. [Amended 5-2-2016 ATM, Art. 33]**

- A. Use districts. Village Housing, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this Article.
- B. Requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant:
  - (1) Anyone wishing to build village housing may do so only on a site containing an area of not less than 5 acres of usable land, but not more than 20 acres of usable land per village housing project and/or application. The minimum lot frontage shall be 50 feet on a public road.
  - (2) Density shall be a maximum ten units per acre of usable land.
  - (3) The total ground floor area of housing units, garages and accessory buildings shall not exceed 25% of the site area.

- (4) One-bedroom units shall contain a minimum of 700 square feet of floor area. Two-bedroom units shall contain a minimum of 900 square feet of floor area. Three-bedroom units shall contain a minimum of 1200 square feet of floor area.
- (5) Buildings shall not exceed 2 ½ stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units may vary and may comprise all of the dwelling units in the project.
- (6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
- (7) Setbacks. All buildings must comply with the setback requirements of the underlying zoning district. The street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of greater width would be necessary to screen and/or separate the development from adjacent property, the setback may be increased to a width of 100 feet. Upon a finding by the Planning Board that a setback of lesser width would allow a historic structure to be preserved, the setback may be reduced. The Board may require no-cut easements, conservation restrictions or the like in any setback area, and may require a historic preservation restriction where appropriate. Buildings shall be located a minimum of 20 feet from interior roadways which are not considered streets or public roads. **[Amended 5-3-2010 ATM, Art. 43]**
- (8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner and not the Town.
- (9) Lighting. All lighting must be shielded and/or directed away from adjoining property.
- (10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.
- (11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the Town. **[Amended 5-2-2016 ATM, Art. 33]**
- (12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the Subdivision Rules and Regulations of the Town of Hopkinton.
- (13) Recreation area. In developments of ten or more units, suitable recreation spaces each of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located. The Planning Board may waive this requirement if the development is within one half mile of an existing active recreational facility which is open to the public free of charge.
- (14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. Fencing may be allowed at the discretion of the Planning Board. The screened area may be included in the required setback distances.
- (15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.

- (16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. This requirement may be waived by the Planning Board upon the recommendation of the Fire Chief.
- (17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Article. All requests for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations.
- (18) Open space, as described in § 210-75.1 B (5), shall consist of a minimum of 15% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this Article that the open space shall generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state. The open space area as delineated and defined on the approved site plan shall not be developed or used for any purpose other than that depicted on the site plan. **[Amended 5-2-2016 ATM, Art. 33]**
- (19) Affordable Units. All of the Village Housing affordable housing units shall be restricted by deed which requires that they remain affordable, as defined by this Article, in perpetuity. 100% of the housing units in any Village Housing development shall be affordable housing units, as defined in this Article.
- (20) Historic buildings and structures shall be retained and preserved to the extent feasible. **[Amended 5-2-2016 ATM, Art. 33]**

### **§ 210-75.4. Administration.**

- A. Application procedure. The application procedure consists of two steps: application for village housing concept plan special permit approval to the Planning Board and application for village housing site plan approval to the Planning Board. A village housing site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law, nor a site plan under the provisions of Article XX of this Chapter. A village housing site plan shall be considered a technical administrative review of an approved concept plan. The village housing concept plan special permit is the special permit referred to in § 210-75.3(A) of this Article.

- (1) Concept plan special permit.

- (a) A record owner desiring to use land for village housing shall file with the Planning Board an application for a village housing concept plan special permit to use the land for village housing, together with such plans, drawings, specifications and additional information as set forth in the Village Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this Article, the Planning Board shall vote to adopt the Village Housing Submission Requirements and Procedures Manual after holding a public hearing.

- (b) Within seven days of receipt of the application for the village housing concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Consultant review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant. [Amended 5-4-2009 ATM, Art. 25]
  - (c) The Planning Board shall hold a public hearing and file its decision in accordance with the provisions of this Chapter. **[Amended 5-4-2015 ATM, Art. 39]**
  - (d) Approval of the village housing concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the Town.
  - (e) After a village housing concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.
  - (f) A village housing concept plan special permit shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17. If any construction work contemplated by such special permit shall have commenced and proceeded in good faith continuously, except for good cause, but notwithstanding, the project shall not have been completed within such two-year period, the applicant must request extension of the special permit from the Board, in which case the Board shall extend the special permit for such period of time as it deems appropriate.
- (2) Village housing site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a village housing site plan to the Planning Board. No village housing site plan application may be submitted unless a concept plan has been approved and is currently in effect. The village housing site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.
- (a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.
  - (b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.

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- (c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.
- (d) Approval criteria.
  - [1] Before the Planning Board may approve the site plan, it shall determine each of the following:
    - [a] That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements.
    - [b] That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.
    - [c] All of the provisions of this Article, including § 210-75.1A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.
    - [d] A Host Community Agreement with the Town of Hopkinton has been negotiated. **[Amended 5-2-2016 ATM, Art. 33]**
  - [2] If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- (e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:
  - [1] Phasing of the village housing site plan construction so that no more than forty (40) units per year of affordable housing will be constructed utilizing a three year average as a standard until that point at which the percentage of affordable housing units referred to in 760 CMR 31.00, the Housing Appeals Committee Criteria for Decisions under M.G.L.c. 40B, §§ 20-23, has been achieved.
  - [2] Performance guarantee. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings.
  - [3] Off-site improvements to correct conditions directly caused by the village housing development.
  - [4] The duration of the Board's approval and a specified date of completion.

- B. Modifications to approved plan. The approved village housing site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.
- C. Completion.
- (1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.
  - (2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.
  - (3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guarantee, if any.
- D. Appeal. Appeals of decisions made under this Article shall be pursuant to MGL c. 40A, § 17.

### **ARTICLE XIV** **Campus Style Development (CSD) District** **[Added 5-6-1996 ATM, Art. 36]**

#### **§ 210-76. Development and design objectives.**

The purposes of the Campus Style Development (CSD) District are to permit the clustering of industrial and commercial uses upon a development site in those areas most suited for development, to avoid strip development, to mitigate the impacts of industrial and commercial development and to preserve open land. The open land set aside pursuant to this article may buffer adjacent uses or residential zoning districts or provide recreational amenities for the occupants of the parcel or residents of the town. The clustering of the uses on the development site shall be designed to be consistent with landscapes which are traditional to New England and Hopkinton. It is the intent of this article that the development site will be designed to preserve the existing streetscape by clustering the uses away from public ways and providing a visual buffer from streets. It is the further intent that the uses on the development site will be clustered away from residential uses and will not be within view from lakes and other long views.

#### **§ 210-77. Applicability.**

Campus style development shall be allowed only upon the issuance of a special permit by the Planning Board, only within Rural Business, Industrial A and Industrial B Districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein. **[Amended 5-7-2007 ATM, Art. 26, 5-4-2009 ATM, Art. 25]**

#### **§ 210-78. General requirements.**

Any parcel of land located within a zone permitting campus style development containing not less than five acres may be considered for a campus style development. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the

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lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.

### **§ 210-79. Dimensional requirements.**

The following size and setback requirements shall apply:

- A. Minimum lot frontage for the development site on a public way: 50 feet.
- B. Minimum lot frontage within the development site: none, provided that the interior roads which must provide adequate access to all buildings on the development site shall not become public ways and are to be considered private access roads. If the roads are intended to be considered as public ways, the Planning Board shall determine the amount of frontage appropriate for each lot, based on a consideration of public safety and adequacy of access.
- C. Minimum lot area for individual lots within the development site: none.
- D. Minimum setbacks of buildings and parking areas from development site property lines:
  - (1) One hundred feet from property line of property in a residentially zoned district.
  - (2) Fifty feet from property line of a commercial or industrially zoned property.
  - (3) Sixty feet from a street.
- E. The minimum setback area shall be landscaped or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area required from a residentially zoned district shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped. Such area shall be wooded for the minimum required distance.
- F. Minimum setbacks of buildings from development site interior lot property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 40 feet or three stories in height, whichever is less. If buildings are located between South Street and Route 495, they may, however, be 45 feet or four stories in height, whichever is less.

### **§ 210-80. Off-street parking.**

The requirements of § 210-124, Off-street parking, shall apply. The Planning Board, in the site plan approval process, may, however, permit buildings within the development site to share parking areas, and may permit a portion of the required spaces to be set aside as reserve or planned spaces to be constructed as future needs require.

### **§ 210-81. Permitted uses.**

Uses permitted within the underlying zoning district shall be permitted on the development site.

### **§ 210-82. [Reserved]**

### **§ 210-83. Open land.**

- A. A minimum of 40% of the development site shall be set aside as open land. Adequate pedestrian access shall be provided to the open land.
- B. The open land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the open land. The open land may consist of a separate parcel and may be conveyed to a nonprofit organization the purpose of which is the preservation of open space. If the open land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- C. The open land shall consist of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the open land may be used solely by occupants of the development site or may be available for use by Town residents. The open land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- D. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the open land.
- E. If detention or retention ponds are necessary for the construction of the buildings on the development site, such ponds shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such detention or retention areas shall be designed to appear as natural landforms.
- F. Areas set aside for planned or reserve parking spaces or fire lanes shall not be considered to be open land.

### **§ 210-84. Design.**

Buildings shall be designed to possess a harmony of appearance and scale with each other. Curb cuts on Town roads shall be minimized, and to the greatest extent possible, buildings shall be clustered away from streets and surrounding residential or open space uses. Parking lots shall include islands with shade trees. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized, so that as many trees and natural features are retained as possible. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.

### **§ 210-85. Application and review process.**

- A. The provisions of Article XX, Site Plan Review, shall apply. If the development constitutes a subdivision pursuant to MGL c. 41, approval shall be required from the Planning Board. The Planning Board may hold one hearing which shall constitute the public hearings required by the Subdivision Control Law, site plan review and the campus style development special permit.
- B. The application shall show the planned use of the entire development site and whether development will occur at one time or in phases. After approval of the site plan, no land may be removed from the development site, and there may be no material deviation from the site plan, without review and approval of the Planning Board.

### **§ 210-86. Special permit criteria.**

The Planning Board may grant the campus style development special permit only if it finds each of the following:

- A. The development meets the development and design objectives of a campus style development contained in this article.
- B. The development standards contained in this article have been met.
- C. The site development is consistent with the Master Plan.
- D. The Planning Board has determined that due regard has been given to the preservation and attractive utilization of the natural features of the development site, including trees, woods, streams and ponds.

### **§ 210-87. Fees.**

Submission fees shall be governed and set by the Planning Board and shall be assessed to the owner and/or the applicant. Such fees may include a deposit for engineering review by a consultant selected by the town.

## **ARTICLE XV**

### **Adult Uses**

**[Added 5-6-1996 ATM, Art. 45]**

### **§ 210-89. Preamble and purpose. [Amended 5-6-2008 STM, Art. 7]**

- A. Whereas, there is documented experience in many other cities including Boston, Massachusetts; Seattle, Washington; Tacoma, Washington; Detroit, Michigan; Minneapolis, Minnesota; and St. Paul, Minnesota among other cities, showing that adult uses are distinguishable from other business uses and that the location of adult uses may degrade or adversely affect the quality of life in the areas of a community where they are located, often with impacts, including but not limited to increased levels of crime, blight, depreciation of property values and late hours of operation resulting in noise and traffic late into the night; and
- B. Whereas, it is the intention of the Town of Hopkinton to rely upon and reference the findings of the above municipalities and various detailed studies they have conducted that empirically document the adverse influences and effects of adult uses on surrounding properties; and
- C. Whereas, the Town of Hopkinton is predominantly residential in its character and development pattern and, although primarily residential, is composed of a mixture of residential, business, commercial, religious, school, park and open space uses, and such areas of use are, in many instances, located in close proximity to one another with the resulting conflicts in land use; and
- D. Whereas, the Town of Hopkinton desires to protect its residential lands from encroachment by commercial adult uses and to ensure and promote the town's image as a safe, pleasant and attractive place of residence for families with children, and to preserve and promote the peace and quiet enjoyment of these areas for all persons; and
- E. Whereas, it is a desire of the Town of Hopkinton to preserve and protect the safety of children and young people in the vicinity of schools and public parks where they may be expected to walk, congregate and

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play, and furthermore that children and young people not be subjected to confrontation with the existence of adult uses in the vicinity of schools and parks, or in commercial areas where there is significant patronage and presence of children and young people; and

- F. Whereas, the commercial areas of the Town of Hopkinton reflect greatly on its image in the region, and it is the desire of the Town of Hopkinton to promote a positive business community image, retain and promote safe and attractive business areas, and retain its rural character, free of crime and nuisance; and
- G. Whereas, the Town of Hopkinton as an aid to mitigating the above impacts of adult uses desires to physically separate commercial adult uses from residential, religious, school, park and open space uses, so that residents not be subjected to confrontation with the existence of adult uses in the vicinity of their residences, schools, parks and playgrounds and churches and chosen places of worship; and
- H. Whereas, adult uses engaging in the sale, rental or display of sexually explicit materials, including books, magazines, periodicals, pictures, photographs, slides, movies, videos, adult entertainment and live nudity, may legitimately be controlled by a municipality, either through concentrating in certain locations or separating from other uses which will be inordinately impacted by the sale, rental or display of sexually explicit materials, and furthermore MGL c. 40A, § 9A, specifically provides for municipal regulation of adult uses through special permits and standards related to location and separation of such uses; and **[Amended 5-6-2008 STM, Art. 7]**
- I. Whereas, the Town of Hopkinton does not desire to suppress any speech activities protected by the First Amendment, but rather to enact a content-neutral ordinance concerned with the secondary effects of adult uses on the surrounding community, especially crime and effects upon children and family life, and therefore desires reasonable regulation of the location of adult uses in order to provide for the protection of the image of the community, its property values, and to protect the residents of the community from any adverse effects of such adult land uses, while providing to those who desire to patronize adult uses such an opportunity in areas within the Town which are appropriate for location of such uses; and
- J. Whereas, it is the intention of the Town of Hopkinton by the adoption of this Chapter to rely upon the decisions of the Supreme Court of the United States and the Supreme Judicial Court of the Commonwealth of Massachusetts pertaining to this subject matter, to regulate and limit the location of adult uses and to promote the Town of Hopkinton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts and the quality of life through effective land use planning;

Now, therefore, pursuant to MGL c. 40A, § 9A, and MGL c. 272, § 31, the following is hereby established as the Adult Uses Bylaw of the Town of Hopkinton.

### **§ 210-90. Definitions.**

As used in this article, the following words shall, unless the context requires otherwise, have the following meanings:

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

**ADULT MOTION-PICTURE THEATER** -- An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ADULT PARAPHERNALIA STORE** -- An establishment having as a substantial or significant portion of its stock-in-trade devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ADULT VIDEO STORE** -- An establishment having as a substantial or significant portion of its stock-in-trade videos, movies or other film material which is distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**ESTABLISHMENT WHICH DISPLAYS LIVE NUDITY** – Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL c.272, §31.

### **§ 210-91. Uses allowed by special permit.**

A. Pursuant to the procedures of MGL c. 40A, § 9A, the following uses shall be allowed only upon the grant of a special permit by the Zoning Board of Appeals:

- (1) Adult bookstores.
- (2) Adult motion-picture theaters.
- (3) Adult paraphernalia stores.
- (4) Adult video stores.
- (5) Establishment which displays live nudity for its patrons. **[Added 5-6-2008 STM, Art. 7]**

B. Requests may be made for permits for more than one of the above uses in one location.

### **§ 210-92. Applicability. [Amended 5-7-2007 ATM, Art. 25]**

The uses permitted by this article may be allowed only upon the issuance of a special permit by the Zoning Board of Appeals, only within the Business, Downtown Business and the Rural Business zoning districts. Such uses shall be subject to all of the requirements of this article for those districts and shall be in accordance with the additional requirements specified herein.

### **§ 210-93. General requirements.**

The uses referred to in this article may be permitted within the above districts, provided that they meet the following requirements:

- A. Such use shall not be conducted within a building in which other uses are located which admit persons under the age of 18.
- B. Such use shall be permitted only when located outside the area circumscribed by a circle which has a radius of 400 feet from the following specified uses or zoning districts:
  - (1) Any residence zoning district (RA, RB, RLF or A).
  - (2) Any church or other religious facility or institution.

- (3) Any public or private school or a public or private child day-care facility.
- (4) A youth center.
- (5) An arena or any other building or facility of a similar nature which admits persons under the age of 18.
- (6) Any library.
- (7) Any public park.
- (8) Any establishment which must obtain a special permit pursuant to this article.
- (9) Any establishment which has received a license under the provisions of MGL c. 138, § 12.

The radius distance shall be measured by following a straight line, without regard to intervening buildings or structures, from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property or the land use district boundary line from which the proposed adult use is to be separated.

- C. The premises and all buildings thereon in which such use occurs must comply in all respects with the requirements of the Hopkinton Zoning Bylaw which pertain to the district in which the said premises are located. In addition, the provisions of Article XX, Site Plan Review, as well as any design review requirements, shall apply to the premises.
- D. Signs shall be permitted subject to the provisions of Article XXVII, Signs. **[Amended 5-7-2007 ATM, Art. 25, 5-4-2009 ATM, Art. 18]**

### **§ 210-94. Application information.**

- A. The application for any such special permit in accordance with this article must include the following items:
  - (1) The name, address, business address, social security numbers and telephone numbers and telephone numbers of the owner or owners of the business which has made the application for such special permit. **[Amended 5-6-2008, STM, Art. 7]**
  - (2) The name, address, business address, social security numbers and telephone numbers of all persons having any equity or other interest, including but not limited to security interest, liens, mortgages or other interest in the said business, as well as the name, address, business address and telephone number of all officers, directors, shareholders and trustees of all persons or entities having any interest in the said business. **[Amended 5-6-2008, STM, Art. 7]**
  - (3) The name, address, business address and telephone numbers of all managers and all other employees that will work in the premises.
  - (4) The name, address, business address and telephone number of the owner of the property upon which the business is situated and the name and address of any and all lessees and sublessees of the said premises.

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- (5) Such actions and precautions concerning the security of the premises as the applicant intends to take with respect to the premises.
  - (6) The site plan referred to in Article XX, Site Plan Review, of this Chapter.
  - (7) A list of any and all merchandise which is to be offered for sale or distribution, either as salable merchandise or as samples or for other distribution at no cost or in any other manner by the business.
- B. Should any change in any of the above items in Subsection A (1) through (7) occur at any time during the period of possession of a special permit hereunder, the permit holder shall forthwith provide the Zoning Board of Appeals with such new information.

### **§ 210-95. Hours of operation.**

The hours of operation of the business upon the premises shall be as determined by the Zoning Board of Appeals in the special permit.

### **§ 210-96. Special permits.**

- A. The Zoning Board of Appeals may, in its discretion, issue a special permit for such use in accordance with the procedures of Article XXII of this Chapter and the conditions, provisions and requirements of said article.
- B. No person who has been convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28, shall be granted a special permit pursuant to this article.
- C. Special permits to be issued hereunder shall only be issued following public hearings which shall be held within 65 days after the filing of an application with the Zoning Board of Appeals, a copy of which shall be given forthwith to the Town Clerk by the applicant at the time of filing with the Zoning Board of Appeals.
- D. Any special permit granted under this article shall lapse within one year from the date of issue, which period shall not include the time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17, if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within such period except for good cause.

### **§ 210-97. Use violative of other laws prohibited.**

Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any other Town bylaw or statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter, or the exhibition or public display thereof.

### **§ 210-98. Severability.**

If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid, unenforceable or unconstitutional by any reviewing agency or by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. It is the intention of the Town of Hopkinton that it would have adopted this article and each section, subsection,

sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid, unenforceable or unconstitutional.

**ARTICLE XVI**  
**Wireless Communications Facilities**  
**[Added 5-5-1997 ATM, Art. 26;**  
**amended 5-7-1998 ATM, Art. 41]**

**§ 210-99. Purpose.**

The purpose of this article is to minimize the adverse impacts of wireless communications facilities on adjacent properties and residential neighborhoods, to minimize the overall number and height of such facilities to only that which is essential and to promote the shared use of existing facilities to reduce the need for new facilities.

**§ 210-100. General requirements.**

- A. No wireless communications facility shall be erected or installed except in compliance with the provisions of this article. Wireless communications facilities are allowed in all zoning districts. A special permit is required from the Board of Appeals to erect or install a wireless communications facility. Any proposed extension in the height, addition of cells, antenna or panels, or construction of a new or replacement facility, shall require the submission of a new application for a special permit.
- B. Whenever possible, wireless communications facilities shall be housed in nonresidential zoning districts. Ground support facilities and fencing shall be suitably screened from view.
- C. Structures shall be removed within one year of cessation of use. If applicable, annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) and the American National Standards Institute and required maintenance shall be filed with the Director of Municipal Inspections by the special permit holder.

**§ 210-101. Regulations.**

- A. To the extent feasible, all service providers shall collocate on a single facility. To the extent technologically practicable, towers shall be designed to structurally accommodate the maximum number of users. The intent of this requirement is to reduce the number of towers which will be required to be located within the community.
- B. New towers shall be considered by the Board of Appeals only after a determination by the Board that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.
- C. In no event shall any tower be located closer than two miles to any other tower, except after presentation of evidence of need therefor to the Board of Appeals and the grant of a variance by it.
- D. Tower height shall not be more than 100 feet above the existing grade, except after presentation of evidence of need therefor to the Board of Appeals and the grant of a variance by it.
- E. A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base. This setback requirement shall not apply to a property line of Interstate Routes 495 and 90.
- F. To the extent feasible, all network interconnections from the communications site shall be via land lines.

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- G. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- H. The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The Board of Appeals may impose reasonable conditions to ensure this result, including painting and lighting standards.
- I. Traffic associated with the tower and accessory facilities and structures shall not adversely affect adjacent ways.
- J. Applicants proposing to erect wireless communications towers, accessory facilities and structures on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Hopkinton to conduct wireless communications services on municipally owned property.
- K. The height of antennas located on residential buildings or in the yards of residential structures shall not exceed the tree line on the lot upon which the building or yard is located.
- L. Facilities located on nonresidential structures shall not exceed 10 feet in height above the roofline of the structure. This regulation shall not apply to facilities located within structures.
- M. An applicant proposing a wireless communications facility in a residential zoning district must demonstrate to the satisfaction of the Board of Appeals that the visual, economic and aesthetic impacts of the facility on residential abutters will be minimal. The applicant must also demonstrate that the facility must be located at the proposed site due to technical, topographical or other unique circumstances. Further, the tower must be located no less than 500 feet from the nearest existing residential structure.

### **§ 210-102. Design guidelines.**

- A. All wireless communications facilities shall be sited in such a manner that the view of the facility from adjacent abutters, residential neighbors and other areas of Town shall be as unobtrusive and limited as possible. All facilities shall be painted or otherwise colored so they will blend in with the landscape or the tower on which they are located. A different color scheme shall be used to blend the structure with the landscape below and above the tree or building line, if so required by the Board of Appeals.
- B. Antennas shall be situated on or attached to a structure so as to be screened and to be not visible from abutting streets. Freestanding antennas shall be located on the landscape so as to minimize the visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and/or installed to blend into the structure and/or the landscape.
- C. Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the rural and scenic character of the area and of the Town and shall not be constructed of razor wire.
- D. Night lighting of towers shall be prohibited unless required by the FAA or the Board of Appeals. Lighting shall be limited to that needed for emergencies and/or as required by the FAA or the Board of Appeals. If necessary, ground lighting for the equipment sheds shall be of minimum standards to satisfy security and safety requirements and shall not spill off the site in any direction.
- E. There shall be a minimum of one parking space for each facility, to be used only in connection with the maintenance of the site and not for the permanent storage of vehicles or other equipment.

### **§ 210-103. Application procedure.**

- A. All applications for wireless communications facilities shall be made and filed on the applicable application form in compliance with Board of Appeals requirements. The Board of Appeals may

develop and adopt a list of required submission materials in addition to those contained in this Chapter. The following information must be submitted:

- (1) A locus plan at a scale of one inch equals 1,000 feet which shall show all property lines, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within 500 feet of the facility.
  - (2) A color photograph or rendition of the proposed tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the tower from the nearest street or streets.
  - (3) The following information prepared by a registered professional engineer:
    - (a) A description of the tower and the technical, economic and other reasons for the proposed location, height and design.
    - (b) Confirmation that the facility complies with all applicable federal and state standards.
    - (c) A description of the capacity of the facility, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
  - (4) If applicable, a written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the FAA, FCC, Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
  - (5) Applicable fees as established by the Board of Appeals.
- B. After an application is submitted, the Board of Appeals may require that the applicant perform a balloon test or other test in the field sufficient for it to comprehend the proposed height and location of the facility in relation to the surrounding area.

### **§ 210-104. Special permit criteria.**

Applications for a special permit shall be approved or approved with conditions if the petitioner can fulfill the requirements of these regulations to the satisfaction of the Board of Appeals. Applications for a special permit may be denied if the petitioner cannot fulfill or address the requirements of these regulations to the satisfaction of the Board of Appeals. The Board shall consider the following factors:

- A. The applicant shall have complied with all of the requirements and demonstrated to the Board all of the factors set forth in all of the sections of this article.
- B. When considering an application for a wireless communications facility, the Board shall strongly consider the proximity of the facility to and its impact upon residential dwellings.
- C. When considering an application to place an antenna on a structure, the Board shall strongly consider the visual impact of the unit from the abutting neighborhoods and street(s).

### **§ 210-105. Exemptions.**

- A. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC is exempt from the provisions of this article, provided that the tower is not used or licensed for any commercial purpose.
- B. Towers used for agriculture, horticulture, floriculture or viticulture or for religious or educational purposes to the extent as set forth in MGL c. 40A, § 3. For the purposes of this Chapter, the providers of wireless communications facilities shall not be considered public service corporations or public utilities. No wireless communications facility shall be erected or constructed unless an application has

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first been submitted to the Board of Appeals and the special permit referred to herein has been obtained.

- C. The provisions of Article XX, Site Plan Review, shall not apply to wireless communications facilities.

### ARTICLE XVIA

#### Senior Housing Development

[Added 5-3-1999 ATM, Article 21; amended 5-5-2003 ATM, Article 23; deleted 5-2-2016 ATM, Art. 34]

### ARTICLE XVII

#### Open Space and Landscape Preservation Development

[Added 4-15-1988 ATM, Art. 48; amended 4-11-1989 ATM, Art. 19; 6-11-1990 ATM, Art. 23; 5-4-1993 ATM, Art. 21; 5-3-1994 ATM, Art. 25; 5-1-1995 ATM, Arts. 32 and 33; 5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24; 5-2-2005 ATM, Art. 27; 5-1-2006 ATM, Art. 35; 5-7-2007 ATM, Arts. 25 and 26, 5-3-2010 ATM, Art. 43]

#### § 210-106. Purpose. [Amended 5-1-2006 ATM, Art. 35]

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural and historic landscape features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics, such as topography, vegetation, water bodies, wetlands, open spaces, such as farmlands and meadows, historic resources major scenic views and wildlife habitats, the following regulations are established. It is not the intent of this article to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

#### § 210-107. Applicability. [Amended 5-3-1994 ATM, Art. 25]

Open space and landscape preservation development shall be allowed within Residence B, Residence Lake Front and Agricultural A zoning districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein.

#### § 210-108. General requirements.

- A. Any parcel of land that is located within a Residence B, Residence Lake Front or Agricultural zoning district and that may be developed as a conventional subdivision may be considered for an open space and landscape preservation development subject to a special permit issued by the Planning Board. [Amended 5-2-2000 ATM, Art. 34; 5-6-2015 ATM, Art. 35]
- B. After an open space and landscape preservation development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

#### § 210-109. Permitted uses.

Permitted uses shall be as follows:

- A. Detached single-family dwellings, as defined, including all accessory uses as permitted in this Chapter for the district in which the land lies.

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- B. Uses permitted within the common open space as described in these regulations.
- C. Recreational facilities consistent with open space and landscape preservation development purposes.

### § 210-110. Minimum requirements.

- A. Size: The total area of the tract proposed for open space and landscape preservation development shall be at least 10 acres or 5 acres if located adjacent to open space that will be expanded by the proposed plan if such open space is already protected by an existing conservation restriction or similar deed restriction, or will be protected by such a restriction in accordance with a pending application to the Planning Board or a condition of a Planning Board approval. [Amended 5-6-2015 ATM, Art. 35]
- B. Density: The total number of building lots on the tract proposed for open space and landscape preservation development shall be calculated using the following equations. The resulting number of lots shall be a guide, and the total number of lots shall be determined by the Board using the following as guidelines:
  - (1) Conventional subdivision plan submitted by the applicant.
  - (2) Information provided by the applicant indicating the development potential of the land.
  - (3) The following equation. The variables for total parcel area and wetlands shall be entered in square feet. When the total number of lots calculated by the equation results in a fraction, the total number of lots shall be rounded down. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34]

- (a) In Residence B and Residence-Lake Front Districts:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{45,000}$$

- (b) In the Agricultural District:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{60,000}$$

### § 210-111. Intensity regulations. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24, 5-4-2005 ATM, Art. 27; 5-1-2006 ATM, Art. 35, 5-3-2010 ATM, Art. 43]

The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an open space and landscape preservation development if the Planning Board finds that such reduction will result in better design, improved protection of historic, natural and scenic resources and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements unless a further reduction is necessary in order to preserve a historic structure.[Amended 5-3-2010 ATM, Art. 43]

#### TABLE OF MINIMUM REQUIREMENTS

| District                   | Zoning Districts |              |                      |
|----------------------------|------------------|--------------|----------------------|
|                            | Residence B      | Agricultural | Residence-Lake Front |
| Minimum area (square feet) | 25,000           | 30,000       | 30,000               |

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|                                   |    |     |     |
|-----------------------------------|----|-----|-----|
| Minimum frontage (feet)           | 75 | 100 | 100 |
| Minimum front yard setback (feet) | 40 | 50  | 30  |
| Minimum side yard setback (feet)  | 20 | 20  | 20  |
| Minimum rear yard setback (feet)  | 20 | 20  | 20  |

- A. The lot frontage depth requirement contained in this Chapter, Article I, § 210-4, Definitions, definition of "lot frontage," may be waived by the Planning Board in order to achieve the purposes of this article.
- B. Dead-end streets may be permitted in an open space and landscape preservation development but shall not exceed 1,000 feet in length. No dead-end street shall provide access to more than 10 building lots.
- C. Common driveways may be permitted in an open space and landscape preservation development, provided that each common drive serves no more than two lots. The requirement in this Zoning Bylaw that a driveway providing the principal access to a lot be across the designated frontage of the lot shall not apply when a common driveway is to be utilized in an open space and landscape preservation development; provided, however, that the common driveway must cross the designated frontage of one of the lots it serves.

### § 210-112. Development standards.

- A. Concept plan standards. Prior to the issuance of a special permit for an open space and landscape preservation development, the applicant shall submit the information necessary to demonstrate that the following standards have been met:
  - (1) The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development.
  - (2) The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
  - (3) The site design shall preserve and, where possible, enhance the historic and natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.
  - (4) The site design shall identify and ensure preservation of significant and special historic and natural features, and use of § 210-117.2, Lots with Historic Structures, shall be considered as a mechanism to do so, where appropriate. **[Amended 5-1-2006 ATM, Art. 35; Amended 5-2-2016 ATM, Art. 35]**
- B. Definitive plan standards. Prior to the approval of a definitive plan based upon the open space and landscape preservation concept plan, the applicant shall submit the information necessary to demonstrate that the following standards have been met. These standards are in addition to the requirements of the Hopkinton Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.
  - (1) The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon but shall not be limited to the locations, design and construction of roadways, buildings and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.

- (2) Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.
- (3) Proper soil erosion and sedimentation control measures shall be employed to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

### **§ 210-113. Open space use and design standards.**

- A. Within an open space and landscape preservation development, no less than 50% of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. The Planning Board may reduce the common open space requirement to 30%, if it is demonstrated that a minimum lot area of 45,000 square feet is required because of soils and topographical conditions, or if it would facilitate the preservation of a historic structure. No more than 50% of the common open space shall contain wetlands as defined by MGL c. 131, § 40. **[Amended 5-3-2010 ATM, Art. 43]**
- B. The common open space shall be designed and maintained in accordance with the following standards:
  - (1) Areas to remain as naturally existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.
  - (2) Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.
  - (3) Common open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
  - (4) No more than 20% of the common open space shall be covered by man-made impervious surfaces.
  - (5) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.
  - (6) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the common open space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms with the intent and purpose of this article. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed 5% of any common open space parcel. **[Added 5-1-1995, ATM, Art. 32]**

C. Buffer areas.

- (1) There shall be a buffer at the perimeter of the site consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than 100 feet in width. The buffer shall be considered common open space. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, or would allow a historic structure to be preserved the buffer may be reduced. If, however, the perimeter of the site abuts a Business (B), Downtown Business (BD), Rural Business (BR) or Industrial A (IA) or Industrial B (IB) zoning district, the Planning Board may require the buffer area abutting a B, BR, IA or IB District to be greater than 100 feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts. **[Amended 5-7-2007 ATM, Art. 25 and Art. 26, 5-4-2009 ATM, Art. 25, 5-3-2010 ATM, Art. 43]**
- (2) The Board may require no-cut easements, conservation restrictions or the like where the buffer requirement has been reduced. These easements and restrictions shall be on private property, shall not be considered a buffer and shall not be included in common open space calculations.
- (3) Retention and/or detention ponds may be permitted in the buffer area upon approval of the Planning Board. Structures shall not be permitted in the buffer area. **[Amended 5-1-1995, ATM, Art. 32]**
- (4) Buffer areas shall remain substantially in their current natural state; provided, however, that such areas may include new trails and trailhead parking areas as may be approved by the Planning Board. **[Amended 5-6-2015 ATM, Art. 35]**

**§ 210-114. Common open space ownership and management.**

- A. Common open space in any open space and landscape preservation development shall be conveyed a) to the Town and may be accepted by it for park or open space use; b) a nonprofit corporation, the principal purpose of which is the conservation of open space; or c) a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the town, a conservation restriction enforceable by the Town shall be recorded, which shall provide that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses, such as parking or roadway. **[5-2-2000 ATM, Art. 34]**
- B. If the common open space is not to be conveyed to the town, then the applicant shall include, as part of the covenant, a provision that the common open space will be deeded as approved by the Planning Board. In addition, the covenant shall not be released until proof of ownership has been provided to the Planning Board.
- C. If the common open space is not to be conveyed to the town, the applicant for an open space and landscape preservation development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence, provided that, if the Town is required to perform any maintenance work, the owners of lots within the open space and landscape preservation development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

- D. The Planning Board may require that all or such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity. **[Amended 5-1-1995 ATM, Art. 33]**
- E. The common open space shall be conveyed prior to the issuance of the first building permit in an open space and landscape preservation development. The Planning Board may grant an extension of time to convey any portion of the common open space, but only if the entity or agency to whom the open space will be conveyed concurs with the request, or in the case of a homeowners association still under the control of the applicant, the intended recipient of the conservation restriction shall concur with the request. **[Amended 5-1-2017 ATM, Art. 35]**

### **§ 210-115. Application and review process.**

The application process for an open space and landscape preservation development is comprised of two steps. In the first step, the applicant submits a concept plan, as outlined below, which describes the overall development plan. The Planning Board shall grant or deny a special permit based upon the information contained in the concept plan. If the special permit is granted, the applicant then submits a definitive plan, as described below, based upon the concept plan. The Planning Board then reviews the plan as a definitive subdivision plan. Two separate public hearings, one for the special permit and one for the definitive plan, must be held.

#### **A. Concept plan.**

- (1) The applicant for an open space and landscape preservation development special permit shall first submit 10 copies of a concept plan as outlined below. The applicant shall also submit a sketch plan at the same scale showing how development of the parcel would be achieved by a conventional subdivision plan, in accordance with all applicable land use regulations. All applications for a special permit under this section shall be referred by the Planning Board to the Board of Health, Conservation Commission and other board/agency/department for its review and comments within 14 days of its submission to the Planning Board. Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Planning Board and the applicant within 35 days of receipt of the referral request from the Planning Board or there shall be deemed to be no opposition or desire to comment. The Planning Board shall not act upon said special permit until either comments from referred boards or agencies have been received or said 35 days from the date of the referral request have elapsed, whichever is sooner. A public hearing shall be held in conformance with MGL, c. 40A, § 9.
- (2) Concept plan. All applicants for open space and landscape preservation development special permits shall submit a concept plan prepared by a professional landscape architect registered in Massachusetts. The concept plan shall contain the following information, in addition to the requirements of a preliminary plan as specified in the Hopkinton Subdivision Rules and Regulations, Section 5.2, and information sufficient to illustrate and establish that the concept plan standards and special permit criteria of this section have been met: **[Amended 5-5-2003 ATM, Art. 24; Amended 5-4-2009 ATM, Art. 25]**
  - (a) Existing landscape features, such as steep topography, including a delineation of areas with slopes over 25%, wetlands, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hilltops and ridges.
  - (b) Existing open areas, such as forests, farm fields, meadows and major long views.

- (c) In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.
- (3) Special permit criteria. The special permit shall be granted only if the Planning Board finds each of the following:
  - (a) The development meets the purpose of an open space and landscape preservation development as described in § 210-106.
  - (b) The development standards contained in § 210-112A(1) through (4) have been met.
  - (c) The common open space is designed in accordance with the standards set forth in § 210-113B.
  - (d) The common open space is designed in accordance with the standards set forth in § 210-113C.
  - (e) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.
  - (f) The open space and landscape preservation development provides for efficient use and delivery of municipal and other services and infrastructure.

**B. Definitive plan.**

- (1) If the open space and landscape preservation development special permit is granted, the applicant shall submit a plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. In accordance with MGL c. 41, § 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this article, the Subdivision Control Law, and the special permit. The Planning Board then shall review the aspects of the open space and landscape preservation development with regard to its compliance to the Subdivision Control Law, and hold a public hearing as required by MGL c. 41, § 81T. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or roadways to be placed closer to a dwelling unit within 500 feet of the project and/or a change in the development pattern which adversely affects natural landscape features and open space. If the Planning Board finds that a substantial variation exists, it must hold a public hearing on the modifications of the concept plan.
- (2) The concept design review fee will be calculated as the preliminary plan design review fee in the Hopkinton Subdivision Rules and Regulations. The definitive plan design review fee will be calculated as the definitive design review fee in the Hopkinton Subdivision Rules and Regulations.

**§ 210-116. [Removed 5-6-2015 ATM, Art. 39]**

### ARTICLE XVIII Supplementary Regulations

#### **§ 210-117. Minimum lot frontage and area. [Amended 5-2-2011 ATM, Art. 43]**

- A. A lot in common ownership which conforms with the minimum lot area and minimum lot frontage required in this Chapter shall not be reduced so as to become nonconforming.
- B. Lot area and width requirements shall not apply to a lot which at the time of the adoption or amendment of this Chapter cannot be made to conform to the requirements for the district in which it is located, provided that said lot has been duly recorded by plan or deed or assessed as a separate parcel before the adoption or amendment of this Chapter. **[Amended 5-4-2009 ATM, Art. 25]**

#### **§ 210-117.1. Lots in two or more residence [Amended 5-6-2015 ATM, Art. 33]**

- A. If a lot is located in two or more residence districts, all of the lot shall be considered as lying entirely within the district having the largest area and frontage requirements.

#### **§ 210-117.2. Lots with Historic Structures [Added 5-2-2011 ATM, Art. 44]**

- A. A lot may be created which does not meet the size and setback requirements of this Chapter upon the issuance of a special permit by the Planning Board, if the following criteria are met:
  - (1) The lot to be created will contain an Historic Structure;
  - (2) The Historic Structure which will be located on the lot is either:
    - (a) Presently situated on a lot for which an application has been submitted to the Town for approval of any single or multi-family residential development, an approval-not-required plan pursuant to MGL c.41 § 81P, or a construction project subject to Article XX, Site Plan Review, and the Historic Structure will remain in its present location; or
    - (b) Planned to be moved from a lot or within a lot for which an application has been submitted to the Town for approval of any single or multi-family residential development, an approval-not-required plan pursuant to MGL c.41 § 81P, or a construction project subject to Article XX, Site Plan Review.
  - (3) The Planning Board finds that the proposed lot is in harmony with the general purpose and intent of this Chapter.
- B. The special permit shall be subject to such conditions and safeguards as the Planning Board may prescribe, including the recording of an historic preservation restriction. **[Amended ATM 5-6-2015, Article 39]**
- C. Administration. Within seven days of receipt of the special permit application, the Planning Board shall transmit a copy of the application to the Historical Commission for comment and recommendations.

#### **§ 210-118. Setbacks.**

- A. No building need provide a greater setback or front yard than the average provided by the nearest principal buildings on the adjoining side lots. In determining such an average, a vacant lot shall be considered as though it had a building meeting the minimum setback requirements from the street line.

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- B. All structures must meet the minimum setback requirements from the street line as required in this Chapter for each street abutting the lot. **[Added 5-1-1995 ATM, Article 35]**

### **§ 210-119. Yards.**

Required side yard and rear yard areas may be varied in the case of an irregular, narrow or shallow lot, or a lot unusual in shape or topography, upon the granting of a special permit by the Board of Appeals.

#### **§ 210-119.1. Driveways. [Added 5-2-2000 ATM, Article 30]**

- A. A driveway within a wetland resource area shall be a minimum of 12 feet in width for the traveled way. The definition of "wetland resource area" shall be that contained in the Wetlands Protection Act and/or the Hopkinton Wetlands Protection Bylaw

#### **§ 210-119.2. Highway buffer. [Added 5-2-2000 ATM, Article 31, Amended 5-7-2007 ATM, Article 26]**

On all lots which abut Interstate Routes 495 and/or 90, in every zoning district with the exception of the Rural Business and Industrial A and Industrial B Districts, there shall be a buffer adjacent to Interstate Routes 495 and 90 a minimum of 50 feet wide, measured from the edge of the highway right-of-way/property line. Buffer areas shall remain wooded, and no clearing of trees or other vegetation or the alteration of other landscape features shall be permitted. No buildings, sewage disposal systems, paved areas, athletic fields, active recreation areas or any other use which requires the clearing of trees or other vegetation or the alteration of other landscape features, with the exception of wireless communication facilities, will be permitted within the buffer area.

### **§ 210-120. Common Driveways [Added 5-4-2009 ATM, Article 26]**

#### **A. Purpose**

The purpose of this Section is to promote public safety, provide for adequate sight distance, avoid site disturbance, minimize the alteration of topographical characteristics and natural resource areas, which include wetlands and historic resources, minimize stormwater runoff and retain a rural residential character. It is not the intent to make undevelopable land developable.

#### **B. Applicability**

With the exception of common driveways within Open Space and Landscape Preservation Development subdivisions (Article XVII), construction of common driveways shall require a special permit from the Planning Board. The term common driveway shall mean a single private way providing vehicular access to 2 single family dwellings (the "benefitted parcels").

Common driveways must be privately owned and maintained, shall not be considered streets or public ways, and shall not constitute a part of the designated or legal frontage for any lot.

#### **C. Design Requirements**

All common driveways must comply with the following design requirements:

- (1) A common driveway must extend from the benefitted parcels to a public or private street right of way. A common driveway, as well as the individual driveways beyond the common portion of the

driveway, must be located entirely within the benefitted parcels. A common driveway must intersect the street right of way within the legal frontage of one of the benefitted parcels.

- (2) The benefitted parcels must have permanent access to the common driveway by easements recorded in the South Middlesex Registry of Deeds.
- (3) The deeds to the benefitted parcels shall require that the owners thereof must establish a maintenance association, the purpose of which is to provide for the maintenance and repair of the common driveway, or otherwise adequately provide for the maintenance and repair of the common driveway. The term “maintenance” shall include, but not be limited to, snow plowing, maintaining design specifications, and repair and maintenance of surfaces and stormwater management facilities. All property contiguous to the common driveway must be a part of the benefitted parcels which must be included within the maintenance association. The easement containing the common driveway shall be a minimum of 20 feet in width.
- (4) Minimum Construction Standards.
  - (a) The radius of the common driveway intersection with the street right of way must be sufficient to enable emergency vehicles to exit and enter the common driveway without leaving the surface of the common driveway. Common driveways shall accommodate the Single-Unit Truck (SU-30) vehicle turning radius at all curve radii, in accordance with the January, 2006 MassHighway Project Development and Design Guide.
  - (b) A minimum depth of 8 inches of gravel must be installed the full width of the entire common driveway traveled way.
  - (c) The maximum grade of the common driveway shall be no greater than 5% within 40 feet of the street right of way. The maximum grade of a common driveway for its full length beyond the initial 40 feet is 15%.
- (5) House numbers of sufficient visibility shall be provided at the entry point onto the street right of way and at each individual driveway along the common driveway, so that emergency vehicles can locate each dwelling.
- (6) Adequate sight line distance must be provided for vehicles exiting the common driveway.
- (7) The minimum width of the traveled way of a common driveway must be no less than 12 feet.
- (8) Passing turnouts shall be provided which provide a total width of at least 18 feet for a distance of 25 feet, where needed for safe sight lines of passage.
- (9) Provisions to permit the turn around of a SU-30 vehicle shall be provided at the terminus of all common driveways longer than 500 feet.

### D. Administration

- (1) A special permit is required from the Planning Board to construct a common driveway. A record owner desiring to construct a common driveway shall file with the Planning Board an application, together with such plans, drawings, specifications, fees and additional information as required by the Planning Board.

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- (2) The Planning Board shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- (3) An Applicant must provide documentation and plans which are sufficient, in the opinion of the Planning Board, for it to determine that the requirements, provisions and Approval Criteria of this Section are met. Such documentation shall include, but shall not be limited to, information on impacts to the environment, public safety, scenic roads and scenic views, and lot development.
- (4) Approval Criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:
  - (a) The common driveway will provide safe and reasonable access for fire, police and emergency vehicles.
  - (b) The common driveway meets the purpose and requirements of this Section.
  - (c) The common driveway will minimize the environmental impacts.
  - (d) The common driveway will not serve more than two single family dwellings.
- (5) The Planning Board may approve the special permit with conditions, which may include, but shall not be limited to: a) a performance bond, secured by deposit of money or negotiable securities, is posted with the Town to guarantee proper construction; and b) construction standards for the common driveway.

**§ 210-121. Maximum heights. [Amended 5-4-1993 ATM, Art. 19; 5-5-1997 ATM, Art. 26; 5-5-2003 ATM, Art. 27]**

In the RA, RB, RLF and A Districts, no structure used for residential purposes shall be erected to a height greater than 40 feet. Structures used for nonresidential purposes in said Districts shall not be erected to a height greater than 35 feet. Chimneys, spikes, towers and other projections not used for human occupancy may be constructed above the foregoing height limitations upon the grant of a special permit by the Board of Appeals; provided, however, that no wireless communications facility shall be erected except in compliance with Article XVI, Wireless Communications Facilities.

**§ 210-121.1. Buffers around nonresidential uses in residential districts. [Added 5-3-1999 ATM, Art. 22]**

- A. A lot which contains a nonresidential use in a Residence A, Residence B, Residence Lake Front or Agricultural District shall contain a buffer area at the perimeter of the lot. The buffer area shall consist of trees, shrubs, vegetation and topographic features sufficient to separate and/or visually screen the use from abutting properties in a residential district and shall be located on the same lot as the nonresidential use. For the purposes of this section, the following shall not be considered nonresidential uses:
  - (1) Lawful and permitted accessory uses to a residential use.
  - (2) Home occupation.
  - (3) Home professional office.

- (4) Home personal service.
  - (5) Home business workshop.
  - (6) Home specialty retail.
  - (7) Agriculture, horticulture, floriculture and viticulture.
  - (8) Utilities.
  - (9) Permanently restricted open space for passive recreation.
  - (10) Undeveloped open land.
- B. The buffer shall be no less than 25 feet wide in a Residence A District; 50 feet wide in a Residence B and Residence Lake Front District; and 75 feet wide in an Agricultural District. The buffer requirement shall not apply with regard to the area adjacent to the street providing the legal frontage for the lot. The buffer requirement shall not apply to nonresidential uses which are located on a lot which abuts a residential district but, rather, shall apply only to nonresidential uses which are upon premises located within a residential district.
- C. Buffer areas shall remain in their natural state. If, in the opinion of the Planning Board, the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs, plantings or fencing may be required.
- D. Activities and structures not permitted within the buffer areas include, but are not limited to: light poles and/or fixtures; parking lots; driveways; buildings; athletic playing fields; playgrounds. Pedestrian and bicycle trails may be located within buffer areas.
- E. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the use from adjacent property, the width of the buffer may be reduced. The buffer width requirement may also be reduced in the event that the lot was previously developed and used for a permitted use within the district and permanent structures were erected within the buffer area. In those circumstances, it is the intent of the Board not to waive the buffer requirement, but, rather, to provide alternative screening arrangements, such as fencing and planting where possible.

### **§ 210-122. Earth removal.**

Earth removal shall be permitted only in accordance with Chapter 96, Earth Removal, of the Bylaws of the Town of Hopkinton, regardless of zoning district.

### **§ 210-123. Trailers. [Amended 3-7-1963 ATM, Art. 35]**

- A. No trailer park or trailer camp shall be allowed within the borders of the town.
- B. A trailer shall not be used for dwelling purposes on any land, regardless of zoning, except as hereinafter provided: not more than one trailer may be used for dwelling purposes upon a lot of land at any one time and then only for a period not to exceed 14 days and for such further time as the Director of Municipal Inspections shall allow, not to exceed 30 days. **[Amended 3-7-1963 ATM, Art. 35]**

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**§ 210-124. Off-street parking.** [Amended 4-14-1975 ATM, Article 30; 4-13-1978 ATM, Article 39; 10-10-1984 STM, Article 20; 4-9-1985 ATM, Art. 36; 6-11-1990 ATM, Article 28; 5-5-1997 ATM, Article 25; 5-5-2008 ATM, Article 27 & Art 29; ATM 5-3-2010, Article 39; 5-7-2012 ATM, Article 52; 5-2-2016 ATM, Article 39]

A. Parking lots shall be designed and located to provide screening from abutting properties, buildings and streets, visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation. Landscaping requirements shall, wherever possible, be met by the retention of existing plants and natural landforms.

B. Parking requirements.

(1) The following off-street parking requirements shall apply to the uses listed below:

| <b>Type of Use</b>                                                                                                                                      | <b>Number of Spaces</b>                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Animal Shelter<br>[5-2-2016 ATM, Article 40]                                                                                                            | 3 spaces per 1,000 square feet of gross floor area                                                          |
| Bed & breakfast<br>[5-5-2008 ATM, Article 29]                                                                                                           | 1 space for each unit available for occupancy                                                               |
| Child care facility<br>[5-3-2004 ATM, Article 29]                                                                                                       | 1 for every 10 children of rated capacity of the facility plus 1 for each staff person on the largest shift |
| Conference center<br>[5-5-2008 ATM, Article 29]                                                                                                         | 2 spaces for every 3 seats                                                                                  |
| Continuing Care Retirement Facility/Assisted Living/Nursing Home Facilities<br>[5-3-2010 ATM, Article 47]                                               | 1 for every 3 beds, plus 1 for each employee on the largest shift                                           |
| Dog Day Care Facility<br>[5-2-2016 ATM, Article 39]                                                                                                     | 1 per 3 dogs                                                                                                |
| General office, medical and dental office, research and development and industrial uses<br>[5-3-2004 ATM, Article 29. Amended 5-7-2012 ATM, Article 52] | 3 per 1,000 square feet of gross floor area                                                                 |
| Health services facility<br>[5-5-2008 ATM, Article 29 Amended 5-7-2012 ATM, Article 46]                                                                 | 3 spaces per 1,000 square feet of gross floor area                                                          |
| Hotel, motel, inn<br>[Added 5-1-2017 ATM, Article 36]                                                                                                   | 1.2 spaces for each unit available for occupancy                                                            |

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|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Museums<br><b>[5-5-2008 ATM, Article 29]</b>                                      | 2 spaces per 1,000 square feet of gross floor area of public floor area, not including corridors and other service areas                                                                                                                                           |
| Nursing home<br><b>[5-3-2004 ATM, Article 29, 5-7-2012 ATM, Article 52]</b>       | 1 for every 3 beds plus 1 for each employee on the largest shift                                                                                                                                                                                                   |
| Places of assembly<br><b>[5-3-2010 ATM, Article 39]</b>                           | 1 for every 2 seats plus 1 for each employee on the largest shift                                                                                                                                                                                                  |
| Recreational uses<br><b>[5-3-2004 ATM, Article 29]</b>                            | 1 for every 5 occupants as permitted by State Building Code                                                                                                                                                                                                        |
| Residential component of mixed use buildings<br><b>[5-3-2004 ATM, Article 29]</b> | 1 for every bedroom                                                                                                                                                                                                                                                |
| Restaurant with customer seats<br><b>[5-1-2017 ATM, Article 33]</b>               | 1 space for every 3 seats plus 1 space for every 2 employees on the largest shift. The term “seats” shall include all customer seats, indoor and outdoor, seasonal and year-round, on the premises.                                                                |
| Restaurant without customer seats<br><b>[5-1-2017 ATM, Article 33]</b>            | 3 spaces, or 1 space for every 300 square feet of gross floor area plus 1 space for every 2 employees on the largest shift, whichever is greater. The term “seats” shall include all customer seats, indoor and outdoor, seasonal and year-round, on the premises. |
| Retail uses                                                                       | 4 per 1,000 square feet of gross floor area                                                                                                                                                                                                                        |
| Warehouse uses                                                                    | 1 per 1,000 square feet of gross floor area                                                                                                                                                                                                                        |

(a) Where a use is not specifically referred to in this paragraph, the requirements for the most nearly comparable use specified above shall apply. In the case of mixed uses on a single lot, the parking requirement shall be the sum of the requirements calculated separately for each area of use, unless a special permit has been issued by the Planning Board pursuant to Section C. **[Amended 5-4-2004 ATM, Article 29, 5-5-2008 ATM, Article 27]**

(b) In the Downtown Business district, the number of parking spaces required shall equal 50% of the amount required in subsection (1) for each non-residential use. The spaces shall be provided using one or more of the methods listed below:

- On the same lot as the use;
- Marked spaces on the street directly adjacent to the use, between the side lot lines of the lot containing the use, and on the same side of the street as the use;
- As provided for in a shared or off-site parking special permit issued by the Planning Board pursuant to Section C. **[Amended 5-3-2010 ATM, Article 39]**

(2) Each parking space shall consist of a rectangle of following minimum dimensions:

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### [5-3-1999 ATM, Art. 19, 5-7-2012 ATM, Article 52]

|                                  |                   |
|----------------------------------|-------------------|
| Small car/compact spaces         | 8 feet by 16 feet |
| Parallel/curbside parking spaces | 8 feet by 22 feet |
| All other spaces                 | 9 feet by 18 feet |

In parking lots containing up to 50 parking spaces, 20% of such parking spaces may be for small car use. In parking lots of 50 spaces or more, up to 40% of such parking spaces may be for small car use. Said small-car spaces shall be grouped in one or more contiguous areas and shall be identified by signs.

- (3) Maneuvering aisles within parking lots and access driveways from the street to parking lots shall not be less than 24 feet in width. If the maneuvering aisle or access driveway will be one-way, a narrower dimension may be proposed, subject to approval of the Planning Board. **[Amended 5-7-2012 ATM, Article 52]**
- (4) As part of the site plan approval process, the Planning Board may allow fewer parking spaces than are required by this Chapter for a use to be constructed, provided that the spaces to be unconstructed shall be delineated on the site plan and indicated as future parking spaces. All or part of said spaces shall be constructed if so required by the Board at a future date or may be constructed by the property owner/tenant at any time without prior Board approval.

### C. Shared and Off-Site Parking **[Added 5-5-2008 ATM, Article 27]**

- (1) The parking required by the uses located on a lot shall be provided on that lot, unless a special permit has been issued by the Planning Board. The Planning Board may issue a special permit to:
  - (a) Reduce the required number of parking spaces when there will be mixed uses on a lot by activities having clearly different peak demand times;
  - (b) Locate some required parking spaces on a separate lot under an agreement between property owners; and
  - (c) Locate some required parking spaces in a separate shared parking lot under an agreement between property owners, when the parking lot is shared by mixed uses having clearly different peak demand times.
- (2) Before granting the Special Permit, the Planning Board shall determine that all parking spaces associated with a use are within practical walking distance. **[Amended 5-6-2015 ATM, Art. 39]** The Planning Board may issue the special permit with conditions, which may include, but not be limited to, the following:
  - (a) A requirement that shared and off-site parking arrangements between property owners be formalized in an instrument that runs with the land and is recorded at the Registry of Deeds;
  - (b) That adequate space is set aside on the lot to construct additional parking spaces in the future should the mix of uses and peak demand times change and require additional parking.

D. Parking space reduction.

A special permit may be issued to reduce the number of parking spaces required for any use. The Planning Board shall be authorized to issue such special permits for uses that are allowed by right or by special permit from the Planning Board; the Board of Appeals shall be authorized to issue such special permits for uses that are allowed by special permit from the Board of Appeals. Before granting the Special Permit, the SPGA shall determine that the provision of parking spaces proposed will be adequate for all parking needs. **[Amended 5-6-2015 ATM, Art. 39]** The special permit may be issued with appropriate conditions, which may include, but not be limited to, provisions for additional parking should uses change over time. **[ATM 5-3-2010, Article 39]**

E. Landscaping and screening requirements. **[Amended 5-5-2008 ATM, Article 27, ATM 5-3- 2010, Article 39]**

- (1) Parking lots shall contain a planting area a minimum of five feet wide around the entire perimeter of the lot. Exceptions may be made in cases where the perimeter of the lot does not abut adjacent property, subject to the approval of the Planning Board.
- (2) Parking lots shall contain around the perimeter and in the interior at least one tree per eight parking spaces.
- (3) Trees shall be planted around the entire perimeter of the parking lot where appropriate, such as adjacent to abutting property and streets.
- (4) Trees to be planted shall be a minimum of 2 1/2 inches in caliper six feet above grade, be of a species common in the area, tolerant of future site conditions and reach an ultimate height of at least 30 feet.
- (5) At least 10% of the interior of any parking lot having 25 or more spaces shall be maintained with landscaping, including trees, in planting areas of at least four feet in width. **[5-7-2012 ATM, Article 52]**
- (6) The portion of any parking lot which abuts a residential district or use shall be screened from such residential district or use by plant materials characterized by dense growth, or a combination of such plant materials, natural landforms and trees, which will form an effective year-round screen. Screening shall be at least five feet in height. Plant materials when planted may be less than five feet in height but not less than three feet in height if of a species or variety which shall attain the required height and width within three years of planting.
- (7) The portion of any parking lot which abuts a public way shall be adequately buffered from such public way by plant materials characterized by dense growth or a combination of such plant materials, trees, natural landforms and other landscape features, such as stone walls. Plant materials may be required to be at least five feet in height. Plant materials when planted may be less than five feet in height but not less than three feet in height if of a species or variety which shall attain the required height and width within three years of planting.

**§ 210-125. Conversions of residential property. [Amended 4-9-1991 ATM, Article 25, 5-7-2007 ATM, Article 26, 5-4-2009 ATM, Article 25]**

The conversion of any house for rental purposes to accommodate not more than four dwelling units may be undertaken in any zoning district except an Industrial A (IA) or Industrial B (IB) District upon grant of a special permit by the Board of Appeals, provided that the exterior is not materially altered and provided that

each dwelling unit so created contains a floor area of at least 600 square feet. Two parking spaces shall be provided on the site for each dwelling unit.

**§ 210-126. Accessory family dwelling unit. [Added 5-4-1993 ATM, Article 20, 5-4-2009 ATM, Article 25]**

- A. The intent and the purpose of this section is to permit accessory dwelling units in single-family residential districts subject to the standards and procedures hereinafter set forth. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the accessory unit remains subordinate to the principal living quarters.
- B. Restrictions. A special permit may be granted by the Board of Appeals for the conversion of an existing or new single-family dwelling to accommodate an additional family living unit by the installation of a common wall or the partitioning of or extension of existing living space.
- C. Use limitations. Such additional family living unit shall at the discretion of the Board of Appeals accommodate up to a maximum of three persons, provided that the owner of record of the structure is a resident of the structure which includes the accessory family dwelling unit. The existing unit shall accommodate an additional family unit only if a) a member of the additional family is related by blood, marriage or adoption to the owner of the premises; or b) a member of the additional family is 60 years of age or older. There shall be no other living unit on the lot upon which such accessory unit is to be located.
- D. Disposal of sewage. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such accessory unit in accordance with the requirements of the Board of Health. Such determination shall be made prior to the application for a special permit, and evidence of same shall be included with such application.
- E. Ingress, egress, access. Adequate provision, as determined by the Director of Municipal Inspections, shall be provided for separate ingress and egress to the outside of each unit. To the extent possible, exterior passageways and accessways shall not detract from the single-family appearance of the dwelling. An interior doorway shall be provided between each dwelling unit as a means of access for purposes of supervision and emergency response. All stairways to additional stories shall be enclosed within the exterior walls of the structure.
- F. Documentation. The Board of Appeals must determine that such conversion, new construction and occupancy of each unit shall meet the requirements of § 210-152 of this Chapter.
- G. Area limitation. Such accessory unit shall be limited to a maximum of 800 square feet in floor area. **[Amended 5-2-2000 ATM, Article 28]**
- H. Plans. Floor plans of the accessory unit and principal residence and a certified site plan showing the dwelling unit on the lot and its relationship to other structures and premises within 200 feet of the lot shall be filed with the application for a special permit.
- I. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a fashion as is consistent with the character of the neighborhood, as determined by the Board of Appeals, which shall seek advice from the Director of Municipal Inspections.
- J. Special permit. No building permit shall be issued in accordance with the special permit issued under this section until the special permit has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the Director of Municipal Inspections.

- K. Occupancy permit; control. No occupancy of the additional dwelling unit shall take place without an occupancy permit issued by the Director of Municipal Inspections. The initial occupancy permit shall remain in force for a period of two years from the date of issue, provided that ownership of the premises is not changed. Thereafter, permits may be issued by the Director of Municipal Inspections for succeeding two-year periods, provided that the structure and use continue to comply with the relevant provisions of the State Building Code, this Chapter and the special permit. Occupancy permits shall not be transferable upon change in ownership or change in occupancy. In such event, an affidavit shall be presented to the Director of Municipal Inspections attesting to the fact that the circumstances under which an occupancy permit was granted will in the future continue to exist. The owner of record is responsible for initiating each application to the Director of Municipal Inspections. Appropriate fees, as established and recorded, may be assessed for each such renewal review, investigation and processing. All documentation presented hereunder must be in form and content satisfactory to the Director of Municipal Inspections.
- L. Definition. Accessory family dwelling unit shall mean a dwelling unit contained within or being an extension of a single-family structure to accommodate an additional family only if a member of the additional family is related by blood, marriage or adoption to the owner of the premises, or a member of the additional family is 60 years of age or older. **[Amended 5-5-2003 ATM, Article 26]**

### **§ 210-126.1. Residential subdivisions of 10 acres or more. [Added 5-2-2000 ATM, Article 33]**

- A. Purpose. The purpose of this section is to preserve the natural and cultural resources of the Town by insuring that development of land for residential use does not consume all or a significant portion of the town's woodlands, fields, farmlands, historic structures and landscapes, cart paths, stone walls, geologic formations, watercourses, wetlands, riparian zones, groundwater recharge areas, hilltops, scenic vistas, areas of critical environmental concern, vernal pools and other significant open spaces, and that such development is undertaken with respect for the land and the town's natural resources. It is the intent of the Town to encourage that residential development be undertaken in accordance with the provisions of the open space and landscape preservation development section of this Chapter when residential development is to occur.
- B. Applicability. Any parcel or parcels of land which, individually, or, if in common ownership with a contiguous parcel or parcels on the effective date of this section, together contain 10 acres or more, shall be subject to the provisions of this section. The development for residential purposes by the subdivision of land as defined in MGL c. 41, § 81L, of any parcel or parcels of land owned individually or under common ownership which comprises 10 acres or more and the development of which occurs within any five-year period shall be considered a residential subdivision of 10 acres or more. For purposes of calculating the size of the parcel or parcels, the area comprising new lots and road rights-of-way shall be included. **[Amended 5-7-2007, Article 30]**
- C. Regulations.
- (1) No residential subdivision of 10 acres or more shall be permitted except after application and approval pursuant to Article XVII, Open Space and Landscape Preservation Development (OSLPD) of this Chapter.
  - (2) After application for approval of a residential subdivision of 10 acres or more pursuant to the OSLPD, the Planning Board shall determine whether the proposal complies with the requirements and criteria of that article. If the Board issues a special permit for an OSLPD concept plan, any subsequent subdivision of the affected parcel shall be conducted in accordance with Article XVII, OSLPD. If the Board does not find that the plan meets the requirements and criteria of Article XVII, OSLPD, the applicant may in that event determine

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whether to pursue development under the OSLPD by revising the plan to meet the requirements and criteria of the OSLPD or by proposing a conventional subdivision.

- (3) In making the determination as to whether development must proceed pursuant to Article XVII, OSLPD, or pursuant to the procedures governing conventional subdivisions, the Planning Board shall evaluate both plans and proposals and select the development method which most closely incorporates the purpose, criteria and requirements of Article XVII, OSLPD, and satisfies, to the greatest extent possible, the purpose of this section.

### **§ 210-126.2. Duplexes. [Added 5-6-2002 ATM, Art. 34, 5-4-2009 ATM, Article 25]**

- A. The intent and purpose of this section is to permit duplexes in the Residence A, Residence B, and Agricultural Zoning Districts subject to the standards and procedures hereinafter set forth, in order that a range of housing options affordable to all citizens be available in the Town. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the duplex is designed to enhance and not detract from the appearance and amenities in the surrounding neighborhood.
- B. Restrictions.
  - (1) A special permit may be granted by the Board of Appeals for the construction of a new duplex.
  - (2) The Board of Appeals shall not grant a special permit if, at the time of application, the number of two-family dwelling units, including, without limitation, duplexes, two-family houses, and buildings containing accessory family dwelling units in Hopkinton is equal to or more than 5% of the total number of dwelling units in Hopkinton.
  - (3) There shall be no more than one duplex per lot.
  - (4) At least one of the duplex units on a lot shall be set aside as permanently affordable and will count toward the 10% statutory goal (c. 40B, § 20) for affordable housing.
- C. Use limitations. There shall be no other living units on the lot upon which a duplex is to be located.
- D. Disposal of sewage. Adequate provision shall be made for the disposal of sewage and waste generated by the duplex in accordance with the requirements of the Board of Health and/or the Department of Public Works. Such determination shall be made prior to the application for a special permit, and evidence of same shall be included with such application.
- E. Storm water management. Adequate provision shall be made for the proper management of storm water runoff from the lot. Evidence of same shall be included with the above application.
- F. Dimensional requirements. Each lot on which a duplex is proposed shall comply with the following dimensional requirements:

Residence A District: All requirements set forth in § 210-8, Residence B (RB) District.

Residence B District: All requirements set forth in § 210-8, Residence B (RB) District.

Agricultural District: All requirements set forth in § 210-14, Agricultural (A) District.
- G. Ingress, egress, access. Adequate provision, as determined by the Director of Municipal Inspections, shall be provided for separate ingress from and egress to the outside of each unit.

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- H. Documentation. The Board of Appeals must determine that the construction and occupancy of each duplex unit shall meet the requirements of § 210-152 of this chapter.
- I. Area limitation. No duplex unit shall exceed a maximum of 1,800 square feet in floor area. Such area shall not include attached or detached garages, attics, or basements. After construction of an approved duplex: in the event that any proposed addition or alteration to any building on the lot will result in any change to the exterior of the building which will be visible from other lots or roadways, and a building permit for such addition or alteration is required, the following procedures must be complied with:
  - (1) If the proposed addition or alteration will result in no increase in floor area, the applicant must submit a plan to the Design Review Board for review and recommendation prior to the issuance of a building permit;
  - (2) If the proposed addition or alteration will result in an increase in floor area, the applicant must submit an application to the Board of Appeals to modify the special permit.
- J. Plans. Floor plans, elevation drawings of each side of any proposed building, and a certified site plan showing the proposed buildings on the lot and their relationship to other structures and premises within 200 feet of the lot shall be filed with the application for a special permit.
- K. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a manner as is consistent with the character of the neighborhood, as determined by the Board of Appeals. The Board of Appeals shall seek the advice of the Director of Municipal Inspections and the Design Review Board in such review. In no case shall the number of parking spaces on the lot be less than two per unit, including spaces inside garages. Unless the Board of Appeals specifically waives the following requirement, the duplex shall be served with two separate driveways, one for each unit.
- L. Design review. The Board of Appeals shall forward a copy of the submission materials to the Design Review Board for review and recommendation. The Design Review Board shall review the exterior design of the proposed buildings, parking, driveways, and landscaping and screening, to determine whether the proposed lot development will be compatible with and not detract from the surrounding neighborhood. Such review shall include consideration of the design guidelines adopted pursuant to § 210-145 of this chapter.
- M. Special permit. No building permit shall be issued in accordance with the special permit issued under this section until the special permit has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the Director of Municipal Inspections.
- N. Separate conveyance. The ownership of each duplex unit may be conveyed or otherwise transferred separately from the other unit. The lot on which the duplex is located shall be held in common ownership. Documents describing the proposed form of ownership and maintenance agreements shall be submitted to the Board of Appeals for its review and approval with the application.
- O. Definition. A duplex is a building which is situated on a single lot and contains two dwelling units which share a common wall or ceiling/floor but are entirely and permanently separated from each other by an unpierced wall extending from the ground to the roof or an unpierced ceiling/floor extending to all exterior walls, except that the building may have a common stairwell exterior to both dwelling units.
- P. Special provisions for low- or moderate-income units.
  - (1) In order to facilitate the creation of affordable housing units in Hopkinton which will count toward the 10% statutory goal (MGL c. 40B, § 20), all applicants for a special permit for one or both duplex units to be occupied by a low- or moderate-income family shall be furnished

with copies of the regulations and guidelines of the Massachusetts Department of Housing and Community Development for approval of such unit as an affordable housing unit for purposes of the statutory goal. Such regulations and guidelines shall include those of the Local Initiative Program and any other program designed to promote the creation of certifiable affordable housing units. Prior to issuance of a special permit for a low- or moderate-income unit which is to be occupied and maintained in accordance with any such program, the Board of Selectmen shall make application to the Department of Housing and Community Development for certification of the unit as an affordable housing unit includable in the Town's inventory of low- and moderate-income housing for the purposes of MGL c. 40B. In the event such application is not approved the special permit shall not be issued. The affordable units shall contain deed restrictions which require that the unit remain affordable in perpetuity. The Board of Appeals may impose permit conditions to ensure that the unit remains affordable, including conditions relating to long-term monitoring and rights of first refusal.

- (2) No building permit shall be issued until certification has been received by the Town of Hopkinton that at least one of the units shall constitute an affordable unit pursuant to MGL c. 40B.
- (3) In the event that such certification is not received, the units shall not be constructed.

### **§ 210-126.3. Animal Shelters [Added 5-2-2016 ATM, Article 40]**

- A. An Animal Shelter may be permitted in any zoning district upon the grant of a special permit from the Board of Appeals, subject to the requirements set forth in this section.
- B. Animal Shelters shall conform to the following provisions:
  - (1) An Animal Shelter shall be located on a lot containing a minimum of three (3) acres;
  - (2) All animals shall be kept indoors after 7:00 PM;
  - (3) Adequate measures shall be implemented to ensure that noise impacts to the surrounding neighborhood are mitigated;
  - (4) Outside areas for animals shall be enclosed by a fence of at least 6 feet in height;
  - (5) Animal waste shall be contained and legally removed in a timely manner;
  - (6) Adequate odor control measures shall be implemented;
  - (7) Adequate screening for abutters shall be provided.

### **§ 210-126.4. Dog Day Care Facilities [Added 5-2-2016 ATM, Article 39]**

- A. A Dog Day Care Facility may be permitted in any zoning district upon the grant of a special permit from the Board of Appeals, subject to the requirements set forth in this section.
- B. Dog Day Care Facilities shall conform to the following provisions:
  - (1) The Dog Day Care Facility shall be located on a lot containing a minimum of three (3) acres;

- (2) There shall be no more than twelve (12) dogs at the Dog Day Care Facility at any one time;
- (3) The hours of operation of the facility shall be as determined by the Board of Appeals in the Special Permit, provided that a Dog Day Care Facility shall not open before 7:00 AM and be open later than 6:00 PM, and a Dog Day Care Facility shall not be open on Saturday or Sunday;
- (4) The outside areas for dogs shall be enclosed by a fence of at least 6 feet in height;
- (5) When the dogs are outside they shall be on the premises and under constant supervision. No more than two (2) dogs shall be outside together before 9:00 AM.
- (6) All dog waste shall be contained and legally removed in a timely manner;
- (7) Adequate odor control measures shall be implemented;
- (8) Adequate measures shall be implemented to ensure that noise impacts to the surrounding neighborhood are mitigated;
- (9) There shall be no overnight care or boarding of dogs;
- (10) Adequate screening for abutters shall be provided;
- (11) Any Special Permit issued for a Dog Day Care Facility shall remain in force for a period of two (2) years from the date of issuance or until there is a change in ownership of the premises, whichever occurs first.

### ARTICLE XIX

#### Nonconforming Lots, Uses and Structures

[Amended 4-13-1978 ATM, Art. 39, 5-2-2011 ATM, Article 43]

#### **§ 210-127. Continued use of existing uses. [Amended 5-2-2011 ATM, Article 43]**

Notwithstanding any possible nonconformity, this Chapter shall not apply to the continued use of existing buildings or structures or of land to the extent of its lawful use at the time of adoption of this Chapter.

#### **§ 210-128. Changes to existing lots, uses and structures. [Amended 5-2-2011 ATM, Article 43]**

##### A. Single and Two Family Residential Dwellings

Alteration, reconstruction, extension or structural change (collectively “alteration”) to a single or two family residential dwelling shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right in the following circumstances, if a) the lot conforms to the minimum lot area and frontage requirements of this Chapter, or b) the lot complied with the minimum area and frontage requirements in effect at the time the lot was created, has not been held in common ownership with adjoining land since rendered nonconforming, and has at least 5,000 square feet of area and 50 feet of frontage:

- (1) Alteration to an existing dwelling which complies with all current size and setback requirements and such alteration also complies with the current size and setback requirements and building height requirements;

- (2) Alteration to an existing dwelling which encroaches upon one or more required yard width or setback requirement, where the alteration will comply with all current setback and building height requirements.

Alteration of a single or two family dwelling which does not conform to the foregoing circumstances shall require the issuance of a special permit by the Board of Appeals upon a finding that the proposed change is not substantially more detrimental to the neighborhood.

### B. Nonconforming Structures

A nonconforming building or structure which is not a single or two family dwelling may be altered, reconstructed, extended or structurally changed only after the issuance of a special permit by the Board of Appeals upon a finding that the proposed change is not substantially more detrimental to the neighborhood.

### C. Nonconforming Lots

A lot which complied with the minimum area and frontage requirements in effect at the time it was created, has not been held in common ownership with adjoining land since rendered nonconforming, and has at least 5,000 square feet of area and 50 feet of frontage, may be built upon for a single or two family dwelling as of right if the dwelling will comply with all applicable regulations of this Chapter. Construction of a single or two family dwelling or other lawful building on such lots where the proposed dwelling or building will not comply with the applicable regulations of this Chapter is permitted only upon the issuance of a special permit by the Board of Appeals and a finding that the proposed change is not substantially more detrimental to the neighborhood.

### D. Nonconforming Uses

- (1) Alteration, reconstruction, extension or structural change (collectively “alteration”) to a nonconforming use to provide for the use in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent shall require the issuance of a special permit by the Board of Appeals upon a finding that the proposed use is not substantially more detrimental to the neighborhood.
- (2) A change from one nonconforming use to another nonconforming use shall require the issuance of a special permit by the Board of Appeals, upon a finding that the proposed use is not substantially more detrimental to the neighborhood and that the proposed use is a similar or more restricted use.
- (3) Where an existing use lacks the required off-street parking facilities for the district in which it is located, such lack shall not render said use nonconforming, but any part of a lot containing such use that is used for parking on the effective date of this Chapter may not be thereafter built upon unless either sufficient additional parking facilities are obtained and made available to keep the ratio of parking space to floor area the same or the remaining number of parking spaces provided conforms to the requirements of this Chapter.

### **§ 210-129. Abandonment. [Amended 4-13-1978 ATM, Art. 39]**

A nonconforming use may not be resumed or changed to another nonconforming use after any of the events or periods described below have taken place:

- A. Abandonment of use for two years (for example, removal and failure to replace installations necessary thereto).

- B. Two years during which it has been neither used nor offered for sale.
- C. Failure to resume use or to convert to another approved nonconforming use within two years of purchase.

### **§ 210-130. Reversion.**

Once a nonconforming use reverts to a more restricted use, it may not return again to its original less restricted use.

### **§ 210-131. Destruction.**

Once a nonconforming use has been destroyed or damaged by fire, explosion or other catastrophe, it may be rebuilt or restored at the same location and again used as it previously was, provided that its owner shall apply for a building permit and start operations for restoring or rebuilding on said premises within 12 months after such catastrophe; and further, provided, that the buildings as restored shall not exceed in volume or area the original nonconforming structure.

### **§ 210-132. Existing special permit uses not nonconforming.**

Where an existing building use or land use is situated in a zoning district where it is permitted only upon the granting of a special permit by the Board of Appeals, said use shall not be deemed nonconforming by reason thereof; rather, the special permit shall be deemed to have been granted for the use as it was on the effective date of this Chapter.

## **ARTICLE XX Site Plan Review**

**[HISTORY: Replaces Zoning Bylaw Article XX in its entirety by the Annual Town Meeting of the Town of Hopkinton 05-07-2012, Art. 45.]**

### **§ 210-133. Purpose.**

The purpose of this Article is to protect the health, safety, convenience and general welfare of the public by providing a comprehensive review of plans for uses and structures that may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character. The Town encourages site plans to be designed to utilize energy efficient technology and renewable energy resources, and adhere to the principles of energy-conscious design with regard to orientation, building materials, shading, landscaping and other elements. With respect to building design, consideration should be given to the architectural style and its relation to the prevailing character and scale of buildings in the neighborhood. Factors to be considered include appropriate building materials, screening, breaks in roof and wall lines, massing and other architectural techniques. The construction, alteration, enlargement or reconstruction of buildings that are to be used exclusively for residential purposes shall be exempt from the provisions of this Article. Any use or structure, or expansion thereof, referred to in section 3 of Chapter 40A of the *Massachusetts General Laws* shall not be exempt from the provisions of this article, provided any of the criteria contained in §210-134 also applies.

### **§ 210-134. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

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**MAJOR PROJECT** - Any construction project that requires new construction or will result in a change in the outside appearance or a change of use of a building or buildings or premises, and that includes one or more of the following

- A. Construction of 5,000 or more square feet of gross floor area; or
- B. An increase in gross floor area by 50% or more, which results in a gross floor area of at least 5,000 square feet; or
- C. Construction of a parking area containing 25 or more parking spaces, or the addition of 25 or more parking spaces to an existing parking lot.

**MINOR PROJECT** - Any construction project or change of use, not included within the definition of a "major project," that includes one or more of the following:

- A. An increase in gross floor area of not more than 5,000 square feet or the addition of rooftop HVAC or mechanical equipment, substantially visible from a public or private street or public place, requiring a building permit; or
- B. Construction, enlargement or alteration of a parking area containing five or more parking spaces.

For the purposes of Site Plan Review, the term "gross floor area" shall mean the sum of the gross horizontal areas of the several floors of a building including all garages, basements and cellars. All dimensions shall be taken from the exterior faces of walls, including the exterior faces of enclosed porches. **[Amended 5-1-2017 ATM, Article 37]**

### **§ 210-135. Procedure.**

- A. An Applicant for site plan review shall file with the Planning Board an application and submission materials as required by the Site Plan Review Submission Requirements and Procedures adopted by the Planning Board and filed with the Town Clerk.
- B. The Planning Board shall, within five days of receipt of a site plan review application, transmit copies of the application and the site plan to the Director of Municipal Inspections, Conservation Commission, Board of Health, Design Review Board, and Director of Public Works for comments and recommendations.
- C. The Planning Board shall hold a public hearing within 65 days of the filing of any application for a major project and shall file a decision within 90 days of the close of the hearing. The Planning Board shall hold a public hearing and shall file a decision on an application for a minor project within 60 days of the receipt of the application. Notice of the time, place, and subject matter of the public hearing shall be given by the Planning Board, at the expense of the Applicant, to the Applicant and to all owners of land abutting the land being the subject of such application as appearing on the most recent tax list on file at the Assessors Office. In addition, in the case of major project site plan review, the Planning Board shall also give notice of the time, place, and subject matter of the public hearing, at the expense of the Applicant, by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing. The time within which the Planning Board must act on an application may be extended upon mutual agreement in writing between the Planning Board and the Applicant. Notwithstanding anything to the contrary in this Section, the Planning Board must act on a major project site plan review application for a renewable/alternative energy research and development or renewable/alternative energy manufacturing facility within six (6) months of the date of submission of a complete application. Failure

to act within the time limitations established in this article shall be deemed constructive approval of the application.

- D. Final action shall be a "Decision of Site Plan Review" that is filed with the Office of the Town Clerk and the Director of Municipal Inspections.
- E. A majority vote of the membership of the Board shall be sufficient to approve or disapprove a Decision of Site Plan Review.
- F. Appeals.

Any person aggrieved by a Decision of Site Plan Review by the Planning Board may appeal such Decision to the Board of Appeals within 20 days of the date filed with the Office of the Town Clerk. All Decisions of Site Plan Review issued by the Planning Board shall include a brief notice of such rights of appeal. Any such appeal shall contain a reasonably concise statement of the grounds therefor.

If the Planning Board has issued a denial decision, the Board of Appeals shall examine the proposal and prepare its own findings to determine if the Applicant has failed to furnish the information, materials or fees required by this Article or by the Submission Requirements and Procedures adopted by the Planning Board, or if the application and site plan present a problem so intractable as to admit of no reasonable solution.

If the Planning Board has issued an approval decision, the Board of Appeals shall examine the proposal and prepare its own findings to determine whether the conditions imposed by the Planning Board are reasonable, and shall limit its evaluation to those conditions at issue in the appeal. The Board of Appeals shall determine the reasonableness of each such condition in a two-step process:

- (1) The Board shall determine whether the condition relates to one of the Site Plan Standards listed in Section 210-136.1; and
- (2) The Board shall examine the condition for reasonableness, which requires that the Board make detailed factual findings to justify its determination of the condition's reasonableness or unreasonableness.

As the party requesting relief, the Appellant bears the burden of proof before the Board of Appeals. Any party before the Board of Appeals upon appeal shall have the right to introduce testimony or evidence relating to the grounds for appeal.

### **§ 210-136.1 Site Plan Standards**

The site plan shall be designed to conform to the following Site Plan Standards:

- A. Site disturbance in wetland buffer zones and to slopes in excess of 25% shall be minimized.
- B. Unique natural and historic features shall be preserved whenever feasible, and the use of § 210-117.2, Lots with Historic Structures, shall be considered as a mechanism to do so, where appropriate.  
**[Amended 5-2-2016 ATM, Art. 35]**
- C. Tree, vegetation and soil removal shall be minimized.
- D. The site activities shown on the Site Plan shall be screened from view from abutting properties in residential use. Methods of screening may include solid fencing, landscaping or other proposals of the

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Applicant, subject to review by the Planning Board. Such screening may be located on or off-site. If located off-site, written permission of the off-site property owner shall be provided to the Board.

- E. All utilities shall be underground.
- F. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other similar uses shall be visually screened from abutting properties and those using public ways. Screening methods may consist of solid fencing, landscaping or similar proposals submitted by the Applicant, subject to review by the Planning Board.
- G. The site plan shall show measures to reduce and abate noise and odors generated from the site that will impact surrounding properties.
- H. The site plan shall comply with all zoning requirements.
- I. The site plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and to and from adjacent public ways. If supporting documentation, such as a traffic or parking study, submitted to the Planning Board indicates that the vehicular and pedestrian traffic movement depicted on the site plan and proposed in the application will have a significant negative impact or impacts on the site or within the adjacent ways, such impacts shall be mitigated by the Applicant.
- J. Parking areas shall be designed so that they are safe and convenient and do not detract from the use and enjoyment of proposed structures. Parking areas shall be designed to facilitate safe pedestrian access to the structures and other on-site facilities.
- K. The site plan shall minimize the number of curb cuts on public ways.
- L. Driveways shall be designed to ensure safe sight distances at interior and exterior intersections and along driveways, in accordance with applicable AASHTO requirements.
- M. Sidewalks shall be provided along the entire frontage of the subject property along existing public ways. The Planning Board may approve alternative provisions or waive the requirements of this Standard in situations where sidewalk construction or use is not feasible or practical.
- N. Levels of illumination shall be provided as follows: **[Amended 5-6-2015 ATM. Art. 36]**
  - (1) No property may have exterior lighting that exceeds the average illumination level recommended by the Illuminating Engineering Society of North America for such use as set forth in "Lighting Facilities for Parking Facilities," Illuminating Engineering Society, 2014 and "The Lighting Handbook," 10<sup>th</sup> Ed., Illuminating Engineering Society, 2011.
  - (2) For pole mounted lights in parking and driveway areas, the height of the light source shall not exceed 15 feet, which shall be measured from the ground at the base of the pole to the bottom of the fixture.
  - (3) Pedestrian area lighting shall utilize fully shielded fixtures, and the height of light source shall not exceed 12 feet, measured from the ground at the base of the pole to the bottom of the fixture.
  - (4) No exterior lighting may interfere with the safe movement of motor vehicles on public ways or private ways open to the public.
  - (5) Mercury vapor lamps shall be prohibited.

(6) Uplighting shall be permitted only when used in one of the following manners:

- (a) To light a primary entrance, when the fixture or lamp is wall-mounted under an architectural element (e.g., roofs over walkways, entries or overhanging, nontranslucent eaves) so that the uplighting is fully captured;
- (b) To light local, state or national flags; or
- (c) To highlight or illuminate a building facade or landscaping, or to highlight or illuminate statues or monuments.

(7) Floodlighting shall be permitted only if a fully shielded fixture is utilized and no lighting will fall onto the property of others.

(8) Safety and security lighting shall use motion sensors, photocells, or photocells or timers to control duration of nighttime illumination.

(9) Exterior lighting of recreation facilities shall utilize fully shielded fixtures and, except as authorized by Special Permit or Site Plan Approval, shall be turned off by 10:00 p.m. or at the conclusion of an activity begun before 10:00 p.m.; provided, however, that in any event the exterior lighting shall be turned off by midnight.

(10) Blinking, flashing, moving, revolving and flickering lights, as well as lighting that changes intensity or color shall be prohibited except for lighting for public safety or traffic control and lighting required by the U.S. Federal Aviation Administration for air traffic control and warning purposes.

(11) Notwithstanding any provisions of this subsection to the contrary, sidewalks that run along the perimeter of a site and are in a public right of way or on abutting property may be illuminated, and illumination may spill onto abutting non-residential property if requested in writing by the abutting property owner.

Exterior lighting that does not conform to the provisions of this subsection may be allowed by special permit from the Planning Board if the Planning Board finds that such exterior lighting will be consistent with the Purposes of this Article, or that there are other demonstrable community, health, safety or welfare benefits that will be served by the exterior lighting. No special permit may be granted pursuant to this subsection unless the Planning Board determines that the proposed exterior lighting is appropriate for the size and use of the property, any buildings thereon, and the neighborhood setting.

O. Adequate access shall be provided to each structure for emergency vehicles and personnel.

P. The site plan shall conform to applicable Massachusetts Department of Environmental Protection Stormwater Management Regulations. The site plan shall show adequate measures to prevent pollution of surface water and groundwater, to minimize erosion and sedimentation and to prevent changes in the potential for flooding. Stormwater management facilities shall be designed so that neighboring properties, public ways and public storm drainage systems will not be adversely impacted.

Q. Mechanical equipment or other utility hardware on the roof, grounds or buildings shall be screened from view from the ground.

R. All dumpsters shall be screened from public view.

### **§ 210-136.2. Decision criteria.**

The Planning Board shall issue a “Decision of Site Plan Review” in one of the following forms:

- A. A written approval of the application subject to any reasonable conditions, modifications and restrictions relating to the Site Plan Standards contained in Section 210-136.1; or
- B. Disapproval of the application if the Applicant fails to furnish the information, materials or fees required in this Article or by the Submission Requirements and Procedures adopted by the Planning Board, or if the application and site plan present a problem so intractable so as to admit of no reasonable solution.

Notwithstanding the above, regulation of uses and structures referred to in section 3 of Chapter 40A of the *Massachusetts General Laws* shall be limited to the extent required by said section.

### **§ 210-137. Conditions of approval; building permits.**

Site plan approval may be made subject to reasonable conditions, modifications and restrictions relating to the Site Plan Standards contained in Section 210-136.1 as the Planning Board may deem necessary, and any construction, reconstruction, alteration or addition shall be carried out only in conformity with such conditions, modifications or restrictions and in conformity with the application and site plan. An order of conditions issued pursuant to section 40 of Chapter 131 of the *Massachusetts General Laws* or Chapter 206 of the Town of Hopkinton Bylaws, which imposes conditions inconsistent with a site plan approval, shall require a revision of the site plan to be submitted to the Planning Board for review and approval.

In the discretion of the Planning Board, recording of a certification of the Town Clerk and the Decision of Site Plan Review at the Registry of Deeds may be made a condition of an approval. For any construction project or change in use that requires site plan review, no building permit may be issued unless and until the Applicant has complied with the provisions of this Article. The conditions, modifications, and restrictions contained within the Decision of Site Plan Review shall be referenced in, incorporated into, and made an express condition of, such building permit.

### **§ 210-138. Performance guarantee.**

As a condition of site plan approval, the Planning Board may require that a performance bond, secured by a deposit of money or negotiable securities in a form selected by the Planning Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the Applicant's engineer, which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the Applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

### **§ 210-139. Duration of approval.**

Site plan approval for a minor or major project shall become void two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal, unless any

construction work contemplated hereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. In such case, a request for extension of the date of completion must be submitted to the Planning Board for approval.

### **§ 210-140. Fees.**

Site plan review fees shall be governed and set by the Planning Board and shall be assessed to the owner and/or the Applicant. Such fee may include a deposit for review by a consultant selected by the Town.

## **ARTICLE XXI**

### **Design Review**

**[Added 5-2-1994 ATM, Article 20]**

### **§210-141. Purpose.**

It is the intent of this article to provide detailed review of uses and structures having substantial impact on the town, to prevent blight, to enhance the natural and aesthetic qualities of the town, to preserve the value of land and buildings and to protect and preserve the historic and cultural aspects and heritage of the town.

### **§ 210-142. Design Review Board.**

- A. The Design Review Board shall be appointed annually by the Planning Board and shall consist of five residents of the Town as follows:
- (1) Chairman of the Planning Board or his/her designee.
  - (2) One person qualified by training and experience in the fine arts or landscape design.
  - (3) One person doing business in the Town or a citizen at large.
  - (4) One person qualified by training and experience in the art or design professions.
  - (5) One member of the Historic District Commission or a designee of the Planning Board.
- B. The Planning Board may also appoint up to two alternate members who shall be Town residents.

### **§ 210-143. Applicability and authority.**

The Design Review Board shall review applications for site plan review submitted pursuant to Article XX and applications for new signs requiring a building permit, provided, however, that the Design Review Board shall not have jurisdiction to review applications for signs over which a Historic District Commission has review authority. **[Amended 5-6-2015 ATM, Art. 37]** It shall evaluate such requests based on the design criteria set forth in this Article. With respect to site plan review applications, the Design Review Board's written findings shall be advisory to the Planning Board and shall be submitted to the Planning Board and the applicant along with any recommendations and proposed conditions. With respect to sign applications, the Design Review Board's written findings shall be advisory to the Director of Municipal Inspections and shall be submitted to the Director of Municipal Inspections and the applicant. Any such findings shall specifically identify each of the design criteria set forth in this Article to which they pertain. **[Amended 5-6-2013 ATM, Art. 53]**

### **§ 210-144. Design criteria.**

The Design Review Board shall review requests for site plan review based on the following criteria:  
**[Amended 5-3-2004 ATM, Art. 30]**

- A. Preservation and enhancement of landscaping. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- B. Relation of buildings to environment. The proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the surrounding area that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings with respect to:
  - (1) Height.
  - (2) Street facade.
  - (3) Rhythm of solids and voids.
  - (4) Spacing of buildings or signs.
  - (5) Materials, textures and color.
  - (6) Roof slopes.
  - (7) Scale.
- C. Open space. All open space, landscaped and usable, shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- D. Heritage. Removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable.

### **§ 210-145. Design guidelines.**

The Design Review Board may publish and make available to the public on request a booklet of guidelines based on the specific design criteria cited above to effectuate the purposes of this article.

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### ARTICLE XXII

#### Board of Appeals

**[Added 3-12-1973 ATM, Article 32; Title Amended 5-6-2015 ATM, Article 39]**

#### **§ 210-146. Board of Appeals.**

- A. Establishment. It is hereby provided that there shall be a Board of Appeals of the Town of Hopkinton.
- B. Powers. The Board of Appeals shall have the following statutory powers under MGL c. 40A:  
**[Amended 4-13-1978 ATM, Art. 39, 5-4-2009 ATM, Art. 25]**
- (1) Appeals. To hear and decide appeals by any person aggrieved by any order or decision of the Director of Municipal Inspections or other administrative official in violation of any provision of MGL c. 40A or of this Chapter. (See MGL c. 40A, § 8.)
  - (2) Special Permits. Pursuant to MGL c.40A, § 9, to act as the Special Permit Granting Authority in accordance with Article XXXIV. **[Amended 5-6-2015 ATM, Art. 39]**
  - (3) Variances. Pursuant to MGL c. 40A, § 14, to hear and decide petitions for use and dimensional variances as set forth in MGL c. 40A, § 10. Use variances permit a use of land other than a use expressly permitted in a particular district. Dimensional variances authorize deviations from restrictions dealing with such matters as setbacks, *frontage* and lot size. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, such rights shall lapse, unless otherwise extended by the Board of Appeals pursuant to MGL c. 40A, § 10. **[Amended 5-3-1999 ATM, Art. 24]**
- C. Members. The Board of Appeals shall consist of five regular members and four associate members. They shall be appointed by the Selectmen for terms of five years each in such manner that the term of one regular member shall expire each year. The Board shall annually elect a Chairman and a Vice Chairman from among its regular members, and a Clerk from among its regular or associate members. A member can only be removed for cause by the Selectmen and only after written charges have been made and a public hearing has been held. The Chairman may designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said Board, in which case an associate member may sit as a member of the Board until said vacancy is filled. **[Amended 3-12-1973 ATM, Art. 32; 3-4-1974 ATM, Art. 47; 4-13-1978 ATM, Art. 39, 5-3-2004 ATM, Art. 28]**
- D. Rules. The Board shall adopt rules not inconsistent with the General Laws and the provisions of this Chapter for conducting its business and shall file a copy thereof with the Town Clerk. **[Amended 4-13-1978 ATM, Art. 39]**
- E. Meetings. Meetings of the Board shall be held at the call of the Chairman and also when called in such other manner as the Board shall determine in its rules. The Chairman or, in the absence of the Chairman, the Acting Chairman, may administer oaths, summon witnesses and call for the production of papers. **[Amended 5-4-2009 ATM, Art. 25]**

#### **§ 210-147. Filing of appeals and repetitive applications. [Amended 4-13-1978 ATM, Art. 39 5-4-2009 ATM, Art. 25]**

Appeals under MGL c. 40A, § 8 must be filed within 30 days after the administrative decision or action from which the appeal is being taken. Initial applications for special permits or variances, where not in the nature

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of an appeal from an administrative order or decision, may be filed at any time. A repetitive application for a special permit or variance which has been unfavorably acted upon by the Board of Appeals within the past two years shall not be reconsidered until after a public hearing held by the Planning Board and a vote of consent of eight of its members to the resubmittal, and unless four of the members of the Board of Appeals vote to admit the resubmittal after a finding, described in the record of its proceedings, that there are specific and material changes in the conditions upon which the previous unfavorable action was based.

### **§ 210-148. Notice of appeals and petitions.**

Notice of any appeals, application or petition to the Board of Appeals shall be filed with the Town Clerk, who shall forthwith transmit copies thereof to the officer or board from whose order or decision the appeal is taken, if any, and to the members of the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case from which the appeal was taken. Any such notice of appeal, application or petition shall specify the grounds thereof.

### **§ 210-149. Hearings. [Amended 4-13-1978 ATM, Art. 39; Amended 5-6-2015 ATM, Art. 39]**

Public hearings shall be held pursuant to MGL c.40A, § 11, on all appeals and applications or petitions for variance.

### **§210-150. Voting. [Amended 4-13-1978 ATM, Art. 39; 5-4-2009 ATM, Art. 2009]**

A vote of four of the five members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official or to decide in favor of this applicant on any matter on which it is required to pass under this Chapter or to effect any variance in the application thereof.

### **§210-151. Decisions. [Amended 4-13-1978 ATM, Art. 39; 5-4-1993 ATM, Art. 17, 5-4-2009 ATM, Art. 25; Amended 5-6-2015 ATM, Art. 39]**

- A. The Board of Appeals may, in conformity with the General Laws and the provisions of this Chapter, reverse or affirm, in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.
- B. The decision of the Board of Appeals on all appeals and applications or petitions for variance shall be made within 100 days after the date of filing.
- C. Failure of the Board of Appeals to act within the specified period shall be deemed to be the grant of the relief, application or petition sought.
- D. The Board of Appeals shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be public record. Notice of decisions shall be mailed forthwith to parties in interest as designated in MGL c.40A, § 11, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent.

### **§210-152. Standards. [Removed 5-6-2015 ATM, Art. 39]**

- A. Variances. [Amended 4-13-1978 ATM, Art. 39; 5-3-1999 ATM, Art. 24]

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- (1) A variance from the terms of this chapter may be granted only where the Board of Appeals specifically finds that:
    - (a) Owing to circumstances relating to the soil conditions, shape or topography (but not size) of such land or structures, and especially affecting such land or structures (but not affecting generally the zoning district in which it is located), a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner; and
    - (b) Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this chapter.
  - (2) Failure to establish any of the standards shall constitute grounds to deny a petition for a variance. A variance may not be granted if the circumstance creating the hardship was self-created or the hardship is unrelated to the premises for which the variance is sought. The loss of the protection afforded a nonconforming use under § 210-127 of this chapter is not a substantial hardship justifying the grant of a variance. **[Amended 5-4-2009 ATM, Art. 2009]**
  - (3) If the Board grants a variance, it may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures. The Board may not impose conditions, safeguards or limitations based upon the continued ownership of the land or structures by the petitioner or any owner.
- B. In all matters on which it has jurisdiction to act, the Board of Appeals shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land and shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

### ARTICLE XXIII

#### Amendments

**[Added 4-13-1988 ATM, Article 39; amended 4-14-1980 ATM. Article 47]**

#### **§ 210-153. Procedure. [Amended 4-13-1978 ATM, Article 39]**

- A. No change or amendment to this chapter shall be adopted until after the Planning Board has held a public hearing thereon as required by Chapter 40A of the General Laws, as amended, and has submitted a final report with recommendations to the Town Meeting, or until 21 days shall have elapsed after such hearing without the submission of such a report.
- B. After such notice, hearings and report, or lapse of time without report, the Town Meeting by a 2/3 vote may adopt, reject or amend and adopt any such proposal, provided that not more than six months have elapsed since the public hearing. No proposed Zoning Bylaw which has been unfavorably acted upon by Town Meeting shall be reconsidered within two years of such action unless its adoption is recommended in the final report of the Planning Board.
- C. In all cases involving changing the Zoning Map where notice of public hearing is required, notice shall be sent to the parties of interest by mail, postage prepaid. "Parties of interest" shall mean the petitioner, the owner of the property if he is not the petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to abutters within 300 feet of the property line of the land subject to public hearing as they appear on the most recent applicable tax list. **[Added 4-14-1980 ATM, Art. 47]**

**§ 210-154. Conformance of permits to subsequent amendments. [Added 4-13-1978 ATM, Article 39]**

Construction or operations under a building or special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within the period of time specified in M.G.L. c.40A §6 after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as possible.

### **ARTICLE XXIV**

#### **Administration and Enforcement**

**[Added 6-19-1972 STM, Article 2; amended 4-13-1978 ATM, Article 39;  
amended 4-14-1980 ATM, Article 42; amended 5-6-1996 ATM, Article 40]**

**§ 210-155. Enforcement official. [Amended 5-6-1996 ATM, Article 40]**

This chapter shall be enforced by the Director of Municipal Inspections.

**§ 210-156. Investigation; notice to desist violation. [Amended 4-13-1978 ATM, Article 39]**

If the Director of Municipal Inspections shall be informed, or have reason to believe that any provision of this chapter or any permit thereunder has been, is being or is likely to be violated, he shall make or cause an investigation to be made of the facts, including an inspection of the property where the violation may exist. When the Director receives a written request to enforce this chapter against any alleged violator, the Director shall reply in writing within 14 days, stating his action, or nonaction, and the reasons therefor. If he finds any violation, he shall give immediate notice in writing to the owner or his duly authorized agent and to the occupant of the premises and shall order that any violation of the provisions of this chapter immediately cease.

**§ 210-157. Sketch plan; responsibility of Director of Municipal Inspections. [Amended 4-14-1980 ATM, Article 42]**

No building permit shall be issued for the erection or alteration of any building, structure or part thereof if the plans, specifications and intended use of the land are not in all respects in conformity with the provisions of this chapter. With each application for a permit, there shall be filed duplicate copies of a plan or sketch drawn to scale showing the lot and location of the buildings, structures and uses of land thereon. It is the responsibility of the Director of Municipal Inspections to ensure that foundations and buildings are constructed in conformance with the submitted plan. If the Director so requests, the applicant shall furnish to the said Director the necessary proof of compliance in the form of an as-built plan of the subject premises certified by a registered land surveyor or registered engineer.

**§ 210-158. Penalty. [Amended 6-19-1972 STM, Art. 2; 4-13-1978 ATM, Article 39; 5-7-2018 ATM, Article 30]**

Whoever violates any provision of this chapter or any of the conditions under which a permit is issued by the Director of Municipal Inspections or any decision rendered by the Board of Appeals under the provisions of this chapter shall be liable to a fine of not more than the amount specified in M.G.L. c.40A, §7 per day for each violation; provided, however, that each day such violation continues shall constitute a separate offense.

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### ARTICLE XXV Miscellaneous Provisions

#### **§ 210-159. Repeal.**

As of the effective date of this chapter, the previously existing Zoning Bylaw of the Town of Hopkinton is hereby repealed. Any existing bylaws or such parts thereof as may be inconsistent herewith are also hereby repealed.

#### **§ 210-160. Separability.**

The provisions of this chapter are hereby declared to be separable, and if any such provision or the application of such provision to any person or circumstances shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions or the application of such provisions to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent of this chapter that said remaining sections would have been adopted had such invalid or unconstitutional provisions not been included herein.

#### **§ 210-161. When effective.**

This chapter shall take effect upon satisfaction of the requirements of MGL c. 40A, § 5.

### ARTICLE XXVI Open Space Mixed Use Development Overlay District [Added 5-5-2008 ATM, Article 29] [Amended ATM 5/6/2014]

#### **§ 210-162. Development and Design Objectives**

The purposes of the Open Space Mixed Use Development Overlay District (OSMUD District) are to balance conservation and development goals and to protect and enhance the character of the natural and cultural resources of the Town, while promoting planned development and appropriate use of land in accordance with community goals and design guidelines. Toward that end, the OSMUD District is intended to permit the clustering of residential and commercial uses on large tracts of land that have open space as an integral characteristic, and to ensure quality site planning to accommodate a site's physical characteristics, including its topography, vegetation, water bodies, wetlands, open spaces, historic resources and major scenic views.

#### **§ 210-163. District and Sub-District Delineations; Applicability**

- A. The OSMUD District is shown on the Official Zoning Map. The OSMUD District is divided into Residential Subdistricts (R), Commercial Subdistricts (C), and a Village Center Subdistrict (VC), as shown on the Official Zoning Map.

The OSMUD District is an overlay district that is superimposed over the underlying zoning districts. Development of land within the OSMUD District may be undertaken either pursuant to this Article or pursuant to the provisions of this Chapter applicable to the corresponding underlying zoning district except as otherwise provided in § 210-172.

- B. Notwithstanding any provision of this Chapter to the contrary, development undertaken pursuant to this Article shall not be subject to the following provisions **[Amended 5-6-2015 ATM, Art. 30; deleted 5-2-2016 ATM, Art. 34]**:

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- (1) § 210-125 (Conversion of Residential Property); and
  - (2) § 210-126.1 (Residential Subdivisions of 10 acres or more).
- C. Development undertaken pursuant to this Article shall be subject to the following provisions of this Chapter only to the extent provided for, and as modified by, the provisions of this Article:
- (1) Article XI, Flexible Community Development Bylaw;
  - (2) Article XII, Water Resources Protection Overlay District;
  - (3) Article XVIII, Supplementary Regulations;
  - (4) Article XIX, Nonconforming Uses; and
  - (5) Article XX, Site Plan Review.

### **§ 210-164. Definitions [Amended 5-2-2011 ATM, Art. 48]**

Except as otherwise provided in this section, the definition set forth in § 210-4 shall be applicable to all terms used in this Article. Notwithstanding the forgoing, the following terms, as used in this Article, shall have the meanings indicated:

**AFFORDABLE HOUSING** – Any Dwelling Units qualifying as low or moderate income housing as defined by regulations of the Department of Housing and Community Development.

**APARTMENT BUILDING** – See definition of Garden Apartment.

**ATTACHED DWELLING** – A dwelling consisting of two or more dwelling units, each of which has a building element such as a wall, floor, ceiling or roof in common with or other Structure attached to another dwelling unit. Attached dwellings include Garden Apartments.

**BUILDABLE AREA** – All area of a Development Project that is not Restricted Land.

**COMMERCIAL USES** – All uses other than Dwelling Uses and Restricted Land Uses.

**COMMON OWNERSHIP** – Common ownership shall mean ownership by the same person or persons or legal entities or ownership by any two or more persons or entities, when there is active or pervasive control of those legal persons or entities by the same controlling person and there is an intermingling of activity among those persons while engaging in a common enterprise. Common Ownership can include a Condominium or Landowners' Association.

**COMMUNITY CENTER** – A facility for a social, educational, or recreational purpose, intended primarily for the occupants of the Development Project or the OSMUD District, in which food and beverages may be served and live entertainment may be provided, and which may include performance and assembly space and indoor and outdoor recreational facilities.

**CONSTRUCTION ACTIVITY** – The construction of new structures or site work associated with the construction of new structures. The term does not include site work not associated with the construction of new structures, the construction of roadways, installation of utilities, restoration and improvement of

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Restricted Land, additions and improvements to existing structures, or activities involving uses and structures referred to in M.G.L. c.40A §3, to the extent allowed under said section of the General Laws.

**CONTINUING CARE RETIREMENT COMMUNITY OR ASSISTED LIVING FACILITY** – A facility providing living accommodations and communal facilities for persons over age 62 and that includes at least: a) 24-hour on-site responsible staff; b) a common dining area in which at least one main full meal is served each day; c) optional laundry, housekeeping and personal services available to residents; d) transportation services; and e) common indoor and outdoor passive or active recreational areas. Such a facility may include: a) a medical or nursing home component; and b) retail sales and services for the convenience of residents, accessible only from inside the facility.

**CULTURAL USES** – Art gallery; art use; museum; public art display space; arts studio, arts; production studio; or ticket sales undertaken in connection with a cultural use.

**DESIGN GUIDELINES** – The Design Guidelines for the OSMUD District adopted by the Planning Board as part of the Master Plan Special Permit to govern Site Plan Review within the OSMUD District.

**DEVELOPMENT PROJECT** – A development undertaken pursuant to this Article, as shown on a site plan submitted to the Planning Board for Site Plan Review. A Development Project may consist of one or more lots and may be located in more than one subdistrict, as long as the applicable requirements of this Article are satisfied with respect to each subdistrict.

**DUPLEX** – An Attached Dwelling consisting of two dwelling units located on a lot in Common Ownership.

**DWELLING USE** – Use as Dwelling Units as defined in § 210-4, but specifically not including residential units that may be part of a Continuing Care Retirement Community, Assisted Living Facility or similar institution.

**GARDEN APARTMENT** – A multifamily residential land use consisting of two or more dwelling units each of which is on a single level, at least some of which have a floor or ceiling in common with another unit.

**GREENHOUSE** – A building made of a material transparent or partially transparent to light, in which the temperature and humidity can be regulated, and which is used primarily for the cultivation of plants.

**HEALTH AND FITNESS CLUB** – A private club, whether or not operated for profit, solely for the purpose or providing physical fitness, exercise therapy, rehabilitation or health-related services.

**HEIGHT** – The vertical distance from the mean finished grade of all sides of building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, excluding chimneys, spikes, towers, wireless communication facilities, screens, parapet walls, and other structures, equipment, or projections not used for human occupancy. In determining the height of buildings within the area designated “OSMUD District Height Zone” on the Official Zoning Map, the area above the mean finished grade and below the floor of the first occupiable story, not to exceed 10 feet, shall be excluded from measurement of height and of stories.

**LANDOWNERS’ ASSOCIATION** – A corporation, trust or other legal entity owned or controlled by the owners of all lots within the OSMUD District, or by owners of all lots within a specified area within the OSMUD District, as the context permits or requires.

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**MASTER PLAN** – The Master Plan for the OSMUD District as submitted to the Planning Board for approval in a Master Plan Special Permit to be issued pursuant to § 210-172.

**MULTIFAMILY DWELLING OR PROJECT** – A collective term referring to any dwelling units other than a Single Family Dwelling located on an individual lot, including an Attached Dwelling, Simplex Dwelling, Duplex Dwelling, Townhouse, Garden Apartment or Apartment Building.

**NEIGHBORHOOD RESTAURANT** – A restaurant or eating establishment intended for the use and convenience of the residents of the immediate neighborhood, not to exceed 1,500 square feet of indoor seating, which may also include outdoor seating.

**RESTRICTED LAND** – Land devoted to uses permitted by § 210-170A, which may include (1) open space land left substantially in its natural state; (2) open space land that is restored or landscaped, including irrigation, detention and/or retention ponds or stormwater catchment areas and subsurface utilities; (3) open space land used for agricultural purposes; (4) open space land improved for active and passive recreational uses, including pedestrian, bicycle and equestrian trails; (5) land improved for other municipal uses; (6) food preparation and sales areas, restrooms, parking and access areas, and similar uses, structures or portions thereof, operated in association with other Restricted Land uses; and (7) A total of no more than 30 acres of land, which may be restricted for the benefit of landowners within a particular area of the OSMUD District. Restricted Land shall not include land set aside for road and/or parking uses that are not accessory to other Restricted Land Uses.

**RESTRICTED LAND COVENANT** – A legally enforceable restriction or covenant, recorded in the Registry of Deeds and enforceable by the Town, providing that the land subject thereto will remain as Restricted Land in perpetuity.

**RETAIL NEIGHBORHOOD STORE** – A store, other than a restaurant or eating establishment, not to exceed 2,000 square feet, located in a neighborhood in which merchandise is sold or services provided for the convenience of the occupants of the immediate neighborhood, such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream.

**SENIOR HOUSING DEVELOPMENT** - A multifamily residential land use consisting of multiple dwelling units on one single contiguous parcel, operated with the intent that at least one resident of every unit be 55 years of age or older. **[Added 5-6-2015 ATM, Art. 30]**

**SIMPLEX DWELLING** – A detached dwelling separated from another dwelling unit by not more than 25 feet and located on a lot in Common Ownership.

**SINGLE FAMILY DWELLING** – A detached dwelling unit on an individual lot or a detached dwelling unit separated from another dwelling unit by more than 25 feet, but not including a mobile home or trailer.

**STRUCTURE** – A man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, carports, porte-cocheres, covered walkways and the like; provided, however, that signs, fences, tents, poles, swing sets and the like are not to be considered structures.

**TOWNHOUSE** – One of a row of three or more dwelling units, each of which has a wall in common with another dwelling unit, with each dwelling unit having a separate entrance and located on a lot in common ownership.

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### § 210-165. Uses [Amended 5-7-2012 ATM, Art. 46; 5-6-2015 ATM, Art. 30; 5-2-2016 ATM, Art.32;]

No land, structure or building shall be used for any purpose in the OSMUD District, other than as set forth in this section, except as otherwise set forth in this Chapter or otherwise permitted by law.

- A use is permitted by right in any subdistrict that is denoted by the letter “Y”.
- A use is prohibited in any subdistrict that is denoted by the letter “N”.
- A use denoted by the letters “SP” may be permitted by Special Permit from the Planning Board.

| Use                                                                                                                                                                                              | Residential Subdistrict | Commercial Subdistrict | Village Center Subdistrict |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------|----------------------------|
| Single-family dwellings                                                                                                                                                                          | Y                       | SP                     | SP                         |
| Multifamily Dwellings other than Senior Housing Developments                                                                                                                                     | Y                       | Y                      | Y                          |
| Attached dwellings including garden apartments                                                                                                                                                   | Y                       | Y                      | Y                          |
| Senior Housing Development                                                                                                                                                                       | Y                       | Y                      | Y                          |
| Home occupations                                                                                                                                                                                 | Y                       | Y                      | Y                          |
| Licensed home day care providers                                                                                                                                                                 | Y                       | Y                      | Y                          |
| Renting of rooms and/or the furnishing of table board in a dwelling occupied as a private residence                                                                                              | Y                       | Y                      | Y                          |
| Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms                                                                                                                       | SP                      | Y                      | Y                          |
| Business or professional offices and banks                                                                                                                                                       | N                       | Y                      | Y                          |
| Community Centers                                                                                                                                                                                | Y                       | Y                      | Y                          |
| Conference centers, with or without a residential dormitory component                                                                                                                            | N                       | SP                     | SP                         |
| Drive-in, drive-through or drive-up uses, but excluding the dispensing of food or drink                                                                                                          | N                       | Y                      | Y                          |
| Health clubs                                                                                                                                                                                     | SP                      | Y                      | Y                          |
| Hotels, motels, and inns with greater than 12 guest rooms                                                                                                                                        | N                       | SP                     | SP                         |
| Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for uses permitted in the Professional Office (P) District under Article IX             | N                       | Y                      | Y                          |
| Recreational Uses of buildings, structures or land, not limited to occupants of the Development Project or OSMUD District, but excluding recreational uses which are part of the Restricted Land | SP                      | Y                      | SP                         |
| Research centers and laboratories not involving noxious or hazardous substances and processes                                                                                                    | N                       | Y                      | Y                          |
| Research centers and laboratories with a biosafety Level of Level 1 or Level 2                                                                                                                   | N                       | SP                     | N                          |
| Restaurants                                                                                                                                                                                      | N                       | Y                      | Y                          |
| Neighborhood Restaurants                                                                                                                                                                         | SP                      | Y                      | Y                          |
| Retail businesses including retail services involving manufacturing, if clearly incidental and accessory to a retail use on the same premises                                                    | N                       | Y                      | Y                          |
| Retail Neighborhood Stores                                                                                                                                                                       | SP                      | Y                      | Y                          |

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| Use                                                                                                                                                              | Residential Subdistrict | Commercial Subdistrict | Village Center Subdistrict |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------|----------------------------|
| Retail stores and retail service shops, including take-out food establishments exclusive of drive-in, drive-up or drive-through take-out food                    | N                       | Y                      | Y                          |
| Cultural Uses                                                                                                                                                    | SP                      | Y                      | Y                          |
| Cinemas, concert halls, theaters, auditoriums                                                                                                                    | N                       | SP                     | SP                         |
| Adult day care                                                                                                                                                   | SP                      | Y                      | Y                          |
| Continuing care retirement communities, assisted living facilities, or similar institutions                                                                      | SP                      | Y                      | SP                         |
| Group homes                                                                                                                                                      | Y                       | Y                      | Y                          |
| Nursing homes, extended care facilities, or physical rehabilitation facilities                                                                                   | N                       | Y                      | SP                         |
| Health services facility                                                                                                                                         | N                       | SP                     | SP                         |
| Out-patient surgery                                                                                                                                              | N                       | SP                     | SP                         |
| Medical offices                                                                                                                                                  | N                       | Y                      | Y                          |
| Veterinary clinics                                                                                                                                               | N                       | SP                     | SP                         |
| Municipal Cemeteries                                                                                                                                             | SP                      | N                      | N                          |
| Places of worship and other religious uses                                                                                                                       | Y                       | Y                      | Y                          |
| Funeral homes and mortuaries                                                                                                                                     | SP                      | Y                      | SP                         |
| Public or semipublic institutions of a philanthropic or charitable character                                                                                     | SP                      | Y                      | Y                          |
| Child care centers                                                                                                                                               | Y                       | Y                      | Y                          |
| Municipal uses                                                                                                                                                   | Y                       | Y                      | Y                          |
| Public and private educational uses (including schools for scholastic and non-scholastic subjects) and public libraries                                          | Y                       | Y                      | Y                          |
| Telecommunication and telephone facilities (if located within a building with another allowed primary use, not to exceed 20% of such building)                   | Y                       | Y                      | Y                          |
| Public transportation facilities, limited to 1) shuttle bus stop facilities and 2) park and ride parking facilities intended for occupants of the OSMUD District | Y                       | Y                      | Y                          |
| Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the OSMUD District | Y                       | Y                      | Y                          |
| Alternate power generation and co-generation facilities serving other uses within the OSMUD District                                                             | SP                      | SP                     | SP                         |
| Agricultural and horticultural uses, including farms of all kinds, nurseries, gardens, greenhouses and livestock, except fur farms                               | Y                       | Y                      | Y                          |
| Equestrian facilities, public or private                                                                                                                         | SP                      | SP                     | N                          |
| Farm stands                                                                                                                                                      | Y                       | Y                      | Y                          |
| Landscaping business and storage/staging facilities                                                                                                              | SP                      | Y                      | Y                          |
| Mixed use buildings consisting of commercial space or retail space on the first floor and a different category of use on one or more upper floors                | N                       | Y                      | Y                          |

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| Use                                                                                                                                                           | Residential Subdistrict | Commercial Subdistrict | Village Center Subdistrict |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------|----------------------------|
| Uses customarily associated with any permitted use on a lot within a Development Project, which may be on a different lot within the same Development Project | Y                       | Y                      | Y                          |
| Accessory uses                                                                                                                                                | Y                       | Y                      | Y                          |
| Restricted Land uses                                                                                                                                          | Y                       | Y                      | Y                          |

### § 210-166. Intensity of Use Limitations [Amended 5-6-2015 ATM, Art. 30]

- A. Dwelling Uses within the OSMUD District shall be limited to 940 new Dwelling Units constructed after May 5, 2008, plus 180 Dwelling Units in Senior Housing Developments constructed after May 4, 2015, provided, however, that the owner or owners of any such additional Dwelling Unit in Senior Housing Developments shall require, through deed restrictions, condominium documents, leases, rental agreements or other appropriate instruments, the form and adequacy of which has been approved by the Planning Board, that no child under the age of 18 may be a resident in any such Dwelling Unit. No more than 50 of the 1120 new Dwelling Units so constructed may be single-family dwellings, and the remainder shall be multi-family dwellings, including attached dwellings, garden apartments, units in mixed-use buildings and Senior Housing Developments.

Neither the dwellings located at 80, 82, 83 nor 90 East Main Street or 26 Clinton Street, nor the Group Home located at 44 Wilson Street, all of which were in existence as of the effective date of this Article, shall be deemed to be a Dwelling Unit for the purposes of this Intensity of Use limitation. However, in the event that any such dwelling is converted to or reconstructed as a multi-family dwelling use, the resulting number of Dwelling Units in excess of one (1) on any such property shall be counted towards the Intensity of Use limitation.

No Accessory Family Dwelling Unit for which the Board of Appeals grants a Special Permit pursuant to § 210-126 shall be deemed to be a separate Dwelling Unit for purposes of this Intensity of Use limitation.

- B. Commercial Uses within the OSMUD District shall be limited to 450,000 square feet of Gross Floor Space in the aggregate, which shall be allocated among the Subdistricts as authorized by a Master Plan Special Permit issued pursuant to § 210-172.
- C. Commercial uses within the VC Subdistrict shall not exceed 150,000 square feet of Gross Floor Area in the aggregate. No single building within the VC Subdistrict shall exceed 25,000 square feet of Gross Floor Area except for a single building which may contain up to 38,000 square feet of Gross Floor Area; provided, however, that, notwithstanding the foregoing, the Planning Board may, by Special Permit, approve a single building in the VC Subdistrict which may contain up to 45,000 square feet of Gross Floor Area. The following shall be excluded from the calculation of Gross Floor Area for purposes of this Intensity of Use limitation: (i) The building at 83 East Main Street, in existence as of the effective date of this Article, in the event such building is converted to Commercial Use, and the building at 97 East Main Street (the Pearson House); (ii) structures accessory to or commonly associated with a Dwelling Use, such as a clubhouse, recreational amenity or management or marketing space; (iii) uses, structures or portions thereof, operated in association with Restricted Land uses; (iv) structures accessory to agricultural and horticultural use, including greenhouses, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in the calculation of Gross Floor Area; (v) structures or portions thereof located at 0 East Main

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Street, the athletic fields parcel/recreational parcel. **[Amended 5-5-2014, Article 32; Amended 5-1-2017 ATM, Article 37]**

### § 210-167. Affordable Housing

Affordable Housing shall be provided within the OSMUD District in accordance with the following requirements:

- A. Except as otherwise provided in the following paragraph of this Section, not fewer than sixty (60) Dwelling Units within the OSMUD District shall be Affordable Housing, which shall be located within one or more Development Projects containing, in the aggregate, not fewer than two hundred forty (240) Dwelling Units eligible for inclusion in the Massachusetts Department of Housing and Community Development's Subsidized Housing Inventory. These requirements shall be in addition to the Affordable Housing requirements provided in Subsection C of this Section.

Notwithstanding the foregoing, if, prior to the issuance of a building permit for a Development Project that contains Affordable Housing, either (i) M.G.L. c. 40B, §§ 20 through 23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20 through 23 no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then not fewer than ninety-four (94) Dwelling Units within the OSMUD District shall be developed as Affordable Housing, in addition to the Affordable Housing requirements provided in Subsection C of this Section. **[Amended 5-6-2015 ATM, Art. 30]**

- B. All Affordable Housing shall be integrated with the rest of the Development Project in which it is located, and shall be comparable in design, exterior appearance, construction, and quality of exterior materials with other units in such Development Project. The mean number of bedrooms in Affordable Housing Dwelling Units shall be no greater than the mean number of bedrooms in the market-rate Dwelling Units in the Development Project in which they are located.
- C. In addition to the Affordable Housing requirements provided in Subsection A of this Section, to the extent that the Senior Housing Developments create a total number of Dwelling Units within the OSMUD District in excess of 940, those Senior Housing Developments shall require the provision of, in the aggregate, one Dwelling Unit of Affordable Housing for every 10 Dwelling Units in Senior Housing Developments, but not to exceed twenty (18) Dwelling Units of Affordable Housing in the aggregate. The additional Dwelling Units of Affordable Housing required under this section may be provided anywhere within the OSMUD District. **[Added 5-6-2015 ATM, Art. 30]**

### § 210-168. Dimensional Requirements **[Amended 5-6-2015 ATM, Art. 30]**

- A. The following size and setback requirements shall apply to each lot within the applicable Subdistrict, and between Subdistricts:

|                                  | Residential Subdistrict (R) and Commercial Subdistrict (C) [Dwelling Uses] | Commercial Subdistrict (C) [Commercial Uses] | Village Center Subdistrict (VC) |
|----------------------------------|----------------------------------------------------------------------------|----------------------------------------------|---------------------------------|
| Minimum lot frontage             | 25 feet                                                                    | 100 feet                                     | 100 feet                        |
| Minimum lot area*                | 4,000 square feet                                                          | 30,000 square feet                           | 30,000 square feet              |
| Minimum setback from street line | 10 feet                                                                    | 25 feet                                      | 25 feet                         |
| Minimum side yard width          | 0                                                                          | 0                                            | 0                               |

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|                         |                                                                                                                                                                                                             |                                                                                                                                                                                                             |                                         |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Minimum rear yard depth | 10 feet                                                                                                                                                                                                     | 10 feet                                                                                                                                                                                                     | 10 feet                                 |
| Maximum building height | 35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less | 35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less | 35 feet or 3 stories, whichever is less |

\* Notwithstanding the definition of Lot Area in §210-4, the surface area of man-made ponds, retention ponds and irrigation ponds shall be included in the area needed to satisfy Minimum Lot Area requirements within the OSMUD District.

When a Commercial Subdistrict abuts a Residential Subdistrict within the OSMUD District, a setback of at least 50 feet between buildings in the Commercial Subdistrict used for commercial purposes and the boundary of the Residential Subdistrict shall be provided

B. The following setback requirements shall apply to any lot within the OSMUD District that abuts land outside the OSMUD District:

|                                  | Residential Subdistrict (R) and Commercial Subdistrict (C) [Dwelling Uses] | Commercial Subdistrict (C) [Commercial Uses] |         |
|----------------------------------|----------------------------------------------------------------------------|----------------------------------------------|---------|
| Minimum setback from street line | 50 feet                                                                    | 50 feet                                      | 50 feet |
| Minimum side yard width          | 25 feet                                                                    | 25 feet                                      | 25 feet |
| Minimum rear yard                | 20 feet                                                                    | 25 feet                                      | 25 feet |

C. All buildings in the Commercial Subdistrict used for commercial purposes shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of the Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways. This Subsection shall not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

D. All buildings in the Village Center Subdistrict shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways and parking areas, if screening of such parking areas is provided in a manner approved by the Planning Board. The Master Plan Special Permit may authorize the Planning Board to approve, pursuant to § 210-173, a setback of a lesser width than is set forth in this Subsection upon a finding that such a lesser setback is sufficient to screen and/or separate the building from the lot outside of the OSMUD District. This Subsection shall not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

### § 210-169. Parking [Amended 5-1-2017 ATM, Article 37]

A. The requirements of § 210-124(B) (1) relating to the minimum number of parking spaces shall

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apply in the OSMUD District, with the following additions and exceptions:

| Uses                                                                                      | Requirement                                                                                         |
|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Single family dwelling                                                                    | 2 spaces per dwelling unit                                                                          |
| Dwelling units other than single family dwelling and those within mixed use buildings     | Dwellings with up to 1 bedroom: 1.5 spaces<br>Dwellings with more than 1 bedroom: 2.0 spaces        |
| Residential Component of a Mixed Use Building                                             | 1 space per dwelling unit                                                                           |
| Hotel, motel, and inns                                                                    | 1 space for each unit available for occupancy                                                       |
| Adult day care                                                                            | 1 space for each full time employee on the largest shift                                            |
| Continuing care retirement community or assisted living facility, or similar institutions | 3 spaces for each 4 units available for occupancy                                                   |
| Funeral homes and mortuaries                                                              | 5 spaces per 1,000 square feet of gross floor area, not including corridors and other service areas |

- B. Structures accessory to agricultural and horticultural use, including greenhouses, shall not be included in the calculation of Gross Floor Area for purposes of the minimum parking requirements, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in such calculation of Gross Floor Area.
- C. Where parking uses have peak user demands at different times or where different uses are accommodated by a shared parking space, as certified by a registered traffic engineer, the Planning Board, by Special Permit may approve shared parking facilities, designed and intended to serve more than a single use shown on a Site Plan, in satisfaction of the applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section.
- D. The Planning Board may, by Special Permit, approve an amount of parking less than applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section, if it finds that the lesser amount of parking will not cause excessive congestion or endanger public safety, and that the lesser amount of parking will provide positive environmental or other benefits.
- E. The Planning Board may, by Special Permit, approve a combination of on-lot and on-street parking, as is appropriate to a pedestrian-oriented environment, in satisfaction of the applicable minimum parking requirements of § 210- 124(B)(1), as modified by this Section.
- F. No Special Permit shall be granted pursuant to Subsection C, D, or E above, unless the Planning Board determines that the provision of parking spaces proposed will be in harmony with the general purpose and intent of this Chapter and adequate for all parking needs, and that all parking spaces associated with a use are within practical walking distance thereof. The Planning Board may grant such approvals with conditions, which may include, but need not be limited to, the following:
- (1) A requirement that shared and off-site parking arrangements between property owners be formalized in an instrument that runs with the land and is recorded at the Registry of Deeds;
  - (2) A requirement that adequate space shall be set aside within the Development Project to construct additional parking spaces in the future should the mix of uses and peak demand times change and require additional parking.

### § 210-170. Restricted Land

- A. Restricted Land may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, underground utilities, municipal purposes and other similar purposes necessary for the convenience and enjoyment of the OSMUD District or the Town, as well as other purposes customarily associated with a use authorized by this Subsection.
- B. The Planning Board shall not issue a Master Plan Special Permit pursuant to §210-172 unless the Master Plan includes not less than 500 acres of Restricted Land consistent with the development and design objectives set forth in §210-162 and planned as large contiguous parcels wherever possible.
- C. Prior to the commencement of a Construction Activity, the North Parcel, consisting of not less than 68 acres, and the South Parcel, consisting of not less than 35 acres, both as shown on the Official Zoning Map, shall be made subject to a Restricted Land Covenant designating such land as open space Restricted Land to be left in substantially its natural state, restored or landscaped, in perpetuity. Thereafter, land designated as Restricted Land shall be subject to a Restricted Land Covenant in accordance with the provisions of Subsection E below.
- D. Except with respect to the North Parcel and the South Parcel, which may not be released from their Restricted Land Covenants, the Restricted Land Covenants applicable to any Restricted Land may provide that such Restricted Land may be released from a Restricted Land Covenant by an instrument executed by the owner, the Planning Board and the Board of Selectmen, and recorded, provided that not less than an equivalent area of land is made subject to a Restricted Land Covenant and substituted therefor, subject to the approval of the Planning Board. The forms of Restricted Land Covenants appropriate for particular Restricted Land uses shall be approved by Town Counsel and included in the Master Plan Special Permit.
- E. Applications for Site Plan Review of Development Projects shall designate 1.80 acres of area to remain as Restricted Land for every 1 acre of Buildable Area within the Development Project. The Restricted Land so designated may be located within the Development Project for which Site Plan Review is being sought or may be located elsewhere within the OSMUD District, and may consist of an entire lot or of a portion of a lot. The North Parcel and the South Parcel may be designated to meet the Restricted Land requirement for Development Projects within the OSMUD District.

In the event that less than 500 acres have been made subject to a Restricted Land Covenant at the expiration of fifteen (15) years from the filing of a Notice pursuant to the provisions of §210-172, the owner or owners of such additional land as is required to achieve the 500-acre total shall subject such land to Restricted Land Covenants. In the event that such owner or owners have not made such additional land as is required to achieve the 500-acre total subject to Restricted Land Covenants within 60 days of the expiration of such period, the Planning Board may designate one or more parcels as are required to achieve such 500-acre total, and such parcels shall forthwith be made subject to a Restricted Land Covenant by the owner or owners thereof. The Planning Board shall have the authority to extend such deadline to a later date upon a finding that the holder or holders of the Master Plan Special Permit are continuing to pursue development of the OSMUD District and have not yet achieved substantial completion notwithstanding good faith efforts. The foregoing obligation shall be binding and enforceable pursuant to the provisions of Article XXIV only upon the owner of the parcels required to be restricted at the expiration of such period, as it may be extended, and shall not affect the compliance with this Chapter of any lot in a Development Project which has received Site Plan Approval prior to the expiration of such period, as it may be extended.

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- F. Restricted Land may be (i) owned by a Landowners' Association, (ii) owned by a non-profit entity, a principal purpose of which is land conservation or the provision of recreational facilities, (iii) conveyed to the Town, or (iv) owned by, made subject to easement rights benefiting, or leased to third parties. In all such cases the uses permitted by such deeds, easements or leases of required Restricted Land shall be consistent with the provisions of this §210-170, the Master Plan Special Permit and the applicable Restricted Land Covenant. A Landowners' Association or other party responsible for Restricted Land may adopt reasonable rules and regulations to govern the use of the Restricted Land under its control and to prevent encroachment thereon.
- G. Restricted Land Covenants shall specify the permitted uses of specific parcels of Restricted Land; the responsible party to be charged with maintenance and stewardship of the Restricted Land in perpetuity; and a required program for such maintenance and stewardship. Applications for Site Plan Review of Development Projects shall include an agreement authorizing the Town to perform maintenance or stewardship of areas designated as Restricted Land in connection with the approval of such Development Project in the event of any failure to comply with the required program for maintenance and stewardship of the Restricted Land, after thirty (30) days notice to the Landowners' Association or other responsible party and failure of the Landowners' Association or such party to cure such failure; provided, however, that, if the Town elects to perform any maintenance or stewardship work, the responsible party therefor shall pay the cost thereof, which cost shall constitute a lien, subordinate to any mortgage or other statutory lien, upon the properties in connection with which the Restricted Land was originally designated, until the cost has been paid.
- H. Nothing in this Section shall be interpreted to preclude the owner of Restricted Land from imposing additional restrictions on the Restricted Land or a Conservation Restriction or Agricultural Preservation Restriction under M.G.L. c. 184 §31-33 which are not inconsistent with the applicable Restricted Land Covenant.

### **§ 210-171. Administration**

- A. The Planning Board shall be the Special Permit Granting Authority for any Special Permit authorized by this Article. The Planning Board may adopt and file with the Town Clerk Regulations governing Submission Requirements and Procedures for any such Special Permit.
- B. In all matters in which it has jurisdiction to issue a use Special Permit pursuant to § 210-165, the Planning Board may issue such Special Permits only upon a finding that the proposed use is in harmony with the general purpose and intent of this Chapter. Any such Special Permit shall be subject to such conditions and safeguards as the Planning Board may prescribe. In reviewing any application for such Special Permit, the Planning Board shall give due consideration to promoting the public health, safety, convenience and welfare; shall encourage the most appropriate use of land and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood.
- C. After the initial issuance of a Master Plan Special Permit, uses that require a Special Permit pursuant to § 210-165 may be authorized either by an amendment of the Master Plan Special Permit pursuant to an application filed by or on behalf of the owners of all land covered by the Master Plan Special Permit or by a separate use Special Permit pursuant to an application filed by or on behalf of the owners of the land upon which such use is proposed to be located; provided, however, that all use Special Permits shall be consistent with and subject to all provisions of the Master Plan Special Permit applicable to the OSMUD District as a whole.

### § 210-172. Master Plan Special Permit

- A. Except as otherwise provided in this Section, no Construction Activity for any development project to be located on land within the OSMUD District may commence unless authorized by a Master Plan Special Permit issued pursuant to the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- B. Prior to the commencement of any Construction Activity for any Development Project approved under an OSMUD District Master Plan Special Permit, the applicant may continue to exercise its rights under the underlying zoning and may elect not to exercise the rights granted in the OSMUD District Master Plan Special Permit. If the applicant elects to exercise the rights granted in the OSMUD District Master Plan Special Permit and pursue development as shown on the approved Master Plan, a Notice to such effect shall be filed with the Town Clerk, Planning Board and Department of Municipal Inspections prior to the issuance of any building permit pursuant to such Master Plan Special Permit. From and after the filing of such Notice, all Construction Activity within the OSMUD District shall be in accordance with the approved Master Plan Special Permit. Activities that do not constitute Construction Activity may be undertaken prior to the filing of the Notice under this Section.
- C. Application for Master Plan Special Permit
  - (1) A record owner desiring an OSMUD District Master Plan Special Permit shall file with the Planning Board an application therefor in accordance with any applicable regulations adopted pursuant to §210-171.
  - (2) At a minimum, the application for the Master Plan Special Permit shall contain the following information relating to development of the OSMUD District:
    - (a) Identification of the entire area of land to be developed;
    - (b) The existing topography of the land, vegetative cover, soil types, wetlands and water bodies, roads and ways, the general location, size and shape of structures to be removed and the location, size and shape of structures to remain;
    - (c) The general proposed location within which structures will be constructed, including a schedule of various land use types including Dwelling Uses, Commercial Uses, mixed use buildings, and/or buildings accessory to Restricted Land uses;
    - (d) The general proposed location, size and intended use of all Restricted Land, including pedestrian, bicycle and equestrian trails, and the Landowners' Association or other entity intended to own, operate and/or maintain such Restricted Land;
    - (e) The general proposed location of all existing and proposed roads, water supply systems, wastewater systems, storm water drainage, utilities, and connections to existing infrastructure, and the Landowners' Association or other entity intended to own, operate and/or maintain such facilities;
    - (f) An analysis of the impact of implementing the Master Plan on surface and ground water quality, groundwater recharge, wildlife habitat and corridors, wetlands and bodies of water, including streams and rivers, both localized and general, and an evaluation of pre-development conditions and post-development conditions;
    - (g) A traffic impact and access study on the impact of implementing the Master Plan on the operation, safety and overall convenience of the roadway system providing access to the

OSMUD District, including impacts on both vehicular and pedestrian travel, and proposed mitigation and trip reduction techniques, if applicable;

- (h) An analysis of the projected economic impact of implementing the Master Plan on the Town, prepared by a qualified independent economic research consultant;
  - (i) A phasing projection indicating the general proposed times within which construction of improvements within the OSMUD District in accordance with the Master Plan is anticipated, which schedule may be subject to variation depending on market forces;
  - (j) Proposed Design Guidelines for the OSMUD District; and
  - (k) Proposed forms of the Restricted Land Covenants.
- (3) Within seven (7) days of receipt of the application, the Planning Board shall transmit copies of the application material to the Board of Selectmen, Director of Public Works Conservation Commission, Fire Department, Police Department, Board of Health, Design Review Board, and Director of Municipal Inspections for review and comment. The Planning Board shall not approve any such application until the final reports of such departments have been submitted to it or until 35 days have elapsed after the transmittal of the application without such report being submitted.
- (4) The Planning Board shall hold a public hearing and file its decision with the Town Clerk in conformance with the requirements of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**

#### D. Master Plan Special Permit Approval Criteria

No Master Plan Special Permit shall be granted unless the Planning Board finds that:

- (1) The Master Plan complies with the provisions of this Article and of the Design Guidelines.
- (2) The Master Plan shall serve the purposes of the OSMUD District as described in § 210-162. **[Amended 5-6-2015 ATM, Art. 39]**
- (3) The impact of the development activities shown on the Master Plan is anticipated to be of benefit to the Town.
- (4) The major intersections and roadways providing access to the OSMUD District will continue to operate at an acceptable level of service (LOS) based on the anticipated impact of vehicular traffic from any previously approved uses within the OSMUD District that will remain plus all new proposed development within the OSMUD District.
- (5) The Master Plan provides adequately for the convenience and safety of vehicular and pedestrian movement within the OSMUD District and in relation to streets, property or improvements outside of the OSMUD District.
- (6) The Master Plan provides for the adequacy of the methods of disposal of sewage, refuse, and other wastes, provision of utilities, and the methods of drainage for surface water and seasonal flooding, if any, and protection of water sources for the Town.

### E. Master Plan Special Permit Amendment

- (1) Amendment of the Master Plan Special Permit shall require approval of the Planning Board. An application to amend the Master Plan Special Permit may be submitted separately or together with an application to the Planning Board for Site Plan Review. If the Board determines that such amendment is significant, it shall hold a public hearing in conformance with M.G.L. c. 40A §9. If the Board determines, at a noticed public meeting of the Board but without a public hearing in conformance with MGL c. 40A §9, that such amendment is minor, it may amend the Master Plan Special Permit without a public hearing, and a copy of the amendment shall be filed with the Town Clerk.
- (2) Applications for amendment to the Master Plan Special Permit may be filed by the owners of the affected land, and shall not be required to be filed by the owners of all land within the OSMUD District.

### F. Duration of Approval

The issuance of a building permit within two (2) years of the date of the filing of the decision with the Town Clerk (or the date of the final resolution of any appeal of such decision) and the commencement of a Construction Activity within six (6) months of issuance of a building permit for such Construction Activity shall be deemed to constitute substantial use of rights under the OSMUD District Master Plan Special Permit.

### § 210-173. Site Plan Review

- A. Construction of all Development Projects within the OSMUD District shall be subject to Site Plan Review by the Planning Board in accordance with the provisions of Article XX, with the following additions and exceptions:
  - (1) Construction of Development Projects for Residential Uses shall be subject to Site Plan Review, notwithstanding any provision of §210-133 or § 210-134 to the contrary. However Site Plan Review shall not apply to the alteration, reconstruction or enlargement of residential buildings. For the purposes of this Section, a mixed-use building shall be considered a commercial building, and shall not be considered a residential building.
  - (2) Construction of all Development Projects for Commercial Uses shall be considered a Major Project with respect to the procedures contained in Article XX.
  - (3) The Decision Criteria in this Article shall supersede the Site Plan Standards listed in §210-136.1 and referred to in §210-136.2.A. **(Amended ATM 5-6-2014 Article 32)**
- B. As part of the Site Plan Review process, the applicant and/or licensed professionals engaged by the applicant also shall file with the Planning Board a certification indicating the manner in which the Development Project complies with the provisions of this Article, the Master Plan Special Permit and the Design Guidelines.
- C. Permissible Building Areas: A Site Plan may show proposed construction within a Permissible Building Area, where the mix of uses and related construction details are subject to change, and shall specify the maximum square feet of Gross Floor Area to be constructed within such Permissible Building Area. Although the Site Plan may show a proposed building in a specific location, the Site Plan approval shall authorize the construction of the Development Project if the structures therein and other site features thereof are located within the Permissible Building Area indicated. After the issuance of a Certificate of Occupancy for a building, the amount by which such building is less than the

maximum square footage of Gross Floor Area allocated thereto or the amount by which the number of Dwelling Units constructed is less than the Dwelling Units proposed shall be available for reallocation to other proposed buildings or Dwelling Units within the OSMUD District, subject to further site plan review of the buildings to which such intensity of uses is reallocated, if required. **[Amended 5-1-2017 ATM, Article 37]**

D. Decision Criteria.

The Planning Board shall approve an application for Site Plan review if it finds that:

- (1) The Site Plan complies with the Master Plan Special Permit;
- (2) The Site Plan meets all of the requirements and standards set forth in this Article, the Master Plan Special Permit, and applicable Design Guidelines;
- (3) The convenience and safety of vehicular and pedestrian movement within the Development Project and in relation to adjacent areas and public ways is ensured;
- (4) Substantial adverse potential impacts of the Development Project have been adequately mitigated.
- (5) Adequate mitigation has been provided with respect to any conditions impacting on-site safety, whether such conditions are created on-site or off-site. **[Added 5-6-2015 ATM, Art. 30]**

E. Minor Modifications: After the filing of a Decision of Site Plan Review, the Planning Board shall have the authority to approve minor modifications to the Site Plan. Minor modifications shall include changes that involve minor Permissible Building Area adjustments, utility or building orientation adjustments; minor adjustments to parking, landscaping, Restricted Land or other building or site details; or other changes that do not significantly increase the square footage of Gross Floor Area of Commercial Uses within a Development Project or the number of Dwelling Units in a Development Project. Minor modifications may be approved by the Planning Board at any regularly scheduled public meetings, without the need to hold a public hearing. **[Amended 5-1-2017 ATM, Article 37]**

F. Duration of Approval: Site Plan approvals under this Article shall remain in effect as to a Development Project as long as a building permit for not less than one (1) building in the Development Project is issued within two (2) years of issuance of the Site Plan approval (or the date of final resolution of any appeal of such issuance).

### **§ 210-174. Design Guidelines**

A. To ensure that Development Projects shall be of quality design, the Site Plans for Development Projects within the OSMUD District shall be based on Design Guidelines adopted for the OSMUD District under the Master Plan Special Permit, which shall supersede any inconsistent provisions of design guidelines adopted under Article XXI.

B. The Design Guidelines shall implement the following principles:

- (1) The design shall consider the natural resources of the land, including topographic, geologic and natural features, and the historical character of the Town, where applicable.
- (2) Restricted Land and landscaped areas shall complement, enhance or screen the building and parking areas. Natural features shall be incorporated within Restricted Land areas where possible.

- (3) A network of trails shall provide access to various points of interest, including recreation areas, unique vistas, and historic sites both within and outside of the OSMUD District and shall link Restricted Land areas.
  - (4) The design of the OSMUD District shall incorporate stormwater practices consistent with low impact development techniques in addition to Best Stormwater Management Practices.
  - (5) Buildings within the OSMUD District shall utilize energy efficient design and execution and low impact development techniques and principles, to the extent feasible.
  - (6) The design shall be respectful of existing neighborhood settings.
- C. The Master Plan Special Permit may provide that the provisions of the Design Guidelines may be waived by the Planning Board as part of the Site Plan Review process based on a finding that such modifications are necessary or appropriate to meeting the development and design objectives of this Article.

### **§ 210-175. Modifications of zoning provision, applicability**

- A. Modifications to Article XII, Water Resources Protection Overlay District. In the OSMUD District, the following modifications to the provisions generally applicable to the Water Resources Protection Overlay District shall apply:
- (1) For purposes of § 210-70(C) (2), the term “Development Project” shall be substituted for the term “lot.”
  - (2) In § 210-70(D) (5), the words “except for excavations related to site work” shall be inserted at the end of the clause.
- B. Modifications to Article XVIII, Supplementary Provisions. In an OSMUD District, the following modifications to the Supplementary Provisions shall apply:
- (1) The provisions of the Design Guidelines shall supersede the provisions of § 210-119.1 pertaining to the width of driveways.
  - (2) The provisions of the Design Guidelines shall supersede the provisions of § 210-124 pertaining to the design of parking facilities.
- C. All land within the OSMUD District shall be subject to the provisions of this Chapter as in effect on the effective date of the amendments added to this Chapter by the 2015 Annual Town Meeting. **[Amended 5-6-2015 ATM, Art. 30]**

## ARTICLE XXVII

### Signs

(Added ATM 5-4-2009, Article 18; deleted and replaced ATM 5-2-2016, Article 36)

#### § 210-176. Purpose.

The requirements of this Article are intended to: 1) facilitate efficient communication; 2) avoid conflict between signs and the visual qualities of the environs; 3) support economic vitality and opportunity; and 4) encourage compatibility and harmony with surrounding buildings, land and land uses.

#### § 210-177. Definitions.

For the purpose of this Article, the following terms shall have the following meanings:

**BANNER** – A temporary sign that is applied to cloth, paper, flexible plastic or fabric of any kind, and that is hung from the ends and/or the top thereof.

**BUSINESS ESTABLISHMENT** – A lawfully existing non-residential use.

**GOVERNMENT SIGN** – A sign that is constructed, placed or maintained by the federal, state or local government or that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

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

**SANDWICH BOARD SIGN** – A portable A-frame sign constructed of durable materials with two flat faces and designed to be displayed on the ground.

**SIGN** – Any letter, word, symbol, drawing, picture, design, device, article or object of whatever material and manner of composition or construction that is displayed in an exterior location. The term "sign" shall not include: historical date plaques and markers, athletic scoreboards, pavement markings, memorials and monuments, decorations, traffic control devices, trailhead markers, kiosks, or flags and insignias of governmental jurisdictions.

**SIGN AREA** – The area that includes all lettering, wording and accompanying symbols or designs as well as the background on which they are displayed, whether open or enclosed, any frame around such background and any cutouts or extensions. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, wall or building shall be considered to be that of the smallest rectangle comprised of horizontals and verticals that encompasses all of the letters and symbols. Only one side of a two-sided identical sign shall be counted in computing the area of a sign.

**TEMPORARY SIGN** – A sign that, by its design or use is temporary in nature and not permanently affixed. Temporary signs are frequently composed of paper, plastic, fabric, posterboard or cardboard, and are typically displayed on property that is for sale, lease or rental, under construction, where a garage, yard or special sale is being held, or where a seasonal or occasional use or event is occurring.

#### § 210-178. General Regulations. [Amended 5-1-2017 ATM, Article 39]

The following regulations shall apply in all zoning districts:

- A. No exterior sign shall be displayed except as provided in this Article, except as exempted by this or other applicable law.
- B. No sign shall be displayed so as to create a hazard, obstruct the line of sight at an intersection or obstruct pedestrian travel on public sidewalks.
- C. Neon signs, including any sign that features exposed glass tubing filled with fluorescent gas, are prohibited. No messages or graphics on permanent signs shall be formed by lights of any kind.
- D. No sign shall be mounted, affixed or painted on roofs or on parapet walls, or extend above the roof eave line of a building.
- E. No sign shall flash, rotate, be animated, make noise, be motorized or move or be designed to move by any means, either in whole or in part.
- F. Notwithstanding any provision of this Article to the contrary, signs may be displayed within the right of way of the following major public ways, if authorized by the Board of Selectmen: East Main St., Main St., Cedar St., West Main St., Wood St., South St. and Hayden Rowe Street. Such signs shall not exceed 20 square feet in area and shall not be illuminated.
- G. The provisions of this Article shall not apply to government signs.
- H. Signs may be externally illuminated by steady, stationary light shielded and directed solely at the sign; signs may be backlit or channel lit. Internally illuminated box and panel signs are prohibited.
- I. Signs attached to a building shall be placed and aligned to define or enhance the building's architectural elements. Sign design shall be reasonably compatible with the mounting location, height, proportions and materials of other signs on the same lot.
- J. Unless specifically authorized by this Article, no sign that advertises goods, products or services that are not sold, manufactured or distributed on or from the premises or facilities on which the sign is located shall be permitted.
- K. No sign that is mounted to be flush with a building wall shall be more than 6 inches in depth.
- L. No portion of any wall sign or projecting sign shall be above the first story of a building.

### **§ 210-179. Temporary signs.**

Temporary signs and banners are permitted in all zoning districts as follows:

- A. No more than 2 temporary signs may be displayed on a lot, neither of which shall exceed 8 square feet in area. A temporary sign shall not be displayed for more than 30 days.
- B. One banner for each business establishment may be displayed on the premises of such use. Such banners shall not exceed 24 square feet in area, and shall not be displayed for more than 30 days.
- C. Temporary banners may be displayed over Main Street if authorized by the Board of Selectmen and subject to such limitations as it shall require. Such banners shall not be displayed for more than 14 days and may not exceed 75 square feet in area.

D. For a period of time beginning 30 days before Patriots Day and ending two days after Patriots Day every year, there shall be no maximum number of temporary signs and banners permitted, and the maximum size of temporary signs shall be 24 square feet.

E. For a period of time beginning 30 days before a municipal, state or federal election and ending two days after the date of the election, there shall be no maximum number of temporary signs permitted.

### **§ 210-180. Sign regulations by zoning district**

A. Signs are permitted by right in each zoning district as follows.

(1) Residence A, Residence B, Residence-Lake Front and Agricultural Districts:

(a) Signs displayed on property that is for sale, lease or rental, not to exceed 6 square feet in area.

(b) Temporary or permanent signs that advertise goods, products or services that are sold, manufactured or distributed on or from the premises or facilities on which the sign is located, not to exceed 6 square feet in area.

(2) Business, Downtown Business and Rural Business Districts

(a) Wall signs and projecting signs shall be allowed on each side of a building facing a public way or parking lot. The area of such signs shall not exceed, in the aggregate, 1.5 square foot for each linear foot of a building wall that faces a public way or parking lot. If a building or business establishment has a street level public entrance that does not face a public way or parking lot, there may be one secondary wall sign in the vicinity of each such entrance, not to exceed 15 square feet in area.

(b) Except as otherwise provided herein, one standing sign per lot shall be allowed, not to exceed 32 square feet in area. Lots that have frontage on more than one public way may have two standing signs on the lot, not to exceed 32 square feet in area, each along a different public way. The height of standing signs shall not exceed 10 feet.

(c) Each business establishment may display one sandwich board sign or other standing sign not permanently affixed to the ground on the premises when the business establishment is open to the public. Such sign shall not exceed 8 square feet in area.

(d) Permanent signs shall conform to all applicable side yard and rear yard requirements.

(e) Two accessory signs per lot may be displayed. No such accessory sign shall exceed 2 square feet in area.

(f) In Rural Business Districts, illuminated signs shall be shielded from view of any residential district lot line adjoining the premises, except as authorized by Special Permit issued pursuant to section 210-180(B).

(g) Signs displayed on property that is for sale, lease or rental of the premises, not to exceed 6 square feet in area.

(3) Industrial A and Industrial B Districts

(a) A non-illuminated sign displayed on property that is for sale, lease or rental, and having an area of not more than 32 square feet, shall be permitted.

(b) Permanent signs shall conform to all applicable side and rear yard requirements. Signs may be located no nearer than 15 feet to the edge of a street.

(c) There may be one standing sign at the entrance to each individual parcel of land, not to exceed 32 square feet in area and 10 feet in height. There may be one wall sign for each business establishment, each not to exceed 32 square feet in area. In addition, there may be one wall sign at the top of the building, not to exceed 32 square feet in area; provided, however, that the sign does not extend above the roofline of the building. **[Amended 5-1-2017 ATM, Article 39]**

(d) Additional non-illuminated signs that do not exceed 2 square feet in area and, if freestanding, do not exceed 4 feet in height are permitted on a lot.

(4) Professional Office District; Campus Style Developments approved by the Planning Board pursuant to Article XIV:

(a) There may be one standing sign at the main entrance to a development site, not to exceed 32 square feet in area and 10 feet in height which shall not be located closer than 15 feet to the edge of a street.

(b) There may be one standing sign at secondary entrances to a development site, not to exceed 15 square feet in area and 10 feet in height which shall not be located closer than 15 feet to the edge of a street.

(c) Each building within a development site may display one wall or standing sign, located on or at the front of the building, not to exceed 25 square feet in area.

(d) There may be up to three additional signs within a development site, each not to exceed 2 square feet in area, and if freestanding, not to exceed 4 feet in height.

B. The following signs shall be allowed by Special Permit from the Board of Appeals, upon a finding that the sign will further the Purposes of this Article, and is otherwise appropriate for the size of the property, any buildings thereon, and the neighborhood setting.

(1) Signs, not otherwise permitted by right, to be displayed in connection with allowed uses, subject to such limitations as may be imposed by the Board of Appeals.

### § 210-181. Special Regulations

A. Garden Apartments in Residential Districts, Village Housing in Residential Districts, Senior Housing Development, Open Space Mixed Use Development Overlay District: In developments approved by the Planning Board pursuant to Article XIII, Garden Apartments in Residential Districts, Article XIII A, Village Housing in Residential Districts, Article XVI A, Senior Housing Development and Article XXVI, Open Space Mixed Use Development Overlay District, all signs shall be solely subject to such limitations of size and usage as may be imposed by the Planning Board.

B. Adult Uses: Signs shall be permitted subject to the requirements of those applicable to the Business District and Article XVI, Adult Uses, of this Chapter. No sign may depict or represent any sexual conduct or state of sexual excitement as defined in Section 31 of Chapter 272 of the Massachusetts General Laws. Nor shall any such depictions or representations be placed upon or within the windows or walls of the premises so as to be visible to the public from the exterior of the premises.

C. Wireless Communications Facilities: For wireless communications facilities permitted pursuant to Article XVI of this Chapter, there shall be no signs, except as required by the applicable Special Permit. All signs shall conform to the requirements of the zoning district in which the facility is located.

D. Signs at a Registered Marijuana Dispensary (RMD) shall be subject to the requirements applicable in the Zoning District in which they are located, with the following additional restrictions:

(1) At a minimum, all signs at RMDs shall be in compliance with the provisions of 105 CMR 725.105 or any applicable successor regulation of the Massachusetts Department of Public Health, as such provisions may be amended from time to time;

(2) RMD window signs shall be limited to a maximum of 20% of the window area. No window sign shall be illuminated. Neon signs, including any sign that features exposed glass tubing filled with fluorescent gas, shall neither be displayed in windows; nor be visible through windows. No window signs or signs visible through windows shall flash, rotate, be animated, be motorized or move or be designed to move by any means, either in whole or in part.

### **§ 210-182. Nonconforming signs**

#### **Legal nonconforming signs shall be regulated as follows:**

A. Except as otherwise provided in this Section, signs lawfully erected or displayed prior to the adoption of this Article may be maintained, reworded, redesigned, altered or repaired without requiring conformance with the provisions of this Article, provided that the sign is not thereby rendered more nonconforming.

B. The protections set forth in this Section shall terminate with respect to any sign that 1) has been abandoned for 6 months or more; or 2) advertises goods, products or services that have not been sold, manufactured or distributed on or from the premises or facilities on which the sign is located for 6 months or more; or 3) has not been properly repaired or properly maintained within 60 days after notice thereof has been given by the Director of Municipal Inspections to the property owner of record.

### **ARTICLE XXVIII Office Park District [Added 5-4-2009 ATM, Art. 23]**

#### **§ 210-183. Development and design objectives.**

The Office Park District is designed to accommodate a range of uses which are suitably located with convenient highway access and to provide specialized services to the community and the region. It is the intent that within the District there shall be an overall unity of design. The location and design of such uses should be such that it will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of a balance and workable relationship between undeveloped natural resources, residential neighborhoods and commercial development.

#### **§ 210-184. Permitted uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in an Office Park District for any purpose except one or more of the following, provided that no use shall involve noxious odors or excessive noise:

- A. Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2.  
**[Amended 2012 ATM, Art. 47]**
- B. Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices.
- C. Conference center.
- D. Banks.
- E. Restaurants.
- F. Drive-in, drive-through, or drive-up uses, but excluding the dispensing of food or drink.
- G. Public and private educational uses.
- H. Agricultural and horticultural uses.
- I. Child care centers.
- J. Places of worship and other religious uses.
- K. Continuing care retirement community, assisted living facility or similar institution, with a maximum number of beds and/or units not to exceed 300. For definition of use, see § 210-164 and for parking requirement, see § 210-169A.
- L. Accessory uses to any use allowed by right or by special permit herein.
- M. Health services facility **[Added 5-7-2012 ATM, Art. 46]**
- N. Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream provided, however, that any such retail store may operate only between the hours of 6:00 A.M. and 10:00 P.M.  
**[Added 2012 ATM, Art. 50]**

### **§ 210-185. Uses allowed by special permit.**

The following uses shall be allowed upon the grant of a special permit by the Planning Board:

- A. Residential dormitory component of a conference center.
- B. Public transportation facilities, limited to 1) shuttle bus stop facilities and 2) park and ride parking facilities.
- C. Continuing care retirement community, assisted living facility or similar institution, with a number of beds and/or units greater than 300. For definition of use, see § 210-164 and for parking requirement, see § 210-169A.

### **§ 210-186. Dimensional requirements.**

The following dimensional requirements shall apply:

- A. Minimum development site area: five acres. The five acres may be comprised of individual lots of less than five acres which, when combined, will be considered to be one development site. Once the lots are combined to constitute a development site, there shall be no further subdivision of the site which would result in a development site of less than five acres.
- B. Minimum lot frontage for the development site on a public way: 50 feet.
- C. Minimum lot frontage within the development site: none, provided that the interior roads, which must provide adequate access for all buildings on the development site, shall not become public ways and are to be considered private access roads. Fifty feet of frontage is required for each lot if the roads are intended to be considered public ways.
- D. Minimum lot area for individual lots within the development site: none.
- E. Setback from development site property lines:
  - (1) Minimum setbacks of buildings and parking areas from development site property lines:
    - (a) Fifty (50) feet from the property line of a Business, Downtown Business, Rural Business, Industrial A or Industrial B zoning district; one hundred (100) feet from the property line of all other zoning districts.
    - (b) Sixty (60) feet from the street line.
  - (2) The minimum setback area shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. The minimum setback area shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped.
- F. Minimum setbacks of buildings from development site interior property lines and private access roads: none.
- G. Maximum building size: Total gross floor area of all buildings shall not exceed 60% of the total development site area.
- H. Maximum building height: No building or structure shall exceed 45 feet and shall not exceed three stories in height.
- I. A minimum of 40% of the development site shall remain undeveloped Open Land.

J. Multiple buildings and uses shall be permitted on a single lot.

### **§ 210-187. Open land.**

- A. Adequate pedestrian access shall be provided to the Open Land. The Open Land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the Open Land. The Open Land may consist of a separate parcel and may be conveyed to a nonprofit organization, the purpose of which is the preservation of open space. If the Open Land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.
- B. The Open Land shall consist primarily of undisturbed land which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the Open Land may be used solely by occupants of the development site or may be available for use by the general public. The decision as to whether to permit the general public to use the Open Land shall be that of the property owner or as provided for in the deed restriction. The Open Land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.
- C. Setback areas from exterior development site property lines of 100 feet or more may be counted as part of the Open Land as long as such setback area is part of the deed restricted area referred to in this section.
- D. If stormwater management facilities are necessary for the construction of the buildings on the development site, such facilities shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such stormwater management facilities shall be designed to appear as natural landforms.
- E. Areas set aside for planned or reserve parking spaces or fire lanes may not be considered to be Open Land.

### **§ 210-188. Design Principles.**

- A. Curb cuts on streets shall be minimized, and to the greatest extent possible, buildings shall be located away from public ways and surrounding residential uses.
- B. Buildings, roadways and parking lots shall be designed to accommodate the landscape and natural site features, and disturbance to the site shall be minimized so that as many trees and natural features are retained as possible.
- C. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling onto adjacent lots and streets.
- D. Interior roadways shall remain private and shall not become public ways. The design of interior roadways shall conform to the Design Standards of the Rules and Regulations Relating to the Subdivision of Land, with the exception that the Planning Board may waive such Standards if desirable. Utilities shall be underground.

### **§ 210-189. Planned Development.**

The Site Plans submitted pursuant to Article XX, Site Plan Review, shall show the planned design, use and lighting of the entire development site, and proposed Design Guidelines. If development will be phased over time, a phasing plan shall be submitted.

### **§ 210-190. Signs**

Signs shall conform to the regulations applicable in the Professional Office (P) District.

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### **ARTICLE XXIX Hotel Overlay District [Added 5-4-2009 ATM, Art. 24]**

#### **§ 210-191. Purpose.**

The purpose of the Hotel Overlay District (HOD) is to provide for hotel uses in select locations within Hopkinton, based on proximity to infrastructure and appropriateness of the site. The District is intended to ensure that good site planning and design is an integral component of such uses, and will accommodate a site's physical characteristics. The intent is to permit hotels within the geographic area delineated on the Zoning Map in the manner described herein, as additional uses permitted in those areas.

#### **§ 210-192. Applicability.**

- A. The HOD is an overlay district superimposed on the zoning districts established by the Hopkinton Zoning Bylaws. Within the HOD, the uses listed in this Article may be permitted in the manner described, in addition to the uses permitted in the underlying zoning districts.
- B. When a portion of a lot is in the HOD, only the portion of the lot in the HOD shall be governed by this Article.
- C. All regulations and restrictions contained within the underlying zoning district shall remain in effect. The purpose of this Article is to allow up to two hotels by special permit in specific geographic areas only.

#### **§ 210-193. Use Regulations.**

Within the HOD, the following uses may be authorized upon the issuance of a special permit:

- A. Hotels and inns, provided that such facilities include: 1) a minimum of 1,500 sq. ft. of function and/or meeting room space; 2) restaurant; and 3) fitness center. Such facilities may be located either within the building or on the same lot. **[Amended 5-2-2016 ATM, Art. 37]**
- B. Accessory uses to hotels which may not be a use by right in the underlying zoning district, or which are not included in Section A above.

#### **§ 210-194. Special Permits.**

- A. The special permit granting authority shall be the Planning Board.
- B. Special Permit Criteria. No special permit shall be granted unless the Planning Board finds that:
  - (1) The proposed use complies with the provisions of this Article.
  - (2) The major intersections and roadways providing access to the use will operate at an acceptable level of service based on the anticipated impact of vehicular traffic.
  - (3) There will be adequate methods for the disposal of sewage and refuse, provision of utilities, and water supply.
  - (4) The design of the site and the architecture of the buildings will be compatible with surrounding structures and landscape features.
- C. The Planning Board shall deny an application for special permit if the number of hotels within the HOD would exceed one on the east side of Rt. 495 and one on the west side of Rt. 495, even if the application would meet the Special Permit Criteria.

### **ARTICLE XXX** **Wind Energy Systems** **[Added 5-4-2009 ATM, Art. 19]**

#### **§ 210-195. Purpose.**

The purpose of this section is to:

- A. Promote the safe, effective and efficient use of Wind Energy Systems installed to reduce the on-site consumption of utility-supplied electricity;
- B. Minimize the impacts of Wind Energy Systems on the character of neighborhoods, property values, scenic, historic, and environmental resources of the Town; and
- C. Protect health and safety, while encouraging Wind Energy Systems and limiting obstacles to their installation and use.

#### **§ 210-196. Applicability.**

Construction and use of a Wind Energy System, Meteorological Tower or any part thereof shall be permitted in all zoning districts subject to the requirements set forth in this section.

#### **§ 210-197. Definitions.**

For the purpose of this section, terms shall have the following meanings:

METEOROLOGICAL TOWER (MET TOWER) – A tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

TOTAL HEIGHT - The vertical distance from ground level to the tip of a wind turbine blade when it is at its highest point.

TOWER - The monopole, freestanding, or guyed structure that supports a wind turbine.

WIND ENERGY SYSTEM (WES) – Equipment that converts and then stores or transfers energy from the wind into useable forms of energy. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other components used in the system.

WIND TURBINE - A device for converting wind energy to mechanical, electrical or another form of energy.

#### **§ 210-198. Use Regulations.**

- A. A WES may be erected upon the issuance of a special permit by the Board of Appeals, provided that the WES is an accessory use to the primary use of the lot.
- B. A Meteorological Tower shall be allowed as of right for a period of two years, subject to renewal by the Director of Municipal Inspections for one additional two year period. A Met Tower shall conform to all provisions of this section, with the exception of the requirement for a special permit.

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- C. A WES shall be set back from property lines a distance which is equal to the total height of the WES, measured from the point of a tower base which is closest to the property line. A Wind Energy System may be located closer to a property line only under the following circumstances: a) the adjacent lot is held in common ownership with the lot on which the WES is proposed; b) upon provision by the applicant of a recordable easement from an abutting property owner(s) that is satisfactory to the Board of Appeals; or c) the WES will be mounted on a building.
- D. In no instance may the noise level at the lot line exceed 10 dB(A) over the average ambient nighttime sound level. In a case where the applicant is also the owner of the abutting lot, the distance shall be measured from the furthest lot line of the abutting lot. Any WES which is located at least 600 feet from a property line shall be presumed to meet this requirement.
- E. Unauthorized climbing access to the tower shall be limited by one or more of the following methods: a) by placing climbing apparatus no lower than 10 feet from the ground; b) by placing shielding over climbing apparatus or access; or c) by installation of a fence.
- F. Tower lighting shall not be permitted unless required by the Board of Appeals.
- G. A WES shall be properly maintained and kept in good working order by the owner at all times.
- H. A WES shall be deemed to have been discontinued if it is out of service for a continuous 24-month period. Upon receipt of a Notice of Discontinuance from the Director of Municipal Inspections, the owner shall have the right to respond to the Notice within 30 days of receipt. The Director of Municipal Inspections shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Director of Municipal Inspections that the WES has not been discontinued. If the WES is determined to be discontinued, the owner of the WES shall remove the system at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the system within said time period may subject the owner to action pursuant to Article XXIV.
- I. The visual impact of Wind Energy Systems shall be mitigated to the extent possible. Methods such as the use of landscaping, alternative locations, and non-reflective paint may be utilized.
- J. There shall be periodic inspection of the WES by a Registered Professional Engineer and submission of such reports to the Director of Municipal Inspections
- K. Nothing in this section shall prevent the co-location of wireless communications equipment on the tower, provided that all other provisions of this Chapter have been satisfied, including the issuance of all necessary permits.

### **§ 210-199. Administration**

- A. A special permit is required from the Board of Appeals to erect or install a Wind Energy System. A record owner desiring to erect a WES shall file with the Board of Appeals an application for a Wind Energy System Special Permit, together with such plans, drawings, specifications, fees and additional information as required by the Board of Appeals.
- B. The Board of Appeals shall have the authority to waive specific provisions of this section upon a determination that the waiver is not inconsistent with the purpose and intent of this section.

- C. The Board of Appeals shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- D. Approval Criteria. Before the Board of Appeals may issue the special permit, it shall determine each of the following:
- (1) The WES conforms to the use regulations and purpose of this section.
  - (2) The WES will not be detrimental to the neighborhood or the Town.
  - (3) The WES is an accessory use to the principal use of the lot.
- If the Board of Appeals does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- E. The Board of Appeals may approve the special permit with conditions, which may include, but shall not be limited to, a performance bond, secured by deposit of money or negotiable securities, is posted with the Town to guarantee proper maintenance and/or removal of the WES. The amount of the performance bond shall not exceed the estimated cost of the WES removal.

### **Article XXXI Commercial Solar Photovoltaic Installations [Added 5-6-2013 ATM Article 57]**

#### **§ 210-200. Purpose and Intent**

The purpose and intent of this Article is to permit the creation of new commercial solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety and minimize impacts on residential neighborhoods and scenic, natural and historic resources.

#### **§ 210-201. Applicability**

Construction and use of a commercial solar photovoltaic installation or any part thereof shall be permitted in any zoning district subject to the requirements set forth in this section.

Nothing in this Article should be construed to prevent the installation of solar photovoltaic installations that are permitted as-of-right in any zoning district as an accessory use.

#### **§ 210-202. Use Regulations**

Commercial solar photovoltaic installations shall conform to the following provisions:

- A. A commercial solar photovoltaic installation may be erected, upon the issuance of a special permit by the Planning Board, on a lot containing a minimum of three (3) acres.
- B. All setback, yard, buffer and screening requirements applicable in the zoning district in which the installation is located shall apply.
- C. All security fences surrounding the installations shall be set back from the property line a distance equal to the setback requirement applicable to buildings within the zoning district in which the installation is located.

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- D. The provisions of Article XX, Site Plan Review, shall not apply to commercial solar photovoltaic installations.
- E. The visual impact of the commercial solar photovoltaic installation, including all accessory structures and appurtenances, shall be mitigated. All accessory structures and appurtenances shall be architecturally compatible with each other. Whenever reasonable, structures shall be shielded from view by vegetation and/or joined and clustered to avoid adverse visual impacts. Methods such as the use of landscaping, natural features and fencing may be utilized.
- F. Lighting shall not be permitted unless required by the Planning Board or by the State Building Code. Where used, lighting shall be directed downward and full cut-off fixtures shall be used.
- G. All utility connections from the commercial solar photovoltaic installation shall be underground unless otherwise specifically permitted otherwise by the Planning Board in the special permit. Electrical transformers and inverters to enable utility interconnections may be above ground if required by the utility provider.
- H. Clearing of natural vegetation shall be limited to the minimum necessary for the construction, operation and maintenance of the commercial solar photovoltaic installation except as otherwise prescribed by applicable laws, regulations and bylaws or the special permit.
- I. The commercial solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, continued compliance with landscaping and screening requirements, and integrity of security measures. The owner or operator shall be responsible for the maintenance of any access roads serving the installation.

### § 210-203. Administration

- A. A special permit is required from the Planning Board to erect or install a commercial solar photovoltaic installation. A record owner desiring to erect or install a commercial solar photovoltaic installation shall file with the Planning Board an application for a special permit, together with such plans, drawings, specifications, fees and additional information as required by the Planning Board.
- B. The Planning Board shall have the authority to waive specific provisions of the Use Regulations of this Article upon a determination that a waiver would not be inconsistent with the purpose and intent of this Article.
- C. The Planning Board shall conduct its review, hold a public hearing and file its decision with the Town Clerk as required by the provisions of this Chapter. **[Amended 5-6-2015 ATM, Art. 39]**
- D. Approval Criteria. Before the Planning Board may issue such Special Permit, it shall determine each of the following: **[Amended 5-6-2015 ATM, Art. 39]**
  - (1) The commercial solar photovoltaic installation conforms to the provisions of this Article.
  - (2) The commercial solar photovoltaic installation will not be detrimental to the neighborhood or the Town.
  - (3) Environmental features of the site and surrounding areas are protected, and specifically surrounding areas will be protected from the proposed use by provision of adequate surface water drainage.
- E. Any special permit issued pursuant to this Article shall be subject to such conditions and safeguards as the Planning Board may prescribe. Such conditions may include the requirement of a performance bond, secured by deposit of money or negotiable securities, posted with the Town to

guarantee proper maintenance and/or removal of the commercial solar photovoltaic installation. The amount of the performance bond shall not exceed the estimated cost of the commercial solar photovoltaic installation's removal. Such conditions may also include additional screening of the facility.

### **§ 210-204. Discontinuance**

A commercial solar photovoltaic installation shall be deemed to have been discontinued if it has not been in service for a continuous 24-month period. Upon receipt of a Notice of Discontinuance from the Director of Municipal Inspections, the owner shall have the right to respond to the Notice within 30 days of receipt. The Director of Municipal Inspections shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Director of Municipal Inspections that the commercial solar photovoltaic installation has not been discontinued. If the commercial solar photovoltaic installation is determined to be discontinued, the owner shall remove the installation, including all structures, equipment, security barriers and transmission lines, and stabilize or re-vegetate the site as necessary to minimize erosion and sedimentation, at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the installation and stabilize the site within said time period may subject the owner to action pursuant to Article XXIV.

## **ARTICLE XXXII (Reserved)**

### **§ 210-205. through § 210-218. (Reserved)**

## **ARTICLE XXXIII Registered Marijuana Dispensaries [Amended 5-6-2014, ATM, Article 31]**

### **§ 210-219. Special Permit**

The Planning Board and not the Board of Appeals shall be the Special Permit Granting Authority for any Registered Marijuana Dispensary (RMD). Applications for Special Permits for RMDs must conform to the Standards and Procedures of this Article XXXIII, in addition to the generally applicable standards for the grant of a special permit set forth in MGL. c. 40A, § 9.

### **§ 210-220. Buffer Zone**

A. RMDs shall not be located within 500 feet of:

- (1) Any school, including a public or private elementary, vocational or secondary school or a public or private college or university;
- (2) Any child care facility, including preschools;
- (3) Any facility in which children commonly congregate, including, but not limited to, a public library, a playground, an athletic field or recreational facility, a place of worship, and a Town owned beach.

- B. For the purposes of this section, the distance of an RMD from a protected use shall be measured in a straight line from the nearest point of the property line of the protected use to the nearest point of the RMD.

### **§ 210-221. Requirements**

- A. No smoking, burning or other consumption of marijuana or marijuana-related products shall be permitted on the premises of an RMD.
- B. No person under the age of 21 shall be permitted on the premises of an RMD unless that person is a qualified patient or accompanied by a caregiver or patient with a valid registration card.
- C. No RMD shall be located inside a building containing residential units, including transient housing.
- D. No RMD shall be located in a movable or mobile structure such as a van or truck.
- E. No RMD shall be located in a building that contains any medical doctor's offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
- F. All RMDs shall be contained within buildings or structures having a gross floor area of not less than 1,000 square feet and not more than 20,000 square feet.
- G. An RMD shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state issued licenses or permits or within six months of ceasing operations, whichever comes first.

### **§ 210-222. Standards and Procedures Applicable to Special Permits for Registered Marijuana Dispensaries:**

- A. Applicants for an RMD Special Permit shall submit the following information in addition to all other required submissions:
  - (1) Names and address of all owners, managers, members, partners and employees;
  - (2) Sources of all marijuana that will be processed, packaged, sold or distributed at the facility;
  - (3) Projected quantity of marijuana that will be processed, packaged, sold or distributed at the facility;
  - (4) The name and contact information for a person on staff at the RMD whose responsibilities include community relations, to whom Town staff can provide notice if there are operating problems associated with the establishment.
- B. No Special Permit may be issued unless the Planning Board finds that the RMD is designed so as to minimize any adverse visual or economic impacts on the abutters or other parties in interest, as defined in *M.G.L. c. 40A, §11*.
- C. Each RMD receiving a Special Permit shall, as a condition of the Special Permit, file with the Planning Board and the Town Clerk a copy of all reports submitted to any state agency, including

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the reports required by 105 CMR 725.105(Q)(4) describing the RMD's liability insurance coverage and the annual security system audits required by 105 CMR 725.110(G).

- D. Special Permits for RMDs shall have a term limited to the duration of the applicant's ownership and the use of the premises as an RMD. Transfers of the special permit may occur only with the permission of the Planning Board, and only in the form of an amendment to the Special Permit.

### **Article XXXIIIA**

#### **Marijuana Establishments**

**[Added 5-1-2017 ATM, Article 38; Amended 5-7-2018, ATM Art. 37]**

Consistent with M.G.L. c.94G, §3(a)(2), all types of marijuana establishments, as defined in M.G.L. c.94G, §1, shall be prohibited in the Town of Hopkinton; provided, however, that Registered Marijuana Dispensaries, and Marijuana Testing Laboratories and Marijuana Research Facilities, including those that develop detection systems for cannabiniol compounds, both as defined in M.G.L. c.94G, shall not be deemed to be Marijuana Establishments.

### **ARTICLE XXXIV**

#### **Special Permit Granting Authority**

**[Added 5-6-2015 ATM, Art. 30]**

#### **§ 210-223. Special Permits.**

- A. Pursuant to MGL c. 40A, § 9, the Special Permit Granting Authority (SPGA) shall hear and decide applications for Special Permits for which express provision is made in this Chapter. The SPGA may be the Board of Appeals or the Planning Board.
- B. The SPGA shall adopt rules not inconsistent with the General Laws and the provisions of this Chapter for conducting its business and shall file a copy thereof with the Town Clerk.
- C. A Special Permit granted under this section shall lapse upon the expiration of the maximum period of time authorized by M.G.L. c.40A, §9, which shall not include such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun except for good cause; provided, however, that, prior to the expiration of such period, an applicant may request an extension of the term of a Special Permit from the SPGA, and the SPGA may extend such term as it deems appropriate.
- D. Public hearings on all applications for Special Permits shall be held in accordance with MGL c. 40A, § 11.
- E. The decision of the SPGA shall be made within 90 days after the close of the public hearing. The required time limits for a public hearing and the filing of a decision may be extended by written agreement between the applicant and the SPGA, and shall be filed with the Town Clerk.
- F. Failure of the SPGA to act within the specified period shall be deemed to be a grant of the Special Permit.
- G. Unless otherwise specified in this Chapter, a special permit may be granted only if the SPGA determines that:

- (1) All applicable criteria and standards set forth in this Chapter have been satisfied, and
  - (2) Grant of the Special Permit will be in harmony with the general purpose and intent of this Chapter.
- H. In reviewing an application for a Special Permit, the SPGA shall give due consideration to promoting the public health, safety, convenience and welfare; and shall not permit a use that is injurious, noxious, offensive or detrimental to its neighborhood except as otherwise specified in this Chapter.
- I. Special permits shall be subject to whatever appropriate conditions and safeguards the SPGA may prescribe.

### **ARTICLE XXXV Neighborhood Mixed Use District [Added ATM 5-6-2014, Article 34]**

#### **§210-237. Development and Design Objectives.**

The Neighborhood Mixed Use District (NMU District) is designed to accommodate the integration of multi-family residential uses with commercial development in areas suitably located with convenient highway access, to increase the inventory of affordable housing in Hopkinton that are Local Initiative Program (LIP) units in compliance with the requirements specified by the Department of Housing and Community Development (DHCD) so that said units will count toward the Town's requirements under M.G.L. c. 40B, §§ 20-23, and to provide specialized services to the community and the region. It is the intent that, within the NMU District, there shall be an overall unity of design of the uses consistent with designs that are traditional to New England and Hopkinton. The location and design of such uses should be such that they will not disturb residential neighborhoods or detract from the appearance of the Town and will result in the maintenance of a balance and workable relationship between undeveloped natural resources, residential neighborhoods and commercial development.

#### **§210-238. Applicability.**

- A. Notwithstanding any provision of this Chapter to the contrary, development undertaken under a Master Plan Special Permit issued pursuant to § 210-247 shall not be subject to § 210-126.1 Residential Subdivisions of 10 acres or more.
- B. Development undertaken pursuant to a Master Plan Special Permit issued pursuant to § 210-247 shall be subject to the following provisions of this Chapter only to the extent provided for in, and as modified by, the provisions of this Article:
  - (1) Article XI, Flexible Community Development Bylaw;
  - (2) Article XII, Water Resources Protection Overlay District;
  - (3) Article XVIII, Supplementary Regulations;
  - (4) Article XX, Site Plan Review.

#### **§210-239. Definitions.**

Except as otherwise provided in this section, the definitions set forth in §210-4 shall be applicable to all terms used in this Article. Notwithstanding the forgoing, the following terms, as used in this Article, shall have the meanings indicated:

**AFFORDABLE HOUSING** – Any Dwelling Units qualifying as low or moderate income housing as defined by regulations of the Department of Housing and Community Development.

**AIR-SUPPORTED STRUCTURE** – A structure used in conjunction with an athletic club/health and fitness club wherein the shape of the structure is attained by air pressure, and occupants of the structure are within the elevated pressure area.

**BUILDABLE AREA** – The portion of a Development Project area that is not Open Conserved Land.

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**CONSTRUCTION ACTIVITY** – The construction of new structures or site work associated with the construction of new structures. The term includes the construction of roadways, installation of utilities, and restoration and improvement of Open Conserved Land.

**DEVELOPMENT PROJECT** - A development undertaken pursuant to this Article, as shown on a site plan submitted to the Planning Board for Site Plan Review. A Development Project may occupy one or more lots.

**DEVELOPMENT SITE** — All land area located within the NMU District.

**DWELLING UNIT** - Use as Dwelling Units as defined in §210-4, but specifically not including residential units that may be part of a Continuing Care Retirement Community, Assisted Living Facility or similar institution.

**HEIGHT** – The vertical distance from the mean finished grade of all sides of building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, excluding chimneys, spikes, towers, wireless communication facilities, screens, parapet walls, and other structures, equipment, or projections not used for human occupancy. For residences, the area above the mean finished grade and below the floor of the first occupiable story, not to exceed 10 feet, shall be excluded from measurement of height and stories.

**MULTIFAMILY DWELLINGS** – Any dwelling units other than Single-Family Dwellings.

**OPEN CONSERVED LAND** – Land that is available for public use, reserved for outdoor passive or active recreation, and protected in perpetuity by an Open Conserved Land Covenant prohibiting further development or activities within such land that are inconsistent with the Open Conserved Land Covenant's purpose.

**OPEN CONSERVED LAND COVENANT** – A legally enforceable restriction or covenant, recorded in the Registry of Deeds and enforceable by the Town, providing that the land subject thereto shall remain as Open Conserved Land in perpetuity.

**STORY** – That portion of a building included between the upper surface of a floor and the upper surface of the floor above, except that attic or loft space between the upper surface of a floor and the upper surface of a slanted or partially slanted roof shall not be considered a story, whether or not used for human occupancy.

### **§210-240. Permitted Uses.**

No new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used in the NMU District for any purpose except one or more of the following, provided that no use shall involve noxious odors or excessive noise.

- A use that is permitted by right is denoted by the letter “Y”.
  - A use denoted by the letters “SP” may be permitted by Special Permit from the Planning Board.
- A. The following uses shall be permitted by right or allowed by Special Permit in the NMU District without the issuance of a Master Plan Special Permit. Upon the issuance of a Master Plan Special Permit pursuant to § 210-247 and the filing of the Notice pursuant to § 210-247.D, the uses

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permitted in § 210-240.B and not those specified in § 210-240.A shall be permitted within the area subject to the Master Plan Special Permit.

Table of Uses –Land not subject to a Master Plan Special Permit

|                                                                                                                                                                                                                                                                                                                                                                                                                  |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2.                                                                                                                                                                                                                       | Y  |
| Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices.                                                                                                                                                                                                                                                                                                        | Y  |
| Conference centers                                                                                                                                                                                                                                                                                                                                                                                               | Y  |
| Banks                                                                                                                                                                                                                                                                                                                                                                                                            | Y  |
| Restaurants                                                                                                                                                                                                                                                                                                                                                                                                      | Y  |
| Drive-in, drive-through, or drive-up uses, but excluding the dispensing of food or drink.                                                                                                                                                                                                                                                                                                                        | Y  |
| Public and private educational uses                                                                                                                                                                                                                                                                                                                                                                              | Y  |
| Agricultural and horticultural uses                                                                                                                                                                                                                                                                                                                                                                              | Y  |
| Child-care centers                                                                                                                                                                                                                                                                                                                                                                                               | Y  |
| Places of worship and other religious uses                                                                                                                                                                                                                                                                                                                                                                       | Y  |
| Continuing care retirement communities, assisted living facilities or similar institutions, with a maximum aggregate number of beds and/or units within the NMU District not to exceed 300. For definition of use, see § 210-164 and for parking requirements see § 210-169A.                                                                                                                                    | Y  |
| Continuing care retirement communities, assisted living facilities or similar institutions, if the maximum aggregate number of beds and/or units within the NMU District will be greater than 300. For definition of use, see § 210-164 and for parking requirements see § 210-169A.                                                                                                                             | SP |
| Health services facilities                                                                                                                                                                                                                                                                                                                                                                                       | Y  |
| Retail stores not to exceed 2,000 square feet, located so as to provide for the convenience of the occupants of the immediate neighborhood, selling items such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream; provided, however, that any such retail store may operate only between the hours of 6:00 a.m. and 10:00 p.m. | Y  |
| Residential dormitory components of a conference center                                                                                                                                                                                                                                                                                                                                                          | SP |
| Public transportation facilities, limited to 1) shuttle bus stop facilities, 2) park and ride parking facilities, and 3) parking facilities for public school buses serving Hopkinton residents.                                                                                                                                                                                                                 | SP |
| Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the NMU District.                                                                                                                                                                                                                                                  | Y  |
| Accessory uses to any use allowed by right or by Special Permit herein.                                                                                                                                                                                                                                                                                                                                          | Y  |

B. The following uses shall be permitted in the NMU District for a Development Project under a Master Plan Special Permit issued pursuant to § 210-247:

Table of Uses –Land subject to a Master Plan Special Permit

|                                                                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Multi-family dwellings                                                                                                                                                                    | Y  |
| Retail stores, not to exceed 15,000 square feet per single tenant or operator                                                                                                             | Y  |
| Retail stores exceeding 15,000 square feet per single tenant or operator, but not to exceed 38,000 square feet per single tenant or operator                                              | SP |
| Athletic clubs/Health and Fitness clubs                                                                                                                                                   | Y  |
| Health services facilities                                                                                                                                                                | Y  |
| Professional offices, medical offices, administrative offices, clerical offices, establishments for research and development or laboratories with a biosafety level of Level 1 or Level 2 | Y  |

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|                                                                                                                                                                                                  |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices                                                                                         | Y  |
| Conference centers                                                                                                                                                                               | Y  |
| Banks                                                                                                                                                                                            | Y  |
| Restaurants                                                                                                                                                                                      | Y  |
| Drive-in, drive-through, or drive-up uses, excluding the dispensing of food or drink                                                                                                             | Y  |
| Public and private educational uses                                                                                                                                                              | Y  |
| Child care centers                                                                                                                                                                               | Y  |
| Places of worship and other religious uses                                                                                                                                                       | Y  |
| Municipal uses                                                                                                                                                                                   | Y  |
| Residential dormitory components of a conference center                                                                                                                                          | SP |
| Public transportation facilities, limited to 1) shuttle bus stop facilities, 2) park and ride parking facilities, and 3) parking facilities for public school buses serving Hopkinton residents. | SP |
| Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the NMU District.                                  | Y  |
| Accessory uses to any use allowed by right or by Special Permit herein.                                                                                                                          | Y  |

### **§210-241. Intensity of Use Limitations.**

- A. Commercial Uses within the NMU District shall be limited to 250,000 square feet of Gross Floor Area in the aggregate, as authorized by a Master Plan Special Permit issued pursuant to §210-247. No single building shall have a footprint exceeding 19,000 square feet of Gross Floor Area or exceed 38,000 square feet of Gross Floor Area in total, with the exception of buildings used for an Athletic Club/Health and Fitness Club. An Athletic Club/Health and Fitness Club may have a footprint of up to 80,000 square feet of Gross Floor Area exclusive of Air Supported Structures or a footprint of up to 110,000 square feet of Gross Floor Area inclusive of Air Supported Structures, but shall not exceed 150,000 square feet of Gross Floor Area inclusive of Air Supported Structures; provided, however, that the Planning Board may, by Special Permit, approve an Athletic Club/Health and Fitness Club with a greater area of Gross Floor Area.

The Planning Board may, by Special Permit, approve the re-use of a building or combination of buildings formerly containing an Athletic Club/Health and Fitness Club for non-residential uses permitted under §210-240.B where such re-use would exceed the maximum footprint or Gross Floor Area otherwise permitted for such uses by this section; provided, however, that no Special Permit may authorize an Air Supported Structure to be used for purposes that are not a component of an Athletic Club/Health and Fitness Club. Under no circumstances shall a Special Permit be issued that results in more than 250,000 square feet of Gross Floor Area of commercial uses within the NMU District. **[Amended 5-1-2017 ATM, Article 37]**

- B. For the purposes of this section, the area of buildings used for water supply or sewage treatment facilities shall be excluded from the calculation of Gross Floor Area. **[Amended 5-1-2017 ATM, Article 37]**
- C. Residential Uses within the NMU District shall be limited to 280 Dwelling Units, which shall be multi-family dwellings with a maximum of 472 bedrooms in total and which shall not include more than 20 three-bedroom units, as authorized by a Master Plan Special Permit issued pursuant to §210-247.

### **§210-242. Affordable Housing.**

Affordable Housing shall be provided in accordance with the following requirements:

- A. One (1) Dwelling Unit shall be established as an Affordable Housing Unit for every four (4) Dwelling Units within the NMU District. As long as the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20-23 provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then all Dwelling Units within the NMU District shall be operated as a rental development. However, if either (i) M.G.L. c. 40B, §§ 20-23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development, issued pursuant to M.G.L. c. 40B §§ 20-23, no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then the Dwelling Units may be operated either as a rental development or as a for-sale condominium development. In such case, the number of affordable Dwelling Units shall be no less than one (1) for every four (4) Dwelling Units within the NMU District.
- B. All Affordable Housing Units shall be integrated with the rest of the residential development in which it is located, and shall be comparable in design, exterior appearance, construction, and quality of exterior materials with other units in such residential development. The mean number of bedrooms in Affordable Housing Units shall be equal to the mean number of bedrooms in the market-rate Dwelling Units in the residential development in which they are located.

### **§210-243. Dimensional Requirements.**

- A. Where a Master Plan Special Permit has not been issued, the dimensional requirements set forth in § 210-186 shall be applicable.
- B. The following dimensional requirements shall apply to any uses for which a Master Plan Special Permit has been issued:

#### **(1) Development Site:**

- (a) Minimum lot frontage for the Development Site on a public way: 50 feet.

- (b) Minimum setback of buildings and parking areas:

- i. For buildings: Forty (40) feet from the boundary line of a Business, Downtown Business, Industrial A, Industrial B or Agricultural District for all buildings; forty (40) feet from the boundary line of a Rural Business District for residential buildings; zero (0) feet from the boundary line of a Rural Business District for commercial buildings; one hundred (100) feet from the boundary of all other zoning districts.
- ii. For parking: Forty (40) feet from the boundary line of a Business, Downtown Business, Industrial A, or Agricultural District; forty (40) feet from the boundary line of an Industrial B District for parking accessory to residential buildings and thirty (30) feet from the boundary line of an Industrial B District for parking accessory to commercial buildings; zero (0) feet from the boundary line of a Rural Business district for at-grade parking accessory to commercial buildings; one hundred (100) feet from the boundary of all other zoning districts.

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- iii. Thirty (30) feet from the street line for residential buildings; forty (40) feet from the street line for all other buildings; five (5) feet from the street line for at-grade parking areas; provided, however, that such setbacks shall not be applicable to private roadways located entirely within the NMU District.
- (c) The minimum setback of buildings and parking areas from property lines shall be landscaped and/or wooded so as to provide adequate year-round screening of the use from abutting property and streets. Such minimum setback areas shall remain undisturbed or, if previously disturbed, shall be planted and/or landscaped.

The Planning Board may authorize by special permit a lesser setback or lesser screening than set forth herein, upon a finding that such lesser setback or screening is appropriate for the Development Site and the surrounding neighborhood and uses.

(2) Individual lots within the Development Site:

- (a) Minimum lot area for individual lots within Development Site: None.
- (b) Minimum lot frontage within the Development Site: None; provided, however, that roadways located entirely within the Development Site shall provide adequate access for all buildings on the development site, but shall not become public ways. Fifty feet of frontage shall be required for each lot in the Development Site if the roads are intended to be eligible for acceptance as public ways.
- (c) Minimum setback of buildings from interior property lines within the Development Site and from private roadways: None.

(3) Maximum building height:

Buildings and structures shall not exceed 50 feet in height or have more than four stories.

(4) A minimum of 40% of the total area of the Development Site shall be Open Conserved Land.

(5) Multiple buildings and uses may be permitted on a single lot.

### **§210-244. Parking.**

The requirements of §210-124(B) (1) relating to the minimum number of parking spaces shall apply in the NMU District, with the following addition:

| Use                         | Requirement                                                                    |
|-----------------------------|--------------------------------------------------------------------------------|
| Multi-family dwelling units | 1 space for one bedroom unit; 2 spaces for every unit with 2 or more bedrooms. |

### **§210-245. Open Conserved Land.**

- A. Adequate pedestrian access, as determined by the Planning Board, shall be provided to the Open Conserved Land. The Open Conserved Land may remain as part of the overall Development Site and need not be a separate parcel, but there shall be Open Conserved Land Covenants stating that there shall be no further development and no activities within the Open Conserved Land that are not consistent with the Open Conserved Land Covenant's purpose. The Open Conserved Land may consist of a separate parcel and may be conveyed to the Town or a nonprofit organization, the purpose of which is the preservation of open space, or may be retained by an owner of land

within the Development Site. Regardless of any such conveyance, the Open Conserved Land shall continue to be considered part of the Development Site for the purpose of calculating dimensional requirements.

- B. The Open Conserved Land shall consist of land that may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units wherever possible. If privately owned, the Open Conserved Land shall be available for use by the general public, subject to such reasonable rules and regulations to govern the use of the Open Conserved Land as may be adopted by the owner thereof. The Open Conserved Land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for outdoor active or passive recreational purposes.
- C. Setback areas from zoning district boundaries, if more than 100 feet in depth, may be considered to be part of the Open Conserved Land.
- D. Areas set aside for planned or reserved parking spaces or fire lanes shall not qualify to be part of the Open Conserved Land.
- E. Open Conserved Land may be used for the provision of subsurface utilities for the NMU District such as sewer lines, water lines, wastewater disposal beds and related underground equipment.
- F. Open Conserved Land Covenants shall specify the permitted uses of specific parcels of Open Conserved Land; the responsible party to be charged with maintenance and stewardship of the Open Conserved Land in perpetuity; and a required program for such maintenance and stewardship.
- G. Nothing in this section shall be interpreted to preclude the owner of Open Conserved Land from imposing additional restrictions on the Open Conserved Land or a conservation restriction which are not inconsistent with the applicable Open Conserved Land Covenant.

### **§ 210-246. Design Principles.**

- A. Curb cuts on public ways abutting the Development Site shall be minimized. Whenever feasible, Development Projects shall include interior vehicular connections to adjacent Development Projects and to adjacent non-residential development outside the NMU District for the purpose of reducing curb cuts and traffic flow on adjacent public ways. The location of curb cuts shall be determined by the Planning Board during the Site Plan Review process.
- B. Buildings, roadways and parking lots shall be designed to accommodate the landscape, natural site features and natural resources. Disturbance to the site shall be minimized so that as many trees and natural features are retained as possible. Natural features shall be incorporated within the Open Conserved Land where possible.
- C. Outdoor lighting fixtures shall be shielded and directed to prevent illumination from falling outside of the intended areas.
- D. The design of any interior roadway that connects two or more Development Projects shall conform to the Rules and Regulations Relating to the Subdivision of Land, whether or not such interior roadway is laid out in accordance with the Subdivision Control Law. The Planning Board may waive specific provisions of the Rules and Regulations Relating to the Subdivision of Land

if such waiver would be not be inconsistent with the design principles set forth in this section and otherwise in the public interest. All utilities within the Development Site shall be underground.

- E. The design of buildings shall be consistent with styles that are traditional to New England and Hopkinton. Buildings shall utilize energy efficient design and low impact development techniques and principles, to the extent feasible.
- F. If stormwater management facilities are necessary for the construction of the buildings on the Development Site, such facilities shall not be located within the required setback areas, unless specifically permitted by the Planning Board. Such stormwater management facilities shall be designed to appear as natural landforms, to the extent feasible.

### **§210-247. Master Plan Special Permit.**

- A. The Planning Board shall be the Special Permit Granting Authority for any Special Permit issued pursuant to the provisions of this Article. The Planning Board may adopt and file with the Town Clerk regulations governing Submission Requirements and Procedures for any such Special Permit.
- B. In all matters in which it has jurisdiction to issue use Special Permits pursuant to the provisions of this Article, the Planning Board may issue such Special Permits only upon a finding that the proposed use is in harmony with the general purpose and intent of this chapter. Any such Special Permit shall be subject to such conditions and safeguards as the Planning Board may prescribe and shall include design guidelines applicable to development of the site. In reviewing any application for such a Special Permit, the Planning Board shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land, shall require that development be consistent with the Design Principles set forth in §210-246 and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood.
- C. Except as otherwise authorized in this Section, no Construction Activity for a use that is subject to a Master Plan Special Permit pursuant to the provisions of this Article shall commence unless authorized by said Master Plan Special Permit.
- D. If the applicant elects to exercise the rights granted in a Master Plan Special Permit issued pursuant to the provisions of this Article, a Notice to such effect shall be filed with the Town Clerk, Planning Board and Department of Municipal Inspections, and recorded in the Registry of Deeds, prior to the commencement of Construction Activity. From and after the filing of such Notice, all Construction Activity within the NMU District shall be in accordance with the approved Master Plan Special Permit.
- E. The entirety of the NMU District shall be subject to one Master Plan Special Permit, for uses allowed pursuant to § 210-240.B.
- F. Application for a Master Plan Special Permit.
  - (1) A record owner desiring a Master Plan Special Permit pursuant to the provisions of this Article shall file with the Planning Board an application therefor in accordance with any applicable regulations and submission requirements adopted pursuant to this Article. At a minimum, the application shall be accompanied by a Master Plan that depicts the planned use of the entire

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NMU District, as well as the following information relating to development of the NMU District:

- (a) Identification of the entire area of land to be developed;
  - (b) The existing topography of the land, vegetative cover, soil types, wetlands and water bodies, roads and ways;
  - (c) The general proposed location within which structures will be constructed, together with a schedule of proposed land use types including Multifamily Dwellings, commercial uses, Air-Supported Structures, mixed use buildings, and/or buildings accessory to Open Conserved Land uses;
  - (d) The general proposed location, size and intended use of all Open Conserved Land, including pedestrian, bicycle and equestrian trails, and the entity intended to own, operate, and/or maintain such Open Conserved Land;
  - (e) The general proposed location of all existing and proposed roads, water supply systems, wastewater systems, storm water drainage, utilities, and connections to existing infrastructure;
  - (f) An analysis of the impact of implementing the Master Plan on surface and ground water quality, groundwater recharge, wildlife habitat and corridors, wetlands and bodies of water, including streams and rivers, both localized and general, and an evaluation of pre-development conditions and post-development conditions;
  - (g) A traffic impact and access study on the impact of implementing the Master Plan;
  - (h) An analysis of the projected economic impact of implementing the Master Plan on the Town, prepared by a qualified independent economic research consultant;
  - (i) A phasing projection indicating the general anticipated schedule of construction of improvements within the NMU District in accordance with the Master Plan Special Permit; provided, however, that such schedule may be subject to variation depending on market forces;
  - (j) Proposed Design Guidelines for the NMU District;
  - (k) Proposed forms of the Open Conserved Land Covenant necessary for the Open Conserved Land.
- (2) Approval criteria. No Master Plan Special Permit shall be granted unless the Planning Board finds that:
- (a) The Master Plan complies with the provisions of this Article.
  - (b) The impact of the development activities shown on the Master Plan is anticipated to be of benefit to the Town.
  - (c) The intersections and roadways providing access to the NMU District will operate at an acceptable level of service based on the anticipated impact of vehicular traffic from all proposed development within the NMU District.

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- (d) The Master Plan provides adequately for the convenience and safety of vehicular and pedestrian movement within the NMU District and in relation to streets, property or improvements outside the NMU District.
  - (e) The Master Plan provides for the adequacy of the methods of disposal of sewage, refuse and other wastes, provision of utilities, and the methods of drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes.
- (3) An NMU special permit may be combined with a special permit regarding parking pursuant to Section 210-124(C) and (D).
- (4) Approval of an NMU Master Plan Special Permit application shall not be considered to constitute approval of any construction.
- (5) Master Plan Special Permit Amendment.
- (a) Amendment of a Master Plan Special Permit issued pursuant to the provisions of this Article shall require the approval of the Planning Board. An application to amend the Master Plan Special Permit may be submitted separately or together with an application to the Planning Board for Site Plan Review. If the Board determines that a proposed amendment is significant, it shall hold a public hearing in conformance with M.G.L. c. 40A §9. If the Board determines, at a noticed public meeting of the Board but without a public hearing in conformance with M.G.L. c. 40A §9, that a proposed amendment is minor, it may amend the Master Plan Special Permit without a public hearing; provided, however, that a copy of such amendment shall be filed with the Town Clerk.
  - (b) Applications for an amendment to a Master Plan Special Permit issued pursuant to the provisions of this Article may be filed by the owners of the affected land, and shall not be required to be filed by the owners of all land within the NMU District.
  - (c) Duration of Approval. The commencement of Construction Activity within two (2) years of the date of the filing of the decision with the Town Clerk (or the date of the final resolution of any appeal of such decision) shall be deemed to constitute substantial use of rights under the Master Plan Special Permit.

### **§210-248. NMU Site Plan Review.**

- A. Construction of all Development Projects within the NMU District shall be subject to Site Plan Review by the Planning Board in accordance with the provisions of Article XX, with the following additions and exceptions:
- (1) Submitted Site Plans shall show the planned design, use and lighting of the entire Development Site; provided, however, that, if development will be phased over time, separate site plan submissions may be made for separate portions of the Development Site.
  - (2) Construction of residential Development Projects shall be subject to Site Plan Review, notwithstanding any provision of §210-133 to the contrary. However, Site Plan Review shall not apply to the alteration, reconstruction or enlargement of residential buildings.
  - (3) In addition to the Site Plan Standards set forth in §210-136.1, the Site Plan shall conform to the Master Plan Special Permit.
- B. Permissible Building Areas: A Site Plan may show proposed construction within a Permissible Building Area, where the mix of uses and related construction details are subject to change, and

shall specify the maximum square feet of Gross Floor Area to be constructed within such Permissible Building Area. Although the Site Plan may show a proposed building in a specific location, the Site Plan approval shall authorize the construction of the Development Project if the structures therein and other site features thereof are located within the Permissible Building Area indicated. After the issuance of a Certificate of Occupancy for a building, (i) for commercial buildings: the amount by which such building is less than the maximum square footage of Gross Floor Space allocated thereto shall be available for reallocation to other proposed commercial buildings in computing the total Gross Floor Area for commercial uses in the NMU District for purposes of the Intensity of Use Limitations set forth in §210-241.A, and (ii) for residential buildings: the amount by which the number of Dwelling Units constructed is less than the number of Dwelling Units proposed shall be available for reallocation to other proposed Dwelling Units in computing the total number of Dwelling Units for purposes of the Intensity of Use Limitations set forth in §210-241.B, subject to further site plan review of the buildings to which such intensity of uses is reallocated, if required. **[Amended 5-1-2017 ATM, Article 37]**

- C. Minor Modifications: After the filing of a Decision of Site Plan Review, the Planning Board shall have the authority to approve minor modifications to the Site Plan. Minor modifications shall include changes that involve minor utility or building orientation adjustments; minor adjustments to parking, landscaping, Open Conserved Land or other building or site details; or other changes that do not significantly increase the square footage of Gross Floor Area of Commercial Uses within a Development Project or the number of Dwelling Units in a Development Project. Minor modifications may be approved by the Planning Board at any regularly scheduled public meetings, without the need to hold a public hearing. **[Amended 5-1-2017 ATM, Article 37]**
- D. Duration of Approval: If the development is to be phased over time, Site Plan approvals under this Article shall remain in effect as long as a building permit for not less than one (1) building in a Development Project on the Development Site is issued within two (2) years of issuance of the Site Plan approval (or the date of final resolution of any appeal of such issuance).

### **§ 210-249. Signs**

All signs in the NMU District are solely subject to such limitations of size and usage as may be imposed by the Planning Board.

### **§210-250. Miscellaneous.**

- A. Modifications to Article XII, Water Resources Protection Overlay District. In the NMU District, the following modifications to the provisions generally applicable to the Water Resources Protection Overlay District shall apply:

For purposes of §210-70(C) (2), the term “Development Project” shall be substituted for the term “lot.”

- B. Modification to Article XVIII, Supplementary Provisions. The Planning Board may, at its discretion, waive provisions of §210-124, Off-Street Parking which pertain to the design of parking facilities, as part of the Site Plan Review process if such waiver would assist with achieving the purposes of this Article.