

## **7. ADMINISTRATION**

### **7.1 Enforcement**

This By-Law shall be enforced by the Board of Selectmen or by a Building Inspector appointed by the Board. Any request for enforcement of this By-Law shall be in writing.

### **7.2 Building or Use Permit**

#### **7.2.1**

No building or structure shall be constructed, relocated, added to or demolished without a permit having been issued by the Building Inspector. No such permit shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with the provisions of this By-Law or with a decision rendered by the Board of Appeals. Any application for such a permit shall be accompanied by a plot plan in triplicate, drawn to a scale of one (1) inch = forty (40) feet, showing the actual shape, area and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings or structures to be constructed, together with the distance from said areas to the nearest point of the proposed structure, the existing and intended use of each building or structure and all streets and ways on, and adjacent to, the lot.

#### **7.2.2**

Simultaneous Issuance of a Demolition Permit and a Building Permit - The building inspector is authorized to issue a building permit either simultaneously with or prior to a permit to demolish a structure on the same lot of land prior to the demolition of the existing structure. No construction of the new structure shall start, including excavation, until the demolition of the existing structure and proper disposal of the resulting debris has been completed and the building inspector has closed out the demolition permit.

#### **7.2.3**

Plot plans shall show existing and approved abutting street grades, driveway locations and grades for any new construction, the proposed elevation of the top of the foundation and of existing and proposed buildings or structures and existing sewers, gas, water and other public utilities in the abutting street. 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 this By-Law, including, but not limited to, off-street parking, screening and fencing. The building inspector may waive any of the above requirements when they are not applicable. Plot plans shall be certified by a Massachusetts registered land surveyor. A record of all applications, plans and permits shall be kept on file by the Building Inspector.

#### **7.2.4**

Construction or operations under a building or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized by this permit is commenced within a period of six (6) months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

#### **7.2.5**

Permit applications for all new structures and outdoor uses, exterior additions, exterior alterations and exterior changes in all areas zoned as a Business District, Industrial District, Industrial-1 District, or Institutional District (excluding single and two-family uses), which require a building permit under the Massachusetts State Building Code – but which are not related to construction projects previously reviewed by the Design Review Board as “Major” or “Minor Projects” under Section 7.4 Site Plan Review – shall be reviewed by the Design Review Board. (See Section 7.7 Design Review of this By-Law.) Prior to application to the Building Inspector for such permits, an application to the Design Review Board for design review shall be made in accordance with the procedures described in Subsection 7.7.3. No application for such a building or use permit shall be made by the applicant nor accepted by the Building Inspector, and no such permit shall be issued, until an advisory report has been received from the Design Review Board.

### **7.3 Occupancy Permit**

#### **7.3.1**

No premises and no building erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Inspector. Such permit shall not be issued until the premises, building or structure, and its uses and accessory uses comply in all respects with this By-Law. A record of all applications and occupancy permits shall be kept on file by the Building Inspector.

#### **7.3.2**

An occupancy permit shall be conditional on the maintenance of full compliance with the provisions of this By-Law in effect at the time of issuance or with restrictions imposed in a decision of the Board of Appeals or Planning Board and shall lapse if such compliance fails.

## 7.4 Site Plan Review

### 7.4.1 Purpose

The purpose of this Section is to provide a comprehensive review procedure for construction projects, herein defined, to insure compliance with the goals and objectives of the Master Plan, and the provisions of the Zoning By-Law, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas.

### 7.4.2 Definitions

For the purposes of this Section the following definition of terms should apply to any construction project excluding single and two family homes.

**MAJOR PROJECT** – Any construction project which involves: the construction of 10,000 or more square feet gross floor area; or an increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more new off-street parking spaces.

In a Chestnut Street Business District, a **MAJOR PROJECT** is any construction project which involves: the new construction or reconstruction of any amount of gross floor area; or an increase in gross floor area of 1,000 or more square feet; or any project which results in the creation of 10 or more new off-street parking spaces; or any project which results in any new curb- or driveway-cut.

In a Business, Avery Square Business, or Hillside Avenue Business District, a **MAJOR PROJECT** is any construction project which involves a new building; or an addition which increases gross floor area of an existing building by 1,000 or more square feet; or any project which results in the creation of 10 or more new off-street parking spaces; or any project which results in any new curb- or driveway-cut.

In the Center Business District, a **MAJOR PROJECT** is any construction project which creates or adds gross floor area; or any project which involves a change in part or all of an existing building or lot from one use category to another as defined under Subsection 3.2.2 of this By-Law and which results in an increase in the number of required parking spaces by 10 or more new off-street parking spaces or which results in an increase in the required number of loading spaces; or any project which results in the construction of any additional off-street parking spaces; or any project which results in any new curb- or driveway-cut. Notwithstanding the aforementioned, if a special permit is otherwise required under Subsection 1.4 or Subsection 3.2.2 of this By-Law, the Planning Board shall be the Special Permit Granting Authority as to the use.

In the Neighborhood Business District, a **MAJOR PROJECT**, is any construction project which creates or adds gross floor area; or any project which involves a change in part or all of an existing building or lot from one use category to another as defined under Subsection 3.2.3 of this By-Law and which results in an increase in the number of required parking spaces by 4 or more

new off-street parking spaces or which results in an increase in the required number of loading spaces; or any project which results in the construction of any additional off-street parking space; or any project which results in any new curb- or driveway-cut.

In the Needham Center Overlay District, Lower Chestnut Street Overlay District, or Garden Street Overlay District, a **MAJOR PROJECT** shall be as defined above in the Center Business District.

In the Elder Services Zoning District a **MAJOR PROJECT** shall be defined as any construction project which involves the construction of 10,000 or more square feet gross floor area; or increase in gross floor area by 5,000 or more square feet; or any project which results in the creation of 25 or more off-street parking spaces; or any project that results in any new curb or driveway cut.

**MINOR PROJECT** – Any construction project which involves: the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area, after the increase, is 5,000 or more square feet – and the project cannot be defined as a Major Project.

In a Chestnut Street Business District, a **MINOR PROJECT** is any construction project which involves an increase in gross floor area of less than 1,000 square feet – and the project cannot be defined as a Major Project.

In a Business, Avery Square Business, or Hillside Avenue Business District, a **MINOR PROJECT** is any project which results in the construction of a new parking lot or expansion of an existing lot and the addition of from 1 to 9 new off-street parking spaces – and the project cannot be defined as a Major Project.

In the Center Business District, a **MINOR PROJECT** is any construction project which involves a change in the exterior façade of a building and the project is not a Major Project as defined by this By-Law. Notwithstanding any provision of this Section 7.4 requiring site plan approval by the Planning Board, any construction project which only involves a change in the exterior façade of a building shall be subject to review by and approval of the Design Review Board. Any person aggrieved by a decision of the Design Review Board may seek de novo review of the façade change from the Planning Board, which may approve or disapprove the façade change, by filing an application with the Planning Board within ten (10) days of the Design Review Board's filing of its decision with the Building Inspector. At least seven days prior to the Planning Board's meeting scheduled to review the application (see next sentence), if the aggrieved party is the original applicant, said original applicant shall post a Planning Board approved form of notice of the meeting in a publicly visible location upon the subject building and place a copy of said approved form of notice in a local paper. Within twenty (20) days of receipt of the application, the Planning Board shall hold a meeting, to which the original applicant shall be invited, for the purpose of conducting a review of the proposed façade changes. Within fifteen (15) days of the meeting, the Planning Board shall issue its decision and deliver copies of same to the applicant, the Design Review Board and the Building Inspector.

In the Medical Overlay District, a **MAJOR PROJECT** is any construction project that involves the creation of twenty (20) or more new off-street parking spaces, any project that results in any new curb or driveway cut, or an increase in gross floor area of 5,000 or more square feet. A **MINOR PROJECT** is any construction project that involves an increase in gross floor area of more than 2,500 square feet but less than 5,000 square feet, and the project cannot be defined as a Major Project.

In the Needham Center Overlay District, Lower Chestnut Street Overlay District, or Garden Street Overlay District, a **MINOR PROJECT** shall be as defined above in the Center Business District.

In the Elder Services District a **MINOR PROJECT** shall be defined as any construction project which involves the construction of more than 5,000 but less than 10,000 square feet gross floor area; or an increase in gross floor area such that the total gross floor area after the increase is 5,000 or more square feet - and the project cannot be defined as a Major Project.

In the New England Business Center, Highland Commercial-128, and Mixed Use-128 Districts a **MAJOR PROJECT** is any construction project that involves: the construction of 10,000 or more square feet gross floor area, an increase in gross floor area of 5,000 or more square feet, or any project that results in the creation of 25 or more new off-street parking spaces. A **MINOR PROJECT** is any construction project that involves the construction of more than 2,500 but less than 10,000 square feet gross floor area, an increase in gross floor area such that the total gross floor area after the increase is 5,000 or more square feet, and the project cannot be defined as a Major Project. Further, projects that require a building permit under the Massachusetts State Building Code, but which are not related to construction projects previously reviewed by the Design Review Board as “Major” or “Minor Projects” under Section 7.4 site plan review, shall be reviewed by the Design Review Board.

### **7.4.3 Requirements**

A Site Plan Review shall be performed by the Planning Board for each major and minor project prior to the filing of an application for a building permit.

**MINOR PROJECT WHICH REQUIRES A SPECIAL PERMIT FROM THE BOARD OF APPEALS UNDER SECTION 3.2** – In the case of a minor project which requires a special permit from the Board of Appeals, as identified in Section 3.2. Schedule of Use Regulations, the Planning Board shall perform a Site Plan Review and submit its recommendations to the Board of Appeals within thirty-five (35) days of the date of filing with the Planning Board; otherwise failure to make such recommendations shall be deemed a lack of opposition thereto. In the event the public hearing by the Board of Appeals is held prior to the expiration of the thirty-five (35) day period, the Board of Appeals shall continue the hearing to permit the submission of recommendations within that period. The decision of the Board of Appeals shall contain

explanatory reasons for its action if it is contrary to the recommendations of the Planning Board. The Planning Board may schedule a meeting(s) with the applicant during the review period.

**MINOR PROJECTS** – In the case of a minor project not requiring a special permit from the Board of Appeals and except as provided otherwise in Section 7.4.2 for a minor project that only involves a change in the exterior façade of a building in the Center Business District, the Planning Board shall conduct the Site Plan Review and issue a report to the applicant with a copy of said report to the Building Inspector within thirty-five (35) days from the date of filing of the Site Plan. Failure of the Board to issue said report within the 35 days shall be construed as satisfying this section.

**MAJOR PROJECTS** – No building, use or occupancy permit for any improvement to real property which constitutes a Major Project under this By-Law shall be issued, except in accordance with the terms of a special permit for such project, after site plan review as further set forth herein. A special permit shall be required for every Major Project, regardless of whether the contemplated use thereof is designated as permissible, as of right or by special permit, under the table of uses set forth in Section 3.2 of this By-Law. The special permit granting authority for all permits the issuance of which is necessary for the construction or use of a Major Project shall be the Planning Board, which, for such purposes, shall have all the powers conferred upon such special permit granting authorities by General Laws Chapter 40A, and shall conduct its business in accordance with the notice, hearing and decisional requirements there set forth, and in accordance with the requirements of this By-Law.

Prior to issuance of a Certificate of Occupancy by the Building Department, the Building Inspector or his designee shall transmit an approval of the completed project as conforming to the approved site plan special permit to the Planning Board.

#### **7.4.4 Procedure**

An application for Site Plan Review and ten (10) copies shall be submitted to the Planning Board concurrent with the submission of a copy to the Town Clerk. At the same time application materials shall be submitted to the Design Review Board, along with an application for design review, in accordance with the procedures described in Subsection 7.7.3 of Section 7.7. Design Review.

The applicant shall include in the application an itemized list of sections of the By-Law under which relief by special permit is or may be required for the construction or use of the project. The applicant shall certify either: (i) that the project can be constructed and/or the proposed use thereof commenced, without need for the issuance of any variance from any provision of this By-Law by the Zoning Board of Appeals, or (ii) that any and all variances necessary for the construction and/or use of the proposed project have been secured, and the period established by law for appeal from the granting thereof has expired without notice of any such appeal having been filed in the office of the Town Clerk.

Upon receipt of an application, the Planning Board shall transmit a set of application materials to the Department of Public Works, Town Engineer, Fire Department, Design Review Board and to any other Town agency as deemed appropriate. Within thirty-five (35) days of receipt of said application materials for Major Projects, each of the Town agencies named above shall review and recommend in writing to the Planning Board regarding the proposed Site Plan(s).

In addition to a preliminary design review report from the Design Review Board, as described in Section 7.7, the Design Review Board shall also submit a final design review report within seventy-five (75) days of the date of its having received an application for design review related to a Major Project.

In the case of Minor Projects, each of the Town agencies named above except the Design Review Board shall review and recommend in writing to the Planning Board within fifteen (15) days of receipt of said application materials regarding the proposed Site Plan. The advisory report of the Design Review Board shall be transmitted directly to the applicant and Building Inspector within thirty-five (35) days of receipt of the application for Site Plan Review.

The application for Site Plan Review shall be accompanied by a site plan with supporting documentation which shall show, among other data, the following:

- (a) locus plan;
- (b) location of structures within 100 feet of property line;
- (c) existing and proposed building showing setback from property lines;
- (d) building elevation, to include penthouses, parapet walls and roof structures; floor plans of each floor; cross and longitudinal views of the proposed structure(s) in relation to proposed site layout, together with an elevation line to show the relationship to the center of the street;
- (e) existing and proposed contour elevations in one foot increments;
- (f) parking areas, including type of space, dimensions of typical spaces, and width of maneuvering aisles and landscaped setbacks;
- (g) driveways and access to site, including width of driveways and driveways openings;
- (h) facilities for vehicular and pedestrian movement;
- (i) drainage;
- (j) utilities;
- (k) landscaping including trees to be retained and removed;

- (l) lighting;
- (m) loading and unloading facilities;
- (n) provisions for refuse removal;
- (o) projected traffic volume in relations to existing and reasonably anticipated conditions;  
and
- (p) other information as may be necessary to determine compliance with the provisions of the Zoning By-Law.

Upon request the Planning Board may, at its discretion, waive the submission by the applicant of any of the required information.

#### **7.4.6 Review Criteria**

In conducting the Site Plan Review, the Planning Board shall consider the following matters:

- (a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light, and air;
- (b) Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- (c) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- (d) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- (e) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and
- (f) Mitigation of adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection, and streets; and may require when acting as the Special Permit Granting Authority or recommend in the case of minor projects, when the Board of Appeals is



acting as the Special Permit Granting Authority, such appropriate conditions, limitations, and safeguards necessary to assure the project meets the criteria of a through f.

## **7.5 Board of Appeals**

The Board of Appeals consists of three (3) regular members and two (2) associate members as authorized and established by General Laws, Chapter 40A, the Special Home Rule Charter Act and Article VIII of the General By-Laws is the Board of Appeals intended and referred to in this By-Law. Subject to and consistent with all the authority, power and duties imposed upon the Board of Appeals by said General Laws, Special Home Rule Charter Act and the General By-Laws, said Board of Appeals shall exercise and perform the authority, powers and duties set forth therein, elsewhere in this By-Law and the following:

### **7.5.1 Appeals**

To hear and decide an appeal taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from the Building Inspector under the provisions of General Laws, Chapter 40A and/or this By-Law, by the Metropolitan Area Planning Council or by any person including an officer or board of the Town of Needham or of any abutting city or town aggrieved by an order or decision of the Building Inspector in violation of any provision of the General Laws, Chapter 40A or this By-Law.

### **7.5.2 Special Permits**

To hear and decide an application for a special permit for a use, building, structure, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity where it would not otherwise be permitted but only in those cases where this By-Law specifically refers to a change from the provisions of this By-Law by the granting of a special permit and only in those cases where the Board of Appeals makes the finding and determination set forth in subparagraph 7.5.2.1. An applicant is not entitled to a special permit and the Board of Appeals, in its discretion, may decline to grant a special permit if it is unable to make a positive finding and determination as required in subparagraph 7.5.2.1.

A special permit shall lapse within a specified period of time, not more than two years, and including any time required to pursue or await the determination of an appeal pursuant to General Laws, Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause or in the case of a permit for construction has not begun within the period except for good cause.

### **7.5.2.1 Finding and Determination**

Prior to granting a special permit, the Board of Appeals shall make a finding and determination that the proposed use, building, structure, off-street parking or loading, modification of dimensional standards, screening or landscaping, or other activity, which is the subject of the application for the special permit:

- (a) complies with such criteria or standards as may be set forth in the section of this By-Law which refers to the granting of the requested special permit;
- (b) is consistent with: 1) the general purposes of this By-Law as set forth in subparagraph 1.1, and 2) the more specific objectives and purposes applicable to the requested special permit which may be set forth elsewhere in this By-Law, such as, but not limited to, those at the beginning of the various sections;
- (c) is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

Where the Board of Appeals determines that one or more of the following objectives are applicable to the particular application for a special permit, the Board of Appeals shall make a finding and determination that the objective will be met:

- (d) the circulation patterns for motor vehicles and pedestrians which would result from the use or structure which is the subject of the special permit will not result in conditions that unnecessarily add to traffic congestion or the potential for traffic accidents on the site or in the surrounding area; and
- (e) the proposed use, structure or activity will not constitute a demonstrable adverse impact on the surrounding area resulting from:
  - 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area,
  - 2) emission or discharge of noxious or hazardous materials or substances, or
  - 3) pollution of water ways or ground water.

### **7.5.2.2 Conditions for Approval of a Special Permit**

In addition to the conditions, standards and criteria as may be set forth in the section of this By-Law that refers to the granting of the special permit, the Board of Appeals may impose additional conditions and limitations, as it deems necessary to insure that the finding and determination that it must make under subparagraph 7.5.2.1 is complied with, including but not limited to:

- (a) screening or landscaping of structures or of principal or accessory uses from view from adjoining lots or from a street, by planting, walls, fences or other devices; planting of larger planting strips, with more or larger plant materials or higher walls or fences than that required in Sections 4.2.14 and 4.4.8.5;
- (b) modification of the exterior features or appearance of a building or structure to ensure compatibility with surrounding buildings and uses;
- (c) limitations on the size, number of occupants or employees, method or hours of operation, extent of facilities or other operating characteristics of a use;
- (d) regulation of the number, design and location of access drives or other traffic features of the proposed use;
- (e) provision of a greater number of parking spaces or loading bays with estimates based on the ITE Parking Generation Manual, 2<sup>nd</sup> Edition, or an alternative technical source determined by the Board of Appeals to be equally or more applicable, but only in such cases that the Board of Appeals makes a finding that the proposed use generates parking demand in excess of that required by the By-Law;
- (f) limitations on construction activities, such as but not limited to, the hours during which construction activity may take place, the movement of trucks or heavy equipment on or off the site, measures to control dirt, dust, erosion and to protect existing vegetation on the site;
- (g) requirements for independent monitoring, at the expense of the applicant, and reporting to the Building Inspector, if necessary to insure continuing compliance with the conditions of a special permit or of this By-Law;
- (h) limitations on the period of time the special permit shall be in effect; and
- (i) such other limitation as may be reasonably related to reducing any adverse impact on, or increasing the compatibility of the proposed use, structure or activity with, the surrounding area.

### **7.5.2.3 Security for Special Permits**

The Board of Appeals, as a condition of granting a special permit may require that the performance of the conditions and observance of the safeguards of such special permit be secured by one, or in part by one and in part by the other, of the methods described in the following clauses (a) and (b). The Board of Appeals shall administer this securing of performance.

- (a) **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 Board of Appeals to secure performance of the conditions and observance of the safeguards of such special permit.
- (b) **Covenant:** By a covenant running with the land, executed and duly recorded by the owner of record, whereby the conditions and safeguards included in such special permit shall be performed before any lot may be conveyed other than by mortgage deed. Nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant of the entire parcel of land, the development of which is governed by the special permit.

#### **7.5.2.4 Reduction of Security**

Until completion of the development, the penal sum of any deposit or security held under clause 7.5.2.3 (a) above may from time to time be reduced by the Board of Appeals by an amount not to exceed 85% of the value of work originally estimated.

#### **7.5.2.5 Release of Security**

Upon the completion of the development or upon performance of the conditions and safeguards imposed by such special permit, security for the performance of which was given, the applicant shall send by registered mail to the Board of Appeals an affidavit that the conditions and safeguards in connection with which such security has been given have been complied with. If the Board of Appeals determines that the conditions and safeguards of the special permit have been complied with, it 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 appropriate instrument, duly acknowledged. If the Board of Appeals determines that the conditions or safeguards included in the special permit have not been complied with, it shall specify the conditions or safeguards with which the applicant has not complied in a notice sent by registered or certified mail, to the applicant.

#### **7.5.2.6 Board of Appeals Failure to Act**

If the Board of Appeals fails to send such a notice within sixty days after it receives the applicant affidavit, all obligations under the security shall cease and terminate, any deposit shall be returned and any such covenant become void.

#### **7.5.2.7 Applicant Failure to Complete Work**

Upon failure of the applicant to complete such work to the satisfaction of the Board of Appeals in accordance with all applicable plans, regulations and specifications, the Town shall be

entitled to enforce such bond or to realize upon such securities to the extent necessary to complete all such work without delay.

### **7.5.3 Variances**

To hear and decide a petition with respect to particular land or structures for a variance from the terms of this By-Law, including a variance authorizing a use or activity not otherwise permitted in a particular zoning district, where the Board specifically finds that owing to circumstances relating to 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 the By-Law 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 By-Law. The Board of Appeals may impose conditions, safeguards and limitations both in time and use, including the continued existence of any particular structures but excluding any condition, safeguard or limitations based upon the continued ownership of the land or structure to which the variance pertains by the applicant, petitioner or any owner. If the rights authorized by a variance are not exercised within one year of the date of the authorization, they shall lapse and may be re-established only after a new notice and hearing.

In the case of every appeal made to the Board of Appeals, every petition for a variance, and every application for a special permit to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting said notice in the Town Hall for a period of not less than fourteen days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within three hundred (300) feet of the property line including owners of land in another municipality all as they appear on the most recent applicable tax lists, the Planning Board, and the Planning Board of every abutting municipality. The assessors shall certify to the Board the names and addresses of the parties in interest.

In the case of an appeal from a decision of the Building Inspector and of a variance, a petition shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of receipt of the petition from the Town Clerk and shall render a decision within one hundred (100) days from the date of filing, unless said time limits for holding the public hearing or rendering a decision have been extended by written mutual agreement between the petitioner and the board, such agreement(s) having been filed with the Town Clerk. Failure by the Board to take final action upon a petition within the one-hundred day period, or any mutually extended time period, shall be deemed to be a grant of the appeal or the variance applied for. (See M.G.L., Ch. 40A, S.15 as amended for further procedural requirements.)

In case of a special permit, an application shall be filed with the Town Clerk who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of the filing date and shall render a decision within ninety (90) days from the date of the public hearing, unless said time limits for holding the public hearing or rendering the decision have been extended by written mutual agreement between the petitioner and the Board, such agreement(s) having been filed with the Town Clerk. Failure to take final action upon an application within the said ninety-day period shall be deemed to be a grant of the permit applied for. (See M.G.L., Ch. 40A, S. 9 as amended for further procedural requirements.)

## **7.6 Planning Board**

### **7.6.1 Special Permit Granting Authority**

The Planning Board shall act as a Special Permit Granting Authority only where so designated in Sections 3.4, 3.8, 3.9, 3.10, 3.14, 4.2.10, 4.2.11, 4.2.12, 4.4.5, 4.4.9, 4.4.10, 5.1.1.6, 6.6, 6.8 and 7.4 of this By-Law. In all other cases, the Board of Appeals shall act as the Special Permit Granting Authority. Procedures and decision criteria for the Planning Board shall be the same as specified in Section 7.5.2 and Section 7.5.3 (second and fourth paragraphs) for special permits acted on by the Board of Appeals, except where alternative or supplemental criteria are specified, such as at Sections 3.4 and 6.6.

### **7.6.2 Recommendations to the Board of Appeals**

Any application filed with the Board of Appeals under Section 7.5 hereof shall be referred upon acceptance of the application by the Board of Appeals to the Planning Board for a report and recommendation relative thereto as provided by General Laws, Chapter 41, Section 81-I, and Chapter 40A, Section 11. The Planning Board shall make its report to the Board of Appeals by the date of the public hearing. Failure to make recommendations within thirty-five (35) days of receipt of the application by the Planning Board shall be deemed lack of opposition thereto.

## **7.7 Design Review**

### **7.7.1 Purpose**

It is the intent of this Section to provide for a detailed design review of structures and that aspect of design related to uses having substantial impact on the Town, upon its traffic, infrastructure and property values, thereby affecting the public health, safety and general welfare; to prevent blight; to enhance the natural and aesthetic qualities of the Town; to conserve the value of land and buildings; and to protect and preserve the historic and cultural heritage of the Town.

## **7.7.2 Design Review Board**

### **7.7.2.1 Composition**

For the purposes of this Section 7.7, there shall be a Design Review Board appointed by the Planning Board and Board of Selectmen and consisting of five regular members plus two alternate members. Three regular members of the Design Review Board shall be appointed by the Planning Board and two regular members plus the two alternate members shall be appointed by the Board of Selectmen. Each of the persons appointed shall be a resident of the Town of Needham. In part, the persons appointed as regular members shall have the following backgrounds and skills:

- (a) Two members qualified by training or education and experience in the art or design professions – one to be appointed by the Planning Board and one by the Board of Selectmen;
- (b) One member qualified by training or education and experience in the fine arts or landscape design to be appointed by the Planning Board;
- (c) One member doing retail business in the Town to be appointed by the Board of Selectmen.

Upon the initial formation of the Board, the Planning Board and Board of Selectmen shall appoint two alternates and one regular member to 1-year terms, two regular members to 2-year terms, and two regular members to 3-year terms; their successors shall be appointed for terms of three years. Three members shall constitute a quorum for meetings, and all actions of the Design Review Board shall require an affirmative vote of three or more members. In the event a regular member is unable or refuses to sit, the Chairman of the Design Review Board shall designate an alternate to sit in place of that absent member.

### **7.7.2.2 Authority and Specific Powers**

The Design Review Board shall review requests for site plan review and approval submitted in accordance with Section 7.4 Site Plan Review and requests for special permits in accordance with Section 4.2.11 Planned Residential Development, Section 4.2.10 Flexible Development and Section 6.11 Retaining Walls and, for a minor project that only involves a change in the exterior façade of a building in the Center Business District, shall review and may approve such façade change.

The Design Review Board shall review permit applications for all new structures and outdoor uses, exterior additions, exterior alterations and exterior changes in all areas zoned as a Business District, Chestnut Street Business District, Lower Chestnut Street Overlay District, Garden Street Overlay District, Center Business District, Needham Center Overlay District, Avery Square Business District, Hillside Avenue Business District, Neighborhood Business District, New England

Business Center District, Highland Commercial-128 District, Mixed Use-128 District, Industrial District, Elder Services Zoning District, Industrial-1 District, or Institutional District (excluding single and two-family uses), which require a building permit under the Massachusetts State Building Code – but which are not related to projects previously reviewed as “Major” or “Minor Projects” under Site Plan Review. The Design Review Board shall also review requests for all sign permits, as required under Article 5 of the Needham General By-Laws.

It shall evaluate such requests based on Subsection 7.7.4 Design Criteria below. Its findings and recommendations, along with any suggested restrictions and conditions, shall be transmitted to the applicant and Planning Board, acting as a special permit granting authority for “Major Projects” under Site Plan Review, Planned Residential Developments and Flexible Developments and to the applicant and Board of Appeals, acting as a special permit granting authority, under Section 6.11 Retaining Walls. Such advisory reports of the Design Review Board shall be transmitted to the Building Inspector and applicant in all other instances as described in the two paragraphs above for “Minor Projects” under Site Plan Review, building permits in all non-residential districts and sign permits. For a minor project that only involves a change in the exterior of a building in the Center Business District, the Design Review Board shall be the review and approval entity for such façade changes.

### **7.7.3 Procedure**

An application for Design Review shall be submitted to the Design Review Board simultaneously with any application submitted to the Planning Board for Site Plan Review, Planned Residential Development or Flexible Development, or prior to any application for a building permit or any construction activity as described in the second paragraph of Subsection 7.7.2.2 (See Section 7.2 of the By-Law for application procedure for such building permits and Article 5 of the General By-Laws for application procedure for all sign permits.)

Within twenty (20) days of receipt of a Design Review application, the Design Review Board shall hold a meeting, to which the applicant shall be invited, for the purpose of conducting a review of the proposed project or activity. Within fifteen (15) days of the meeting, a preliminary design review report shall be sent both to the applicant and to the Planning Board, when a special permit is required under Sections 7.4, 4.2.11 and 4.2.10. However, if the proposed project or activity involves only a building permit or sign permit from the Building Inspector, or is a “Minor Project” under Site Plan Review (all as described in Subsection 7.7.2.2), no preliminary report is required and the written advisory report of the Design Review Board to the applicant and the Building Inspector shall be a final report.

In connection with the Design Review Board’s authority to review and approve exterior façade changes in the Center Business District pursuant to Section 7.4.2, an application shall be submitted to the Design Review Board. At least seven days prior to the Design Review Board meeting scheduled to review the application (see next sentence), the applicant shall post a Planning Board approved form of notice of the meeting in a publicly visible location upon the subject building and place a copy of said approved form of notice in a local paper. Within twenty (20) days



of receipt of the application, the Design Review Board shall hold a meeting, to which the applicant shall be invited, for the purpose of conducting a review of the proposed exterior façade changes. Within fifteen (15) days of the meeting, the Design Review Board shall issue its decision and deliver copies of same to the applicant, the Planning Board and the Building Inspector.

In the case of a Special Permit for Site Plan Review, Planned Residential Development or Flexible Development, a preliminary design review report shall be submitted to the Planning Board, with a copy to the applicant, within thirty-five (35) days of the date of receipt of the application. A final advisory report shall be issued to the applicant and to the Planning Board within seventy-five (75) days of the date of receipt of the application for Design Review.

In addition to the submission materials listed in Sections 4.2.11 Planned Residential, 7.4 Site Plan Review or 7.2 Building or Use Permit, respectively, an application for Design Review shall contain the requisite number of materials listed in the “Rules and Regulations” of the Design Review Board.

#### **7.7.4 Design Criteria**

The Design Review Board shall review requests for site plan reviews and special permits, as well as for building permits for certain construction activities, all as described in Subsection 7.7.2.2, based on the following standards:

- (1) Preservation and enhancement of landscaping – The landscaping shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- (2) Relation of buildings to environment – Proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings with respect to:
  - (a) height
  - (b) street façade
  - (c) spatial relationships of solids and voids
  - (d) spacing of buildings or signs
  - (e) materials, textures and colors
  - (f) roof slopes
  - (g) scale
- (3) Open Space – All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby area properties.

- (4) Signs and advertising devices – The size, location, design, color, texture, lighting and materials of signs and advertising devices shall be in harmony with significant architectural features of existing and proposed buildings and structures and with surrounding properties.
- (5) Heritage – Protection and enhancement of historic, traditional or significant uses, structures, or architectural elements shall be considered insofar as practicable.

In addition, to paragraph (4) above, the Design Review Board shall review requests for sign permits according to the design guidelines listed in Section 3.5 of Article 5 of the General By-Laws.

For requests for site plan reviews and special permits in the Needham Center Overlay District, the Lower Chestnut Street Overlay District and the Garden Street Overlay District, the Design Review Board shall consider, in addition to paragraphs (1) through (5) above, the design guidelines set forth in Sections 3.8, 3.9 and 3.10 of this By-Law.

## **7.8 Repetitive Petitions**

### **7.8.1**

No proposed change in this By-Law which has been unfavorably acted upon by the Town Meeting shall be considered on its merits 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.

### **7.8.2**

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 years after the date of final unfavorable action unless (1) all but one of the members of the Planning Board consent to a repetition after notice is given to parties in interest of the time and place of the proceedings to consider consent and (2) the Board of Appeals finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records and similarly consents.

## **7.9 Penalties**

Any person, firm or corporation violating any section or provision of this By-Law shall be subject to a fine not exceeding one hundred dollars (\$100.00) for the first offense and three hundred dollars (\$300.00) for each subsequent offense. Each day, or part thereof, that any violation continues shall constitute a separate offense.

## **7.10 Amendment**

This By-Law may be amended from time to time at an Annual or Special Town Meeting. An amendment may be initiated by the submission to the Board of Selectmen of a proposed change by the Board of Selectmen, the Board of Appeals, an individual owning land in the Town to be affected by the amendment, registered voters of the Town pursuant to General Laws, Chapter 39, Section 10, the Planning Board and the Metropolitan Area Planning Council. Within fourteen (14) days of the receipt of the proposed change, the Board of Selectmen shall submit it to the Planning Board. A public hearing shall be held within sixty-five (65) days after the proposed change is submitted to the Board.

## **7.11 Severability**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provisions thereof.

## **7.12 Effective Date**

The effective date of an amendment to this By-Law shall be the date on which such amendment was adopted by a favorable two-thirds vote of Town Meeting, subject to its approval by the Attorney General and its publication in a town bulletin or pamphlet and posting or publication in a newspaper pursuant to General Laws, Chapter 40, Section 32.

# **8. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana**

## **8.1 Purpose**

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved Chapter 334 of the Acts of 2016, which was amended by Chapter 351 of the Acts of 2016, regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. The law as amended provides that it is effective on December 15, 2016 and the Cannabis Control Commission is required to issue regulations regarding implementation by March 15, 2018.

Currently under the Zoning By-Law, Recreational Marijuana Establishments and Marijuana Retailers are not a permitted use in the Town and any regulations promulgated by the State Cannabis Control Commission are expected to provide guidance to the Town in regulating Recreational Marijuana Establishments and Marijuana Retailers. Further, Chapter 334 establishes two important provisions that relate to ballot action that the Town may wish to take prior to the adoption of Zoning By-Law amendments relating to Recreational Marijuana Establishments. First, under Section 3 of General Laws Chapter 94G inserted by Section 5 of Chapter 334 the Town may,

by ballot, determine whether it will adopt a By-Law that will limit the number of marijuana establishments in the Town or govern the time, place and manner of marijuana establishment operations in such a way as to require a vote of the voters of the Town and second, by ballot that cannot occur prior to November 6, 2018, the next biennial state election, on whether to allow on-site consumption of marijuana products.

The regulation of Recreational Marijuana Establishments and Marijuana Retailers raise novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and Marijuana Retailers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning By-Law regarding regulation of Recreational Marijuana Establishments and Marijuana Retailers and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments and Marijuana Retailers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning By-Law in a manner consistent with sound land use planning goals and objectives.

## **8.2 Definitions**

“Manufacture”, to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

“Marijuana accessories”, equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

“Marijuana cultivator”, an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

“Marijuana establishment”, a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, not including any registered or medical marijuana dispensary as authorized by Chapter 369 of the Acts of 2012 – An Act for the Humanitarian Medical Use of Marijuana or as regulated by Massachusetts Department of Public Health Regulations 105 CMR 725.000.

“Marijuana product manufacturer”, an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

“Marijuana products”, products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

“Marijuana testing facility”, an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

“Marijuana retailer”, an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers, not including any registered or medical marijuana dispensary as authorized by Chapter 369 of the Acts of 2012 – An Act for the Humanitarian Medical Use of Marijuana or as regulated by Massachusetts Department of Public Health Regulations 105 CMR 725.000.

### **8.3 Temporary Moratorium.**

For the reasons set forth above and notwithstanding any other provision of the Zoning By-Law to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments and Marijuana Retailers and the sale of marijuana, but not including any marijuana sold for medical purposes by a registered or medical marijuana dispensary as authorized by Chapter 369 of the Acts of 2012 – An Act for the Humanitarian Medical Use of Marijuana or as regulated by Massachusetts Department of Public Health Regulations 105 CMR 725.000. The moratorium shall be in effect through December 31, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and Marijuana Retailers and related uses, determine whether the town shall limit the number of marijuana establishments in the Town or govern the time, place and manner of marijuana establishment operations, determine whether the town will prohibit on-site consumption at Recreational Marijuana Establishments and Marijuana Retailers and shall consider adopting new provisions of the Zoning By-Law to address the impact and operation of Recreational Marijuana Establishments and Marijuana Retailers and related uses.

### **8.4 Severability.**

The provisions of this By-Law are severable. If any provision, paragraph, sentence, or clause of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid.