
Article 15:

LAND USE PERMIT REQUIREMENTS

1510 Introduction

1510.1 Purpose

This Article is adopted to promote the general welfare of the Town by encouraging the most appropriate Use of land throughout the Town, to protect the health and safety of its inhabitants and to increase the amenities of the Town by defining the regulations, standards, criteria, and other provisions for granting Land Use Permits within the Town all as authorized by, but not limited by the provision of the Zoning Act, Chapter 40A of the General Laws.

1510.2 Applicability

Land Use in the Town may be permitted under the By-laws as of right, as of right subject to Site Plan Review, by waiver, by Special Permit or Variance, or a combination thereof.

1511 LAND USE PERMITTING BOARDS

1511.1 Zoning Board of Appeals

Establishment and composition

There shall be a Zoning Board of Appeals (sometimes referred to as the "ZBA") consisting of five (5) members and three (3) associate members, all residents of the Town, appointed by the Select Board under the provisions of Chapter 40A, Section 12 of the General Laws which shall act on all matters within its jurisdiction under the By-laws and in the manner prescribed in said chapter of the General Laws.

All provisions of the By-laws and the Town By-laws for the establishment of the ZBA, the number of members thereof, term of office and powers and duties so far as the same are inconsistent herewith are hereby repealed and the By-laws are established in place thereof and in substitution thereof.

Powers

The Zoning Board of Appeals shall have and exercise all the powers granted to it by Ch.'s 40A, 40B and 41 of the General Laws and the By-laws. The Zoning Board of Appeals powers include:

1. To hear and decide applications as the Special Permit Granting Authority for special permits for those Uses provided in the By-laws and

Chapter 40A, Section 9 of the General Laws including applications for all changes, Alterations, or extensions of a Non-Conforming Structure , Lot or Use, except where the Planning Board or Select Board is specifically designated as the Special Permit Granting Authority by the By-laws.

2. To hear and decide as the Permit Granting Authority, appeals or petitions for variances from the terms of the By-laws with respect to particular Uses, land or Structures including issuance and modification of Use variances as set forth in Ch. 40A, Section 10 of the General Laws.

3. To hear and decide as the Permit Granting Authority, appeals taken by any person aggrieved by reason of the inability to obtain a permit or enforcement action from any administrative officer or board under the provisions of Ch. 40A, Sections 8 and 15.

4. To hear and decide as the Permit Granting Authority, applications for comprehensive permits for construction of low- or moderate-income housing by a public agency, limited dividend corporation or nonprofit corporation as set forth in Ch. 40B, Sections 20-23 of the General Laws.

Rules and Regulations

The ZBA shall adopt Rules and Regulations not inconsistent with the provisions of the By-laws for the administration of its powers including the conduct of its business and otherwise carrying out the purposes of Chapter 40A of the General Laws. A copy of such Rules and Regulations is filed in the office of the Town Clerk and posted on the Town website.

Fees

The ZBA may adopt reasonable administrative fees and technical review fees for any for any land Use permitting applications received by it.

1511.2 Planning Board

Establishment and composition

There shall be a Planning Board consisting of five (5) members, all residents of the Town, appointed by the Select Board under the provisions of Ch. 41A, Sections 81A-81GG of the General Laws which shall act on all matters within its jurisdiction under the By-laws and in the manner prescribed in said chapter of the General Laws. The Select Board shall have the authority to appoint one (1) associate member.

Powers

The Planning Board shall have the following powers as provided in the By-laws, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Planning Board:

1. To hear and decide applications as the Special Permit Granting Authority for Residential Cluster Developments;

2. To hear and decide applications as the Special Granting Authority for special permits as provided in Chapter 40A, Section 9 of the General Laws for Large Ground-Mounted Solar Photovoltaic Installations, and for such other Uses as the By-laws or the Town By-laws may designate.
3. To hear and decide applications as the Special Permit Granting Authority for special permits for those other Uses as prescribed provided in the By-laws and Chapter 40A, Section 9 of the General Laws;
4. To review and decide on applications as the Permit Granting Authority for ANR plans;
5. To hear and decide applications for sub-divisions; and
6. To hear and decide applications for Site Plan Review.

Rules and Regulations

The Planning Board shall adopt Rules and Regulations not inconsistent with the provisions of the By-laws for the administration of its powers including the conduct of its business and otherwise carrying out the purposes of said Chapter 40A, 41 A and other applicable provisions of the General Law. A copy of such Rules and Regulations is filed in the office of the Town Clerk and posted on the Town website.

Fees

The Planning Board may adopt reasonable administrative fees and technical review fees for any land Use permitting application received by it.

1511.3 Select Board

The Select Board shall be the Special Permit Granting Authority as provided in Ch. 40A, Section 9 of the General Laws, for Uses in the Tremont Nail Factory Overlay District, and for such other Uses as the By-laws or the Town By-laws may designate.

1512 DETERMINATION OF REQUIRED LAND USE PERMITS

1512.1 Applicability

The provisions of this Article 15 of the By-laws shall not interfere with or annul any other provisions of the By-laws, Rules or Regulations, or permit, except that, where this Article imposes a greater restriction or limitation on the Use of Building s, Structure s, or premises than is imposed by existing provisions of the By-laws and General Laws, this Article of the By-laws shall control.

1512.2 Zoning Conformance Review

The Building Commissioner shall determine the applicable land Use permits required to obtain a Building permit for any project subject to the By-laws. An Applicant seeking land Use permit(s) shall first submit an application for a Building permit to the Building Commissioner who shall conduct a zoning conformance review to determine the

applicable land Use permits with reference to the Use Table in Article 3 of the By-laws and other applicable provisions of the By-laws, the General Laws or other governmental laws, codes and regulations.

Upon completion of such review, the Building Commissioner shall issue a "Letter of Denial", listing the requirements for zoning compliance under the By-laws, including but not limited to required land Use permits. A copy of the "Letter of Denial" shall be included with the land Use permit application and provided to the appropriate Permit Granting Authority.

An Applicant for any land Use permit is strongly encouraged to meet with the Planning and Community Development Office to complete a preliminary project review prior to submitting a land Use permit application

1512.3 Application for land Use permit

An Applicant for a land Use permit shall submit a complete application to the Permit Granting Authority using the form and including the required information and documents in support of the application as described in the Rules and Regulations of the Permit Granting Authority. An application will not be deemed complete unless and until all such information and documents is received by the Permit Granting Authority. The Permit Granting Authority may, in the course of review of an application for such permit request any additional information it may reasonable require.

1512.4 Order of applications for permits

Relationship to Site Plan Review

Whenever a Use or Structure requires a special permit and Site Plan Review pursuant to the requirements of the By-laws, an application for Site Plan Review may be made either separately or simultaneously to the Special Permit Granting Authority.

Relationship to License Approval

Whenever a Use or Structure requires a special permit or a variance for Use or dimension pursuant to the requirements of the By-laws and the resulting Use also requires license approval from the Select Board acting in their capacity as the Select Board and/or in other licensing capacities as the Local Licensing Authority, application shall be made first or simultaneously to the Select Board for license/permit approval.

1512.5 Final unfavorable decision

No appeal, application or petition for a land Use permit under the By-laws which has been unfavorably and finally acted upon by the Permit Granting Authority who issued the unfavorable decision shall be acted favorably upon by the respective authority for a period of two (2) years after the date of the final unfavorable action unless the following two conditions are met:

1. All but one member of the Special Permit Granting Authority votes their consent to the refiling of the application for any special permit within the two (2) year period; and
2. The Special Permit Granting Authority finds that there are specific and material changes in the conditions upon which the previous unfavorable action was based and describe those changes in its record of the meeting.

The review process shall be taken in accordance with Ch. 40A Section 16 of the General Laws and include notice to the parties in interest as to the time and place of the meeting when the question of such consent will be considered.

1513 DESIGN REVIEW

1513.1 Purpose

The purpose of design review is to preserve and enhance the cultural, economic and historical resources of the Town by providing a detailed design review to confirm the consistency of a project with the Master Plan of the Town, the By-laws and the exterior appearance of Building (s) and sites.

1513.2 Uses and Activities Subject to Design Review

The following Uses and activities under the By-laws shall be subject to design review:

1. Requests for site plan review or special permit within the WV-1R District are subject to the Design Guidelines and Performance Standards for that District filed with the Town Clerk and posted on the Town website;
2. Requests for special permit site plan approval of Large Ground- Mounted Photovoltaic Solar Installations are subject to those Design Guidelines and Performance Standards for that Use issued by the Planning Board and filed with the Town Clerk and posted on the Town website.
3. Any construction, Alteration, demolition or removal of a Structure or site, other than any construction, Alteration, demolition or removal of a 1-Family residence which does not change the 1-Family Use of the Structure or site. This includes all actions except those that are considered to be routine maintenance.

1513.3 Design Process

Model

An Applicant subject to design review under the By-laws shall provide a three-dimensional study model (Model) of the project to the Permit Granting Authority which shall accompany the application for a land Use permit under this Article and shall demonstrate compliance with the applicable Design Guidelines. At a minimum, the Model shall include, but not be limited to, the following:

1. Proposed Building (s);
2. Neighboring Buildings;
3. Property lines;
4. Proposed topography modeled at two (2) foot intervals;
5. Location and dimensions of drives, parking areas, walks and paths;
6. Location and characteristics of any common open space, usable Open Space or natural open space;
7. Proposed landscaping;
8. Public Streets and roadways;
9. Any other significant facilities or Structures deemed appropriate by the Permit Granting Authority; and
10. A legend that explains the design principles employed in designing the site.

The Model shall accurately replicate the Applicant's project and be of sufficient detail to clearly illustrate the nature of the site, the nature of the materials Used, and the nature of the Building . The model shall be constructed at a scale of 1" = 10'.

1513.4 Open Space Design

The design of new or altered Buildings shall insure that valuable Open Space within the Town is created, and that existing Open Space is preserved, protected, and enhanced. Projects shall be consistent with the Town's Master Plan, Open Space and Recreation Plan, and Open Space goals, policies, objectives and plans.

Statement of principles

1. Provide public access to water ways and coastal areas;
2. Provide enjoyable and usable private and public Open Space shall be provided that will add to the amenities of the Town;
3. Development or redevelopment shall provide public and/or private Open Space and enhance adjacent open spaces. The scale, proportions, setbacks, height, and roof slopes of proposed Buildings shall be compatible with existing or newly created open space;;
4. Existing landscaping and landforms shall be incorporated into plans and Used to the advantage of the design;
5. When possible small parks shall be provided with benches and other amenities that are accessible to the general public; and
6. Non-surface off-Street parking shall be provided to minimize paved surface areas, wherever possible.

1513.5 Preservation and Enhancement of Landscape

The design of new or altered Buildings shall insure the integration of existing vegetation, land forms and water resources into development plans, keeping in mind the relationship of the natural environment to surrounding properties

Statement of principles

1. Promote the skillful Use of existing topography, landforms and landscaping, including the preservation of natural landscaping by minimizing tree and soil removal and the restoration of landscaping and wildlife habitat to its natural state;
2. Provide landscaping and grades changes that either strengthen or buffer the visual relationship with surrounding areas;
3. Provide trees, shrubs and groundcovers noted for longevity, low maintenance requirements, attractive appearance, ability to survive, and screening ability;
4. Plant evergreens to provide an effective year round buffer between business and residential areas;
5. Provide plantings, planters and flower boxes to visually break up paved areas and/or to enhance an ordinary façade; and
6. Plant additional Street trees and landscaping in public areas when projects impact the public Streetscape.

1513.6 Signs and Awnings

The combined impact of Signs and awnings can be part of the attraction of a commercial District. To maximize their effectiveness, every Sign and awning shall be an integral part of its Building , and each shall be complementary to adjacent Signs and awnings. As a result, they become part of an overall image, each Sign and awning supporting the other and each helping to draw customers. All Signs and awnings shall conform to the maximum area height, number, setback and illumination requirements set forth in the By-laws including but not limited to Article 11.

Statement of Principles

1. Signs and awnings should be compatible throughout various village Districts;
2. Signs and awnings on the same Building or on a series of attached Buildings should have consistency of size, location, design, color, texture, lighting, materials and expression;
3. Signs and awning should be carefully integrated with the Building façade;
4. Place Sign and awnings consistent with architectural details and not in conflict with Building details such as cornices, arches, lintels, pediments, windows, pilasters, etc.;

5. Mount Signs and awnings to align with other Signs on the Building , or installed within the natural Sign band formed by the Building 's details and cornices;
6. Care should be taken that Signs do not overpower the rest of the storefront, and be attractive as designs in themselves;
7. The design of lettering, materials and colors shall result in good visibility and be compatible and complementary with other Signs and awnings on the Building ;
8. Lettering shall be legible and oriented to the pedestrian on the sidewalk and to slow moving traffic.

1513.7 Heritage Structures

The Permit Granting Authority shall insure that proposed new Building s respect adjacent Heritage Structure s. When appropriate, the Permit Granting Authority will consult with and request opinions and information from the Historical Commission regarding Heritage Structure s.

1513.8 Ancient Ways

The Permit Granting Authority shall consider how the proposed project impacts Ancient Ways. When appropriate, the Permit Granting Authority will consult with and request opinions and information from the appropriate State resource to determine the impact.

1513.9 Endangered Species

The Permit Granting Authority shall consider how the proposed project impacts any endangered species. When appropriate, the Permit Granting Authority will consult with and request opinions and information from the appropriate State resource to determine the impact.

1513.10 Environment Justice Community

The Permit Granting Authority shall consider how the proposed project impacts any Environmental Justice consideration. When appropriate, the Permit Granting Authority will consult with and request opinions and information from the appropriate State resource to determine the impact.

1515 APPROVAL NOT REQUIRED (ANR) PLANS

1515.1 Purpose

Ch. 41, Sections 81L and 81P of the Subdivision Control Law contained in the General Laws provides for plans that do not require Planning Board approval, also known as Approval Not Required (ANR) plans.

1515.2 Criteria

In order for a plan to be eligible for ANR treatment, it must meet Frontage requirements of the By-laws, and provide direct access to the Lot by means of:

1. A public way or a way that is Used and maintained as a public way;
2. A way shown on an approved plan in accordance with the Subdivision Control Law; o,
3. A way in existence when the Subdivision Control Law took effect in the Town and is suitable for the proposed Use of the Lots.

1515.3 Procedure

In addition to the following procedures, an Applicant should refer to the Town Subdivision Rules and Regulations, the By-laws and Ch. 41, Section 81p of the General Laws for further information and requirements relative to the approval of an ANR plan:

1. The application and plan the must be submitted to the Planning Board
2. The Planning Board has twenty- one (21) days from receipt of the application and plan to endorse the plan or determine if subdivision approval is required in which case written notice of such determination shall be provided to the Town Clerk and Applicant.
3. Constructive approval will be automatically granted if no action is taken within the twenty-one (21) days, with no provision for extension.
4. The Planning Board may not rescind an ANR endorsement.

1516 REGULATION OF NEW SUBDIVISIONS

1516.1 Purpose

Ch. 41, Sections 81K-81GG of the General Laws known as the Subdivision Control Law, was enacted to protect the safety, convenience and welfare of the inhabitants of the Town by regulating the laying out and construction of ways which are not yet public roads in a proposed subdivision to ensure suitable access to the Lots in the subdivision and ensuring adequate access to utilities including water and sewer as well as parks and open space. No person and/or Owner shall make a subdivision of land unless and until first submitting an application and plan to the Planning Board for its review and approval. Under the Subdivision Control Law, the Planning Board has authority over creation of Lots as well as the Design and construction of roads, utilities, and drainage servicing the Lots. The Planning Board has adopted subdivision Rules and Regulations to fulfill the purpose of the Subdivision Control Law which have been duly certified by the

Town Clerk, are on file with that office, posted on the Town website and are recorded with the Plymouth County Registry of Deeds and filed with Plymouth Registry District of the Land Court.

1516.2 Procedure

The Planning Board shall:

1. Determine whether a plan requires approval under the Subdivision Control Law;
2. Review and approve or disapprove all preliminary and definitive subdivision plans;
3. Hold a public hearing to review a definitive plan;
4. Obtain a performance guarantee;
5. Release Lots upon request; and
6. Advise the Zoning Board of Appeals on comprehensive permits that are subdivisions.

1517 SPECIAL PERMIT

1517.1 Purpose

A special permit must be obtained from the Special Permit Granting Authority for certain proposed Uses, as provided in the By-laws.

1517.2 Applicability; Uses requiring a special permit

Specific types of Uses, as described in Article 3: Use Regulations of the By-laws and such other provisions as are specified in other sections of the By-laws, in the General Laws, or in other governmental laws, codes and regulations shall be permitted only upon the issuance of a Special Permit.

The particular types of and requirements for special permits that the Special Permit Granting Authority may issue under Ch. 40A, Section 9 of the General Laws include without limitation:

1. Increases in the density or intensity of Use in a proposed development;
2. Multi-family housing in a nonresidential District;
3. Transfer of development rights of land within or between Districts;
4. Cluster developments;
5. Planned unit developments;
6. Shared elderly housing;
7. Activities in connection with scientific research or scientific development;
8. Adult bookstores, adult motion picture theatres, adult paraphernalia, adult video stores, or establishments which display live nudity;

9. Protection of access to direct sunlight for solar energy systems; and
10. Exclusion of accessory or incidental childcare facilities from maximum permissible floor area calculations;

1517.3 Uses requiring a special permit and site plan review

Some Uses listed in Article 3: Use Regulations of the By-laws and such other provisions as are specified in other sections of the By-laws, in the General Laws, or in other governmental laws, codes and regulations, require a Site Plan Review as well as a Special Permit. For these requirements, see Site Plan Review section of this Article of the By-laws.

1517.4 Criteria

Special permits shall be granted by the Special Permit Granting Authority, only upon its written determination that the adverse effects of the proposed Use will not outweigh its beneficial impacts to the Town or neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site.

In addition to any specific requirements or factors contained elsewhere in the By-laws, the determination by the Special Permit Granting Authority shall, indicate that the proposed Use will be in harmony with the general purpose and intent of the By-laws, and shall include consideration of each of the following:

1. The Use, Structure or condition as developed will not adversely affect the neighborhood;
2. The specific site is an appropriate location and is suitable for such a Use, Structure , or condition;
3. There will be no nuisance or serious hazard to vehicles or pedestrians;
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed Use, Structure or condition. This includes the provision of appropriate sewage treatment facilities which provide for denitrification, when the permit granting authority deems such facilities necessary for protection of drinking water supply wells, ponds, or saltwater embayments;
5. The Use, Structure or condition as proposed does not pose a substantial detriment to the Town or neighborhood in which it is proposed;
6. The proposal, as approved, conforms to all other applicable provisions of the By-laws;
7. The adequacy of the site in terms of size for the proposed Use;
8. The impact on traffic flow and safety;
9. The impact on neighborhood visual character, including views and vistas;
10. The adequacy of method of sewage disposal, source of water, and drainage;
11. The adequacy of utilities and other public services;

12. The effect of the proposed project on the adequacy of the supply of affordable housing in the Town;
13. The decision of the Site Plan Review Authority: under this Article;
14. The compliance with all applicable sections of the By-laws including, but not limited to, all performance requirements under Articles 7:Designstandards and Guidelines, Article 9: Parking, Article 10: Landscaping and Article 12: Performance Standards; and that no other conflicts between the proposed project and the By-laws exists.

1517.5 Procedures

An Applicant for a special permit shall file an application containing all information and documentation required by the Rules and Regulations of the Special Permit Granting Authority and otherwise in accordance with this Article.

1517.6 Conditions

A special permit may be granted subject to general or specific provisions set forth therein, and such reasonable conditions, safeguards and limitations on time or Use including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of the By-laws. The Special Permit Granting Authority may also waive conditions as it deems appropriate.

1517.7 Relation to Conservation Commission approval

The Applicant shall submit to the Special Permit Granting Authority in addition to other requirements for special permit review, either:

1. A Determination of Non-Applicability of the Massachusetts Wetlands Protection Act under Ch. 131, Section 4 of the General Laws and Town Wetland Protective By-laws issued by the Conservation Commission, as described in that Act; or
2. An Order of Conditions or Order of Resource Area Delineation covering the proposed work or approving the wetland Resource Area delineations issued by the Town Conservation Commission for the purpose of protecting those interests described in the Wetlands Protection Act and the Town Wetlands Protective By-laws,

The Special Permit Granting Authority may issue approval of a Special Permit only after receipt of the original or certified copy of either 1. or 2, above

1517.8 Effective date

No special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision was filed in the office of the Town Clerk and no appeal has been filed or that if an appeal has been filed, that it has been dismissed or denied.

1517.9 Special permit lapse of rights

Unless otherwise provided by the By-laws a special permit shall lapse three (3) years from the date it is granted if a substantial Use thereof has not sooner commenced except for good cause shown, or in the case of a permit for construction, if the construction has not begun by that date, except for good cause shown. The determination of good cause shall be made by the Special Permit Granting Authority.

1518 SPECIAL PERMIT PERFORMANCE GUARANTY

1518.1 Requirements

The Special Permit Granting Authority as a condition for granting a special permit may require that the faithful and satisfactory construction of all proposed improvements in accordance with such permit be secured, as the Authority determines, in situations it deems appropriate. The improvements shall be made within two (2) years of the approval of the plan unless an extension is approved by the Special Permit Granting Authority.

1518.2 Performance guarantee filing fee; Amount of performance guarantee

A performance guarantee filing shall be imposed and the amount of the performance guarantee shall be determined as set forth in the Rules and Regulations.

The Special Permit Granting Authority shall set the amount of such security to be secured by one, or in part by the other of the methods described below:

1. Cash bond or deposit: By a proper bond or a deposit of money or negotiable securities or letter of credit, sufficient in the opinion of the Special Permit Granting Authority to secure performance of the conditions and observance of safeguards of such special permit.
2. Covenant: By covenant running with the land, executed and duly recorded by the Owner of record, whereby the conditions and safeguards included in such permit shall be performed before any Lot may be conveyed other than by a mortgage deed. Nothing herein shall be deemed to prohibit a conveyance of a single deed subject to such covenant of the entire parcel of land, the development of which is governed by the permit.

1518.3 Reduction of security

Until completion and submittal of the as built drawings, an electronic copy of the as built plan and a final inspection, the penal sum of any security held may from time to time be reduced by the Special Permit Granting Authority by an amount not to exceed fifty percent (50%) of the value of the work originally estimated.

1518.4 Release of security

Upon the satisfactory completion of the work under the Special Permit, security or performance of which was given, the Applicant shall send by registered mail to the Special Permit Granting Authority, an affidavit that the conditions and safeguards in connection with such security has been given have been complied with by the Applicant.

1. Upon the Special Permit Granting Authority's determination that the conditions and safeguards in connection with such security have been complied with by the Applicant, the Special Permit Granting Authority shall release the interest of the Town in such security, return or release the security to the person who furnished the same or release the covenant by the appropriate instrument, duly acknowledged.

2. Upon the Special Permit Granting Authority's determination that the conditions and safeguards included in the special permit have not been complied with by the Applicant in connection with such security have been complied with by the Applicant, the Special Permit Granting Authority shall specify the conditions safeguards included in the special permit with which the Applicant has not complied in a notice sent by registered mail to the Applicant.

1518.5 Failure to notify Applicant

If the Special Permit Granting Authority fails to send such a notice within sixty (60) days after it receives the affidavit of the Applicant, all obligations under the security shall cease and terminate, any deposit shall be returned and any such covenant shall be void.

1518.6 Applicant's failure to complete work

Upon failure of the Applicant to complete such work to the satisfaction of the Special Permit Granting Authority and in accordance with all applicable plans, the By-laws, Rules and Regulations Rules and Regulations and specifications of the Town, the Town shall be entitled to enforce such a bond or to realize upon such securities to the extent necessary to complete all such the work without delay.

1519 SITE PLAN REVIEW

1519.1 Purpose

Each Use for which a site plan review submission is required is considered a potentially significant addition to a developing or developed area of the Town, and to a residential neighborhood, commercial or industrial District. The purpose of Site Plan Review is to ensure the design and layout of certain developments permitted as a matter of right or

by special permit will not result in a detriment to the neighborhood, the District or the environment

1519.2 Conditions

The Site Plan Review Authority In considering a site plan under this section shall assure, to the degree consistent with reasonable Use of the site for the purposes permitted or permissible by the By-laws and the applicable Rules and Regulations that due consideration has been given to:

1. Protection of adjacent areas against detrimental or offensive Uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air;
2. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent Streets, properties or improvements;
3. Adequacy of the methods of disposal of sewage, refuse, and other wastes including other production by-products resulting from the Uses permitted or permissible on the site;
4. Adequacy of space for off-Street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment on the site;
5. Protection of environmental features on the site and in adjacent areas;
6. Promotion of appropriate arrangement of Structure s within the site and in relation to existing Structure s within the District and neighborhood;
7. Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, lighting, landscaping, wetlands, water courses, Buildings and other features that support the neighborhood; and
8. Compliance with all applicable sections of the By-laws.

1519.3 Site Plan Review authority

Planning Board

The Site Plan Review authority under the By-laws shall be the Planning Board except as elsewhere provided.

Zoning Board of Appeals

Where the applicable development requires a special permit, comprehensive permit or variance from the Zoning Board of Appeals, the Site Plan Review Authority under the By-laws shall be the Zoning Board of Appeals.

1519.4 Applicability: Uses Requiring a Site Plan Review

Specific types of Uses, as described in Article 3: Use Regulations of the By-laws and such other provisions as are specified in other sections of the By-laws, in the General Laws, or

in other governmental laws, codes and regulations shall be permitted only after the completion of Site Plan Review.

Whenever a Use or Structure requires a special permit and site plan review pursuant to the requirements of the By-laws, an application for Site Plan Review shall be made first or simultaneously to the Site plan Review Authority. In the event that an additional permit is required under the By-laws, the Site Plan Review Authority shall be the authority provided for in the By-laws.

The following Uses shall be permitted only upon the completion of Site Plan Review by the Site Plan Review Authority :

1. Number of Parking Spaces: Any new development expansion or change of Use, other than a 1-Family or 2 Family Development, which would require ten (10) or more parking spaces under the parking schedule in ARTICLE 9 of the By-laws, regardless of the number of parking spaces existing on the premises.
2. Parcel Size: A special permit for any development of any type on a site of thirty (30) acres or more.
3. Solar Use: A special permit for a Large Ground-Mounted Solar Photovoltaic Installation.
4. District: Any proposed project in the WV-1R Reinvestment Sub District

1519.5 Contents of Application

Applicants should refer to the Rules and Regulations of the Planning Board or Zoning Board of Appeal, as the case maybe for requirements as to the contents of the site plan and other required information to be submitted with an application for Site Plan Review.

1519.6 Review Criteria

In evaluating and rendering a decision on an application for a Site Plan Review, the Site Plan Review Authority shall consider if the development will achieve the objectives listed below and may require conditions and safeguards deemed necessary to realize those objectives:

1. Natural features

Finish site contours shall approximate the character of the natural site and the proposed development shall achieve the following objectives:

- a. Manage or reduce the volume of cut and fill;
- b. Manage or reduce the number of removed trees;
- c. Manage or reduce the pollutants reaching the water table;
- d. Manage or reduce the area of wetland vegetation displaced;
- e. Manage or reduce soil erosion;
- f. Manage or reduce the area of impervious surface; and

g. Manage or reduce the amount of stormwater runoff from the site.

2. Relation of Buildings to environment

The proposed development shall visually relate to its environment, with consideration given to appropriate scale, massing, and height to ensure that the architecture shall be in harmony with the surrounding natural environment and neighborhood.

3. Vehicular and pedestrian circulation

Vehicular circulation shall be designed to provide safe, efficient, and traffic calming features. Wherever feasible, access and circulation shall adhere to the following standards:

- a. Vehicular and pedestrian circulation layout shall be designed to reduce traffic hazards to pedestrians and vehicles both on and off the site;
- b. Street layouts shall be designed to minimize through traffic movement, excessive vehicular travel and excessive speed;
- c. Local Streets shall not be over designed or overbuilt and their appearance shall be appropriate to their Use;
- d. Ingress and egress points, commensurate with safety, shall be kept to a minimum along major abutting Streets;
- e. A minimum amount of space shall be devoted to Streets and Streets shall be constructed to adhere to topography;
- f. Sufficient off-Street parking shall be provided to minimize curb parking; All Streets shall be designed to the specifications of the subdivision Rules and Regulations; and
- g. Subdivision Rules and Regulations.

4. Pedestrian circulation

- a. Sidewalks shall whenever possible be provided along Streets Used for pedestrian access to schools, parks and shopping;
- b. Sidewalks shall be separated from the roadway edge by a border area of at least five (5) feet to increase pedestrian safety; and
3. Sidewalk ramps for handicapped accessibility shall be provided where appropriate.

5. Parking

- a. Parking areas shall be designed so that vehicles may exit without backing onto a public Street;
- b. Parking areas shall be designed so that sanitation, emergency, and other public service vehicles can serve the developments without backing unreasonable distances or making hazardous turning movements;
- c. Parking areas shall be designed so that vehicles cannot extend beyond the perimeter of such areas onto adjacent properties or public rights-of-way;

- d. Circulation within parking areas shall be designed so that vehicles can proceed safely without danger to pedestrian or other vehicles;
- e. Parking areas shall be designed to reduce their visual impact from adjacent land Uses and from public ways by the Use of vegetative buffers, berms, structural screening, such as a fence, or a combination of the above;
- g. Parking areas shall be designed to provide visual relief from large areas of unbroken pavement by including landscaped islands within the parking area;

6. Landscaping

All site plans shall be subject to the Landscaping requirements of the By-laws.

1519.7 Effect of other laws

Site Plan Review is supplementary to other sections of the By-laws by imposing Site Plan Review requirements affecting the access, circulation, design, and landscaping of parking areas, and general landscaping and design criteria. The application of this Article shall not interfere with or annul any By-laws, Rules or Regulations or permit or Town By-laws except that where this Article imposes a greater restriction upon the Use of Building s, Structure s or land than is imposed by existing provisions of the General Laws or the By-laws, this Article will control.

1519.8 Relation to Conservation Commission approval

The Applicant shall submit to the Site Plan Review Authority in addition to other requirements for Site Plan Review, either:

1. A Determination of Non-Applicability of Massachusetts Wetlands Protection Act. Ch. 131, Section 40 of the General Laws and the Wareham Wetland Protective By-laws; or
2. An Order of Conditions or Order of Resource Area Delineation, covering the proposed work, or approving the wetland Resource Area delineations issued by the Conservation Commission for the purpose of protecting those interests described in the Massachusetts Wetlands Protection Act and the Wareham Wetlands Protective By-laws.

The Site Plan Review Authority may issue approval of a Site Plan Review only after receipt of the original or certified copy of either 1 or 2, above

1519.9 Relation to subdivision plan

The approval of a Site Plan by the Site Plan Review Authority shall neither oblige the Permit Granting Authority to approve any related preliminary or definitive plan for subdivision nor substitute for such approval. However, the Site Plan Review Authority may allow an Applicant to combine a submission for a Special Permit and/or a Site Plan Review with a submission for preliminary or definitive subdivision approval if such

submission conforms to all requirements for both a Special Permit and/or a Site Plan Review and subdivision approval. In such case, the Permitting Authority may conduct a combined public hearing for both a Special Permit and/or Site Plan Review and subdivision approval.

1519.10 Effective date

No site plan review approval, extension, modification, or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision was filed in the office of the Town Clerk and no appeal has been filed or that if an appeal has been filed, that it has been dismissed or denied.

1519.11 Recording of the approved site plan

Each approved site plan including any extension, modification, or renewal thereof shall be recorded with the Plymouth County Registry of Deed or Registry District of the Land Court.

1519.12 Site Plan Review lapse of rights

Unless otherwise provided by the By-laws, approval of a site plan shall lapse two (2) years from the date it is granted if a substantial Use thereof has not sooner commenced except for good cause shown, or in the case of a permit for construction, if the construction has not begun by that date, except for good cause shown. The determination of good cause shall be made by the Site Plan Review Authority.

1519.13 Revisions to approved Site Plan

A request for any revision to an approved Site Plan must be submitted in writing to either the Zoning Enforcement Officer or Director of Planning and Community Development for review and a determination if the revision or change is either minor or major.

1. Minor revisions

If such revisions to an approved Site Plan Review is determined to be minor and not substantive, such determination shall be reviewed by the Site Plan Review Authority and, if agreed by a majority vote that the revision is minor, it may be approved without a public hearing.

2. Major revisions

If such revisions to an approved Site Plan are determined to be significant in terms of size or location of the Building , relocation of access and exit curbs, overall parking layout, landscaping and buffers, overall appearance of the Building , or intensity of Use, or relate to conditions specifically addressed in the decision by the Site Plan Review Authority, then such revisions shall be

considered major and a public hearing before the Site Plan Review Authority for these modifications shall be required in accordance with the By-laws.

The Site Plan Review Authority shall review the proposed revisions and either approve, approve with conditions or deny the proposed revisions.

1519.14 Administrative approval for minor Alteration to Building exterior or site

The Director of Planning and Community Development may authorize work to proceed under duly authorized permit(s) without site plan review for minor Alterations provided the following criteria are satisfied:

1. The proposed Alteration shall not violate any provision of the By-laws; The proposed Alteration does not result in an expansion of the Building footprint other than expansions required by the Building code related to means of egress or accessibility;
2. The proposed Alteration does not change the height or roof lines of any Building;
3. The proposed Alteration does not result in any substantial change in Lot coverage; and
4. The Director of Planning and Community Development notifies the Site Plan Review Authority of the nature of the request and the basis for the decision.

1519.15 Certification of Project Completion

An Applicant may, upon completion of all work authorized under an approved site plan under this Article, submit an application for an occupancy permit for a project under this Article. The application shall be accompanied by a Certification of Project Completion which shall include an:

1. "As-Built" Plan

Two copies of "as built" plan and electronic copies of the same filed with the Planning and Community Development Office and the Site Plan Review Authority. Such plan shall be certified and signed by a professional engineer and shall show as actually constructed, all underground public and private utility lines including details of Structures and appurtenances where appropriate, all service connections and ties to same, site elevations, grades and slopes, utility invert elevations and pipe slopes, all parking requirements, curbing, and any other pertinent data relative to the approved site plan;

2. Professional Certification

Provide a written certification from a professional engineer licensed by the Commonwealth of Massachusetts that the project complies with the requirement of the By-laws and the applicable Rules and Regulations; and

3. Project Approval

Within fourteen (14) days of the date of the plan submission, the Site Plan Review Authority shall approve the project or submit their recommendation on the "as built" plan to the Planning and Community Development Office and the Zoning Enforcement Officer. The Applicant shall construct or install any

improvements required by the Site Plan Review Authority to the satisfaction of the Zoning Enforcement Officer.

1519.16 Site Plan performance guaranty

Requirement

The Site Plan Review Authority as a condition for granting a Site Plan Review approval may require that the faithful and satisfactory construction of all proposed improvements in accordance with such approval be secured, as the Authority determines, in situations it deems appropriate. The improvements shall be made within two (2) years of the approval of the plan unless an extension is approved by the Site Plan Review Authority.

Performance guarantee filing fee; Amount of performance guarantee

A performance guarantee filing fee shall be imposed and the amount of the performance guarantee shall be determined as set forth in the Rules and Regulations.

The Site Plan Review Authority shall set the amount of such security to be secured by one, or in part by the other of the methods described below:

1. Cash bond or deposit: By a proper bond or a deposit of money or negotiable securities or letter of credit, sufficient in the opinion of the Special Permit Granting Authority to secure performance of the conditions and observance of safeguards of such special permit.
2. Covenant: By covenant running with the land, executed and duly recorded by the Owner of record, whereby the conditions and safeguards included in such permit shall be performed before any Lot may be conveyed other than by a mortgage deed. Nothing herein shall be deemed to prohibit a conveyance of a single deed subject to such covenant of the entire parcel of land, the development of which is governed by the permit.

Reduction of security

Until completion and submittal of the as built drawings, an electronic copy of the as built plan and a final inspection, the penal sum of any security held may from time to time be reduced by the Site plan Review Authority by an amount not to exceed fifty percent (50%) of the value of the work originally estimated.

Release of security

Upon the satisfactory completion of the work under the Site Plan Review approval, security or performance of which was given, the Applicant shall send by registered mail to the Site plan Review Authority, an affidavit that the conditions and safeguards in connection with such security has been given have been complied with by the Applicant.

1. Upon the Site Plan Review Authority's determination that the conditions and safeguards in connection with such security have been complied with by the

Applicant, the Authority shall release the interest of the Town in such security, return or release the security to the person who furnished the same or release the covenant by the appropriate instrument, duly acknowledged.

2. Upon the Site Plan Review Authority's determination that the conditions and safeguards included in the site plan approval have not been complied with by the Applicant in connection with such security have been complied with by the Applicant, the Authority shall specify the conditions or safeguards included in the site plan approval with which the Applicant has not complied in a notice sent by registered mail to the Applicant.

Failure to notify Applicant

If the Site Plan Review Authority fails to send such a notice within sixty (60) days after it receives the affidavit of the Applicant, all obligations under the security shall cease and terminate, any deposit shall be returned and any such covenant shall be void.

Applicant's failure to complete work

Upon failure of the Applicant to complete such work to the satisfaction of the Authority and in accordance with all applicable plans, the By-laws, Rules and Regulations and specifications of the Town, the Town shall be entitled to enforce such a bond or to realize upon such securities to the extent necessary to complete all such the work without delay.

1520 VARIANCES

1520.1 Powers

The Zoning Board of Appeals shall hear and decide all applications for variances from the provisions of the By-laws, including granting a variance authorizing a Use or activity not otherwise permitted in the District in which the land or Structure is located but only for those Uses included in Article 3 of the By-laws.

1520.2 Criteria

A variance may be granted by the Zoning Board of Appeals only where after notice and a public hearing, it is determined that factors owing to soil conditions, Lot shape, or topography of such land or Structure s creates an impracticality or limits the location or positioning of a new Structure or addition on a site or location that previously conformed to zoning requirements. An Applicant must demonstrate that a literal enforcement of the By-laws would involve substantial hardship, financial or otherwise, to the Applicant, 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 the By-laws.

1520.3 Specific Findings

The Zoning Board of Appeals shall specifically make findings related to both of the following criteria:

1. Owing to circumstances relating to the soil conditions, shape, or topography of land or Structures and especially affecting such land or Structure but not affecting generally the District in which the land or Structure is located, a literal enforcement of the provisions of Ch. 40A, Section 10 of the General Laws and the By-laws, would involve substantial hardship, financial or otherwise, to the Applicant or appellant; and
2. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of Ch. 40A, section 10 of the General Laws or the By-laws.

1520.4 Conditions, Safeguards, and Limitations

The Zoning Board of Appeals may impose such conditions, safeguards and limitations, both of time and Use, including the continued existence of any particular Structure s, but excluding any condition, safeguard, or limitation based upon the continued Ownership of the land or Structure s to which the variance pertains by the applicant, petitioner, or any Owner.

1520.5 Lapse of Rights

Any rights authorized by a variance shall be exercised within one (1) year from the date of the grant of the variance or the rights shall lapse. However, the Zoning Board of Appeals, upon written request and notice by the applicant, may extend the time for those rights for a period not to exceed six (6) months. The application for an extension beyond the original one (1) year period shall be filed prior to the expiration of the one (1) year time period. The Zoning Board of Appeals has thirty (30) days in which to act on the request, and if it fails to do so, the rights may be reestablished only after notice and a new public hearing pursuant to the provisions of the By-laws.

1521 PRE-EXISTING NON-CONFORMING USES AND STRUCTURES

The Zoning Board of Appeals shall hear and decide applications for all changes or Alterations to or extensions of pre-existing non-conforming Uses, Lots and Structure s as the Permit Granting Authority. A determination shall be issued in accordance with the standards of Article 13 of the By-laws.

1522 APPEALS

1522.1 Administrative appeal to Zoning Board of Appeals

The Zoning Board of Appeals shall hear administrative appeals by designated parties aggrieved by an inability to obtain a permit or enforcement action by the Permit

Granting Authority or by an order or decision of the Building Commissioner or other administrative officer of the Town whether or not previously a party to the proceeding. Such appeals shall be made in accordance with the provisions of Ch. 40A of the General Laws.

1522.2 Basis of Appeal

An administrative appeal to the Zoning Board of Appeals may be taken by the following parties:

1. A person aggrieved by reason of the inability to obtain a permit or enforcement action from an administrative officer under the provisions of the By-laws or Ch. 40A, Section 8 of the General Laws, and
2. A person, including an officer or board of the Town or of any abutting Town, aggrieved by an order or decision of the Building Commissioner or other administrative officer, in violation of provisions of the By-laws or Ch. 40A of the General Laws.

1522.3 Deadline to initiate an appeal

An appeal shall be initiated within thirty (30) days from the date of the order or decision, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk and other wise in accordance with the General Laws.

1522.4 Judicial review of decisions

Appealable decisions

A person or board aggrieved by a decision of the Zoning Board of Appeals on a variance or an administrative appeal by the Special Permit Granting Authority as specified in the By-laws on a special permit, and by the Site Plan Review Authority on a site plan review, whether or not previously a party to the proceeding or otherwise as provided in Ch. 40A, Section 17 of the General Laws, may appeal to the Superior Court or Land Court or other court as applicable in accordance with said Ch. 40A, Section 17.

1522.5 Appeal process

The appellant shall file a notice of appeal, specifying the grounds thereof, with the Town Clerk in accordance with the provisions of Ch. 40A, Section 17 of the General Laws. The appeal shall be filed within twenty (20) days from the date that the decision is filed with the Town Clerk.

1522.6 Repetitive appeal

Two (2) year requirement

No appeal, variance application, or special permit application that has been unfavorably and finally acted upon by the respective Permit Granting Authority shall be acted favorably upon by the respective board for a period of two (2) years after the date of final unfavorable action unless the following two conditions are met:

1. All but one member of the Planning Board shall vote their consent to the refiling of the application for any appeal, variance, or special permit within the two (2) year period; and
2. The applicable Permit Granting Authority finds that there are specific and material changes in the conditions upon which the previous unfavorable action was based and describe those changes in its record of the meeting.

Actions of parties involved in a repetitive petition process shall be taken in accordance with Ch. 40A, Section 16 of the General Laws and include notice to the parties in interest as to the time and place of the meetings.

1523 SITE WORK

1523.1 Purpose

It is the intent of the By-laws to promote the health, safety and welfare of the community's inhabitants by preventing the unnecessary destruction of the natural physical environment. Therefore, in all zoning Districts, no site preparation work shall begin, including the removal of trees, except for purposes of soil testing to obtain required permits, for any project which requires one or more of the following approvals – a subdivision plan, a special permit, a site plan review – until such approvals have been obtained.

1524 SITE INSPECTION PROGRAM

1524.1 Authority

All approved land Use applications shall be subject to site inspections. The Planning Board is responsible for the administration, management and implementation of the site inspection process. The Planning Board shall adopt reasonable Rules and Regulations to implement the site inspections, including fees required to offset the cost of the inspection services which shall be the responsibility of the Applicant

1524.2 Site inspections

Site Inspections include, but are not limited to, daily field inspections, field reports, field tests, laboratory work, meetings, conferences and related professional inspection and/or coordination services by the Planning Board or its representative(s). As a condition of a permit issued under the By-laws, the Applicant shall provide the Town with a "Site Access Certificate" specifying that the Planning Board and the Planning Board's representative will have unlimited access to the Applicant's private property for the purpose of inspecting the sitework.

1525 CERTIFICATE OF OCCUPANCY

No Certificate of Occupancy shall be issued for any Building , Structure or Use, or portion(s) thereof, subject to Special Permit and / or Site Plan Review until:

1. The Building Commissioner or designated Town Engineer receives certification from a registered architect, engineer or land surveyor, that all construction (including utilities) has been completed in accordance with the approved site plan;
2. The Building Commissioner and the designated Town Engineer verifies that all conditions of the approved permit have been met; and
3. The Building Commissioner and / or the Director of Planning confirms with the Permit Granting Authority, at a regularly scheduled meeting of that Board, that all conditions of the approved site plan have been met. Such notification shall be recorded in the minutes of the Permit Granting Authority.

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