

## TOWN OF WAREHAM ZONING BY-LAW

### **590 Special Permit for large tracts in the Conference Recreational District**

#### **590.1. General**

In order to permit a mixture of retail, residential, open space, general commercial and office uses, and a variety of building types, tracts of land within the Conference Recreational District may be developed under a Special Permit granted by the Planning Board as herein defined and limited.

#### **590.2 Special Permit Authority**

The Planning Board (Board) may grant a Special Permit for construction of a mixed-use project in the Conference Recreational District. The Special Permit shall conform to this By-Law and to Massachusetts General Laws Chapter 40A, Section 9 and to regulations which the Board may adopt for carrying out its requirements hereunder.

- a. Purpose - The purpose of the mixed-use Special Permit is to provide for a mixture of residential, open space, retail, office and other compatible uses within the Conference Recreational District in order to foster greater opportunity for the construction of quality developments on large tracts of land by providing flexible guidelines which allow the integration of a variety of land uses and densities in one development, provided that such land usage is shown to be for the public good and will serve to preserve and protect the public health, safety and welfare; and
- b. will improve the physical and aesthetic qualities of the Conference Recreational District and encourage the most appropriate use of land within the Conference Recreational District and improve and/or reinforce the livability and aesthetic qualities of the surrounding neighborhood and/or environment, and
- c. is consistent with the objectives of the Zoning By-Law.

#### **590.3 Review Procedure for Mixed Use Special Permit Applications**

The review procedure for a mixed use Special Permit consists of three steps:

- a. a pre-application conference,
- b. submission by the applicant and review by the Planning Board of a Preliminary Plan for the proposed mixed-use development, and
- c. submission by the applicant and review by both the Planning Board of an application and final plan for a mixed-use Special Permit.

#### **590.4.**

- a. Procedure for Preliminary Plan
  - i. The applicant shall file with the Town Clerk, at least fourteen (14) days before a regularly scheduled meeting of the Planning Board, the original and one (1) copy of the preliminary plan accompanied by the form entitled "Submission of Preliminary Plan Mixed-Uses". The applicant shall at the same time submit to the Planning Board eight (8) copies of the preliminary plan.
  - ii. A fee of \$350.00 (certified check) made out to the "Town of Wareham" shall accompany the submission of the preliminary plan to the Town Clerk.
  - iii. The applicant shall also, at the time the preliminary plan is filed, submit additional copies of the preliminary plan for distribution by the Planning Board to such Town boards and agencies as the Planning Board shall deem appropriate.
  - iv. The applicant shall meet with the Planning Board to discuss the preliminary plan.
  - v. The Town boards and agencies receiving copies of the preliminary plan shall submit to the Planning Board written recommendations on the preliminary plan within 30 days after filing of the preliminary plan. Failure to report to the Planning Board within 30 days shall be deemed lack of objection to the application, unless the Planning Board elects to contact such Town board or agencies requesting such a response.
  - vi. The applicant is encouraged to meet with the Town boards and agencies receiving copies of the preliminary plan during the review period.

- vii. The Planning Board within 45 days from filing of the preliminary plan shall review and determine whether the proposed project is consistent with the development of the Town and this By-Law. The Planning Board may suggest modifications and changes to the development described in the preliminary plan and shall make a written report of its recommendations to guide the applicant in the preparation of the final plan. The written report of the Planning Board shall be filed in the Town Clerk's office; after such filing the applicant may proceed to file its final plan.
- viii. If the Planning Board is unable to file its written report within 45 days after filing of the preliminary plan, the Planning Board shall notify the applicant, in writing, of the issue(s) preventing such a report in which case the Planning Board shall have an additional 21 days to file said written report.

#### 590.5 Contents of Preliminary Plan

A preliminary plan shall comprise the graphic and narrative materials described below.

- a. Graphic materials shall include plans of sufficient number, character and clarity to show the proposed development and the existing conditions on the site. Such graphic materials shall show at least:
  - i. existing and proposed lines of streets, ways, utility and all easements, and any public areas within or next to the parcel;
  - ii. the approximate boundary lines of existing and proposed lots with appropriate areas and dimensions;
  - iii. the proposed system of drainage, including adjacent existing natural waterways, including any planned nitrogen reduction from surface water runoff;
  - iv. the existing and proposed topography of the site at five foot or smaller contour intervals;
  - v. the proposed wastewater disposal system
  - vi. existing and proposed buildings, significant structures and proposed open space and proposed site amenities, and proposed circulation patterns; and,
  - vii. an analysis of the natural features of the site, including wetlands, flood plain, slopes over 10%, soil conditions and other features requested by the Planning Board or required by any regulation of the Board.
- b. Written materials shall include the following:
  - i. a description of the proposed mixed-use development, showing the planning objectives and the character of the development to be achieved through the mixed-use Special Permit;
  - ii. a description of the neighborhood in which the parcel lies, including utilities and other public facilities and the general impact of the proposed mixed use upon them; and,
  - iii. a summary of environmental concerns.
  - iv. a pro-forma for the entire proposal along with evidence of financial capacity to undertake and complete the proposed development

#### 590.6 Submission of Final Plan

- a. The applicant shall file the original application for a mixed use Special Permit and the original of the final plan together with one (1) copy of those materials, with the Town Clerk. The applicant shall also submit to the Planning Board and to those boards and agencies set forth in subparagraph 590.4.a.iii of this Section at the time the application is filed with the Town Clerk, a copy of the application and the final plan. The Final Plan shall comply, except as may be waived by the Planning Board, with the substantive Rules and Regulations of the Planning Board and with Sections 1530-1534, inclusive, of this By-Law and the Design Standards and Guidelines contained in Section 730 of this By-Law
- b. The Town boards and agencies receiving copies of the final plan shall submit to the Planning Board written recommendations on the application and final plan within 30 days of the filing of the transmittal letter certifying that copies of the final plan have been forwarded.
- c. The Planning Board, within 65 days of the filing of the final plan with the Town Clerk, shall hold a public hearing, notice of which shall be given in the manner and to the parties provided in of

this By-Law and Massachusetts General Laws Chapter 40A, Section 11, and to any other property owners deemed by the Planning Board to be affected thereby.

- d. The Board shall, within 90 days following the public hearing, issue a written decision setting forth the reason or reasons for its decision or actions. Such written decision may provide that the application is approved as submitted, is approved subject to modifications or conditions, or is denied. A copy of the Board's decision shall be filed within fourteen days with the Town Clerk and shall be mailed forthwith to the applicant. Failure by the Board to issue a written decision taking final action on the application within 90 days following the public hearing shall be deemed to be a grant of the application and the Town Clerk shall issue forthwith, upon request, a certificate of such failure to act.
- e. Approval of a Special Permit for a mixed-use shall require a majority vote of the Board.
- f. The final plan, as approved by the Board, shall be filed with the Town Clerk and recorded with the Plymouth Registry of Deeds or the Plymouth Registry District of the Land Court, as appropriate.
- g. Special Permits granted under this Section shall lapse in two years, excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has not been begun. The Board may grant an extension for good cause after a hearing, as provided in Massachusetts General Laws Chapter 40A, Section 11, and shall grant an extension if the delay has been caused by the need to seek other permits related to the development.
- h. No construction or reconstruction except as shown on the recorded final plan, or as provided in Section 590.11 hereof, approved amendments to such plan, shall occur without a further submission of plans to the Board; and a notation to this effect shall appear upon the recorded final plan and upon deeds to any property within the mixed-use parcel.
- i. Following filing with the Wareham Town Clerk and recording with the Plymouth Registry District, a final plan which has been approved pursuant to the provisions of this By-Law shall be deemed to run with the land, as provided in this Section of the By-Law.

590.7. Minimum Requirements - The mixed-use Special Permit shall be subject to the following conditions, and the Planning Board shall make a determination that the project meets the requirements of Massachusetts General Laws Chapter 40A, Section 9 and this mixed-use By-Law as to all the following conditions:

- a. the mixed use is consistent with the purpose set out in 590.2 of this By-Law;
- b. execution, delivery and recording of such covenants, agreements and instruments running with the land and binding on the owner of the parcel, its legal representative, successors, heirs and assigns, and enforceable by the Town, as the Board may require, and in form and substance satisfactory to it, in order to insure adherence to the terms of the Special Permit issued hereunder;
- c. the prior approval of detailed plans for the project including, without limiting the generality of the foregoing, plans showing all structures and improvements on the parcel, all ways and utilities serving the same (which plans shall, except as waived by the Planning Board, comply with the procedural and substantive Rules and Regulations of the Planning Board), all lot lines, easements and rights of way of record, building plans and specifications illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, typical elevations, as well as the general height, bulk and appearance of structures, and such other and further documents, studies, reports or data which the Board deems desirable in order to assist it in making its determination;
- d. the Board may, in appropriate cases, impose density, dimensional and setback requirements in addition to those required by this By-Law; and
- e. the Board may, in appropriate cases, reduce the density, dimensional and setback requirements set forth elsewhere in this By-Law.

#### 590.8 Permitted Uses and Intensity of Use:

- a. The specific mixture of uses and square footages within the Conference Recreational District shall be the prerogative of the developer, subject to design and site plan review powers accorded to the Planning Board, except that any special permit application with the Conference Recreational District must include an existing or proposed regulation 18 hole golf course, par 70 or higher and meet the minimum lot size requirement set forth in 590.9.a below.

#### b. Permitted Uses

In addition to the uses allowed with the Conference Recreational District, the Planning Board may allow such other uses, including, but not limited to, residential units, single family or multi-family, free standing, attached and/or multi-story, but excluding large, so-called "big box" retail uses, that the Planning Board deems to be appropriate, best and highest land uses within the Conference Recreational District and in harmony with the general purpose of this By-Law, upon finding that allowing said uses will encourage the preservation of valuable open space and promote the more efficient use of land in harmony with its natural features and will protect and promote the health, safety and general welfare of the inhabitants of the Town.

Uses not allowed in Section 320 of this By-Law may be permitted as part of the originally approved final plan if, in the judgment of the Board, the proposed use does not create health, traffic or safety problems for the remainder of the development area and abutter areas and is consistent with the remaining land uses in the mixed-use area and the overall plan contemplated by the Special Permit Application.

#### 590.9. Dimensional Requirements

- a. Site Area Requirements - A minimum of 100 acres is required within the Conference Recreational District. The parcel(s) shall be contiguous; however, a public transportation, utility, parking area or public ways shall not constitute a boundary or property line in computing the size of the contiguous parcel. The public transport, utility, parking area or public way, however, shall not be used in the calculation of the total project area.
- b. Density – The Planning Board shall determine the appropriate density during the Hearing on the Special Permit application, notwithstanding any provision of this By-Law to the contrary
- c. Dimensional Requirements - The Planning Board shall determine the appropriate dimensional requirements during the Hearing on the Special Permit application, notwithstanding any provision of this By-Law to the contrary
- d. Setbacks - The Planning Board shall determine the appropriate dimensional requirements during the Hearing on the Special Permit application, notwithstanding any provision of this By-Law to the contrary
- e. Open Space - The Open Space (as that term is defined in Article 16 of this By-Law) within the proposed development may be used for recreational purposes as described in Section 817.3 of this By-Law.
- f. Height - No building within the mixed-use development shall exceed 55 feet in height above the average finished grade of abutting properties. Parking facilities within the building(s) shall not be calculated as part of the allowable height.

#### 590.10. Parking Requirements

- a. In all mixed-use developments adequate off-street parking shall be provided. The Board and the applicant shall have as a goal, for the purposes of defining adequate off-street parking for the development, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the Board shall make provision for complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in reductions in the parking requirements set

out in this subsection of the By-Law. The parking may be at ground level, underground or in a parking garage. Parking garages can be free standing (in which case 55 feet is the allowed maximum height) or as part of buildings with commercial or residential purposes. If a free standing parking structure is proposed, the spaces must be assigned to specific uses at the time of the submission of the final plan.

590.11 Amendments - After approval of the mixed use Special Permit by the Board, the developer may seek amendments to the final plan as approved by the Board as provided below:

- a. Minor amendments shall be defined and administered in accordance with regulations adopted by the Board.
- b. An application for a major amendment shall be filed with the Town Clerk. The applicant shall also submit copies of the application for a major amendment with the Building Commissioner and the Planning Board. An application for a major amendment shall comply with subsections 5 and 6 of this Section.