

ARTICLE 900 ADMINISTRATION

901 ENFORCEMENT

This Bylaw shall be enforced by the Board of Selectmen, either directly or by a Zoning Enforcement Officer or agent appointed by the Board. No person shall erect or externally alter a building or other structure in the Town without a permit from the Board or Zoning Enforcement Officer upon a form prescribed by the Board. No person shall occupy a building, structure, or premises without a certificate of occupancy.

902 STOP ORDER

902.1 Scope

A Stop Order shall be issued for any violation of the provisions of this Bylaw in unauthorized sale or lease; construction in deviation from approved plans; subsequent actions contrary to the stated activities and uses permitted by approved plans; failure to adequately maintain common open space; or inadequate or insufficient construction of improvements.

902.2 Notice

A Stop Order shall be issued by the Zoning Enforcement Officer and delivered to the owner of any property or his agent. Delivery shall be construed to include mailing of such Order, postage prepaid, to said owner or posting on the property. Copies of such Order shall be maintained by the Town.

- a) **Contents** – The Stop Order shall be in writing and shall state the nature of the violation and conditions under which work or use may continue. A time limit, not to exceed five (5) days, shall be permitted to allow for the necessary correction of the violation.
- b) **Unlawful Continuance** – Any person who shall continue in violation of the Stop Order shall be in violation of this Bylaw and shall be subject to the enforcement provisions of this Bylaw.
- c) **Failure to Issue** – The failure of the Town to obtain a Stop Order for any reason whatsoever shall not be interpreted as an estoppel against the Town from pursuing any other legal remedy permitted under law.

903 BUILDING OR USE PERMIT

903.1 Issuance

No building or structure shall be used, constructed, relocated, added to or demolished without a building permit having been issued by the Zoning Enforcement Officer. No such permit shall be issued until such construction, alteration, or use, as proposed complies in all respects with the provisions of this Bylaw or with a decision rendered or Special Permit granted by the Board of Appeals, or any other Special Permit Granting Authority authorized under this Bylaw.

903.2 Planned Developments

Prior to issuance of a building permit to construct an exterior alteration or addition to an existing structure or dwelling in a Planned Development, application shall be made to the Zoning Enforcement Officer in the usual manner. The Zoning Enforcement Officer shall forthwith forward the application along with all plans and specifications to the Design Review Board and the development's Homeowners' Association for their review and recommendation. In both instances, the recommendation shall be forwarded to the Zoning Board of Appeals and the Zoning Enforcement Officer within twenty-one (21) days. Failure to make such recommendation within twenty-one (21) days of the receipt of the referral shall be deemed to constitute approval. Once the recommendations have been received by the Zoning Board of Appeals and the Zoning Enforcement Officer, or said twenty-one (21) days have elapsed, an appointment at the next administrative meeting of the Board will be scheduled. At that time, the Zoning Board of Appeals shall determine whether the proposed alteration or addition exceeds the terms of the Special Permit under which the development was constructed and requires an amendment to said Special Permit. If the Board of Appeals determines that an amendment is not required, it shall notify the Zoning Enforcement Officer and a building permit may be issued.

904 OCCUPANCY PERMIT

904.1 Permanent Occupancy

No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without a Certificate of Zoning Compliance signed by the Zoning Enforcement Officer. Such certificates shall not be issued until the premises, building or structure, and its proposed uses and accessory uses comply in all respects with this Bylaw. A record of all applications and occupancy permits shall be kept on file by the Zoning Enforcement Officer.

A Certificate of Zoning Compliance shall be conditional on the maintenance of full compliance with the provisions of this Bylaw in effect at the time of issuance or with a decision of, or Special Permit granted by the Board of Appeals or any other Special Permit Granting Authority authorized by this Bylaw and shall lapse if such compliance fails.

904.2 Applications

Applications for Certificate of Zoning Compliance shall be granted or denied in writing within ten (10) days of receipt by the Zoning Enforcement Officer.

905 PLOT PLAN ACCOMPANYING APPLICATION

905.1 Minimum Requirements

Any application for a building or use permit or a certificate of occupancy shall be accompanied by a plot plan, in triplicate, accurately drawn to a scale of one (1) inch equaling forty (40) feet, showing the actual shape, area and dimensions of the lot to be built upon, the exact location and size of any buildings or structures already on the lot, the location of proposed alterations to and enlargements of existing buildings or structures, driveways, the location of new buildings or structures to be constructed, together with the lines within which all buildings or structures are to be erected or enlarged, the existing and intended use of each building or structure and all streets and ways on or adjacent to the lot,

delineation of any Wetlands Protection Overlay District, Flood Hazard Areas Overlay District or Aquifer Protection Overlay District areas located within the lot, or include a statement on the plan stating, "No part of lot is within zoned Wetlands Protection Overlay District, Flood Hazard Areas Overlay or Aquifer Protection Overlay District" and such other information as the Zoning Enforcement Officer may determine is necessary. In the case of a building or use permit for an interior improvement to a building or structure, a plot plan shall not be required.

905.2 Additional Requirements

In addition, for all new buildings and structures and all existing buildings and structures to be externally enlarged or expanded in ground area to an extent greater than thirty (30) percent of internal floor area or ground coverage, or six hundred (600) square feet, whichever is larger, plot plans shall show existing and approved abutting street grades, the proposed elevation of the top of the foundation of existing and proposed buildings or structures, existing and proposed topography, existing septic disposal systems, private wells, wetland boundary delineation as approved by the Conservation Commission, gas, water and other public utilities in the abutting street and the zoning classification of the abutting properties. Plot plans shall also show such other information as may be necessary to provide for the verification of compliance with the applicable provisions and the enforcement of the Bylaw, including, but not limited to, off-street parking, screening and fencing. Plot plans shall be certified by a registered professional engineer or land surveyor. A record of all applications, plans and permits shall be kept on file by the Zoning Enforcement Officer.

906 BOARD OF APPEALS

A Board of Appeals is hereby established which shall have all of the powers of a Board of Appeals under G. L. c. 40A. The Board of Appeals shall consist of five (5) members appointed by the Selectmen, one (1) of which shall be an attorney, and one (1) who shall conform to the requirements under the State Building Code with terms so arranged that no two (2) members' terms shall expire in one (1) year. The Board of Selectmen shall also appoint at least two (2) associate members annually. No member or associate member shall act on any appeal in which he/she has a personal or financial interest. In case of absence of any regular member, his/her place shall be taken by an associate member.

Said Board of Appeals shall exercise the authority and powers and perform the duties set for in G. L. c. 40A, in this Bylaw and the following:

906.1 Appeals from the Zoning Enforcement Officer or Other Administrative Official

An appeal to the permit-granting authority as the zoning ordinance or Bylaw may provide, may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency or by any person, including an officer or board of the Town, or of an abutting city or town aggrieved by an order or decision of the Zoning Enforcement Officer, or other administrative official, in violation of any provisions of this chapter or any ordinance or Bylaw adopted thereunder.

906.2 Special Permits

To hear and decide applications for Special Permits as provided in this Bylaw, subject to any general or specific rules therein contained, and including authority to impose appropriate terms, conditions and safeguards in its decisions.

Applications shall be approved only upon the Board's written determination that the proposal's benefits to the Town will outweigh any adverse effects for the Town or vicinity after consideration of the following, among other things, were germane:

1. Suitability of the proposed location for this proposal, taking the following into consideration:
 - a) Nearby land uses, and whether they would be supported by or damaged by having the proposed use nearby.
 - b) Uses of the site which would be displaced by or preempted by this use.
 - c) Adequacy of roads, water, drainage and other public facilities serving the location.
 - d) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from the proposal such as: erosion, siltation, potential groundwater or surface water contamination, especially if affecting public or private water supplies, habitat disturbance or loss of valuable natural vegetation.
 - e) Contribution to cumulative impact upon municipal water supplies, including consideration of nitrate-nitrogen loading, if within a defined Aquifer Protection Overlay District.

2. Activity type, mix and intensity, taking the following into consideration:
 - a) Whether the proposal contributes to the diversity of services available locally;
 - b) Seasonal consequences, including addition to peak period congestion;
 - c) Service to local, in preference to regional, markets;
 - d) For business developments, likelihood of employment opportunities being created for residents, and the quality of those opportunities; and
 - e) For residential developments, how substantially, if at all, the proposal contributes to housing diversity.

3. Building and site design, including consideration of the following:
 - a) Whether scenic views from public ways and developed properties have been considerately treated;
 - b) Whether compatibility with neighborhood character has been considerately treated;
 - c) Whether reasonable efforts have been made to minimize visibility of parking and service areas from public streets;
 - d) Whether any traditional public access to or along shoreline has been maintained; and
 - e) Compliance with the criteria of Section 424.4 and/or Section 615 under Site Plan Approval.
 - f) Compliance with Section 404.20 entitled, "Determination of Suitability of Piers."

A Special Permit granted under this authority shall lapse within a two (2) year period, or a shorter period if so provided, and if a substantial use thereof has not sooner commenced except for good cause or if construction has not begun within the period except for good cause.

The Planning Board, when acting as a Special Permit Granting Authority, is authorized to appoint associate members to the Planning Board for the purpose of acting on special permit applications, in accordance with the following procedures:

- 1) The Planning Board may, by a majority vote, appoint up to two (2) associate members at a public hearing after such positions have been publicly advertised;
- 2) The Chair of the Planning Board may designate an associate member to sit on the board for the purposes of acting on a special permit application in case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board or in the event of a vacancy on the board.

906.3 Variances

To grant upon appeal or upon petition with respect to particular land or structures a variance including a use variance from the terms of this Bylaw where the Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

906.4 Referral

In addition to those applications for a Special Permit which require site plan approval under Section 615, the Special Permit Granting Authority shall refer a Special Permit application to the Board of Appeals, Board of Health, Conservation Commission, Duxbury Bay Management Commission, Planning Board, Water Advisory Board and Design Review Board for written comments and recommendations before taking final action on said Special Permit application. In addition to the above noted Boards, the Special Permit Granting Authority may refer a Special Permit application to any other Town agency/board/department for comments and recommendations if it so desires before taking final action on said Special Permit application. A public hearing on said referral shall not be required.

Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Special Permit Granting Authority and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Special Permit Granting Authority shall not act upon said Special Permit until either comments from referred boards or agencies have been received, or said thirty-five (35) days have elapsed, whichever is sooner. Applications referred to more than one (1) board or agency may be reviewed jointly by said boards or agencies.

906.5 Application Requirements and Determinants for Special Permits from the Board of Appeals:

A. Requirements:

With each application for a Special Permit, except as otherwise provided for a development application, three (3) copies of a site plan shall be submitted to each of the following boards: the Board of Appeals, Planning Board, Board of Health, Conservation Commission and Department of Public Works. One (1) copy of the application shall be submitted to each of the Zoning Enforcement Officer and the Design Review Board. To the extent to which the following information is necessary to delineate and describe site conditions related to the proposed use for which the Special Permit is requested, said site plan shall show among other things: all existing and proposed buildings, structures, parking spaces, driveways, driveway openings, service areas, and other uses, existing and proposed contours at two-foot intervals, proposed clear sight distances at all driveway openings, existing and proposed ways, existing and proposed water sources and volumes of use, existing traffic counts (from town data) and estimated future traffic volumes, land uses, abutting and across the street from the site, the zoning districts within one thousand (1,000) feet of the site perimeter, desirable existing and proposed trees on the premises, all facilities for refuse storage, sewerage, refuse and other waste disposal and for surface water drainage or retention and all principal landscape features, such as fences, walls, planting areas and walks on the lot. Said plan shall also illustrate public and private water supply wells within the site boundaries and on adjacent properties, and where applicable, the limits of any defined aquifer protection district area as specified in Section 406 of this Zoning Bylaw. Signs and lighting shall also be included. Said plan shall be prepared by a registered engineer and/or land surveyor at an appropriate scale to show clearly dimensions, legends and all other information deemed necessary to describe the site and its conditions.

B. Determinants:

In approving a site plan as part of the Special Permit, the Board of Appeals shall assure to a degree consistent with a reasonable use of the site for a purpose permitted within the district in which it is located:

- Protection for adjoining premises against detrimental or offensive use on the site;
- Adequacy of space for vehicular access to and off-street parking and loading/unloading on the site;
- Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways and land;
- Adequacy of water supplies and distribution for domestic uses fire protection;
- Adequacy of the methods of storage and disposal for sewage, refuse and other wastes resulting from the uses permitted on the site and the methods of drainage or retention of surface water;
- Maintenance and promotion of dispersed shade on paved areas through the effective use of established and/or new trees;
- Conformance to sign regulations in Section 601.

907 APPEAL OF BOARD OF APPEALS DECISION

Any person aggrieved by a decision of the Board of Appeals or any other special permit granting authority may take an appeal to the courts in accordance with G. L. c. 40A.

908 ADMINISTRATION OF DEVELOPMENT APPLICATIONS

908.1 Duties and Responsibilities

The Board of Appeals shall be responsible for the administration of the Planned Development Special Permit procedures and for scheduling, advertising and conducting all public hearings, the taking and evaluating of testimony and the approval with or without conditions or the denial of a Development Application.

908.2 Designated Review Body

The Board of Appeals shall designate the Planning Board as the review body for Special Permit procedures dealing with Planned Development.

908.3 Duties and Responsibilities of the Review Body

The Planning Board shall administer the review of information required by this Bylaw; shall assign to the appropriate Town committees, commissions and boards including, but not limited to, the following: Board of Selectmen, School Committee, Board of Health, Water Commissioners, Conservation Commission, Historical Commission, Department of Public Works, Finance Committee, Fiscal Advisory Committee, Town Assessors, Fire Chief and Open Space and Recreation Committee and Design Review Board, and the review of data particular to each of these bodies; shall set time limits for the review and reports consistent with the provisions herein; shall conduct meetings; shall prepare written findings; and shall give testimony to the Board of Appeals.

909 DESIGN REVIEW BOARD

909.1 Establishment and Membership

A Design Review Board is hereby established. Said Board shall consist of five (5) members and two (2) alternate members who shall be appointed by the Board of Selectmen in the manner prescribed herein. Members shall include, where possible in order of preference, an architect, a landscape architect, a designee of the Planning Board, a lawyer, a realtor, a nominee of any of the local historical societies or a contractor. Members shall serve for three (3) years or until their successors are appointed, except that of the five members first appointed one shall serve for three (3) years, two (2) shall serve for two (2) years and two (2) shall serve for one (1) year each. Members may be removed for cause by the Board of Selectmen following written charges and a properly advertised public hearing. A vacancy shall be filled forthwith by appointment by the Board of Selectmen for the unexpired term. Two (2) alternate members of the Board shall be appointed each year by the Board of Selectmen for a term of one (1) year in accordance with the order of occupation preference designated herein.

909.2 Organization and Proceedings

The Design Review Board shall elect a chairman from among its members to serve for a term of one (1) year. The Board shall adopt such guidelines as may be considered

necessary to the conduct of its duties and responsibilities. The Board shall keep records of its proceedings, any plans, photographs or other drawings or documents pertaining to each matter reviewed by the Board and a statement of its recommendations and the reason therefore.

909.3 Duties and Procedures

The Design Review Board shall assist the Planning Board and Zoning Board of Appeals in reviewing development applications with respect to those matters referred to it by the respective Boards. It shall also make recommendations on such other plans and applications as the Zoning Board of Appeals, Planning Board and Zoning Enforcement Officer may submit to it. The Design Review Board shall submit written reports within twenty-one (21) days of the date of submittal for review. All recommendations and reports of the Design Review Board shall be done with the concurrence of at least three (3) members. The Zoning Board of Appeals may modify any recommendations of the Design Review Board. Any such request for modification shall be dealt with by the Zoning Board of Appeals as an administrative matter.

910 REPETITIVE PETITIONS

910.1 Bylaw Amendments

No proposed change in this Bylaw which has been unfavorably acted upon by the Town Meeting shall be considered by the Town Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board to Town Meeting.

910.2 Board of Appeals Decision

No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two (2) years after the date of final unfavorable action unless all but one (1) of the members of the Planning Board first find specific and material changes in the conditions upon which the previous unfavorable action was based and consent to a re-hearing and unless the Board of Appeals finds such changes in conditions warrant such favorable action.

911 PENALTIES

911.1 Conditions

Any person violating any of the provisions of this Bylaw shall be fined not more than fifty dollars (\$50.00) for each offense. Each day that any violation is permitted to exist after written notification thereof by the Zoning Enforcement Officer shall constitute a separate offense. The Town shall be the beneficiary of all fines paid including the costs of prosecuting any legal action if allowable by law.

911.2 Applicability

The penalty provisions of this Bylaw may be imposed upon the developer, and owner, general agent, tenant architect, any contractor or builder, or any person having an identifiable property interest including a mechanic's lien, mortgage or other attachment against the property.

911.3 Non Criminal Disposition

In addition to the procedure of enforcement as described above, the provisions of this Bylaw may also be enforced by the Zoning Enforcement Officer, by non criminal complaint pursuant to the provisions of MGL Chapter 40, Section 21D. The penalty for violation of any provision of this bylaw shall be twenty-five dollars (\$25.00) for the first offense; fifty dollars (\$50.00) for the second offense; one hundred dollars (\$100.00) for the third offense; and two hundred dollars (\$200.00) for the fourth offense and each subsequent offense.

912 AMENDMENT

912.1 Authority

This Bylaw may be amended from time to time in accordance with the provisions of G. L. c. 40A. An amendment may be initiated by submitting a proposed change to the Board of Selectmen, by the Board of Selectmen, the Board of Appeals, an individual owning land in the Town, registered voters of the Town pursuant to G. L. c. 39, sec. 10, the Planning Board and the Metropolitan Area Planning Council, within fourteen (14) days of the receipt of a proposed change, the Board of Selectmen shall submit it to the Planning Board for review, a public hearing and a report.

912.2 Public Hearing

The Planning Board shall hold a public hearing on any proposed amendment, first causing notice of the time, place of such hearing and sufficient identification of the subject to be discussed in the manner prescribed in G. L. c. 40A.

912.3 Report

The Planning Board shall, after hearing all testimony regarding any proposed amendment, submit a final report with its recommendations to the Town Meeting in accordance with and subject to the provisions of G. L. c. 40A.

913 SEVERABILITY

The provisions of this Bylaw shall be severable, and if any of its provisions shall be held to be unconstitutional, the validity of any of the remaining portions of this Bylaw shall not be affected.

914 EFFECTIVE DATE

An amendment to this Bylaw shall take effect on the date on which such amendment was adopted by a favorable two-thirds vote of Town Meeting subject to the publications requirements as provided in G. L. c. 40A, sec. 5.

915 CONFLICT WITH OTHER LAWS AND REGULATIONS

This Bylaw shall not interfere with or annul any Bylaw, rule, regulations or permit provided that, unless specifically excepted where this Bylaw is more stringent, it shall control.